



MAYOR & COUNCIL COMMUNICATION

DATE: December 2, 2014
REGULAR
ITEM # 14

AGENDA ITEM: 2835 Legion Avenue – Request to Connect to Legion Avenue 201 Wastewater System (Old Village Remote A)
SUBMITTED BY: Ryan Stempski, Assistant City Engineer
THROUGH: Dean A. Zuleger, City Administrator
REVIEWED BY: Jack Griffin, City Engineer
Cathy Bendel, Finance Director
Mike Bouthilet, Public Works

SUGGESTED ORDER OF BUSINESS:

- Introduction of ItemCity Engineer
- Report/Presentation.....City Engineer
- Questions from Council to Staff.....Mayor Facilitates
- Public Input, if Appropriate Mayor Facilitates
- Call for Motion Mayor & City Council
- Discussion Mayor & City Council
- Action on Motion..... Mayor Facilitates

POLICY RECOMMENDER: Engineering/Public Works

FISCAL IMPACT: None

The property owner at 2835 Legion Avenue will be required to pay an up-front system buy-in cost of \$7,520; will need to obtain a sewer connection permit and pay the permit fee; and will be required to extend and connect to the City 201 Wastewater System at their own cost. Upon connection, the property owner will be billed the applicable wastewater system user charges.

SUMMARY AND ACTION REQUESTED:

The City Council is respectfully requested to consider a request from Scott and Cindy Baerman at 2835 Legion Avenue to connect to the City’s 201 Wastewater System located along Legion Avenue. The recommended motion for the action is as follows:

“Move to approve an Assessment Agreement for 2835 Legion Avenue to Connect to the 201 Wastewater System (Old Village Remote A).”

LEGISLATIVE HISTORY/BACKGROUND INFORMATION:

The City was recently contacted by Scott Baerman, property owner at 2835 Legion Avenue, regarding ongoing performance issues with his septic system. The property owner referenced a non-compliant Septic System Compliance Report by Inspect Minnesota & Midwest Soil Testing dated May 6, 2009. This report identified issues with bottomless tanks, a lack of three foot separation between the bottom of the seepage bed and seasonally saturated soils. The system is referenced as an imminent threat to public health and safety because of the unsafe manhole covers.

The property owner was given the following three options by Washington County:

1. Replace the system in its entirety.
2. Abandon the current system and install holding tanks. The holding tanks will be a temporary measure until City sewer becomes available in the future.
3. Hook up to the City 201 Wastewater System.

An Assessment Agreement to connect the City 201 Wastewater System was drafted and provided to the property owner. The system buy-in cost was determined by staff by using the assessment costs charge to current system users at the time the system was constructed and indexing those costs to today's dollar amounts. Upon review of this agreement, the property owner has formally requested permission to connect to this system pursuant the terms of the Assessment Agreement.

RECOMMENDATION:

Staff is recommending the City Council approve an Assessment Agreement for 2835 Legion Avenue to connect to the City 201 Wastewater System. The recommended motion for the action is as follows:

“Move to approve an Assessment Agreement for 2835 Legion Avenue to Connect to the 201 Wastewater System (Old Village Remote A).”

ATTACHMENT(S):

1. Legion Avenue 201 Wastewater System (Old Village Remote A) Record Drawing.
2. Assessment Agreement
3. Septic System Compliance Report by Inspect Minnesota & Midwest Soil Testing, dated May 6, 2009.

Return To:
David K. Snyder, Esq.
JOHNSON / TURNER ATTORNEYS AT LAW
56 East Broadway Avenue, Suite 206
Forest Lake, MN 55025

DRAFT – NOVEMBER 14, 2014

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

ASSESSMENT AGREEMENT

THIS AGREEMENT, made and entered into this ____ day of _____, 2014, by and between the City of Lake Elmo, a Minnesota municipality organized under the laws of the State of Minnesota (hereinafter referred to as "City"); and Scott and Cindy Baerman, owners of the property located at 2832 Legion Avenue N., Lake Elmo MN, 55042 (hereinafter referred to as "Applicant").

WITNESS:

WHEREAS, the City Council of the City has, by council action taken on _____ approved a request by Applicant to connect to the City's 201 Wastewater Treatment System, Remote A located on Legion Avenue North due to a noncompliant system located on their property; and,

WHEREAS, it is the policy of the City to enter into development contracts as contemplated in Minnesota Statutes §462.358, Subd. 2(a); and,

WHEREAS, the parties hereto desire to set forth their respective rights and obligations.

NOW, THEREFORE, in consideration of the premises and of the mutual promises and conditions contained herein, it is agreed by the parties hereto as follows:

1. The Council has approved the Applicant's request to connect to the Remote A 201 wastewater treatment system for a treatment system buy-in cost of \$7,520 to be paid before the connection is made.

2. The applicant is responsible for performing the work and incurring all costs for constructing their sanitary sewer service line and connecting to the City's 2.5-inch low pressure forcemain located within the right of way of Legion Avenue North.

3. The applicant must retain a licensed contractor and obtain a sewer connection permit before commencing the work. The sewer connection permit must include a scaled drawing showing the work to be performed in accordance with the state building code requirements, including curb stop and valve locations, to be reviewed and approved by the City Building Official.

4. At the time that the City notifies the Applicant that the public sanitary sewer is or was made available, then the Applicant shall, within six (6) months, connect to public sanitary sewer. Applicant agrees that in connection with any assessment proceeding, the value conferred on the Applicant's property by the availability of public sewer shall be determined based upon the fact that no permanent septic system serves the property and that the 201 wastewater treatment system connection is temporary and would no longer be useable once sanitary sewer is furnished to the property.

5. Warranty of Title. Applicant warrants and represents to the City that it is the fee owner(s) of the Subject Parcel described herein and that it has authority to execute this Assessment Agreement and agree to the conditions hereof.

6. Binding Effect. This Agreement shall be deemed to be a restrictive covenant and the terms and conditions hereof shall run with the lands described herein, and be binding on and inure

to the benefit of the heirs, representatives and assigns of the parties hereto, and shall be binding upon all future owners of all or any part of the subject property, and shall be deemed covenants running with the land. Reference herein to the Applicant, if there be more than one, shall mean each and all of them.

This Agreement shall be placed of record so as to give notice hereof to subsequent purchasers, the cost of said recording shall be borne by the Applicant and charged against the escrow account.

7. Notices. Any notice or other communication that either party wishes or must give to the other shall be deemed duly given: (i) on the date of personal delivery or (ii) two (2) days following mailing by certified mail, postage prepaid, return receipt requested, to the following addresses of the parties or to such other address as either party shall designate to the other:

City of Lake Elmo:

Adam Bell, City Clerk
City of Lake Elmo
3800 Laverne Avenue North
Lake Elmo, MN 55042

Applicant:

Scott and Cindy Baerman
2832 Legion Avenue North
Lake Elmo, MN 55042

8. Governing Law. This Agreement shall be interpreted in accordance with and be governed by the laws of the State of Minnesota.

9. Entire Agreement. This Agreement sets forth the entire agreement of the parties hereto and supersedes all prior agreements and understandings between the parties with respect to the matters contained herein.

10. Amendment, Modification or Waiver. No amendment, modification or waiver of

any condition, provision or term herein shall be valid or of any effect unless made in writing, signed by the party or parties to be bound or by a duly authorized representative thereof and specifying with particularity the extent and nature of such amendment, modification and waiver.

IN WITNESS WHEREOF, the City and Applicant have caused this Agreement to be duly executed on the day and year first above written.

[SIGNATURES ON FOLLOWING PAGE(S)]

APPLICANT

Scott Baerman

Cindy Baerman

STATE OF MINNESOTA)
) ss.
COUNTY OF WASHINGTON)

On this _____ day of _____, 2014, before me, a Notary Public, within and for said County and State, personally appeared Scott Baerman and Cindy Baerman, husband and wife, who signed the foregoing instrument and acknowledged said instrument to be their free act and deed.

Notary Public

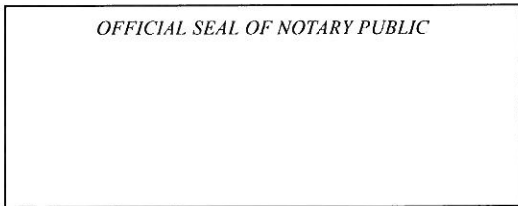
CITY OF LAKE ELMO

By: _____
Mike Pearson
Its: Mayor

By: _____
Adam Bell
Its: Clerk

STATE OF MINNESOTA)
) ss.
COUNTY OF WASHINGTON)

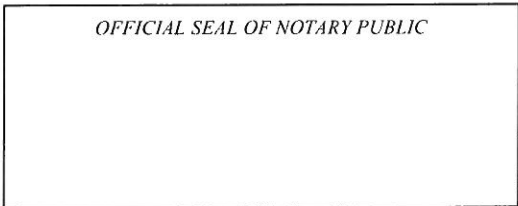
The foregoing instrument was acknowledged before me this ____ day of _____, 2014, by Mike Pearson, the Mayor of the City of Lake Elmo, a Minnesota municipal corporation, on behalf of said City with full authority so to do.



SIGNATURE OF NOTARY PUBLIC

STATE OF MINNESOTA)
) ss.
COUNTY OF WASHINGTON)

The foregoing instrument was acknowledged before me this ____ day of _____, 2014, by Adam Bell, the Clerk of the City of Lake Elmo, a Minnesota municipal corporation, on behalf of said City with full authority so to do.



SIGNATURE OF NOTARY PUBLIC

DRAFTED BY:
David K. Snyder, Esq.
JOHNSON / TURNER ATTORNEYS AT LAW
56 East Broadway Avenue, Suite 206
Forest Lake, MN 55025
(651) 464-7292

Inspect Minnesota & Midwest Soil Testing

Brian Humpal - President - MPCA Licensed Designer, Inspector, Installer, and Pumper

May 7, 2009

Mr. Brad Hetlund
Keller Williams Realty
659 Bielenberg Drive Suite 100
Woodbury, MN 55125

Subject: Septic System at 2832 Legion Ave, Lake Elmo, MN


Dear Brad:

Please find attached septic system report for subject property.

I am sending a copy of the enclosed septic report to your client who has paid for our services at the time of the inspection.

Thank you very much for allowing me to do this work. Please contact me should you have any questions.

Sincerely,



Brian Humpal

Copies: Mr. Scott Baerman - Buyer
Mr. Karl Horning - City of Lake Elmo

Inspect Minnesota & Midwest Soil Testing

P.O. Box 383 Hugo, MN 55038
651-493-2682

Brian Humpal
MPCA Licensed Designer & Inspector

SEPTIC SYSTEM COMPLIANCE REPORT

Date: May 6, 2009 **Time:** 10:00 AM **Owner:** Elizabeth & Theodore Olson
Inspection Address: 2832 Legion Ave, Lake Elmo, MN 55042

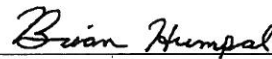
REPORT SUMMARY

I have performed an "MPCA Compliance Inspection" on this septic system, have reviewed the sellers "private sewer system disclosure" statement, and have reviewed the limited design/permit records on file at the City of Lake Elmo. This system consists of a bottomless septic tank, a bottomless lift tank, and a gravity seepage bed (bottomless septic tanks are considered to be cesspools by the MPCA). The septic tanks were most likely installed in 1970 when the house was built and the seepage bed was installed in 1981, with an addition to the bed in 1996.

My inspection indicates that this system is presently "non-compliant" in accordance with MPCA rules 7080.1500 Subp.4(B)(D) because of the bottomless tanks (cesspools) and also the lack of the required three foot separation between the bottom of the seepage bed and seasonally saturated soils. This system is also an imminent threat to public health and safety per MPCA rule 7080.1500 Subp. 4(A) because of the unsafe manhole covers.

In accordance with MPCA rules, I am sending a copy of this complete report to the City of Lake Elmo. I am not sure of the City's requirements on the upgrading of these non-compliant systems and cannot officially speak on behalf of the City. Please contact City of Lake Elmo Building Inspector, Mr. Karl Horning, (651-777-5510) to verify the City's position.

Please advise buyer, agents, lender, etc. to contact me at any time should they have any questions regarding this system.



Brian Humpal

NOTE: This report is not complete without the inclusion/attachment of the additional pages which consist of up to five (5) MPCA drafted Compliance Inspection Documents, one (1) Homeowner/Occupant Information Sheet (when obtainable), one (1) site diagram, one (1) log of soil boring(s), one (1) Brian L. Humpal, Inc. Disclaimer Sheet, and one (1) MPCA License.



Minnesota Pollution Control Agency

520 Lafayette Road North
St. Paul, MN 55155-4194

Compliance Inspection Form

Existing Subsurface Sewage Treatment Systems (SSTS)

Instructions on page 7

Parcel number: _____

System status: Compliant Noncompliant
(based on all compliance requirements)

For Local Tracking Purposes:

Summary Form

Property Information

Property owner name(s): Elizabeth & Theodore Olson
 Property address: 2832 Legion Ave, Lake Elmo, MN 55042
 Property owner's address (if different): Unknown
 County: Washington Property owner phone: Unknown Permitting authority: Lake Elmo
 Date system constructed: 70, 81, 96 Reason for inspection: Property Sale

System Description

Brief system description: Bottomless septic & lift tank, gravity seepage bed (bottomless tanks are considered cesspools by the MPCA)
 Local permit number: 96-165 Number of bedrooms: 3 Design flow rate: Unknown

Is the system:

In Shoreland area? Yes No In Wellhead Protection Area? Yes No
 An U.S. Environmental Protection Agency (EPA) Class V Injection Well? Yes No System serving a Minnesota Department of Health (MDH) licensed facility? Yes No

Compliance Status (Based on state requirements – additional local requirements may also apply.)

Based on the information gathered and reported on attached forms, the compliance status of this system is (check one):

Certificate of Compliance – valid until (3 years from date of report): _____
 Notice of Noncompliance - For Noncompliant systems:

The reason for noncompliance is: Bottomless septic tank, bottomless lift tank, lack of the required three foot separation between the bottom of the seepage bed and seasonally saturated soils, unsafe manhole covers

This noncompliant system is classified as (check one below):

Imminent threat to public health & safety Failing to protect ground water Not in compliance with operating permit

Certification (Completed form must be submitted to the local unit of government within 15 days.)

