



City of Lake Elmo

3800 Laverne Avenue North
Lake Elmo, Minnesota 55042

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NOTICE OF MEETING

The City of Lake Elmo
Planning Commission will conduct a meeting on
Monday, September 28, 2009, at 7:00 p.m.

AGENDA

1. Pledge of Allegiance
2. Approve Agenda
3. Approve Minutes
 - a. None.
4. Public Hearings
 - a. **CONDITIONAL USE PERMIT AMENDMENT:** Consideration of an application to amend an existing Conditional Use Permit for Country Sun Farm & Greenhouse at 11211 60th Street North by adding acreage to the existing 43 acres. The areas proposed to be added to the permit would include area for overflow parking, the potential movement of the existing greenhouse, and movement of other uses such as a corn maze, display area, and hayride route. The amendment would also reclassify some of the existing uses as an Agricultural Entertainment Business.
 - b. **WIRELESS COMMUNICATION ORDINANCE AMENDMENT:** Consideration of an ordinance to replace Section 150.110 – 150.126 regarding Wireless Communications Facility Ordinance with a new, revised ordinance to address items such as preferred location, height restrictions, and application requirements for wireless towers.
5. Business Items
 - a. Review of OP Buffer Setbacks
6. City Council Updates
 - a. September 15, 2009
 - i. Revised Landscape Plan for St. Croix's Sanctuary – approved
 - ii. Storage of Boats/Trailers; Direction from Council
7. Adjourn

ITEM: Continue previously tabled public hearing and consider an application for a Conditional Use Permit Amendment to add 24 acres and a 39,900 square foot parking lot to Country Sun Farm and Greenhouse at 11211 60th Street and to consider reclassifying some existing uses as Agricultural Entertainment Business.

REQUESTED BY: Country Sun Farm & Greenhouses

SUBMITTED BY: Kelli Matzek, City Planner

REVIEWED BY: Kyle Klatt, Planning Director

SUMMARY AND ACTION REQUESTED:

The Planning Commission is being asked to continue the public hearing tabled from the September 14th meeting, take any comment and to consider the application from Country Sun Farm & Greenhouse. The applicants are requesting essentially two separate, but related proposals.

The first part of the application is the review of the expansion for the existing Conditional Use Permit (CUP). The existing CUP allows greenhouses and sales on approximately 43 acres. The applicants are requesting this CUP be expanded to include an additional 24 acres to the east to provide additional room to move existing uses such as a greenhouse, corn maze, and hay ride route. The reasoning for the request, as stated by the applicant, is to prepare for a future improvement to the Lake Elmo Avenue and State Highway 36 interchange. That land would instead be utilized as a frontage road for Highway 36.

Staff is recommending denial of this as the property on which the relocation of the uses is proposed is zoned Rural Residential and does not permit, nor conditionally permit those uses specified by the existing CUP.

The applicants are also interested in adding an overflow parking area within this "new" 24 acres. The proposed 39,900 square foot area is to be created of crushed limestone and/or recycled pavement millings. The property owners would like to utilize a portion of the area disturbed from work being performed by Northern Natural Gas. This additional parking would help to address past concerns of removing parked vehicles from State Highway 36.

The second part of the application is the reclassification of some existing uses on the original 43 acres from "sales" to "Agricultural Entertainment Business" which was added as a conditionally permitted use in both the Agricultural and Rural Residential zoning districts in 2008. In addition, this new CUP would include the additional 24 acres being proposed for the CUP amendment as mentioned above. Approval of this CUP would allow the movement of the corn maze and hay ride route to this new area, but would not allow the movement of the greenhouse as it would not be considered part of the Agricultural Entertainment Business.

Although staff does not anticipate any concerns with the existing uses on the site, by reclassifying and identifying what has evolved over the past few decades on the site, the documentation will help to clarify the currently vague and often silent CUPs that have been approved and amended over time. Also, staff finds this a more applicable definition of this use than the previously utilized

“greenhouse” and “sales lot” in review of the CUP. An analysis of the review criteria are outlined in the full staff report attached.

ADDITIONAL FACTS:

- There was not an indication by the applicant of an intent to increase/expand the current use on this proposed additional acreage, but instead to relocate the existing uses and structures.
- Previous staff reports have identified this site to have received a CUP in 1979 for the greenhouse business being conducted on the site for years previous. However, staff has been unable to find the original CUP.
- The land area included in the CUP has expanded over the decades through approval of CUP amendments from 8 acres to its current configuration of over 43 acres.
- Past approved amendments have permitted the inclusion of greenhouse expansions, retail sales, and sale of “carnival” type foods and beverages.
- The size of the proposed overflow parking area will NOT meet the city’s threshold for requiring additional engineering, but will require a permit from the Valley Branch Watershed District and the Minnesota Department of Transportation.

STAFF RECOMMENDATION

Staff is recommending the Planning Commission continue the public hearing so as to take any testimony, consider the application, and provide a recommendation to the City Council on the two separate parts of the application described above.

Staff is recommending denial of the amendment to the existing CUP to include the additional 24 acres for reasons stated in the full staff report.

Staff is recommending approval of the CUP for Agricultural Entertainment Business on the entire 67 acres proposed for Country Sun Farm and Greenhouse as well as the improved overflow parking for reasons stated in the full staff report with six conditions.

Suggested motion for consideration:

*Move to deny the amendment of the existing CUP to include 24 acres.
Move to approve the CUP for Agricultural Entertainment Business on the entire 67 acre site for Country Sun Farm and Greenhouse and to allow the construction of the improved overflow parking lot.*

SUGGESTED ORDER OF BUSINESS:

- | | |
|--|---|
| • Introduction | Kelli Matzek, City Planner |
| • Report | Kelli Matzek, City Planner |
| • Questions to staff | Chair facilitates |
| • Comments from applicant | Keith Bergmann/Dick Bergmann, Applicant |
| • Questions/comments from the public, if any (up to 3 minutes) | Chair facilitates |
| • Discussion | Chair facilitates |
| • Consider recommending approval of application | Commission |

ATTACHMENTS: Location map
 Applicant’s Submittals

City of Lake Elmo Planning Department
Conditional Use Permit Amendment Request

To: **Planning Commission**

From: Kelli Matzek, City Planner

Meeting Date: **9-14-09**

Applicant: **Country Sun Farm Greenhouses**

Owner: Richard and Eileen Bergmann; Keith Bergmann

Location: **11211 60th Street North**

Zoning: A – Agricultural and RR – Rural Residential

Introductory Information

***Requested
CUP
Amendment:***

The applicants are seeking to amend an approved conditional use permit for the site at 11211 60th Street North to add approximately 24 acres to the area covered by the existing conditional use permit and to add an improved overflow parking area of 39,900 square feet (87 parking stalls). The parking lot is proposed to be composed of crushed limestone and/or recycled pavement millings.

The second portion of the application is to clarify the existing uses on the property and to reclassify the appropriate uses from the current designation of “sales lot” to the more appropriate term “Agricultural Entertainment Business.” Such uses include the haunted house, hayride, and a corn maze.

***Property
Information:***

The City’s files contain records that reference back to 1979 for a smaller area of the applicant’s property. At that time the owners were advised that the greenhouse business they had conducted on the site for some years would require a CUP. A CUP was obtained and has since been amended over time for the addition of acreage, additional uses, and expansion of existing structures.

History of the CUP amendments:

Resolution 83-8 (January 1983): authorizes the operation of a greenhouse and sales lot

Resolution 84-43 (July 1984): expanding the area covered by the CUP for the use of greenhouses and sales lot; variance approval to side yard setback

Resolution 87-27: allowing a temporary use for the operation of an asphalt mix plant (since expired)

Resolution 2003-070: allows the sale of food items such as snacks and carnival type

(cont.) foods/beverages

Resolution 2004-039: allows the expansion of the greenhouses

The CUP was also reviewed annually for a number of years by city staff, primarily in the 80's and 90's. The staff at that time found the uses on the site to be acceptable and recommended approval of the annual review for the Country Sun Farm & Greenhouse CUP.

Staff could not find mention in the existing CUP of the uses on the property beyond the greenhouses and sales. Although there was no mention of uses on the site such as the haunted house, hay rides, corn maze, or petting farm in the resolution, there was mention in past staff reports to both the commission and the council that the uses did exist at that time.

Existing Uses on the Site as identified by the applicant:

Greenhouse growing range
Corn maze
Petting zoo/farm
Growing of field crops
House and care for livestock
Raise flowers
Hayrides
Halloween decorations
Haunted House
Children Activities and Games
Seasonal Sales of fresh flower and plant material
Seasonal Sale of Christmas trees and related Christmas decorations
Seasonal Sale of pumpkins
Sale of concessions (as previously outlined in CUP amendment approval)

Activity locations are depicted in the applicant's submittals which are attached at the end of the report.

Applicable § 154.018 **CONDITIONAL USE PERMITS.**
Codes:

(A) *Granting/denial.* Conditional use permits may be granted or denied in any district by action of the governing body according to the standards for that district in granting a conditional use permit, the governing body shall consider the advice and recommendations of the Planning Commission and the effect of the proposed use upon the health, safety, morals, convenience, and general welfare of occupants of surrounding lands, existing and anticipated traffic conditions including parking facilities on adjacent streets and land, the effect on utility and school capacities, the effect on property values of property in the surrounding area, and the effect of the

(cont.) proposed use on the Comprehensive Plan. If it determines that the proposed use will not be detrimental to the health, safety, convenience, morals, or general welfare of the community nor will cause serious traffic congestion, nor hazards, nor will seriously depreciate surrounding property values, and that the use is in harmony with the general purpose and intent of this chapter and the Comprehensive Plan, the Council may grant the permits.

