



MAYOR & COUNCIL COMMUNICATION

DATE: August 16, 2016
REGULAR
ITEM # 18

AGENDA ITEM: CSAH 13 Phase 1 Improvements - Authorize Preparation of a Feasibility Report

SUBMITTED BY: Jack Griffin, City Engineer

THROUGH: Kristina Handt, City Administrator

REVIEWED BY: Chad Isakson, Project Engineer
Cathy Bendel, Finance Director

SUGGESTED ORDER OF BUSINESS:

- Introduction of Item.....City 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.

FISCAL IMPACT: \$7,000. If the improvements are ordered, the report costs will be charged against the project fund and become assessable to the benefitting properties. Should the project not be constructed, the report costs cannot be assessed.

SUMMARY AND ACTION REQUESTED: The City Council is respectfully requested to consider approving Resolution No. 2016-67, Ordering the Preparation of a Feasibility Report meeting MN State Statute 429 for the CSAH 13 Phase 1 Improvements so that the costs may be wholly or partially assessed to the benefitting properties.

LEGISLATIVE HISTORY/BACKGROUND INFORMATION: The City of Lake Elmo, City of Oakdale, and Washington County are working jointly to make improvements along County State Aid Highway (CSAH) 13 (Ideal Avenue/Olson Lake Trail) with the Phase 1 Improvements to be constructed in 2017. On July 19, 2016 the City of Lake Elmo approved a Resolution of Municipal Support for the Phase 1 Improvements consisting of pavement

preservation from CSAH 14 to 44th Street and Street Reconstruction with Trail, Drainage and Sanitary Sewer Improvements from 44th Street to 50th Street. The project will improve the roadway corridor, better manage storm water, add a pedestrian facility, and extend Oakdale's municipal sanitary sewer system to several Lake Elmo properties.

Washington County intends to require cost participation from the Cities of Lake Elmo and Oakdale in accordance with the County Cost Participation Policy for County Improvement Projects. In addition, the improvements include the extension of sanitary sewer service to Lake Elmo and Oakdale properties at the request of both cities. The current estimate for the local cost share of the improvements to be shared approximately equally between Lake Elmo and Oakdale is \$1,185,142. A Joint Powers Agreement will be prepared to more specifically allocate those costs between the County and each City.

Special assessments have been identified as one of the available funding mechanisms for the improvements where the benefiting properties are specially assessed all or a portion of the cost of the improvement, pursuant to the City's Special Assessment Policy and Minnesota Statutes, Chapter 429. In order to maintain special assessments as a viable funding alternative, the City Council must direct the preparation of a feasibility report meeting the statutory process for public improvements that are specially assessed.

The report will advise on the improvements being recommended along the corridor, provide estimated project costs for the City cost participation of the recommended improvements, including easement and right-of-way, permits, and other requirements needed to implement the improvements, recommend whether the improvements should be made as proposed or in connection with some other improvement, and advise if the improvements are necessary, cost effective, and feasible. The Report will also provide a preliminary assessment roll for each of the benefiting properties. Utility improvements will address sanitary sewer service to replace individual on-site treatment systems. Project costs will be as provided by Washington County's design consultant (SRF Consulting) for the improvements. Additionally, a Cooperate Agreement will be needed between Lake Elmo and Oakdale to address the respective municipal cost share along with maintenance responsibilities for the various improvements.

RECOMMENDATION: Staff is recommending that the City Council authorize FOCUS Engineering, Inc. to prepare a Feasibility Report meeting MN State Statute 429 for the CSAH 13 Phase 1 Improvements in the not to exceed amount of \$7,000. The recommended motion for this action is as follows:

“Move to approve Resolution No. 2016-67, Ordering preparation of a Feasibility Report by FOCUS Engineering for the CSAH 13 Phase 1 Improvements in a not to exceed amount of \$7,000.”

ATTACHMENT(S):

1. Resolution No. 2016-67, Ordering Preparation of a Feasibility Report.
2. CSAH 13 Location Map and Typical Section.
3. Project Schedule.

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

RESOLUTION NO. 2016-67

**A RESOLUTION ORDERING PREPARATION OF A FEASIBILITY REPORT
FOR THE CSAH 13 PHASE 1 IMPROVEMENTS**

WHEREAS, on July 19, 2016 the City of Lake Elmo approved a Resolution of Municipal Support for the County State Aid Highway 13 (Ideal Avenue/Olson Lake Trail) Roadway, Trail, Drainage and Sanitary Sewer Improvements for CSAH 13 from CSAH 14 to 50th Street; and

WHEREAS, the CSAH 13 Phase 1 Improvements, including pavement preservation from CSAH 14 to 44th Street and Street Reconstruction with Trail, Drainage and Sanitary Sewer Improvements from 44th Street to 50th Street, are proposed for construction beginning in 2017; and

WHEREAS, Washington County, the City of Oakdale and the City of Lake Elmo are each responsible for sharing in the project costs per the Washington County cost participation policy; and

WHEREAS, it is proposed to assess the benefiting properties for all or a portion of the cost of the improvement, pursuant to the City's Special Assessment Policy and Minnesota Statutes, Chapter 429.

NOW, THEREFORE, IT IS HEREBY RESOLVED,

That the proposed improvement, called the CSAH 13 Phase 1 Improvements, be referred to the City Engineer and FOCUS Engineering, and that FOCUS Engineering is instructed to complete a feasibility report in accordance with Minnesota Statutes, Chapter 429 for the proposed improvements, and to report to the council with all convenient speed advising the council in a preliminary way as to whether the proposed improvement is necessary, cost-effective, and feasible; whether it should be best made as proposed or in connection with some other improvement; using estimated costs for the recommended improvements as determined by the County's design consultant; and a description of the methodology used to calculate individual assessments for affected parcels.

ADOPTED BY THE LAKE ELMO CITY COUNCIL ON THE SIXTEENTH DAY OF AUGUST 2016.

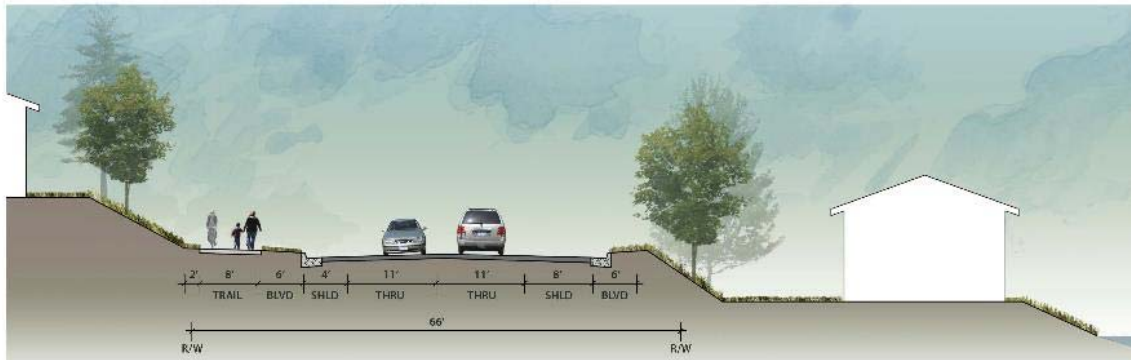
CITY OF LAKE ELMO

By: _____
Mike Pearson
Mayor

(Seal)
ATTEST:

Julie Johnson
City Clerk

Preferred Alternative



#5 - North End Curb and Gutter Design (Trail)



CSAH 13

IDEAL AVENUE NORTH / OLSON LAKE TRAIL

PROJECT SCHEDULE
CITY OF LAKE ELMO

CSAH 13 PHASE 1 IMPROVEMENTS
PROJECT NO. 2015.125

FOCUS ENGINEERING, inc.

Cara Geheren, P.E. 651.300.4261
Jack Griffin, P.E. 651.300.4264
Ryan Stempski, P.E. 651.300.4267
Chad Isakson, P.E. 651.300.4283

AUGUST 2016

JULY 19, 2016	Council approves Phase 1 Municipal Consent. County proceeds with Final Design.
AUGUST 16, 2016	Council authorizes the preparation of the CSAH 13 Phase 1 Feasibility Report.
FEBRUARY 21, 2017	County presents final plans and specifications. Council accepts Report and adopts project assessment policy. Calls Public Improvement and Final Assessment Hearing.
FEBRUARY 22, 2017	Notice of Public Improvement and Final Assessment Hearing (Publish March 1 and March 8, 2017).
FEBRUARY 27, 2017	County posts advertisement for bid.
MARCH 21, 2016	Public Improvement and Final Assessment Hearing. Council <u>Orders the Improvement</u> for the CSAH 13 Phase 1 Improvements (Requires 4/5 th vote).
APRIL 4, 2017	County Accepts Contractor Bids.
APRIL 18, 2017	Council approves "Concurrence" to award contract.
MAY, 2017	Start of Phase 1 Construction. <ul style="list-style-type: none">• NOVEMBER, 2017 Substantial Completion.• JULY, 2018 Final Completion.



MAYOR AND COUNCIL COMMUNICATION

DATE: 8/16/2016

REGULAR

ITEM #: 18

AGENDA ITEM: Boulder Ponds PUD Amendment/Rezoning
SUBMITTED BY: Stephen Wensman, Planning Director
THROUGH: Kristina Handt, City Administrator
REVIEWED BY: Ben Gozola, Consultant Senior Planner
Emily Becker, City Planner

BACKGROUND:

OP4 Boulder Ponds LLC is requesting approval of a rezoning/PUD amendment to the Boulder Ponds PUD to rezone Outlots B (PID#34.029.21.33.0023) and C (PID# 34.029.21.33.0024), Boulder Ponds from Commercial PUD and MDR-PUD, respectively to HDR-PUD.. The Planning Commission held a public hearing on 7/25/16 and recommended approval.

ISSUE BEFORE COUNCIL:

The Council shall determine whether to approve the rezoning/PUD amendment.

PROPOSAL DETAILS/ANALYSIS:

OP4 Boulder Ponds LLC believes the MDR/PUD was the incorrectly zoning for the proposed 64-unit senior facility proposed for Outlot C. The existing zoning is MDR/PUD whereas the desired zoning is HDR/PUD. Boulder Ponds would also like to add the adjacent Commercial/PUD outlot, Outlot C, to the development site with the same HDR/PUD zoning.

The zoning for Boulder Ponds occurred on 4/21/15 and was based on a density analysis presented during the Concept PUD process. The area guided for Medium Density Residential, which is approximately 10.1 acres, contains 17 single family dwellings and a planned 64 senior facility, which has a planned gross density of 7.98 units per acre; the appropriate density for Medium Density Residential land use guide.

The norther portion of the area was developed into 17 single family dwellings and was zoned LDR/PUD. The southern portion of the area was platted as Outlot C (2.24 acres) and zoned MDR/PUD for the planned 64-unit senior residential use. With MDR zoning, the maximum allowed density is only 7 units per acre, whereas with HDR, the maximum allowed density is 15 units per acre.

Correction from the Planning Commission Report. A 64-unit residential development on Outlot C would have a density of 25.91 units per acre which exceeds the allowed HDR density. However, after consultation with Consultant Planner, Ben Gozola, Staff now understands that this density, 64 dwelling units on 2.24 acres was approved as part of the concept plan and anticipated at preliminary plat. By adding the 1.44 acre-Outlot B to the development site, rezoning it from Commercial/PUD to HDR/PUD, an additional density of 26 additional dwelling units could be allowed based on the HDR zoning, or 31 additional dwelling units if 20% density bonus was applied through the PUD (for a total potential density of 90 dwelling units over both Outlots B and C together, or 95 if density bonus is applicable through the PUD).

No additional density would be allowed, as suggested by the Developer, for unused density in the other portions of the development, north of 5th Street.

The Developer has suggested that they might want to be allowed additional density if providing senior congregate care facilities with services, as was done with the Arbor Glen project in the Village area. If you recall, the memory care units were not counted towards the overall density count because these units are recognized as being different from standard multi-family residential development. In addition, the City Council slightly increased the maximum allowed density up to a maximum of 16 units per acre within the VMX District area. These provisions required a comprehensive plan amendment and did not include any other areas besides the VMX Zoning District. Without a similar comprehensive plan amendment, any memory care units would be considered as dwelling units.

PLANNING COMMISSION/PUBLIC HEARING COMMENTS:

at the Public Hearing, no one spoke from the public and there was no written correspondence. The Planning Commission expressed concern about approving the rezoning to HDR/PUD without a specific plan and was concerned that the senior living project could end up as a market rate high density multi-family rental housing. The Planning Commission made a motion that they are in support of congregate care with services not counting as dwelling units as was approved in the VMX District. Todd Williams and Tom Kreimer are in support of more high density residential and that the Boulder Ponds site is an appropriate location. The Planning Commission recommended approval of the rezoning/PUD amendment with a 7-0 vote.

FISCAL IMPACT:

There would be no direct fiscal impact by the rezoning/PUD Amendment, however, it will improve the marketability of Outlots B and C, which will provide development fees and building permit fees to the City when developed.

OPTIONS:

The City Council should consider whether to approve the Rezoning/PUD Amendment from MDR/PUD and Commercial/PUD to HDR/PUD for Outlots C and B, respectively.

RECOMMENDATION:

Staff and the Planning Commission recommend approval of Ordinance 08-149 Rezoning/PUD Amendment with the following motion:

“Move to approve a zoning map amendment/PUD Amendment, Ordinance 08-149, to rezone Outlots B (PID 34.029.21.33.0023) and C (PID 34.029.21.33.0024), Bolder Ponds from Commercial/PUD and MDR/PUD respectively to HDR/PUD”.

ATTACHMENTS:

- Planning Commission Minutes 7-25-16
- Planning Commission Report Packet
- Ordinance O8-149



**City of Lake Elmo
Planning Commission Meeting
Minutes of July 25, 2016**

Chairman Kreimer called to order the meeting of the Lake Elmo Planning Commission at 7:00 p.m.

COMMISSIONERS PRESENT: Dunn, Larson, Griffin, Fields, Dodson, Kreimer, Lundquist and Williams.

COMMISSIONERS ABSENT: None

STAFF PRESENT: Planning Director Wensman

Approve Agenda:

M/S/P: Dodson/Griffin, move to approve the agenda as amended, **Vote: 7-0, motion carried.**

Approve Minutes: June 27, 2016

M/S/P: Williams/Griffin, move to approve the June 27, 2016 minutes as amended, **Vote: 7-0, motion carried.**

Public Hearing – Zoning Map Amendment/PUD Amendment OP4 Boulder Ponds

Wensman started his presentation regarding the Boulder Ponds PUD amendment which is processed as a rezoning. They would like to rezone outlots B & C from Commercial PUD and MDR-PUD to HDR-PUD. Wensman went through some of the history of the site and explained what the developer is trying to do. Wensman provided draft findings as follows 1) The rezoning/PUD amendment is consistent with the Comprehensive Plan designation for the subject property 2) The proposed land use, Senior Housing is a conditional use in both the Commercial and HDR zoning districts, so the underlying land use will remain unchanged 3) The proposed HDR/PUD zoning is appropriate for the proposed senior housing density. 4) The proposed PUD/Amendment is consistent with the Boulder Ponds PUD Concept Plan and Preliminary PUD Plans.

Wensman stated that in order to develop the site as senior living, the area would need final plat/final PUD plan approval, outlot B & C would need to be combined into a single lot and a conditional use permit approval is required for congregate housing.

Dodson is wondering why the CUP application is not with this. Wensman stated that they are trying to market the property, but there is no plan. Dodson is wondering if

they rezone the property, what would stop them from putting in a different type of High density housing. Wensman stated that there would be no guarantee that a different plan wouldn't come forward.

Fields asked if the senior housing is the motivation for rezoning this property, why wouldn't we wait until there is a plan for a CUP for the senior housing. Fields feels that making the change could have the City end up with something that is unintended.

Larson is wondering if there could be a condition attached to this request stating that it is for Senior Housing. Wensman stated that he does not believe there can be conditions on a rezoning.

Deb Ridgeway, Excelsior Group, stated that they do not have a buyer yet for the property. She feels it is to clean up the zoning for the marketing of the property. She said that they need a larger lot in order to market this as smaller lots are not desirable. They are currently marketing the site as a senior housing project.

Williams asked about the combined parcels and how many units they need to make it viable. Deb Ridgeway stated that they feel they need 100 units for it to be a viable senior housing project. Williams stated that it is only approximately 4 acres and at 15 units/acre maximum, that still only gives them approximately 60 units. Ridgeway stated that based on it being a PUD and looking at the entire site, they would be allowed 210 units. They would be platting 98 units at this time with a difference of 112 units.

Wensman does not agree with Ridgeway's calculations. The underlying zoning is the tool to enforce the comprehensive plan. There are bonuses allowed, however, once the zoning is set for a parcel, that is how it needs to be developed. The LDR could have been developed more dense, and just because it wasn't, doesn't mean that it can be shifted to another area. The PUD is not an open door for density.