I hereby certify that all the necessary information has been gathered to determine the compliance status of this system. No determination of future system performance has been nor can be made due to unknown conditions during system construction, possible abuse of the system, inadequate maintenance, or future water usage.

Name: Brian Humpal Certification number: C5342

Business license name and number: Inspect Minnesota, Midwest Soil Testing - L2896 or

Name of local unit of government: _____

Signature: Brian Humpal Date: 5/7/09

Required Attachments

Inspector Complete: **This Inspection Report is 10 pages long.**

Check compliance forms attached: Hydraulic Performance Tank Integrity Soil Separation Operating Permit Form (if applicable) System drawing/As-built drawing An assessment of any local requirements that are different from what is required on this form Soil Boring Logs Abandonment form (if appropriate) Other information (list):

Report Summary, Property Information, Disclaimer, License

Upgrade Requirements (derived from Minn. Stat. § 115.55) An imminent threat to public health and safety (ITPHS) must be upgraded, replaced, or its use discontinued within ten months of receipt of this notice or within a shorter period if required by local ordinance. If the system is failing to protect ground water, the system must be upgraded, replaced, or its use discontinued within the time required by local ordinance. If an existing system is not failing as defined in law, and has at least two feet of design soil separation, then the system need not be upgraded, repaired, replaced, or its use discontinued, notwithstanding any local ordinance that is more strict. This provision does not apply to systems in shoreland areas, Wellhead Protection Areas, or those used in connection with food, beverage, and lodging establishments as defined in law.

Parcel number: _____

System status: Compliant Noncompliant
(as determined by this form)

Hydraulic Performance and Other Compliance

Compliance Issue #1 of 4

Date of observation: 5/6/09 Reason for observation: Property Sale

This form expires upon next inspection or in three years, whichever occurs first: 5/6/2012

Compliance questions/criteria: (Required)
(Check the appropriate box)

Does the system discharge sewage to the ground surface?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Does the system discharge sewage to drain tile or surface waters?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Does the system cause sewage backup into dwelling or establishment?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Do other situations exist that have the potential to immediately and adversely impact or threaten public health or safety (electrical, unsafe covers, etc.)?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Any "yes" answer indicates that the system is an imminent threat to public health and safety.	
Does the system pose a threat to ground water for any conditions deemed non-protective as determined by the inspector?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

"Yes" indicates that the system is failing to protect ground water. If "yes", describe the condition noted:

Bottomless tanks (cesspools)
Lack of the required three foot separation between the bottom of the drainfield and seasonally saturated soils

Verification Method*: (Optional)
(Check the appropriate box)

- Searched for surface outlet
- Performed hydraulic test
- Searched for seeping in yard
- Checked for backup in home
- Excessive ponding in soil system/D-boxes
- Homeowner testimony
- Examined for surging in tank
- "Black soil" above soil dispersal system
- System requires "emergency" pumping
- Performed dye test
- Other: None of the above found

** No standard protocol exists. This list is not exhaustive, in sequential order, nor does it indicate which combinations are necessary to make this determination.*

Certification

This form is to be completed and attached to the Summary Form of the Minnesota Pollution Control Agency's (MPCA) **Compliance Inspection Form for Existing Subsurface Sewage Treatment Systems**. Observations, interpretations, and conclusions must be completed by an inspector. Completed form must be submitted to the local unit of government within 15 days.

Property owner name(s): Elizabeth & Theodore Olson

Property address: 2832 Legion Ave, Lake Elmo, MN 55042

Property owner's address (if different): Unknown

County: Washington Phone: Unknown

I hereby certify that I personally made the observations, interpretations, and conclusions reported on this form and that they are correct.

Name: Brian Humpal Certification number: C5342

Business license name and number: Inspect Minnesota, Midwest Soil Testing - L2896 or

Name of local unit of government: _____

Signature: Brian Humpal Date: 5/7/09

Parcel number: _____

System status: Compliant Noncompliant
(as determined by this form)

Tank Integrity and Safety Compliance

Compliance Issue #2 of 4

Date of observation: 5/6/09 Reason for observation: Property Sale

This form expires on (three years): 5/6/2012

Compliance questions/criteria: (Required) (Check the appropriate box)

Does the system consist of a seepage pit*, cesspool, drywell, or leaching pit?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Do any sewage tank(s) leak below their designed operating depth?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

If yes, identify which sewage tank leaks. All Tanks
Any "yes" answer indicates that the system is failing to protect ground water.

* Seepage pits meeting 7080.2550 may be compliant if allowed in ordinance by local permitting authority.

Verification Method** (Optional) (Check the appropriate box)

- Probed tank bottom
- Observed low liquid level
- Examined construction records
- Examined empty (pumped) tank
- Probed outside tank for "black soil"
- Pressure/vacuum check
- Other: _____

** No standard protocol exists. This list is not exhaustive, in sequential order, nor does it indicate which combinations are necessary to make this determination.

Safety Check

1. Are any maintenance hole covers damaged, cracked, or appeared to be structurally unsound? Yes* No
2. Were all maintenance hole covers replaced in a secured manner (e.g., all screws replaced)? Yes No*
3. Was secondary access restraint present (safety pan, second cover, or safety netting) – highly recommended. Yes No
4. Was any other safety/health issue present? Yes* No

Explain: Manhole covers are unsafe and can easily be removed

***System is an imminent threat to public health and safety.**

Certification

This form is to be completed and attached to the Summary Form of the Minnesota Pollution Control Agency's (MPCA) **Compliance Inspection Form for Existing Subsurface Sewage Treatment Systems**. Observations, interpretations, and conclusions must be completed by an inspector, maintainer, or service provider. Completed form must be submitted to the local unit of government within 15 days.

Property owner name(s): Elizabeth & Theodore Olson

Property address: 2832 Legion Ave, Lake Elmo, MN 55042

Property owner's address (if different): Unknown

County: Washington Phone: Unknown

I hereby certify that I personally made the observations, interpretations, and conclusions reported on this form and that they are correct.

Name: Brian Humpal Certification number: C5342

Business license name and number: Inspect Minnesota, Midwest Soil Testing - L2896 or

Name of local unit of government: _____

Signature: Brian Humpal

Date: 5/7/09

Parcel number: _____

System status: Compliant Noncompliant
(as determined by this form)

Soil Separation Compliance and Other Compliance

Compliance Issue #3 of 4

Date of observation: 5/6/09 Reason for observation: Property Sale

This information on this form does not expire.

Compliance questions/criteria: (Required)
(Check the appropriate box)

For systems built prior to April 1, 1996, and not located in Shoreland or Wellhead Protection Area or not serving a food, beverage or lodging establishment:

Does the system have at least a two-foot vertical separation distance from periodically saturated soil or bedrock?

Yes No

For non-performance systems built April 1, 1996, or later or for non-performance systems located in Shoreland or Wellhead Protection Areas or serving a food, beverage or lodging establishment:

Does the system have a three-foot vertical separation distance from periodically saturated soil or bedrock?*

Yes No

For reduced separation distance systems (i.e., "performance" systems under old 7080.0179 or Type IV or V system under new 7080.2350 or 7080.2400):

Does the system meet the designed vertical separation distance from periodically saturated soil or bedrock?*

Yes No

Any "no" answer indicates that the system is failing to protect ground water.

Verification Method:** (Optional)

(Check the appropriate box)

Conducted soil observation(s) (attach boring logs)

Two previous verifications (attach boring logs)

Other: _____

Soil observation does not expire. Previous observations by two independent parties are sufficient, unless site conditions have been altered.

* May be reduced by up to 15 percent if allowed in local ordinance.

** No standard protocol exists. This list is not exhaustive, in sequential order, nor does it indicate which combinations are necessary to make this determination.

Certification

This form is to be completed and attached to the Summary Form of the Minnesota Pollution Control Agency's (MPCA) **Compliance Inspection Form for Existing Subsurface Sewage Treatment Systems**. Observations, interpretations, and conclusions must be completed by an inspector or designer. Completed form must be submitted to the local unit of government within 15 days.

Property owner name(s): Elizabeth & Theodore Olson

Property address: 2832 Legion Ave, Lake Elmo, MN 55042

Property owner's address (if different): Unknown

County: Washington Phone: Unknown

I hereby certify that I personally made the observations, interpretations, and conclusions reported on this form and that they are correct.

Name: Brian Humpal Certification number: C5342

Business license name and number: Inspect Minnesota, Midwest Soil Testing - L2896 or

Name of local unit of government: _____

Signature: *Brian Humpal*

Date: 5/7/09

Inspect Minnesota & Midwest Soil Testing

Septic System Owner/Occupant Information

The following information must be provided by the legal Owner or authorized representative.
The information will be used for the purpose of conducting an MPCA Compliance Inspection.

Date of Inspection 5-6-09 Time 10:00 AM
Property Address 2832 Legion Ave
Lake Elmo, MN Zip 55042
Property Owner Elizabeth + Theodore Olson Phone _____

(Check appropriate sewer system component and indicate on site sketch on back of form).

<u>Tank(s)</u>	<u>Tank(s) Material</u>	<u>Soil Treatment System</u>	<u>Other</u>
<input checked="" type="checkbox"/> Septic	<input type="checkbox"/> fiberglass	<input type="checkbox"/> rock trench	<input type="checkbox"/> alternative system
<input type="checkbox"/> Aerobic	<input type="checkbox"/> plastic	<input type="checkbox"/> gravelless trench	<input type="checkbox"/> experimental system
<input checked="" type="checkbox"/> Pump	<input type="checkbox"/> metal	<input type="checkbox"/> chamber trench	<input type="checkbox"/> drywell system
<input type="checkbox"/> Holding	<input type="checkbox"/> concrete	<input checked="" type="checkbox"/> seepage bed Gravity	<input type="checkbox"/> other system
	<input checked="" type="checkbox"/> block	<input type="checkbox"/> mound	
	<input checked="" type="checkbox"/> other <u>bottomless</u>	<input type="checkbox"/> at-grade	

Have any other compliance inspections been done on this system? _____ When/why/who? _____

Year house built 1970 Year septic installed 70, 81, 96 Tank size 900 est gals.

How long has seller lived in home? _____ Number of residents in home? _____

More than one system (laundry, etc.)? N Number of bedrooms? 3

Garbage disposal? N Whirlpool bath? Y Are all floors drained by gravity? Y

Does this property have any footing drain tiles connected to the septic system? N

Do any buildings on this property such as garages, workshops, etc. have floor drains connected to the septic system? N

Location of septic system on lot? Tanks North, Drainfield East

Location of water well on lot? City Water Is the well a deep well? N/A

Have you ever experienced any problems with the system such as tree roots, sewage back-ups in floor drains, sinks, toilets, etc.; sewage odors inside/outside of property, surfacing of sewage onto the ground, septic tank overflowing, etc., or have any repairs been made to the system? _____

If yes, explain _____

When was the system last pumped? 2007 Name of pumper _____

How often pumped in previous years? every 2-3 Is system on a monitoring plan? _____

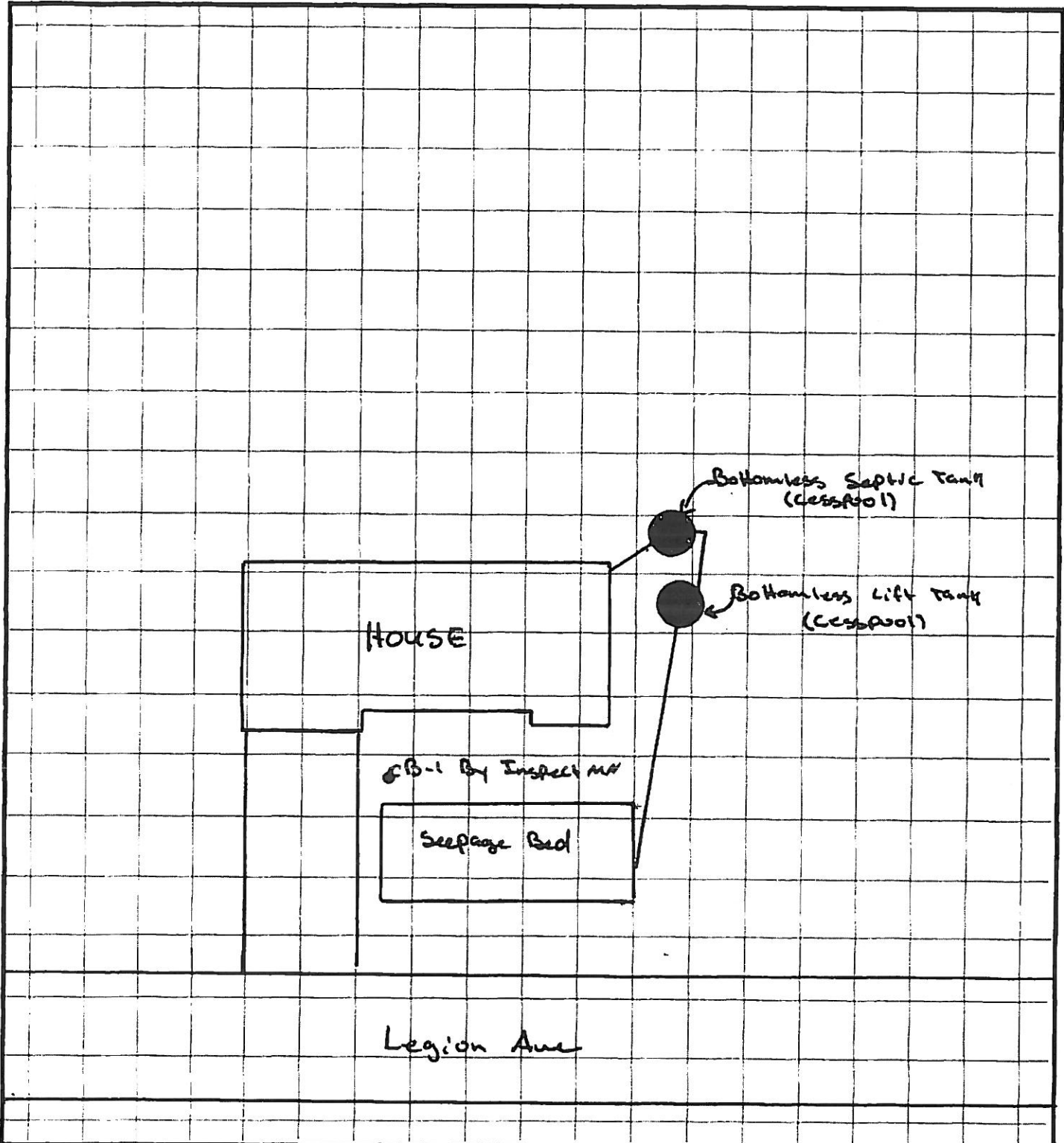
Have you received notices from any government agency concerning this system? _____

Is your property located in a shoreland management area? N

Do you have any additional information that should be given to the new owner? _____

I hereby certify that the above information is correct to the best of my knowledge. I also understand that if the system is considered "failing" per MPCA rules, that the inspector must by law submit a copy of this report to the local unit of government within 30 days of the date of inspection completion. I also agree that unless otherwise noted in this report, that I/we are ultimately responsible for payment of all fees for all work performed relative to this inspection by Inspect Minnesota and Midwest Soil Testing.