§ 11.01 DEFINITIONS.

AGRICULTURAL ENTERTAINMENT BUSINESS. An agricultural sales business that combines the elements and characteristics of agriculture and tourism, which is not necessarily located in an existing building. Examples of agricultural entertainment include: corn mazes, hay rides, sleigh rides, petting farms, on-farm tours, agricultural related museums, demonstrations of farming practices, techniques and methods, fee-based fishing and hunting, horseback riding, nature trails, haunted barns and similar activities which are related to agriculture.

AGRICULTURAL SALES BUSINESS. The retail sale of fresh fruits, vegetables, flowers, herbs, trees, or other agricultural, floricultural, or horticultural products produced on the premises. The operation may be indoors or outdoors, include pick-your-own opportunities, and may involve accessory sales of unprocessed foodstuffs; home processed food products such as jams, jellies, pickles, sauces; or baked goods and homemade handicrafts. The floor area devoted to the sale of accessory items shall not exceed 25% of the total floor area. No commercially packaged handicrafts or commercially processed or packaged foodstuffs shall be sold as accessory items. No activities other than the sale of goods as outlined above shall be allowed as part of the **AGRICULTURAL SALES BUSINESS.**

OPEN SALES LOTS. Lands devoted to the display of goods for sale, rent, lease, or trade, where the goods are not enclosed within a building.

§ 154.033 AG OR A – AGRICULTURAL.

- (A) *Permitted uses and structures.*
 - (9) Agricultural sales businesses subject to performance standards outlined in § 154.110;
- (B) *Uses permitted by conditional use permit.*
 - (1) Greenhouses;
 - (8) Agricultural entertainment businesses subject to the following performance standards: {see analysis on page 7 below}

§ 154.036 RR – RURAL RESIDENTIAL.

- (A) *Permitted uses and structures.*
 - (4) Agricultural sales businesses subject to performance standards outlined in § 154.110.
- (C) *Conditionally permitted uses.*
 - (4) Agricultural entertainment businesses subject to the requirements

outlined in § 154.033(B)(8).

Findings & General Site Overview

Site Data:	<p>Existing CUP Property <i>Lot Size:</i> Approximately 43 acres <i>Existing Use:</i> Country Sun Farm & Greenhouse operations <i>Existing Zoning:</i> A (Agricultural) <i>Property Identification Number (PID):</i> 09-029-21-12-0001</p> <p>Proposed Additional Land for CUP <i>Lot Size:</i> Approximately 24 acres <i>Existing Use:</i> Farm/Construction Site for Northern Natural Gas Project <i>Existing Zoning:</i> RR (Rural Residential) <i>Property Identification Number (PID):</i> 01-029-21-21-0007</p>
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Application Review:

CUP Amendment Review:	<p><i>Land Addition, Overflow Parking</i></p> <p>The applicants are requesting to add an additional 24 acres to the area currently operating under a CUP. The reasoning for the request as stated by the applicant is to prepare for a future improvement to the Lake Elmo Avenue and State Highway 36 interchange. The alteration to the intersection and a potential service road could displace some of the applicant's property currently utilized for the hay ride, corn maze, and greenhouses. That land would instead be utilized as a frontage road for Highway 36. The existing uses that would be displaced are proposed to be relocated to the proposed additional land to the East.</p> <p>The applicants are also interested in adding an overflow parking area. The proposed 39,900 square foot area is to be created of crushed limestone and/or recycled pavement millings. The parking lot is being proposed at this time to take advantage of work being done in that area currently by the Northern Natural Gas company within their easement. The company has been utilizing that portion of the applicant's land as a parking area for vehicles associated with the work. The property owners would like to utilize a portion of this as an overflow parking area as the area is already being compacted and disturbed. The remaining area will be restored. If additional overflow parking is needed, the grassy area will be utilized. This will minimize the impervious surface area, the resulting runoff, and reduce or eliminate the potential for vehicles visiting their business from parking on State Highway 36.</p> <p><u>However,</u> the land on which the current CUP operates is zoned Agricultural while the property proposed to be added to the CUP is zoned Rural Residential. While the Agricultural zoning district currently identifies greenhouses as a conditional use, the Rural Residential zoning district does not. Although neither zoning district currently</p>
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(cont.)

identifies a “sales lot” as either permitted or conditionally permitted, the CUP for the existing Agricultural zoned property will continue to allow that use on the existing property until it is discontinued for a year at which time that use will no longer be permitted. Therefore, staff will not move forward with analyzing the addition of the proposed 24 acres to the existing CUP (greenhouse and open sales) until such time as the city decides the code should be revised to permit greenhouses and/or sales lots in the Rural Residential zoning district or the land is rezoned to Agricultural.

The applicants may choose to perform such activities as listed in the Agricultural Sales Business definition on either properties as that is listed in both Agricultural and Rural Residential zoning districts as permitted uses. A greenhouse connected to a sales area may be considered an Agricultural Sales Business. Assuming the standards outlined in code are met, the applicants are allowed to do so without a conditional use permit.

Therefore, as the city code does not permit, nor conditionally permit, greenhouses or sales lots in the Rural Residential zoning district, **staff is recommending denial of this portion of the application.**

CUP Review: *Reclassification of Some Existing Uses as Agricultural Entertainment Business*

Country Sun Farm & Greenhouse has existed in some form since at least the 1970s according to previous staff reports and other city documents. Since then, the land area and the uses on the site have evolved over time. The original CUP was for the greenhouses to be utilized at the property on just a few acres. Resolution 83-8 identifies granting of a conditional use permit to allow greenhouse and sales lot at the Bergmann’s property. Other amendments have allowed the expansion of the existing greenhouses and sale of limited foods and beverages.

Although there are gaps in documentation, staff’s interpretation is that the current operation of Country Sun Farm & Greenhouse occupies the existing approximately 43 acres under the resolution conditionally permitting greenhouses, sales lot, and food sales (as specified). It is understood that previous staff interpreted the uses such as the corn maze, petting zoo, hay rides, agricultural sales, and kid activities being utilized on the existing site as being considered permitted under the conditional use permit or an incidental and accessory use to those permitted uses.

In 2008, the city code was amended (Ordinance 08-006) to include definitions for Agricultural Entertainment Business and Agricultural Sales Business. The Agricultural Entertainment Business use was added as conditionally permitted in both the Agricultural and Rural Residential zoning districts at that time. The Agricultural Sales Business was added as a permitted use in both districts.

(cont.) Because the owners of Country Sun Farm & Greenhouse have come in for an amendment to the CUP, staff is recommending at this time to reclassify some of the existing uses as an Agricultural Entertainment Business on the existing land area being operated under the CUP and to include the proposed additional 24 acres under this permit as well. Although the existing uses MAY continue to be considered a part of the "sales lot" identified in the CUP or considered an accessory use, by utilizing an existing definition that more accurately describes the uses on the site it may provide further clarity for both the city and the property owners in the future as to what is acceptable on the property.

This separate CUP would function in parallel with the existing CUP for the greenhouse, sales lot, and food sales as permitted on the "original" 43 acres and would stand alone on the newly added property, currently zoned RR – Rural Residential.

CUP Review Criteria (Section 154.018):

Effect of the proposed use upon the health, safety, morals, convenience, and general welfare of occupants of surrounding lands.

The permitting of an Agricultural Entertainment Business on the entire 67 acres would not have a negative impact on the health, safety, morals, convenience, or general welfare of occupants of surrounding lands.

The proposed addition of approximately 24 acres for movement of existing uses and the inclusion of an overflow parking area will not negatively effect the health, safety, morals, convenience, or general welfare of occupants of surrounding lands. The movement of the existing uses (hay ride, corn maze, etc.) in the future to this site will create more of a buffer between the seasonal uses and the existing residential homes. The property being requested to be considered for inclusion is currently bordered to the North by State Highway 36, to the South by vacant land previously used for agricultural purposes and to the East by a residential home owned by the applicant's son and dedicated open space property owned by the applicants. Therefore, it can be reasonably assumed that the movement of the uses further from the more densely built homes along Lake Elmo Avenue (County Road 17) would reduce the amount of impact of the uses.

Existing and anticipated traffic conditions (incl. parking facilities on adjacent streets and land)

The applicants' proposal includes the construction of a 39,900 square foot overflow parking area of 87 designated parking stalls as well as a designation of an additional grassy area if additional parking is necessary. This proposal will address existing and anticipated parking needs by providing additional parking for visitors on the site. By allowing additional parking, the applicants are working to address concerns expressed in the past of parking that has occurred on State Highway 36.

(cont.) Effect on utility and school capacities

The addition of land and an overflow parking area to the existing CUP will have no effect on utilities or school capacities.

Effect on property values of property in the surrounding area

The property values of the surrounding properties will not be negatively impacted by the addition of the land to the existing CUP. The Bergmanns' or their relatives own property to the East of the proposed additional land, State Highway 36 is to the North, and vacant/agricultural land is to the South. Should the land to the South be developed someday as an Open Space Preservation development (for which it is eligible by standards of minimum lot size), a buffer setback will likely be established which will serve as a barrier to the seasonal uses nearby, should that be a concern in the future.