Williams wanted to confirm the allowed density for this site for HDR zoning. Wensman stated that it would be 64 units for this project or 76 units if they achieve the 20% bonus. He asked Ridgeway if that is the case, would they still want to proceed with the rezoning request. Ridgeway confirmed that they would.

Dunn asked what qualified for a 20% bonus. Wensman stated that there is the base zoning and then with a PUD there are highlights that qualify for bonuses. Dunn stated that it is very hard to keep track of these issues if the developer keeps changing things as they go along. Wensman stated that the deviations are spelled out at the time of preliminary plat.

Fields thinks that rezoning this now without a project opens the door for market rate multi-family rental housing.

Public hearing opened at 7:38 pm

No one spoke and there was no written correspondence.

Public hearing closed at 7:38 pm

M/S/P: Willimans/Dodson, move to add finding number 5 that there is disagreement between the applicant and staff as to how many units would be allowed with the new zoning, **Vote: 7-0, motion carried unanimously.**

M/S/P: Fields/Williams, move to add finding number 6 that to change the zoning to HDR would allow the site to be marketed as a market rate multi-family housing site, **Vote: 7-0, motion carried unanimously.**

M/S/P: Williams/, move to add finding number 7 that unit counts for the congregate care as found in the senior housing in the Old Village area, should also be applied City wide. There was no second and this was added to the approval motion.

Ridgeway wanted to clarify that the preliminary plat was approved to have a 64 unit senior facility, but the zoning was not put into place correctly. They would just like to expand the acreage so that they can market this better. The existing residents know that this is intended to be a senior living project.

Ben Schmidt, Excelsior Group, their understanding based on the original PUD is that they could do a 64 unit senior facility on the 2.4 acres, but they would not be able to do it under the MDR zoning. This needs to change to HDR to get to what was approved with the PUD. Based on the original density of the 2.4 acre parcel, by adding the additional acreage, 100 units is easy to get to. He agrees with using the same language that was used in the Old Village.

M/S/P: Williams/Dodson, move to recommend approval of the rezoning/PUD Amendment for Outlots B and C, Boulder Ponds, rezoning from Commercial/PUD and MDR/PUD, respectively, to HDR/PUD based on the findings in the staff report and the additional findings voted on and further recommend that the counts that apply to senior housing in the Old Village, be applied to this site, **Vote: 7-0, motion carried unanimously.**

Williams stated that the City needs more HDR in the City as we have virtually none right now. He feels this is an appropriate place for HDR. Kreimer also agrees that this was always shown as a multi-family building.

Public Hearing – Zoning Text Amendment Open Space Development

Wensman started his presentation regarding the Open Space ordinance. He went through the recommendations that the Planning Commission had. There was also recommendations from the City Council. This version takes into consideration the Comments of the City Council. This ordinance is currently not in the Zoning Code, and this will move it back to the zoning Code.

Wensman went through the specifics of the changes in this version. This version articulates what the City is looking for in these PUD's. One significant change is eliminating the super majority vote for deviations to allow more flexibility. The Comprehensive Plan is very clear that the density is 18/40 acres. The Buffer language was updated, septic sites need to be identified first, roadway standards were eliminated in favor of City Standards, lot sizes were left at 1 acre and ½ acre, building area was clarified and open space configuration can be reduced on a case by case basis. The City attorney added language regarding failing septic systems so that the City does not incur costs for failure. Individual septic systems must be on the individual lots and are not allowed in outlots. There will no longer be a public hearing at the concept phase. Now there will be a public hearing at the final plat to memorialize the agreement via ordinance so that it is a lot cleaner and easier to track. Wensman also stated that the City Engineer did not put a number on the number of homes that would be needed to support a community septic.

Williams would like the 154.650 purpose to be modified to say "wildlife corridor" or "natural corridor" instead of just corridor.

Williams is concerned about the number of homes necessary to support a community drainfield. Dodson feels that the critical language is that the City be able to do the work and bill back the affected residents, rather than relying on the HOA to do the work and collect. Williams pointed out some grammar issues on page 8 item 4 and Dunn would like the (as much as possible) removed. Leaves too much room for interpretation. Would also like to change "strive to" to "shall".

Williams is wondering about on page 9 (6) v., the association owned stormwater management facilities. He thought that the engineer is insisting that the City own these in other subdivisions. Wensman said that he will discuss with contract planner and City Engineer. Williams is wondering why the code is silent regarding signage and doesn't just refer to the City sign code. Wensman stated that city sign code would apply and would not need to be put in this section.

The Planning Commission is not comfortable with page 11 1 (b) 2, the City holding the conservation easements and would like them to be held by an outside agency.

Williams is wondering if there is a list of purposes that the open space can be set aside for. He thinks that it is not clear enough what the purposes should be. Wensman stated that it does talk about agriculture and natural habitat, but it does not say that those are

the only 2 things it can be used for. Kreimer is wondering if language could be added if the land trust doesn't accept the land, the City may consider it. Williams stated that he believes the MN land trust typically wants open space that is 10 acres and this could be problematic with the reduction to 20 acres. Dunn feels that there seems to be unintended consequences for coming down to a 20 acre minimum.

Williams is wondering if there should be a setback for trails when there is a wetland. Wensman stated that VBWD reviews the plans when a wetland is present and the review process protects that. Williams thinks that 154.660 (3) for deviations, there should be the word "and" after a & b so that all 3 criteria need to be met to get the deviations.

Williams thinks that on page 18 (3) is left over from the commercial PUD and should be taken out. Williams suggested some other changes that were clean up items that applied more to commercial PUD's.

Public hearing opened at 9:25 pm

No one spoke and there was no written correspondence

Public hearing closed at 9:25 pm

M/S/P: Williams/Griffin, move to postpone consideration of the OP Ordinance until staff can return a cleaned up copy for consideration, **Vote: 7-0, motion carried unanimously.**

Public Hearing – Zoning Text Amendment to opt out of requirements for Temporary Health Care Dwellings

Wensman started his presentation by giving an overview of the Temporary Health Care Dwelling legislation. Staff drafted an ordinance to opt out of the state statute. The Building Official had a number of concerns such as septic systems, anchoring, water access, insulation, etc. Staff drafted an ordinance to opt out of the state statute based on the recommendation of the Planning Commission.

Public hearing opened at 9:30 pm

No one spoke and there was no written correspondence

Public hearing closed at 9:30 pm

M/S/P: Dunn/Williams, move to recommend approval of the ordinance to opt out of the requirements of Minnesota Statutes Section 462.3593 , **Vote: 7-0, motion carried unanimously.**

Dodson is concerned that if the state felt strongly enough to enact this, should we be willing to provide a mechanism for people to provide for loved ones.

Larson feels that this legislation does not seem to fit in our community. Wensman stated that this is really to care for an aging population which is a valid concern, but is not sure that this is the best solution. This has been talked about in many different states. Wensman knows of at least a dozen cities around us that have opted out and only 1 that he knows of that have opted in.

Business Item – Ordinance amendment for the keeping of pigeons

Wensman gave a brief update on the pigeon ordinance. This item was talked about a while back and he has incorporated the suggestions of the Planning Commission from previous discussions. This is not an item that is in the zoning code, so a public hearing would not be required. This item will move forward to the City Council at a future date.

City Council Updates – July 5, 2016 Meeting

- i) Vacation of watermain easement for Auto Owners – passed.
- ii) Amend Fence regulations in regards to encroachment agreements – passed.
- iii) Hunting Ordinance – Tabled.
- iv) CPA for Rural Single Family in regards to sanitary sewer – passed.
- v) Moratorium extension – passed.
- vi) Neighborhood park in Savona neighborhood – request for Park Commission to review.

City Council Updates – July 19, 2016 Meeting

- i) Hunting Ordinance – Input given to Planning Director to bring back to future meeting.

Staff Updates

1. Upcoming Meetings
 - a. August 8, 2016
 - b. August 22, 2016

Commission Concerns

Dunn is wondering if there is any way to get a feel for what the costs will be to the City for these additional developments that come forward. Be it for police, fire, lighting, etc.

Dunn also mentioned that Baytown and West Lakeland are really concerned about Lake Elmo not taking a stand against the airport expansion. She would like it to be taken to the City Council for a resolution.

M/S/P: Dunn/Larson, move to bring a request to the City Council to support Baytown and West Lakeland in their opposition to the airport expansion , **Vote: 6-1, motion carried unanimously.**

Williams stated that the current design has no impact on the Neal ave and 30th Street intersection. Larson stated that the last set of meetings that they had come to an agreement with Baytown. Kreimer stated that he just doesn't feel that he has enough information to vote on this issue.

Fields was wondering if there was any update on the land purchased by Prairie Island and put into trust. Wensman stated that he can check with Kristina.

Dunn is wondering when discussions will start regarding lowering the forecast population numbers. Wensman stated that he has not gotten further direction from the City Council.

Meeting adjourned at 9:57 pm

Respectfully submitted,

Joan Ziertman
Planning Program Assistant



PLANNING COMMISSION
DATE: 7/25/16
AGENDA ITEM: 4b- PUBLIC HEAR ITEM
CASE # 2016-24

ITEM: Rezoning/PUD Amendment – Boulder Ponds

SUBMITTED BY: Stephen Wensman, Planning Director

REVIEWED BY: Emily Becker, City Planner

SUMMARY AND ACTION REQUESTED:

OP4 Boulder Ponds LLC is requesting approval of a rezoning/PUD amendment to the Boulder Ponds PUD to rezone Outlots B (PID#34.029.21.33.0023) and C (PID# 34.029.21.33.0024), Boulder Ponds from Commercial PUD and MDR-PUD, respectively to HDR-PUD.

GENERAL INFORMATION

Applicant: OP4 Boulder Ponds LLC

Property Owners: OP4 Boulder Ponds LLC

Location: Jade Trail North, South of 5th Street

Request: rezoning/PUD amendment to the Boulder Ponds PUD to rezone Outlots B and C, Boulder Ponds from Commercial PUD and MDR-PUD, respectively to HDR-PUD

Existing Land Use and Zoning: Undeveloped outlots - Commercial PUD/MDR PUD

Surrounding Land Use and Zoning: LDR to the north, vacant - Commercial PUD outlot to the east, BP to the west, vacant Commercial PUD outlot to the south

Comprehensive Plan: MDR/Commercial

History: Boulder Ponds Preliminary Plat was approved on 7/28/14. The subject parcels were rezoned from RT to Commercial PUD/MDR PUD on 4/21/15.

Deadline for Action: Application Complete – 6/27/16
60 Day Deadline – 8/26/16
Extension Letter Mailed – N/A
120 Day Deadline – N/A

Applicable Regulations: Article XVI, Chapter 154, Sections 750-760, PUD Regulations
Article X – Urban Residential Districts

REQUEST DETAILS:

OP4 Boulder Ponds is requesting a Rezoning/PUD Amendment of two parcels, Outlot B and C, from Commercial/PUD and MDR/PUD respectively, to HDR/PUD in order to better market the parcels for a future Senior Housing Development.

Outlot B is presently zoned for Commercial/PUD and is 1.44 acres in size. Outlot C is presently zoned for MDR/PUD and is 2.24 acres in size. The applicant would like to rezone both parcels to HDR/PUD and market them together for a proposed senior housing project.

REVIEW AND ANALYSIS:

According to Article XVI, Chapter 15, Section 757, Subd C of the Planned Unit Development Code, PUD Amendments shall be authorized by an amendment of the final development plan under the procedures for zoning amendment in Article III of the City Code of Ordinances.

The rationale for the housing density in the MDR portion of Boulder Ponds was described in the 12/09/13 Planning Report for the Boulder Ponds PUD Concept Plan:

The medium density area, which is approximately 10.1 acres, contains 81 residential units (17 single family, 64 multi-family), resulting in a gross density of 7.98 units per acre. It should be noted that this density figure is slightly higher than what is guided by the Comprehensive Plan. However, given that the proposed development is a PUD, and that the amount of land guided for medium density residential development on these parcels by the Comprehensive Plan is much greater, Staff has determined that the proposed Concept Plan meets the spirit and intent of the Comprehensive Plan. To explain Staff's reasoning for this determination in another way, the proposed Concept Plan decreases the amount of total land guided for medium density development by over 20 acres by moving the collector road south. The slight increase in density above the allowed range per the Comp Plan is balanced by the significant reduction in the amount of land guided medium density. To put it in simple terms, by using the low end of gross density ranges in the Comp Plan, these parcels were guided to have 195 total residential units (not accounting for road right-of-way), whereas the proposed PUD Concept Plan includes 157 total units. Overall, the proposed PUD Concept Plan is consistent with the intent of the land use and density requirements as guided by the City's Comprehensive Plan.

The rationale for the density is sound, however, when it recommending subsequent zoning for the sites, Staff had recommended LDR/PUD for the single family cul-de-sac, Jade Circle North, and MDR/PUD for the senior housing parcel (Outlot C). Outlot B was zoned Commercial PUD. The LDR/PUD zoning is the correct zoning for the single family housing on Jade Circle North just south of 5th Street, but the remaining 2.240 acre parcel (Outlot C) was zoned MDR/PUD for a planned 64 unit Senior Housing project. The zoning code, Section 154.453, Subdivision A, allows:

Averaging of Lot Area. When lots are clustered within a development to provide common open space, the open space may be used to calculate an average density per lot to determine compliance with the individual lot area requirements.

To determine the allowed density for Outlot C, A 64-unit project on a 2.240 acres site (and 0.23 acres of corresponding open space) would have a density of 25.91 units per acre, exceeding the 7-unit per acres allowed by the underlying MDR zoning, or 8.4-units per acre if 20% density bonus

was applied through the PUD. The HDR zoning would provide a 15-units per acre base density, or 18-units per acre if 20% density bonus was applied through the PUD. Even with HDR/PUD zoning, the 64-unit project would exceed the density allowable on the 2.47 acre site (.23 acres of open space). Therefore, OP4 Boulder Ponds LLC is proposing to rezone Outlot B (1.44 acres) from Commercial/PUD to HDR/PUD to add to the Senior Housing project area. With the addition of Outlot B, the 64-unit senior housing project be 4.18 acres (3.68 acres outlot area + .5 acres of open space) in size with a density of 15-units per acre. HDR/PUD is the appropriate zoning district for the proposed use on Outlots B and C combined.

Senior housing (congregate housing) is a conditional use in both the Commercial and HDR Zoning Districts, so although the request is for a rezoning from Commercial/PUD to HDR/PUD, the proposed underlying land use remains essentially the same.

In order to proceed with a senior housing project on the Outlots B and C the following would be required:

- Final PUD Plans and Final Plat (combining the two outlots into a single lot)
- Conditional Use Permit

DRAFT FINDINGS:

In order to approve a rezoning, the Planning Commission shall consider findings are shall submit the same with its recommendation to the City Council. Staff suggests the following findings:

1. The Rezoning/PUD Amendment is consistent with the Comprehensive Plan designation for the subject property.
2. The proposed land use, Senior Housing, is a conditional use in both the Commercial and HDR zoning districts, so the underlying land use will remain unchanged.
3. The proposed HDR/PUD zoning is appropriate for the proposed senior housing density.
4. The proposed PUD/Amendment is consistent with the Boulder Ponds PUD Concept Plan and Preliminary PUD Plans.

RECOMMENDATION:

Staff recommends approval of the Rezoning/PUD Amendment for Outlots B and C, Boulder Ponds, rezoning from Commercial/PUD and MDR/PUD, respectively, to HDR/PUD with the following motion:

“Move to recommend approval of the Rezoning/PUD Amendment for Outlots B and C, Boulder Ponds from Commercial/PUD and MDR/PUD, respectively, to HDR/PUD with the following motion based on the findings in the Staff report.”

ATTACHMENTS:

- Application and Narrative
- Planning Commission Report – Boulder Ponds PUD – Concept Plan 12/09/16
- Housing Density Analysis (from 12/09/16 Concept Plan)

ORDER OF BUSINESS:

- IntroductionPlanning Staff
- Report by StaffPlanning Staff
- Questions from the Commission Chair & Commission Members
- Open the Public HearingChair
- Close the Public Hearing.....Chair
- Discussion by the Commission Chair & Commission Members
- Action by the Commission..... Chair & Commission Members

Date Received: _____
Received By: _____
Permit #: _____



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

LAND USE APPLICATION

- Comprehensive Plan Zoning District Amend Zoning Text Amend Variance*(see below) Zoning Appeal
- Conditional Use Permit (C.U.P.) Flood Plain C.U.P. Interim Use Permit (I.U.P.) Excavating/Grading
- Lot Line Adjustment Minor Subdivision Residential Subdivision Sketch/Concept Plan
- PUD Concept Plan PUD Preliminary Plan PUD Final Plan

Applicant: OP4 Boulder Ponds, LLC (Contact: Deb Ridgeway)
Address: 1660 Highway 100 S, Suite 400, St. Louis Park, MN 55416
Phone #: 952.525.3223
Email Address: deb.ridgeway@ExcelsiorLLC.com

Fee Owner: Same as Applicant
Address: _____
Phone #: _____
Email Address: _____

Property Location (Address and Complete (long) Legal Description): _____
xxxx Jade Trail
Outlots B & C, Boulder Ponds

Detailed Reason for Request: Rezone Outlots B & C from Commercial PUD and MDR-PUD, respectively to HDR - PUD. Please refer to project narrative for a detailed explanation.

