



YOR & COUNCIL COMMUNICATION

DATE: 8/16/2016

REGULAR

ITEM # 23

AGENDA ITEM: Hammes Estates Developer's Agreement

SUBMITTED BY: Stephen Wensman, Planning Director

THROUGH: Kristina Handt, City Administrator

REVIEWED BY: Jack Griffin, City Engineer
Sarah Sonsalla, City Attorney

RECOMMENDATION: Staff is recommending that the City Council approve a developer's agreement associated with the Hammes Estates residential development. The agreement has been drafted based on a draft developer agreement template that Staff has been updating for future approval by the Council.

DEVELOPER AGREEMENT TEMPLATE UPDATE: The City Council adopted a new Developer Agreement Template in January 2016, which improved upon the way in which the Developer Security was released. Since that update, Staff has continued to update the template based on reasonable requests by developers and Staff generated refinements with the intent of having a template that addresses various development scenarios and best practices. Staff had intended to bring the draft template forward for Council approval concurrently with this Agreement, however, Staff would like to conduct further research and potential include additional updates prior to approval. This Developer Agreement is similar to the January 2016 template, but differs as follows:

1. This Agreement allows phasing of the construction activities for the purpose of receiving building permits within the phase of a plat provided that the Developer receives City staff approval for the construction phasing plan prior to the preconstruction meeting and the phasing plan is incorporated into the final approved construction plans. This will allow the Developer to plat a larger development area, but phase construction in a manner that allows building permits to be issued at preapproved stages of the development, yet in such a way that City staff can manage the development process effectively and efficiently.
2. The Agreement separates the security release for Landscaping from others. Landscaping is among the last of improvements in a development, and with a two year warranty, has been holding up larger security releases.

3. Section 20, Landscaping and Tree Replacement Improvements, was added to strengthen and clarify the landscaping requirements and responsibility.
4. Title policy, rather than title commitment, shall be required for land dedicated to the City at the request of the City Attorney.
5. Section 28, Subd. D was added to ensure permanent or temporary street signs are installed by the developer prior to building permits for public safety purposes.
6. Section 28, Subd. D was amended to require the Developer to all outstanding special assessments prior to recording the plat.

These changes to the template have been reviewed by the City Engineer, the Planning Director and City Attorney.

LEGISLATIVE HISTORY/STAFF REPORT: The Hammes Estates Final Plat was approved on October 7, 2014 and extended to October 31, 2016. A new developer has purchase the property with the intent to develop it accordance with City approvals. On October 7, 2014, the City Council had approved a developers agreement for the Hammes Estates, but because of the lapsed time and because a new developer has taken over the project, Staff has updated the developer agreement consistent with the conditions of approval for the Hammes Estates Final Plat, development issues, and based on the January 2016 Developer Agreement Template with the changes outlined above. The key aspects of the agreement include the following components:

- All phases of the development must be final platted by December 31, 2019.
- All required public improvements must be completed by October 31, 2017, with the exception of the final wear course of asphalt on streets.
- A provisions has been added to Section 15, Construction Sequence and Compliance to ensure the drainage and erosion control work needed to remedy the repeated flooding on adjacent properties is properly addressed.
- Consistent with the previously approved developer agreement, the developer will pay a cash contribution of \$107, 554 to satisfy park dedication which will be held in escrow until the Goose Lake Park improvements are installed.
- The developer will provide a letter of credit in the amount of \$3,169,766 related to the cost of the proposed improvements which including a boardwalk, and wetland mitigations and restoration.
- That the developer provide a cash deposit of \$502,140 for SAC and WAC charges, park dedication (to be put in escrow), engineering administration, one year of street light operating costs, and other City fees.
- Consistent with the previous approved Developer Agreement, a special provision was protects the 100 foot greenbelt/buffer around Stonegate.

- Section 29, City Payments, provides for City payment to the developer for utility oversizing in the amount of \$25,573.

FISCAL IMPACT: Direct Payments to Developer – \$25,573 for oversizing of utilities. Goose Lake Park Improvements will be paid for and installed by the developer in lieu of park dedication. The City will receive Future financial impacts include maintenance of streets, trails, sanitary sewer mains, watermains and other public infrastructure, maintenance of storm water ponding areas (after warranty period), monthly lease payments for street lights, and other public financial responsibilities typically associated with a new development. The City will collect building permit fees, Sewer Accessibility Charges and Water Accessibility Charges for the 57 lot subdivision.

SUMMARY AND ACTION REQUESTED: The City Council is being asked to authorize execution of a developer’s agreement for the Hammes Estates residential development. The attached agreement was based on the approved development agreement template, since amended as outlined above, with all changes specific to the Hammes Estates project. This agreement must be executed and conditions complied with before any construction activity, outside of the previously authorized grading work, may proceed on the site. No work on the site will occur until the preliminary plat plans are updated and approved, the conditions of final plat are complied with and the plat is recording with Washington County. The recommended motion to take action on the request is as follows:

“Move to adopt Resolution 2016-71 approving the developer’s agreement for Hammes Estates”

ATTACHMENTS:

1. Resolution 2016-71
2. Hammes Estates Developer’s Agreement

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

RESOLUTION NO. 2016-71

*A RESOLUTION APPROVING AMENDMENTS TO THE APPROVED DEVELOPMENT
AGREEMENT FOR HAMMES ESTATES 1ST ADDITION*

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

WHEREAS, The Ryland Group, Inc., 7599 Anagram Drive, Eden Prairie, MN (“Applicant”) has previously submitted an application to the City of Lake Elmo (“City”) for a Final Plat for Hammes Estates 1st Addition; and

WHEREAS, The Lake Elmo City Council adopted Resolution No. 2014-82 on October 7, 2014 approving the Final Plat for Hammes Estates 1st Addition; and

WHEREAS, The Lake Elmo City Council adopted Resolution No. 2014-83 on October 7, 2014, approving the Development Agreement for Hammes Estates 1st Addition; and

WHEREAS, the Ryland Group, Inc. did not record the Final Plat, nor does it intend to develop the property, and

WHEREAS, on November 4, 2015 the Lake Elmo City Council approved an extension of the Final Plat until October 31, 2016, and

WHEREAS, Rachel Development Inc., 4125 Napier Ct NE, St. Michael, Minnesota 55376 has purchased the property in order to develop it according to the Plans approved by the City, and

NOW, THEREFORE, based on the information received, the City Council of the City of Lake Elmo does hereby approve the Developer’s Agreement for Hammes Estates 1st Addition and authorizes the Mayor and City Clerk to execute the document.

Passed and duly adopted this 16th day of August, 2016 by the City Council of the City of Lake Elmo, Minnesota.

Mike Pearson, Mayor

ATTEST:

Julie Johnson, City Clerk

(reserved for recording information)

DEVELOPMENT CONTRACT

(Public sewer and water)

Hammes Estates 1st Addition

AGREEMENT dated _____, 2_____, by and between the **CITY OF LAKE ELMO** a Minnesota municipal corporation (“City”), and Rachel Development Inc. (the “Developer”).

1. REQUEST FOR PLAT APPROVAL. The Developer has asked the City to approve a plat for _____ (referred to in this Contract as the “plat”) , and that final plat was approved by the City Council on October 7, 2014 via Resolution 2014-81 and later extended to October 31, 2016. The land is situated in the County of Washington, State of Minnesota, and is legally described on

Exhibit A

2. CONDITIONS OF PLAT APPROVAL. The City hereby approves the plat on condition that the Developer enter into this Contract, furnish the security required by it, and record the plat with the County Recorder or Registrar of Titles within (180) days after the City extended approval date referenced herein.

3. RIGHT TO PROCEED. Unless separate written approval has been given by the City, within the plat or land to be platted, the Developer may not grade or otherwise disturb the earth, remove

trees, construct sewer lines, water lines, streets, utilities, public or private improvements, or any buildings until all the following conditions have been satisfied: 1) this agreement has been fully executed by both parties and filed with the City Clerk, 2) the necessary security has been received by the City, 3) the plat has been recorded with the Washington County Recorder's Office, and 4) the City's Planning Director has issued a letter that all conditions have been satisfied, a preconstruction conference has been held, and that the Developer may proceed.

4. PHASED DEVELOPMENT. If the plat is a phase of a multi-phased preliminary plat, the City may refuse to approve final plats of subsequent phases if the Developer has breached this Contract and the breach has not been remedied. Development of subsequent phases may not proceed until Development Contracts for such phases are approved by the City. Park charges and availability charges for sewer and water referred to in this Contract are not being imposed on outlots, if any, in the plat that are designated in an approved preliminary plat for future subdivision into lots and blocks. Such charges will be calculated and imposed when the outlots are final platted into lots and blocks.

5. PRELIMINARY PLAT STATUS. If the plat is a phase of a multi-phased preliminary plat, the preliminary plat approval for all phases not final platted shall lapse and be void unless final platted into lots and blocks, not outlots, on or before December 31, 2019.

6. CHANGES IN OFFICIAL CONTROLS. For two (2) years from the date of this Contract, no amendments to the City's Comprehensive Plan or official controls shall apply to or affect the use, development density, lot size, lot layout or dedications of the approved final plat unless required by state or federal law or agreed to in writing by the City and the Developer. Thereafter, notwithstanding anything in this Contract to the contrary, to the full extent permitted by state law, the City may require compliance with any amendments to the City's Comprehensive Plan, official controls, platting or dedication requirements enacted after the date of this Contract.

7. DEVELOPMENT PLANS. The plat shall be developed in accordance with the following plans and at the Developer's sole expense. The plans shall not be attached to this Contract. If the plans vary from the written terms of this Contract, the written terms shall control. The plans are:

Plan A - Plat

Plan B - Final Grading, Drainage, and Erosion Control Plan

- Plan C - Tree Preservation and Reforestation Plan
- Plan D - Plans and Specifications for Public Improvements
- Plan E - Street Lighting Plan
- Plan F - Landscape Plan

8. IMPROVEMENTS. The Developer shall install and pay for the following:

- A. Streets
- B. Sanitary Sewer
- C. Watermain
- D. Surface Water Facilities (pipe, ponds, rain gardens, etc.)
- E. Grading and Erosion Control
- F. Sidewalks/Trails
- G. Street Lighting
- H. Underground Utilities
- I. Street Signs and Traffic Control Signs
- J. Landscaping
- K. Tree Preservation and Reforestation
- L. Wetland Mitigation and Buffers
- M. Monuments Required by Minnesota Statutes
- N. Miscellaneous Facilities

The improvements shall be installed in accordance with the City subdivision ordinance and the City's Engineering Design and Construction Standards Manual and pursuant to the direction of the City Engineer. The Developer shall submit plans and specifications which have been prepared by a competent registered professional engineer to the City for approval by the City Engineer. The Developer shall instruct its engineer to provide adequate field inspection personnel to assure an acceptable level of quality control to the extent that the Developer's engineer will be able to certify that the construction work meets the approved City standards as a condition of City acceptance. In addition, the City may, at the City's discretion and at the Developer's expense, have one or more City inspectors and a soil engineer inspect the work on a full or part-time basis. The Developer's engineer shall provide for on-site project management. The Developer's engineer is responsible for design changes and contract administration between the Developer

and the Developer's contractor. The Developer or his engineer shall schedule a pre-construction meeting at a mutually agreeable time at the City Hall with all parties concerned, including the City staff, to review the program for the construction work.

All labor and work shall be done and performed in the best and most workmanlike manner and in strict conformance with the approved plans and specifications. No deviations from the approved plans and specifications will be permitted unless approved in writing by the City Engineer. The Developer agrees to furnish to the City a list of contractors being considered for retention by the Developer for the performance of the work required by the Contract. The Developer shall not do any work or furnish any materials not covered by the plans and specifications and special conditions of this Contract, for which reimbursement is expected from the City, unless such work is first ordered in writing by the City Engineer as provided in the specifications.

9. CITY ENGINEERING ADMINISTRATION AND CONSTRUCTION

OBSERVATION. At the time of Final Plat, the Developer shall submit an escrow for City Engineering Administration and Construction Observation in an amount provided under paragraph 38. Summary of Cash Requirements. Thereafter, the Developer shall reimburse the City each month, within 30 days of receiving an invoice, for all engineering administration and construction observation performed during the construction of the plat. After 30 days of the invoice, the City may draw upon the escrow and stop the work on site until said escrow has been replenished in its full amount. City engineering administration will include monitoring of construction progress and construction observation, consultation with the Developer and his engineer on status or problems regarding the project, coordination for testing, final inspection and acceptance, project monitoring during the warranty period, and processing of requests for reduction in security. Construction observation may be performed by the City's in-house staff or consulting engineer. Construction observation shall include, at the discretion of the city, part or full time inspection of proposed public utilities and street construction. Services will be billed on an hourly basis.