Owner/Occupant Vacant Date _____



Inspect
Minnesota
& Midwest
Soil Testing

"SITE SKETCH"
 Property Address
2832 Legion Ave
Lake Elmo, MN 55042

DRAWN BY BLH
 CHECKED BY
 FILE
 SCALE NO SCALE
 FIGURE NO.

Log Of Soil Borings

Location of Project:		2832 Legion Ave, Lake Elmo, MN 55042	
Borings Made By:		Inspect Minnesota	Date: 5/6/09
Auger Used:		Hand/Bucket	Classification System: USDA
Boring Number:		1	Boring Number:
Surface Elevation of Boring	Same as ground surface at seepage bed		Surface Elevation of Boring
Depth In Inches	<u>Soils Encountered</u>	Depth In Inches	<u>Soils Encountered</u>
0-6	7.5YR 2.5/2 Silt Loam (Fill)		
6-20	7.5YR 3/4 Loamy Sand (Fill)		
20-33	7.5YR 3/4 Loamy Sand W/Silt Loam Layers And 5YR 5/8 & 7.5YR 5/2 Fill Mottles		
33-46	7.5YR 4/4 Loamy Sand (Fill) With 7.5YR 5/8 & 7.5YR 5/3 Mottles/Redox		
46-54	10YR 3/2 Sandy Loam Native Soil With 5YR 4/6 & 7.5YR 4/1 Mottles/Redox		
54-66	10YR 3/2 Loam Sand Saturated		
66-72	10YR 3/1 Sandy Loam Saturated		
20"	Depth To End Of Boring Or Mottled Soils		Depth To End Of Boring Or Mottled Soils
Same	Elevation Of Boring Relative To System		Elevation Of Boring Relative To System
-33"	Depth To Bottom Of System		Depth To Bottom Of System
=0"	Of Separation		Of Separation
End Of Boring At:	72"	End Of Boring At:	
Mottled Soil Present At:	20"	Mottled Soil Present At:	
Standing Water Present At:	None	Standing Water Present At:	

Bottom Of Distribution Medium At: 33 Inches

Brian L. Humpal, Inc. dba. Inspect Minnesota,
Midwest Soil Testing DISCLAIMER SHEET
Relative to Septic System Compliance Inspections

1. This inspection/report is being performed for only the seller/owner of the property on which the septic system is located; there is no contract between Brian L. Humpal, Inc. and any other party except the seller/owner unless otherwise noted. In such case that the buyer of the property is paying for the inspection, the contract is between only the buyer of the property and Brian L. Humpal, Inc., there is no contract with any other party unless otherwise noted.
2. Brian L. Humpal, Inc. has not been retained to warrant, guarantee, or certify the proper functioning of the system for any period of time beyond the date of inspection or the future. Because of the numerous factors (usage, maintenance, tank pumping, soil characteristics, previous failures, etc.) which may affect the proper operation of a septic system, as well as the inability of Brian L. Humpal, Inc. to supervise or monitor the use or maintenance of the system, the report shall not be construed as a warranty by Brian L. Humpal, Inc. that the system will function properly for any particular person for any period of time.
3. Minimum Compliance Inspection requirements relative to this inspection and this report include only verification that the septic system has a water tight septic tank(s) and lift tank, the required separation from the bottom of the drainfield/mound distribution medium and saturated soils, no back-ups of sewage into the dwelling, and no discharge of sewage/effluent onto the ground surface or surface water (lakes, streams, etc.) Brian L. Humpal, Inc. does not inspect basement ejector pumps or exterior lift tank pumps as they are considered to be a “maintenance item”. Sewage back-up verification is limited to observing the floor drain area and/or the information supplied by the last occupants of the dwelling prior to inspection. Brian L. Humpal, Inc. cannot guarantee that the information given to them by the last occupants of the dwelling prior to inspection relative to back-ups is accurate. Some persons may attempt to hide or conceal signs of previous back-ups.
4. Certification of this system does not warranty future use beyond the date of the inspection. Any system, old or new, can be hydraulically overloaded as a result of more people moving into the house than were previously occupying the house, improper maintenance and/or heavy usage, tree roots, freezing conditions, surface drainage problems, or the system can simply stop working because of it’s age. The average life expectancy of a properly maintained septic system is twenty to twenty five years.
5. A Compliance Inspection is not meant to be a test or inspection for longevity of the septic system, a Compliance Inspection is strictly for the purpose of determining if the septic system is polluting the environment at the date and time the inspection is performed. This inspection is not intended to determine if the septic system was originally designed or installed to past or present MPCA or Local Unit of Government code requirements.
6. WINTER WORK: Client (person paying for inspection) understands that inspections conducted during winter weather (approximately November 1st through April 1st) are more difficult to perform because of the possible snow cover and ground frost. Septic system components such as tanks / tank covers and drop boxes / drop box covers and soil treatment areas are more difficult to locate because of snow cover and ground frost. Soil borings and locating drainfields are more difficult to perform because of ground frost. Brian L. Humpal, Inc. will attempt to use the same level of standards when performing winter work as when performing non-winter work. However, Client understands that because of aforementioned considerations, the same level of standards may not be possible.

Subsurface Sewage Treatment Systems

Non-transferable

License

License # L2896

Date of Issuance: Dec 16, 2008
Maintainer License Expires: Dec 22, 2009
Installer License Expires: Dec 22, 2009
Inspector License Expires: Dec 22, 2009
Designer License Expires: Dec 22, 2009

Inspect Minnesota, Midwest Soil Testing

Designated Certified Individual (DCI)	Certification Type	Certification Expires
Brian L. Humpal	Maintainer (Certified)	Oct 15, 2011
Brian L. Humpal	Inspector (Certified)	Oct 15, 2011
Brian L. Humpal	Installer (Certified)	Oct 15, 2011
Brian L. Humpal	Designer (Certified)	Oct 15, 2011



Minnesota Pollution Control Agency

520 Lafayette Road North
St. Paul, Minnesota 55155-4194

Steven Giddings
Steven Giddings, Manager

Environmental Business Assistance Section



MAYOR & COUNCIL COMMUNICATION

DATE: December 2, 2014
REGULAR
ITEM # 15

AGENDA ITEM: EN Properties, LLC Trucking Terminal Interim Use Permit Renewal

SUBMITTED BY: Kyle Klatt, Community Development Director

THROUGH: Dean Zuleger, City Administrator

REVIEWED BY: Nick Johnson, City Planner

SUGGESTED ORDER OF BUSINESS:

- Introduction of ItemCommunity Development Director
- Report/Presentation.....Community Development Director
- Questions from Council to Staff Mayor Facilitates
- Call for Motion Mayor & City Council
- Discussion Mayor & City Council
- Action on Motion Mayor Facilitates

POLICY RECCOMENDER: Terry Emerson (EN Properties, LLC) is requesting that the City Council renew the interim use permit that has previously been issued for his property at 11530 Hudson Boulevard in Lake Elmo. Staff is recommending approval of a two-year extension for the interim use for this property.

FISCAL IMPACT: None – the City’s Interim Use Ordinance specifies that the operation of the interim use will not add additional costs to the City concerning future public improvements in this area.

SUMMARY AND ACTION REQUESTED: The City Council is being asked to consider a request by Terry Emerson of EN Properties for the renewal of an Interim Use Permit related to his truck terminal facility located at 11530 Hudson Boulevard. The Interim Use Permit for this property was originally approved by the Council on December 9, 2008 and was reviewed little more than a year after the approval date. The applicant has received a subsequent extension for the interim use that technically expired at the end of 2012. Because there have been no changes to the site since the previous extension and because Staff is not aware of any issues or concerns associated with the operation of the facility, Staff is recommending that the City process the renewal request in accordance with the requirements for renewal of an interim use permit as specified in the Zoning Ordinance (as opposed to requiring an entirely new application).

Staff has previously conducted an on-site review of the site with the applicant, and has not observed any changes to the site since this review was conducted. Staff is recommending that the City grant a two-year renewal to allow the trucking terminal to continue operating on this location. Should the Council decide to approve the renewal request, the original Interim Use Permit agreement will need to be revised and updated to reflect the new termination date. A revised agreement is attached to this report and referenced in the draft resolution of approval.

The recommended motion to take action on the request is as follows:

“Move to adopt Resolution No. 2014-95 granting a renewal for an Interim Use Permit to allow a bus/truck terminal at 11530 Hudson Boulevard and approving a revised consent agreement for the interim use renewal time period.”

LEGISLATIVE HISTORY/STAFF REPORT: Because the Interim Use Permit is not operating under circumstances that are different than originally described in the initial permit request, Staff will not be providing the Planning Commission and City Council with a new Staff report or additional information concerning this use. The original report filed with the Council in December of 2008 is available for review, along with any of the subsequent City reviews. The City’s regulations pertaining to Interim Uses has been updated since the applicant’s permit was granted; however, the general findings and conclusions from the original report and as references in the Interim Use Agreement are still valid.

The trucking terminal currently operating from 11530 Hudson Boulevard is allowed as an Interim Use subject to the standards for a non-agricultural low impact use, and has been in operation since early 2009. If the permit is renewed by the City Council, the applicant has indicated that he is working with the Kenworth Trucking company to move into this site and operate under the requirements of the existing permit and ordinance requirements.

The City’s Interim Use Ordinance includes special requirements for the review of a renewal request that requires notification of the renewal be sent to surrounding property owners. If there are no objections to the interim use permit renewal expressed within 10 days of this notice, the City Council can approve the request by resolution. Should any objections be filed with the City, the permit must be reviewed as a new application. Staff has sent out notices in accordance with this ordinance, and the 10 day comment period will end on November 28, 2014. Staff has not received any comments to date, and will be preparing a resolution of approval for consideration by the City Council at its December 2, 2014 meeting.

As noted in previous reviews of the interim use, Staff has observed the following:

- *Traffic:* The non-agricultural low impact use standards specify that the daily vehicle trips from the site cannot exceed 6 trips per acre of agricultural land. Because the agricultural area owned by the applicant is 70 acres in size, the total number of vehicle trips cannot exceed 420 per day. The applicant has estimated that there are no more than 120 trips in and out of the site every day by trucks and employee vehicles. Staff’s own observations

during visits to the site since it began operations, in addition to daily trips along Manning Avenue, have supported this estimate.

- *Site Operation.* The daily use of the site has not changed substantially from the way it was originally run as a bus garage. Although the semi-trailers being parked on the site are generally larger than the school buses that previously were stored and serviced here, the number of daily trips is substantially lower now than in the recent past. The overall site activities, including exterior storage, light maintenance/servicing of vehicles, and refueling are very similar to past activities, but with fewer vehicles and trips into and outside of the property.
- *Landscaping.* One of the conditions of Interim Use approval stated “that additional screening be provided in all locations recommended by the City Forester in order to replace vegetation that has either died or been removed”. The applicant did plant some additional trees on the site in early 2009, and has previously replaced more trees along the northern and eastern site boundaries. Given the replanting that has occurred since the Interim Use Permit was issued, the applicant has been demonstrating a clear intent to comply with the original landscape plan since the issuance of the Interim Use Permit
- *Interim Use Permit/Consent Agreement.* The Interim Use provisions in the Zoning Ordinance (and the resolution of approval) require that an applicant for an interim use permit enter into a consent agreement with the City that clarifies the terms and requirements under which the interim use can operate. With the request for renewal, the City will need to consider and approve a revised consent agreement, which at a minimum, should reference the new termination date for the interim use.

BACKGROUND INFORMATION (SWOT):

Strengths: The proposed IUP renewal will allow the continued operation of a business in the community that has had a limited impact in this area.

Weaknesses: The City will need to continue monitoring the interim use as future development projects come forward.

Opportunities: The interim use allows a limited use of agricultural land in advance of future development in this portion of the City.

Threats: The user of this site will need to be taken into account as part of future development proposals.

RECOMMENDATION: Based upon the above background information and Staff report, it is recommended that the City Council renew the Interim Use Permit concerning the EN Properties, LLC Trucking Terminal facility operating at 11530 Hudson Boulevard by undertaking the following action:

“Move to adopt Resolution No. 2014-95 granting a renewal for an Interim Use Permit to allow a bus/truck terminal at 11530 Hudson Boulevard and approving a revised consent agreement for the interim use renewal time period.”

ATTACHMENTS:

1. Resolution No. 2014-95
2. Location Map
3. Updated Consent Agreement

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

RESOLUTION NO. 2014-95

**A RESOLUTION GRANTING A RENEWAL FOR AN INTERIM USE PERMIT TO
ALLOW A BUS/TRUCK TERMINAL AT 11530 HUDSON BOULEVARD SOUTH AND
APPROVING A REVISED CONSENT AGREEMENT FOR THE INTERIM USE
RENEWAL TIME PERIOD**

WHEREAS, Terry Emerson, E & E Properties, 11530 Hudson Boulevard South, has submitted a request to renew an Interim Use Permit related to a non-agricultural low impact use at 11530 Hudson Boulevard South establishing a bus/truck terminal in a HD-A-BP zoning district.

WHEREAS, the Lake Elmo Planning Commission held a Public Hearing on November 10, 2008, and reviewed and recommended approval of the Interim Use Permit for a bus/truck terminal on the site based on the following findings:

- 1) That the applicant has demonstrated compliance with all of the standards for a non-agricultural low impact use; and
- 2) That the applicant has demonstrated compliance with all applicable City Code standards for the issuance of an interim use.