*Variance Requests: As outlined in Section 301.060 C. of the Lake Elmo Municipal Code, the applicant must demonstrate practical difficulties before a variance can be granted. The practical difficulties related to this application are as follows:

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: By OP4 Boulder Ponds, LLC Date: 6/24/16
Signature of fee owner: By OP4 Boulder Ponds, LLC Date: 6/24/16



Zoning Amendment & Preliminary PUD Amendment

Project Representatives and Contact Information.

LANDOWNER/
DEVELOPER OP4 Boulder Ponds, LLC
 c/o The Excelsior Group, LLC
 1660 Highway 100 South, Suite 400
 St. Louis Park, MN 55416

Ben Schmidt, Vice President
952.525.3225
Ben.Schmidt@ExcelsiorLLC.com

Deb Ridgeway, Asset Manager
952.525.3223
Deb.Ridgeway@ExcelsiorLLC.com

Property Address, Zoning, Parcel Size, PID and Legal Description

	Outlot B, Boulder Ponds	Outlot C, Boulder Ponds
ADDRESS	XXXX Hudson Blvd	XXXX Hudson Blvd
CURRENT ZONING	Commercial - PUD	MDR - PUD
PARCEL SIZE		
Acres	1.72	2.46
Sq. Ft	2,591,320.2	6,098.4
PIDs	34-029-21-33-0023	34-029-21-33-0024

Boulder Ponds is a Planned Unit Development that was approved to include a variety of land uses, including single family residential, multifamily residential and commercial. The first phase of street and utility installation is complete to serve 20 Villa lots, 27 single family lots and 10 acres of commercial and multifamily.

During the preliminary plat process, the 2.42 multifamily site (Outlot C) was presented as a 64-unit multifamily building. Based on the current zoning of medium density residential (7 units per acre), Outlot C is allowed only 15.4 units, which is inconsistent with the PUD approval. In addition to remedying this inconsistency, there is a desire to rezone Outlot B to allow multifamily on the entire 4.18 acres. Therefore, this application requests approval to amend the zoning of Outlots B & C, Boulders Ponds from Commercial and MDR-PUD to HDR-PUD and allow for a maximum 112 multifamily units. This is based on the analysis of the current approved plan with 98 units versus the 210.4 units that could be allowed per the zoning code. The accompanying plan further illustrates this. There is no proposed layout at this time, but when a plan is created, Final Plat, Final PUD and Conditional Use Permit approvals will be required providing adequate oversight of the specific site plans.

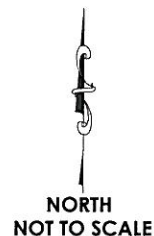
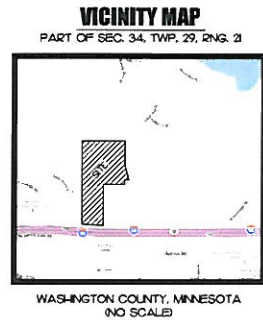
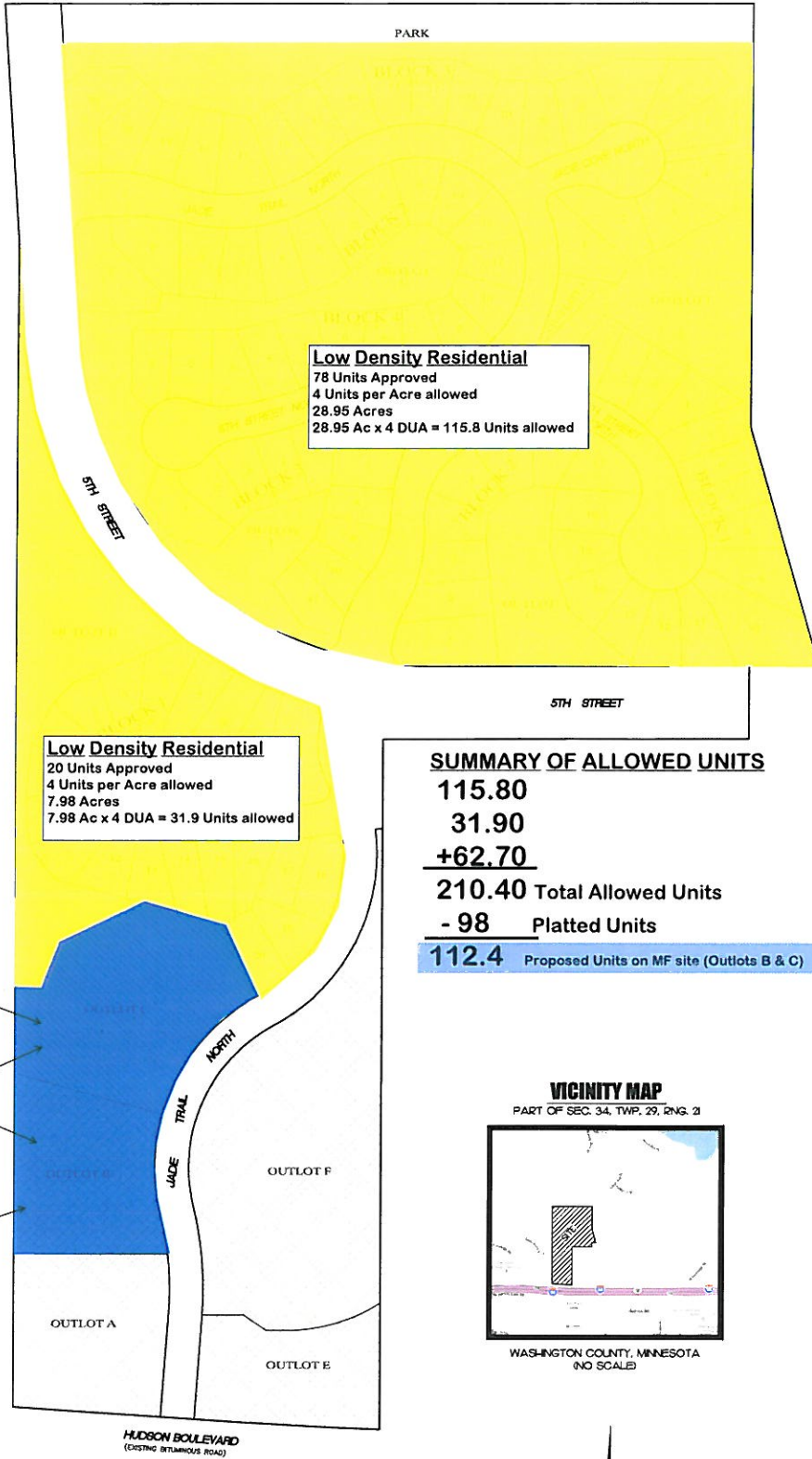
In conclusion, Boulder Ponds offers a uniquely planned mixed-use neighborhood where the land uses provide a seamless transition from commercial to low density residential. The high density use between the commercial and lower density homes creates a complementary buffer and generally a more desirable and overall more viable neighborhood for Lake Elmo.

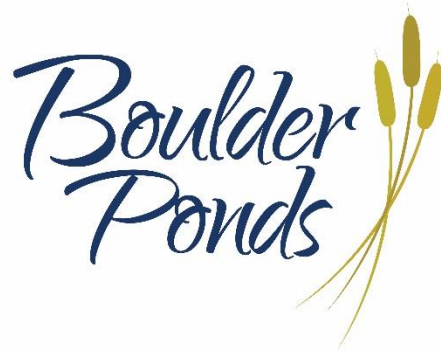
PROPOSED ZONING EXHIBIT FOR:

BOULDER PONDS

OWNER/DEVELOPER

OP4 BOULDER PONDS, LLC
11455 VIKING DRIVE
SUITE 350
EDEN PRAIRIE, MN 55344





Zoning Amendment & Preliminary PUD Amendment

Project Representatives and Contact Information.

LANDOWNER/
DEVELOPER OP4 Boulder Ponds, LLC
 c/o The Excelsior Group, LLC
 1660 Highway 100 South, Suite 400
 St. Louis Park, MN 55416

Ben Schmidt, Vice President
952.525.3225
Ben.Schmidt@ExcelsiorLLC.com

Deb Ridgeway, Asset Manager
952.525.3223
Deb.Ridgeway@ExcelsiorLLC.com

Property Address, Zoning, Parcel Size, PID and Legal Description

	Outlot B, Boulder Ponds	Outlot C, Boulder Ponds
ADDRESS	XXXX Hudson Blvd	XXXX Hudson Blvd
CURRENT ZONING	Commercial - PUD	MDR - PUD
PARCEL SIZE		
Acres	1.72	2.46
Sq. Ft	2,591,320.2	6,098.4
PIDs	34-029-21-33-0023	34-029-21-33-0024

Boulder Ponds is a Planned Unit Development that was approved to include a variety of land uses, including single family residential, multifamily residential and commercial. The first phase of street and utility installation is complete to serve 20 Villa lots, 27 single family lots and 10 acres of commercial and multifamily.

During the preliminary plat process, the 2.42 multifamily site (Outlot C) was presented as a 64-unit multifamily building. Based on the current zoning of medium density residential (7 units per acre), Outlot C is allowed only 15.4 units, which is inconsistent with the PUD approval. In addition to remedying this inconsistency, there is a desire to rezone Outlot B to allow multifamily on the entire 4.18 acres. Therefore, this application requests approval to amend the zoning of Outlots B & C, Boulders Ponds from Commercial and MDR-PUD to HDR-PUD and allow for a maximum 112 multifamily units. This is based on the analysis of the current approved plan with 98 units versus the 210.4 units that could be allowed per the zoning code. The accompanying plan further illustrates this. There is no proposed layout at this time, but when a plan is created, Final Plat, Final PUD and Conditional Use Permit approvals will be required providing adequate oversight of the specific site plans.

In conclusion, Boulder Ponds offers a uniquely planned mixed-use neighborhood where the land uses provide a seamless transition from commercial to low density residential. The high density use between the commercial and lower density homes creates a complementary buffer and generally a more desirable and overall more viable neighborhood for Lake Elmo.



PLANNING COMMISSION
DATE: 12/09/13
AGENDA ITEM: 4A – PUBLIC HEARING
CASE # 2013-29

ITEM: Boulder Ponds Planned Unit Development (PUD) – Concept Plan

SUBMITTED BY: Nick Johnson, City Planner

REVIEWED BY: Kyle Klatt, Community Development Director
Jack Griffin, City Engineer
Mike Bouthilet, Public Works Superintendent
Greg Malmquist, Fire Chief
Rick Chase, Building Official
Matt Moore, South Washington Watershed District

SUMMARY AND ACTION REQUESTED:

The Planning Commission is being asked to hold a public hearing for a request from Amaris Company LLC for a residential Planned Unit Development Concept Plan with 93 single family residential homes and a 64-unit multifamily dwelling to be located on approximately 58 acres immediately east of the Eagle Point Business Park and within the City's I-94 Corridor Planning Area. Staff is recommending approval of the PUD Concept Plan with 11 conditions of approval as listed in the Staff Report.

GENERAL INFORMATION

Applicant: Amaris Company, LLC, P.O. Box 10811, White Bear Lake, MN 55110

Property Owners: Louis Damiani Trust, c/o Security Bank & Trust Co., William C. Kuhlmann, 2202 11th Street East, Glencoe, MN 55336

Tim Montgomery, 6211 Upper 51st Street North, Oakdale, MN 55128

Location: Part of Section 34 in Lake Elmo, north of I-94 and Hudson Boulevard, south of Stonegate residential subdivision, and east of Eagle Point Business Park. PINs: 34.029.21.33.0001; 34.029.21.32.0001; 34.029.21.33.0002.

Request: Application for Concept Plan approval of a Planned Unit Development (PUD) containing 93 single family homes and a 64-unit senior housing multi-family residential building to be named Boulder Ponds of Lake Elmo.

Existing Land Use and Zoning: Agricultural land with one single family home (9120 Hudson Blvd. N.). Current Zoning: RT – Rural Transitional Zoning District; Proposed Zoning: LDR and MDR PUD

Surrounding Land Use and Zoning: North: Residential Estates subdivision (Stonegate) – RE zoning and Park (Stonegate Park) – PF zoning;
West: Offices (Eagle Point Town Office Park) – BP zoning;

	South: Retail Trade (Lampert Lumber) – C zoning and Sales and Storage Lots (Cranky Ape) – C zoning; and East: future proposed Lennar urban low density residential subdivision (Savona) – current zoning: RT, future zoning: LDR.
<i>Comprehensive Plan:</i>	Urban Low Density Residential (2.5 – 4 units per acre), Urban Medium Density Residential (4.5 – 7 units per acre), and Commercial.
<i>History:</i>	Applicants are participating in the Section 34 Utility Project under a Statute 429 area-wide assessment. The utility project is expected to be completed in December of 2013.
<i>Deadline for Action:</i>	Application Complete – 11/7/13 60 Day Deadline – 1/6/14 Extension Letter Mailed – No 120 Day Deadline – 3/7/13
<i>Applicable Regulations:</i>	Chapter 153 – Subdivision Regulations Article 10 – Urban Residential Districts (§154.450) Article 16 – Planned Unit Development (§154.800)

REQUEST DETAILS

The City of Lake Elmo has received an application from Amaris Company, LLC for a Planned Unit Development (PUD) Concept Plan on approximately 58 acres of land located within the I-94 Corridor Planning Area. The Concept Plan includes 93 single family homes on the northern and central portion of the site, as well as a proposed 64-unit senior housing multi-family residential building. In addition, the Concept Plan includes vacant land along the Hudson Blvd that is planned for future Commercial land uses per the City's Comprehensive Plan. It is the applicant's intention to plat the Commercial areas as outlots until Commercial users are identified. The proposed PUD, to be called Boulder Ponds of Lake Elmo, would be located on property currently owned by the Louis Damiani Trust, currently managed by Security Bank & Trust Co., and Mr. Tim Montgomery.

The Concept Plan has been developed in response to the City's adopted Comprehensive Plan for the I-94 Corridor, which guide the applicant's land as a mix of Urban Low Density Residential – LDR, Urban Medium Density Residential – MDR and Commercial. The plan incorporates 93 single family lots, most of which are designed with a width of approximately 65 feet. The majority (76) of the single family lots are located north of the future minor collector road, 5th Street, whereas 17 single family lots are located south of the minor collector. In addition, the 64-unit senior housing multi-family building is also located south of the minor collector road adjacent to the areas that are guided for future Commercial land uses.

As opposed to following the City's normal subdivision procedures, the applicants have determined that a planned development approach offers the best method to achieve their development vision for their property. The purpose of the City's PUD ordinance is to provide flexibility in development and zoning standards for large parcels under unified control with the goal of achieving higher quality development. More specifically, the General Concept Plan phase of the PUD procedure allows the applicant to submit a general plan to the City demonstrating his or her basic intent of the development, including general density ranges, location of residential and nonresidential land uses, and location of streets, paths and open space. The purpose of approving the Concept Plan is to

provide the applicant with conceptual approval related to the requested flexibilities or variations from the City Zoning and Subdivision Ordinances, or other City standards, before incurring substantial costs related to submitting a full Preliminary Plat application. In terms of procedure, the planned development path is similar to the normal subdivision process in that Preliminary and Final PUD Plan approvals must follow parallel track to Preliminary and Final Plat. However, one critical difference between the planned development process and standard subdivision process is that the PUD Concept Plan phase requires a public hearing and the approval of the City Council.

Alternatively, the Sketch Plan review phase, the first step in the standard subdivision process, does not require a public hearing and City approval. The reason that the PUD Concept Plan requires a public hearing and City approval is due to the requested flexibility and variation from the City's standard zoning and subdivision procedures. Regarding variation from the City's Zoning Ordinance and Comprehensive Plan, the applicants have requested minor flexibility in a couple of areas, hence justifying the planned development approach. The requested variances or flexibilities will be further discussed and analyzed in the Planning and Zoning section of the Staff Report.

The Boulder Ponds Concept Plan also includes a significant portion of the proposed 5th Street minor collector road as planned in the City's Transportation Plan. Once completed, the minor collector road will serve as the primary access for the Boulder Ponds planned development. The segment of the minor collector road included in the Concept Plan is part of the 1st phase of the 5th Street collector road, from Inwood Avenue (CSAH 13) to Keats Avenue (CSAH 19). Eventually, the 5th Street minor collector road is planned to serve the entire I-94 Corridor from west to east (Inwood Ave. to Manning Ave.). As shown in the Concept Plan, the design of the minor collector road as part of the Boulder Ponds development is consistent with the City's specifications for this roadway segment. The applicant has provided for a 120-foot wide right-of-way, which will provide sufficient room for the construction of a parkway with turning lanes, 10-foot bituminous trail, sidewalk, trees, lighting, and other design elements as planned by the City. It should also be noted that the applicants and other interested landowners in the area have recently met with City staff to discuss the possibility of petitioning the City for a 429 area-wide assessment project to complete the 5th Street minor collector road from Keats Ave. (CSAH 19) to the western boundary of the Boulder Pond project next year. Finally, to achieve the desired vision of development for their project, as well as address difficult grade issues on the site, the applicants are proposing to move the alignment of the minor collector road to the south. The applicants are currently working with the adjacent property owners to the east, US Homes Corp. (Lennar Homes) and DPS-Lake Elmo LLC (Dale Properties), to come to terms on an agreed alignment of the 5th Street minor collector road. The proposed alignment of the minor collector road will be further discussed in the Review and Analysis section of the Staff Report.