Effect of the proposed use on the Comprehensive Plan (in harmony with the general purpose and intent of this chapter and the Comp Plan)

Both the property under the existing CUP and the proposed additional property are guided in the Future Land Use for "RAD – 0.45 DU/Acre" as designated in the Lake Elmo Comprehensive Plan. The RAD designation stands for Rural Agricultural Density and is related to the zoning classifications Agricultural (AG or A) and Rural Residential (RR).

The city does not have a slated timeframe for which this property (or any property outside of the future sewered areas) is scheduled to convert to a higher density residential use as an Open Space Preservation development, which is the 0.45 DU/Acre mentioned in the Land Use guidance section of the Comprehensive Plan.

The Comprehensive Plan states that the city has a "desire to preserve its rural character, open space and green corridors." In keeping with this statement and the verbally stated intent to allow owners of larger properties in the city to continue to make a living from their land, staff is interpreting the continued use of the existing Country Sun Farm & Greenhouse activities as compliant with the city's intent for large rural lots and the Comprehensive Plan.

The Agricultural Entertainment Business use was specifically included as a conditionally permitted use in the A and RR zoning districts in 2008, but not the commercially oriented zoning districts (HB, LB, GB) in the city. This action taken by the city provides direction to staff to continue the interpretation that an Agricultural Entertainment Business is, in fact, agricultural in nature and not commercial. Because the city code must be in harmony with the Comprehensive Plan, staff would find the addition of this language to the code in 2008 to be in accordance with the intent of the Comprehensive Plan.

Because the city code has listed Agricultural Entertainment Businesses as a conditionally permitted use and as the city has received an application for such, the

(cont.)

city must permit the use if it is found to meet all the outlined requirements for both a conditional use permit as well as the individual requirements listed for an Agricultural Entertainment Business.

Staff is stating the interpretation that the existing uses at Country Sun Farm & Greenhouse are in accordance with the Agricultural Entertainment Business use as defined and allowed by CUP in the A and RR zoning districts and therefore compliant with the Lake Elmo Comprehensive Plan. Should the city disagree with staff's interpretation one option would be to change the zoning for all Agricultural and Rural Residential zoned properties guided for this unsewered higher density residential land use in the future into a holding district. This holding district could restrict what can be done on the properties to ensure they are in keeping with the planned future residential development on the property. The Comprehensive Plan identifies 1,113 properties within the city as guided for this type of land development (although this number includes some existing OP development parcels).

Agricultural and Rural Residential Zoning District Review Criteria (Section 154.033)

(a) The property proposed to be used for agricultural entertainment must be located with direct access to a collector or arterial street as identified in the comprehensive plan;

Currently, the property has right-in right-out access off TH 36 as well as reasonable access off of County Road 17.

(b) All parking must occur on-site, be on a primary surface such as class five gravel or pavement; and must be set back at least 30 feet from all property lines;

As mentioned previously in this staff report, the applicants are proposing to add two overflow parking areas – one of which would be improved and the other to remain grass.

The applicants are proposing to construct the improved parking lot of crushed limestone and/or recycled pavement millings. This is consistent with the requirement for surface type.

Staff will add as a condition of approval that the parking area be 30 feet from all property lines. This should not be an issue.

(c) No more than 25% of the site may be covered with impervious surface and the remainder shall be suitably landscaped;

The applicants are no where near the 25 percent maximum impervious surface

(cont.)

coverage as all the area proposed to be covered under this CUP is largely open or used for agricultural purposes.

(d) Roof top or outside building mechanical equipment must be screened from view from adjacent properties and rights-of-way with an opaque material architecturally compatible with the building(s);

The applicants are not requesting to add any buildings at this time.

(e) Trash containers must be located inside or screened in an acceptable manner;

Staff will add this as a condition of approval.

(f) Discharge of firearms, including blanks, shall not be allowed on the property;

Although the discharge of firearms on the property may be detrimental to the business they are operating, staff will add this as a condition of approval.

(g) The property owner shall give the city permission to conduct inspections of the property in order to investigate complaints;

Staff will add this as a condition of approval.

(h) The property owner must take reasonable steps to prevent trespassing on adjacent properties by employees, contractors or patrons;

Existing buffers such as a tree line as well as a fence do provide a vegetative and fenced buffer of the property.

(i) Usable primary and alternate well and septic sites sized for the maximum anticipated usage of the property shall be identified on the property. Alternate sites shall be protected in the site plan design, and will only need to be used upon failure of a primary site; and

The applicants are currently operating with an existing well and septic system. Because they are not asking to add any buildings at this time which would require sanitary facilities or a water supply, staff would suggest this be addressed in the future if such a building is added.

(j) Adherence to the general review criteria applicable to all CUP applications.

Staff finds this criteria is met, as analyzed earlier in this report.

**CUP
Amendment
Conclusions:**

Staff would recommend **denial** of the CUP amendment request as the Rural Residential zoning district does not allow greenhouses or sales lots in the district. A greenhouse connected to a sales area may be considered an Agricultural Sales

(cont.) Business which is a permitted use in both the A and RR zoning districts.

Staff would recommend **approval** of an Agricultural Entertainment Business for Country Sun Farms & Greenhouses at 11211 60th Street North for the entire 67 acres as well as for the improved overflow parking area of 39,900 square feet.

Resident Concerns: Staff is not aware of any concerns surrounding the CUP amendment or additional CUP for the property reclassifying existing uses as an Agricultural Entertainment Business.

Additional Information:

- Neither the watershed district nor the DNR provided comment in opposition to the proposed master plan amendment.
- The proposed overflow parking area will require a permit from the Valley Branch Watershed District as the impervious surface area proposed would exceed 6,000 square feet.
- A Mn/DOT drainage permit will be required to ensure that current drainage rates to Mn/DOT right-of-way will not be increased.

Conclusion:

The applicants are seeking approval of the following for 11211 60th Street North:
A CUP Amendment to add approximately 24 acres to the existing CUP for Greenhouses and Open Sales Lot.

A CUP to reclassify and clarify uses existing on the property as an Agricultural Entertainment Business for the entire CUP area and to add an improved overflow parking lot of 39,900 square feet.

Commission Options:

The Planning Commission has the following options:

- A) Recommend approval of the CUP amendment, additional CUP classification of Agricultural Entertainment Business request, and improved overflow parking area;
- B) Recommend approval of the CUP amendment and improved overflow parking area, but denial of the additional CUP classification of Agricultural Entertainment Business request.
- C) Recommend denial of the CUP amendment, improved overflow parking area, and additional CUP classification of Agricultural Entertainment Business request;

The 60-day review period for this application expires on 10-19-09, but can be extended an additional 60 days if more time is needed.

Staff Rec: Staff is recommending denial of the CUP amendment to add 24 acres and an overflow parking area at 11211 60th Street North based on the following:

1. The Rural Residential zoning district does not permit, nor conditionally permit, greenhouses or sales lots which is what the existing CUP is designated. Therefore, the movement of the greenhouse not utilized in part for sales onto the proposed 24 acres would not be allowed.

Staff is recommending approval of the additional CUP reclassifying some of the existing uses on the property from "sales lot" to Agricultural Entertainment Business, to cover the additional 24 acres as an Agricultural Entertainment Business, and to build an overflow parking area at 11211 60th Street North based on the following:

1. In 2008, the City of Lake Elmo approved Ordinance 08-006 which defined Agricultural Entertainment Business and identified the use as conditionally permitted in the Agricultural and Rural Residential zoning districts.
2. The applicants are proposing to have the additional 24 acres available for use by Country Sun Farm & Greenhouse in anticipation of needing to relocate existing uses from one property to another in response to potential future construction of a frontage road and reconfiguration of the intersection of County Road 17 and State Highway 36.
3. The expansion of land and potential movement of uses would reduce the impact to adjacent neighbors.
4. The addition of the overflow parking area would take advantage of existing disrupted areas as a result of work done by Northern Natural Gas.
5. The proposed overflow parking areas (both improved and grass) would reduce or eliminate the parking that may take place on State Highway 36 by visitors to the site.
6. The CUP for an Agricultural Entertainment Business at this time does not permit the increase of intensity of the use, but instead clarifies the uses on the site for staff and the property owners.
7. The conditions outlined in both Section 154.018 for Conditional Use Permits and Section 154.033 for Agricultural Entertainment Businesses are met.

With the following conditions:

1. The applicants must obtain any required permits from the Valley Branch Watershed District and the Minnesota Department of Transportation.
2. The designated parking area shall be 30 feet from all property lines.
3. Trash containers must be located inside or screened in an acceptable manner.
4. Discharge of firearms, including blanks, shall not be allowed on the property.
5. The property owner shall give the city permission to conduct inspections of the property in order to investigate complaints.
6. Future improvements including the relocation of any existing structures to the site, must comply with the process outlined in Section 151.070 Plan Review.