WHEREAS, Section 154.019, Subd. (B, 5) of the City Code requires the applicant to enter into a consent agreement with the City the specifies the terms and conditions of the interim use; and

WHEREAS, the Lake Elmo City Council reviewed the Interim Use Permit request and consent agreement at its December 1 and December 9, 2008 meetings and approved the Interim Use Permit and consent agreement at its December 9, 2008 meeting;

WHEREAS, the Planning Commission held a Public Hearing on December 13, 2010, and reviewed and recommended approval of the renewal request concerning the Interim Use Permit for a bus/truck terminal on the site based on the findings that were included in the City original approval; and

WHEREAS, the City Council considered a request for an additional renewal of the interim use permit at its December 2, 2014 meeting; and

WHEREAS, the Lake Elmo City Council reviewed the renewal request concerning the Interim Use Permit request and revised consent agreement at its December 2, 2014 meeting;

NOW, THEREFORE, BE IT RESOLVED that the Lake Elmo City Council hereby approves the renewal of the Interim Use Permit at 11530 Hudson Boulevard South to establish a bus/truck terminal as a non-agricultural low impact use and authorizes the execution of the revised consent agreement for this interim use subject to the following conditions:

- 1) That the applicant signs the approved consent agreement with the City in accordance with Section 154.019, Subd. (B, 5) of the City Code.
- 2) That the interim use will be valid for a period of two years from the date of the renewal of the Interim Use Permit (December 2, 2016).
- 3) That the interim use shall be subject to a review by the City Council after two years; and that neighboring property owners will be notified of the date when said review is conducted by the City.
- 4) That the interim use will terminate when any portion of the property is rezoned or when public sanitary sewer is provided to the site.

This resolution was adopted by the City Council of the City of Lake Elmo on the 2nd day of December 2014, by a vote of ___ Ayes and ___ Nays.

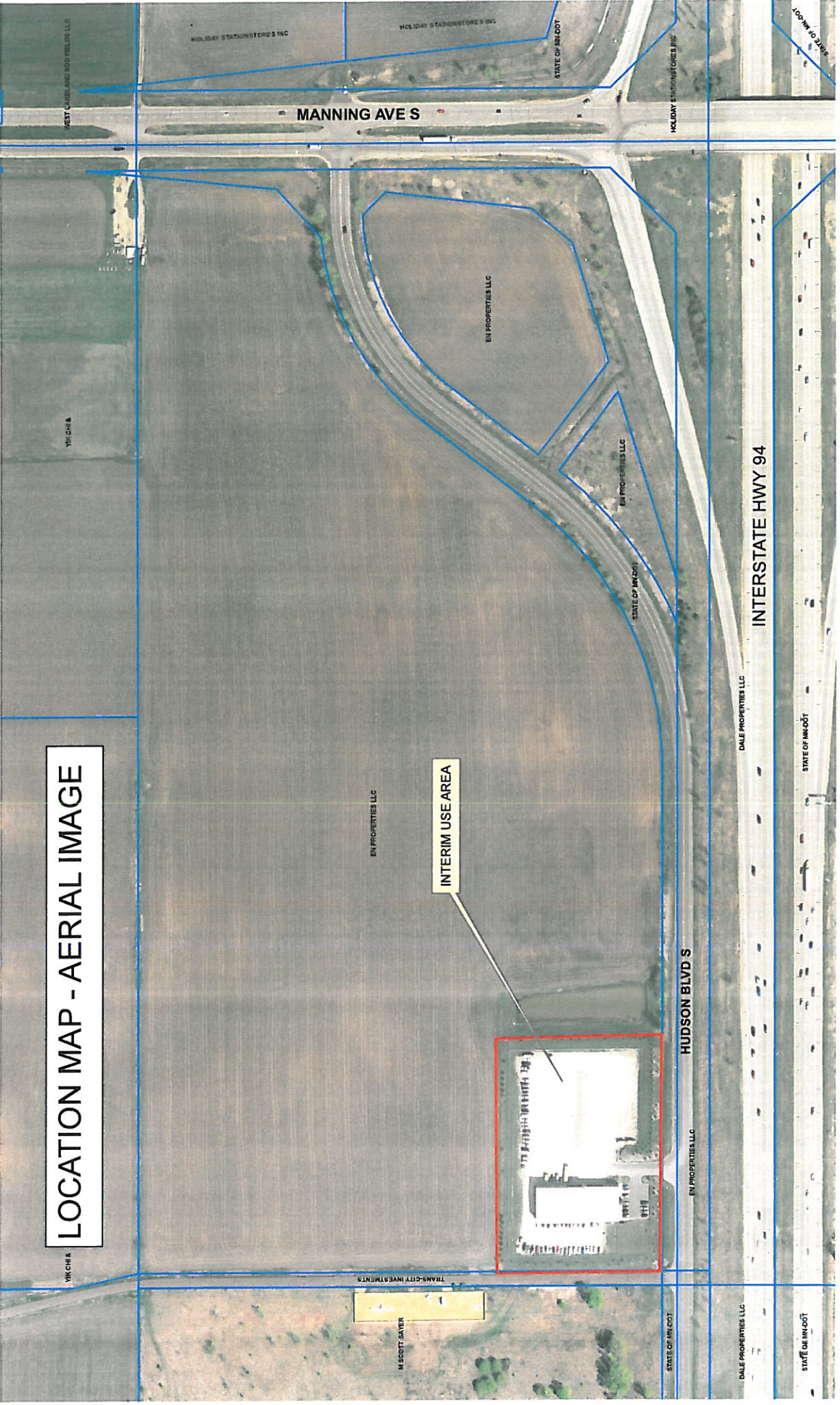
Mike Pearson, Mayor

ATTEST:

Adam Bell, City Clerk

(SEAL)

LOCATION MAP - AERIAL IMAGE



INTERIM USE AREA

MANNING AVE S

INTERSTATE HWY 94

HUDSON BLVD S

EN PROPERTIES LLC

EN PROPERTIES LLC

EN PROPERTIES LLC

STATE OF INDIOT

DALE PROPERTIES LLC

STATE OF INDIOT

EN PROPERTIES LLC

DALE PROPERTIES LLC

STATE OF INDIOT

WILCH &

WILCH &

M SCOTT JAYER



TRANSCITY INVESTMENTS

HOLIDAY 9 STATION STORE S INC

HOLIDAY 9 STATION STORE S INC

STATE OF INDIOT

HOLIDAY 9 STATION STORE S INC

JORGAN ZUMER

**CONSENT AGREEMENT
INTERIM USE PERMIT**

1.0 Parties. This Consent Agreement/Interim Use Permit ("Agreement") is entered into by and between the City of Lake Elmo, a Minnesota statutory ("City"); and E & E Properties, LLC, a Minnesota limited liability corporation ("Applicant").

2.0 Recitals.

A. Applicant is the record fee owner of the following described property situated in Lake Elmo, MN ("Property"):

That part of the South Half of the Southeast Quarter of Section 36, Township 29 North, Range 21 West, Washington County, Minnesota lying easterly of the West 33.00 feet (2 rods) thereof, EXCEPT that part designated as Parcel 44 on Minnesota Department of Transportation Right of Way Plat No. 82-35, State Project No. 8292 (94-392) 904, recorded as Document No. 424557 in the office of the County recorder, Washington County, Minnesota.

Subject to highway easements in favor of Washington County described in Book 258 of Deeds, page 91 and Book 309 of Deeds, page 831, of record, and on file in said office of the County Recorder.

Also, subject to highway easements in favor of the State of Minnesota as described in Book 109 of Deeds, page 622, Book 109 of Deeds, page 638, and Book 220 of Deeds, page 11, of record and on file in said office of the County Recorder.

B. The Property is zoned HD-A-BP.

C. Interim uses are allowed in the HD-A-BP zoning district subject to the regulations contained in Lake Elmo City Code Section 154.019.

D. Applicant has requested that the City allow a portion of the Property to be used as a bus/truck terminal as illustrated on the Site Plan attached as Exhibit A (Site Plan):

E. On the 30th day of October 2008, Applicant submitted a completed application for an Interim Use Permit.

- F. On the 10th day of November, 2008, the Lake Elmo Planning Commission, at a public hearing, reviewed the Interim Use Permit application, city staff comments and reports, Applicant's comments and reports, public comments, and recommended approval of the interim bus/truck terminal use subject to certain conditions.
- G. On the 1st day of December, 2008, and on the 9th day of December, 2008, the Lake Elmo City Council reviewed the Interim Use Permit application, city staff comments and reports, Applicant's comments and reports, public comments, and the recommendations of the Lake Elmo Planning Commission, and agreed to authorize the interim use subject to the terms and conditions as specified in Section 154.019 of the Zoning Ordinance and Resolution 2008-056 approving the interim use permit.
- H. On the 2nd day of February, 2010, the Lake Elmo City Council completed a one-year review of the interim use permit and granted an extension of the Interim Use.
- I. On the 2nd day of December 2014 the Lake Elmo City Council considered a request to renew the interim use permit and authorized the Mayor to execute a consent agreement with the Applicant.

3.0 Terms and Conditions. The Lake Elmo City Council hereby authorizes and Applicant, for itself, and its successors and assigns, agree that the interim bus/truck terminal use shall be subject to the following conditions:

- A. The Applicant, and its successors and assigns, shall have no entitlement to future re-approval of the Interim Use Permit.
- B. Applicant and its successors and assigns, agree that in the event of a full or partial taking of the Property by a governmental unit that the value of the Property taken will be based on its highest and best use as it existed prior to the approval of the Interim Use Permit.
- C. The interim use shall be located on that portion of the Applicant's Property illustrated on the Site Plan. The remainder of Applicant's Property shall continue to be used for agricultural purposes.
- D. Applicant shall replace any trees that have died or been removed from the site in order to maintain the site landscaping as depicted on the original Site Plan for the property.
- E. The Interim Use Permit is valid until the first occurring following event:

1. For two (2) years from the date of the renewal of the Interim Use Permit (December 2, 2014);
2. Until a violation of the conditions of this Consent Agreement;
3. Until a change in the City's zoning regulations, which renders the interim use non-conforming; or
4. Until the redevelopment of the Property for a permitted or conditional use as allowed by the City's zoning regulations.

4.0 Rescission of the Conditional Use. The Conditional Use Permit, which was previously issued for the Property is hereby rescinded and replaced by this Consent Agreement/Interim Use Permit.

5.0 Acknowledgement and Consent. Applicant acknowledges that this is a legally binding agreement and that Applicant has had an opportunity to review the Agreement with legal counsel. Applicant consents to the terms of this Agreement and its restrictions on the use of the Property and the Interim Use Area.

6.0 Effective Date. This Consent Agreement/Interim Use Permit shall be effective upon execution by all parties.

Date: 12/2/14

CITY OF LAKE ELMO

By: _____
Mike Pearson
Mayor

E and E Properties, LLC

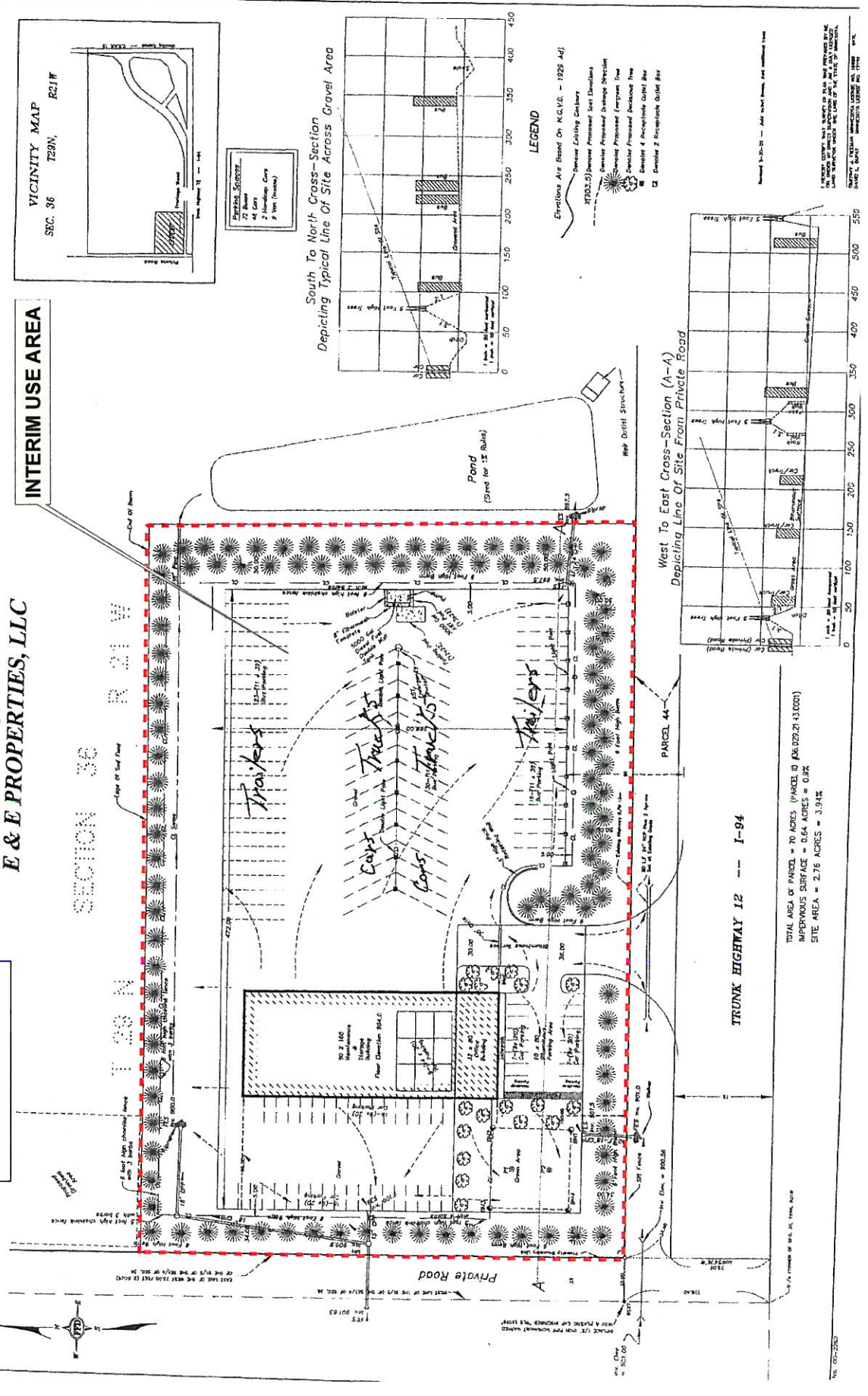
By: _____
Terry Emerson

Its: _____

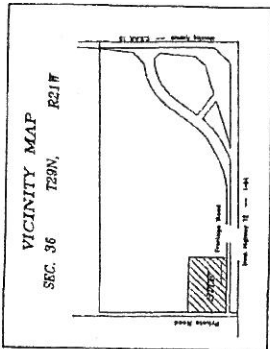
Exhibit A

SITE PLAN Bus Storage Site E & E PROPERTIES, LLC

Folz, Freeman, Dupuy & Associates, Inc.
PLANNING ARCHITECTS ENGINEERS
1405 W. 10TH AVENUE, SUITE 100
DENVER, CO 80202
(303) 733-1833



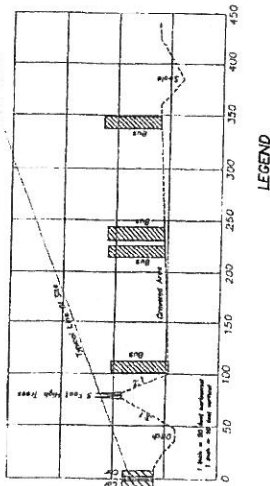
INTERIM USE AREA



SYMBOLS

- 72' Buffer
- 48' Core
- 2' Buffering Core
- 5' Core (Interior)

South To North Cross-Section
Depicting Typical Line Of Site Across Gravel Area

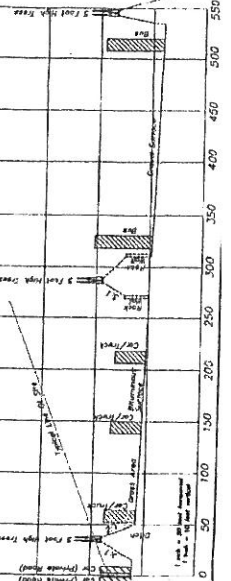


LEGEND

Elevations Are Based On N.G.V.D. - 1928 AD!