In terms of utilities, the applicants are currently participating in the Section 34 Utility Project, which is extending sewer and water throughout Stage 1 of the I-94 Corridor Planning Area. With the improvements associated with the Section 34 project, the applicants will have access to both sewer and water from the south (Hudson Blvd.) and west (Eagle Point Business Park). Currently, sewer and water service are being provided by the City of Oakdale via a Joint Services Agreement. There is currently enough capacity in the Oakdale system to provide sewer and water service to the Boulder Ponds development. As the build-out of the Stage 1 Area of the I-94 Corridor progresses, the City will need to transition water services to the Lake Elmo municipal water system via the Inwood Ave Trunk Watermain Extension Project, as well as transition sewer flows to the Met Council W.O.N.E interceptor station along Hudson Blvd. The City will work with the applicants to plan for adequate utility infrastructure with the submission of the PUD Preliminary Plan and Preliminary Plat.

Other major features of the proposed planned development include outlot areas that will provide for open space, trails, and storm water management throughout the development area. The development

also incorporates a buffer/greenway area along the northern boundary of the plat adjacent to an existing RE – Residential Estates subdivision as required in the City’s Comprehensive Plan. All outlots that are planned for park land or storm water use will be deeded to the City, while the future home owner’s association will retain ownership of the remaining outlots.

Regarding next steps, the applicant is proposing to bring forward a Preliminary Plan and Preliminary Plat application upon approval of the Concept Plan. Per the PUD Ordinance, the final approval of the proposed planned unit development will result in a zoning change to a specific PUD zoning district, with specific requirements and standards that are specific to the development. If the application moves forward, the change in the base zoning (LDR, MDR, C) of the property would occur at the time of Preliminary Plan approval, and the final PUD zoning with approved flexibility that is specific to the development would be established at Final Plan approval.

PLANNING AND ZONING ISSUES

The Boulder Ponds site is guided for Urban Low Density Residential, **Urban Medium Density Residential and Commercial land uses** in the City’s Comprehensive Plan. The Density Analysis sheet within the Boulder Ponds Concept Plan delineates the low density, medium density and commercial areas respectively within the proposed planned development. The realignment of the 5th Street minor collector road to the south allows the applicant to maximize the single family residential area to the north, creating a larger distinct single family neighborhood as opposed to having the parcels bisected in half by the collector road.

Regarding the design of the planned development, the single family residential area to the north of the minor collector street is defined by one curvilinear residential through street that allows for ease of travel through the neighborhood. The remaining portions of the single family neighborhood are served by three cul-de-sacs, none exceeding 500 feet in length. Also, the applicants are proposing to include several landscaped medians and islands within the proposed City streets, the highlights of which are three medians in the middle of the single family neighborhood. In relation to the lots and blocks, the arrangement follow a curvilinear pattern, which allows the vast majority of the lots to back up to common open space of some form. The northern portion of the single family area north of the minor collector street also contains the 100’ greenbelt buffer between the new growth areas and the Stonegate residential estates subdivision as guided by the City’s Comprehensive Plan. The greenbelt buffer contains a trail that connects to the trail provided by the Lennar urban low density subdivision to the east and connects with the trail within the 5th Street corridor to the west. This area is also the location of a power line easement owned by Xcel Energy. On the southern half of the minor collector road, a local street connects the medium density residential commercial areas from 5th Street to Hudson Boulevard. South of the collector road, the plan include one small area of 17 single family lots, as well as a 64-unit multi-family building intended for senior housing. Regarding the commercial areas (approximately 9 acres) to the south of the medium density residential area, it is the applicant’s intention to plat these areas as outlots until prospective users are identified.

For pedestrian circulation and recreation, sidewalks and trails are planned throughout the Boulder Ponds planned development. Consistent with City Design Standards, the applicants have included sidewalks to be installed on at least one side of all streets. Also, the greenbelt buffer trail included on the northern portion of the site is consistent with the guidance of the Comprehensive Plan. In addition to the internal trails and sidewalks that are proposed by the developer, the 5th Street Corridor include a 10-foot bituminous trail on the north side of the road and a six-foot sidewalk on the south

3.57

side. The internal trails and sidewalks provide good circulation to the 5th Street trail, which is intended to provide a regional transportation and recreation purpose.

Regarding the single family lots within the Boulder Ponds Concept Plan, the vast majority of the lots meet the minimum size requirements for the City's Urban Low Density Residential – LDR zoning district. The minimum lot size per the City's LDR zoning district is 8,000 square feet, and the minimum lot width at building setback line is 60'. Of the 93 single family lots, all but five lots (Lot 59, 69, 72, 73 and 75) meet or exceed the minimum lot size of 8,000 square feet as required under LDR zoning. Overall, the average single family lot size in the planned development is approximately 10,495 square feet. In addition, the vast majority of the single family lots meet or exceed the minimum 60' lot width. The applicants have noted that allowing for minor flexibility in lot area and width is one of the key reasons for proceeding with a planned development. Also pertaining to the single family residential lots, the applicants are requesting that the City consider reduced side yard and front yard setbacks to accommodate the unique design of the single family residential portion of the planned development. Reduced setbacks allow for greater clustering, which promotes high levels of open space. According to §154.802.E-F, planned developments may allow for reduced setbacks and reductions in area and width of individual lots. It is Staff's understanding that the applicants are seeking to allow 5' side yard setbacks on both sides of the principal structure. In addition, the applicants may be seeking reduced front yard setbacks. Any reductions in front yard setback must be approved with the understanding that adequate separation is provided between parking areas (driveways) and sidewalks, so that any potential obstacles, such as parked vehicles or trailers, do not encroach on residential sidewalks. Overall, reductions in all residential lot sizes and setbacks must be clearly identified, reviewed and approved at time of PUD Preliminary Plan phase.

Also related to single family lots, the applicants have included five residential lots that are partially or almost entirely on a small triangular piece of property owned by Dale Properties. The applicants are proposing to acquire this land from Dale Properties in order to facilitate the platting of these five additional lots and realign the minor collector road to the south. Dale Properties has submitted a letter (Attachment #5) indicating that general agreement has been reached on the land acquisition. For the purposes of the Concept Plan, the applicants have "ghost platted" the five lots, Lots 14-18 on the PUD Lot Areas sheet, with the intention of acquiring the land prior to Preliminary Plat submission. If these lots are to be included in the PUD Preliminary Plan and Preliminary Plat, the applicants must submit evidence demonstrating control or consent of this area being included in the plat. If this is not possible, plans must be revised accordingly.

Regarding the proposed multi-family residential building, the applicant has noted that it is likely intended for a senior living facility. Given that the application is currently at Concept Plan phase, it is not required that significant detail be provided. However, it should be noted that within the Urban Medium Density Residential – MDR zoning district, multi-family dwellings are considered a conditional use. At the time of Final Plat and PUD Final Plan approval for the phase that includes the 64-unit multi-family dwelling, the applicant will be required to apply for a Conditional Use Permit (CUP). Further review of the multi-family dwelling should occur at the time of review for the required CUP.

On the topic of housing density, the applicants have submitted a density analysis worksheet to present the gross densities associated with the low density and medium density areas. Due to the fact that the minor collector road has been moved to the south, the proposed Boulder Ponds planned development would include more single family residential development than is currently planned for in the Comprehensive Plan. However, it is important to note that per the Comp Plan, the 5th Street

minor collector road serves as the boundary between low density and medium density areas in the Stage 1 Area (Inwood Ave. to Keats Ave.) of the I-94 Corridor. The gross density of the single family area to the north of the collector road, which is approximately 28.5 acres, is calculated to be 2.66 units per acre. The medium density area, which is approximately 10.1 acres, contains 81 residential units (17 single family, 64 multi-family), resulting in a gross density of 7.98 units per acre. It should be noted that this density figure is slightly higher than what is guided by the Comprehensive Plan. However, given that the proposed development is a PUD, and that the amount of land guided for medium density residential development on these parcels by the Comprehensive Plan is much greater, Staff has determined that the proposed Concept Plan meets the spirit and intent of the Comprehensive Plan. To explain Staff's reasoning for this determination in another way, the proposed Concept Plan decreases the amount of total land guided for medium density development by over 20 acres by moving the collector road south. The slight increase in density above the allowed range per the Comp Plan is balanced by the significant reduction in the amount of land guided medium density. To put it in simple terms, by using the low end of gross density ranges in the Comp Plan, these parcels were guided to have 195 total residential units (not accounting for road right-of-way), whereas the proposed PUD Concept Plan includes 157 total units. Overall, the proposed PUD Concept Plan is consistent with the intent of the land use and density requirements as guided by the City's Comprehensive Plan.

In terms of parkland dedication requirements, the Subdivision Ordinance requires that 10% of the land in urban residential districts to be dedicated for park purposes. Alternatively, fees may be submitted to the City in lieu of land dedication at a rate equal to the market value of the land. It is at the discretion of the City Council how parkland/fees are accepted to meet this requirement. The Boulder Ponds site is approximately 58 acres in size. Therefore, under the approach of a pure land dedication, the applicants would be required to dedicate approximately 5.8 acres of land for parkland purposes. In the application narrative, the applicants note that within the proposed Plan Concept Plan, 11.8 acres are devoted as park space. However, it must be noted that to be accepted as parkland for dedication purposes, the land must be able to serve an active recreation purpose. In addition, if linear land dedications are accepted, a trail that provides effective connectivity in the community must be provided and constructed. Also, it should be noted that the City cannot accept land that is subject to private easement for public parkland dedication. This consideration relates to the location of the Xcel Energy power line easement in the greenbelt buffer area in the northern portion of the site. It is the recommendation of Staff that further discussions be had with the applicants regarding which areas are eligible for parkland dedication. Greater clarity regarding parkland dedication requirements and eligibility should be reached in advance of Preliminary Plat.

Regarding available or future park facilities, the applicants are proposing to continue the greenbelt/buffer trail along the northern portion of the property. This trail provides connections to the 5th Street regional trail and Stonegate Park from the east. Given its proximity, it makes logical sense that Stonegate Park, in addition to other City parks, will serve the future residents of the Boulder Ponds planned development. It is recommended by Staff that the City works with the applicants and property owners to the west of Stonegate Park, Azure Properties, to investigate possible expansions or improvements to Stonegate Park. In addition Staff will work with the Park Commission to evaluate if any additional facilities or programs should be offered at Stonegate Park. Evaluating the facilities and programming of Stonegate Park should inform future planning or expansion efforts.

REVIEW AND ANALYSIS

City Staff has reviewed the proposed Boulder Ponds PUD Concept Plan, which has gone through multiple iterations in advance of the formal application being accepted as complete by the City. During the course of these reviews, several of the issues and concerns that were previously raised by Staff have been addressed by the applicant with updated submission documents. However, it is important to note that there are other elements of the plan that still require additional attention in advance of a PUD Preliminary Plan and Preliminary Plat submittal. In general, the proposed plan will meet all applicable City requirements for PUD Concept Plan approval, and any deficiencies or additional work that is needed is noted for the purpose of inclusion in the review record. In addition there are several things happening in and around the Boulder Ponds planned development that will have an impact on the project, including the possible petition for a 429 area-wide assessment project to construct the 5th Street minor collector road, as well as the final alignment of said road. Given that some of these efforts are still underway, Staff recognizes that some minor modifications may be necessary from PUD Concept Plan phase to PUD Preliminary Plan phase.

The City has received a detailed list of comments from the City Engineer, in addition to general comments by the South Washington Watershed District, all of which are attached for consideration by the Commission.

In addition to the general comments that have been provided in the preceding sections of this report, Staff would like the Planning Commission to consider the issues and comments related to the following discussion areas as well:

- **Comprehensive Plan.** The proposed subdivision is consistent with the Lake Elmo Comprehensive Plan for this area and with the densities that were approved as part of this plan. The gross densities for the development generally are consistent with the ranges allowed for the urban low density and urban medium density land use categories. Other aspects of the Comprehensive Plan relate to the Boulder Ponds PUD Concept Plan as follows:
 - **Transportation.** The City's transportation plan calls for the construction of a minor collector road that will connect the eastern and western portions of the I-94 Corridor. Staff views this road as a critical piece of the transportation infrastructure that is needed to serve the densities that have been planned for this area. The applicant has incorporated the right-of-way at the width necessary to construct the minor collector as part of its PUD Concept Plan.
 - **Parks.** The greenbelt trail provided on the northern portion of the site is consistent with the City's Land Use Plan in the Comprehensive Plan. In addition, the City's Park Plan in the Comprehensive Plan does not identify this area as a future location of a neighborhood park due to its proximity to Stonegate Park.
 - **Water.** Water will eventually be provided to this area via a future extension of the municipal system along Inwood Avenue. The Boulder Ponds planned development will be able to be served under the City's current agreement with the City of Oakdale until the Inwood watermain extension is completed.
 - **Sanitary Sewer.** The Boulder Ponds planned development will be required to connect to the sewer main being constructed as part of the Section 34 area wide assessment project. In this case, all of the property owners that are planned to be served by sanitary sewer have petitioned the City to construct the required sewer and water mains to serve the area.

- **Phasing.** The Boulder Ponds planned development is located within the Stage 1 phasing area for the I-94 Corridor and therefore the proposed development is consistent with the City's anticipated phasing of growth.
- **Zoning.** The proposed base zoning for the Boulder Ponds site will be split between the Urban Low Density Residential – LDR, the Urban Medium Density Residential – MDR, and Commercial – C zoning districts. However, approval of PUD Final Plan will result in a zoning change to a specific PUD Zoning District, recording all of the permitted variations, such as minimum lot size and setbacks, from the Zoning requirements of the base zoning district.
- **Subdivision Requirements.** The City's Subdivision Ordinance includes a fairly lengthy list of standards that must be met by all new subdivisions, and include requirements for blocks, lots, easements, erosion and sediment control, drainage systems, monuments, sanitary sewer and water facilities, streets, and other aspects of the plans. The City will work with the applicant to ensure that all standards specified in the Subdivision Ordinance are met, or that the appropriate variation is requested through the PUD Preliminary Plan.
- **Concept Phasing.** The applicants have also submitted a Concept Phasing Plan, indicating how they intend to proceed with construction and build-out of the proposed planned development. As proposed by the applicants, the Phasing Plan indicates that Phase I includes construction of the access road to Hudson Blvd. and the southern portion of the northern single family residential area. Phase II includes construction of the medium density residential area. Finally, Phase III includes the construction of the remaining single family area in the northern portion of the site, as well the 5th Street minor collector road. Staff is recommending that the Phasing Plan be revised so that all public infrastructure is constructed adjacent to any areas being platted. More specifically, the minor collector road should be constructed adjacent to any areas of residential homes that are being platted. It is critical that the city ensures that all public improvements needed to serve development in the I-94 Corridor are installed as growth occurs.
- **Infrastructure.** The developer will be required to construct all streets, sewer, water, storm water ponds, and other infrastructure necessary to serve the development. Storm water facilities should be platted as outlots and deeded to the city for maintenance purposes. Adequate access to storm water facilities must be provided.
- **Tree Preservation and Protection.** Based upon the existing tree cover of the site, it is possible that the applicant may not be required to complete a Tree Preservation Plan. If the applicant can demonstrate that significant trees on the site will not be negatively impacted by development activity, they would be allowed to submit a Woodland Evaluation Report in lieu of a Tree Preservation Plan.
- **Green Belt/Buffer.** The Comprehensive Plan identifies an area north of the Boulder Ponds planned development and south of the Stonegate subdivision as a green belt/buffer space with a minimum width of 100 feet. In the case of the subject property, this area is also the location for a significant power line easement held by Xcel Energy. As proposed in the PUD Concept Plan, the applicant is utilizing this space for the continuation of trail corridor from the east. Design of the greenbelt trail is consistent with City planning efforts to date. Staff believes that that green belt/buffer requirements of the Comprehensive Plan have been met by the applicant.