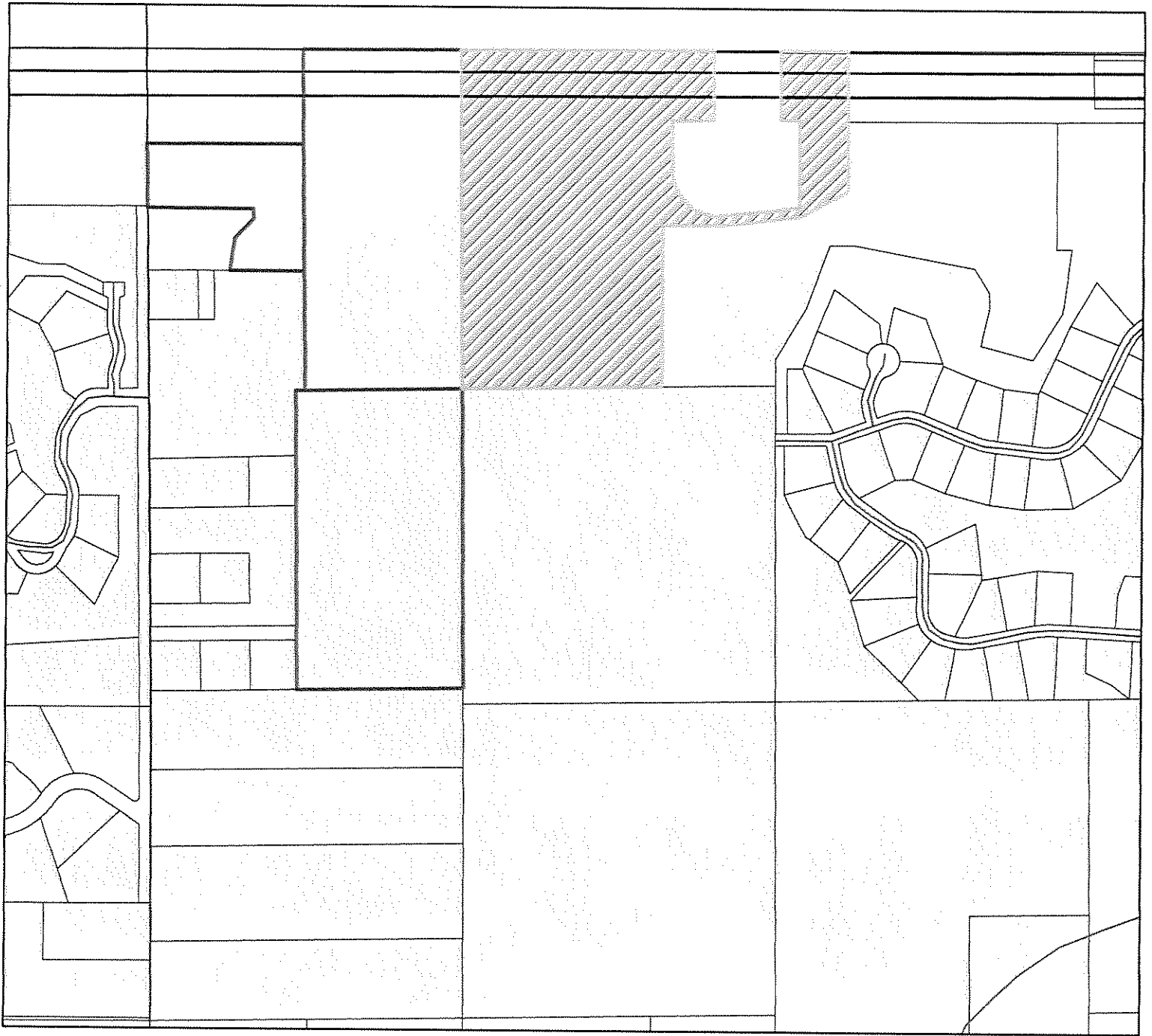
Denial Motion | To recommend denial of the requests, you may use the following motion as a guide:

Template: | **I move we recommend that Council deny both the requested Conditional Use Permit Amendment and the addition of a CUP for an Agricultural Entertainment Business at 11211 60th Street North based on the following findings...(please site reasons for the recommendation)**

Denial/ | To recommend approval of the requests, you may use the following motion as a guide:
Approval

Motion
Template: | **I move we recommend that Council denies the requested Conditional Use Permit Amendment and approval of the addition of a CUP for an Agricultural Entertainment Business for the entire 67 acres at 11211 60th Street North based on the following findings ...(use staff's findings provided above or cite your own)**

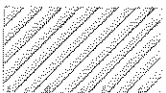
cc: Richard and Eileen Bergmann, applicants
Keith Bergmann



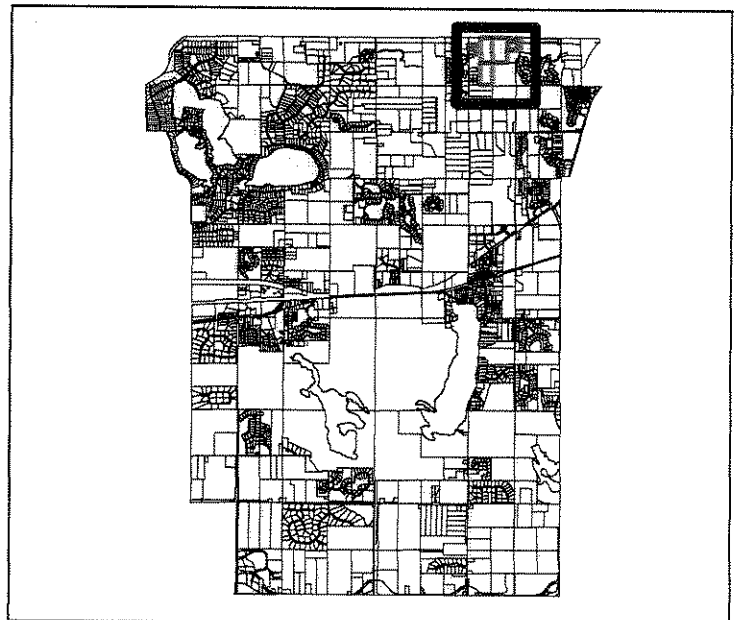
11211 60th Street North Country Sun Farm & Greenhouse



Existing CUP Area



Proposed Additional CUP Area



To whom it may concern:

After recent discussions with City Staff, I have prepared some additional maps of Country Sun Farm's layout, to better describe the activities taking place at Country Sun Farm.

First, we are actually asking about two different issues with respect to what we are requesting on our CUP requests. First we would like to place additional property which we own into our CUP as the highway 36, Lake Elmo Ave. intersection plans we have been looking at with the city, county and state, essentially wipe out a large portion of our property which is currently in CUP. Basically, when the project goes through, our greenhouse growing range, corn maze, and most of our petting zoo area will be part of a road system. It is for these reasons that we are requesting to add the additional land under our CUP so that when the time comes, we can make plans with the city on how to best move some of these activities from one location to another. We would like to do this at this time, and not wait for the roads to actually start pushing there way through, so that we can make better plans and preparations as we await this projects arrival and completion.

Secondly, we are asking that we be placed under the Agricultural Entertainment Business category, as it was brought to our attention that this new category was created to basically address businesses such as ours. Our current CUP does not outline very well what we are and are not allowed to do on the property, and it would seem that what we have previously been allowed to do would fit very well into this new category. Essentially we are not asking that we change anything other than to categorize our business as something which the city has recently so well defined.

Finally, the maps included:

The red highlighted area shows our existing area under the current CUP. Within this area, we grow field crops, house and care for livestock, and raise flowers. Our fall hayrides also drive around this area and show people our fields and animals, and Halloween decorations which we seasonally put up and take down.

The orange highlighted area shows where on the property we have activities and decorations for the public to walk around at their leisure and explore. Included in this area is our haunted house (which is only viewed from the outside), our petting zoo, our corn maze, the loading and unloading area for the hay ride, and area for kids activities and games.

The blue highlighted area depicts the property which we are asking be placed under our current CUP. The plans for this area would be to move some or all of the existing activities from the orange area to this location depending on what is done with the highway 36, Lake Elmo Ave. intersection project. Also, the greenhouse growing range, and some parking area would possibly have to be moved due to the road project. Finally, the hayrides would drive through fields in this area as the pick up and drop off location for the hayride would possibly also need to be moved.

The green highlighted area shows property owned by Country Sun Farm which will be maintained as a buffer area between the activities taking place at Country Sun Farm, and newly built houses in recently added developments. This land is currently in the Minnesota Land Trust, and has been set aside to perpetuate and maintain its current green space and natural elements and features.