- X(00.5) Downed Existing Gateway
- Downed Proposed Gate Structure
- Downed Proposed Drainage Structure
- Downed Proposed Compaction Foot
- Downed Proposed Backflow Foot
- Downed Proposed Gate! Bar
- Downed Proposed Gate! Bar

West To East Cross-Section (A-A)
Depicting Line Of Site From Private Road



TOTAL AREA OF PARCEL = 70 ACRES (PARCEL ID #A0329.21-13.0001)
IMPERVIOUS SURFACE = 0.64 ACRES = 0.92%
SITE AREA = 2.76 ACRES = 3.94%

TRUNK HIGHWAY 12 --- I-94

SCALE:
1" = 50' Feet



RECEIVED
07/12/03



MAYOR & COUNCIL COMMUNICATION

DATE: December 2, 2014
REGULAR
ITEM # 16

AGENDA ITEM: Halcyon Cemetery Sketch Plan Review

SUBMITTED BY: Nick M. Johnson, City Planner

THROUGH: Dean Zuleger, City Administrator

REVIEWED BY: Planning Commission
Kyle Klatt, Community Development Director

SUGGESTED ORDER OF BUSINESS:

- Introduction of ItemCommunity Development Director
- Report/Presentation.....Community Development Director
- Questions from Council to Staff..... Mayor Facilitates
- Call for Motion Mayor & City Council
- Discussion..... Mayor & City Council
- Action on Motion..... Mayor Facilitates

POLICY RECCOMENDER: Mr. Lee Rossow has submitted a Sketch Plan for a proposed cemetery to be located on a 10-acre parcel located at 11050 50th Street North. The sketch plan review provides the applicant the opportunity to receive initial feedback on a development concept from the City Council, Planning Commission and staff. The sketch plan review is intended to assist the applicant in the preparation of a Preliminary Plat application.

FISCAL IMPACT: None – City costs related to the review of the sketch plan are reimbursed by an application fee and a development review escrow.

SUMMARY AND ACTION REQUESTED: The City Council is being asked to review a Sketch Plan submitted by Mr. Lee Rossow for a proposed cemetery at 11050 50th Street North. The Planning Commission reviewed the sketch plan for the cemetery, to be called Halcyon, at the 11/24/14 meeting. As the sketch plan review requires no formal action, the City Council is asked to provide preliminary feedback and high level review of the proposed development. In order for the cemetery to be properly filed with Washington County, a required step per State Statutes, the City ultimately needs to approve the plat. The Sketch Plan allows the City to provide initial feedback in advance of preliminary/final plat application.

BACKGROUND INFORMATION:

Attached is the original detailed Staff Report that was provided to the Planning Commission on 11/24/14 regarding the Halcyon Cemetery. The Staff Report includes general information about the proposed cemetery, a summary of the relevant planning and zoning issues, as well as a review of the proposed design. In terms of the specifics of the review, greater details are found in the Staff Report dated 11/24/14, as well as the attachments.

PLANNING COMMISSION REPORT:

The Planning Commission reviewed the sketch plan at its November 24, 2014 meeting. In reviewing the Halcyon Cemetery Sketch Plan, the Planning Commission provided high level review and initial feedback to the applicant regarding the proposal. Greater detail of the Planning Commission's review comments can be found in the Planning Commission minutes (DRAFT). However, staff wanted to highlight the following items that were identified during the Planning Commission review:

- The Planning Commission asked why the proposed cemetery is subject to the plat review process of the City's subdivision ordinance. In order for use of the property as a cemetery to proceed, it must be properly filed with Washington County as a plat. In order for this to occur, the City must approve the plat.
- There was general discussion about the use of the existing buildings on site. The existing home would be used for administrative purposes, as a greeting or gathering space, and as a full-time caretaker's residence. The existing accessory building on the site would be used as a maintenance building or garage.
- There was discussion about the location of the access with regards to access spacing to nearby Lake Elmo Avenue (CSAH 17). Staff will contact Washington County to get their input on the location of the driveway on 50th Street.
- The proposed activities of the cemetery were discussed. The applicants noted that the site will not perform the same services as a funeral home. Cremation services or other services for the dead will not be performed on-site.
- The security of the site was also discussed. The applicant is planning for a tall security fence to secure the site. A gate will also be employed when the site is closed at night. In addition to security, screening using landscaping or trees was also discussed adjacent to residential properties.
- The neighboring property owner, Deb Downing, provided the Planning Commission with a list of questions for the applicant. Ms. Downing's email is provided as Attachment #6. The applicant and staff addressed several of the neighbor's questions.

In providing feedback directly to the applicant, the Planning Commission was able to communicate the areas of future focus and review. The applicant noted that after review by the City Council, they will likely start preparing a preliminary plat application.

STRENGTHS, WEAKNESSES, OPPORTUNITIES, THREATS:

Strengths: Providing a review of a sketch or concept plan allows for initial review of a development plan in advance of preliminary/final plat application. This process allows the City to identify critical issues and set expectations before the applicant has expended significant resources in preparing a preliminary plat.

Weaknesses: Transitioning the use from a single family home to a cemetery will take the property off the property tax rolls, as cemeteries under 300 acres are exempt. However, per current zoning ordinance, cemeteries are a permitted use in Agricultural and Rural Residential zones.

Opportunities: The applicant has noted that there are few opportunities for non-denominational burials and similar services in the area. They view the potential market for such use in the coming years as strong.

Threats: None

RECOMMENDATION:

No formal action is required as part of the sketch plan review. The City Council is asked to provide high-level review and feedback regarding the proposed cemetery. The review comments and issues identified in this stage of review are utilized to inform a future preliminary/final plat application.

ATTACHMENTS:

1. Staff Report to the Planning Commission, 11/24/14
2. Location Map
3. Application Form
4. Existing Conditions Plan
5. Cemetery Sketch Plan
6. Email from Deb Downing, 5135 Lake Elmo Ave. N.



PLANNING COMMISSION
DATE: 11/24/2014
AGENDA ITEM: 5A – BUSINESS ITEM
CASE # 2014-50

ITEM: Halcyon Cemetery - Sketch Plan Review
SUBMITTED BY: Nick Johnson, City Planner
REVIEWED BY: Kyle Klatt, Community Development Director

SUMMARY AND ACTION REQUESTED:

The Planning Commission is being asked to review a Sketch Plan for a proposed cemetery within the Rural Planning Area submitted by Mr. Lee Rossow. The proposed cemetery would be located at 11050 50th Street North, on the northeast corner of 50th Street and Lake Elmo Avenue (CSAH 17). The Sketch Plan includes three main areas for in-ground burials, space for columbarium, and a parking area. The existing home and accessory building would be repurposed to serve as administration and maintenance of the cemetery. Because this is a Sketch Plan review, there is no formal action required by the Planning Commission.

GENERAL INFORMATION

Applicant: Lee Rossow, 11050 50th Street North, Lake Elmo, MN 55042
Property Owners: Lee Rossow, 11050 50th Street North, Lake Elmo, MN 55042
Location: Part of Section 01, Township 29 North, Range 21 West in Lake Elmo, immediately north of 50th Street and immediately east of Lake Elmo Avenue (CSAH 17). PID Number: 01.029.21.33.0003
Request: Sketch Plan Review
Existing Land Use: Single Family Detached
Existing Zoning: RR – Rural Residential
Surrounding Land Use: North – single family home (RR); west – single family home (RR); south – Agricultural (RR); east – single family residential (RR) and Municipal Well Site #4.
Surrounding Zoning: RR – Rural Residential; PF – Public Facilities
Comprehensive Plan: Rural Area Development
Proposed Zoning: RR – Rural Residential
History: The 10-acre site has historically been used for a single family home. According to County records, the existing home was built in 1984.
Deadline for Action: N/A – No action required by City

Applicable Regulations: Article IX – Rural Districts

REQUEST DETAILS

The City of Lake Elmo is in receipt of a Sketch Plan from Mr. Lee Rossow for a proposed cemetery that would be located within the Rural Planning Area as defined in the Comprehensive Plan. The proposed cemetery would be located at the northeast corner of the intersection of 50th Street North and Lake Elmo Avenue North. Under the City's Zoning Code, cemeteries are a permitted use in the Rural Residential (RR) and Agricultural (A) zoning districts. The subject property is zoned Rural Residential. However, in order to sell burial plots, the property must go through a formal platting process.

Per State Statutes, cemeteries must be formally platted under the appropriate regulation of the State and local jurisdiction. The Lake Elmo Subdivision Ordinance specifies that as part of the pre-application process for a subdivision of land, the applicant must first submit a Sketch Plan for review by the Planning Commission. The Ordinance notes that the purpose of the Sketch Plan review is as follows:

***Sketch plan.** In order to ensure that all applicants are informed of the procedural requirements and minimum standards of this chapter and the requirements or limitations imposed by other city ordinances or plans, prior to the development of a preliminary plat, the subdivider shall meet with the Planning Commission and prepare a sketch plan which explains or illustrates the proposed subdivision and its purpose. The Planning Commission shall accept the information received, but take no formal or informal action which could be construed as approval or denial of the proposed plat.*

Based on this wording, the Planning Commission is not being asked to take any formal action as part of its review other than to accept the information received. Staff has completed an internal review of the Sketch Plan, and general comments from Staff are included in this memorandum and applicable attachment.

BACKGROUND

The proposed Sketch Plan is located in the north-central portion of the Rural Planning Area at the intersection of 50th Street North and Lake Elmo Avenue North (CSAH 17).

The applicant's submission to the City includes the following components:

- *Application Forms*
- *Existing Conditions.* The applicants have submitted an existing conditions plan, showing an aerial image of the property and the existing single family detached residential use. As shown in the existing conditions plan, the house and accessory building are currently existing on the property. These structure would be repurposed as part of the proposed cemetery as an administration/caretaker building and maintenance garage.
- *Sketch Plan.* The Sketch Plan for the proposed cemetery shows three larger in-ground burial areas, several sites for columbaria, a gathering space, a parking lot, a network of private drive lanes or driveways to access the various sites, and the existing buildings and drainfield.

The Staff review comments that follow are all based on conducting a very high level review of the Sketch Plan since there is not a lot of detailed information that is required at this stage in the subdivision process. Staff has focused its review on the elements of the site plan that

STAFF REVIEW COMMENTS:

Staff has reviewed the proposed Sketch Plan and provided comments in the following areas:

- **Land Use:** The proposed Sketch Plan does conform to the City's Land Use Plan in that the site is guided for Rural Area Development. Under this designation, Rural Residential is a typical zoning for sites of this size and character.
- **Zoning.** The current zoning for the parcel is Rural Residential. Under this zoning designation, a cemetery is a permitted use. In the Zoning Code, cemetery is defined as the following:

Land used or intended to be used for the burial of the dead and dedicated for cemetery purposes, including columbarium's, crematories, mausoleums, and mortuaries when operated in conjunction with and within the boundaries of such cemetery.

Under this definition, it is staff's interpretation that the proposed use would be permitted under the City's ordinance. It should also be noted that the Zoning Code does not include any specific development standards for cemeteries at this time. The only other reference to cemeteries in the Zoning Code is in the PF – Public Facilities zoning district, where cemeteries are identified as a conditional use.

- **Public Utilities.** The site is currently not hooked up to City water, but does have access via a watermain extension from Well #4 and down Lake Elmo Avenue North. Should the proposed use require City water, it does have access to service.
- **Private Utilities.** It should be noted that an existing septic system serves the site. The property is not in the City's Public Sanitary Sewer Service Area. If any expansion of the septic system is required for the cemetery use, the applicant will need to secure the applicable permits from the Washington County Dept. of Health.
- **Access.** The applicants are proposing to reduce the total accesses to the property from 2 to 1, accessing the site off of 50th Street North. The current driveway configuration includes accesses on both Lake Elmo Ave. and 50th Street North. The proposed access on 50th Street would be move to the west, while the access on Lake Elmo Ave. would be eliminated. As proposed, the access on 50th Street would be located approximately 150 feet from Lake Elmo Ave. Staff recommends that the proposed access be reviewed by the City Engineer in consultation with Washington County in order to ensure that the proposed access spacing is appropriate for the conditions on 50th Street and Lake Elmo Avenue.
- **Landscaping and Tree Protection/Preservation.** The applicant has not provided any details concerning landscaping for the site, which must be submitted at the time of Preliminary Plat submission. In addition, a tree preservation plan or woodland evaluation report must be submitted with preliminary plat to document any impacts to significant trees on the site. The City's landscaping provisions require 5 trees for every one acre of land that is developed, as

well as 1 tree per 50 feet of street frontage. These requirements should inform the landscape plan for the site.