The direction and review provided through the inspection of the improvements should not be considered a substitute for the Developer required management of the development. The Developer will cause the contractor(s) to furnish the City with a schedule of proposed operations at least five (5) days prior to the commencement of construction of each type of Improvement. City shall inspect all Developer Installed Improvements during and after construction for compliance with approved plans and specifications. The Developer will notify the City Engineer at such times during construction as the City Engineer requires for inspection purposes. Such inspection is pursuant to the City's governmental authority, and no agency or joint venture relationship between the City and the Developer is thereby created.

10. CONTRACTORS/SUBCONTRACTORS. City Council members, City employees, and City Planning Commission members, and corporations, partnerships, and other entities in which such individuals have greater than a 25% ownership interest or in which they are an officer or director may not act as contractors or subcontractors for the public improvements identified in Paragraph 8 above.

11. PERMITS. The Developer shall obtain or require its contractors and subcontractors to obtain all necessary permits, including but not limited to:

- A. Right-of-Way Excavations and Obstructions:
 - City of Lake Elmo, Right-of-Way Utility Installation(s)
 - City of Lake Elmo, Right-of-Way Obstruction(s)
 - Washington County, Utility Installations(s)
 - Washington County, Street or Driveway Access(s)
 - Minnesota Department of Transportation, Utility Installation
 - Minnesota Department of Transportation, Right-of-Way Permit

- B. Watermain Extensions:
 - Minnesota Department of Health

- C. Sanitary Sewer Extensions:
 - Minnesota Pollution Control Agency
 - Metropolitan Council Environmental Services

- D. Stormwater Management:
 - Valley Branch, Brown's Creek or South Washington Watershed District Permit

- E. Erosion, Sedimentation Control:
 - Minnesota Pollution Control Agency, General NPDES Stormwater Permit
 - SWPPP (Stormwater Pollution Prevention Plan)

- F. Wetland Mitigation:
 - Board of Water and Soil Resources, WCA
- G. Construction Dewatering:
 - Minnesota Department of Natural Resources

12. TIME OF PERFORMANCE. The Developer shall install all required public improvements by October 31, 2017, with the exception of the final wear course of asphalt on streets. The Developer shall install the bituminous wearing course of streets after the first course has weathered a winter season, consistent with warranty requirements, however final acceptance of the improvements will not be granted until all work is completed including the final wear course. The Developer may, however, request an extension of time from the City. If an extension is granted, it shall be conditioned upon updating the security posted by the Developer to reflect cost increases and amending this agreement to reflect the extended completion date. Final wear course placement outside of this time frame must have the written approval of the City Engineer.

13. LICENSE. The Developer hereby grants the City, its agents, employees, officers and contractors a license to enter the plat to perform all work and inspections deemed appropriate by the City in conjunction with plat development.

14. CONSTRUCTION ACCESS. Construction traffic access and egress for grading, public utility construction, and street construction is restricted to access the subdivision via Keats Avenue North. No construction traffic is permitted on other adjacent local streets.

15. CONSTRUCTION SEQUENCE AND COMPLIANCE. The City will require the Developer to construct the improvements in a sequence which will allow progress and compliance points to be measured and evaluated. The Developer and/or its representatives are required to supervise and coordinate all construction activities for all improvements and must notify the City in writing stating when the work is ready for the inspection at each of the measurable points defined in the following paragraphs 16, 17 and 18. In addition, once work begins onsite, the drainage and erosion control work identified by the City around Wetland A and Keats Avenue shall commence immediately and work shall be diligent until completed to the City's satisfaction. The City reserves the right to stop all other work on

the site if the erosion control correction work is not completed within 15 working days or if, in the City's sole discretion, the erosion control correction work is not progressing in a timely and diligent manner.

16. EROSION CONTROL. Prior to initiating site grading, the erosion control plan, Plan B, shall be implemented by the Developer and inspected and approved by the City. Erosion control practices must comply with the approved plans and specifications for the plat, with all watershed district permits and with Minnesota Pollution Control Agency's Best Management Practices. The City may impose additional erosion control requirements as deemed necessary. The parties recognize that time is of the essence in controlling erosion. If the Developer does not comply with the erosion control plan and schedule or supplementary instructions received from the City, the City may take such action as it deems appropriate to control erosion. The City will endeavor to notify the Developer in advance of any proposed action, but failure of the City to do so will not affect the Developer's and City's rights or obligations hereunder. If the Developer does not reimburse the City for any cost the City incurred for such work within ten (10) days, the City may draw down the security to pay any costs. No development, utility or street construction will be allowed and no building permits will be issued unless the plat is in full compliance with the approved erosion control plan.

If building permits are issued prior to the acceptance of public improvements, the Developer assumes all responsibility for erosion control compliance throughout the plat and the City may take such action as allowed by this agreement against the Developer for any noncompliant issue as stated above. Erosion control plans for individual lots will be required in accordance with the City's building permit requirements, or as required by the City or City Engineer.

17. GRADING PLAN. The plat shall be graded in accordance with the approved grading drainage and erosion control plan, Plan "B". The plan shall conform to the Engineering Design and Construction Standards Manual. All grading shall be completed within the Subdivision prior to the preparation and submittal of the as-constructed grading plan.

A. Within thirty (30) days after completion of the grading, the Developer shall provide the City with a "record" grading plan certified by a registered land surveyor or engineer that all ponds,

swales, and ditches have been constructed on public easements or land owned by the City. The "record" plan shall contain site grades and field verified elevations of the following: a) cross sections of ponds; b) location and elevations along all swales, emergency overflows, wetlands, wetland mitigation areas if any, ditches, locations and dimensions of borrow areas/stockpiles; c) lot corner elevations and house pads; and d) top and bottom of retaining walls.

B. The City will not issue any building permits until the approved certified record grading plan is on file with the City.

18. STREET AND UTILITY IMPROVEMENTS. All storm sewers, sanitary sewers, watermain, and streets shall be installed in accordance with the approved Plans and Specifications for Public Improvements, Plan "D". The plan shall conform to the City's Engineering Design and Construction Standards Manual. Curb and gutter and the first lift of the bituminous streets, sidewalks, boulevards graded, street signs installed, and all restoration work on the site shall be completed in accordance with the approved plans. Once the work is completed, the developer or its representative shall submit a written request to the City asking for an inspection of the initial improvements. The City will then schedule a walk-through to create a punch list of outstanding items to be completed. Upon receipt of the written punch list provided by the City, the punch list items must be completed by the Developer and the City notified to re-inspect the improvements. The final bituminous wear course shall be installed in accordance with paragraph 12 above.

19. STREET MAINTENANCE DURING CONSTRUCTION. The Developer shall be responsible for all street maintenance until the streets are accepted by the City. Warning signs shall be placed when hazards develop in streets to prevent the public from traveling on same and to direct attention to detours. If and when streets become impassable, such streets shall be barricaded and closed. In the event residences are occupied prior to completing streets, the Developer shall maintain a smooth surface and provide proper surface drainage to insure that the streets are passable to traffic and emergency vehicles. The Developer shall be responsible for keeping streets within and without the subdivision clean of dirt and debris that may spill, track, or wash onto the street from the Developer's operation. If the City, for

any reason plows snow prior to final acceptance of the streets by the City, the City shall not be responsible for repairing the streets because of damage caused by the snow plowing operations. The Developer shall contract for street cleaning within and immediately adjacent to the development. At a minimum, scraping and sweeping shall take place on a weekly basis. A copy of this contract shall be approved by the City before grading is started. The contract shall provide that the City may direct the contractor to clean the streets and the contractor will bill the Developer.

20. LANDSCAPING AND TREE REPLACEMENT IMPROVEMENTS.

A. The Developer agrees to install landscaping in accordance with the approved Landscape Plans and as required by City Ordinances. All landscaping materials such as trees, shrubs, grasses, or other vegetation installed by the Developer according to the approved Plans shall be warranted and maintained for a period of 2 years. The 2 year warranty period shall be deemed to start once all required landscaping identified as responsibility of Developer in the approved Plans has received acceptance by the City. The Developer agrees to have the installer of said landscaping complete an inspection thirty (30) days prior to the end of the 2 year warranty period and provide the City with a written report identifying the condition of all landscaping. In the event any landscaping installed by the Developer is deemed to be in poor condition or dead, the developer is to replace said landscaping with like kind materials or as otherwise approved by the City.

B. The Developer shall be responsible for maintaining regular watering, fertilizing, and over-seeding necessary to establish final lawns and yards as identified in the approved Plans for Outlots, public rights-of-way, and any disturbed areas outside the plat boundaries according to an approved landscape maintenance plan. The Developer agrees to achieve “substantial performance” on all seeded or sodded lawns and yards disturbed during the construction of Subdivision Improvements. For the purpose of this agreement “substantial performance” shall be defined for areas seeded or sodded with a turf or lawn mix as “square foot turf areas with an average blade height of three inches free of eroded, bare, or dead spots and free from perennial weeds or unwanted grasses with no visible surface soil.” For areas seeded with a native grass or flower mix “substantial performance” shall be defined as “square foot native grass or flower areas with an average height of 8 inches free of eroded, bare, or dead spots and no

visible surface soil.”

21. OWNERSHIP OF IMPROVEMENTS. Upon completion of the work and construction required by this Contract, the improvements lying within public easements shall become City property. Prior to acceptance of the improvements by the City, the Developer must furnish the City with a complete set of reproducible "record" plans, an electronic file of the "record" plans in accordance with the City's Engineering Design and Construction Standards Manual together with the following affidavits:

- Developer/Developer Engineer's Certificate
- Land Surveyor's Certificate

certifying that all construction has been completed in accordance with the terms of this Contract. All necessary forms will be furnished by the City. Upon receipt of "record plans" and affidavits, and upon review and verification by the City Engineer, the City Engineer will accept the completed public improvements.

22. PARK DEDICATION. The Developer shall pay a cash contribution of \$107,554 in satisfaction of the City's park dedication requirements. The charge was based on the park dedication requirement for all the areas to be platted within the Hammes Estates Preliminary Plat. No additional fees in lieu of land dedication will be charged for future developments within the preliminary plat area. The charge was calculated as follows: 2.1 acres (5.7 acres of park land provided subtracted from 7.8 acres of park land required) \$51,216 per acre per the submitted appraisal for the property. The Developer shall receive a credit from the cash amount due for the actual costs of the North East Park Plan Improvements depicted in the Final Landscape Plans dated September 22, 2014. These improvements shall include: 16-foot by 24-foot shelter, picnic table, bike rack, grill station, retaining wall, fishing pier, canoe rack, concrete hardsurface, woodland seed mix restoration, landscaping and parking lot improvements. The Developer shall deposit \$107,554 with the City at the time of final plat to be held by the City in escrow until such time as the park improvements have been installed. Upon installation of park improvements, the City shall release the credited amount to the Developer and assume responsibility for maintenance of the park improvements, except for the woodland restoration and landscaping.

23. SANITARY SEWER AND WATER UTILITY AVAILABILITY CHARGES (SAC AND WAC). The Developer shall be responsible for the payment of all sewer availability charges (SAC) and all water availability charges (WAC) with respect to the Improvements required by the City and any state or metropolitan government agency.

The sewer availability charge (SAC) in the amount of \$3,000.00 per REU shall be paid by the Developer prior to the City recording the final plat. The total amount to be paid by the Developer is \$171,000.00.

The water availability charge (WAC) in the amount of \$3,000.00 per REU shall be paid by the Developer prior to the City recording the final plat. The total amount to be paid by the Developer is \$171,000.00.00.

In addition, a sewer connection charge in the amount of \$1,000.00 per REU, a Met Council sewer availability charge in the amount of \$2,485.00 per REU, and a water connection charge in the amount of \$1,000.00 per REU will be collected by the City at the time the building permit is issued for each lot.

24. TRAFFIC CONTROL SIGNS. The Traffic control signs shall be included as part of the street improvements, and installation costs shall be included in the street construction calculations.

25. STREET LIGHTS. The Developer is responsible for the cost of street light installation consistent with a street lighting plan approved by the City. Before the City signs the final plat, the Developer shall post a security for street light installation consistent with the approved plan. The required security is \$54,000 and consists of nine (9) decorative lights at \$6000 each. The Developer shall also pay \$1,161.00 in payment of the first year operating costs for street lights.

