



STAFF REPORT

DATE: 03/07/2017

CONSENT

ITEM #: 8

MOTION

TO: City Council

FROM: Stephen Wensman, Planning Director

AGENDA ITEM: 2040 Comprehensive Plan Update- SHC Master Services Agreement and Addendum.

REVIEWED BY: Kristina Handt, City Administrator
Sarah Sonsalla, City Attorney

BACKGROUND:

All cities, within the seven-county metropolitan region must prepare a comprehensive plan and update that plan as needed every 10 years. The City's Comprehensive Plan update is due to be submitted to the Metropolitan Council on December 31, 2018. City Staff prepared a Comprehensive Planning Request for Proposal which was approved by the Council on November 15, 2016 by consent. On January 17, 2017, the City Council approved the hiring of SHC to assist the City with the 2040 Comprehensive Plan update and to authorize Staff to negotiate the contract. Staff met with SHC, negotiated the contract, and is recommending the attached contract for approval.

ISSUE BEFORE COUNCIL:

The issue before Council is whether to approve the SHC Planning Services Agreement.

PROPOSAL DETAILS/ANALYSIS:

The City has established a total project budget of \$100,000 for the Comprehensive Plan update as was reflected in the 2017 budget book. The City applied for and received news on 1/11/17 that Living Healthy in Washington County (LHWC) has chosen Lake Elmo as a partner to receive Health in Comprehensive Planning Partner Project funding in the amount of \$15,000 (made available through the Statewide Health Improvement Program (SHIP)). These funds must be used in the Comprehensive Planning process, specifically as it relates to community engagement, healthy food access, active living assessment, and plan development that supports active living and/or healthy food access. The funds are restricted to certain allowable uses (mapping/spatial analysis, consultant time, promotional materials, etc.), must be spent by October 31, 2017, and must be matched by 10% of the total funding requested. Staff met with SHC to refine the public engagement process and to including the Living Healthy grant into the project, included in Addendum 3. The cost for the changes including the costs to complete the Living Healthy aspects of the project add an additional \$10,000 to the project, resulting in a Not-to-Exceed amount for comprehensive planning services of \$90,000.

FISCAL IMPACT:

The City has budgeted \$100,000 for the comprehensive plan update. The City has received a Washington County Living Healthy grant in the amount of \$15,000 to apply to the project. The SHC Master Services Agreement and Addendum for comprehensive planning services including the Living Healthy component for a not to exceed amount of \$90,000.

OPTIONS:

The Council has the following options:

- 1) To approve the Agreement and Addendum on consent.
- 2) To remove the Agreement and Addendum from the consent agenda and to recommend changes to the Agreement.
- 3) To reject the Agreement.

RECOMMENDATION:

Staff recommends the Council approve the SHC Master Services Agreement and Addendum with the updated project schedule for comprehensive planning services as part of the consent agenda.

If the Council removes the item from the consent agenda, then Staff recommends the Council approve the SHC Master Services Agreement and Addendum with the updated project schedule for comprehensive planning services with the following motion:

“Move to approve the SHC Master Services Agreement and Addendum with the updated project schedule for comprehensive planning services”

ATTACHMENTS:

- SHC Master Services Agreement
- Addendum 3
- Revised schedule

MASTER SERVICES AGREEMENT
BETWEEN SWANSON HASKAMP CONSULTING, LLC
AND THE CITY OF LAKE ELMO FOR PLANNING SERVICES RELATED TO
THE 2040 COMPREHENSIVE PLAN UPDATE

The Agreement ("Agreement") is made as of _____ 2017 and between, the City of Lake Elmo ("Client"), 3800 Laverne Avenue N., Lake Elmo, MN 55042, and Swanson Haskamp Consulting, LLC ("SHC"), 246 Albert Street S., Suite 2A, St. Paul, MN 55105, to provide Professional Planning Services ("Services") by SHC for the 2040 Comprehensive Plan Update project ("Project") as directed by the Client.

Description of Services (Scope of Services)

Jennifer Haskamp, President of SHC shall be the primary contact and project manager assigned to perform planning and project management services for the Project. SHC responded to the Client's Request for Proposal on December 22, 2016 which included a defined scope of services, schedule, and budget (hereinafter referred to as "Proposal"). The Proposal is hereby incorporated as Addendum 1, and SHC agrees to perform and complete the work as identified within the Proposal. The following summary of the Project Proposal is provided:

- Phase I: Project Initiation, Issue Identification, Background Report, Visioning and Goal Setting
- Phase II: Plan Development
 - Land Use & Housing
 - Parks & Trails, Natural Resources
 - Transportation, Water & Wastewater
 - Implementation
- Phase III: City Review & Adjacent Jurisdictions
- Phase IV: Metropolitan Council Review
- Phase V: Update Official Controls (Not included within budget)

SHC shall perform the services identified in the Project Proposal and no others unless otherwise agreed to by verbal or written direction, and unless SHC is paid additional compensation.

Standard of Care.

SHC's services shall be performed based on the standard of reasonable professional care for services similar in scope, schedule, and complexity to the services being provided by SHC. All warranties, express or implied, under the Proposal or otherwise, in connection with SHC's services are expressly disclaimed.

Period of Service

This contract shall be effective through commencement of Phase IV: Metropolitan Council Review, or approximately December 2018, as identified in the Project Proposal.

Compensation

SHC shall be paid for the Project per Addendum 1: Proposal, and such services shall not exceed \$80,000. Billing rates of the SHC Team shall be as identified on the attached Addendum 2: Rate Schedule. Client agrees that the not-to-exceed value of this contract correlates directly to the activities identified in the Proposal. Any change orders, additional services and/or modifications to the Proposal may result in adjustments to the budget and such additional charges would be billed per the Rate Schedule included within the Proposal through the duration of this contract. Any such changes shall be in writing and be attached as an Addendum to this Master Services Agreement. Payments are due upon presentation of SHC's invoices, and the Client agrees to pay bills within 30 days of receipt. SHC and the Client shall work together to establish the method for reporting and submitting invoices to assist with the ease of monthly billing and budget management. Client hereby acknowledges that sufficient funds are currently available, or methods to obtain funds, are assigned to pay for the cost of the Project contemplated by the Agreement. SHC has the right, at its sole discretion,

to stop work and withhold work product or Services, if payments have not been received within 30 days of invoicing date. If Payments are not made within 30 days, a service charge of one (1) percent per month (12% annum), or as permitted by law, will be charged on any unpaid balance. Service charges may be compounded.

If Client fails to make payments to SHC consistent with the Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at SHC's option, cause for suspension of performance of the Services under the Agreement. If SHC elects to suspend Services, prior to suspension of Services, SHC shall give seven days written notice to Client. In the event of a suspension of Services, SHC shall have no liability to Client for delay or damage caused to Client because of such suspension of Services. Before resuming Services, SHC shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of SHC's services. SHC's fees for the remaining Services and the time schedules shall be equitably adjusted.

In the event of termination not the fault of SHC, SHC shall be compensated for Services performed prior to termination, together with reimbursable expenses due.

Client's Responsibilities

Client shall provide full information in a timely manner regarding requirements for and limitations for successful execution of the Scope of Services, including objectives, schedule, constraints and criteria, requirements and relationships and any other pertinent information that will assist SHC in achieving the expectations of the Client. The Client further agrees to work collaboratively with SHC on the tasks and responsibilities as identified within the Proposal, particularly as it relates to the Technical Panel, Advisory Panel ("AP") and Public Participation activities.

The Client shall designate a representative authorized to act on the Client's behalf with respect to the Proposal and will serve as the Project point of contact throughout the duration of this contract. The Client, or such designated representative, shall render decisions in a timely manner pertaining to documents submitted by SHC to avoid unreasonable delay in the orderly and sequential progress of the Proposal.

Termination

The Agreement may be terminated by either party at any time should the other party fail to perform in accordance with its terms through no fault of the party initiating the termination. Such termination shall be effective after giving ten days written notice. Client agrees to pay SHC for all Services provided up to the effective date of termination.

Miscellaneous

Work Product

The documents prepared by SHC for the Project are instruments of SHC's service for use solely with respect to the Client and, unless otherwise provided and agreed, SHC shall be deemed the author of these documents. All documents shall be the property of the Client, and both the Client and SHC shall retain all common law, statutory and other reserved rights, including the copyright. The Client and SHC shall be permitted to retain copies, including reproducible copies, of SHC's documents for the Client's information, reference and use in connection with the Services.

Claims and Consequential Damages

SHC and Client waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's terminating in accordance with the termination clause.

Any claim, dispute or other matter in question arising out of or relating to the Proposal or breach thereof ("Claim") shall be resolved by litigation in the State or (assuming subject matter jurisdiction) Federal Court located in Washington County, Minnesota.

Interpretation and Severability

Each provision of this Agreement is severable from the others. Should any provision of the Agreement be found invalid or unenforceable, such provision shall be ineffective only to the extent required by law, without invalidating the remainder of such provision or the remainder of the Agreement. Further, to the extent permitted by law, any provision found invalid or unenforceable shall be deemed automatically redrawn to the extent necessary to render it valid and enforceable.