- **Screening and Fencing.** The Sketch Plan also includes fencing around all four boundaries of the property. The north and east sides of the property include a regular fence, whereas the west and south sides include ornamental fencing. Significant detail of the fencing is not provided with this submittal, but Staff would assume that the northern and eastern fencing is provided for screening purposes for the adjacent residential properties. The ornamental fencing is likely provided for aesthetic purposes along the street frontage sides of the property. In addition to fencing, staff would recommend that some landscaping and trees be utilized to add additional screening along the property boundaries.
- **Park Dedication.** The City’s subdivision ordinance requires parkland dedication for subdivisions. Residential subdivision require a land dedication as a percentage depending on the zoning or land use, whereas commercial projects are required to post a fee in lieu of land dedication. For example, subdivisions on Rural Residential land require a 4% dedication, or equal market value in fees thereof. The current commercial rate for park dedication is \$4,500 per acre. Staff is still conducting some research to determine if and how much parkland dedication would be appropriate for this type of use. Staff will consult with the City Attorney in determining what the appropriate precedents are for a similar case such as the present application. If any dedication were appropriate, staff would recommend a fee in lieu of land dedication.
- **Subdivision Review Process.** In order to proceed with the subdivision of the land included in the Sketch Plan, the applicant will need to next prepare a Preliminary Plat application. At the Preliminary Plat stage, there is more information required as part of the submission process, which also requires a public hearing.

RECCOMENDATION:

No formal action is required at this time. Staff is recommending that the Planning Commission accept the Sketch Plan provided by Mr. Lee Rossow for a cemetery at 11050 50th Street North and provide feedback.

ATTACHMENTS:

1. Location Map
2. Application Form
3. Existing Conditions Plan
4. Cemetery Sketch Plan

ORDER OF BUSINESS:

- IntroductionCommunity Development Director
- Report by Staff City Planner
- Questions from the Commission Chair & Commission Members
- Discussion by the Commission Chair & Commission Members



Source: Esri, DigitalGlobe, GeoEye, i-cubed, USDA, USGS, AEX, Getmapping, Aerogrid, IGN, IGP, swisstopo, and the GIS User Community

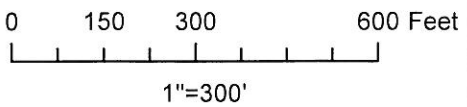
Location Map: Proposed Halcyon Cemetery



Data Source: Washington County, MN
11-17-2014



11050 50th Street N.



Date Received: _____
Received By: _____
LU File #: _____



651-747-3900
3800 Laverne Avenue North
Lake Elmo, MN 55042

PRELIMINARY PLAT APPLICATION

Applicant: LEE ROSSOW
Address: 11050 50TH STREET N
Phone #: 651-308-2999
Email Address: 337 @ LACH.NET

Fee Owner: SAME
Address: OFFICE 1870 RICE ST. ST PAUL, MN
Phone #: _____ 55113
Email Address: _____

Property Location (Address and Complete (long) Legal Description):
11050 50TH STREET N
LAKE ELMO, MN 55042

General information of proposed subdivision: _____
SEE PLANS

Conducted pre-application meeting with Staff? Yes No

In signing this application, I hereby acknowledge that I have read and fully understand the applicable provisions of the Zoning Ordinance and current administrative procedures. I further acknowledge the fee explanation as outlined in the application procedures and hereby agree to pay all statements received from the City pertaining to additional application expense.

Signature of applicant: Lee Rossow Date: OCTOBER 30, 2014

Signature of Fee Owner: SAME Date: _____



Lake Elmo City Hall
651-747-3900
3800 Laverne Avenue North
Lake Elmo, MN 55042

ACKNOWLEDGEMENT OF RESPONSIBILITY

This is to certify that I am making application for the described action by the City and that I am responsible for complying with all City requirements with regard to this request. This application should be processed in my name and I am the party whom the City should contact regarding any matter pertaining to this application.

I have read and understand the instructions supplied for processing this application. The documents and/or information I have submitted are true and correct to the best of my knowledge. I will keep myself informed of the deadlines for submission of material and of the progress of this application.

I understand that this application may be reviewed by City staff and consultants. I further understand that additional information, including, but not limited to, traffic analysis and expert testimony may be required for review of this application. I agree to pay to the City upon demand, expenses, determined by the City, that the City incurs in reviewing this application and shall provide an escrow deposit to the City in an amount to be determined by the City. Said expenses shall include, but are not limited to, staff time, engineering, legal expenses and other consultant expenses.

I agree to allow access by City personnel to the property for purposes of review of my application.

Signature of applicant Lee Rossow Date OCTOBER 30, 2014

Name of applicant LEE ROSSOW Phone 651 308 2999
(Please Print)

Name and address of Contact (if other than applicant) _____
E-MAIL 337 @ LACH. NET



Lake Elmo City Hall
651-747-3900
3800 Laverne Avenue North
Lake Elmo, MN 55042

AFFIRMATION OF SUFFICIENT INTEREST

I hereby affirm that I am the fee title owner of the below described property or that I have written authorization from the owner to pursue the described action.

Name of applicant LEE ROSSOW
(Please Print)

Street address/legal description of subject property
11050 50TH STREET N

Lee Rossow
Signature

OCTOBER 30, 2014
Date

If you are not the fee owner, attach another copy of this form which has been completed by the fee owner or a copy of your authorization to pursue this action.

If a corporation is fee title holder, attach a copy of the resolution of the Board of Directors authorizing this action.

If a joint venture or partnership is the fee owner, attach a copy of agreement authorizing this action on behalf of the joint venture or partnership.

PROJECT NUMBER

HALCYON

LAKE ELMO, MINNESOTA

GCI PROJECTS, INC.
11700 W. 52ND ST.
ROSEVILLE, MN 55112
763-943-8000

EXHIBIT TITLE

LOUGHS ASSOCIATES

PLANNING AND DESIGN SERVICES

11700 W. 52ND ST.
ROSEVILLE, MN 55112
763-943-8000

DATE

PROJECT NUMBER

CLIENT

PROJECT LOCATION

PROJECT TYPE

PROJECT STATUS

PROJECT DESCRIPTION

PROJECT CONTACT

PROJECT PHONE

PROJECT FAX

PROJECT EMAIL

PROJECT WEBSITE

PROJECT ADDRESS

PROJECT CITY

PROJECT STATE

PROJECT ZIP

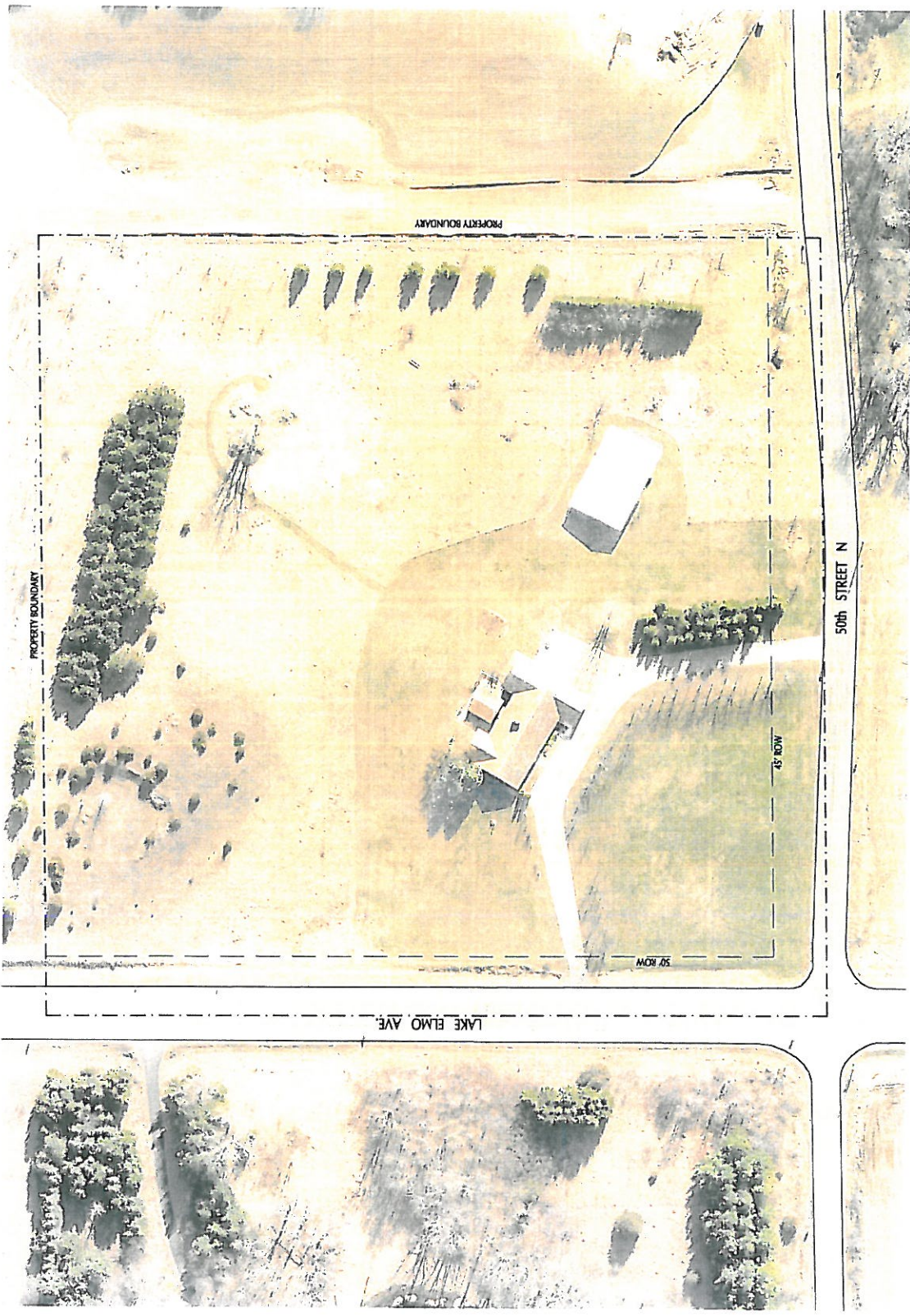
EXISTING CONDITIONS

DATE

SCALE

PROJECT NUMBER

EC1.0



PROJECT NAME

HALCYON

CLIENT

Lake Elmo, Minnesota

DESIGNER

G.C.J. Properties, Inc.
Lee Kosow

1870 Rice St.
Roseville, MN 55127
612.913.1111
www.gcyj.com

ARCHITECT

LOUCKS
ASSOCIATES

1870 Rice St., Suite 100
Roseville, MN 55127
612.913.1111
www.loucks.com

DATE

10/15/2014

SCALE

AS SHOWN

PROJECT NO.

14-001

CLIENT NO.

14-001

PROJECT NO.

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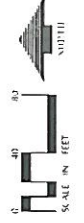
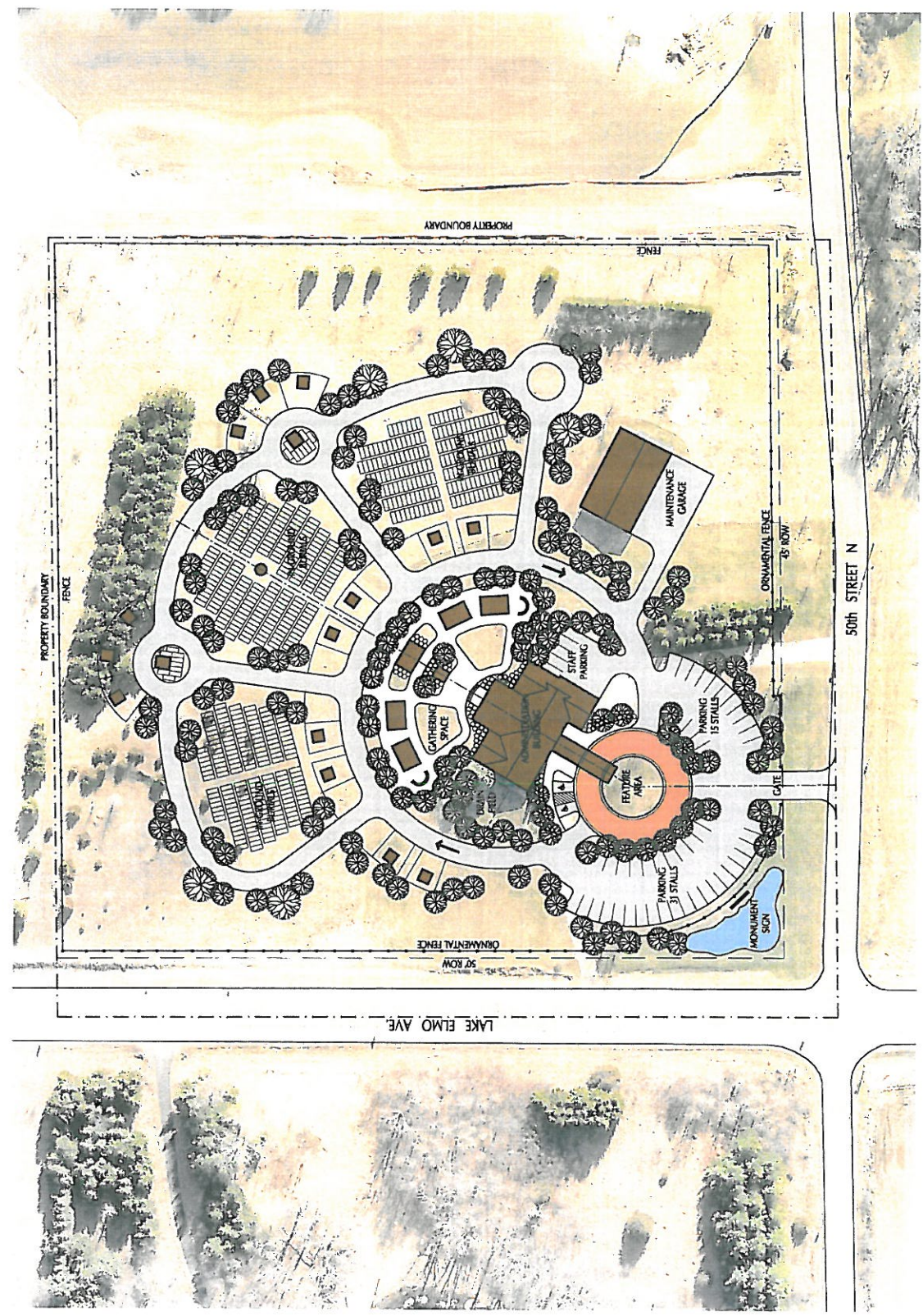
14-001

CLIENT NO.