26. WETLAND MITIGATION. The Developer shall complete wetland mitigation/restoration in accordance with the approved Plans and Specifications and in accordance with any applicable Watershed or agency Permits. If the mitigation work is found to be incomplete or restoration is unsuccessful the City may draw down the security at any time during the warranty period if the Developer fails to take corrective measures to be used by the City to perform the work.

27. BUILDING PERMITS/CERTIFICATES OF OCCUPANCY.

A. No building permit shall be issued for any lot within the Plat, or within a completed phase of the Plat in a City preapproved phasing plan, until such time that sanitary sewer, water, storm sewer, curbing and one lift of asphalt has been installed for all public streets; and record grading plans have been submitted and approved by the City Engineer. A preapproved phasing plan is defined as a phased construction plan that has been submitted by the developer and approved by the City in advance of the preconstruction meeting for the Plat. Once the construction has started the City will not consider revisions to the phasing plan for the purpose of issuing building permits.

B. Issuance of building permits for up to four “model homes” may be authorized by the Planning Director prior to the completion of the improvements described in Section A above, if there is safe public access to the subject lot that is sufficient to allow construction to proceed and there is a record grading plan approved by the City Engineer for the subject lot and all downstream storm water drainage facilities. The City will not issue a certificate of occupancy for any “model home” until all conditions identified in Section A above have been completed.

C. Prior to issuance of building permits, wetland buffer monuments shall be placed in accordance with the City’s zoning ordinance. The monument design shall be approved by the Community Development Department.

D. Prior to issuance of building permits, permanent or temporary street signs shall be installed by the developer.

E. Breach of the terms of this Contract by the Developer, including nonpayment of billings from the City, shall be grounds for denial of building permits, certificates of occupancy, and/or withholding of other permits, inspection or actions, including lots sold to third parties, and the halting of all work in the plat.

F. If building permits are issued prior to the acceptance of public improvements, the Developer assumes all liability and costs resulting in delays in completion of public improvements and damage to public improvements caused by the City, Developer, its contractors, subcontractors, materialmen, employees, agents, or third parties.

G. No sewer and water connection permits may be issued until the streets needed for

access have been paved with a bituminous surface and the utilities are tested and approved by the City Engineer.

28. RESPONSIBILITY FOR COSTS.

A. In the event that the City receives claims from labor, materialmen, or others that work required by this Contract has been performed, the sums due them have not been paid, and the laborers, materialmen, or others are seeking payment from the City, the Developer hereby authorizes the City to commence an Interpleader action pursuant to Rule 22, Minnesota Rules of Civil Procedure for the District Courts, to draw upon the letters of credit in an amount up to 125 percent of the claim(s) and deposit the funds in compliance with the Rule, and upon such deposit, the Developer shall release, discharge, and dismiss the City from any further proceedings as it pertains to the letters of credit deposited with the District Court, except that the Court shall retain jurisdiction to determine attorneys' fees pursuant to this Contract.

B. Except as otherwise specified herein, the Developer shall pay all costs incurred by it or the City in conjunction with the development of the plat, including but not limited to legal, planning, engineering and inspection expenses incurred in connection with approval and acceptance of the plat, the preparation of this Contract, review of construction plans and documents, and all costs and expenses incurred by the City in monitoring and inspecting development of the plat. All amounts incurred and due at the time, must be fully paid prior to execution and release of the final plat for recording.

C. The Developer shall hold the City and its officers, employees, and agents harmless from claims made by itself and third parties for damages sustained or costs incurred resulting from plat approval and development. The Developer shall indemnify the City and its officers, employees, and agents for all costs, damages, or expenses which the City may pay or incur in consequence of such claims, including attorneys' fees.

D. The Developer shall reimburse the City for costs incurred in the enforcement of this Contract, including reasonable engineering and attorneys' fees.

E. The Developer shall pay, or cause to be paid when due, and in any event before any penalty is attached, all outstanding special assessments prior to recording the final plat.

F. The Developer shall pay in full all bills submitted to it by the City for obligations incurred under this Contract within thirty (30) days after receipt. Bills not paid within thirty (30) days shall be assessed a late fee per the City of Lake Elmo adopted Fee Schedule. Upon request, the City will provide copies of detailed invoices of the work performed.

29. CITY PAYMENTS. Within thirty (30) days of the City's final acceptance of the Improvements, pursuant to Section 19 of the Contract, the City shall reimburse the Developer for the actual costs incurred by the Developer to oversize the water main, in an amount not to exceed \$25,573.00. The actual amount of the City's reimbursement shall be based on actual construction costs which must be verified by the Developer to the City in the Plans submitted to the City as required in Section 18. This payment by the City shall be the City's only responsibility with regard to construction of the Improvements and in no case shall act as a waiver of any other right of the City under this Contract or under applicable laws, ordinances or rules. In order to receive reimbursement, the Developer must not be in default of any of the terms of this Contract.

30. SPECIAL PROVISIONS. The following special provisions shall apply to plat development:

A. Implementation of the recommendations listed in the September 18, 2014, Engineering memorandum.

B. Upon the recording of the final plat, the Developer shall convey Outlots A and C to the City by warranty deed, free and clear of any and all encumbrances. The Developer shall be responsible for paying the cost of a title policy that insures the City's interest in these properties.

C. The Developer shall install a temporary turnaround on the end of June Avenue North and Juniper Avenue North until the streets are extended to in the second phase of the Hammes development.

D. The Developer must obtain a sign permit from the City Building Official prior to installation of any subdivision identification signs.

E. There shall be a green belt/buffer established between the property being platted by

the Developer and the adjacent Stonegate Subdivision that is at least 100 feet in width. The Developer shall include a provision in its homeowners' association covenants that restricts the construction of any improvements within the green belt/buffer area. The homeowners' association covenants shall provide that any changes to this provision in the covenants must be approved by the City. The homeowners' association covenants must be reviewed and approved by the City prior to them being recorded.

F. The Developer shall be responsible for the construction of all improvements within the Keats Avenue (CSAH 19) right-of-way as required by Washington County and further described in the review letter received from the County dated May 6, 2014. The required improvements shall include, but not be limited to: modifications to the median crossing in this area, continuation of a bituminous trail through the median, turn lanes, and other improvements as required by the County.

G. The Developer shall observe all other County requirements as specified in the Washington County review letter dated May 6, 2014.

H. The Developer shall enter into a landscape license and maintenance agreement with and satisfactory to the City that clarifies the individuals or entities responsible for any landscaping installed in areas outside of land dedicated as public park and open space on the final plat.

I. All trails shall be either located within easements that are either granted to the City by a separate instrument or dedicated to the City in the plat or, alternatively, located within an outlot that is conveyed to the City.

J. The Developer must provide a title policy in favor of the City in an amount of not less than \$200,000, insuring the City's interests as they appear on the plat.

K. Any land under which public trails are located will be accepted as park land provided the Developer constructs said trails within the dedicated areas as part of the public improvements for the subdivision and Outlots are provided where required by the City.

L. No more than one hundred units depicted on the preliminary plat (100) may be approved as part of a final plat until a second access is provided to the subdivision via a connection through the property to the south of the Hammes Estates.

M. The Developer shall be responsible to monitor the restored southern shoreline of Goose Lake for invasive species for a period of 5 years as specified in the MN DNR Public Waters Work Permit.

N. The parties acknowledge that all documentation of remediation activities related to a recorded soil contamination on the site to the Minnesota Pollution Control Agency have previously been submitted and approved.

31. MISCELLANEOUS.

A. The Developer may not assign this Contract without the written permission of the City Council. The Developer's obligation hereunder shall continue in full force and effect even if the Developer sells one or more lots, the entire plat, or any part of it.

B. Retaining walls that require a building permit shall be constructed in accordance with plans and specifications prepared by a structural or geotechnical engineer licensed by the State of Minnesota. Following construction, a certification signed by the design engineer shall be filed with the City Engineer evidencing that the retaining wall was constructed in accordance with the approved plans and specifications. All retaining walls identified on the development plans or by special conditions referred to in this Contract shall be constructed before any other building permit is issued for a lot on which a retaining wall is required to be built.

C. Appropriate legal documents regarding Homeowner Association documents, covenants and restrictions, as approved by the City Attorney, shall be filed with the final plat. No third-party beneficiary is hereby conferred.

D. Developer shall take out and maintain or cause to be taken out and maintained until six (6) months after the City has accepted the public improvements, public liability and property damage insurance covering personal injury, including death, and claims for property damage which may arise out of Developer's work or the work of its subcontractors or by one directly or indirectly employed by any of them. Limits for bodily injury and death shall be not less than \$500,000 for one person and \$1,000,000 for each occurrence; limits for property damage shall be not less than \$200,000 for each occurrence; or a

combination single limit policy of \$1,000,000 or more. The City shall be named as an additional insured on the policy, and the Developer shall file with the City a certificate evidencing coverage prior to the City signing the plat. The certificate shall provide that the City must be given thirty (30) days advance written notice of the cancellation of the insurance.

E. Third parties shall have no recourse against the City under this Contract.

F. If any portion, section, subsection, sentence, clause, paragraph, or phrase of this Contract is for any reason held invalid, such decision shall not affect the validity of the remaining portion of this Contract.

G. The action or inaction of the City shall not constitute a waiver or amendment to the provisions of this Contract. To be binding, amendments or waivers shall be in writing, signed by the parties and approved by written resolution of the City Council. The City's failure to promptly take legal action to enforce this Contract shall not be a waiver or release.

H. This Contract shall run with the land and may be recorded against the title to the property. The Developer covenants with the City, its successors and assigns, that the Developer has fee title to the property being final platted and/or has obtained consents to this Contract, in the form attached hereto, from all parties who have an interest in the property; that there are no unrecorded interests in the property being final platted; and that the Developer will indemnify and hold the City harmless for any breach of the foregoing covenants.

I. Each right, power or remedy herein conferred upon the City is cumulative and in addition to every other right, power or remedy, express or implied, now or hereafter arising, available to City, at law or in equity, or under any other agreement, and each and every right, power and remedy herein set forth or otherwise so existing may be exercised from time to time as often and in such order as may be deemed expedient by the City and shall not be a waiver of the right to exercise at any time thereafter any other right, power or remedy.

J. The Developer represents to the City that the plat complies with all city, county, metropolitan, state, and federal laws and regulations, including but not limited to: subdivision ordinances,

zoning ordinances, and environmental regulations. If the City determines that the plat does not comply, the City may, at its option, refuse to allow construction or development work in the plat until the Developer does comply. Upon the City's demand, the Developer shall cease work until there is compliance.

32. EVENTS OF DEFAULT. The following shall be "Events of Default" under this Agreement and the term "Event of Default" shall mean, whenever it is used in this Agreement, any one or more of the following events:

A. Subject to unavoidable delays, failure by the Developer to commence and complete construction of the Public Improvements pursuant to the terms, conditions and limitations of this Agreement.

B. Failure by the Developer to substantially observe or perform any material covenant, condition, obligation or agreement on its part to be observed or performed under this Agreement.

33. REMEDIES ON DEFAULT. Whenever any Event of Default occurs, the City, subject to any rights of third parties agreed to by the City pursuant to this Agreement, or otherwise by written, executed instrument of the City, may take any one or more of the following:

A. The City may suspend its performance under the Agreement until it receives assurances from the Developer, deemed adequate by the City, that Developer will cure its default and continue its performance under the Agreement. Suspension of performance includes the right of the City to withhold permits including, but not limited to, building permits.

B. The City may initiate such action, including legal or administrative action, as is necessary for the City to secure performance of any provision of this agreement or recover any amounts due under this Agreement from the Developer, or immediately draw on the Letter of Credit, as set forth in this Agreement.

34. ENFORCEMENT BY CITY; DAMAGES. The Developer acknowledges the right of the City to enforce the terms of this Agreement against the Developer, by action for specific performance or damages, or both, or by any other legally authorized means. The Developer also acknowledges that its failure to perform any or all of its obligations under this Agreement may result in substantial damages to

the City; that in the event of default by the Developer, the City may commence legal action to recover all damages, losses and expenses sustained by the City; and that such expenses may include, but are not limited to, the reasonable fees of legal counsel employed with respect to the enforcement of this Agreement.

35. WARRANTY. The Developer warrants all improvements required to be constructed by it pursuant to this Contract against poor material and faulty workmanship. Twenty-five percent (25%) of the original security amount of the improvements shall be retained through the warranty period.