Assignment

The Client and SHC, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. Neither the Client nor SHC shall assign this Agreement without the written consent of the other.

Team Relationship

The Client and SHC agree to work together on the basis of trust, good faith and fair dealing, and shall take actions reasonably necessary to enable each other to perform this Agreement in a timely, efficient and economical manner.

Entire Agreement

The terms and conditions set forth herein constitute the entire understanding of the parties relating to the services to be provided by SHC. Only a written instrument signed by both parties may amend the Agreement.

Governing Law

The Agreement shall be construed, interpreted, and enforced in accordance with the laws of the State of Minnesota, excluding its conflict of laws. SHC and Client expressly consent to the exclusive personal jurisdiction and venue of the Minnesota courts for all purposes relating to the Proposal. The parties waive trial by jury.

Execution

In witness whereof, the parties hereto have made and executed the Agreement as of the day and first above written.

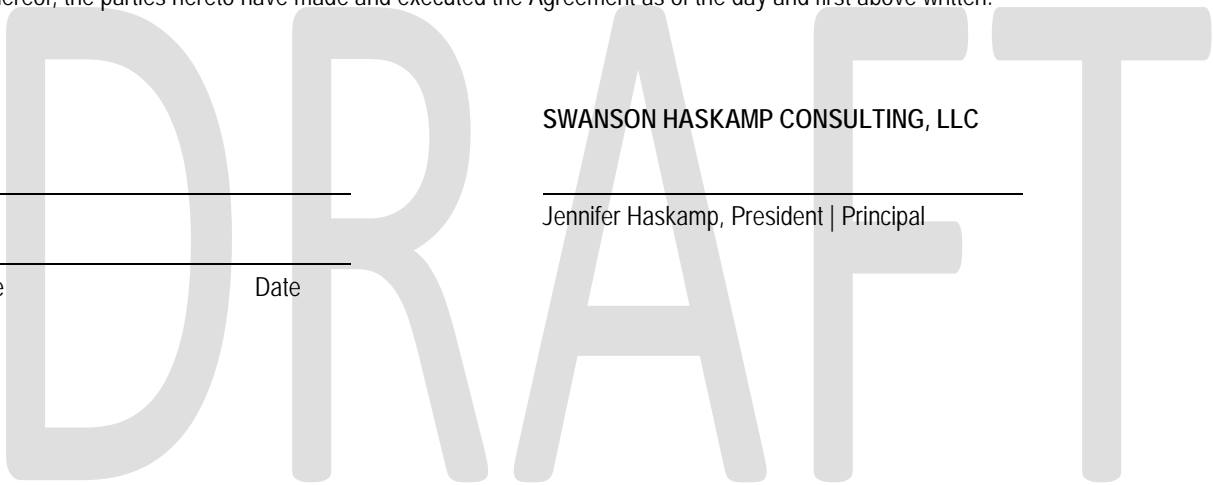
CLIENT

SWANSON HASKAMP CONSULTING, LLC

Jennifer Haskamp, President | Principal

Printed Name

Date



Addendum 3 to Master Services Agreement (“MSA”) dated _____, 2017

I. Cost and Fee Summary:

The Project Proposal Not-to-Exceed value of **\$80,000** will accommodate the proposed changes and additional Stakeholder meetings with the allocation of the Health Living Grant as detailed in Sections II and II which follow.

The Living Healthy Grant requires additional Services to the Project Proposal to complete. The additional Services are detailed within Section III b and c which follows. The estimate for the additional Services is approximately \$8,870 with a not-to-exceed value of **\$10,000**.

Total Not-to-Exceed + Addendum 3 = \$90,000

II. Changes to the Proposal

The following changes and additions to the Project Proposal, where Project Proposal is defined within the MSA, are summarized below as discussed with City Staff on February 8, 2017:

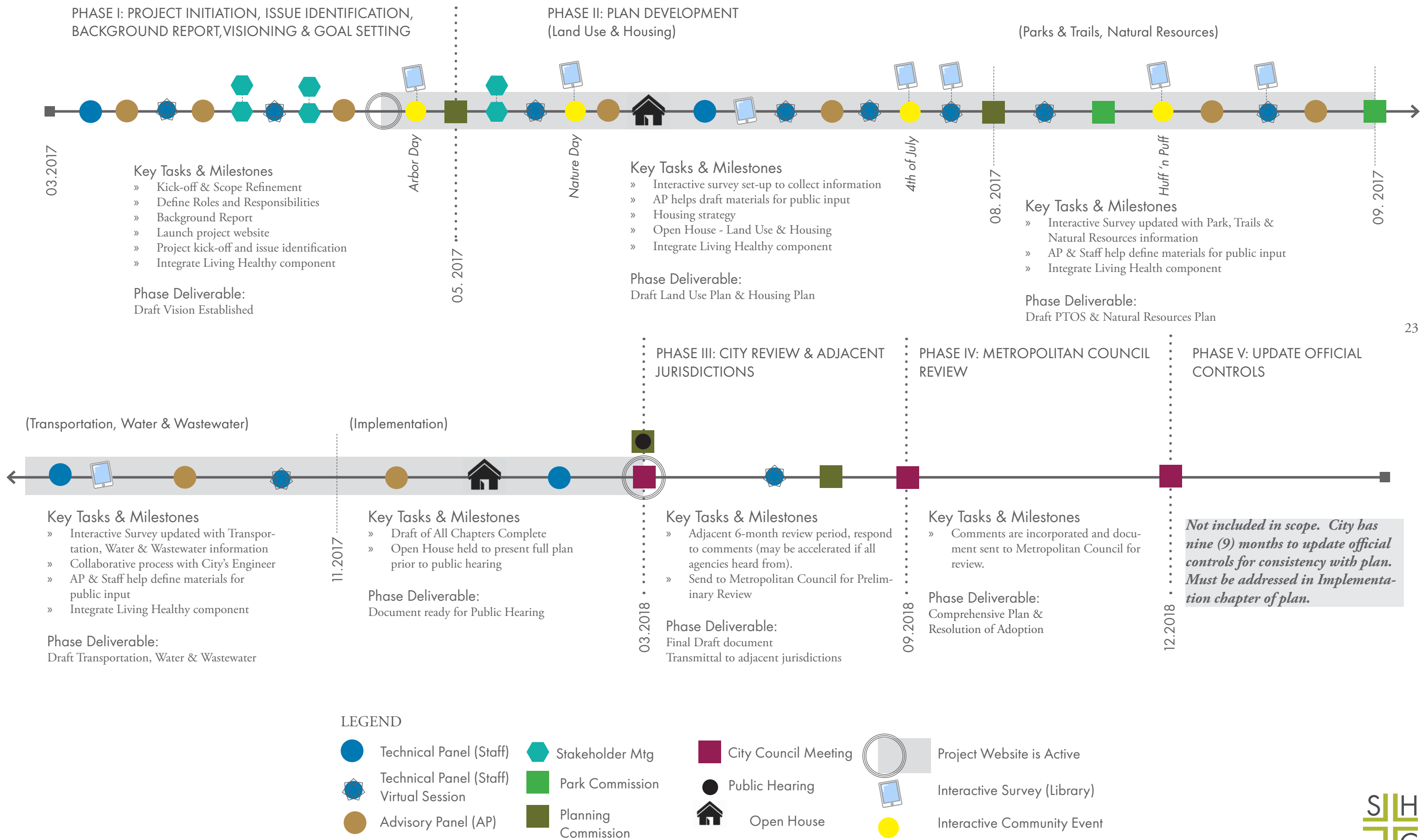
- a. All Advisory Panel Meetings will be held in-person, and the scoped Virtual Advisory Panel meetings in the Proposal will be changed to in-person meetings. This result in three (3) additional in-person Advisory Panel meetings, and a cost difference of \$600 based on the flat meeting rates defined within the Proposal.
- b. The City would like to hold in-person stakeholder meetings as part of the public participation process. These meetings were not identified in the Proposal. The following stakeholder groups are identified:
 - i. Cimarron/FamilyMeans
 - ii. South of 10th Street Homeowners Association (HOAs)
 - iii. Church/Faith Groups/Civic Organizations/Schools
 - iv. Rural Residential
 - v. Tri-Lakes Area/Lake Association
 - vi. Village Area/Business Association
- c. The additional stakeholder meetings result in additional Services totaling approximately \$6,340 (includes meeting attendance and meeting preparation)
- d. Schedule has been amended to reflect additional meetings and is attached to this Addendum.

III. Living Healthy Grant Money Allocation

- a. SHC has reviewed the Living Healthy grant which was received by the City after the Proposal was submitted. Some of the objectives associated with the Living Healthy grant can be accommodated within the existing scope as follows:
 - i. Advisory Panel Meetings (9): \$100 of each meeting billed against the grant (\$900)

- ii. Staff Meetings (8): \$100 of each meeting billed against the grant (\$800)
 - iii. Stakeholder Meetings (6): \$100 of each meeting billed against the grant (\$600)
 - iv. Park Commission Meetings (2): \$250 of each meeting billed against the grant (\$500)
- b. The Living Healthy Grant details the expectation of going out to the public to solicit information. Staff identified 4-5 events throughout the duration of the Project where SHC and staff would attend to solicit feedback. Attendance and preparation for these events results in additional Services totaling approximately \$4,600.
- c. To incorporate the elements of Living Healthy Grant throughout the document in plan components and mapping results in an additional Services totaling approximately \$4,270.