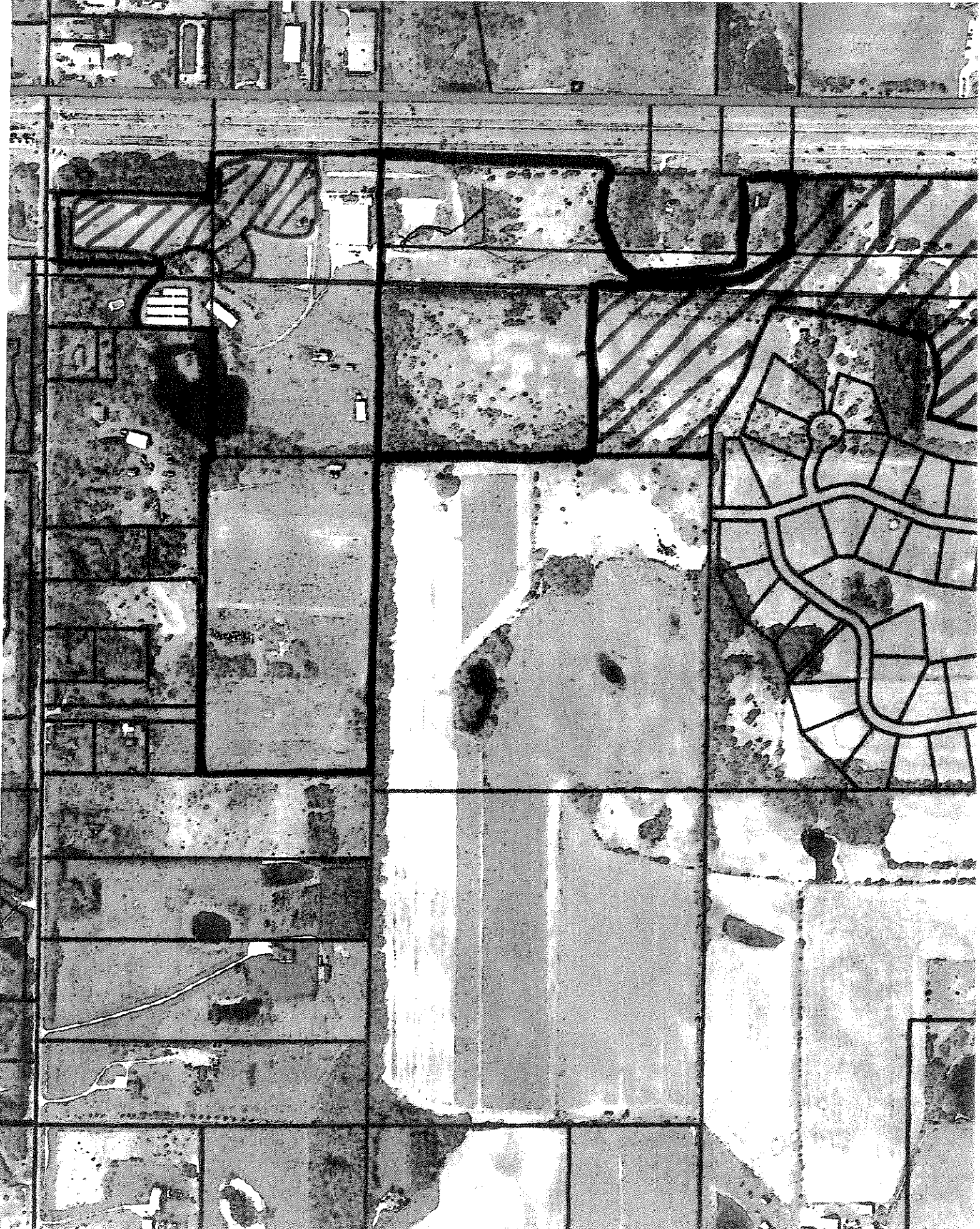
Country Sun Farm and Greenhouse's CUP

It has recently been brought to our attention that the city through a review and reworking process of local codes has made a determination for specific conditional use permits which fall under specific categories.

Our current CONDITIONAL USE PERMIT is very vague and difficult to interpret. We are simply a greenhouse with a sales lot, which takes up approximately 47 acres. We feel that the cities new determination of an AGRICULTURAL ENTERTAINMENT BUSINESS more appropriately defines what it is that our business does.

Our business currently consists of seasonal sales of fresh flower and plant material, Christmas trees and related Christmas decorations, and Halloween pumpkin sales and fall family entertainment. Under the AGRICULTURAL ENTERTAINMENT BUSINESS category are listed many examples of what this entertainment may include such as corn mazes, hay rides, petting farms, haunted barns and similar activities.

Over the past decade or more, many of these activities have taken place on our farm, and have been considered in compliance with our current CONDITIONAL USE PERMIT. We feel though that to have greater clarity, we should be redefined as an AGRICULTURAL ENTERTAINMENT BUSINESS. Under such a definition there would be a greater more concise determination of what we do. Examples of the entertainment which we feel should be included in our CONDITIONAL USE PERMIT as an AGRICULTURAL ENTERTAINMENT BUSINESS, would include hay rides, corn mazes, petting farms, haunted barns (house), Halloween themed decorations, children's games, play areas and structures, and existing concessions, previously defined and approved.



Peking Zoo Holding Pens

Greenhouse and Sales Building

Concession Stand within Greenhouse and Sales Building

Haunted House

Corn Maze Area

Ticket Booth

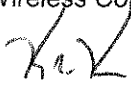
Animal/Farm Buildings

Pole Barn / Shop Area

Greenhouse Growing Range



Planning Commission
Date: 9/28/09
Public Hearing
Item: 4b

ITEM: Proposed Revisions to the Wireless Communications Ordinance
SUBMITTED BY: Kyle Klatt, Planning Director 
REVIEWED BY: Kelli Matzek, City Planner

SUMMARY AND ACTION REQUESTED:

The Planning Commission is being asked to review and hold a public hearing on proposed revisions to the Wireless Communications Ordinance. The draft ordinance has been prepared based on initial feedback from the Planning Commission and City Council during preliminary workshop sessions, a public open house related to the provision of wireless communications services in the community, and subsequent meetings and a second open house at which additional comments were received by the City. The final draft document is attached in two distinct versions: one that depicts all revisions and tracks changes since the last Planning Commission review and a clean version that removes all markings in the document.

The intent of the proposed ordinance revisions is to bring the existing code up to date and to balance the need for the City to allow communications companies to provide service in Lake Elmo while minimizing the potential impacts from new facilities.

ADDITIONAL INFORMATION:

Given the length and complexity of the proposed ordinance, Staff will be providing a summary of each section at the public hearing. The City's project consultant with Owl Engineering will also be in attendance at the meeting and will be available to answer any questions from the Commission or members of the public.

RECOMMENDATION:

Staff is recommending that the Planning Commission recommend approval of the proposed amendments to the wireless communications ordinance.

ATTACHMENTS:

1. Wireless Communications Ordinance – Marked Version
2. Wireless Communications Ordinance – Clean Version
3. Letter from T-Mobile Corporation

ORDER OF BUSINESS:

- Introduction Kyle Klatt, Planning Director
- Report by staff..... Kyle Klatt, Planning Director

- Questions from the Commission.....Chair & Commission Members
- Open the Public Hearing..... Chair
- Close the Public Hearing Chair
- Call for a motion.....Chair Facilitates
- Discussion of Commission on the motion.....Chair Facilitates
- Action by the Planning CommissionChair & Commission Members

City of Lake Elmo Planning Department
Wireless Communications Ordinance Amendment

To: Planning Commission

From: Kyle Klatt, Planning Director

Meeting Date: 9/28/09

Introductory Information

Objective: The Planning Commission is being asked to review and hold a public hearing on proposed revisions to the Wireless Communications Ordinance. The Commission previously reviewed an earlier draft of the ordinance at its August 10, 2009 meeting, and since this time, staff has completed the following:

- Incorporating comments from the Planning Commission, City Attorney, and project consultant into the draft document.
- Meeting with wireless communications industry representatives and incorporating revisions where appropriate into the draft ordinance based on comments from this meeting.
- Conducting a second public open house to review the draft ordinance.
- Finalizing the draft ordinance for consideration at a public hearing.

Attached to this report are two versions of the draft ordinance, one of which represents a fully-marked version with tracking of the various changes that have been made, and a second which is a clean version of the proposed ordinance without any tracking changes. A key is provided for the marked version to clarify when updates were made.

Early this year, the Lake Elmo City Council adopted a moratorium on the construction of new telecommunications towers within the City, and has previously directed the Planning Department to work on an update to the existing wireless communication tower ordinance during the moratorium period. The moratorium was established until the end of 2009; however, the work plan that was approved by the Council for the update project anticipated that the new ordinance would be adopted well before the end of the year.

After the Planning Commission completes the public hearing process and makes a recommendation on the proposed ordinance, next step will likely be a workshop session with the City Council to review the final draft.

Open House Meetings: An open house related to the wireless communications ordinance update project was conducted on June 10, 2009 and was attended by six citizens and a representative

from the Minnesota Wireless Communications Association. The comments received at this meeting can be summarized in general as follow:

- Residents spoke about the lack of coverage in certain portions of the City, especially in the Tri-Lakes area.
- There was support for providing expanded service in Lake Elmo, even if it means the construction of new towers.
- The citizens present expressed a preference for towers that support co-location to help expand the options for service in the City.
- There was no specific preference stated for where towers should be located, whether on public or private property.
- The residents in attendance did not express concern over the appearance of new towers, and did not see a significant benefit to using techniques to camouflage new towers.

Garret Lysiak of Owl Engineer was present at the open house to answer questions from the public and will also be available at the Planning Commission meeting to further discuss the drafting of a revised ordinance.

A second open house was conducted on September 17, 2009 and attended by three residents in addition to the project consultant. In addition to a general discussion concerning the proposed ordinance, a request was made to incorporate a reference in the code back to the City's property maintenance standards. It was noted that under the proposed ordinance, T-Mobile could submit a new application in the same area and would be required to consider the fire station property as a priority site since it is located on public land.

Prior to the public open house, staff met with a group of wireless industry representatives to consider feedback from the perspective of the wireless carriers. In addition to suggesting some language changes, the Real Estate Manager for T-Mobile submitted a letter documenting various concerns with the ordinance as written. Where staff deemed it appropriate, changes to the ordinance were made as noted in the marked version.