A. The required warranty period for all work relating to the public sewer and water shall be two (2) years from the date of final written City acceptance of the work.

B. The required warranty period for all work relating to street construction, including concrete curb and gutter, sidewalks and trails, materials and equipment shall be subject to one (1) year from the date of final written acceptance of the work.

C. The required warranty period for sod, trees, and landscaping is 2 growing seasons following final written City acceptance of the installation.

36. SUMMARY OF SECURITY REQUIREMENTS. To guarantee compliance with the terms of this agreement, payment of special assessments, payment of the costs of all public improvements, and construction of all public improvements, the Developer shall furnish the City with an irrevocable letter of credit, in the form attached hereto, from a bank, cash escrow or a combination cash escrow and Letter of Credit ("security") for **\$3,169,766**. The amount of the security was calculated as follows:

CONSTRUCTION CATEGORY:	COST	125%
1. Grading	\$156,000	\$195,000
2. Sanitary Sewer	\$413,076	\$516,345
3. Watermain	\$298,624	\$373,280
4. Storm Sewer (includes pond structures and outfall pipes)	\$492,748	\$615,935
5. Streets	\$430,598	\$538,247
6. Trails and Sidewalks	\$111,360	\$139,200
7. Surface Water Facilities (infiltration basins, bio retention basins, rain gardens, etc.)	N/A	

8. Street Lighting	\$54,000	\$67,500
9. Street Signs and Traffic Control Signs	\$6,300	\$7,875
10. Private Utilities (electricity, natural gas, telephone, and cable)	N/A	
11. Landscaping	\$244,922	\$306,152
12. Tree Preservation and Restoration	(Included in Landscaping)	
13. Wetland Mitigation and Buffers	\$50,000	\$62,500
14. Monuments	\$5,700	\$7,125
15. Erosion and Sedimentation Control	\$195,986	\$244,982
16. Boardwalk	\$ 66,500	\$83,125
17. Developer's Record Drawings	\$10,000	\$12,500
CONSTRUCTION SUBTOTAL	\$2,535,813	N/A
TOTAL PROJECT SECURITIES (at 125% Construction Costs)	N/A	\$3,169,766

This breakdown is for historical reference; it is not a restriction on the use of the security. The bank shall be subject to the approval of the City Administrator. The City may draw down the security, without notice, for any violation of the terms of this Contract or if the security is allowed to lapse prior to the end of the required term. If the required public improvements are not completed at least thirty (30) days prior to the expiration of the security, the City may also draw it down. If the security is drawn down, the proceeds shall be used to cure the default.

37. REDUCTION OF SECURITY. Upon written request by the Developer to the City Engineer and upon receipt of proof satisfactory to the City Engineer that work has been completed in accordance with the approved plans and specifications, and terms of this Agreement, and that all financial obligations to the City have been satisfied, the City Engineer may approve reductions in the security as follows:

A. Upon completion of grading operations, including temporary site restoration, Developer shall submit an as-built grading survey to the City that at a minimum establishes the as-built grades at all lot corners and downstream drainage conveyance systems and storm water ponds. Upon inspection of the site and approval of the as-built survey, 100%, or \$195,000, of the grading security may be released. This security reduction does not include amounts related to erosion and sedimentation

control.

B. Up to 75% of the security provided in accordance with paragraph 36 may be released upon completion of the following key milestones of the project as determined by the City Engineer.

C. Construction Categories 2 and 3: The amount of \$667,218 may be released when all sanitary sewer and watermain utilities have been installed, all testing and televising has been successfully completed, sanitary sewer as-built inverts have been verified, and the utilities are considered ready for use by the City Engineer.

D. Construction Categories 4 and 5: The amount of \$865,637 may be released when all streets, and storm sewer have been installed and tested, and have been found to be complete to the satisfaction of the City Engineer including all corrective work for any identified punch list items and including verification of storm sewer as-built inverts, but not including the final wear course.

E. Construction Categories 6-10 and 14-17: The amount of \$359,386 may be released when all remaining Developer's obligations under this Agreement have been completed including: (1) bituminous wear course, (2) street lighting and private utilities, (3) sidewalks and trails, (4) bio retention facilities, (5) iron monuments for lot corners have been installed, (3) all financial obligations to the City satisfied, (4) the required "record" plans in the form of the City standards have been received and approved by the City, and (5) the public improvements are accepted by the City Engineer and City Council.

F. Construction Categories 11, 12 and 13: The amount of \$229,614 may be released when Landscaping Improvements have been installed to the satisfaction of the City Landscape Architect including all corrective work for any identified punch list items.

G. Twenty-five percent (25%) of the original security amounts, excluding grading and landscaping improvements shall be retained until: (1) all improvements have been fully completed and excepted by the City, including all corrective work and warranty punch list items, (2) all financial obligations to the City have been satisfied, and (3) the warranty period has expired.

H. Twenty-five percent (25%) of the original landscaping security amounts shall be

retained until: (1) all landscape improvements have been fully completed and excepted by the City, including all corrective work and warranty punch list items, (2) all financial obligations to the City have been satisfied, and (3) the warranty period has expired.

I. In addition to the above project milestone based security reductions, the Developer may submit written request to the City Engineer and upon receipt of proof satisfactory to the City Engineer that work is progressing in accordance with the approved plans and specifications, and terms of this Agreement, and that all financial obligations to the City have been satisfied, the City Engineer may approve a one-time reduction in the security for Construction Categories 2-5 in an amount not to exceed fifty percent (50%) of the initial security amounts.

J. It is the intention of the parties that the City at all times have available to it a Letter of Credit in an amount adequate to ensure completion of all elements of the Subdivision Improvements and other obligations of the Developer under this Agreement, including fees or costs due to the City by the Developer. To that end and notwithstanding anything herein to the contrary, all requests by the Developer for a reduction or release of the Letter of Credit shall be evaluated by the City in light of that principle.

38. SUMMARY OF CASH REQUIREMENTS. The following is a summary of the cash requirements under this Contract which must be furnished to the City at the time of final plat approval:

Sewer Availability Charge (SAC)	\$171,000
Water Availability Charge (WAC)	\$171,000
Park Dedication	\$107,554
Street Light Operating Fee	\$1,161
City Base Map Upgrading	\$1425
City Engineering Administration Escrow	\$50,000
TOTAL CASH REQUIREMENTS	\$502,140

39. NOTICES. Required notices to the Developer shall be in writing, and shall be either hand delivered to the Developer, its employees or agents, or mailed to the Developer by certified mail at the following address: 4125 Napier Ct NE, St. Michael, Minnesota 55376; Attn: David Stradtman. Notices to the City shall be in writing and shall be either hand delivered to the City Administrator, or mailed to the City

by certified mail in care of the City Administrator at the following address: Lake Elmo City Hall, 3800 Laverne Avenue N. Lake Elmo, Minnesota 55042.

40. EVIDENCE OF TITLE. Developer shall furnish the City with evidence of fee ownership of the property being platted by way of an attorney’s title opinion or title insurance policy dated not earlier than thirty (30) days prior to the execution of the plat.

CITY OF LAKE ELMO

BY: _____
Mike Pearson, Mayor

(SEAL)

AND _____
Julie Johnson, City Clerk

RACHEL DEVELOPMENT INC.:

BY: _____
Its

STATE OF MINNESOTA)
 (ss.
COUNTY OF WASHINGTON)

The foregoing instrument was acknowledged before me this _____ day of _____, 2016, by Mike Pearson and by Julie Johnson, the Mayor and City Clerk of the City of Lake Elmo, a Minnesota municipal corporation, on behalf of the corporation and pursuant to the authority granted by its City Council.

NOTARY PUBLIC

STATE OF MINNESOTA)
 (ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day _____ of _____, 2 _____, _____ the _____ of _____.

NOTARY PUBLIC

DRAFTED BY:
City of Lake Elmo
3800 Laverne Avenue North
Lake Elmo, MN 55042
(651) 747-3901

**FEE OWNER CONSENT
TO
DEVELOPMENT CONTRACT**

_____, fee owners of all or part of the subject property, the development of which is governed by the foregoing Development Contract, affirm and consent to the provisions thereof and agree to be bound by the provisions as the same may apply to that portion of the subject property owned by them.

Dated this _____ day of _____, 2_____.

STATE OF MINNESOTA)
 (ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2_____,
by _____.

NOTARY PUBLIC

DRAFTED BY:
City of Lake Elmo
3800 Laverne Avenue North
Lake Elmo, MN 55042
(651) 747-3901

**MORTGAGE CONSENT
TO
DEVELOPMENT CONTRACT**

_____, which holds a mortgage on the subject property, the development of which is governed by the foregoing Development Contract, agrees that the Development Contract shall remain in full force and effect even if it forecloses on its mortgage.

Dated this _____ day of _____, 2_____.

STATE OF MINNESOTA)
 (ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2_____, by _____.

NOTARY PUBLIC

DRAFTED BY:
City of Lake Elmo
3800 Laverne Avenue North
Lake Elmo, MN 55042
(651) 747-3901

**CONTRACT PURCHASER CONSENT
TO
DEVELOPMENT CONTRACT**

_____, which/who has a contract purchaser's interest in all or part of the subject property, the development of which is governed by the foregoing Development Contract, hereby affirms and consents to the provisions thereof and agrees to be bound by the provisions as the same may apply to that portion of the subject property in which there is a contract purchaser's interest.

Dated this _____ day of _____, 2_____.

STATE OF MINNESOTA)
 (ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2016, by _____.

NOTARY PUBLIC

DRAFTED BY:
City of Lake Elmo
3800 Laverne Avenue North
Lake Elmo, MN 55042
(651) 747-3901

EXHIBIT "A"
TO
DEVELOPMENT CONTRACT

Legal Description of Property Being Final Platted as

Hammes Estates 1st Addition

That part of the South Half of the Northeast Quarter of Section 34, Township 29 North, Range 21 West, Washington County, Minnesota, EXCEPT the East 60.00 feet of the North 967 feet of said South Half of the Northeast Quarter thereof. AND EXCEPT Parcel 3 of Washington County Highway Right of Way Plat 49-19B, recorded September 18, 1985 as Document Number 492530

IRREVOCABLE LETTER OF CREDIT

No. _____
Date: _____

TO: City of Lake Elmo

Dear Sir or Madam:

We hereby issue, for the account of _____ (Name of Developer) and in your favor, our Irrevocable Letter of Credit in the amount of \$_____, available to you by your draft drawn on sight on the undersigned bank.

The draft must:

- a) Bear the clause, "Drawn under Letter of Credit No. _____, dated _____, 2_____, of (Name of Bank) _____";
- b) Be signed by the Mayor or City Administrator of the City of Lake Elmo.
- c) Be presented for payment at _____ (Address of Bank) _____, on or before 4:00 p.m. on November 30, 2_____.

This Letter of Credit shall automatically renew for successive one-year terms unless, at least forty-five (45) days prior to the next annual renewal date (which shall be November 30 of each year), the Bank delivers written notice to the Lake Elmo City Administrator that it intends to modify the terms of, or cancel, this Letter of Credit. Written notice is effective if sent by certified mail, postage prepaid, and deposited in the U.S. Mail, at least forty-five (45) days prior to the next annual renewal date addressed as follows: City Administrator, City Hall, 3800 Laverne Ave. N. Lake Elmo Minnesota 55042 and is actually received by the City Administrator at least thirty (30) days prior to the renewal date.

This Letter of Credit sets forth in full our understanding which shall not in any way be modified, amended, amplified, or limited by reference to any document, instrument, or agreement, whether or not referred to herein.

This Letter of Credit is not assignable. This is not a Notation Letter of Credit. More than one draw may be made under this Letter of Credit.

This Letter of Credit shall be governed by the most recent revision of the Uniform Customs and Practice for Documentary Credits, International Chamber of Commerce Publication No. 500.

We hereby agree that a draft drawn under and in compliance with this Letter of Credit shall be duly honored upon presentation.

BY: _____
Its _____



STAFF REPORT

DATE: August 16, 2016

REGULAR

ITEM #: 24

MOTION

TO: Mayor and Council

FROM: Kristina Handt, City Administrator

AGENDA ITEM: RFP for Job Classification and Compensation Study

BACKGROUND:

Over the last year or so as the City has been hiring for positions, staff has used the online Salary Survey through the League of Minnesota Cities to help establish a hiring range. Staff had reviewed salaries in cities that are 25% smaller and larger than Lake Elmo (6,000-10,000 population). Information entered into the survey is voluntary on the part of cities.