DRAFT





MINNESOTA DEPARTMENT OF NATURAL RESOURCES
CENTRAL REGION
1200 WARNER ROAD
SAINT PAUL, MN 55106
651-259-5800

Date: 12/29/2016

Steve Wensman
Planning Director, City of Lake Elmo
3800 Laverne Avenue North
Lake Elmo, MN 55042

Re: MNDNR Conditional Approval of City of Elmo's Shoreland Regulations and DNR Flexibility to State Shoreland Standards

Steve –

MNDNR has reviewed Lake Elmo's draft Article 17 – Shoreland Management Overlay District (submitted to our Central Region Office for review on 12/28/16) for compliance with the State Shoreland Management Regulations. Contingent on changes requested by MNDNR in the attached draft Article 17 dated 12/29/16, the attached Article 17 with additions and deletions is compliant with MN Rules, Parts 6120.2500 – 6210.3900 and is conditionally approved by MNDNR.

Under shoreland flexibility, MNDNR and the City of Lake Elmo agree to allow a 35-foot maximum building height (standard = 25 feet) and 30% maximum impervious surface coverage of lots in sewered areas (standard = 25%), in return for 15% impervious surface coverage on unsewered lots (standard = 25%) and a 20% bonus density increase for PUDs (standard = 200%). The 20% bonus density increase for PUDs is consistent with the City's existing PUD provisions. It is found that these flexibility requests involve circumstances that take into account the existing development patterns of Lake Elmo. MNDNR provides conditional approval for your request for implementation flexibility.

If you have questions regarding the contents of this letter, please contact Jenifer Sorensen, Area Hydrologist (651-259-5754; jenifer.sorensen@state.mn.us). Thank you for Lake Elmo's efforts in developing standards that will protect the water resources of the state.

Sincerely,

Terri Yearwood
Central Region Manager
MNDNR, Division of Ecological & Water Resources
1200 Warner Road, St. Paul, MN 55106
651-259-5766 | terri.yearwood@state.mn.us

mndnr.gov



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CITY OF LAKE ELMO - 12-29-16
COUNTY OF WASHINGTON
STATE OF MINNESOTA

ORDINANCE NO. 08-___

AN ORDINANCE AMENDING SHORELAND MANAGEMENT DISTRICT RESTRICTIONS TO OBTAIN COMPLIANCE WITH DEPARTMENT OF NATURAL RESOURCES SHORELAND ORDINANCE REQUIREMENTS.

SECTION 1. The City Council of the City of Lake Elmo hereby amends Title XV: Land Usage; Chapter 154: Zoning Code; Section 800 to read the following:

ARTICLE 17. SHORELAND MANAGEMENT OVERLAY DISTRICT

§154.800 Shoreland Management Overlay District

§154.800 Shoreland Management Overlay District

- A. *Purpose.* ~~The ordinance is adopted pursuant to the authorization and policies contained in Minnesota Statutes, Chapter 103F, Minnesota Regulations, Parts 6120.2500-6120.3900, and the planning and zoning enabling legislation in Minnesota Statutes, Chapter 462.~~ The purpose of the Shoreland Management Overlay District is to preserve and enhance the quality of surface waters and conserve the economic and natural environmental values of shorelands through the following activities:
1. Regulate placement of sanitary and waste treatment facilities on shorelands of public waters to prevent pollution of public waters and public health hazards resulting from the facilities.
 2. Regulate alteration of shorelands of public waters to prevent excessive sediment pollution, increased water runoff and excessive nutrient runoff pollution.
 3. Preserve and enhance the unique aesthetic appearance and ecological value of the shoreland.
 4. Regulate the construction of buildings and changes of land use in shorelands to minimize property damage during periods of high water.
- B. *Definitions.* The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them ~~in this subsection, in Subd. 01: Definitions: of Chapter 11: General Code Provisions,~~ except where the context clearly indicates a different meaning.
- ~~*Bluff.* A topographic feature such as a hill, cliff, or embankment having the following characteristics. (An area with an average slope of less than 18% over a distance of 50 feet or more shall not be considered part of the bluff.)~~
- ~~1. Part or all of the feature is in a Shoreland area;~~
 - ~~2. The slope rises at least 25 feet above the ordinary high water level of the water body;~~
 - ~~3. The grade of the slope from the toe of the bluff to a point 25 feet or more above the ordinary high water level averages 30% or greater; and~~
 - ~~4. The slope must drain toward the water body.~~
- ~~*Bluff Impact Zone.* A bluff and land located within 20 feet from the top of a bluff.~~
- ~~*Boathouse.* A structure designed and used solely for the storage of boats and boating equipment.~~

~~Dedicated Riparian Area. Starting at the Ordinary High Water Level (OHWL), areas dedicated to the City to be maintained in a permanent state of natural vegetation for the purposes of protecting surface waters from the impacts of land alteration and/or development activity. Permitted uses within dedicated riparian areas are noted in subsection (C)(7) (f).~~

Commented [EB1]: Language regarding dedicated riparian areas has been removed. This part of the ordinance was added in 2014 and not approved by the DNR.

~~D.N.R. The Minnesota Department of Natural Resources.~~

~~Land Alteration. The excavation or grading of land involving movement of earth and materials in excess of 50 yards.~~

~~Shore Impact Zone. Land located between the ordinary high water level of a public water and a line parallel to it at a setback of 50% of the structure setback.~~

~~Shoreland. Land located within the following distances from public waters: 1,000 feet from the ordinary high water level of a lake, pond, or foliage; and 300 feet from a river or stream, or the landward extent of a flood plain designated by ordinance on a river or stream; whichever is greater. The limits of shorelands may be reduced whenever the waters involved are bounded by topographic divides which extend landward from the waters for lesser distances and when approved by the Commissioner.~~

Commented [EB2]: This is an administrative function requiring approval by the DNR and is included in the administrative section.

~~Water Oriented Accessory Structure or Facility. A small, above ground building or other improvement, except stairways, fences, docks, and retaining walls which, because of the relationship of its use to a surface water feature, reasonably needs to be located closer to public waters than the normal structure setback. Examples of the structures and facilities include boathouses, gazebos, screen houses, fish houses, pump houses, and detached decks.~~

Commented [EB3]: The DNR recommended removing these definitions according to its comments dated 12.19.2016, as they are all already in the definitions of Chapter 11 of the City Code.

C. Shoreland Management Overlay District

1. *Shoreland Classifications.* The public waters in Table 17-1 have been classified by the commissioner of natural resources, consistent with the classifications assigned by the commissioner under Minnesota Rules, part 6120.3300, as: natural environment (NE), recreational development (RD) and tributary (T) shorelands. ~~Where noted, riparian dedication is required by the City.~~

Table 17-1: Shoreland Classifications

DNR ID #	Name	Location	Ordinary High Water Level	Class	150 FT ³ Riparian Dedication Required
82011601	Armstrong (north of CSAH 10)	Sec 28, T29, R21	1020.3	NE	No
82011602	Armstrong (south of CSAH 10)	Sec 28, T29, R21	1019.3	NE	No
82009900	Clear	Sec 2 & 11, T29, R21	-	NE	No
82010100	DeMontreville	Sec 4, 5 & 9, T29, R21	929.3	RD	No
82010500	Berschen's Pond			NE	
82011000	Downs	Sec 24, T29, R21	889.1	NE	No
82010900	Eagle Point	Sec 22 & 27, T29, R21	896.5	NE	No
82010600	Elmo	Sec 13, 14, 23, 24 & 26, T29, R21	885.6	RD	No
82010800	Friedrich Pond	Sec 15 & 22, T29, R21	-	NE	No
82011300	Goose	Sec 27, 34 & 35, T29, R21	924.4	NE	Yes
82011100	H.J. Brown Pond	Sec 26, T29, R21	-	NE	No
82007400	Horseshoe	Sec 25, T29, R21	876.8	NE	No
82010400	Jane	Sec 9 & 10, T29, R21	924.0	RD	No

Commented [JS4]: Armstrong Lake (South) must remain within Table 17-1. The basin itself is in Oakdale, but a portion of the lake's shoreland district are within the City boundary of Lake Elmo and thus must be regulated under the City's shoreland ordinance.