- ***Streets and Transportation.*** The proposed street system has been designed to comply with all applicable subdivision requirements and City engineering standards, with the exception of the requested variance as noted in the City Engineer's report. Staff does have some concerns related to the landscape medians and island in term of acceptable turning radii, emergency vehicle access, snow removal, general maintenance, and safe turning movements. More specifically, the central intersection of the northern single family area contains three large medians/island that present difficult turning movements and safety concerns related to limited turning radii, potential limited visibility due to plantings, and, in multiple instances, direct driveway access that intersects with this unique central intersection. The applicant will be directed to provide significant geometric detail of these areas and work with staff to ensure that all islands and medians allows for safe travel movements and efficient maintenance. Finally, further clarification must be provided regarding proposed plantings in these medians/islands, as well as the responsible party for the maintenance of these plantings.
- ***5th Street Alignment and Design.*** Staff has the following comments regarding the proposed alignment of the 5th Street minor collector road and design:
 - The applicants have proposed to relocate the alignment of the 5th Street minor collector road to the south in order to maximize the potential for a single family neighborhood to the north, as well as mitigate difficult grade issues that exist on the site. From meeting with the applicants on multiple occasions regarding the proposed alignment of the minor collector road, staff has found the existing grade challenges to be accurate, and the alignment proposed in the Concept Plan to work in the context of meeting Municipal State Aid (MSA) road design requirements. To make the proposed alignment feasible, the applicants are working with the property owners to the east, Lennar and Dale Properties, to negotiate realigning the road to the south. All indications that the City has received indicate that general agreement has been reached, and the realignment will move forward. Evidence of these negotiations is documented in Attachment #5, a letter from Mr. Alan Dale of Dale Properties.
 - In addition to the eastern alignment, the applicants have also been working with Bremer Bank regarding the alignment of the minor collector road in the northwestern portion of the site. As proposed, the 5th Street right-of-way would encroach on the Bremer Bank property, and the road would encroach ever so slightly on the very northeast corner of the Bremer property. It is the City's understanding that discussion regarding the alignment of the collector in the northwest corner are moving forward in a positive direction. As a condition of seeking PUD Preliminary Plan and Preliminary Plat approval, Staff is recommending that both alignment areas, the northwestern and eastern alignments, are resolved or agreed upon by all interested parties in advance of future application submittals.
 - Regarding the proposed alignment of the collector road, as well as the alignment of the local access road connecting Hudson Blvd., the properties to the south and east (Cranky Ape and Lampert Lumber) of the subject property do not currently have access provided. It is Staff's recommendation that right-of-way be platted to these adjacent parcels in a location that is acceptable to the City Engineer.
 - Finally, as part of the PUD Preliminary Plan and Preliminary Plat application submission, Staff is requesting that the plans for 5th Street include all design elements as requested by the City, including the street trees, landscaping, lighting, median plantings, and other elements as proposed by the Damon Farber design work.

- ***Sidewalks and Trails.*** As noted in the City Engineer’s report, there are several instances where sidewalks and trails are located within either private outlots or on individual residential single family lots. The Subdivision Ordinance requires that all front property lines include 10’ drainage and utility easements. The placement of sidewalks within these easements would impact the City’s ability to use these easements for utility or maintenance purposes. In addition, having the sidewalks located on private property hinders the City’s ability to maintain these public improvements. Also, it is important to maintain appropriate clear zones for all sidewalks and trails. Staff is recommending that all sidewalks and trails be located in City right-of-way.
- ***City Engineer Review.*** The City Engineer has provided the Planning Department with a detailed comment letter dated November 20, 2013 as a summary of his PUD Concept Plan review. Staff has incorporated the more significant issues identified by the Engineer as part of the recommended conditions of approval, and has also included a general condition that all issues identified by the City Engineer must be addressed by the applicant prior to approval of a the PUD Preliminary Plan and Preliminary Plat. The Engineer does note that the proposed Concept Plan complies with the City’s standards, with one exception related to base material of City streets.
- ***Watershed Districts.*** The project area lies within the South Washington Watershed District. Comments have been provided (Attachment #4) by the SWWD Engineer, Matt Moore.
- ***Environmental Review.*** Based upon the proposed scope of the Concept Plan, the City does not believe that the planned development will individually trigger further environmental review.

Based on the above Staff Report and analysis, Staff is recommending approval of the Boulder Ponds PUD Concept Plan with multiple conditions intended to address future considerations related to the submission of a PUD Preliminary Plan and Preliminary Plat application. The recommended conditions are as follows:

Recommended Conditions of Approval:

- 1) The applicant must obtain permission and consent from the adjoining property owner, Bremer Bank, related to the right-of-way and alignment of the 5th Street minor collector road in the northwest corner of the site. The final alignment must be determined prior to the submittal of PUD Preliminary Plan and Preliminary Plat applications.
- 2) The applicant must resolve the alignment of the 5th Street minor collector road in the southeast portion of the site with adjoining property owners, specifically Lennar and Dale Properties. The final alignment must be determined prior to the submittal of PUD Preliminary Plan and Preliminary Plat applications.
- 3) Access must be provided to the adjacent parcels owned by Star River Holdings LLC (Cranky Ape) and Lampert Yards Inc (Lampert Lumber) via either the 5th Street minor collector road or the access road to Hudson Boulevard. The access location must meet the approval of the City Engineer.
- 4) The applicant must acquire additional land in the eastern portion of the site to plat single family residential Lots 14-18 as part of the Preliminary Plat application, or revise their plan accordingly.

- 5) Request for flexibilities related to lot size, width, setbacks and all other requirements per the City's Zoning Ordinance or Design Standards must be clarified and documented as part of the PUD Preliminary Plan and Preliminary Plat submission.
- 6) The applicant must revise the Phasing Plan to accommodate the construction of all public infrastructure adjacent to any proposed areas to be platted within said phase per the City Engineer's report dated November 20, 2013.
- 7) All street and median geometrics must accommodate emergency vehicle access and maintenance. Applicants must demonstrate acceptable turning radii for all uniquely shaped landscape medians and cul-de-sacs.
- 8) All sidewalks must be located in dedicated public right-of-way. All trails must be located within dedicated right-of-way, City parkland, or a 30-foot wide dedicated easement at a minimum.
- 9) The developer shall follow all of the rules and regulations spelled out in the Wetland Conservation Act, and shall acquire the needed permits from the appropriate watershed district prior to the commencement of any grading or development activity on the site.
- 10) Any land under which public trails are located will be accepted as park land provided the developer constructs said trails as part of the public improvements for the subdivision, and the land is located outside of any restrictive easements.
- 11) The applicant shall observe all comments and recommendations from the City Engineer documented on the Engineer's report dated November 20, 2013.

DRAFT FINDINGS

Staff is recommending that the Planning Commission consider the following findings with regards to the proposed Boulder Ponds Concept Plan:

- 1) That the Boulder Ponds PUD Concept Plan is consistent with the Lake Elmo Comprehensive Plan and the Future Land Use Map for this area.
- 2) That the Boulder Ponds PUD Concept Plan complies with the general intent of the City's Urban Low Density Residential and Urban Medium Density Residential zoning districts.
- 3) That the Boulder Ponds PUD Concept Plan complies with the City's Subdivision Ordinance.
- 4) That the Boulder Ponds PUD complies with the City's PUD Ordinance.
- 5) That the Boulder Ponds PUD Concept Plan is consistent with the City's engineering standards with one exception as noted by the City Engineer in his review comments to the City dated November 20, 2013.

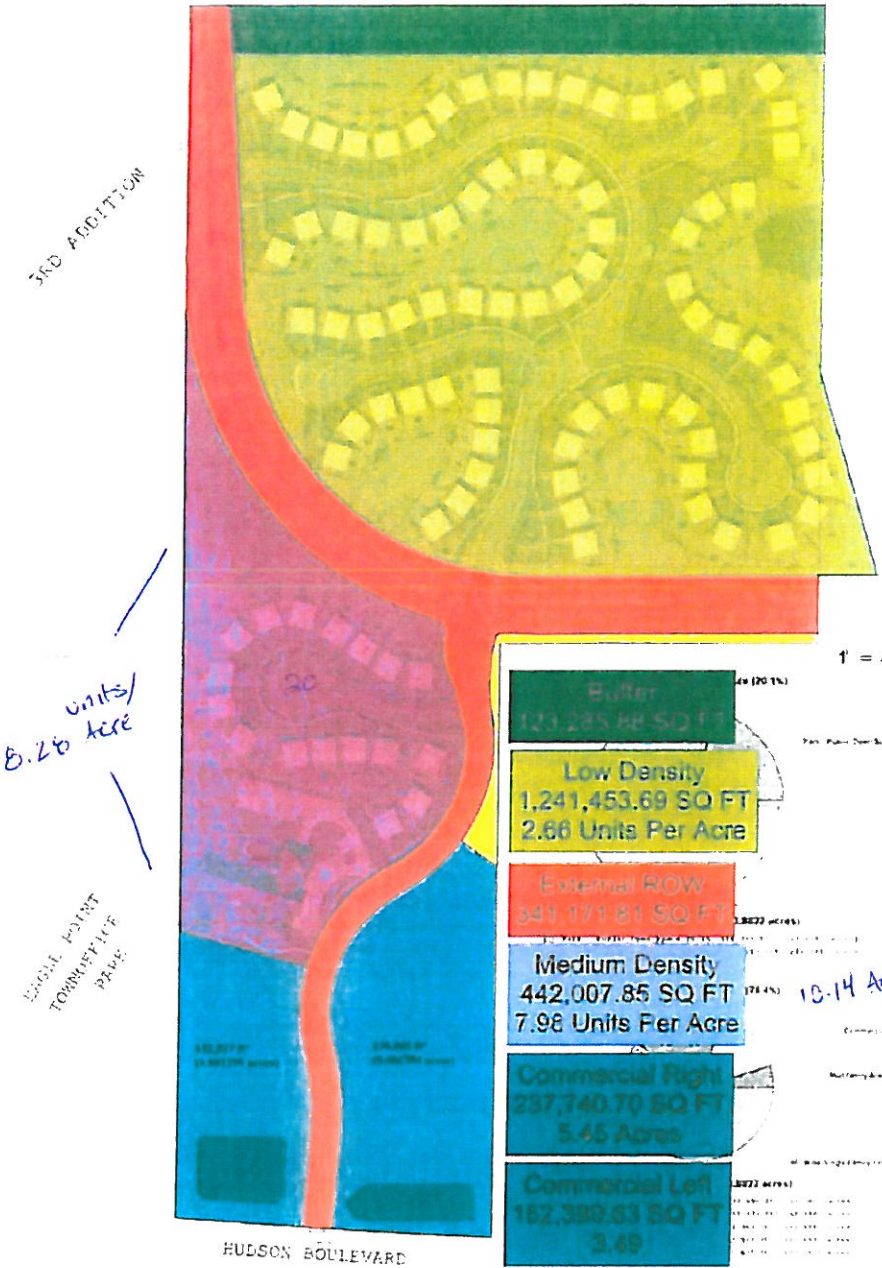
RECOMMENDATION:

Staff recommends that the Planning Commission recommend approval of the Boulder Ponds PUD Concept Plan with the 11 conditions of approval as listed in the Staff Report. Suggested motion:

“Move to recommend approval of the Boulder Ponds PUD Concept Plan with the findings of fact and conditions of approval as drafted in the Staff Report.”

TONEG

Density Analysis



units/
8.26 acre

3RD ADDITION

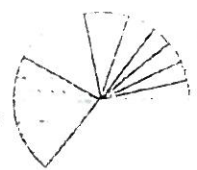
HUDSON BOULEVARD

Buffer 123,285.88 SQ FT 1.78 Acres
Low Density 1,241,453.69 SQ FT 2.66 Units Per Acre
External ROW 341,171.81 SQ FT 4.93 Acres
Medium Density 442,007.85 SQ FT 7.98 Units Per Acre
Commercial Right 237,740.70 SQ FT 3.45 Acres
Commercial Left 162,389.63 SQ FT 2.40 Acres

1" = 80 feet



Area Chart

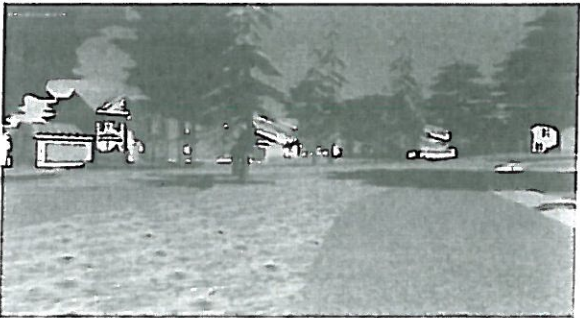


- Single Family Detached
- 1-2 Bed Manufacturing Unit
- Paving Road/Concrete Street
- Private Drive Senior Housing
- 6 and 8' Wide Main Trunk
- 64 Unit Senior Building

Total Area: 683,522 ft² (15.6915 acres)

Category	Area (sq ft)	Area (Acres)
Commercial	400,120,570	5.81
Medium Density	442,007,850	6.41
Low Density	1,241,453,690	17.98
External ROW	341,171,810	4.93
Commercial Right	237,740,700	3.45
Commercial Left	162,389,630	2.40
Buffer	123,285,880	1.78

10.14 Acres



Boulder Ponds

of Lake Elmo, MN

Total Number of lots	93
Average Lot Size	10,489 sq ft
Minimum lot Size	7,200 sq ft

Rick Harrison Site Design
s.d.s.d.

88127 Ave North
Golden Valley, MN 55417
www.rickharrison.com



the knowledge for sustainable design

CITY OF LAKE ELMO
COUNTY OF WASHINGTON
STATE OF MINNESOTA

ORDINANCE NO. 08-149

AN ORDINANCE TO AMEND THE LAKE ELMO CITY CODE
BY AMENDING THE OFFICIAL ZONING MAP
OF THE CITY OF LAKE ELMO

The City Council of the City of Lake Elmo ordains that Lake Elmo City Code, Section 154.032 Zoning District Map, of the Municipal Code, shall be amended by adding Ordinance No. 08-149, as follows:

Section 1: Zoning Map Amendment. The following properties, Outlot B, Boulder Ponds (PID#34.029.21.33.0023) and Outlot C, Boulder Ponds (PID#34.029.21.33.0024) are hereby rezoned from C-Commercial/PUD and MDR-Medium Density Residential/PUD, respectively, to HDR-High Density Residential/PUD.

Section 2: The City Council of the City of Lake Elmo also hereby ordains that the Zoning Administrator shall make the applicable changes to the official zoning map of the City of Lake Elmo.

Section 3: Effective Date. This ordinance shall become effective immediately upon adoption and publication in the official newspaper of the City of Lake Elmo.

This Ordinance No. 08-149 was adopted on this 19th day of August 2016, by a vote of _ Ayes and _ Nays.

Mike Pearson, Mayor

ATTEST:

Julie Johnson, City Clerk



MAYOR AND COUNCIL COMMUNICATION

DATE: 8/16/2016

REGULAR

ITEM #: 19

AGENDA ITEM: Temporary Health Care Dwellings
SUBMITTED BY: Emily Becker, City Planner
THROUGH: Kristina Handt, City Administrator
REVIEWED BY: Stephen Wensman, Planning Director

BACKGROUND:

On May 12, 2016, Governor Dayton signed in to law the creation and regulations of temporary family health care dwellings, codified as Minn. Stat. 462.3593, which permit and regulate temporary family health care dwellings. Community desire for transitional housing for those with mental and physical disabilities, and the increased need for short-term care for aging family members served as the catalyst behind this initiative. The resulting law allows for a family to more easily care for these individuals by using a temporary dwelling on the property. The law goes into effect on September 1, 2016 unless cities adopt an ordinance opting out.

Currently, temporary health care dwellings specifically are not listed as conditional or permitted uses in the Zoning Code and therefore are considered prohibited except under certain provisions set forth in the Design and Performance Standards Section of the Zoning Code which allows, in some cases and with certain standards, temporary farm dwellings, temporary construction offices, and recreational vehicles. By not adopting the ordinance opting-out, temporary health care dwellings meeting the Statute's standards would now be allowed with a permit.

On July 25, 2016, the Planning Commission held a public hearing, considered, and recommended approval of the adoption of an ordinance opting-out of the requirements of Minnesota Statutes, Section 462.3593.

ISSUE BEFORE COUNCIL:

The Council should consider if an ordinance opting-out of the requirements of Minnesota Statutes, Section 462.3593, which permits and regulates temporary family health care dwellings, should be adopted.

PROPOSAL DETAILS/ANALYSIS:

Minnesota Statute, Section 462.3593 has the following key components:

- Creates a new type of permit referred to as a temporary dwelling permit that has a six-month duration, with an option to extend the permit for six months.

- Requires that the permit be for a property where the caregiver or relative resides.
- Allows modular and manufactured housing (instead of just recreational vehicles) to use this permit process as long as the unit meets all of the listed criteria.
- Lists the criteria for the structure and the information required in the permit application.
- Addresses sewer safety issues with required backflow valves and advance verification of septic service contracts.
- Requires the inclusion of site maps showing where the unit will be placed and notification of adjacent neighbors prior to application.
- Requires applications to specify the individual authorized to live in the unit.
- Applies the permit approval process found in Minnesota Statutes, section 15.99, but allows the local government unit only 15 days to make a decision on granting the permit (no extension). It waives the public hearing requirement and allows the clock to be restarted if an application is deemed incomplete, as long as the applicant is notified of how the application is incomplete within five days. A 30-day decision is allowed if the regular council meeting occurs only once a month.
- Requires unit placement to meet existing stormwater, shoreland, setback, and easement requirements.
- A temporary family health care dwelling that meets the requirements of Sections 2 and 3 of the Statute cannot be prohibited by local ordinances that regulate accessory uses or recreational vehicle parking or storage.
- Sets a default permit fee level that may be replaced by a local ordinance.
- Allows cities to pass an ordinance opting out of using this new permitting system.