Recent hirings have brought about questions regarding the overall classification and salaries of City positions. For example, recent department head hires have salaries \$5-10,000+ higher than longer term employees. Also, we have supervisors of multiple positions making less than those who supervise only one position.

ISSUE BEFORE COUNCIL:

Should the Council authorize issuing a Request for Proposals for a Job Classification and Compensation Study?

PROPOSAL DETAILS:

The first step in evaluating the salaries would be to review the job classifications. This establishes the foundation for grouping jobs into categories in order to compare them both internally (with similar jobs within the city) and externally (with similar jobs in the larger market). The City last completed a pay equity report as required under state law in 2014. I've included a copy of the job classification submitted with that report. Clearly, our current pay rates are out of synch with the job classifications. Of particular concern would be female held positions that have higher points in the classification system but receive lower salaries than male positions with lower point values.

After the City has established the classifications, the next step would be to compare the various job classes to appropriate job categories and classes in the market. This comparison to the market should go beyond what is included in LMC's salary survey as it does not include all cities since it is voluntary.

In order to best complete these tasks, staff would recommend the Council approve issuing an RFP. Due to current staff workload, to avoid (perceived or real) conflicts of interest, and to follow the best management practices in local government, an outside firm should be hired to complete the analysis and provide recommendations as needed.

This issue was discussed by the Human Resource Committee on August 8th. The committee had concerns about the cost of a proposal, discussed doing the work internally, suggested looking at job descriptions, and noted that the classification may not have been updated in a number of years. Two of the three

members supported going out for an RFP. The third member's concern was cost and the thought that the work could be completed by staff or interns.

FISCAL IMPACT:

None to issue the RFP. Cost of proposal to be determined at the time they are received. The financial projections for 2016 include a budget surplus of over \$550,000. If the project is started this year those funds could be utilized. Any fund balance that carries over into 2017 could also be used to pay for this project without having to increase the tax levy.

RECOMMENDATION:

Motion to authorize the issuance of a Request for Proposals for a Job Classification and Compensation Study

Job Class Data Entry Verification List

Case: 2014 Data

Job Nbr	Class Title	Nbr Males	Nbr Females	Class Type	Jobs Points	Min Mo Salary	Max Mo Salary	Yrs to Max Salary	Yrs of Service	Exceptional Service Pay
18	Receptionist	0	1	F	124	\$2,687.00	\$2,687.00	0.00	2.00	
17	Water/Fire support	1	0	M	130	\$2,690.00	\$2,690.00	0.00	2.00	
14	Planning Assistant	0	1	F	170	\$3,007.00	\$3,007.00	0.00	2.00	
1	Deputy Clerk	0	1	F	205	\$3,188.00	\$3,188.00	0.00	2.00	
2	Heavy Equipment Operato	1	0	M	214	\$3,167.00	\$4,853.00	0.00	4.00	
3	Heavy Equipment Operato	1	0	M	214	\$3,167.00	\$4,853.00	0.00	7.00	
4	Heavy Equipment Operato	1	0	M	214	\$3,167.00	\$4,853.00	0.00	9.00	
5	Heavy Equipment Operato	1	0	M	214	\$3,167.00	\$4,853.00	0.00	23.00	
16	Park Maintainer	1	0	M	214	\$3,167.00	\$4,853.00	0.00	2.00	
15	Librarian	1	0	M	282	\$3,750.00	\$3,750.00	0.00	1.00	
19	Taxpayer Relations	0	1	F	300	\$3,771.00	\$3,771.00	0.00	3.00	
7	City Planner	1	0	M	345	\$4,167.00	\$4,167.00	0.00	2.00	
6	Building Official	1	0	M	360	\$5,099.00	\$5,099.00	0.00	3.00	
8	Fire Chief	1	0	M	372	\$5,718.00	\$5,718.00	0.00	9.00	
9	Finance Director	0	1	F	384	\$6,118.00	\$6,118.00	0.00	3.00	
10	City Clerk	1	0	M	384	\$5,417.00	\$5,417.00	0.00	3.00	
11	Maintenance Supervisor	1	0	M	384	\$6,110.00	\$6,110.00	0.00	28.00	
12	Community Development I	1	0	M	457	\$6,921.00	\$6,921.00	0.00	7.00	
13	City Administrator	1	0	M	496	\$9,417.00	\$9,417.00	0.00	3.00	

Job Number Count: 19



STAFF REPORT

DATE: August 16, 2016

REGULAR

ITEM #: 25

MOTION

TO: Mayor and City Council
FROM: Kristina Handt, City Administrator
REVIEWED BY: Sarah Sonsalla, City Attorney
AGENDA ITEM: Amend Chap 31 of City Code

BACKGROUND:

The Council last updated Chapter 31 of the City Code related to the City Council at their July 5, 2016 meeting. At the August 10, 2016 work session the Council discussed a few areas that they would like to update. Those updates included: (1) removal of council reports 3 months before a local election, (2) change the timeline for Council to make agenda request so staff had more time to prepare items, (3) get packets out a day earlier so Council had more time to review, and (4) consistent language about Council waiting until all public comments are completed before responding was added in two additional areas.

ISSUE BEFORE COUNCIL:

Should the City amend Chapter 31 of the City Code?

PROPOSAL DETAILS/ANALYSIS:

A redlined version of the proposed changes is included in your packet. All of the proposed changes occur in Sec. 31.04.

If the ordinance is updated, staff would also recommend a summary publication ordinance be adopted.

FISCAL IMPACT:

NA

OPTIONS:

- 1) Approve Ordinance No 08-150
- 2) Amend and then Approve Ordinance No 08-150
- 3) Do not approve Ordinance No 08-150

RECOMMENDATION:

Motion to approve Ordinance No. 08-150

Motion to adopt Resolution No 2016-69 Approving Summary Publication of Ordinance No 08-150

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

ORDINANCE NO. 08-150

**AN ORDINANCE AMENDING THE LAKE ELMO CITY CODE OF ORDINANCES BY
AMENDING THE CITY'S PROVISIONS RELATED TO THE CITY COUNCIL**

SECTION 1. The City Council of the City of Lake Elmo hereby amends Chapter 31 of the City Code by adding the underlined language and deleting the stricken language as follows:

§ 31.01 MEETINGS.

(A) *Authority.* City councils are authorized to adopt rules of procedure and provide for order at their meetings.

- (1) *Parliamentary procedure.* Except as specifically provided under statute or these parts, the most current version of the Robert's Rules of Order Revised governs any question of parliamentary procedure that arises at a city meeting.

(B) *Purpose.* The purpose of this policy on City Council meetings is to set the groundwork for orderly and respectful communications between and among council members, city staff, and citizens to promote the efficient working of the public's business at City Council meetings.

(C) *Regular meetings.* Except as provided herein, regular meetings shall be held at City Hall beginning at 7:00 p.m. on the first and third Tuesdays of each month. The City Council may cancel regular Council meetings by adopting the appropriate motion at any duly called Council meeting. The City Council may change the date, time, and/or place of a regular meeting by adopting the appropriate motion at any duly called Council meeting and by posting a written notice of the date, time, and place of the rescheduled meeting on the city bulletin board and at the main entrance to the City Hall at least 3 days before the date of the rescheduled regular meeting.

- (1) *Quorum.* A simple majority (3) of the Council shall constitute a quorum for the valid transaction of any scheduled business to come before the Council.
- (2) *Location.* All meetings, including special, recessed, closed, and continued meetings, shall be held in the City Council chambers, located at City Hall, unless otherwise designated, pursuant to Minn. Stat. § 13D.04, subd. 2.
- (3) *Schedule.* A schedule of regular meetings shall be kept on file with the city clerk.
- (4) *Recessed or continued meetings.* When a meeting is recessed or continued, the

presiding officer shall state the time and place for the next meeting to occur pursuant to Minn. Stat. § 13D.04, subd. 4. The time and place shall also be noted in the minutes. If the time and place is stated and noted in the minutes, no additional notice of the meeting is required, unless otherwise required by law. However, if the time and place is not stated and noted as required herein, compliance with the notice procedures for a special meeting, as defined in this Section, shall be required.

(D) *Open Meeting Law.* The Minnesota Open Meeting Law (“OML”), Minn. Stat. Ch. 13D, generally requires that all meetings of public bodies be open to the public.

- (1) Principles. The presumption of openness in the OML serves three basic principles:
 - (a) To prohibit actions from being taken at a secret meeting, where it is impossible for the interested public to become fully informed concerning the decisions of public bodies, or to detect improper influences;
 - (b) To ensure the public’s right to be informed; and
 - (c) To afford the interested public an opportunity to present its views to the public body on matters of public interest.
- (2) The City Council views providing and encouraging citizen access to city meetings as one of its most important duties. As a result of this principle, all Council and committee meetings, including special meetings, with the exception of closed meeting, as required by Minn. Stat. Ch. 13, shall be open to the public.
- (3) In calculating the number of days for providing notice under the OML, the first day that the notice is given is not counted, but the last day is counted. If the last day is a Saturday, Sunday, or legal holiday, that day is omitted from the calculation and the day following the Saturday, Sunday, or legal holiday is considered the last day.
- (4) In keeping with the intent of the OML, Council members shall not use any form of communications technology, such as text messaging or email, to communicate with another person during a public meeting in a manner that is hidden or shielded from public view.
- (5) Pursuant to Minn. Stat. § 13D.01, subd. 6, at least one copy of the written materials made available to the Council at or before the meeting shall also be made available for inspection by the public, excluding any non-public data, attorney-client privileged data, or materials related to agenda items of closed meetings, or anything else otherwise deemed not public by any applicable law.

(E) *Special meetings.* Special meetings may be called by the Mayor or by any two (2)

Council members filing a written notice with the city administrator. At least three (3) days prior to the date of the special meeting, the city administrator shall provide notice to all members of the Council and to each person who has filed a written request for notice of special meetings, and shall post the notice on the city bulletin board and at the main entrance to City Hall. The notice shall indicate the date, time, place, and purpose of the special meeting. If matters not directly related to the purpose of the special meeting are discussed or acted upon at the special meeting, the minutes of the special meeting shall include a specific description of the matters. Days shall be counted as provided in paragraph (D)(3) above. Notice to the public of special meetings must be given pursuant to Minn. Stat. 13D.04, subd. 2.

- (1) *Closed Meetings.* The OML allows or requires some meetings to be closed to the public for certain defined purposes. When a meeting is closed, the presiding officer at the meeting shall state for the record the reason for closing the meeting and cite the specific provision of law allowing or requiring the meeting to be closed. The presiding officer shall also ensure that meetings are recorded, if required by law.

(F) *Emergency meetings.* An emergency meeting is a special meeting called by the Mayor or any two (2) Council members because of circumstances that in the judgment of the Mayor or any two (2) Council members require immediate consideration by the Council. The person or persons who call the emergency meeting shall make a good faith effort to contact all Council members and, as soon as reasonably practicable after notice has been given to Council members, all members of the news media who have filed a written request for notice of emergency meetings if the request includes the news media's telephone number. The notice shall include the date, time, place, and purpose of the emergency meeting. If matters not directly related to the emergency meeting are discussed at an emergency meeting, the minutes of the emergency meeting shall include a specific description of the matters.

(G) *Business conducted at special or emergency meetings.* No business shall be transacted at special or emergency meetings unless the business shall have been specified, in the notice, without the consent of all of the members of the Council present. Any member present at any special or emergency meeting who fails to object and have their objections entered in the minutes of the special or emergency meeting will be conclusively presumed to have consented to the transaction of all business transacted at the special or emergency meeting and no objection may thereafter be raised by a Council member that the notice of the special or emergency meeting was defective.

(H) *Initial meeting.* At the first regular Council meeting in January of each year, the Council shall:

- (1) Appoint an acting mayor, who shall act as mayor in the mayor's absence, pursuant to Minn. Stat. § 412.121;
- (2) Select one official newspaper pursuant to Minn. Stat. § 412.831;
- (3) *Select an official depository for city funds.* This must be done within 30 days of

the state of the city's fiscal year pursuant to Minn. Stat. §§ 427.01-.02; 118A.02, subd. 1; and 427.09;

- (4) Review the Council's bylaws and make any needed changes;
- (5) *Assign committee duties to members.* All assignments of Council members to serve on city boards, commissions, and committees shall be by a majority vote of a quorum of a duly called meeting, unless otherwise provided by law;
- (6) Approve official bonds that have been filed with the clerk;
- (7) Appoint a city attorney; and
- (8) Appoint a city engineer.