82011700	Kramer	Sec 35, T29, R21	-	NE	Yes
82041900	Margaret	Sec 26, T29, R21	-	NE	No
82010300	Olson	Sec 8 & 9, T29, R21	929.3	RD	No
N/A	Raleigh Creek North (to Eagle Point Lake)	Sec 16, 21 & 22, T29, R21	-	T	No
N/A	Raleigh Creek South (Eagle Point Lake to Lake Elmo)	Sec 22, 23 & 227, T29, R21	-	T	No
82011200	Rose	Sec 25 & 36, T29, R21	-	NE	No
82010700	Sunfish	Sec 14, T29, R21	896.4	NE	No
82010000	Unnamed	Sec 4, T29, R21	-	NE	No
82031300	Unnamed	Sec 12, T29, R21	-	NE	No
82041700	Unnamed	Sec 25, T29, R21	-	NE	No
82048400	Unnamed	Sec 11, T29, R21	-	NE	No
N/A	Unnamed to Wilmes Lake	Sec 33, T29, R21	-	T	No
N/A	Unnamed Tributary	Sec 25, T29, R21	-	T	No

Classifications

RD = Recreational Development Lake Classification

NE = Natural Environment Lake Classification

T = Tributary River Classification

Notes to Table 17-1:

- a. As measured from and perpendicular to the ordinary high water level (OHWL)

2. Land Uses in Shoreland Districts. All uses of land shall be regulated by the applicable zoning district subject to applicable conditions. Notwithstanding the underlying zoning district, the following uses shall be regulated in shoreland districts as specified in Table 17-2:

Table 17-2: Permitted (P), ~~and~~ Conditional (C) ~~and Interim (I)~~ Uses, Shoreland Classifications

Land Uses	Shoreland Classification		
	Recreational Development	Natural Environment	Tributary River
Residential	P	P	P
Commercial	P	C	C
Public and Civic Uses	P	C	C
Outdoor Recreation ^a	C	C	C
Agricultural and Related Uses ^{b, c}	P	P	P
Industrial and Extractive Uses	P	C	C
Utilities, Transportation and Communications	C	C	C
Accessory Uses	P	P	P

Commented [EB5]: The DNR allows extractive uses as conditional uses in these shorelands. Industrial uses are also conditional within RD and T shoreland classifications but are not allowed in NE lakes. The 2014 shoreland amendment had not allowed these uses with any shorelands, and Staff has not made any changes to this.

Planned Developments (PUDs)	C	C	C
<u>Forest Land Conversion</u>	<u>C</u>	<u>C</u>	<u>C</u>

Notes to Table 17-2:

- a. City owned parks and open space and any uses or structures accessory to such uses are permitted within shoreland areas.
- b. Vegetative clearing within shore and bluff impact zones and on steep slopes is not permitted.
- c. New feedlots are not allowed in any Shoreland Management Overlay District.

3. *Shoreland Standards.* The following standards in Table 17-3 shall apply within shoreland areas to principal, conditional and accessory uses and structures:

Table 17-3: Shoreland Standards

Standards	Shoreland Classification		
	Recreational Development	Natural Environment	Tributary River
Minimum structure setback from County, State or Federal road right-of-way	50 feet	50 feet	50 feet
<u>Minimum setback from right-of-way line of town road, public street, or other roads or streets not classified</u>	<u>20 feet</u>	<u>20 feet</u>	<u>20 feet</u>
Minimum structure setback from an unplatted cemetery or historical site ^a	50 feet	50 feet	50 feet
Minimum structure setback from the Ordinary High Water Level (OHWL) ^{b, c, e}			
<u>Riparian dedication required</u>	<u>200 feet</u>	<u>200 feet</u>	<u>200 feet</u>
<u>Riparian dedication not required^d</u>			
Sewered ^d	75 feet	<u>100 150 feet</u>	<u>50 75 feet</u>
Unsewered ^d	100 feet	150 feet	100 feet
Minimum structure setback from top of bluff	30 feet	30 feet	30 feet
Minimum septic system setback from OHWL	75 feet	150 feet	75 feet
Minimum low floor elevation above the 100-year flood elevation	2 feet	2 feet	2 feet
Maximum impervious lot coverage			
<u>With riparian dedication</u>	<u>50%</u>	<u>50%</u>	<u>50%</u>
<u>Without riparian dedication</u>			
Sewered ^e	30%	30%	30%
Unsewered	15% <u>or 6,000 square foot (sf), whichever is larger</u>		
Minimum lot size ^f , riparian lots			
<u>Riparian dedication required</u>	<u>Same as zoning district</u>		
<u>Riparian dedication not required, sSewered</u>			
Single family detached	20,000 sf	40,000 sf	Same as zoning district
Two-family or duplex	35,000 sf	70,000 sf	
<u>Triplex</u>	<u>120,000 sf</u>	<u>160,000 sf</u>	<u>Same as</u>

Commented [EB6]: This aligns with MN rules. Comment from DNR: The reason why the structure setback from the OHW is 150 feet for both sewerred and unsewerred lots is that NE lakes are especially sensitive water bodies – they are typically shallow and more wetland in character than RD and GD classified lakes, which are larger and deeper. Having a greater setback on NE lake allows the width of the shoreland impact zone (SIZ) to also be greater (since the SIZ is 1/2 the structure setback). In summary, to reduce the impacts from human activities on NE lakes, which are more ecologically sensitive, the OHW setback on NE lakes is greater than for RD and GD lakes.

Commented [EB7]: MN rules only requires 50 feet for a sewerred property in a tributary SL

<u>Quad</u>	<u>160,000 sf</u>	<u>200,000 sf</u>	<u>zoning district</u>
Riparian dedication not required, unsewered			
Single family detached	40,000 sf	80,000 sf	Same as zoning district
Minimum lot size^f, non-riparian lots			
<u>Riparian dedication required</u>	<u>Same as zoning district</u>		
<u>Riparian dedication not required, s</u> <u>Sewered</u>			
Single family detached	15,000 sf	20,000 sf	Same as zoning district
Two-family or duplex	17,500 <u>26,000</u> sf	26,000 <u>35,000</u> sf	
<u>Triplex</u>	<u>38,000 sf</u>	<u>52,000 sf</u>	
<u>Quad</u>	<u>49,000 sf</u>	<u>65,000 sf</u>	
<u>Riparian dedication not required, u</u> <u>Unsewered</u>			
Single family detached	40,000 sf	80,000 sf	Same as zoning district
<u>Two-family or duplex</u>	<u>80,000 sf</u>	<u>160,000 sf</u>	
<u>Triplex</u>	<u>120,000 sf</u>	<u>240,000 sf</u>	
<u>Quad</u>	<u>160,000 sf</u>	<u>320,000 sf</u>	
Minimum lot width, ^{f, g} riparian lots			
<u>Riparian dedication required</u>	<u>Same as zoning district</u>		
<u>Riparian dedication not required, s</u> <u>Sewered</u>			
Single family detached	80 <u>75</u> feet	125 feet	80-75 feet
Two-family or duplex ^e	135 feet	225 feet	115 feet
<u>Triplex^e</u>	<u>195 feet</u>	<u>325 feet</u>	<u>150 feet</u>
<u>Quad^e</u>	<u>255 feet</u>	<u>425 feet</u>	<u>190 feet</u>
<u>Riparian dedication not required, u</u> <u>Unsewered</u>			
<u>Single family detached</u>	<u>150 feet</u>	<u>200 feet</u>	<u>100 feet</u>
<u>Two-family or duplex^e</u>	<u>225 feet</u>	<u>300 feet</u>	<u>150 feet</u>
<u>Triplex^e</u>	<u>300 feet</u>	<u>400 feet</u>	<u>300 feet</u>
<u>Quad^e</u>	<u>375 feet</u>	<u>500 feet</u>	<u>250 feet</u>
<u>Minimum lot width, nonriparian Lots</u>			
<u>Sewered</u>			
<u>Single family detached</u>	<u>75 feet</u>	<u>125 feet</u>	<u>75 feet</u>
<u>Two-family or duplex^e</u>	<u>135 feet</u>	<u>220 feet</u>	<u>115 feet</u>
<u>Triplex^e</u>	<u>190 feet</u>	<u>315 feet</u>	<u>150 feet</u>
<u>Quad^e</u>	<u>245 feet</u>	<u>410 feet</u>	<u>190 feet</u>
<u>Unsewered</u>			
<u>Single family detached</u>	<u>150 feet</u>	<u>200 feet</u>	<u>100 feet</u>
<u>Two-family or duplex^e</u>	<u>265 feet</u>	<u>400 feet</u>	<u>150 feet</u>
<u>Triplex^e</u>	<u>375 feet</u>	<u>600 feet</u>	<u>200 feet</u>

<u>Quad^e</u>	<u>490 feet</u>	<u>800 feet</u>	<u>250 feet</u>
<u>Maximum Structure Height</u>	<u>35 feet</u>	<u>35 feet</u>	<u>35 feet</u>

Notes to Table 17-3:

- a. Reduction of the required setback from a historic site is permitted with the approval of the office of the Minnesota State Archeologist.
- b. Where structures exist on both sides of a proposed building site, structure setbacks may be altered without a variance to conform to the adjoining setbacks from the Ordinary High Water Level (OHWL), provided the proposed building is not located in a shore impact zone or bluff impact zone.
- c. ~~With the exception of public crossings of public waters, R~~oads, driveways and parking areas shall meet the minimum structure setback. Where no alternative exists, such improvements may be placed within the required structure setbacks provided they are designed to adapt to the natural landscape, soil erosion is minimized and no construction shall occur in shore or bluff impact zones. Exceptions to setback requirements must comply with the rules and regulations of local watershed districts.
- d. Commercial, ~~and~~ public and civic uses located on lots with public waters frontage shall be setback double the required setback or be substantially screened from the water by vegetation or topography, assuming summer, leaf-on conditions.