Staff Review and Analysis

***Ordinance
Summary:***

The primary issue that the proposed ordinance tries to rectify from the current ordinance is to establish a clear process for determining the need to new towers in the community. This review would be conducted by an outside RF consultant working on behalf of the City, and would help verify that a new facility would indeed be necessary to provide adequate coverage in Lake Elmo. Other major changes can be summarized as follows:

- Definitions have been added to clarify the terms used throughout the ordinance.

- New towers are regulated as a Conditional Use Permit, while installations on existing structures or in a similar low-impact situation can be approved with only an administrative review.
- A list of all zoning districts is provided along with tower height and parcel size requirements. New towers would now be permitted in commercial zoning districts.
- A detailed ranking of preferred tower sites is provided, and new facilities can only be approved when higher-ranked sites are considered first.
- Additional standards have been added related to the effects of towers on surrounding property.
- A list of minimum conditions of approval for a new facility is provided and is intended to clarify the expectations of the City while allowing some flexibility to deal with site-specific issues.

The general structure of the ordinance has not changed much since the last Planning Commission review, although a few sections have undergone modest revisions based on the feedback that has been received to date. A new section pertaining to expert review has been added as noted below. A quick summary of each section is noted as follows:

- *Purpose and Intent.* This section has been modified by including some additional language to clarify the overall purpose of the ordinance.
- *Definitions.* Since the terms used in the Wireless Communications Ordinance do not show up in other section of the City Code, Staff is recommending that they be included in this section instead of with the general City Code definitions. A definition for “utility pole” is now included.
- *Permit Requirements.* This section breaks down the review process into two separate actions, one of which requires a Conditional Use Permit (the construction of a new tower) while the other can be reviewed and approved administratively (co-location or construction on existing structures). The goal of this two-tiered system is to encourage co-location and reduce the demand for new towers by making it much easier to locate facilities on existing structures.
- *Proof of Need.* This new section requires that a wireless carrier provide adequate documentation that a new tower site is needed before it can be approved by the City. Under the proposed provisions, the City would obtain much more information than was required under the previous ordinance in order to establish need.
- *Location Requirements and Site Ranking Analysis.* This section provides clear

rankings for each type of facility and requires that an analysis be submitted that documents why one of the City's preferred locations is not feasible. Co-location and existing structures are at the top of the rankings, with public lands also preferred over private property.

- *Co-location requirements.* Minor changes from existing language that requires co-location if there are suitable existing structures for a wireless communications facility within the applicant's search area.
- *Prohibited Areas.* Identifies locations where towers may not be located in the community. The Planning Commission has previously recommended reducing the minimum acreage requirements in order to allow sites closer to residential service areas to be evaluated.
- *Zoning Requirements.* Specifies the zoning districts and maximum heights allowed in each district while exempting public land from these requirements. The Planning Commission has previously recommended allowing towers in certain instances in residential zones.
- *Application and Review Procedures.* Outlines the submission requirements for new wireless communications facilities; very similar to the previous ordinance language but this section could be modified if the Commission believes that additional information is necessary for the review of a permit.
- *Expert Review.* A new section has been added since the last Planning Commission meeting that describes the process by which the City will be able to hire on outside expert to assist with the review process.
- *Construction Permits.* Requires compliance with the Building Code.
- *Tower Standards.* This section has been modified to provide additional evaluation of the potential effects on neighboring properties and to clarify the height and setback requirements. Several sections have been merged so that all standards are found in one place in the code. Specific landscape requirements have been added to this section. This section also now includes a reference to the City's general property maintenance standards.
- *Wireless Communications Agreement.* The bulk of this language is found in the current code; however, an applicant will now be required to post a financial guarantee to ensure that the tower is removed should it be abandoned.
- *Abandonment and Removal.* Provides additional clarification concerning the City's ability to enforce provisions related to the abandonment of a facility.
- *Minimum Conditions.* Offer a list of conditions that should be considered by the City with the review of each wireless communications application. The

	<p>intent of this section is to clearly identify the expectations of the City while providing some flexibility to add or subtract from this list with each unique case.</p> <p>Please note that staff has reviewed model codes that contain additional provisions that could be considered by the Planning Commission, but at this time, have not been incorporated into the draft document. Some examples of alternative sections include the following:</p> <ul style="list-style-type: none"> • A requirement that towers maintain a specific separate distance from other towers in order to avoid a clustering of facilities in one location. • Stricter design standards that would provide additional requirements concerning the City's preferences for color, design, and style (i.e. whether a tower should be camouflaged or limited to a specific height above adjacent structures or trees). The current code leaves much of the decision making concerning a proposed tower design to be decided during the review process. • The identification and preservation of scenic views throughout the community. • Additional protections for residential properties to limit views of tower facilities. <p>Staff is recommending that the Planning Commission conduct the public hearing to receive public comments and make a decision at this time if any sections of the ordinance need further review or clarification.</p>
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Conclusion and Recommendation:

	<p>The Planning Commission is being asked to conduct a public hearing to consider public testimony regarding the draft wireless communications ordinance. Staff is recommending that the Commission recommend approval of the ordinance to the City Council.</p>
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Commission Options:

The Planning Commission has the following options:

- A) Recommend approval of the proposed revisions to the wireless communications ordinance;
- B) Recommend staff make changes to the proposed ordinance or additional revisions to the document;

C) Table the item for further study.

As this is a city driven process, there is no 60-day deadline.

Wireless Communications Ordinance Draft
Planning Commission Draft – 9/28/09
KEY:

Redline – New Text

Yellow Highlight – Amendments After Initial Planning Commission Review

Blue Highlight – Amendments After Wireless Industry Meeting and 2nd Open House

**WIRELESS TELECOMMUNICATION TOWER PERMIT COMMUNICATIONS
FACILITIES**

§ 150.110 PURPOSE AND INTENT.

~~—The wireless telecommunication tower permit regulations are intended to:~~

The purpose of this ordinance is to allow for and regulate the design, location, placement, construction, maintenance, and removal of Wireless Communications Towers and antennas and to:

(A) Reasonably accommodate the provision of wireless telecommunication services to the general public;

~~—(B) Provide safety/emergency service through the use of wireless communications facilities;~~

~~(CB)~~ Minimize adverse visual effects of wireless telecommunication towers, antennae, or accessory equipment through careful design and siting standards;

~~—(D) Strictly control the location and design of wireless communications facilities so that allowed facilities will not be obtrusive or visually unpleasant;~~

~~—(E) Provide clear standards governing all aspects of such facilities;~~

~~(CF)~~ Avoid potential damage to adjacent properties from tower failures through structural standards and setback requirements; and

~~(GD)~~ Maximize the use of existing and approved towers, structures, and/or buildings for the location of new wireless telecommunication towers in order to reduce the number of the structures needed to accommodate wireless telecommunication services.

~~—(H) Allow new facilities only when a documented proof of need satisfactory to the City can be shown;~~

~~—(I) Protect residential property and neighborhoods from visually intrusive tower installations where reasonable possible.~~

(1997 Code, § 1390.01) (Ord. 97-24, passed 1-21-1998)

§ 150.111 DEFINITIONS

Antenna. A device placed outdoors on a building or structure and used to transmit and/or receive radio or electromagnetic waves, excluding: satellite dishes, ten (10) feet or shorter whip antennas one inch or less in diameter, and television antennas having a total length of not more than six feet which are located on a dwelling or other permitted building. (R)

Monopole. A freestanding, self-supporting tower that uses a single pole, does not use a lattice design and has no guy wires. (N)

Satellite Dish or Satellite Earth Station Antenna. A round, conical, or cone-shaped device more than 18 inches in diameter and placed outdoors on the ground or on a structure and used to transmit and/or receive radio or electromagnetic waves. (N)

Wireless Communication Facility. Cables, wires, lines, wave guides, antennas, and any other equipment or facilities associated with the transmission or reception of communications located or installed on or near a tower or antenna support structure but not including a satellite earth station antenna (satellite dish) 7 feet or less in diameter. (R)

Wireless Communications Tower. A self-supporting monopole, poles, or lattice structure constructed at normal grade and extending into the air at least 20 feet and used to support wireless communications facilities. (R)

Tower Height. The vertical distance from the average grade at the base of a tower to the highest point of a tower or to the highest point of the highest wireless communications facilities on a tower, whichever is higher. (N)

Utility Pole. A structure which is owned by a governmental agency or utility company and which is used to support illumination devices or lines and other equipment carrying electricity or communications. (N)

§ 150.1124 PERMIT REQUIREMENTS

(A) All new wireless communications facilities shall require a Conditional Use Permit in accordance with the Zoning District requirements specified in Section 150.XXX of this Chapter with the exception of those facilities that are exempt from review under this Chapter or that may be approved administratively with a Wireless Communications Permit.

(1) A public hearing for a new wireless communications facility that requires a Conditional Use Permit shall be preceded by 10-days mailed notice to the record owners of property located within 1,000 feet of the parcel on which the tower will be located.