14-001

PROJECT NO.

14-001



CP1.0

CONCEPT PLAN

Nick Johnson

From: Deb <deb4135@aol.com>
Sent: Friday, November 21, 2014 1:11 PM
To: Nick Johnson
Subject: Questions for Planning Commission
Attachments: Planning_Commission_questions.docx

Nick,

It's been a crazy week but I've gotten the questions done and have attached them to this e-mail. Thanks for taking the time to talk to me about this proposed project in our neighborhood.

I've also put the questions below in case the attachment doesn't work.

1.
 1. When will the property be open and will it be locked after hours? Will there be on site staff and if so what will the hours of that staff be?
 2. What will the lighting be and will there be lighting all night? If so, will it be localized and facing downward or will it be illuminating into adjacent properties?
 3. What will the security be to help keep vandals and unauthorized persons from gaining entry or going into adjacent properties?
 4. What is the height and type of the fencing that is not street side, i.e. chain link, solid wood?
 5. The property is zoned residential. Since this appears to be a for profit business venture, if it fails who will be responsible for the property or removing the bodies? Also, since it will have been used for a business purpose, will it then be eligible to continue as a commercial property vs. a residential property?
 6. Is there a potential impact to the ground water due to the in ground burial feature of the plan? There is a new city well that has just been placed to the east of the property. In addition, most homes in the area have private wells. There have been studies done that the decaying bodies of the dead can impact water quality.

These questions are being submitted by adjacent property owner, Debra Downing, 5135 Lake Elmo Av.

Deb Downing
5135 Lake Elmo Av N
Lake Elmo, MN 55042
612-867-7014
deb4135@aol.com



MAYOR & COUNCIL COMMUNICATION

DATE: December 2, 2014
REGULAR
ITEM # 17

AGENDA ITEM: Lake Elmo Avenue (CSAH 17) Project Cooperative Agreement with Washington County for Right of Way Acquisition

SUBMITTED BY: Nick M. Johnson, City Planner

THROUGH: Dean Zuleger, City Administrator

REVIEWED BY: Kyle Klatt, Community Development Director
Jack Griffin, City Engineer
David Snyder, City Attorney

SUGGESTED ORDER OF BUSINESS:

- Introduction of ItemCommunity Development Director
- Report/Presentation.....Community Development Director
- Questions from Council to Staff..... Mayor Facilitates
- Call for Motion Mayor & City Council
- Discussion Mayor & City Council
- Action on Motion..... Mayor Facilitates

POLICY RECCOMENDER: Staff is recommending that the City enter into a cooperative agreement with Washington County to contract right-of-way and temporary easement acquisition services related to the Lake Elmo Avenue Street and Utility Project.

FISCAL IMPACT: Not to exceed \$597,950. The City would be required to pay the County for all services rendered related to the acquisition of temporary easements or permanent right of way. The costs for easement and right-of-way acquisition should be considered part of the total project costs and funded in accordance with a council approved project funding plan, yet to be fully determined. The project is planned for in the 2015 and 2016 CIP.

SUMMARY AND ACTION REQUESTED: The City Council is being asked to consider entering a cooperative agreement with Washington County to contract services for the acquisition of permanent right-of-way and temporary construction easements for the Lake Elmo Avenue Downtown Street and Utility Project. Contracting these services through Washington County would be advantageous for the City for a number of reasons. Foremost, following the County’s right-of-way acquisition process would help to ensure that the project will proceed as

planned in 2015 and 2016. The acquisition of easements and right-of-way is extremely time sensitive. Failure to acquire the necessary easements could result in the bidding of the project in a less favorable bidding environment, or the delay of the project to the following year.

Staff is recommending that the City Council approve the Cooperative Agreement with Washington County through the following motion:

“Move to adopt Resolution No. 2014-96, approving the Cooperative Agreement with Washington County to facilitate right of way acquisition associated with the Lake Elmo Avenue Downtown Street and Utility Project.”

BACKGROUND INFORMATION:

The City and County have been working collaboratively over the past year on the Lake Elmo Avenue Downtown Street and Utility Project. The project includes the installation of sanitary sewer, replacement of watermain, stormwater improvements, and street reconstruction for Lake Elmo Ave. from 30th Street to Trunk Highway (TH) 5, 30th Street North, Upper 33rd Street North, 36th Street North and Laverne Avenue North. The ability to work on the downtown street and utility project resulted from Washington County moving the project up to 2015 in their Capital Improvement Plan (CIP) at the request of the City. In addition to the development of preliminary plans for the project, the City and County have engaged in significant efforts in community engagement, finance and planning. The project is planned to proceed in two phases over 2015 and 2016 (See Phasing Map for Downtown Street and Utility Improvements – Attachment #5). In order for the project to proceed on the planned schedule, the City and County must begin acquisition of permanent right of way, permanent easements and temporary easements.

To acquire the necessary right of way and easements for the project, the City has been presented two options: 1) The City can acquire all right of way associated with City streets without the assistance of the County, or 2) The County has offered the City the opportunity to utilize the County’s right of way acquisition services for the total project at cost. If the City were to perform the acquisition services for the City streets independently of the County, the City would likely need to contract these services to an outside right-of-way agent and have staff manage this contract. Conversely, if the County were to perform these services, they have the staff in place to complete the acquisition for the entire project, not just Lake Elmo Avenue (CSAH 17 – County facility). Staff has evaluated both options and, after careful consideration, has determined that contracting the service to Washington County is the superior and more prudent option for the following reasons:

- The County right-of-way acquisition process is a tried and true method that will leave no doubt to the acquisition of the necessary right-of-way and easements to proceed with the project. For more detail on the County process, see Attachments #3 and #4. In the judgment of staff, there is a tremendous amount of value in ensuring that the project proceeds in 2015, as the City and County have expended significant resources in preparing for the project to commence in 2015. In other words, ensuring that the

necessary right-of-way is acquired for the process to commence is critical in mitigating potential risk to the project.

- Following the County's acquisition process provides a concrete timeframe in which the final construction plans can be prepared and the project can go out for public bid. One of the critical goals for both the County and the City is to ensure that the public construction project is bid within a favorable bidding timeframe. If the project gets delayed due to right-of-way and easement acquisition, the project could be bid during a less favorable bidding environment, leading to an escalation of costs. Once again, following the County's acquisition process minimizes the risk associated with project delays that can result in escalating costs.
- Completing the necessary acquisition work under the County contract will ensure that all property owners are treated in a fair and equitable manner within the same process. The County will contract all acquisition work through one appraiser and agent, allowing for fair treatment for all property owners, as well as one point of contact for the entirety of the project. Staff believes that there is value in having all property owner's work within the same process so no property owner gains favor or additional compensation over another through the acquisition process.
- Contracting these services to the County provides value to the City in minimizing the amount of resources necessary for management of the acquisition process. Given the magnitude of the project (number of property owners, amount of right-of-way/easements) and the amount of planning, design, construction and public engagement tasks associated with it, staff is concerned with not having sufficient time and resources to adequately manage the acquisition process.

In terms of the costs associated with the right-of-way acquisition, it is important to note that the City will only be responsible for the actual costs incurred within the acquisition process. Within the Cooperative Agreement (Attachment #2), this critical point is outlined in subsection C.4. In other words, if the design of the project as it stands today were to change, and some of the easement or right-of-way acquisition were unnecessary, these services would not be rendered. In other words, the estimate cost figure of \$597,950 is a not-to-exceed worst case scenario figure. In addition, please note that the agreement contains \$121,500 in contingency second-appraisal costs. Under state law, any government must offer a second appraisal if the landowner requests it. However, the request for second appraisal is not common within such public projects. Given the required contingencies in the agreement, staff is confident that the overall cost of right-of-way and easement acquisition will go down as the process unfolds. The County has provided a conservative and safe estimate in order to ensure that the proposed agreement covers all contingencies and scenarios through the acquisition process.

STRENGTHS, WEAKNESSES, OPPORTUNITIES, THREATS:

Strengths: The County provides greater certainty to maintain a timely project schedule and control of design and construction costs. The County also provides a process that will result in a fair and equitable treatment for all property owners. Finally, utilizing the

County's services will allow City staff to focus resources on design, planning, construction, and community engagement efforts.

Weaknesses: If staff had significant time and resources to pursue easement acquisitions in house, acquisition costs may be able to be reduced. However, the ability to reduce acquisition costs likely results in non-equitable treatment between property owners.

Opportunities: The County process offers cost-effective and proven methods and the resources to assist the City with maintaining the project schedule. Keeping the project on schedule will result in bidding the project in a more favorable bidding environment.

Threats: All acquisition processes risk the threat of dispute. The County process helps ensure statutory process is followed to mitigate the risk of dispute.

RECOMMENDATION:

Based on the aforementioned, Staff is recommending that the City Council approve the cooperative agreement with Washington County through the following motion:

“Move to adopt Resolution No. 2014-96, approving the Cooperative Agreement with Washington County to facilitate right of way acquisition associated with the Lake Elmo Avenue Downtown Street and Utility Project.”

ATTACHMENTS:

1. Resolution No. 2014-96
2. Cooperative Agreement for Right of Way Cost of CSAH 17
3. Cooperative Agreement Memorandum
4. County Right of Way Acquisition Schedule
5. Phasing Map for Downtown Street and Utility Improvements

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

RESOLUTION NO. 2014-96

A RESOLUTION APPROVING A COOPERATIVE AGREEMENT WITH WASHINGTON COUNTY TO FACILITATE ALL RIGHT OF WAY ACQUISITION FOR THE LAKE ELMO AVE DOWNTOWN STREET AND UTILITY PROJECT

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

WHEREAS, the City and Washington County intend to reconstruct County State Aid Highway (CSAH) 17 (Lake Elmo Avenue) from Trunk Highway (TH) 5 to 30th Street North in the City of Lake Elmo; and

WHEREAS, the City and County intend to reconstruct 30th Street North, Upper 33rd Street North, 36th Street North and Laverne Avenue North, all local streets in the City of Lake Elmo, as part of the project; and

WHEREAS, the construction of streets and utilities associated with the project will require the acquisition of permanent right of way, permanent easements, and temporary easements; and

WHEREAS, the preliminary right of way cost estimate has been prepared by the County and the City will participate in the right of way costs in accordance with the Revised Draft County Cost Participation Policy for Projects Constructed in Washington County Using State Aid Funds or Local Tax Levy Dollars dated September 30, 2014; and

WHEREAS, a cooperative agreement between the City and County is the appropriate method to facilitate the right of way acquisition; and

NOW, THEREFORE, BE IT RESOLVED THAT the City Council does hereby approve the Cooperative Agreement Between the City of Lake Elmo and Washington County for Right of Way Cost for the Lake Elmo Avenue Downtown Street and Utility Project.

Passed and duly adopted this 2nd day of December 2014 by the City Council of the City of Lake Elmo, Minnesota.

Mike Pearson, Mayor

ATTEST:

Adam Bell, City Clerk

**COOPERATIVE AGREEMENT BETWEEN THE CITY OF
LAKE ELMO AND WASHINGTON COUNTY FOR RIGHT OF WAY
COST OF COUNTY STATE AID HIGHWAY (CSAH) 17**

WASHINGTON COUNTY	
CONTRACT NO.	9155
DEPT.	PUBLIC WORKS
DIVISION	TRANSPORTATION
TERM	SIGNATURE - COMPLETION

THIS AGREEMENT, by and between the City of Lake Elmo, a municipal corporation, herein after referred to as the "City", and Washington County, a political subdivision of the State of Minnesota, hereinafter referred to as the "County", shall consist of this agreement and Exhibit A (Project Location Map).

WITNESSETH:

WHEREAS, the County intends to reconstruct County State Aid Highway (CSAH) 17 (Lake Elmo Avenue) from Trunk Highway (TH) 5 to 30th Street North in the City of Lake Elmo; and

WHEREAS, the County intends to reconstruct, as a part of this project, a portion of the City streets: 30th Street North, Upper 33rd Street North, 36th Street North, and Laverne Avenue; and

WHEREAS, the preliminary right of way cost estimate has been prepared by the County and the City will participate in the right of way costs in accordance with the County Cost Participation Policy as summarized in Section C of this agreement; and

WHEREAS, the City desires to use local funds for these improvements; and

WHEREAS, a cooperative effort between the City and County is the appropriate method to facilitate the right of way acquisition; and

WHEREAS, this Agreement is made pursuant to statutory authority contained in Minnesota Statute 162.17 sub.1 and Minnesota Statute 471.59.

NOW THEREFORE, IT IS HEREBY MUTUALLY AGREED AS FOLLOWS:

A. PURPOSE

The purpose of this agreement is set forth in the above whereas clauses which are all incorporated by reference as if fully set forth herein.

B. RIGHT OF WAY AND EASEMENTS

1. The County shall acquire all permanent right-of-way, permanent easements, and temporary slope easements. All permanent rights-of-way, permanent easements, and temporary easements will be acquired in the name of the County.
2. Any rights-of-way, permanent easements, and temporary slope easements that cannot be obtained through negotiation will be acquired by the County through eminent domain proceedings.
3. Upon completion of the project, title to permanent right-of-way for and adjacent to City streets and permanent easements for storm water storage and water quality treatment within the City will be conveyed to the City.

C. COST PARTICIPATION ITEMS AND ESTIMATED COSTS

1. The estimated cost participation breakdown is in accordance with the REVISED DRAFT "Cost Participation Policy for Projects Constructed in Washington County Using State Aid Funds or Local Tax Levy Dollars" dated September 30, 2014.
2. The City shall pay to the County 55 percent of the cost of all permanent right-of-way, permanent

utility and/or drainage easements, temporary slope easements, title work costs, appraisal costs, relocation specialist costs, relocation costs, condemnation commissioner costs, and all related acquisition costs along CSAH 17 (Lake Elmo Avenue), from 30th Street North to MN Highway 5. The City cost is ESTIMATED in the table below.