The City does not currently allow temporary health care dwellings, except under certain circumstances and standards, so this Section of Minnesota Statutes would allow for, under certain standards, a use that is currently prohibited by Zoning Code. Additionally, the Building Official has the following concerns about allowing temporary health care dwellings: structure anchoring; septic system issues; water system access; inadequacy of insulation requirements for colder weather; municipal sewer connection issues; Metropolitan Council SAC/WAC charges determination difficulties; and backflow check access.

FISCAL IMPACT:

Adopting an ordinance opting-out of Minnesota Statute, Section 462.3593 would reduce potential issues which could be caused by allowing temporary dwellings and Staff time spent resolving these potential issues.

PLANNING COMMISSION/PUBLIC HEARING:

The Planning Commission recommends adopting an ordinance that has the City of Lake Elmo opting out of the requirements of Sections 2 and 3 of the Statute. The Commission did have some concern that there is no current mechanism to provide temporary housing for those with mental and physical disabilities and aging family members.

OPTIONS:

The Council may:

- Approve the ordinance as proposed.
- Deny the ordinance.

RECOMMENDATION:

Staff respectfully requests that the Council approve, as recommended by the Planning Commission, the proposed ordinance opting-out of Minnesota Statutes, Section 462.3593.

“Move to approve Ord. 08-151 opting-out of Minnesota Statutes, Section 462.3593.”

ATTACHMENTS:

- Ord. 08-151
- Planning Commission meeting minutes, 7/25/16
- History of Session Law Chapter 111 (codified as Minnesota Statutes, Section 462.3593)
- Chapter 111 (codified as Minnesota Statutes, Section 462.3593)
- Summary of Responses from Other Cities Regarding Temporary Health Care Dwellings

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

ORDINANCE NO. 08-151

**AN ORDINANCE OPTING-OUT OF THE REQUIREMENTS OF MINNESOTA
STATUTES, SECTION 462.3593**

SECTION 1. Section 301: Standards for Residential and Related Uses, Article 7: Specific Development Standards; Chapter 154: Zoning Code; Title XV: Land Usage of the Lake Elmo City Code of Ordinances is amended by adding the following:

E. Temporary Health Care Dwellings

1. Pursuant to authority granted by Minnesota Statutes, Section 462.3593, subdivision 9, the City opts-out of the requirements of Minnesota Statutes, Section 462.3593, which defines and regulates temporary family health care dwellings. By exercising this authority, the City is prohibiting the use of temporary family health care dwellings within the City.

SECTION 2. Effective Date. This Ordinance shall be effective immediately upon its passage and publication in the official newspaper of the City of Lake Elmo.

SECTION 3. Adoption Date. This Ordinance No. 08-151 was adopted on this _____ day of _____, 2016, by a vote of __ Ayes and __ Nays.

LAKE ELMO CITY COUNCIL

Mike Pearson, Mayor

ATTEST:

Julie Johnson, City Clerk

This Ordinance _____ was published on the _____ day of _____, 2016.

the only 2 things it can be used for. Kreimer is wondering if language could be added if the land trust doesn't accept the land, the City may consider it. Williams stated that he believes the MN land trust typically wants open space that is 10 acres and this could be problematic with the reduction to 20 acres. Dunn feels that there seems to be unintended consequences for coming down to a 20 acre minimum.

Williams is wondering if there should be a setback for trails when there is a wetland. Wensman stated that VBWD reviews the plans when a wetland is present and the review process protects that. Williams thinks that 154.660 (3) for deviations, there should be the word "and" after a & b so that all 3 criteria need to be met to get the deviations.

Williams thinks that on page 18 (3) is left over from the commercial PUD and should be taken out. Williams suggested some other changes that were clean up items that applied more to commercial PUD's.

Public hearing opened at 9:25 pm

No one spoke and there was no written correspondence

Public hearing closed at 9:25 pm

M/S/P: Williams/Griffin, move to postpone consideration of the OP Ordinance until staff can return a cleaned up copy for consideration, **Vote: 7-0, motion carried unanimously.**

Public Hearing – Zoning Text Amendment to opt out of requirements for Temporary Health Care Dwellings

Wensman started his presentation by giving an overview of the Temporary Health Care Dwelling legislation. Staff drafted an ordinance to opt out of the state statute. The Building Official had a number of concerns such as septic systems, anchoring, water access, insulation, etc. Staff drafted an ordinance to opt out of the state statute based on the recommendation of the Planning Commission.

Public hearing opened at 9:30 pm

No one spoke and there was no written correspondence

Public hearing closed at 9:30 pm

M/S/P: Dunn/Williams, move to recommend approval of the ordinance to opt out of the requirements of Minnesota Statutes Section 462.3593 , **Vote: 7-0, motion carried unanimously.**

Dodson is concerned that if the state felt strongly enough to enact this, should we be willing to provide a mechanism for people to provide for loved ones.

Larson feels that this legislation does not seem to fit in our community. Wensman stated that this is really to care for an aging population which is a valid concern, but is not sure that this is the best solution. This has been talked about in many different states. Wensman knows of at least a dozen cities around us that have opted out and only 1 that he knows of that have opted in.

Business Item – Ordinance amendment for the keeping of pigeons

Wensman gave a brief update on the pigeon ordinance. This item was talked about a while back and he has incorporated the suggestions of the Planning Commission from previous discussions. This is not an item that is in the zoning code, so a public hearing would not be required. This item will move forward to the City Council at a future date.

City Council Updates – July 5, 2016 Meeting

- i) Vacation of watermain easement for Auto Owners – passed.
- ii) Amend Fence regulations in regards to encroachment agreements – passed.
- iii) Hunting Ordinance – Tabled.
- iv) CPA for Rural Single Family in regards to sanitary sewer – passed.
- v) Moratorium extension – passed.
- vi) Neighborhood park in Savona neighborhood – request for Park Commission to review.

City Council Updates – July 19, 2016 Meeting

- i) Hunting Ordinance – Input given to Planning Director to bring back to future meeting.

Staff Updates

1. Upcoming Meetings
 - a. August 8, 2016
 - b. August 22, 2016

Commission Concerns

Dunn is wondering if there is any way to get a feel for what the costs will be to the City for these additional developments that come forward. Be it for police, fire, lighting, etc.

Dunn also mentioned that Baytown and West Lakeland are really concerned about Lake Elmo not taking a stand against the airport expansion. She would like it to be taken to the City Council for a resolution.



Minnesota State Legislature

Minnesota Senate

Bills



SF 2555

Status in the **Senate** for the 89th Legislature (2015 - 2016)Current bill text: [4th Engrossment](#)[Add SF 2555 to MyBills](#)[Version List](#) ▾Companion: [HF2497](#);[Companion Text](#)[House Search](#)

Revisor number: 16-5628

Session Law Chapter: [111](#)[Long Description](#)[Committee Hearings and Actions](#)[Senate Counsel & Research Summary](#)

Description

Temporary family health care dwellings zoning regulation; temporary dwelling permits establishment

Authors

[Hoffman](#); [Rosen](#); [Eken](#); [Koenen](#); [Abeler](#)

House Authors

[Peterson](#); [Loonan](#); [Newton](#); [Pugh](#); [Laine](#); [Schultz](#)

Actions

[Separated](#)[Chronological](#)

Senate

03/10/2016	Introduction and first reading	pg. 4960 Intro
03/10/2016	Referred to State and Local Government	
04/06/2016	Comm report: To pass as amended and re-refer to Health, Human Services and Housing	pg. 5675a 1
04/07/2016	Comm report: To pass as amended and re-refer to Finance	pg. 5715a 2
04/28/2016	Comm report: To pass as amended	pg. 6535a 3
04/28/2016	Second reading	pg. 6538
05/02/2016	Special Order: Amended	pg. 6572a 4
05/02/2016	Third reading Passed	pg. 6573 vote: 50-15
05/12/2016	Returned from House	pg. 7006
	Presentment date 05/12/16	
05/17/2016	Governor's action Approval 05/12/16	pg. 7050
05/17/2016	Secretary of State Chapter 111 05/12/16	pg. 7050
	Effective date 09/01/16	

House

05/04/2016	Received from Senate	pg. 7894
05/04/2016	Senate file first reading, referred for comparison HF 2497	pg. 7896
05/05/2016	Bills not identical, SF substituted on General Register	pg. 7908

05/05/2016	Second reading	pg. 7909
05/09/2016	House rule 1.21, placed on Calendar for the Day Wednesday, May 11, 2016	pg. 7991
05/11/2016	Third reading	pg. 8013
05/11/2016	Bill was passed	pg. 8014 vote: 113-17
	Presented to Governor 05/12/16	
	Governor approval 5/12/2016	
	Secretary of State, Filed 05/12/16	pg. 8163
	Chapter number 111	

ABOUT THE LEGISLATURE

[FAQ](#)
[Guide to the Legislative Process](#)
[Historical Statistics](#)
[Employment/Internships](#)
[Visiting the Capitol](#)
[Maps](#)
[District Finder](#)
[Accessibility](#)

CONTACT US

For all comments concerning legislation or issues:
[Contact your House Member](#)
[Contact your Senator](#)

For bill status information, questions, or corrections:
[Contact Senate Index at 651-296-5560](#)
[Submit website comments](#)

GET CONNECTED

[MyBills](#)
[E-mail Updates & RSS Feeds](#)
[House News](#)
[Senate News](#)

2016 Minnesota Session Laws

Key: (1) ~~language to be deleted~~ (2) new language

CHAPTER 111--S.F.No. 2555

An act relating to local government; regulating zoning of temporary family health care dwellings; establishing temporary dwelling permits; amending Minnesota Statutes 2014, section 144D.01, subdivision 4; proposing coding for new law in Minnesota Statutes, chapters 394; 462.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 2014, section 144D.01, subdivision 4, is amended to read:

Subd. 4. Housing with services establishment or establishment. (a) "Housing with services establishment" or "establishment" means:

(1) an establishment providing sleeping accommodations to one or more adult residents, at least 80 percent of which are 55 years of age or older, and offering or providing, for a fee, one or more regularly scheduled health-related services or two or more regularly scheduled supportive services, whether offered or provided directly by the establishment or by another entity arranged for by the establishment; or

(2) an establishment that registers under section 144D.025.

(b) Housing with services establishment does not include:

(1) a nursing home licensed under chapter 144A;

(2) a hospital, certified boarding care home, or supervised living facility licensed under sections 144.50 to 144.56;

(3) a board and lodging establishment licensed under chapter 157 and Minnesota Rules, parts 9520.0500 to 9520.0670, 9525.0215 to 9525.0355, 9525.0500 to 9525.0660, or 9530.4100 to 9530.4450, or under chapter 245D;

(4) a board and lodging establishment which serves as a shelter for battered women or other similar purpose;

(5) a family adult foster care home licensed by the Department of Human Services;

(6) private homes in which the residents are related by kinship, law, or affinity with the providers of services;

(7) residential settings for persons with developmental disabilities in which the services are licensed under Minnesota Rules, parts 9525.2100 to 9525.2140, or applicable successor rules or laws;

(8) a home-sharing arrangement such as when an elderly or disabled person or single-parent family makes lodging in a private residence available to another person in exchange for services or rent, or both;

(9) a duly organized condominium, cooperative, common interest community, or owners' association of the foregoing where at least 80 percent of the units that comprise the condominium, cooperative, or common interest community are occupied by individuals who are the owners, members, or shareholders of the units; ~~or~~

(10) services for persons with developmental disabilities that are provided under a license according to Minnesota Rules, parts [9525.2000](#) to [9525.2140](#) in effect until January 1, 1998, or under chapter 245D; or

(11) a temporary family health care dwelling as defined in sections 394.307 and 462.3593.

Sec. 2. **[394.307] TEMPORARY FAMILY HEALTH CARE DWELLINGS.**

Subdivision 1. Definitions. (a) For purposes of this section, the following terms have the meanings given.

(b) "Caregiver" means an individual 18 years of age or older who:

(1) provides care for a mentally or physically impaired person; and

(2) is a relative, legal guardian, or health care agent of the mentally or physically impaired person for whom the individual is caring.

(c) "Instrumental activities of daily living" has the meaning given in section 256B.0659, subdivision 1, paragraph (i).

(d) "Mentally or physically impaired person" means a person who is a resident of this state and who requires assistance with two or more instrumental activities of daily living as certified in writing by a physician, a physician assistant, or an advanced practice registered nurse licensed to practice in this state.

(e) "Relative" means a spouse, parent, grandparent, child, grandchild, sibling, uncle, aunt, nephew, or niece of the mentally or physically impaired person. Relative includes half, step, and in-law relationships.

(f) "Temporary family health care dwelling" means a mobile residential dwelling providing an environment facilitating a caregiver's provision of care for a mentally or physically impaired person that meets the requirements of subdivision 2.

Subd. 2. Temporary family health care dwelling. A temporary family health care dwelling must:

(1) be primarily assembled at a location other than its site of installation;

(2) be no more than 300 gross square feet;

(3) not be attached to a permanent foundation;

(4) be universally designed and meet state-recognized accessibility standards;

(5) provide access to water and electric utilities either by connecting to the utilities that are serving the principal dwelling on the lot or by other comparable means;

(6) have exterior materials that are compatible in composition, appearance, and durability to the exterior materials used in standard residential construction;

(7) have a minimum insulation rating of R-15;

(8) be able to be installed, removed, and transported by a one-ton pickup truck as defined in section 168.002, subdivision 21b, a truck as defined in section 168.002, subdivision 37, or a truck tractor as defined in section 168.002, subdivision 38;

(9) be built to either Minnesota Rules, chapter 1360 or 1361, and contain an Industrialized Buildings Commission seal and data plate or to American National Standards Institute Code 119.2; and

(10) be equipped with a backflow check valve.

Subd. 3. Temporary dwelling permit; application. (a) Unless the county has designated temporary family health care dwellings as permitted uses, a temporary family

health care dwelling is subject to the provisions in this section. A temporary family health care dwelling that meets the requirements of this section cannot be prohibited by a local ordinance that regulates accessory uses or recreational vehicle parking or storage.

(b) The caregiver or relative must apply for a temporary dwelling permit from the county. The permit application must be signed by the primary caregiver, the owner of the property on which the temporary family health care dwelling will be located, and the resident of the property if the property owner does not reside on the property, and include:

(1) the name, address, and telephone number of the property owner, the resident of the property if different from the owner, and the primary caregiver responsible for the care of the mentally or physically impaired person; and the name of the mentally or physically impaired person who will live in the temporary family health care dwelling;

(2) proof of the provider network from which the mentally or physically impaired person may receive respite care, primary care, or remote patient monitoring services;

(3) a written certification that the mentally or physically impaired person requires assistance with two or more instrumental activities of daily living signed by a physician, a physician assistant, or an advanced practice registered nurse licensed to practice in this state;

(4) an executed contract for septic service management or other proof of adequate septic service management;

(5) an affidavit that the applicant has provided notice to adjacent property owners and residents of the application for the temporary dwelling permit; and

(6) a general site map to show the location of the temporary family health care dwelling and other structures on the lot.

(c) The temporary family health care dwelling must be located on property where the caregiver or relative resides. A temporary family health care dwelling must comply with all setback requirements that apply to the primary structure and with any maximum floor area ratio limitations that may apply to the primary structure. The temporary family health care dwelling must be located on the lot so that septic services and emergency vehicles can gain access to the temporary family health care dwelling in a safe and timely manner.

(d) A temporary family health care dwelling is limited to one occupant who is a mentally or physically impaired person. The person must be identified in the application. Only one temporary family health care dwelling is allowed on a lot.

(e) Unless otherwise provided, a temporary family health care dwelling installed under this section must comply with all applicable state law and local ordinances.

Subd. 4. Initial permit term; renewal. The initial temporary dwelling permit is valid for six months. The applicant may renew the permit once for an additional six months.

Subd. 5. Inspection. The county may require that the permit holder provide evidence of compliance with this section as long as the temporary family health care dwelling remains on the property. The county may inspect the temporary family health care dwelling at reasonable times convenient to the caregiver to determine if the temporary family health care dwelling is occupied and meets the requirements of this section.

Subd. 6. Revocation of permit. The county may revoke the temporary dwelling permit if the permit holder violates any requirement of this section. If the county revokes a permit, the permit holder has 60 days from the date of revocation to remove the temporary family health care dwelling.

Subd. 7. **Fee.** Unless otherwise specified by an action of the county board, the county may charge a fee of up to \$100 for the initial permit and up to \$50 for a renewal of the permit.

Subd. 8. **No public hearing required; application of section 15.99.** (a) Due to the time-sensitive nature of issuing a temporary dwelling permit for a temporary family health care dwelling, the county does not have to hold a public hearing on the application.