No person shall install a wireless telecommunication facility or any portion thereof, at a height greater than is allowed for structures in the underlying zoning district without first being issued a

~~wireless telecommunication tower permit.~~

(1997 Code, § 1390.03) (Ord. 97-24, passed 1-21-1998) Penalty, see § 10.99

(B) Exemptions. The following are exempt from review under this Chapter:

(1) Television antennas, satellite dishes one meter (39 inches) in diameter or less;

(2) Satellite dishes used commercially and three (3) meters in diameter or less;

(3) Receive only antennas;

(4) Amateur radio facilities, subject to any compliance or interference restrictions;

(5) Mobile services providing public information coverage of news events or of a temporary or emergency nature.

(C) Administrative Review. The following shall be allowed as a permitted use subject to the issuance of a Wireless Communications Permit in accordance with Section 150.XXX of this chapter:

(1) Satellite dishes more than one meter (39 inches) in diameter;

(2) Ground mounted antennas not exceeding the maximum height allowed for structures in the underlying zoning district;

(3) Building mounted antennas not exceeding 25 feet above the highest part of the building to which they are attached;

(4) Utility pole-mounted antennas not exceeding 25 feet above the highest part of the utility pole to which they are attached;

(5) Antennas co-located on an existing wireless communications facility structure.

150.113 PROOF OF NEED

(A) As part of an application for a Conditional Use Permit or Wireless Communications Permit an applicant shall demonstrate proof of need by providing a coverage/interference analysis and capacity analysis, which indicates that the location of the tower or antennas as proposed is necessary to meet the frequency plus other spacing needs of the "cellular communication system" and/or to provide adequate portable radio coverage and capacity to areas which cannot be adequately served by locating the tower/or antenna at another site. For purposes of the analysis, in-building service is not deemed to be as critical as outside coverage. The proof of need for the tower or antennae must be demonstrated to the satisfaction of the City by providing the City an analysis from a qualified professional RF engineer with experience in radio frequency analysis work, which is subject to acceptance by the City prior to commencing the

work.

(B) The cost of the City's review, including an analysis of the proof of need, is the applicant's responsibility. An escrow shall be established in amount required by Council resolution for this purpose.

(C) The analysis and the material provided by the engineer shall include at least the following:

(1) Structural Capacity Analysis. Provide an analysis of the impact of the proposed facility on the tower's carrying capacity of at least three (3) antenna arrays required (using a typical maximum facility) under the co-location provision of this code.

(2) Coverage/Interference. Provide an analysis for:

(a) City property and other public property with values (expressed in dBuv) for on street level, in vehicle, and in building level with said interference analysis indicating the protection afforded for all the frequencies in use or which could be in use by the City or other public safety agencies.

(b) Private property with values (expressed in dBuv) for on street level and in building level with said analysis indicating the protection afforded property within one-half mile of the proposed facility and site.

(3) System Capacity Analysis. If the system coverage analysis does not show a coverage need, provide a system capacity analysis.

(4) Radio Frequency Radiation Hazard Analysis. The analysis must address compliance with the most current FCC Bulletin GET 65 radiation standard. ~~A yearly report must be submitted before December 31 of each year showing the results of on-site measurements at the site. A Registered Professional Engineer must sign these measurements and report.~~ (MOVED TO CONDITIONS AND REVISED)

(5) Map of Existing and Proposed Facilities. A map showing the location of all existing and any proposed ~~facilities-towers~~ within ~~two four (24)~~ miles of the site being considered. Telecommunications equipment and towers within this area shall be identified by type, function, ownership/users, and height. The capacity of existing towers located within ~~two four (24)~~ miles (the study area) to carry additional facilities must be provided.

(6) Map of Existing Buildings and Structures. A map showing the location of all existing buildings, water towers and structures over seventy-five (75) feet or more in height above the ground within two (2) miles of the site being considered. The potential and efforts undertaken to use these buildings and structures as a supporting base for an antenna or telecommunications facility purpose must be described and analyzed.

(7) Other Information. Any other information deemed necessary by the City in order to demonstrate the need for a new wireless communications facility.

(8) Exception. If the request is limited to adding an antenna array on an existing tower without increasing the height of the tower support structure or otherwise permitted after an administrative review under Section 150.111, the City may waive some or all of the proof of need requirements listed above.

§ 150.114 LOCATION REQUIREMENTS AND SITE RANKING ANALYSIS

(A) Location Requirements for New Facilities. If a new wireless communications facility is needed based on the materials and studies submitted and reviewed by the City, the following preferences, listed in ranked order, shall be followed and each preference shall be analyzed to determine the most appropriate location:

(1) Use of Existing Towers. An existing tower may be used to support the proposed facility. If no existing tower has additional capacity, a determination must be made to show how towers in the study area can be modified to accommodate the proposed facility. The co-location requirements specified in Section 150.112 shall be used to help determine whether or not an existing tower can be used to support a proposed facility.

(2) Use of Existing Structures. An existing structure over 35 feet high may be used. Preference shall be given to existing light poles, high voltage utility towers and water towers.

(3) Use of Existing Buildings Four or More Stories in Height. Public and commercial buildings or structures four or more stories high which can more likely accommodate facilities without obstructing views or being obtrusive to scenic views shall be given preference over shorter buildings.

(4) Within an existing easement that contains utility poles over 75 feet in height or within 100 feet of said right-of-way.

(5) Public Land and Facilities. In situations in which one of the four options listed above is not feasible, land owned by the City or other public property shall have preference to private property.

(6) Less restrictive zoning districts shall be given preference over more restrictive zoning districts. For example, proposed sites in commercial or industrial districts will be given preference over sites in residential, rural residential or agricultural zoning districts.

(7) Sites with the least impact on residential areas and which are the least offensive to and inconsistent with the community's rural character shall be given preference.

~~(8) In all cases, except for non-conforming existing towers, the location must meet the zoning requirements.~~

~~(9) Amateur radio towers in Agriculture and Residential Zoning Districts are not required to co-locate.~~

(B) In cases where a lower ranked alternative is proposed, the applicant shall file a written analysis demonstrating that despite diligent efforts to adhere to the established hierarchy within the potential service area, as determined by a qualified radio frequency engineer, higher ranked options are not technologically feasible. An application for a lower-ranked site shall be considered incomplete without this written documentation.

§ 150.1157- CO-LOCATION REQUIREMENTS.

~~Except as hereinafter provided~~In accordance with the location requirements and site preferential rankings found in this Chapter, antenna utilized to provide wireless telecommunication services shall be located on existing towers or structures which exceed 75-35 feet in height and which are located within 1/4 mile of the antenna- the potential service area for the site being proposed by the applicant. In the event that co-location is not possible, the applicant must demonstrate that a good faith effort to co-locate on existing towers and structures was made but an agreement could not be reached.

(1997 Code, § 1390.08) (Ord. 97-24, passed 1-21-1998) Penalty, see § 10.99

~~§ 150.118- EXCEPTIONS TO CO-LOCATION REQUIREMENTS.~~

(A) Exceptions to Co-location Requirements. The City Council shall waive any or all of the co-location requirements if it is determined that:

~~—(A)—~~ (1) The antennae and/or tower accessory equipment would cause the structural capacity of an existing or approved tower or building to be exceeded, as documented by a qualified and licensed professional engineer, and the existing or approved tower or building cannot be reinforced, modified, or replaced to accommodate the antennae or tower accessory equipment at a reasonable cost;

~~—(B)—~~ (2) The antennae and/or tower accessory equipment would cause interference materially impacting the usability of existing antennae or tower accessory equipment as documented by a qualified radio frequency engineer and the interference cannot be prevented at a reasonable cost, or would otherwise prevent the use of existing antennae or related accessory equipment and structures;

~~—(C)—~~ (3) Existing or approved towers and buildings within the applicant's search radius cannot or will not accommodate the antennae and/or tower accessory equipment at a height necessary to function reasonably as documented by a qualified radio frequency engineer; and/or

~~—(D)—~~ (4) Other unforeseen reasons make it infeasible to locate the antennae and/or tower accessory equipment upon an existing or approved tower or building.
(1997 Code, § 1390.09) (Ord. 97-24, passed 1-21-1998)

§ 150.1162- PROHIBITED AREAS.

Wireless telecommunication towers shall not be allowed in the following areas:

(A) Residentially zoned parcels (RR, R-1, R-2, R-3, R-4, and RE Zoning Districts) of less than ~~10~~2.5 acres unless the wireless telecommunication tower and ground facilities accessory thereto are located within 100 feet of the right-of-way of a public utility transmission line ~~existing public utility power line right-of-way or other public right-of-way~~ that contains utility poles over 75 feet in height or within 100 feet of said right-of-way;

(B) Open space easements or conservation easements; and/or

(C) Airport impact zones without consent of the F.A.A.

(1997 Code, § 1390.03) (Ord. 97-24, passed 1-21-1998) Penalty, see § 10.99

§ 150.1173 ALLOWED TOWER SITES ZONING REQUIREMENTS.