(I) *Public meetings.* All Council meetings, including special and adjourned meetings and meetings of Council committees, shall be conducted in accordance with the Minnesota Open Meeting Law. (1997 Code, § 200.01)

(J) *Ground rules.* Each Council member shall abide by the following ground rules for interaction with each other and with members of the public at Council meetings. All Council members shall assist the presiding officer in preserving order and decorum and in providing for the efficient operation of the meeting. Council meetings shall be conducted in a courteous manner that recognizes the validity of differing viewpoints and promotes the ideal of respectful democratic discussion and debate that is free of insult, slander, and personal attacks or threats.

- (1) *Respect others.* Council members should:
 - (a) Respect each other and the process;
 - (b) Assume each Council member is being honest and genuine in the expression of his or her views;
 - (c) Not shame or blame others;
 - (d) Not talk about people who are not present; and
 - (e) Respect residents of the city and city staff.
- (2) *Listen.* Council members should:
 - (a) Not interrupt while others are speaking;
 - (b) Ask clarifying not interrogating questions;

- (c) Use "I" statements not "You" statements;
 - (d) Discuss and debate ideas in a civil manner;
 - (e) Be respectful of the ideas of others even if they don't agree with your ideas;
and
 - (f) Keep side conversations to a minimum.
- (3) *Accountability.* Council members should:
- (a) Participate to the best of their ability;
 - (b) Be responsible for making sure all voices are heard;
 - (c) Be accountable for what they do and say;
 - (d) Hold each other accountable in a civil way;
 - (e) Be responsible for their part of a problem or issue;
 - (f) Be accountable for the use of information by not misusing information or by providing incorrect information; and
 - (g) Be responsible for reviewing agenda items and support information.
- (4) *Take risks.* Council members should:
- (a) Take risks, be authentic and speak truthfully; and
 - (b) Not be hostile or harassing toward others for taking risks.
- (5) *Be open.* Council members should:
- (a) Be open to other's stories and realities;
 - (b) Be open to partially-formed ideas;
 - (c) Learn from mistakes;
 - (d) Be open to a change of heart and mind; and
 - (e) Not operate from fear.
- (6) *Personal reaction.* Council members should not take things personally, and focus on the ideas being expressed, not the person expressing the ideas.

- (7) *General rules of decorum.* To effectuate the following ground rules, all Council members shall conduct themselves at all times in a manner consistent with the following:
- (a) No Council member shall engage in private conversation or pass private messages while in the chamber in a manner so as to interrupt the proceedings of the Council;
 - (b) No Council member shall leave his or her seat or make any noise or disturbance while a vote is being taken and until the result of the vote is announced;
 - (c) No Council member shall use profane or obscene words or gestures, or unparliamentary language, or use language that threatens harm or violence toward another person during at any time;
 - (d) No Council member shall speak on any subject other than the subject in debate;
 - (e) No Council member shall speak without being recognized by the presiding officer, nor shall any Council member interrupt the speech of another Council member;
 - (f) No Council member shall disobey the Council's Rules of Order and Procedure as adopted or a decision of the presiding officer on questions of order or practice or upon the interpretation of the rules of Council;
 - (g) No Council member shall engage in disorderly conduct that disturbs or disrupts the orderly conduct of any meeting; and
 - (h) No Council member shall engage in conduct which delays or interrupts the proceedings or which hinders honest, respectful discussion and debate.

§ 31.02 PRESIDING OFFICER.

(A) *Presiding Officer.* The mayor shall preside at all meetings of the Council unless another person has been designated by majority vote of the Council to preside over any or all meetings for a specific period of time.

- (1) *Role of the presiding officer.* The presiding officer shall preserve order, enforce the Council Rules of Order and Procedure as adopted, and determine, without debate, all questions of procedure and order, subject to the final decision of the Council on appeal as provided in this Section. The presiding officer shall determine which member has the right to speak and may move matters to a vote once the officer has determined that all members have spoken. The presiding

officer may determine whether a motion or proposed amendment is in order and may call members to order. Except as otherwise provided by statute or by the provisions of this Chapter, the proceedings of the Council shall be conducted in accordance with the latest edition of *Roberts Rules of Order*.

- (2) *Adjourning a meeting.* If considered necessary, because of grave disorder as determined by the presiding officer, the presiding officer may adjourn or continue any meeting to another time or suspend the meeting for a specified period of time.
- (3) *Designation of a sergeant-at-arms.* The presiding officer may request that local law enforcement designate a member to serve as a sergeant-at-arms at Council meetings. The sergeant-at-arms shall carry out all orders or instructions given by the presiding officer for the purpose of maintaining order and decorum at meetings.
- (4) *Motions and voting.* The presiding officer may make motions, second motion, speak on any questions, and vote on any matter properly before the Council. This provision does not apply to non-elected presiding officers designated under this section.
- (5) *Absences of presiding officer.* In the absence of the mayor, the acting mayor shall preside. In the absence of both the mayor and the acting mayor, the city clerk/administrator shall call the meeting to order. The first order of business shall be to select a presiding officer for the meeting from the members present. The city clerk/administrator shall preside until the Council members present choose a member to act as presiding officer.
- (6) *Appeals and ruling of the presiding officer.* Any member of the Council may appeal to the full Council a ruling on order or procedure made by the presiding officer.
- (7) *Procedure for appeals.* An appeal is made by motion. No second is needed for the motion of appeal. The member making the motion may speak once solely on the question involved, and the presiding officer may speak once solely to explain their ruling, but no other Council member may participate in the discussion.
- (8) Once both the maker of the motion and the presiding officer has spoken, the matter must be voted upon by the Council as a whole.
- (9) The appeal shall be sustained if it is approved by a majority of the members present, exclusive of the presiding officer.
- (10) *Temporary designation of a presiding officer.* The presiding officer may choose to designate a temporary presiding officer before participating in debate on a given matter. The presiding officer shall resume presiding as soon as action on the matter is concluded.

§ 31.03 MINUTES.

(A) Minutes constitute a vital record of the city and are the best means of preserving Council intent, findings of fact, and action. Pursuant to Minn. Stat. § 412.151, the city clerk must keep a minute book. The minute book shall contain, at a minimum, the following:

- (1) The Council members who are present;
- (2) The type of meeting (regular, special, continued, closed);
- (3) Date and place of the meeting;
- (4) Time the meeting was called to order;
- (5) Approval of minutes of the previous meeting, with any corrections;
- (6) The members who make or second any motions;
- (7) A record of all members and their vote for any roll call votes;
- (8) The subject matter of all proposed resolutions or ordinances;
- (9) Whether any resolution or ordinance is approved or disapproved by vote of the Council;
- (10) The votes of each member voting, including the mayor, and the votes of any member not voting (e.g. abstentions, including reason for abstention if given, not present);
- (11) A statement of the findings of fact and an explanation of Council action, including specific reasons for approval and disapproval of specific resolutions or ordinances, on all land use and licensing matters;
- (12) Listing of all bills allowed or approved for payment, noting the recipient, purpose, and amount;
- (13) Approval of hourly rates paid for services provided, mileage rates, meal-reimbursement amounts, and per diem amounts;
- (14) A list of all transfers of funds;
- (15) Authorizations and directions to invest excess funds, and information on investment redemptions and maturities;
- (16) The identity of any party to whom a contract was awarded;

- (17) Appointments of representatives to committees or outside organizations; and
- (18) The name of all citizens appearing before the Council during the public comment period along with a brief summary of the subject matter of their comments.

(B) The minutes of each meeting shall be typed and signed by the clerk/administrator. Copies of the minutes shall be included in the agendas for the Council meeting.

(C) Meeting minutes shall be considered and approved at a future meeting.

- (1) Meeting minutes do not need to be read aloud;
- (2) The presiding officer shall call for any corrections;
- (3) If there is no objection to a correction, it will be made without a vote of the Council;
- (4) If there is an objection, the Council shall vote upon the addition or correction by a roll call vote;
- (5) Council shall take formal action by vote to approve the minutes as distributed, with any corrections or amendments made as described herein; and
- (6) Minutes shall be published as required by Minn. Stat. §§ 412.191, 331A.08, subd. 3, 331A.01, subd. 10.

§ 31.04 ORDER OF BUSINESS AT REGULAR MEETINGS.

(A) *Order established.* Each meeting of the Council shall convene at the time and place appointed for the meeting. Council business shall be conducted in the order determined by the Council at its first annual meeting or as thereafter amended by the majority vote of the Council.

- (1) *Order of Business.* The standard order of business for Council meetings shall be the following:
 - (a) Call to Order/Pledge of Allegiance;
 - (b) Approval of Agenda;
 - (c) Approval of Minutes from Past Meeting(s);
 - (d) Public Comment;
 - (e) Presentations;

- (f) Consent Agenda;
- (g) Regular Agenda;
- (h) Report of the Council. Council Reports will not be part of the Order of Business for meetings falling three months before a local election ;
- (i) Reports from City Staff; and
- (j) Adjourn.

(B) *Agenda*. An agenda will be prepared for all regular Council meetings by the city clerk/administrator or their designee. Agenda items may be placed on the agenda by the Mayor and a Council member, two Council members or staff. Members of the public wishing to place an item on the agenda must do so by contacting city staff or Council members, or by speaking during the public comment period. No member of the general public may add any items to the agenda.

- (1) *Special Meetings*. When a special meeting is called pursuant to applicable law, the agenda for the special meeting must be included in the request for the meeting and in the publication of the notice of the meeting pursuant to Minn. Stat. § 13D.04, subd. 2.
- (2) *Agenda Procedures*. Any Staff member or Mayor and Council member or two Council members wishing to add an item to any agenda pursuant to this Section shall do so by complying with the following:
 - (a) All requests to place an item on the posted agenda must be received by the city clerk/administrator by 10 a.m. five-eleven days prior to the next Council meeting. For a regularly scheduled Tuesday meeting, the deadline for agenda items would be 10 a.m. on the preceding ThursdayFriday preceding packet completion.
 - (b) All requests to place an item on the posted agenda must be on the form prescribed by the city clerk/administrator. The form shall be completed with the goal of clearly describing the subject matter to be considered by the Council and any action requested or required. Supporting information may be attached to the form as necessary.
 - (c) All requests to place an item on the posted agenda by city staff or Council members must be reviewed by the city clerk/administrator or their designee prior to being included in the agenda.
 - (d) The agenda, along with all related information materials, will be provided to all City Council members and the city attorney at least three days prior to

the Council meeting for which it applies. For a regularly scheduled Tuesday meeting, the packet will be provided by 5 p.m. the ~~Friday~~ Thursday preceding.

(C) *Consent Agenda.* A consent agenda may be used to improve the efficiency of meetings. The consent agenda allows the Council to consider several items at one time. Only one motion is necessary to approve all items on the consent agenda.

- (1) Items that require findings of fact or an explanation of Council actions, such as land use matters and the consideration of licensing requests, should not be placed on the consent agenda.
- (2) An item on the consent agenda may be removed from such agenda for full consideration by the Council upon request made by any member of the Council. Items removed from the consent agenda will be placed on the regular agenda for discussion and consideration.

(D) *Presentation, discussion and agenda item decisions.* The following is the order of business for presenting and discussing items on Council agendas:

- (1) Introduction of item;
- (2) Report by staff or other presenter;
- (3) Questions from Council members to the presenter in a round robin manner. The presiding officer will facilitate the round robin process by asking each individual Council member for one question and allowing for a response to the individual question. Then the presiding officer will ask the next Council member, in sequence, until all Council members have asked and received responses to a question. No Council member shall take more than three minutes to ask a question or comment on an item which is being presented before another Council member has a turn to question and comment on the same item;
- (4) Receive questions/comments from the applicant/requesting party to the Council, and allow each Council member to respond in the round robin process;
- (5) Allow questions from Council members to the applicant/requesting party, if applicable, using the round robin process;
- (6) Allow questions/comments from the public to Council members. Each member of the public shall state his or her comments in six minutes. Council shall not interrupt or interact until all public comments are completed;
- (7) At the conclusion of the round robin process, the presiding officer calls for a motion or discussion among the Council. Discussion on any presentation shall be kept to a minimum, and each Council member shall only speak once on the issue.

This action is not an indication that the motion on the table is the motion that will be approved in its current form. It is purely for discussion purposes;

- (8) Discussion among Council members using the round robin process;
- (9) Action by the Council on the motion.

(E) *Meeting Schedule.*

- (1) Each meeting of the Council shall convene at the time and place appointed. All public hearings shall commence at the advertised time.
- (2) Council business shall be conducted in the order of the prepared agenda, unless an alteration is approved by a majority of the Council.
- (3) The last item on the agenda will be commenced no later than 12 a.m.
- (4) If all business has not been completed by 12 a.m., the meeting shall be continued to another date and time following the notice provisions contained herein.