(b) The procedures governing the time limit for deciding an application for the temporary dwelling permit under this section are governed by section 15.99, except as provided in this section. The county has 15 days to issue a permit requested under this section or to deny it, except that if the county board holds regular meetings only once per calendar month the county has 30 days to issue a permit requested under this section or to deny it. If the county receives a written request that does not contain all required information, the applicable 15-day or 30-day limit starts over only if the county sends written notice within five business days of receipt of the request telling the requester what information is missing. The county cannot extend the period of time to decide.

Subd. 9. **Opt-out.** A county may by resolution opt-out of the requirements of this section.

Sec. 3. **[462.3593] TEMPORARY FAMILY HEALTH CARE DWELLINGS.**

Subdivision 1. **Definitions.** (a) For purposes of this section, the following terms have the meanings given.

(b) "Caregiver" means an individual 18 years of age or older who:

(1) provides care for a mentally or physically impaired person; and

(2) is a relative, legal guardian, or health care agent of the mentally or physically impaired person for whom the individual is caring.

(c) "Instrumental activities of daily living" has the meaning given in section 256B.0659, subdivision 1, paragraph (i).

(d) "Mentally or physically impaired person" means a person who is a resident of this state and who requires assistance with two or more instrumental activities of daily living as certified in writing by a physician, a physician assistant, or an advanced practice registered nurse licensed to practice in this state.

(e) "Relative" means a spouse, parent, grandparent, child, grandchild, sibling, uncle, aunt, nephew, or niece of the mentally or physically impaired person. Relative includes half, step, and in-law relationships.

(f) "Temporary family health care dwelling" means a mobile residential dwelling providing an environment facilitating a caregiver's provision of care for a mentally or physically impaired person that meets the requirements of subdivision 2.

Subd. 2. **Temporary family health care dwelling.** A temporary family health care dwelling must:

(1) be primarily assembled at a location other than its site of installation;

(2) be no more than 300 gross square feet;

(3) not be attached to a permanent foundation;

(4) be universally designed and meet state-recognized accessibility standards;

(5) provide access to water and electric utilities either by connecting to the utilities that are serving the principal dwelling on the lot or by other comparable means;

(6) have exterior materials that are compatible in composition, appearance, and durability to the exterior materials used in standard residential construction;

(7) have a minimum insulation rating of R-15;

(8) be able to be installed, removed, and transported by a one-ton pickup truck as defined in section 168.002, subdivision 21b, a truck as defined in section 168.002, subdivision 37, or a truck tractor as defined in section 168.002, subdivision 38;

(9) be built to either Minnesota Rules, chapter 1360 or 1361, and contain an Industrialized Buildings Commission seal and data plate or to American National Standards Institute Code 119.2; and

(10) be equipped with a backflow check valve.

Subd. 3. Temporary dwelling permit; application. (a) Unless the municipality has designated temporary family health care dwellings as permitted uses, a temporary family health care dwelling is subject to the provisions in this section. A temporary family health care dwelling that meets the requirements of this section cannot be prohibited by a local ordinance that regulates accessory uses or recreational vehicle parking or storage.

(b) The caregiver or relative must apply for a temporary dwelling permit from the municipality. The permit application must be signed by the primary caregiver, the owner of the property on which the temporary family health care dwelling will be located, and the resident of the property if the property owner does not reside on the property, and include:

(1) the name, address, and telephone number of the property owner, the resident of the property if different from the owner, and the primary caregiver responsible for the care of the mentally or physically impaired person; and the name of the mentally or physically impaired person who will live in the temporary family health care dwelling;

(2) proof of the provider network from which the mentally or physically impaired person may receive respite care, primary care, or remote patient monitoring services;

(3) a written certification that the mentally or physically impaired person requires assistance with two or more instrumental activities of daily living signed by a physician, a physician assistant, or an advanced practice registered nurse licensed to practice in this state;

(4) an executed contract for septic service management or other proof of adequate septic service management;

(5) an affidavit that the applicant has provided notice to adjacent property owners and residents of the application for the temporary dwelling permit; and

(6) a general site map to show the location of the temporary family health care dwelling and other structures on the lot.

(c) The temporary family health care dwelling must be located on property where the caregiver or relative resides. A temporary family health care dwelling must comply with all setback requirements that apply to the primary structure and with any maximum floor area ratio limitations that may apply to the primary structure. The temporary family health care dwelling must be located on the lot so that septic services and emergency vehicles can gain access to the temporary family health care dwelling in a safe and timely manner.

(d) A temporary family health care dwelling is limited to one occupant who is a mentally or physically impaired person. The person must be identified in the application. Only one temporary family health care dwelling is allowed on a lot.

(e) Unless otherwise provided, a temporary family health care dwelling installed under this section must comply with all applicable state law, local ordinances, and charter provisions.

Subd. 4. **Initial permit term; renewal.** The initial temporary dwelling permit is valid for six months. The applicant may renew the permit once for an additional six months.

Subd. 5. **Inspection.** The municipality may require that the permit holder provide evidence of compliance with this section as long as the temporary family health care dwelling remains on the property. The municipality may inspect the temporary family health care dwelling at reasonable times convenient to the caregiver to determine if the temporary family health care dwelling is occupied and meets the requirements of this section.

Subd. 6. **Revocation of permit.** The municipality may revoke the temporary dwelling permit if the permit holder violates any requirement of this section. If the municipality revokes a permit, the permit holder has 60 days from the date of revocation to remove the temporary family health care dwelling.

Subd. 7. **Fee.** Unless otherwise provided by ordinance, the municipality may charge a fee of up to \$100 for the initial permit and up to \$50 for a renewal of the permit.

Subd. 8. **No public hearing required; application of section 15.99.** (a) Due to the time-sensitive nature of issuing a temporary dwelling permit for a temporary family health care dwelling, the municipality does not have to hold a public hearing on the application.

(b) The procedures governing the time limit for deciding an application for the temporary dwelling permit under this section are governed by section 15.99, except as provided in this section. The municipality has 15 days to issue a permit requested under this section or to deny it, except that if the statutory or home rule charter city holds regular meetings only once per calendar month the statutory or home rule charter city has 30 days to issue a permit requested under this section or to deny it. If the municipality receives a written request that does not contain all required information, the applicable 15-day or 30-day limit starts over only if the municipality sends written notice within five business days of receipt of the request telling the requester what information is missing. The municipality cannot extend the period of time to decide.

Subd. 9. **Opt-out.** A municipality may by ordinance opt-out of the requirements of this section.

Sec. 4. **EFFECTIVE DATE.** This act is effective September 1, 2016, and applies to temporary dwelling permit applications made under this act on or after that date.

Presented to the governor May 12, 2016

Signed by the governor May 12, 2016, 1:27 p.m.

Copyright © 2016 by the Revisor of Statutes, State of Minnesota. All rights reserved.

List of Cities Opting Out

Two Harbors

Tonka Bay

Stillwater

Springfield

Savage

Oak Park Heights (Leaning Opting-Out)

North St. Paul

North Oaks

New Ulm

New Prague

Montevideo

Mendota Heights

Lauderdale

Lakeville

Lake Elmo (Pending Council Approval)

Hopkins

Glencoe

Excelsior

Dilworth

Detroit Lakes

Crystal

Corcoran

Clearwater

Burnsville

Austin



MAYOR AND COUNCIL COMMUNICATION

DATE: 8/16/2016

REGULAR

ITEM #: 21

AGENDA ITEM: Pigeon Ordinance
SUBMITTED BY: Emily Becker, City Planner
THROUGH: Kristina Handt, City Administrator
REVIEWED BY: Stephen Wensman, Planning Director

BACKGROUND:

In late 2015, Planning Director Wensman had received an inquiry regarding the keeping of pigeons in the City and found that the City Ordinance did not address the issue. Chapter 95: Animals, of the City Code, does not currently address the keeping of pigeons. Pigeons are not considered farm animals nor are they pets. Without an ordinance for the keeping of pigeons, any future pigeon issues would be regulated by complaints through the nuisance ordinance. The issue was originally discussed at the Planning Commission and it was recommended that an ordinance written to regulate the keeping of pigeons. Staff prepared a draft ordinance, held a public hearing on the ordinance at the January 11, 2016 Planning Commission meeting and the Commission recommended that the City Council approve the ordinance.

ISSUE BEFORE COUNCIL:

The Council should consider if an ordinance should be adopted regulating the keeping of pigeons. If the Council decides such an ordinance should be adopted, it should consider if the provisions set forth in the Ordinance are appropriate for the City.

PROPOSAL DETAILS/ANALYSIS:

The ordinance was drafted based on review of several Wisconsin ordinances, the Gem Lake and Forest Lake ordinances, and followed the City of Lake Elmo Chicken Ordinance as a template. Gem Lake's ordinance regulating pigeons is most similar to the proposed ordinance. Staff research found that the cities of Oakdale, Woodbury, Maplewood, and Stillwater do not have ordinances for the keeping of pigeons.

The proposed ordinance has the following key components:

- A property must be zoned RR – Rural Residential or A – Agricultural and be 2.5 acres or greater in size.
- There cannot be more than 20 pigeons per lot.
- Property must be the primary residence of the pigeon keeper.
- A permit is required, requiring much of the same application materials as a Chicken Keeping Permit requires.
- Permit conditions are set forth including:

- The requirement to keep the pigeon premises clean.
- Food storage restrictions.
- Treatment of pigeons.
- Disposal standards.
- Loft requirements:
 - Setback 50 feet from property line and adjacent habitable structures.
 - Must be no more than 12 feet high and 200 square feet in floor area.
 - Enclosure standards.
- Violations and permit issuance and revocation are outlined and are very similar to those of the current ordinance that sets forth standards for the keeping of chickens.

FISCAL IMPACT:

Setting forth such standards may reduce future staff time spent on nuisance complaints pertaining to the keeping of pigeons.

PLANNING COMMISSION/PUBLIC HEARING:

A public hearing was held on January 11, 2016 with no public comment. Commissioner Dodson questioned why the loft requirements were so specific and why restricting the keeping of pigeons to the Agricultural and Rural Residential Districts. There was also a question by Commissioner Williams as to how the number of birds (20) was arrived at. Commissioner Williams also requested 2 additional requirements to the ordinance. Staff has included both. As a whole the Commission discussed the appropriate number of pigeons to allow. Commissioner Dodson thought 60 would be appropriate and Commissioner Larson thought no more than 100. The Commission ultimately decided it was better to be more restrictive and settled back to the number 20.

Since the Commission meeting, Staff reevaluated the number of pigeons that could be housed in a 200 sq. ft. loft and it is upward of 200 depending on how the loft were designed with a center aisle. It is Staff's understanding that most pigeon fanciers prefer to keep flocks of 100 or more pigeons at a time. The person who initially inquired about keeping pigeons wanted to keep 100 pigeons. The City of Gem Lake restricts the number of pigeons to 120.

OPTIONS:

The Council may:

- Approve the ordinance as proposed.
- Amend the ordinance and approve the ordinance as amended.
- Deny the ordinance.

RECOMMENDATION:

Staff respectfully requests that the Council approve, as recommended by the Planning Commission, the proposed ordinance regulating the keeping and maintaining of pigeons.

“Move to approve Ord. 08-148 regulating the keeping and maintaining of pigeons.”

In addition, Staff is recommending that the City Council authorize summary publication of the approved ordinance through the following resolution:

“Move to adopt Resolution 2016-68, authorizing summary publication of Ordinance 08-148”

ATTACHMENTS:

- Ord. 08-148
- Resolution 2016-68
- Planning Commission meeting minutes, 1/11/16
- Gem Lake Ordinance

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

ORDINANCE NO. 08-148

**AN ORDINANCE AMENDING THE LAKE ELMO CITY CODE OF ORDINANCES BY
ADDING SECTIONS 95.114-95.122 WHICH PERTAIN TO KEEPING AND
MAINTAINING PIGEONS.**

SECTION 1. The City Council of the City of Lake Elmo hereby amends Chapter 95: Animals of the City Code by inserting the following new sections:

KEEPING AND MAINTAINING PIGEONS

§ 95.114 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

LOFT. Any and all quarters in which pigeons are housed.

PIGEON. Any and all varieties and breeds of pigeons.

§ 95.115 PURPOSE.

The purpose of this subchapter is to establish certain requirements for keeping and maintaining pigeons to avoid issues that might otherwise be associated with keeping and maintaining pigeons in populated areas.

§ 95.116 INVESTIGATION AND ENFORCEMENT.

Officers designated by the city shall have authority in the investigation and enforcement of this subchapter, and no person shall interfere with, hinder or molest any such officer in the exercise of such powers. The city shall make investigations as is necessary and may grant, deny, or refuse to renew any application for permit, or terminate an existing permit under this subchapter.

§ 95.117 KEEPING OF PIGEONS.

(A) Pigeons shall only be permitted on lots 2.5 acres or greater in size in the RR – Rural Residential and A-Agriculture zoning districts.

(B) Maximum number of pigeons shall be no more than twenty (20) per residential lot.

(C) The property will be the primary residence of the pigeon keeper.

§ 95.118 PERMIT REQUIRED; TERM, CONSENT, FEE.

(A) No person shall (without first obtaining a permit in writing from the City Clerk) own, keep, harbor, or have custody of any pigeons within the city of Lake Elmo.

(B) The first permit is valid for up to 2 years beginning on the date of issuance and ending on December 31 of the following year. Subsequent permits are valid from January 1 to December 31.

(C) Prior to issuance of a permit, notices must be mailed to all homes within 150 feet of the applicant's property lines.

(D) The fee for a permit may be imposed, set, established and fixed by the city council, by ordinance, from time to time.

§ 95.119 APPLICATION.

Any person desiring a permit required under the provisions of this subchapter shall make written application to the City Clerk upon a form prescribed by and containing such information as required by the city. Among other things, the application shall contain the following information:

(A) A description of the real property upon which it is desired to keep the pigeons.

(B) The number of pigeons to be maintained on the premises.

(C) A site plan of the property showing the location and size of the proposed loft, and/or aviary, setbacks from the loft to property lines and surrounding buildings (including houses and buildings on adjacent lots).

(D) Statements that the applicant will at all times keep the pigeons in accordance with all of the conditions prescribed by the officer, or modification thereof, and that failure to obey such conditions will constitute a violation of the provisions of this article and grounds for cancellation of the permit.

(E) Such other and further information as may be required by the officer.

§ 95.120 PERMIT CONDITIONS.

Each person keeping pigeons within the City of Lake Elmo shall comply with the following:

(A) No loft for keeping or confining pigeons shall be maintained or operated in any manner which violates the city building code or zoning ordinance.

(B) Pigeons must be banded in a way to identify each pigeon as kept by its owner.

(C) All premises on which pigeons are kept and maintained shall be kept reasonably clean and free from filth, garbage and such substances which attract rodents at all times.

(D) All pigeons shall be fed within the confines of the loft or premises on which pigeons are housed.

(E) All grains and food stored for the use of pigeons shall be kept in rodent-proof containers.

(F) Pigeons shall be exercised and permitted to fly only when under control of the permit holder or their representative.

(G) All aviaries shall be completely enclosed with wire netting or equivalent material that will prevent pigeons from escaping the confines of the loft or coop.

(H) The outline of the loft to house said pigeons shall be of such design to conform to the symmetry of the existing buildings.

(I) The loft must provide a minimum 4 cubic feet of space per bird. The loft must be enclosed with wire netting or equivalent material that will prevent pigeons from escaping the confines of the loft. Lofts must be elevated a minimum of six inches and a maximum of twelve inches above grade to ensure free-way beneath the loft. Lofts shall rest upon concrete footings, cement blocks, or other suitable foundation material. A loft may have a maximum height of 12 feet and a maximum floor area of 200 square feet and must comply with Section 154.406.

(K) Pigeon lofts may be located in the rear yard only and shall be at least 50 feet from adjacent property lines and habitable structures.

(L) The property upon which pigeons are kept shall have established a principal use conforming to the zoning ordinance.

(M) Dead Pigeons must be disposed of according to the Minnesota Board of Animal Health rules which require pigeon carcasses to be disposed of as soon as possible after death, usually within 48 to 72 hours. Legal forms of Pigeon carcass disposal include burial, off-site incineration or rendering, or composting.

§ 95.121 VIOLATIONS.

(A) Any person violating any of the sections of this article shall be deemed guilty of a misdemeanor and upon conviction, shall be penalized in accordance with § 10.99.

(B) If any person is found guilty by a court for violation of this section, their permit to own, keep, harbor, or have custody of pigeons shall be deemed automatically revoked and no new permit may be issued for a period of 1 year.

(C) Any person violating any conditions of this permit shall reimburse the city for all costs borne by the city to enforce the conditions of the permit including, but not limited to, the pickup and impounding of pigeons.

§ 95.122 ISSUANCE, REVOCATION.