~~e. The maximum amount of impervious surface allowed for sewerer lots zoned Rural Single Family (RS) is 15% of lot area or 6,000 sf, whichever is larger.~~

e. Subdivisions of duplexes, triplexes, and quads within Natural Environment Shoreland districts must also meet standards set forth in Section (C)(5)(d).

f. Minimum lot size and width requirements apply to residential uses only.

g. Lots Intended As Controlled Accesses to Public Waters or as Recreation Areas for Use by Owners of Nonriparian Lots within Subdivisions. Must meet or exceed the following standards:

They must meet the width and size requirements for residential lots, and be suitable for the intended uses of controlled access lots.

- i. If docking, mooring, or over-water storage of more than six (6) watercraft is to be allowed at a controlled access lot, then the width of the lot (keeping the same lot depth) must be increased by the percent of the requirements for riparian residential lots for each watercraft beyond six, consistent with the following table:

Controlled Access Lot Frontage Requirements

<u>Ratio of Lake Size to Shore Length (acres/mile)</u>	<u>Required increase in frontage (percent)</u>
<u>Less than 100</u>	<u>25%</u>
<u>100-200</u>	<u>20%</u>
<u>201-300</u>	<u>15%</u>
<u>301-400</u>	<u>10%</u>
<u>Greater than 400</u>	<u>5%</u>

- ii. They must be jointly owned by all purchasers of lots in the subdivision or by all purchasers of nonriparian lots in the subdivision who are provided riparian access rights on the access lot; and covenants or other equally effective legal instruments must be developed that specify which lot owners have authority to use the access lot and what activities are allowed. The activities may include watercraft launching, loading, storage, beaching, mooring, or docking. They must also include other outdoor recreational activities that do not significantly conflict with general public use of the public water or the enjoyment of normal property rights by adjacent property owners. Examples of the non-significant conflict activities include swimming, sunbathing, or picnicking. The covenants must

Commented [JS8]: Under (C)(5)(c)

limit the total number of vehicles allowed to be parked and the total number of watercraft allowed to be continuously moored, docked, or stored over water, and must require centralization of all common facilities and activities in the most suitable locations on the lot to minimize topographic and vegetation alterations. They must also require all parking areas, storage buildings, and other facilities to be screened by vegetation or topography as much as practical from view from the public water, assuming summer, leaf-on conditions.

4. Design Criteria for Structures

a. *Water Oriented Accessory Structures.* Each lot may have one (1) water oriented accessory structure not meeting the normal structure setbacks if the structure complies with the following provisions:

- i. *Structure Height.* The structure or facility must not exceed ten (10) feet in height, exclusive of safety rails, from the average grade of the structure to the peak of the roof. Detached decks must not exceed eight (8) feet above grade at any point.
- ii. *Structure Size.* Water oriented accessory structures cannot occupy an area greater than two-hundred and fifty (250) square feet.
- iii. *Structure Setback.* The setback of the structure or facility landward from the Ordinary High Water Level (OHWL) must be at least ten (10) feet on a recreational development lake and fifty (50) feet on a natural environment lake.
- iv. *The structure or facility must be treated to reduce visibility as viewed from public waters and adjacent shorelands by vegetation, topography, increased setbacks or color, assuming summer, leaf-on conditions.*
- v. *The roof of the structure may be used as a deck with safety rails, but must not be enclosed or used as a storage area.*
- vi. The structure or facility must not be used for human habitation and must not contain water supply or sewage treatment facilities.
- vii. *Watercraft Storage Facilities.* As an alternative for recreational development water bodies, water oriented accessory structures used solely for watercraft storage, and including the storage of related boating and water oriented sporting equipment, may occupy up to four hundred (400) square feet provided the maximum width of the structure is twenty (20) feet as measured parallel to the configuration of the shoreline.

b. *Stairways, Lifts and Landings.* Stairways and lifts are the preferred alternative to major topographic alterations for achieving access up and down bluffs and steep slopes to shore areas. Stairways and lifts must meet the following design requirements:

- i. Stairways and lifts must not exceed four (4) feet in width. Wider stairways may be used for public open space or recreation properties.
- ii. Landings for stairways and lifts must not exceed thirty-two (32) square feet in area. Landings larger than thirty-two (32) square feet may be used for public open space or recreation properties.
- iii. Canopies or roofs are not allowed on stairways, lifts or landings.
- iv. Stairways, lifts and landings may be either constructed above ground on posts or pilings or placed into the ground, provided that they are designed and built in a manner that ensures control of soil erosion.
- v. Stairways, lifts and landing must be located in the most visually inconspicuous portions of lots, as viewed from the surface of the public water assuming summer, leaf-on conditions, whenever practical.

Commented [EB9]: This is language taken from the MNDNR model ordinance. There had previously been an issue with the height allowed for water-oriented accessory structures (previously the ordinance did not mention the maximum height was 10 feet exclusive of safety rails).

- vi. Facilities such as public and private watercraft access ramps, lifts, access-related parking areas, or mobility paths for physically handicapped persons are also allowed for achieving access to shore areas, provided that the dimensional and performance standards of subsections (i) through (v) above are satisfied—and provided the vegetative screening and erosion control requirements are met.
 - c. Roads, Driveways, and Parking Areas. Public and private roads, driveways, and parking areas must be designed to take advantage of natural vegetation and topography to achieve maximum screening from view from public waters. Documentation must be provided by a qualified individual that all roads and parking areas are designed and constructed to minimize and control erosion to public waters consistent with the field office technical guides of the local soil and water conservation district, or other applicable technical materials.
 - d. Steep slopes. Local government officials must evaluate possible soil erosion impacts and development visibility from public waters before issuing a permit for construction of sewage treatment systems, roads, driveways, structures, or other improvements on steep slopes. When determined necessary, conditions must be attached to issued permits to prevent erosion and to preserve existing vegetation screening of structures, vehicles, and other facilities as viewed from the surface of public waters, assuming summer, leaf-on vegetation.
5. *Subdivision Standards.* The following standards shall apply to subdivisions in shoreland areas:
- a. Each lot created through subdivision must be suitable in its natural state for the proposed use with minimal alteration. In determining suitability the City will consider susceptibility to flooding, existence of wetlands, soil and rock formations with severe limitations for development, severe erosion potential, steep topography, inadequate water supply or sewage treatment capabilities, near-shore aquatic conditions unsuitable for water-based recreation, important fish and wildlife habitat, presence of significant historic sites, or any other feature of the natural land likely to be harmful to the health, safety, or welfare of future residents of the proposed subdivision, or of the community at large.
 - b. Subdivisions must conform to all other official controls adopted by the City of Lake Elmo. Subdivisions will not be approved that are designed so variances from one or more standards in official controls would be needed to use the lots for their intended purpose. Lots that would require use of holding tanks must not be approved.
 - ~~c. If, in a group of two or more contiguous lots under the same ownership, any individual lot does not meet the requirements of this section, the lot must not be considered as a separate parcel of land for the purposes of sale or development. The lot must be combined with the one or more contiguous lots so they equal one or more parcels of land, each meeting the requirement of this section as much as possible. An exception to this standard shall be made if each lot contains a habitable dwelling at the time they into common ownership.~~
 - c. On natural environment lakes, subdivisions of duplexes, triplexes, and quads must also meet the following standards:
 - i. Each building must be set back at least 200 feet from the ordinary high water level.
 - ii. Each building must have common sewage treatment and water systems that serve all dwelling units in the building.
 - ~~iii.~~ Watercraft docking facilities for each lot must be centralized in one location and serve all dwelling units in the building.
 - ~~iii-~~iv. No more than 25 percent of a lake's shoreline can be in a duplex, triplex, or quad environment.

Commented [JS10]: Added this language in, which is under 6120.3200 Subpart 2 B.