(F) *Public participation and comment at council meetings.* Council meetings are the forum for the Council to conduct the city's business. While Council meetings are open to the public pursuant to the Minnesota Open Meeting Law, they are not a forum for public expression. As such, members of the public are not allowed to participate in Council discussion and debate without a specific invitation and/or formal recognition by the presiding officer. Members of the public shall not applaud, engage in conversation, or engage in other behavior through words or actions that may disrupt the proceedings of the Council.

(G) *Members of the public shall follow the direction of the presiding officer.* Members of the public who do not follow the direction of the presiding officer will be warned that further disruptive conduct will result in removal from the meeting. After such warning, if the conduct continues, the presiding officer may ask the member of the public to leave the meeting room. If the member of the public refuses to follow the direction of the presiding officer, the presiding officer may direct the sergeant-at-arms to remove the person through any lawful means. In emergency situations, or where the conduct is an egregious threat to the safety of the public or the Council, a warning is not necessary before the sergeant-at-arms is directed to remove the person.

(H) *Public comment period.* A limited forum for members of the public to speak with the Council is provided on each agenda. Public comments during the public comment period are subject to the following limitations:

- (1) Speakers must be recognized by the presiding officer before speaking and are limited to six minutes for comment;
- (2) When multiple speakers appear to speak on the same topic, comments should not

be repetitive. The presiding officer may request speakers to appoint a spokesperson;

- (3) The presiding officer may place a time limit on the public comment period if necessary to allow for the conduct of city business. If there is not sufficient time at the meeting to hear all public comments, the comment period may be deferred to the next regular Council meeting or at a continued meeting;
- (4) Speakers must sign up prior to speaking and provide their name, address, and a brief summary of the subject matter which they wish to address. The sign-up sheet will be available at the start of the City Council meeting;
- (5) Speakers must direct their remarks toward the presiding officer;
- (6) Speakers shall not use obscene, profane, insulting, or threatening language, nor conduct themselves in a threatening, loud, or boisterous manner that disrupts the conduct of the meeting or the security of the public;
- (7) Speakers are required to follow the direction of the presiding officer; and
- (8) The Council will generally not respond at the same meeting where an issue is initially raised by a member of the public. Generally, the matter will be referred to staff for further research and possible report or action at a future Council meeting. If Council responds, Council shall not interrupt or interact until all public comments are completed.

(I) *Public Hearings.* Public hearings are sometimes required by law to allow the public to offer input on Council decisions. Unlike public comment periods, public hearings allow the public to speak on a matter currently before the Council. When public hearings are required by law, notice shall be provided as required by state statute. Public hearings shall be commenced at the time advertised in any notice required by law.

- (1) *General procedure for public hearings.* The order of business for all public hearings conducted by the Council shall be:
 - (a) Opening comments by the presiding officer announcing the purpose of the public hearing;
 - (b) The presiding officer opens the public hearing portion of the meeting;
 - (c) Staff presentation, if any (i.e. administrator/clerk, attorney, engineer etc.);
 - (d) Developer/other presentation, if any;
 - (e) Public comment (all individual comments limited to six minute maximum);

- (f) The clerk/administrator shall make note of any submitted written testimony; and
 - (g) The presiding officer formally closes the public hearing portion of the meeting.
- (2) Speakers who wish to address the Council at a public hearing must follow the same rules as contained herein for public comment periods. The presiding officer may allow more time, where appropriate.
- (3) Speakers may also provide written comments to the Council before or at the meeting. Written comments shall be noted and provided to the Council and to anyone else as required by law.

(4) The presiding officer may continue the hearing, if necessary, following the procedures for continuing a meeting contained in this Section.

~~(4)(5)~~ Council shall not interrupt or interact until all public comments are completed.

§ 31.05 VOTING.

(A) The votes of the Council will be taken by voice or hand vote. The presiding officer shall announce the results of all votes of the Council.

(B) A clear statement of the matter being voted upon and the names of those voting for and against the matter shall be recorded in the official minutes.

(C) The presiding officer may ask for a roll call vote to be conducted by the clerk/administrator on any motion of resolution.

(D) The clerk/administrator may ask for a verification roll call if the vote of a Council member is not clear on the voice vote.

(E) A majority vote of the quorum present shall be sufficient for all matters before the Council, unless otherwise provided by law.

(F) Any Council member may abstain from voting for any reason.

(G) If any Council member is present but does not vote, the minutes, as to his or her name, shall be marked "Present-Not Voting."

§ 31.06 ORDINANCES, RESOLUTIONS, MOTIONS, PETITIONS, PROCLAMATIONS AND COMMUNICATIONS.

(A) *Signing and publication proof.* Every ordinance and resolution passed by the Council

shall be in writing and signed by the Mayor, attested by the clerk, and filed by the clerk in the ordinance or resolution book. Unless otherwise provided by law, no ordinance shall require more than one reading and all ordinances shall be adopted by a majority vote of Council members present at the Council meeting. Proof of publication of every ordinance shall be attached and filed with the ordinance.

(B) *Repeals and amendments.* Every ordinance or resolution repealing a previous ordinance or resolution or a section or subdivision shall give the number, if any, and the title of the ordinance or code number of the ordinance or resolution to be repealed in whole or in part. Each ordinance or resolution amending an existing ordinance or resolution or part shall set forth in full each amended section or subdivision as it will read with the amendment.

(C) *Mayoral and city proclamations.* Except as otherwise provided by law, all mayoral and city proclamations recognizing events, persons, and official observances shall be adopted by a majority of the Council members present and voting at the meeting where such proclamation is presented for adoption.

(D) *Seating assignments.* Council members shall occupy the chairs assigned to them by the presiding officer, but two Council members may exchange seats by joining in a formal request to the presiding officer to do so.

§ 31.07 SUSPENSION OR AMENDMENT OF RULES.

The rules of procedure applicable to Council meetings may be suspended or amended by 2/3rds vote of the Council members present and voting, provided that such action is not in violation of state statutes.

§ 31.08 SALARIES OF MAYOR AND COUNCIL MEMBERS.

The Mayor and Council members shall be paid salaries as determined from time to time by the Council and set by ordinance. An ordinance establishing Council salaries shall be adopted before a regular city election and shall not be effective until January 1 following such election.

§ 31.09 PAYMENT OF SALARIES.

The salaries provided by §§ 31.01*et seq.* shall be paid semi-annually, or more frequently, as directed by the Council.

§ 31.10 COUNCIL TO ACT AS BOARD OF ADJUSTMENT AND APPEALS.

(A) *Establishment of Board of Adjustment and Appeals.* The Council is established as the Board of Adjustment and Appeals. The Board of Adjustment and Appeals shall have the following powers with respect to this section:

- (1) The exclusive power to hear and decide appeals where it is alleged that there is an error in any decision, order, requirement, or determination made by an

administrative officer in the enforcement of the zoning code; and

- (2) The appeal shall be filed within 5 business days from the date that the decision, order, requirement, or determination is made and shall state:
 - (a) The particular decision, order, requirement, or determination from which the appeal is taken;
 - (b) The name and address of the appellant;
 - (c) The grounds for the appeal; and
 - (d) The relief requested by the appellant.

(B) *Effect of appeal.* An appeal stays all proceedings in furtherance of the action appealed from unless the Board of Adjustment and Appeals, to whom the appeal is taken, certifies that by reason of the facts stated in the certificate a stay would cause imminent peril to life or property.

(C) *Authority of the Board of Adjustment and Appeals.* The Board of Adjustment and Appeals may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from and to that extent shall have all the powers of the officer from whom the appeal was taken, and may direct the issuance of a permit.

(D) *Hearing procedures.*

- (1) The Zoning Administrator shall, upon the filing of a notice of appeal, refer the matter to the Board of Adjustment and Appeals and establish a time for the hearing of the matter by the Board.
- (2) The Zoning Administrator shall notify the appellant or applicant, the Chairperson of the Planning Commission, the Building Official, the abutting property owners, and in the case of an appeal the officer from whom the appeal is taken, of the time and place of the hearing. The notice shall be in writing and shall be served on the person by mail, provided the notice shall be mailed at least 10 days preceding the date of the hearing.

(E) *Record of findings.*

- (1) The Board of Adjustment and Appeals shall make written findings in any case of an appeal and shall state in the findings the reasons for its decision. The order issued by the Board of Adjustment and Appeals shall include the legal description of the land involved. Any order shall be filed with the Zoning Administrator who shall immediately mail a copy of the order, bearing the notation of the filing date, to the appellant or applicant.
- (2) A certified copy of any order issued by the Board of Adjustment and Appeals

acting upon any appeal from an decision, order, requirement, or determination of an administrative officer, may be filed with the County Recorder or Registrar of Titles for recording. The filing may be made by the Zoning Administrator as soon as is reasonably possible after the filing of the order with the Zoning Administrator.

(F) *Decision; appeals.* All decisions of the Board of Adjustment and Appeals acting upon an appeal from an order, requirement, decision, or determination by an administrative officer or upon an application for a variance shall be final, except that any aggrieved person may have any decision or order of the Board reviewed for an appropriate remedy in district court as provided by law.

§ 31.11 TERMS OF OFFICE.

(A) *Council Members.* Two Council members shall be elected for four-year terms at each biannual election.

(B) *Mayor.* The Mayor shall be elected for a four-year term commencing with the regular municipal elections to be held in 2008. The first four-year mayoral term shall commence on January 1, 2009.

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. 08-150 was adopted on this _____ day of August, 2016, by a vote of __ Ayes and __ Nays.

LAKE ELMO CITY COUNCIL

Mike Pearson, Mayor

ATTEST:

Julie Johnson, City Clerk

This Ordinance 08-150 was published on the _____ day of _____, 2016.

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

RESOLUTION NO. 2016-69

**RESOLUTION AUTHORIZING PUBLICATION OF ORDINANCE 08-150 BY TITLE
AND SUMMARY**

WHEREAS, the City Council of the City of Lake Elmo has adopted Ordinance No. 08-150, an ordinance amending the City Code of Ordinances by amending the City's provisions related to the City Council; and

WHEREAS, the Ordinance is 17 pages in length; and

WHEREAS, Minnesota Statutes Section 412.191, subdivision 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; and

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. 08-150 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. 08-150, which amends certain provisions of Chapter 31 of the City Code. The Ordinance amends the order of business at regular meetings, agenda procedures and Council response to public comment.

The full text of Ordinance No. 08-150 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 copy be placed for public inspection at the Lake Elmo Public Library.

Dated: August 16, 2016.

Mike Pearson, Mayor

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.



STAFF REPORT

DATE: August 16, 2016

REGULAR

ITEM #: 26

MOTION

TO: Mayor and Council

FROM: Kristina Handt, City Administrator

AGENDA ITEM: No-Wake high water elevation level for Lake Demontreville and Olson

BACKGROUND:

Included in your packet is a letter from Roger Johnson to the Environmental Committee in May 2016. Mr. Johnson sent this letter to me. It has not been sent to the Environmental Committee because the Council already had the issue of changing the no wake level before them at the February 24, 2015 meeting. Consistent with this Council's practice and Roberts Rules of Order, if an item has already been decided it may only be brought back by two members having voted on the prevailing side. At the February 24, 2015 meeting the following motion was made and failed: **MOTION:** Council Member Bloyer moved **TO CALL FOR PUBLIC HEARING ON DATE UNCERTAIN**. Mayor Pearson seconded the motion. **MOTION FAILED 0-5**. Since all five members were on the prevailing side, any two members of the Council can bring this item back up.

I've included in the packet the staff report from the February 24, 2015 meeting as background. If this item is referred to the Environmental Committee additional attachments and history will be provided to them.

ISSUE BEFORE COUNCIL:

Should the Council refer this matter to the Environmental Committee for review? Should an outside consultant be used to provide a study as first proposed by the DNR in 2015?

PROPOSAL DETAILS:

Council members Lundgren and Smith requested to have this item on the agenda for the purposes of discussion and possible referral to the Environmental Committee. Council member Smith has also expressed interest in having an expert do a study of the lakes to help determine the appropriate level.

FISCAL IMPACT:

Costs for an expert to complete a study are unknown at this time. Further research on that could be completed while the Environmental Committee reviews the issue.