(A) If granted, the permit shall be issued by the city and shall state the conditions, if any, imposed upon the permitted for the keeping of pigeons under this permit. The permit shall specify the restrictions, limitations, conditions and prohibitions which the city deems reasonably necessary to protect any person or neighboring use from unsanitary conditions, unreasonable noise or odors, or annoyance, or to protect the public health and safety. Such permit may be modified from time to time or revoked by the city for failure to conform to such restrictions, limitations, or prohibitions. Such modification or revocation shall be effective after 10 days following the mailing of written notice thereof by certified mail to the person or persons keeping or maintaining such pigeons.

(B) The city may revoke any permit issued under this subchapter if the person holding the permit refuses or fails to comply with this subchapter, with any regulations promulgated by the city council pursuant to this article, or with any state or local law governing cruelty to animals or the keeping of animals. Any person whose permit is revoked shall, within 10 days thereafter, humanely dispose of all pigeons being owned, kept or harbored by such person, and no part of the permit fee shall be refunded.

SECTION 2. Effective Date. This ordinance shall become effective immediately upon adoption and publication in the official newspaper of the City of Lake Elmo.

SECTION 3. Adoption Date. This Ordinance No. 08-148 was adopted on this ___ day of _____, 2016, by a vote of _ Ayes and _ Nays.

Mayor Mike Pearson

ATTEST:

Kristina Handt
City Administrator

This Ordinance No. 08-148 was published on the ___ day of _____, 2016.

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

RESOLUTION NO. 2016-68

**RESOLUTION AUTHORIZING PUBLICATION OF ORDINANCE 08-148 BY TITLE
AND SUMMARY**

WHEREAS, the City Council of the City of Lake Elmo has adopted Ordinance No. 08-148, an ordinance regulating the keeping and maintenance of pigeons; and

WHEREAS, the ordinance is lengthy; and

WHEREAS, Minnesota Statutes, section 412.191, subd. 4, allows publication by title and summary in the case of lengthy ordinances or those containing charts or maps; and

WHEREAS, the City Council believes that the following summary would clearly inform the public of the intent and effect of the ordinance.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Lake Elmo, that the City Clerk shall cause the following summary of Ordinance No. 08-148 to be published in the official newspaper in lieu of the entire ordinance:

Public Notice

The City Council of the City of Lake Elmo has adopted Ordinance No. 08-148 regulating the keeping and maintaining of pigeons by:

- Restricting the keeping of pigeons to lots 2.5 acres or more in size and in RR – Rural Residential and A – Agricultural zoning districts.
- Limiting the number of pigeons to no more than 20 per residential lot.
- Requiring a permit, outlining application requirements.
- Setting forth permit conditions in regards to the maintenance of pigeons and loft standards.

The full text of Ordinance No. 08-148 is available for inspection at Lake Elmo City Hall during regular business hours.

BE IT FURTHER RESOLVED by the City Council of the City of Lake Elmo that the City Administrator keep a copy of the ordinance at City Hall for public inspection and that a full copy of the ordinance be placed in a public location within the City.

Dated: August 16, 2016

Mayor Mike Pearson

ATTEST:

Julie Johnson, City Clerk

(SEAL)

The motion for the adoption of the foregoing resolution was duly seconded by member
_____ and upon vote being taken thereon, the following voted in favor
thereof: _____ and the following voted against
same: _____

Whereupon said resolution was declared duly passed and adopted.

M/S/P: Williams/Kreimer, move to recommend rezoning of the Inwood booster station property from RR to the PF zoning district, ***Vote: 5-0, motion carried Unanimously.***

Ordinance Amendment – a request for an ordinance amendment to the animal ordinance that pertains to the keeping of pigeons.

Wensman started his presentation stating that he had an inquiry regarding the keeping of pigeons. Currently pigeons are not regulated. Wensman researched what other Citys do. He used the Gem Lake ordinance as a guide and also used our accessory building ordinance as a guide to know how many pigeons would fit in what size building. The minimum lot size would be 2.5 acres and it would only apply to AG and RR zoning. Maximum number allowed would be 20 and they would need to be banded. Aviaries would need to be enclosed. The loft area would have an area of 4 cubic feet per bird and the maximum loft height would be 12 feet with a maximum of 200 square feet. They would need to be located in the rear property 50 feet away from any habitable structures.

Dodson thinks the construction of the loft is very specific and is wondering why. Wensman stated it was taken out of other code and is probably to keep the birds safe from predators. Dodson was also wondering why it is limited to RR and AG. Wensman stated it is because he is trying to restrict it to where there is the least potential for complaints.

Williams asked how the number 20 was arrived at. Wensman stated that he looked at the size of the accessory building and worked backwards. Williams is not sure that 20 is enough.

Public Hearing opened at 10:04 pm.

No one spoke and there was no written or electronic correspondence.

Public Hearing Closed at 10:05 pm.

Dodson would like to see the number increased to 60. Larson would like to see 100 as a maximum.

Kreimer thinks that is a lot of birds on a 2.5 acre lot. No one spoke at the public hearing and he thinks that we should be restrictive until someone comes in and asks for more. Griffin stated that it can be a big nuisance if they are not taken care of and saw it first hand this summer. Dunn agrees that we should add to the code, but should be more restrictive for now. Kreimer would like to see on page 3 letter K read "Pigeon lofts may be located in the rear yard only and shall be at least 50 feet from property lines and adjacent habitable structures." Williams would like to include in 95.117 an item C that

would state “Any property where pigeons would be kept will have a principle use conforming to the zoning ordinance.”

Williams would like to add under 95.117 letter D “The property will be the primary residence of the pigeon keeper.”

M/S/P: Williams/Kreimer move to recommend approval of the ordinance pertaining to the keeping of pigeons with the 3 suggested changes, ***Vote: 5-0, motion carried, unanimously.***

Ordinance Amendment – a request for an ordinance amendment to the weapons ordinance as it pertains to hunting.

Wensman started his presentation and stated that this is being brought forward based on the number of calls the City received this fall. Wensman stated that the City might want to consider producing a map each year to designate where hunting is allowed. Public Park, public trail, ROW and public school was specifically added. Wensman ran these changes through Washington County sheriff and they were in support and liked the idea of a map.

Griffin would like to see some distinction between shotguns and rifles. She would like to see rifles prohibited in the City. The Commission was wondering how this applies to conceal and carry and how 130.15 (B) (2) would apply. Wensman stated that he can bring it back to the City Attorney. Dodson asked how much of this had to do with land use and if it really needed to come to the Planning Commission.

Public Hearing opened at 10:30 pm.

No one spoke and there was no written or electronic correspondence.

Public Hearing Closed at 10:30 pm.

Kreimer was wondering where paint ball, air guns, etc. would fall in this scope. Wensman stated that he looked at it only from the standpoint of hunting.

M/S/P: Williams/Kreimer move to postpone consideration of the weapons and hunting ordinance until clarification on 4 issues is received, ***Vote: 5-0, motion carried, unanimously.***

Council Updates – December 15, 2015 Meeting

1. CUP Amendment-Oakdale Gun Club – Approved.
2. Preliminary Plat Approval-Reider – approved.
3. ZTA-Uses in Rural Districts – Repeal uses that were added in 2013.

CITY OF GEM LAKE, RAMSEY COUNTY, MINNESOTA

ORDINANCE NO. 110

AN ORDINANCE TO PERMIT AND REGULATE THE KEEPING OF PIGEONS IN THE CITY OF GEM LAKE, AMENDING ORDINANCE NO. 69.

THE CITY COUNCIL OF THE CITY OF GEM LAKE ORDAINS:

SECTION 1. Intent and Purpose. It is the purpose and intent of this ordinance to permit the keeping, maintenance and flying of certain registered pigeons as a recreational sport and hobby, subject to regulations hereinafter set forth. The keeping, breeding, maintenance and flying of fancy, racing and sporting breeds of pigeons, as defined herein, is determined not to be a nuisance and is not detrimental to the public welfare, if regulated as hereafter set forth. It is recognized that the keeping, breeding, maintenance and flying of such pigeons is now mainly engaged in by members of local, district and national organizations, and such persons keep their pigeons in suitable permanent structures constructed and maintained for such purpose, and keep such structures in a clean and sanitary manner, and do not permit their pigeons to remain at large in the community in such manner as to disturb their neighbors or to prevent the full enjoyment of property rights by their neighbors.

SECTION 2. AMENDMENT. Section 2.3 of Ordinance 69 is amended, to add the following definitions:

Pigeon. A member of the family Columbidae, and shall include “Racing Pigeons”, “Fancy Pigeons” and “Sporting Pigeons” as defined in this ordinance.

Pigeon - Fancy Pigeon. A pigeon which, through past breeding, has developed certain distinctive physical and performing characteristics as to be clearly identified and accepted as such by the National Pigeon Association, the American Pigeon Club, or the Rare Breeds Pigeon Club. Examples: Fantails, Pouters, Trumpeters.

Pigeon - Loft. A structure for the keeping or housing of pigeons.

Pigeon - Mature Pigeon. A pigeon aged six months or older.

Pigeon - Racing Pigeon. A pigeon which, through selective past breeding, has developed the distinctive physical and mental characteristics as to enable it to return to its home after having been released a considerable distance therefrom, and which is accepted as such by the American Racing Pigeon Union, Inc. or the International Federation of Racing Pigeon Fanciers. Common names are Racing Homer, Homing Pigeon, or Carrier Pigeon.

Pigeon - Sporting Pigeon. A pigeon which, through selective past breeding, has developed the ability to fly in a distinctive manner, such as aerial acrobatics or endurance flying. Examples: Rollers, Tipplers.

SECTION 3. AMENDMENT. Section 3 of Ordinance 69 is amended to add the following sub-sections:

Section 3.12 Keeping of Pigeons. The keeping, breeding, maintenance and flying of pigeons may be permitted subject to the following:

3.12.1 A loft must be constructed and maintained to keep and confine the pigeons. The loft must provide at least nine cubic feet of space per bird. The loft must be enclosed with wire netting or equivalent material that will prevent pigeons from escaping the confines of the loft. Lofts must be elevated a minimum of six inches and a maximum of twelve inches above grade to ensure free-way beneath the loft. Lofts shall rest upon concrete footings, cement blocks, or other suitable foundation material. A loft may have a maximum height of nine feet.

3.12.2 The loft must be constructed and maintained so as to be rodent-proof.

3.12.3 The owner may construct pigeon lofts up to a cumulative maximum floor area of 200 square feet. Any single loft with over 120 square feet in floor area requires a building permit, as with other accessory structures.

3.12.4 Pigeon lofts may be located in the rear yard only and shall be at least 50 feet from adjacent habitable structures.

3.12.5 Pigeons shall be confined to the loft except when they are released for exercise, performance, training, or to return from areas outside the City of Gem Lake for the purpose of engaging in a race or returning from training flights.

3.12.6 All pigeons shall be fed within the confines of the loft on the premises on which the pigeons are housed.

3.12.7 All grains and food stored for the use of the pigeons on a licensed premises shall be kept in a rodent-proof container.

3.12.8 Pigeons must be banded in a way to identify each pigeon as kept by its owner.

3.12.9 All premises on which pigeons are kept or maintained shall be kept reasonably clean from filth, garbage, and any substances which attract rodents. The loft and its surroundings must be cleaned daily.

3.12.10 No one shall release pigeons to fly for exercise, training or competition within the City of Gem Lake except an owner of pigeons who is a member in good standing of an organized pigeon club, such as the American Racing Pigeon Union, Inc., the International Federation of Racing Pigeon Fanciers, the National Pigeon Association, the American Tippler Society, the International Roller Association, the Rare Breeds Pigeon

Club, or a local club which has rules that will help preserve the peace and tranquility of the neighborhood.

SECTION 4. AMENDMENT. Section 4 of Ordinance 69 is hereby amended to add the following sub-sections:

Section 4.2. Pigeon Keeping License. No person shall own, keep or harbor pigeons within the City of Gem Lake without first obtaining a license. Applicant shall complete an application form provided by the City. The application shall include, but not be limited to the following information: a site plan showing the location and size of the premises, and the location size and type of all pigeon lofts, and demonstration that said lofts will comply with City zoning requirements; a statement of the maximum number of pigeons to be kept on the premises at one time; and an agreement by the applicant that the premises may be inspected by the City at all reasonable times so as to assure compliance with the conditions outlined in Section 3.12. Only one license may be issued per property.

4.2.1 Duration of License; Fee. Each license issued hereunder shall expire one (1) year after issuance unless sooner revoked. A license must be renewed annually to continue the keeping of pigeons. The City Council shall set the annual fee for a license by ordinance with other City fees. Fees shall be paid at the time of the making of the application for license or renewal.

4.2.2 Number of Animals. The number of pigeons permitted to be kept under an approved license is calculated by dividing the volume of loft space by nine (minimum space per bird). The maximum number of pigeons allowed to any licensee, regardless of capacity, is 120 birds from March 1 to May 31, and 90 birds during the rest of the year.

4.2.3 Denial or Revocation. The pigeon-keeping license may be revoked, or renewal denied, if the licensee fails to comply with limits on number of pigeons or any of the conditions outlined in Section 3.12.

SECTION 5. Severability. Should any section, subdivision, clause or other provision of this Ordinance be held to be invalid in any court of competent jurisdiction, such decision shall not affect the validity of the Ordinance as a whole, or of any part hereof, other than the part held to be invalid.

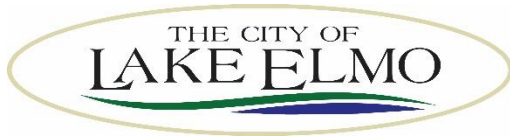
SECTION 6. Effective Date. This Ordinance shall take effect and be in force from and after its passage and publication.

Dated: 10-19, 2009


Robert Uzpen Mayor


William Short - Clerk

Summary of Ordinance 110 approved by City Council and published in the White Bear Press on 10-28, 2009.



MAYOR AND COUNCIL COMMUNICATION

DATE: August 16, 2016

REGULAR

ITEM #: 22

MOTION

AGENDA ITEM: Removing the Prohibition of Solid Wall Fences Over Four Feet in Height on Any Lot Under ½ Acre

SUBMITTED BY: Kristina Handt, City Administrator

REVIEWED BY: Councilmembers Fliflet and Smith
Stephen Wensman, Planning Director

SUMMARY AND BACKGROUND:

Councilmember Fliflet, seconded by Councilmember Smith, is requesting that the City Council direct Staff to amend the City's Fencing Regulations by repealing Subd. (E) (3), which prohibits solid wall fences over four (4) feet in height. This prohibition creates complexities in the fencing regulations.

ISSUE BEFORE COUNCIL:

Council is respectfully requested to consider if this Subdivision of the City's fencing regulations should be removed and, if so, direct Staff to prepare a report to bring to the Planning Commission for a public hearing.

PROPOSAL DETAILS/ANALYSIS:

The City's fencing regulations are rather complex as compared to other cities. A brief history is provided below of changes to the fencing regulations that show details as to how this particular regulation was adopted. All other provisions of this Section would remain.

- 5/13/2013: Fence regulations are discussed at the Planning Commission meeting. Regulations at that time prohibited privacy fencing, and the proposed ordinance amendment allowed for solid fences up to six feet in height except in front and side (corner) yard setbacks. Anticipated higher density residential development was cited as the reason for the recommendation of allowing privacy fencing, as the demand for this type of fencing would likely increase.
- 5/23/2013: Public Hearing is held on the ordinance. There is discussion over whether or not the air and openness requirement for those portions of a fence over 4 feet in height is appropriate, but the final version of the amendment does not include the provision.
- 6/4/2013: The fence ordinance amendment is brought to Council. There is concern about allowing six foot solid wall fences in small yards. A discussion about the ordinance at a workshop is requested.
- 6/11/2013: Item is brought to Council Work Session. Concern is again expressed about solid wall fences being put up on smaller lots. There was discussion about prohibiting such fences on lots of

½ acre or less, and there is concern that this could be seen as discrimination against those property owners of such lots.

- 6/18/2013: Fence ordinance amendment is on the agenda but tabled until the next meeting when all members are expected to be present.
- 7/2/2013: The fence ordinance amendment, along with an alternative version of the proposed amendment, is discussed. The alternative version prohibited solid wall fences over four feet on lot ½ acre in size. There was a significant amount of discussion over whether or not to strike the ½ acre lot size provision. The matter was tabled to a later council meeting.
- 7/16/2013: The ordinance amendment that prohibits solid wall fences over four feet in height is adopted.

FISCAL IMPACT:

Less Staff time may be spent in processing fence permit applications and enforcement of this Subdivision.

OPTIONS:

The City Council should consider whether or not to recommend that Staff and the Planning Commission hold a public hearing and consider recommending approval of an amendment to the City's Fencing Regulations.

RECOMMENDATION:

Councilmember Fliflet, seconded by Councilmember Smith, is requesting that the City Council direct Staff and the Planning Commission to hold a public hearing and consider recommending approval of an amendment to the City's Fencing Regulations that repeals Subd. (E) (3) of Section 154.205: Fencing Regulations of the City Code:

“Move to direct City Staff and the Planning Commission to hold a public hearing and consider recommending approval of the City's Fencing Regulations that repeals Subd. (E) (3) of Section 154.205: Fencing Regulations of the City Code.”