6. *Agricultural Activities.* The following standards shall apply to agricultural activities in shoreland areas:
- a. The shore impact for parcels with permitted agricultural uses is equal to a line parallel to and 50 feet from the OHWL.
 - b. General cultivation farming, grazing, nurseries, horticulture, truck farming, sod farming, and wild crop harvesting are permitted uses if steep slopes and shore impact zones are maintained in permanent vegetation or operated under an approved conservation plan (resource management systems) consistent with the field office technical guides of the local soil and water conservation district or the USDA Natural Resources Conservation Service.
- ~~Feedlots and manure storage are not permitted within the shoreland of watercourses or in bluff impact zones, and must meet a minimum setback of 300 feet from the ordinary high water level of all public water basins identified in subsection (C)(1).~~
- c. New animal feedlots are not allowed in shoreland. Modifications or expansions to existing feedlots or resumption of old feedlots are conditional uses and must meet the following standards:
 - i. Feedlots must be designed consistent with Minnesota Rules Chapter 7020;
 - ii. Feedlots must not further encroach into the existing ordinary high water level setback or the bluff impact zone and must not expand to a capacity of 1,000 animal units or more; and,
 - iii. Old feedlots not currently in operation may resume operation consistent with Minnesota Statute Section 116.0711.
 - d. The use of pesticides, fertilizers or animal wastes within shoreland areas shall be done in such a way as to minimize impacts on shore impact zones by proper application or use of earth or vegetation.
7. *Shoreland Alterations.* The purpose of this section is to prevent erosion into public waters, fix nutrients, preserve shoreland aesthetics, preserve historic values, prevent back slumping and protect fish and wildlife habitat. Shoreland alterations shall be allowed in accordance with the following standards:
- a. No principal or accessory structure or use shall be placed within bluff or shore impact zones other than agricultural activities as permitted by subsection (C)(~~5~~)6(b).
 - b. Shore impact zones shall be maintained in permanent vegetation or operated under an approved conservation plan consistent with the field office technical guides of the local soil and water conservation district.
 - c. *Intensive Vegetative Clearing.* Intensive vegetation clearing within shore and bluff impact zones and/or steep slopes is not permitted. Intensive clearing within shoreland areas outside of bluff or shore impact zones and steep slope areas is permitted subject to standards set forth in Subp. (C) (8) of this Section. ~~City approval of an erosion and sedimentation control plan that is consistent with the City's Storm Water and Erosion and Sediment Control Ordinance (§150.270).~~
 - d. *Limited Tree Clearing.* Limited clearing of trees and shrubs and the cutting, pruning and trimming of trees within bluff and shore impact zones or steep slopes to accommodate picnic areas, trails and water access and to provide a view to the water from a principal dwelling site shall be permitted provided the screening of structures, as viewed from the water, is not substantially reduced and that the shading of water surface is along rivers is preserved. These provisions do not apply to the removal of tree limbs or branches that are dead or pose a safety hazard.
 - e. *Grading in Shoreland Areas.* All grading and filling activities must be in conformance with the Wetland Conservation Act. Any grading or filling on steep slopes or within shore or bluff impact zones involving the movement of ten (10) or more cubic yards of material or involving more than fifty (50) cubic yards of material elsewhere in a shoreland area shall require the submission of a Grading Permit. Approval shall be granted only if the following conditions are met:

Commented [DP11]: PCA rules are now more restrictive and supersede the shoreland rules. PCA rules prohibit new feedlots in shoreland so 300 foot setback and bluff impact zone are no longer relevant. PCA rules do allow modification or expansion to existing feedlots or resumption of old feedlots. Per SL rules these would need to be processed as a conditional use. If these situations could apply in the City, suggest using this language.

Commented [EB12]: This has been moved to the Forest Management Section

- ~~i. Any filling or grading in any Type 2, 3, 4, 5, 6, 7 or 8 wetland shall be in conformance with the Wetland Conservation Act of 1991 and shall require consideration of how extensively the proposed activity will affect the following functional qualities of the wetland:

 - ~~a) Sediment and pollution trapping and retention~~
 - ~~b) Storage of surface runoff to prevent or reduce flood damage~~
 - ~~c) Fish and wildlife habitat and endangered plants and animals~~
 - ~~d) Recreational use~~
 - ~~e) Shoreline or bank stabilization~~
 - ~~f) Historical significance~~~~
- ii. The smallest amount of bare ground is exposed for the shortest time possible;
- iii. Ground cover such as mulch is used for temporary bare soil coverage and permanent ground cover, such as sod, is established;
- iv. Methods to prevent erosion and trap sediment during construction are employed;
- v. Altered areas are stabilized to accepted erosion control standards;
- vi. Fill is not placed so as to create unstable slopes;
- vii. Plans to place fill or excavated material on steep slopes are certified by qualified professionals as to slope stability and must not create finished slopes of 30 percent or greater;
- viii. Alterations below the OHWL ~~of public waters are authorized~~ must first be authorized by the Commissioner of the Minnesota Department of Natural Resources per Minn. Stats. § 103G.245 and 103G.405;
- ix. Placement of natural rock riprap, including associated grading of the shoreline and placement of a filter blanket, is permitted if the finished slope does not exceed three feet horizontal to one foot vertical, the landward extent of the riprap is within ten feet of the OHWL and the height of the riprap above the OHWL does not exceed three feet; and
- x. Alterations of topography shall only be permitted if accessory to a permitted or conditional use.
- xi. Fill or excavated material must not be placed in bluff impact zone.
- ~~f. Dedicated Riparian Areas. Riparian areas dedicated to the City shall be protected from intensive development. Permitted uses include passive open space, pedestrian trails, public parks and park related structures, facilities for public water access, fishing piers, parking lots for park users, and stormwater treatment ponds. Unless being used for active park purposes, the riparian areas shall be maintained in permanent natural vegetation.~~
- 8. Forest management standards. The harvesting of timber and associated reforestation or conversion of forested use to a nonforested use must be conducted consistent with the following standards:
 - a. Timber harvesting and associated reforestation must be conducted consistent with the Sustaining Minnesota Forest Resources: Voluntary Site-Level Forest Management Guidelines for Landowners, Loggers and Resource Managers
 - b. Forest land conversion to another use requires issuance of a conditional use permit and adherence to the following standards:
 - i. Shore and bluff impact zones must not be intensively cleared of vegetation.
 - ii. An erosion and sediment control plan is developed and approved by the City and local soil and water conservation district and is consistent with the City's

Commented [EB13]: These can be removed as they duplicate standards in MR 8420

Storm Water and Erosion and Sediment Control Ordinance (150.270) before issuance of a conditional use permit for the conversion.

- ~~8. Sand and Gravel Extraction. The following standards shall apply to sand and gravel extraction uses:~~
- ~~a. Processing machinery shall be located consistent with setback standards for structures.~~
 - ~~b. A site development and restoration plan shall be developed by the owner for approval by the city which addresses dust, noise, possible pollutant discharges, hours and duration of operation and anticipates vegetation and topography alterations. It shall identify actions to be taken to mitigate adverse environmental impacts and measures to be employed to restore the site after excavation.~~
9. *Stormwater Management.* Stormwater management shall be in accordance with the City's Storm Water and Erosion and Sediment Control Ordinance (§150.270). In addition, the Minnesota Pollution Control Agency's Minnesota Stormwater Manual shall be used as guidance. Within shoreland areas, the following standards also apply:
- a. Existing natural drainage ways, wetlands and vegetated soil surfaces must be used to convey, store, filter and retain storm water in a manner consistent with local watershed district rules and regulations before discharge to public waters.
 - b. Development must be planned and conducted in a manner that will minimize the extent of disturbed areas, runoff velocities, and erosion potential and reduce and delay runoff volumes. Disturbed areas must be stabilized and protected as soon as grading is complete and facilities or methods used to retain sediment on the site are removed.
 - c. Use of fertilizers, pesticides or animal wastes within shoreland areas must be done in a way to minimize impact on the shore impact zone or public water by proper application.
 - d. New constructed storm water outfalls to public waters must provide for filtering or settling of suspended solids and skimming of surface debris before discharge.
10. *Private Utilities.* The following provisions shall apply in shoreland areas:
- a. Private subsurface sewage treatment systems shall meet applicable City and County requirements and Minnesota Pollution Control Agency's Chapter 7080 standards. Publicly owned sewer systems shall be used where available.
 - b. Any private water supply to be used for domestic purposes shall meet quality standards established by the Minnesota Department of Health and the Minnesota Pollution Control Agency.
 - i. Private wells must be located, constructed, maintained, and sealed in accordance with or in a more thorough manner than the Water Well Construction Code of the Minnesota Department of Health.
- ~~11. Planned Unit Developments. Residential planned unit developments shall be permitted in shoreland areas subject to the requirements of Article XVI of this chapter.~~
- ~~a. Design criteria for planned unit developments within shoreland areas:~~
- ~~i. At least 50 percent of the total project area shall be preserved as open space. The open space computation shall not include road rights of way, or land covered by roads, structures or parking surfaces.~~
 - ~~ii. Open space shall include areas having physical characteristics that are unsuitable for development in their natural state and areas containing significant historic sites or unplatted cemeteries.~~
 - ~~iii. Open space may contain outdoor recreational facilities for use by the owners of residential units or the public.~~
 - ~~iv. The appearance of open space areas, including topography, vegetation and allowable uses, shall be preserved.~~

- v. ~~PUDs shall be connected to public water supply and sewer systems.~~
- vi. ~~Before final approval of a PUD is granted, the developer/owner shall provide for the preservation and maintenance, in perpetuity, of open space and the continuation of the development as a community.~~
- vii. ~~Approval from the DNR is required to ensure compliance with additional regulations.~~

11. Planned Unit Developments (PUD)

Commented [DP14]: Proposed for Section 11 of Article 17.

- a. Purpose. To protect and enhance the natural and scenic qualities of shoreland areas during and after development and redevelopment of high density residential uses.
- b. Density. Deviation from the minimum lot size standards of Table 17-3 of this ordinance is allowed if the standards in this Section are met.
- c. Processing of PUDs. Planned unit developments are processed according to the procedures in Section 154.758 and the standards of Article XVI and Article XVII, whichever is more restrictive. Approval cannot occur until all applicable environmental reviews are complete.
- d. Application for a PUD. The applicant for a PUD must submit the following documents prior to final action on the application request:
 - i. A property owners association agreement with mandatory membership, and consistent with 11 (h) (iv) of this ordinance.
 - ii. Deed restrictions, covenants, permanent easements or other instruments that:
 - 1. Address future vegetative and topographic alterations, construction of additional buildings, beaching of watercraft, and construction of commercial buildings in residential PUDs; and
 - 2. Ensure preservation and maintenance of open space in perpetuity accordance with the criteria and analysis specified in 11 (h) of this ordinance.
- e. Density Determination. Proposed new or expansions to existing planned unit developments must be evaluated using the following procedures:
 - i. Step 1. Identify Density Analysis Tiers. Divide the project parcel into tiers by drawing one or more lines parallel to the ordinary high water level at the following intervals, proceeding landward:

Commented [EB15]: Deed restrictions and covenants may be provided to address future vegetative and topographic alterations, construction of additional buildings, etc., but a permanent easement will likely be required over open space areas.