OPTIONS:

- 1) Refer the review of the no wake threshold for Olson Lake and Lake Demontreville to the Environmental Committee
- 2) Authorize staff to obtain quotes for a study
- 3) Keep the no wake levels at 929.7 feet

RECOMMENDATION:

Recommendation of Council Member Lundgren is to refer to the Environmental Committee ***Motion to refer the No-Wake high water elevation level for Lake Demontreville and Olson to the Environmental Committee***



...preserve, protect, and improve water and shoreline health

May 24, 2016

Environmental Committee
City of Lake Elmo
3800 Laverne Avenue North
Lake Elmo, Minnesota 55042

Re: No-Wake ordinance for Lake Demontreville & Olson

Dear Environmental Committee Members:

The Lake Demontreville & Olson Association (LDO) is a non-profit organization comprised of the vast majority of Lake Demontreville and Olson shoreline property owners. The Association would like your assistance in addressing an important environmental issue that affects Lake Demontreville and Olson property owners as well as Lake Elmo residents and non-residents who use the public access to Lake Demontreville and Olson for their enjoyment.

When the two lakes experience high water levels, the shorelines are particularly vulnerable to severe erosion from the wakes generated by motorized watercraft. This erosion is detrimental to shoreline properties, water quality, fish, and natural plants that inhabit the lakes and shore. These detrimental impacts of motorized watercraft have been documented by numerous studies, visual observation, and of course, simple common sense.

When high water levels occur, generally due to extreme winter snowfall or spring rainfall, the City of Lake Elmo has the authority to impose a "No-Wake" rule, when motorized watercraft are restricted to slow speeds until water levels return to normal levels that are not as sensitive to shoreline erosion. It is the City of Lake Elmo that sets this rule, not the Minnesota Department of Natural Resources (DNR) or any other governmental body. Many communities use the DNR's Official High Watermark (OHW) as the benchmark for determining when a No-Wake rule should be imposed.

The DNR has determined the OHM for Lake Demontreville & Olson to be at elevation 929.3 feet. Until 2014, this was the benchmark for determining when the City of Lake Elmo would impose a No-Wake rule to protect the lakes. In 2013, the then seated City Council raised the No-Wake threshold to 929.7 feet...contrary to the preferences of 85% of the shoreline property owners .

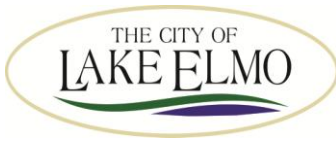
The LDO Association has been the steward of these lakes for many years. We are very concerned about the long range health of the lakes. We therefore would like you to consider this issue and recommend that the City Council return the No-Wake threshold to the DNR set OHW level of 929.3 feet.

Our board and membership are available to discuss this request in further detail at your convenience.

Thank you for your consideration,

Roger Johnson, President
Lake Demontreville Olson Association
8048 Hill Trail North,
Lake Elmo, MN 55042
Tele: 651-777-7766

Cc: LE City Administrator
LDO Board Members:
Terry Lizakowski
Fr. Pat McCorkell
Link Lavey
Mark Peterson
Nick Linsmayer
Ron Gritzmaker
Gary Fields
Charles Shultz
Jill Lundgren
Gerald Goracki



MAYOR & COUNCIL COMMUNICATION

DATE: February 24, 2015
REGULAR
ITEM #: 19

AGENDA ITEM: Proposed Ordinance Amending 97.21 Watercraft and Water Surface Regulations
SUBMITTED BY: Dean Zuleger, City Administrator at the request of Council Member Justin Bloyer
THROUGH: Mayor Mike Pearson
REVIEWED BY: Dean Zuleger, City Administrator

SUGGESTED ORDER OF BUSINESS:

- Introduction of Item..... City Administrator
- Report/Presentation.....City Administrator
- Questions from Council to Staff..... Mayor Facilitates
- Public Comment Mayor Facilitates
- Call for Motion.....Mayor & City Council
- DiscussionMayor & City Council
- Action on Motion Mayor Facilitates

SUMMARY AND ACTION REQUESTED: To approve amendments to City Ordinances regulating watercraft regulations (ss 97.21 (2)), to lower the no wake level on Olson Lake and Lake Demontreville from a negotiated 929.7 to the recognized MNDNR Ordinary High Water level of 929.3.

FISCAL IMPACT TO CITY: TBD. Cost of study to determine the ecological / economic impacts that provide a “credible reason” for reducing the negotiated no wake level of 929.7 to the MNDNR OHW of 929.3

BACKGROUND INFORMATION: In 2013, the City of Lake Elmo amended its City Ordinances regulating water craft and water surface regulations and submitted the changes to the MNDNR, which approved the ordinance on July 3, 2014. (See Attached Ordinance)

STAFF REPORT:

In 2007, the VBWD constructed Project 1007, that placed a weir drain in Olson Lake that drain to a series of ponds and pipes to alleviate high water levels and prevent ecological / economic impact. Prior to 2007, the MNDNR Ordinary High Water Level for this lake system was 930.0. After the weir was constructed, the Ordinary High Water level was reset at 929.3. The Ordinary High Water Level is generally considered the level where terrestrial plants meet the aquatic plant level on a lake shore (see attached diagram). In a

plurality of lakes researched over the last three years that have some form of no wake restriction, there is no standard or formulaic way to establish a no wake level, but admittedly many lakes default to the OHW for uniformity purpose.

In conversations with MNDNR staff there seems to be little objection to using the OHW as a no wake trigger.

During the summer of 2011, the Olson/Demontreville lake complex experienced high waters that caused the City Council to construct an emergency no wake level of 929.7 using a simple formula of halving the pre-2007 OHW and the post-2007 OHW. The issue was fraught with emotion due to the expediency in which the issue was handled. In the winter of 2012, staff worked with the MNDNR to craft an ordinance that would meet with all party's approval to establish a negotiated no wake level of 929.7 on Olsen Lake and Lake Demontreville. Specifically, MNDNR did not want to specify a specific elevation level for no wake imposition on Lake Olson and Lake Demontreville and they wished to make the City Code consistent with MN Statute 86 – governing motorized water craft operation. After several months of MNDNR review and text changes, staff brought a draft ordinance to the City Council for their review on June 5, 2012. At this time several lake shore residents expressed their dislike for the draft as they felt that the statutory norming that took place defeated the intent and purpose of the ordinance. It was agreed that the City Administrator and members of the Tri-Lakes association would meet with MNDNR officials to discuss specific concerns about lake elevation levels and a provision of state statutes that creates a slow, no wake speed for personal watercraft within 150 feet of shoreline.

A delegation from Lake Elmo consisting of Mayor Dean Johnston, Administrator Dean Zuleger, Tri-Lakes President Justin Bloyer and Lake Olson Association President Roger Johnson met with MNDNR's Kim Elverum, Boat & Water Safety Coordinator, to broker a compromise and clarify whether MN Statute 86 had preemption over local ordinances. At this meeting, it was agreed that if MNDNR technical staff agreed to the specific lake level definition of 929.7, the ordinance passed in July 2011 could stand permanently. The City Administrator spoke with MDNR technical staff (Schodeen) who had no objections to a pre-determined no wake level of 929.7.

Appropriate changes were made to the ordinance and were reviewed by Mr. Roger Johnson, Mr. Justin Bloyer and Mayor Dean Johnson for approval prior to final drafting.

In July of 2012, the City of Lake Elmo and affected land owners residing on the shores of Lake Olson, Lake Demontreville and Lake Jane crafted an amendment to current city code that would regulate the use of three lakes in the area known as the Tri-Lake area of the City of Lake Elmo. After considerable debate, the parties reached a consensus on three main areas – with the item germane to this discussion being:

1. A slow, no wake speed condition be set if the lake level of 929.7 feet above sea level is exceeded for five consecutive days for Lake Olson and Lake Demontreville;

The City Council adopted these changes in July 2012, but the issue has been continually fraught with anxiety as lakeshore owners wrestle with the important issues regarding, what is essentially, their backyard. Efforts over the years to determine the appropriate wake related use (especially time restrictions) have resulted in neighborhood surveys, long deliberations by the respective homeowner's associations, and exploration of additional changes that include but are not limited to eliminating wake on the lakes altogether.

In the March of 2013, two City Council Members requested that the City's current lake use ordinances be modified yet again to create an expansion of use allowed under MNDNR statutes for the purpose of more

hours for wake creation a better ability to enforce proper use, and to allow additional time for lakeshore owners to use their “backyard” before the lakes are congested via use by the general public. The request came late at the March 5th City Council Meeting.

In May 2013, a lengthy public hearing was held on the changes where a 5-0 vote was taken by the City Council to change the ordinance.

City Staff prepared the ordinance with corroborating data and submitted the ordinance for MNDNR review. After several modifications to comply with MNDNR regulations were made, the MNDNR (July 2, 2013 – see attached) approved the ordinance (see attached) for implementation. During this time a no wake restriction was placed on Olsen Lake & Lake Demontreville for one week in the spirit of the understanding between the negotiating no wake level.

In the Spring / Summer 2014, due to large spring rains and the drainage of Long Lake, Olson Lake and Lake Demontreville exceeded the negotiated no wake level of 929.7 for a two different time periods that totaled 31 days with City staff checking the water level almost every day from May 1st to July 14th. (See attached Olson / Tri Lakes Level Data). Staff observed during this review period that the weir begins to strenuously drain the lake and pump into an adjoining pond at the MNDNR OHW of 929.3.

On February 12, 2015, at a Council Member’s request, the City Administrator inquired of Mr. Stan Linnell, MNDNR Boating and Water Safety Manager, about what would be needed to reduce the no wake level on Olson Lake and Lake Demontreville from the negotiated 929.7 to the MNDNR OHW level of 929.3. Mr. Linnell noted that the MDNR would ideally need to see “data of ecological / environmental impact” before they would consider a change and that data should come in a form of a study. The City Administrator has inquired with two water resource consulting firms on the “what and how” the gathering of this data would entail and what the cost might be. As of the writing of this memo, no cost information has been received at this time. On February 19, 2015, Mr. Linnell, noted (after conversations with members of the City Council, VBWD, and citizen advocates) that while ideally a study would be preferable, the MNDNR would need to minimally see a “credible, documented reason” to reduce the level. (See Linnell Email 2-19-2015). **Per the MNDNR, a formal public hearing is requested to provide public comment on the proposed change in elevation. The soonest a public hearing could be held is March 17, 2015.**

ORDINANCE CONSTRUCTION

If the Council pleases, the ordinance would change to read as followed:

(2) High water conditions. No person shall operate any motorboat at greater than a slow, no-wake speed as defined by M.S. § 86B.005 whenever the lake level of Lakes Olson and Demontreville is above 929.3 feet above sea level (MSL), the Ordinary High Water Level (OHWL) as defined by M.S. 103G.005 and set by the MN Department of Natural Resources. This restriction will remain in effect until the water level drops below 929.3 feet the OHWL as set by the MN Department of Natural Resources, and remains there for 3 consecutive days.

KEY ISSUES

During the course of the analysis, three main issues rise to the top of consideration:

1. The weir constructed by the Valley Branch Water Shed District in 2007 begins to aggressively drain the lake at the MNDNR OHW of 929.3 (observable by staff over the last two summers);
2. The City has not experienced a full normal season of boat use since the enactment of the 2013 ordinance change – with 2014 high water levels being compounded by a plugged drain pipe upstream at Long Lake;
3. It appears the MNDNR may request additional ecological / economic data that shows positive impact of lowering the no wake from 929.7 to 929.3. This data has been categorized as “a credible, reason” to make the change. Other than third party information on 2014 damage the City does not have a way to provide that “reason” at this time.

RECOMMENDATION: Based upon the background information, a review of key issues, discussion with MNDNR staff, discussion with lake shore owners, staff does not have a recommendation at this time without more information (a normal season of operation and study of the water level effect on terrestrial plants/shore erosion) on the impacts of the level change.

However, if the Council wishes to change the level to the MNDNR OHW to create a formulaic approach to no wake enforcement, the motion would read:

“Move to call for a public hearing on March 17, 2015, to receive public comment on whether to amend 97.21 of the City Code regulating watercraft and water surface regulations to technically change the no wake level on Olson Lake and Lake Demontreville from the negotiated level of 929.7 to the MNDNR OHW of 929.3 with all other ordinance language staying intact.”

ATTACHMENTS:

**Current Ordinance
MNDNR Approval
Lake Level Report
OHW Technical Drawing
Linnell Email of 2-17-2015**



...preserve, protect, and improve water and shoreline health

May 24, 2016

Environmental Committee
City of Lake Elmo
3800 Laverne Avenue North
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