- The City shall pay to the County 100 percent of the cost of all permanent right-of-way, permanent utility and/or drainage easements, temporary slope easements, title work costs, appraisal costs, relocation specialist costs, relocation costs, condemnation commissioner costs, and all related acquisition costs on 30th Street North, Upper 33rd Street North, 36th Street North, and Laverne Avenue. The City cost is ESTIMATED in the table below.

Table 1 City of Lake Elmo Cost Summary	
ITEM	CITY COST ESTIMATE
CITY STREET (30TH ST N, UPPER 33RD ST N, 36TH ST N, LAVERNE AVE) ACQUISITION NEEDS:	
TITLE WORK COSTS (100%)	\$6,450
APPRAISAL COSTS (100%)	\$43,000
LANDOWNER SECOND APPRAISAL COSTS (100%)	\$64,500
PERMANENT RIGHT OF WAY ACQUISITION (100%)	\$100,000
TEMPORARY EASEMENT ACQUISITION (100%)	\$75,000
TREE AND LANDSCAPING COST TO CURE (100%)	\$30,000
LAKE ELMO AVENUE (CSAH 17) ACQUISITION NEEDS:	
TITLE WORK COSTS (55%)	\$6,000
APPRAISAL COSTS (55%)	\$40,000
LANDOWNER SECOND APPRAISAL COSTS (55%)	\$57,000
PERMANENT RIGHT OF WAY ACQUISITION (55%)	\$70,000
TEMPORARY EASEMENT ACQUISITION (55%)	\$80,000
TREE AND LANDSCAPING COST TO CURE (55%)	\$26,000
TOTAL COSTS	\$597,950

- Actual right of way costs shall be determined at the conclusion of the acquisition process. The City shall be responsible to pay for the actual costs of the aforementioned acquisition costs.

D. PAYMENT

Right of way costs shall be due a payable by the City to the County immediately and will be invoiced to the City by the County as incurred during the project. The City shall pay 100 percent of the invoiced amount within 35 days of its receipt.

E. CIVIL RIGHTS AND NON-DISCRIMINATION

The provisions of Minn. Stat. 181.59 and of any applicable ordinance relating to civil rights and discrimination shall be considered part of this Agreement as if fully set further herein, and shall be part of any Agreement entered into by the parties with any contractor subcontractor, or material suppliers.

F. INDEMNIFICATION

1. The City agrees that it will defend, indemnify and hold harmless the County against any and all liability, loss, damages, costs and expenses which the County may hereafter sustain, incur or be required to pay by reason of any negligent act by the City, its agents, officers or employees during the performance of this agreement.
2. The County agrees that it will defend, indemnify and hold harmless the City against any and all liability, loss, damages, costs and expenses which the City may hereafter sustain, incur or be required to pay by reason of any negligent act by the County, its agents, officers or employees during the performance of this agreement.
3. To the fullest extent permitted by law, actions by the parties to this Agreement are intended to be and shall be construed as a "cooperative activity" and it is the intent of the parties that they shall be deemed a "single governmental unit" for the purposes of liability, as set forth in Minnesota Statutes, Section 471.59, subd. 1a(b). The parties to this Agreement are not liable for the acts or omissions of another party to this Agreement except to the extent they have agreed in writing to be responsible for the acts or omissions of the other parties as provided for in Section 471.59, subd. 1a.
4. Each party's liability shall be governed by the provisions of Minnesota Statutes, Chapter 466 and other applicable law. The parties agree that liability under this Agreement is controlled by Minnesota Statute 471.59, subdivision 1a and that the total liability for the parties shall not exceed the limits on governmental liability for a single unit of government as specified in 466.04, subdivision 1(a).

G. DATA PRIVACY

All data collected, created, received, maintained, or disseminated, or used for any purposes in the course of this Agreement is governed by the Minnesota Government Data Practices Act, Minnesota Statutes 1984, Section 13.01, et seq. or any other applicable state statutes and state rules adopted to implement the Act, as well as state statutes and federal regulations on data privacy.

H. CONDITIONS

The City shall not assess or otherwise recover any portion of its cost for this project through levy on County-owned property.

IN TESTIMONY WHEREOF the parties have duly executed this agreement by their duly authorized officers.

WASHINGTON COUNTY

CITY OF LAKE ELMO

 Chair Date
 Board of Commissioners

 Mayor Date

 Molly O'Rourke Date
 County Administrator

 City Administrator Date

Approved as to form:

Approved as to form:

 Assistant County Attorney Date

 City Attorney Date

MEMORANDUM

Date: November 25, 2014
To: City of Lake Elmo
From: Washington County Public Works
Re: **Cooperative Agreement between the City of Lake Elmo and Washington County for Right of Way Cost of County State Aid Highway (CSAH) 17**

Below is a brief description of how the estimated costs were calculated for the anticipated right of way acquisition associated with the Lake Elmo Avenue (CSAH 17) Corridor Management and Safety Improvement Project. The items described below are associated with the standard right of way acquisition process the County follows.

TITLE WORK COSTS

- Necessary to verify ownership and any encumbrances on the property.
- Cost is \$150/parcel

APPRAISAL COSTS

- Appraiser will value the acquisition area needed for each parcel
- The appraised value will be used as the offer to the property owners for the necessary acquisition.
- Appraisal costs vary depending on the complexity of the parcel; but average \$1000/parcel

LANDOWNER SECOND APPRAISAL COSTS

- After the initial offer is made, property owners have a right (by Minnesota State Law) to hire a different appraiser to value the acquisition area. This is usually done only if a property owner is not satisfied with the initial offer.
- By Minnesota State Law, property owners are entitled reasonable reimbursement for a second appraisal up to \$1500 for single family residential, two-family residential, and agricultural property and \$5000 for commercial and other types of property.
- Costs for this in the cooperative agreement were assuming a majority of property owners would get a second appraisal; which is unlikely.

PERMANENT RIGHT OF WAY ACQUISITION COSTS

- The appraiser will determine the value of the property based on recent sales of similar property

- This project will necessitate several small permanent acquisitions; with the majority of permanent acquisitions on 30th Street.

TEMPORARY EASEMENT ACQUISITION COSTS

- The majority of property along Lake Elmo Avenue, 30th Street, Upper 33rd Street, 36th Street North, and Laverne Avenue will require temporary easements
- Temporary Easement costs are essentially “rental costs” for the necessary area.
- Temporary Easement costs usually range between 8-10% of the land value/year
- Temporary Easements are normally purchased for at least two construction seasons (For example: April 1, 2015 – September 30, 2016) even if the project is designed to be completed in one season. This allows for any schedule delays, turf establishment in the easement area, and clean-up work.

TREE AND LANDSCAPING COST TO CURE

- There will be an estimated 46 trees removed on private property as a part of the project.
- Full grown tree value averages \$1000/tree
- The appraiser will include any tree compensation in the appraised value of the overall acquisition amount.
- Estimated costs in the table on the cooperative agreement allow for these 46 trees; and in addition, any trees that may have been missed or additional shrubs and/or landscaping items that would also be reimbursed to the property owners in the appraisals.

CONDEMNATION COSTS

- These costs are not listed on the table in the cooperative agreement; as there is no way to estimate them
- For any parcel that does not settle; the County will begin eminent domain proceedings
- Costs associated with these proceedings include (but are not limited to): condemnation commissioner, attorney, updated appraisal, and testimony fees.
- If this step is needed, the city will be responsible for 100% of these costs on acquisitions along city streets and 55% of these costs on acquisitions along Lake Elmo Avenue (CSAH 17)

R/W Schedule: Laverne Ave, Upper 33rd, 36th

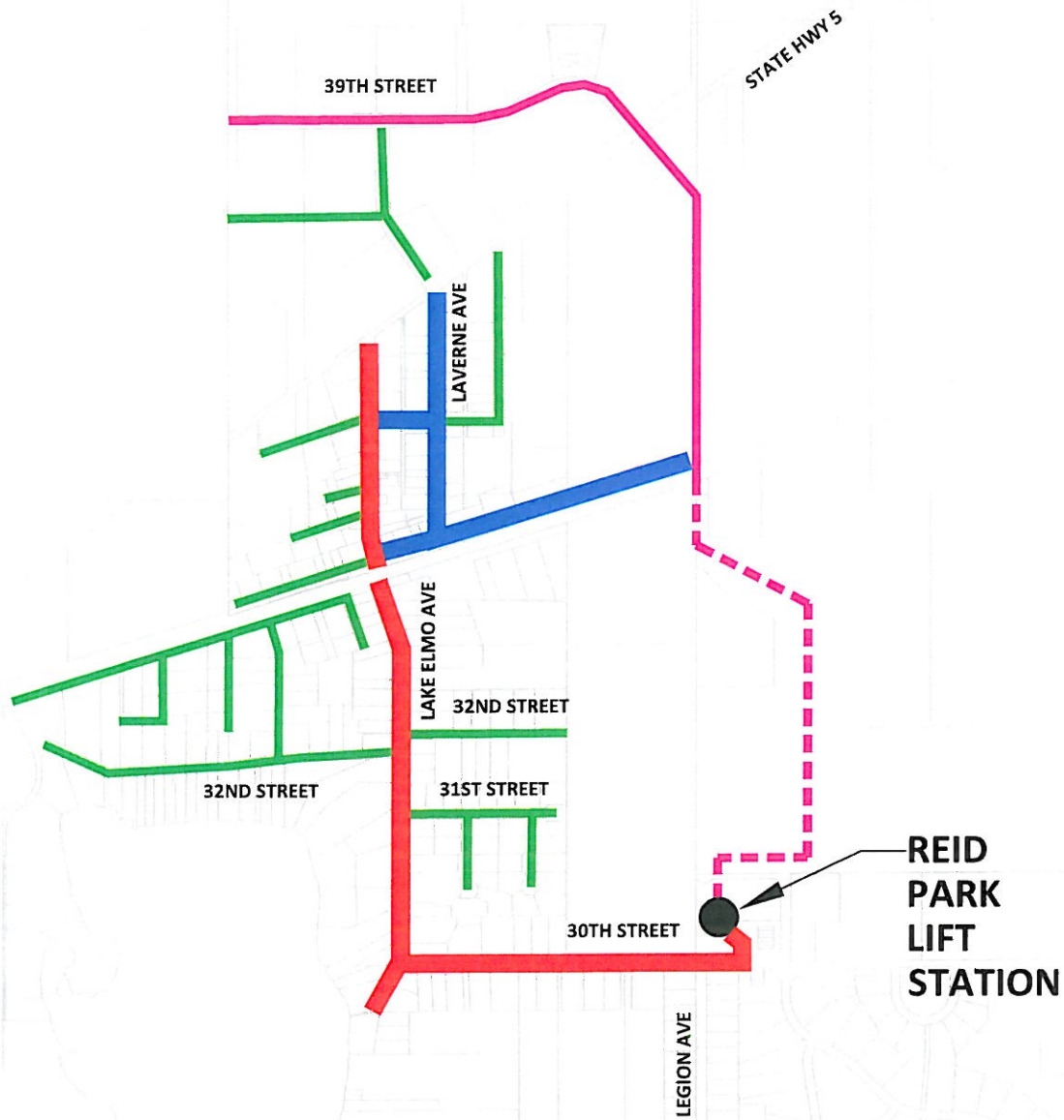
(As of November 4, 2014)

<u>Action</u>	<u>Date</u>
Final Construction limits determined and to the County (for Laverne Ave, Upper 33rd and 36th)	November 14, 2014
City Approval of Cooperative Agreement (ROW and Design)	November, 2014
To County Board: RBA for Hiring Appraiser; RBA to Acquire ROW; Cooperative Agreement (ROW and Design) with City of Lake Elmo; Project Update	December 9 or 16, 2014
John Baer (County Survey) working on parcel sketches and legal descriptions for Laverne Ave, Upper 33rd, and 36th	November and December, 2014
Initial Contact Letters sent to residents	December, 2014
Parcel Sketches, Legal Descriptions, and Property Information to Appraiser	January 2, 2015
Appraisals Due	February 27, 2015
Make offers to all property owners (as appraisals come in - no later than the end of March)	no later than March 27, 2015
Negotiate and Buy R/W	March - May, 2015
Begin Eminent Domain Process with unsettled parcels (serve all unsettled parcel property owners through WashCo Attorney's Office) (60 days after last offer)	May 27 - June 10, 2015
Continue Negotiations with unsettled parcels	June - August
Title and Possession for all R/W on Laverne Ave, Upper 33rd, and 36th (90 days after property owners were served)	September 8, 2015

R/W Schedule: CSAH 17 and 30th Street

(As of November 4, 2014)

<u>Action</u>	<u>Date</u>
City Approval of Cooperative Agreement (ROW and Design)	November, 2014
To County Board: RBA for Hiring Appraiser; RBA to Acquire ROW; Cooperative Agreement (ROW and Design) with City of Lake Elmo; Project Update	December 9 or 16, 2014
Final Construction limits determined and to the County (for CSAH 17 and 30th Street)	December 31, 2014
John Baer (County Survey) working on parcel sketches and legal descriptions for CSAH 17 and 30th Street	January and February, 2015
Initial Contact Letters sent to residents	February, 2015
Parcel Sketches, Legal Descriptions, and Property Information to Appraiser	March 2, 2015
Appraisals Due	May 1, 2015
Make offers to all property owners (as appraisals come in)	no later than June 5, 2015
Negotiate and Buy R/W	June - August, 2015
Begin Eminent Domain Process with unsettled parcels (serve all unsettled parcel property owners through WashCo Attorney's Office) (60 days after last offer)	August 5 - August 19, 2015
Continue Negotiations with unsettled parcels	August - October
Title and Possession for all R/W on CSAH 17 and 30th Street (90 days after property owners were served)	November 18, 2015



LEGEND

- 2014 CONSTRUCTION: 39TH STREET IMPROVEMENTS (CITY PROJECT)
- - - 2015 CONSTRUCTION: VILLAGE EAST SEWER IMPROVEMENTS (PRIVATE PROJECT)
- 2015 CONSTRUCTION: VILLAGE STREET, SANITARY SEWER, AND WATERMAIN IMPROVEMENTS (CITY PROJECT)
- 2016 CONSTRUCTION: VILLAGE STREET, SANITARY SEWER, AND WATERMAIN IMPROVEMENTS (COUNTY PROJECT)
- FUTURE: TENTATIVE 2017-2019 CONSTRUCTION: VILLAGE STREET AND UTILITY IMPROVEMENTS (CITY PROJECTS)