Classification	Tier Depth	
	No Sewer (ft)	Sewer (ft)
Recreational Development Lakes	267	267
Natural Environment Lakes	400	320
Tributary Rivers	300	300

- ii. Step 2. Calculate Suitable Area for Development. Calculate the suitable area within each tier by excluding all wetlands, bluffs, or land below the ordinary high water level of public waters.
- iii. Step 3. Determine Base Density

1. Divide the suitable area within each tier by the minimum single residential lot area in Table 17-3 for lakes to determine the allowable number of dwelling units, or base density, for each tier. For rivers, if a minimum lot area is not specified, divide the tier width by the minimum single residential lot width. Allowable densities may be transferred from any tier to any other tier further from the waterbody, but must not be transferred to any tier closer to the waterbody.
 2. All PUDs must meet the design standards in Section 11 (f) of this ordinance.
- iii. Step 4. Determine if the Site can Accommodate Increased Density.
- The PUD may provide for an increase in density of up to 20% allowed in the base zoning district or in Table 17-3, whichever is more restrictive, if:
- Structure setbacks from the ordinary high water level:
1. Are increased to at least 50 percent greater than the minimum setback; or
 2. The impact on the waterbody is reduced an equivalent amount through vegetative management, topography, or additional acceptable means and the setback is at least 25 percent greater than the minimum setback.

f. Design Criteria. All PUDs must meet the following design criteria:

i. General Design Standards.

1. Dwelling units must be clustered into one or more groups and located on suitable areas of the development.
2. Dwelling units must be designed and located to meet the dimensional standards, other than those for lot area and width, in Table 17-3:
3. Shore recreation facilities:
 1. Must be centralized and located in areas suitable for them based on a suitability analysis by the local unit of government, which shall consider susceptibility to flooding, existence of wetlands, soil and rock formations with severe limitations for development, severe erosion potential, steep topography, inadequate water supply or sewage treatment capabilities, near-shore aquatic conditions unsuitable for water-based recreation, important fish and wildlife habitat, presence of significant historic sites, or any other feature of the natural land likely to be harmful to the health, safety, or welfare of future residents of the proposed subdivision or of the city.
 2. The number of spaces provided for continuous beaching, mooring, or docking of watercraft must not exceed one for each allowable dwelling unit in the first tier.
 3. Launching ramp facilities, including a small dock for loading and unloading equipment, may be provided for use by occupants of dwelling units located in other tiers.

Commented [EB16]: Are riparian or nonriparian lot size standards to be used? This is obvious for 2nd and 3rd tiers and so on, but not so obvious for 1st tiers.

Commented [DP17]: Use riparian lot areas for 1st tier. If there is no 1st tier (e.g. development is in SL but contains no riparian land or there are no lots in the 1st tier) Otherwise, use nonriparian lot sizes for all other tiers.

Commented [DP18]: For lot area of rivers, Table 17.3 refers to underlying zoning. These can range widely from small to large lots, however, lot widths next to a tributary are fixed. What are the results of a minimum lot size of 7000 sf and a required width of, say, 150 feet – a lot depth of 47 feet? Is this practical in Lake Elmo?

Commented [EB19R18]: I think this is something that would need to be reviewed on a case by case basis. This example does not make sense and will have to be clarified by the MNDNR.

Commented [DP20]: Since the city specifies lot area for river lots as “underlying” zoning, this sentence can be removed. Table 17.3 includes the minimum lot widths, so removing sentence is probably best to eliminate confusion.

Commented [EB21]: I’m not sure I’m understanding what this is saying correctly. Do you mean divide the underlying zoning districts’ minimum lot area by the SL required minimum lot width. How I’m reading it is:
Min Tier Width (Does this mean 267, 300, etc.(Tier Depth?)) / Min Single Residential Lot Width (of zoning district?).

Can you please clarify?

Commented [DP22]: Unless the city envisions hotels, resorts or campgrounds in shoreland, commercial PUD provisions and references are not needed and have been removed.

Commented [DP23]: Consistent with existing PUD standards

Commented [DP24]: Definition for this?

Commented [EB25R24]: I included the definition from the previous shoreland ordinance.

Commented [JS26R24]:

- 4. At least 50 percent of the total project area shall be preserved as open space and must meet standards outlined in 11 (g) of this ordinance.
- 5. PUDs shall be connected to public water supply and sewer systems. When sewer is not available, individual septic systems are not allowed; community septic systems are required.
- 6. Approval from the DNR is required to ensure compliance with additional regulations.
- ii. Structures, parking areas, and other facilities must be treated to reduce visibility as viewed from public waters and adjacent shorelands by vegetation, topography, increased setbacks, color, or other means acceptable to the local unit of government, assuming summer, leaf-on conditions. Vegetative and topographic screening must be preserved, if existing, or may be required to be provided.
- iii. Accessory structures and facilities, except water oriented accessory structures, must meet the required structure setback and must be centralized.

Commented [EB27]: This is language from the 2014 ordinance amendment.

Commented [EB28]: This was added to provide an option for developments to which sewer is not available.

g. Open Space Requirements.

- i. Open space must constitute at least 50 percent of the total project area and must include:
 - 1. Areas with physical characteristics unsuitable for development in their natural state and areas containing significant historic sites or unplatted cemeteries;
 - 2. Portions of the shore impact zone preserved in its natural or existing state as follows:
 - i. For existing residential PUD's, at least 50 percent of the shore impact zone
 - ii. For new residential PUDs, at least 70 percent of the shore impact zone.

Commented [EB29]: This was added from our 2014 ordinance.

- ii. Open space may include:
 - 1. Outdoor recreational facilities for use by owners of lots in the subdivision and by the general public; and
 - 2. Stormwater detention facilities, subsurface sewage treatment systems (if the use of the space is restricted to avoid adverse impacts on the systems), and other required site improvements not prohibited herein may be applied to this requirement.

Commented [DP30]: These provisions, or similar, may be in other parts of the code. If so, they may be acceptable. If these exist, I couldn't find them.

Commented [EB31R30]: It more or less says this through this part of the PUD Ordinance.: *Open space.* For all PUDs, at least 20% of the project area not within street rights-of-way shall be preserved as protected open space. Other public or site amenities may be approved as an alternative to this requirement. Any required open space must be available to the residents, tenants, or customers of the PUD for recreational purposes or similar benefit. Land reserved for storm water detention facilities and other required site improvements may be applied to this requirement. Open space shall be designed to meet the needs of residents of the PUD and the surrounding neighborhoods, to the extent practicable, for parks, playgrounds, playing fields and other recreational facilities.

However, because this does not explicitly restrict commercial facilities or lots, I think it best to keep it in here. I did add some language that allows stormwater detention facilities and other site improvements not prohibited herein to be located in open space.

- i. Open space shall not include:
 - 1. Road rights-of-way, or land covered by roads, structures or parking surfaces.
 - 2. Lots, unless owned in common by an owners association; road rights-of-way, or land covered by road surfaces; parking areas, or structures, except water-oriented accessory structures or facilities; and
 - 3. Commercial facilities or uses.

Commented [EB32]: This was added from our 2014 ordinance.

h. Open Space Maintenance and Administration Requirements.

- i. Open space preservation. The appearance of open space areas, including topography, vegetation, and allowable uses, must be preserved.

Commented [DP33]: These provisions, or similar, may be in other parts of the code. If so, they may be acceptable. If these exist, I couldn't find them.

- ii. Before final approval of a PUD is granted, the developer/owner shall provide for the preservation and maintenance, in perpetuity, of open space and the continuation of the development as a community.
- iii. The instruments must prohibit:
 - 1. Commercial uses ;
 - 2. Vegetation and topographic alterations other than routine maintenance;
 - 3. Construction of additional buildings or storage of vehicles and other materials; and
 - 4. Uncontrolled beaching of watercraft.
- iv. Development organization and functioning. All planned unit developments must use an owners association with the following features:
 - 1. Membership must be mandatory for each dwelling unit owner and any successive owner;
 - 2. Each member must pay a pro rata share of the association's expenses, and unpaid assessments can become liens on units or dwelling sites;
 - 3. Assessments must be adjustable to accommodate changing conditions; and
 - 4. The association must be responsible for insurance, taxes, and maintenance of all commonly owned property and facilities.

Commented [EB34]: This is the exact language provided in regards to open space preservation in City-approved 2014 ordinance.

Commented [DP35]: These provisions, or similar, may be in other parts of the code. If so, they may be acceptable. If these exist, I couldn't find them.

12. ~~Nonconformities. Nonconformities, substandard lots and structures, and nonconforming on-site sewage treatment systems within shoreland areas shall meet the requirements specified in Article IV of this chapter.~~

- a. ~~All legally established nonconformities as of the date of this ordinance may continue, but will be managed according to Minnesota Statutes, Section 462.357 Subd. 1e and other regulations of this community for alterations and additions; repair after damage; discontinuance of use; and intensification of use.~~
- b. ~~All additions or expansions to the outside dimensions of an existing nonconforming structure must meet the setback, height, and other requirements of this ordinance. Any deviation from these requirements must be authorized by a variance.~~
- a. ~~The expansion or enlargement of a riparian substandard structure shall meet the shoreland development standards set forth in subsection (C)(3) except as follows:~~
 - i. ~~The extension, enlargement or alteration of a riparian substandard structure or sanitary facility may be permitted on the side of the structure or facility facing away from the OHWL without following the variance process.~~
 - ii. ~~An improvement to a riparian substandard structure or sanitary facility may be allowed to extend laterally by a conditional use permit (parallel to the OHWL) when the improvement is in compliance with the other dimensional standards of this chapter. In no case shall the improvement extend closer to the OHWL than the existing structure.~~
 - i. ~~Decks may be allowed without a variance where riparian dedication is not required, provided as follows:~~
 - 1. ~~A thorough evaluation of the property and structure reveals no reasonable location for a deck meeting or exceeding the existing OHWL setback of the structure;~~

- 2. ~~The deck encroachment toward the OHWL does not exceed 15 percent of the existing shoreline setback of the structure from the OHWL or does not encroach closer than 30 feet, whichever is more restrictive; and~~
 - 3. ~~The deck is constructed primarily of wood, and is not roofed or screened.~~
 - ii. ~~If a riparian substandard structure is demolished, replacement shall comply with the dimensional standards of this section.~~
 - b. ~~Any deviations from the standards set forth in subsection (C)(3) must be authorized by a variance.~~
 - c. ~~*Nonconforming Sewage Treatment Systems:*~~
 - iii. ~~A sewage treatment system not meeting the requirements of subsection (C)(10) (a) must be upgraded, at a minimum, at any time a permit or variance of any type is required for any improvement on, or use of, the property. For the purpose of this provision, a sewage treatment system shall not be considered nonconforming if the only deficiency is the sewage treatment system's improper setback from the OHWL.~~
 - iv. ~~Upgrading or replacement of any nonconforming system will be required within a reasonable period of time which will not exceed 2 years. Sewage systems installed according to all applicable local shoreland management standards adopted under Minnesota Statutes, section 103F, in effect at the time of installation may be considered as conforming unless they are determined to be failing, except that systems using cesspools, leaching pits, seepage pits, or other deep disposal methods, or systems with less soil treatment area separation above groundwater than required by the Minnesota Pollution Control Agency's Chapter 7080 for design of on-site sewage treatment systems, shall be considered nonconforming.~~
 - d. ~~*Construction on nonconforming lots of record:*~~
 - v. ~~Lots of record in the office of the county recorder on the date of enactment of local shoreland controls that do not meet the requirements of Table 17-3 of this ordinance may be allowed as building sites without variances from lot size requirements provided the use is permitted in the zoning district, the lot size meets the minimum restrictions of the underlying zoning district, the lot has been in separate ownership from abutting lands at all times since it became substandard, was created compliant with official controls in effect at the time, and sewage treatment and setback requirements of this ordinance are met.~~
 - vi. ~~If, in a group of two or more contiguous lots under the same ownership, any individual lot does not meet the requirements of Table 17-3 of this ordinance the lot must not be considered as a separate parcel of land for the purposes of sale or development. The lot must be combined with the one or more contiguous lots so they equal one or more parcels of land, each meeting the requirements of Table 17-3 of this ordinance as much as possible.~~
13. Surface Water-Oriented Uses. ~~Uses with needs to have access to and use of public waters may be located on parcels or lots with frontage on public waters must meet the following standards:~~
- i. ~~In addition to meeting impervious coverage limits, setbacks, and other zoning standards, uses must be designed to incorporate topographic and vegetative screening of parking areas and structures.~~
 - ii. ~~Uses that require short-term watercraft mooring for patrons must centralize these facilities and design them to avoid obstructions of navigation and to be the minimum size necessary to meet the need.~~
 - iii. ~~No advertising signs or supporting facilities for signs may be placed in or upon public waters. Signs conveying information or safety messages may be placed in~~

or on public waters by a public authority or under a permit issued by the county sheriff.

- iv. Signs may be placed, when necessary, within the shore impact zone if they are designed and sized to be the minimum necessary to convey needed information.
- v. Other outside lighting may be located within the shore impact zone or over public waters if it is used primarily to illuminate potential safety hazards and is shielded or otherwise directed to prevent direct illumination out across public waters. This does not preclude use of navigational lights.

D. Administration.

1. Variances. Variances may only be granted in accordance with Minnesota Statutes, Section 462.357 and are subject to the following:

a. A variance may not circumvent the general purposes and intent of this ordinance; and

b. For properties with existing sewage treatment systems, a certificate of compliance, consistent with Minnesota Rules Chapter 7082.0700 Subp. 3, is required for variance approval. A sewage treatment system shall be considered compliant if the only deficiency is the system's improper setback from the ordinary high water level.

2. Conditional Uses. All conditional uses in the shoreland area are subject to a thorough evaluation of the waterbody and the topographic, vegetation, and soil conditions to ensure:

a. The prevention of soil erosion or other possible pollution of public waters, both during and after construction;

b. The visibility of structures and other facilities as viewed from public waters is limited;

c. There is adequate water supply and on-site sewage treatment; and

d. The types, uses, and numbers of watercraft that the project will generate are compatible in relation to the suitability of public waters to safely accommodate these watercraft.

3. Mitigation.

a. In evaluating all variances, conditional uses, zoning and building permit applications, the zoning authority shall require the property owner to address, when related to and proportional to the impact, the following conditions to meet the purpose of this ordinance, to protect adjacent properties, and the public interest:

- 1. Advanced storm water runoff management treatment;
- 2. Reducing impervious surfaces;
- 3. Increasing setbacks from the ordinary high water level;
- 4. Restoration of wetlands;
- 5. Limiting vegetation removal and/or riparian vegetation restoration;
- 6. Provisions for the location, design, and use of structures, sewage treatment systems, water supply systems, watercraft launching and docking areas, and parking areas; and
- 7. Other conservation-designed conditions the zoning authority deems necessary.

b. In evaluating plans to construct sewage treatment systems, roads, driveways, structures, or other improvements on steep slopes, conditions to prevent erosion and to preserve existing vegetation screening of structures, vehicles, and other facilities as viewed from the surface of public waters assuming summer, leaf-on vegetation shall be attached to permits.

4. Notifications to the Department of Natural Resources

a. All notices of public hearings to consider variances, ordinance amendments, or conditional uses under shoreland management controls must be sent to the commissioner or the commissioner's designated representative at least ten days before the hearings. Notices of hearings to consider proposed subdivisions/plats must include copies of the subdivision/plat.

b. All approved ordinance amendments and subdivisions/plats, and final decisions approving variances or conditional uses under local shoreland management controls must be sent to the commissioner or the commissioner's designated representative and postmarked within ten days of final action. When a variance is approved after the Department of Natural Resources has formally recommended denial in the hearing record, the notification of the approved variance shall also include the summary of the public record/testimony and the findings of facts and conclusions which supported the issuance of the variance.

c. Any request to change the shoreland management classification of public waters must be sent to the commissioner or the commissioner's designated representative for approval, and must include a resolution and supporting data as required by Minnesota Rules, part 6120.3000, subp.4.

d. Any request to reduce the boundaries of shorelands of public waters must be sent to the commissioner or the commissioner's designated representative for approval. The boundaries of shorelands may be reduced when the shoreland of water bodies with different classifications overlap. In these cases, the topographic divide between the water bodies shall be used for adjusting the boundaries.

~~1. Required Notice to the Department of Natural Resources. The zoning administrator shall send copies of notices of any public hearings to consider variances, plats, ordinance amendments, PUDs or conditional uses under local shoreland management controls to the commissioner of the department of natural resources or his designee at least ten days prior to the hearings. In addition, a copy of the approved amendments, plats, variances and conditional uses shall be sent to the commissioner or his designee within ten days of the final decision.~~

5. Subsurface Sewage Treatment System Certificate of Compliance. A certificate of compliance, consistent with Minnesota Rules Chapter 7082.0700 Subp. 3, is required whenever a permit or variance of any type is required for any improvement on or use of the property. A sewage treatment system shall be considered compliant if the only deficient is the system's improper setback from the ordinary high water level.

Commented [EB36]: I added this but also added subsurface sewage treatment system to the language, as I wanted to clarify for the reader that may not know the MN rules that the certificate of compliance was in regards to SSTS, not just any permit or variance.

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

SECTION 4. Adoption Date. This Ordinance 08-___ was adopted on this ____ day of ____ 2016, by a vote of ___ Ayes and ___ Nays.

LAKE ELMO CITY COUNCIL

Mike Pearson, Mayor

ATTEST:

Julie Johnson, City Clerk

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