~~— Applicants for a wireless telecommunication tower permit shall make a reasonable effort to locate the towers and accessory ground facilities in the following areas:~~

~~— (A) On an existing public utility power line support structure, within an existing public utility power line right-of-way, or within 100 feet of the right-of-way;~~

~~— (B) On publicly owned property, as approved by the City Council; and/or~~

~~— (C) On agriculturally or residentially zoned parcels greater than 10 acres.~~

~~(1997 Code, § 1390.04) (Ord. 97-24, passed 1-21-1998) Penalty, see § 10.99~~

(A) Wireless communications facilities that require a Conditional Use Permit, including the installation of a new tower, shall be permitted in the following zoning districts and subject to the following height restrictions provided they meet all other requirements of this ordinance:

<u>Zoning District</u>	<u>Maximum Height (in feet)</u>	<u>Minimum Parcel Area</u>
A – Agriculture	175	10
RR – Rural Residential Zoning	150	5
R-1, R-2, R-3, and R-4 Residential	75	2.5
OP – Open Space	Not Allowed	-
RE – Residential Estates	75	2.5
GB, LB, CB, HB – Business	150	5
BP – Business Park	175	5
PF – Public Facility	175	None

(B) Regardless of zoning district, new facilities may be allowed within an existing public utility power line right-of-way or other public right-of-way that contains utility poles over 75 feet in height or within 100 feet of said right-of-way.

(C) Public land exemption. A wireless communications facility may be located on any parcel that is owned by the City or another public entity regardless of the zoning district or size of the property.

§ 150.1184 APPLICATION AND REVIEW PROCEDURES.

(A) Wireless Communications Permit (Administrative Approval). An applicant seeking approval of a facility that can be approved administratively with a wireless communications permit shall follow all of the application requirements listed below for a Conditional Use Permit but shall be exempt from those requirements found in section 154.018 of the City Code, including the public hearing requirements. An application found to comply with the provisions of this Chapter may be approved by the Planning Director. Approval shall be in writing, identifying the specific facility approved, the location, mounting height, and other pertinent information and any conditions of approval. If the requested facility is to be located on public property, the agreement allowing the facility shall be approved by the City Council and executed prior to issuing the permit.

~~Applications for a wireless telecommunication tower permit shall be submitted on forms provided by the City Planner, which shall include the following information:~~

(B) Conditional Use Permit. Wireless communications facilities that require a Conditional Use Permit are subject to the requirements specified in Section 154.018 of this Code in addition to all requirements of Section 150.110 of the Code.. Applications shall be submitted on forms provided by the City and shall include the following information:

(BA) A sketch site plan drawn to scale acceptable to the City Planner and City Engineer/Planning Director which illustrates:

- (1) The parcel on which the tower and accessory ground facilities will be located;
- (2) The existing and proposed buildings and structures located and to be located on the tower parcel;
- (3) The buildings located within ~~100~~ 200 feet of the perimeter of the tower parcel; and
- (4) Access easements as necessary to the tower parcel.

(B) A scaled drawing of the exterior of the proposed wireless communications facility, clearly showing the method of fencing, coloration, materials, and camouflage techniques being used.

(C) Photo-simulated post construction renderings of the proposed wireless communications facilities, equipment enclosures, and ancillary structures as they would look after construction from locations at the periphery of the proposed site, which shall, at a minimum, include renderings from the vantage point of any adjacent roadways and ~~occupied commercial or~~

~~residential structures residential neighborhoods.~~ The renderings shall also include photo-simulations of the antenna supporting structure after it has been fully developed with antenna structures (the applicant may assume for the purpose of the simulation that other antenna structures on the facility will resemble their proposed structure size and design). ~~A minimum of two such renderings shall be provided; additional renderings may be required if the City determines that additional views should be considered.~~

~~—(B) A sketch drawn to scale or a photo image acceptable to the City Planner and City Engineer which illustrates the relative size of the proposed wireless telecommunication tower or existing structure on which the antenna will be located compared to structures located within 100 feet of the perimeter of the parcel on which the tower is located and which illustrates the visibility of the tower from adjoining parcels located within 100 feet of the perimeter of the parcel on which the tower is located. The City Planner may also require a visual impact demonstration including mock-ups and/or photo montages and plans for painting the tower;~~

~~(D) Exterior paint or finish samples of the colors to be used in the construction of the wireless communications facility.~~

~~(DE)~~ A report from a qualified and licensed professional engineer which:

- (1) Describes the wireless telecommunication tower height and design including a cross-section and elevation;
- (2) Certifies the wireless telecommunication tower's compliance with structural and electrical standards;
- (3) Documents the height above grade for the mounting positions, which can be used for co-location and the minimum separation distances between the co-location positions; and
- (4) Describes the wireless telecommunication tower's capacity to support antennae, including an example of the number and type of antennas that can be accommodated on the wireless telecommunication tower.

~~(DE)~~ In conjunction with the information required to demonstrate the proof of need for a new facility under this Chapter, the applicant shall submit a 5-year plan for wireless telecommunication facilities to be located within the city shall be submitted by the applicant. The city acknowledges that the plans are fluid and in all likelihood will change depending upon market demands for the service. The city will maintain an inventory of all existing and reasonably anticipated cell site installations. The applicant shall provide the following written information in each 5-year plan and the plan must be updated with each submittal for a new wireless telecommunication tower permit as necessary:

- (1) A description of the radio frequencies to be used for each technology;
- (2) A list of all existing sites to be upgraded or replaced, and proposed cell sites within the city for these services by the applicant; and

(3) A presentation size map of the city, which shows the 5-year plan for cell sites, or if individual properties are not known, the geographic service areas of the cell sites.

~~(E) The cost of mailing addresses for all property owners of record located within 1,000 feet of the subject property to be complied by the city;~~

(F) An application fee in an amount prescribed from time to time by City Council resolution as necessary to reimburse the city for costs incurred to process the wireless telecommunication tower permit application along with an escrow payment as prescribed by the City Council to cover the costs associated with the City's review of the permit;

(G) Confirmation that the applicant is properly licensed by the F.C.C., or is the authorized representative of a wireless telecommunication provider properly licensed by the F.C.C.;

(H) Written authorization from the property owner describing the area which will be subject to the tower lease and acknowledging that the property owner will be responsible for removal of the wireless telecommunication tower, antennae, and tower accessory equipment which is unused or abandoned for ~~12~~ six (6) consecutive months;

(I) Documentation of the steps to be taken by applicant to avoid causing destructive interference to co-located previously established public safety communications facilities; and

(J) A detailed landscape plan, which indicates how tower accessory equipment will be screened.

(1997 Code, § 1390.05) (Ord. 97-24, passed 1-21-1998)

§ 150.119 EXPERT REVIEW

(A) Where due to the complexity of the methodology or analysis required to review an application for a wireless communications facility, the Planning Director may require a technical review by a third party expert. The costs of this review shall be borne by the applicant, and shall be in addition to applicable Conditional Use or Wireless Communications Permit and building permit fees. The applicant shall submit an escrow deposit that may be applied towards the cost of such technical review upon notification from the Director that a technical review is required, and shall remit any outstanding balance to the city for such review prior to issuance of a building permit. The maximum fee for such review and the required escrow deposit shall be in accordance with the fee schedule adopted by the City Council.

(B) The expert review may address any or all of the following:

(1) The accuracy and completeness of submissions;

(2) The applicability of analysis techniques and methodologies;

(3) The validity of conclusions reached;

(4) Whether the proposed wireless communications facility complies with the applicable approval criteria set forth in these regulations;

(5) Other matters deemed by the City to be relevant to determining whether a proposed wireless communications facility complies with the provisions of these regulations.

(C) Based on the results of the expert review, the City may require changes to the applicant's application or submittals.

(D) The applicant shall reimburse the city within 15 working days of the date of receipt of an invoice for expenses associated with the third party expert's review of the application. Failure by the applicant to make reimbursement pursuant to this section shall abate the pending application until paid in full.

~~§ 150.115 PLANNING COMMISSION REVIEW.~~

~~— (A) Upon receipt of a completed application, the City Planner shall schedule a hearing before the Planning Commission which shall be preceded by 10 days mailed notice to the record owners of property located within 1,000 feet of the parcel on which the tower will be located.~~

~~— (B) The Planning Commission shall make recommendations to the City Council regarding the issuance of the wireless telecommunication tower permit and, in particular, in regard to the following:~~

~~— (1) Compliance of application with the city regulations and development standards; and/or~~

~~— (2) Proposed conditions, as necessary, to prevent the wireless telecommunication tower, antennae, and tower accessory equipment from becoming a nuisance to surrounding property owners.~~

~~(1997 Code, § 1390.06) (Ord. 97-24, passed 1-21-1998)~~

~~§ 150.12019 CONSTRUCTION PERMITS.~~

All wireless telecommunication towers erected, constructed, or located within the city, and all wiring therefore, shall comply with the requirements set forth in the Uniform Building Code. (1997 Code, § 1390.10) (Ord. 97-24, passed 1-21-1998) Penalty, see § 10.99

~~§ 150.12120 TOWER STANDARDS.~~

(A) Wireless telecommunication towers shall comply with the following standards unless the City Council grants a variance as necessary to reasonably accommodate the wireless telecommunication tower. Variance procedures shall be processed according to the zoning code.

(B) *Design.*

(1) To blend into the surrounding environment through the use of color and architectural treatment techniques that soften the visual impact of the wireless communication tower on the surrounding environment.

(2) To be of a monopole design unless the City Council determines that an alternative design would better blend into the surrounding environment;

(3) All proposed wireless telecommunication tower shall be designed, structurally, electrically, and in all respects, to accommodate both the applicant's antennas and comparable antennas for at least 2 additional users if the tower is over 100 feet in height or for at least 1 additional user if the tower is between 75 feet and 100 feet in height; provided that this standard may be waived or otherwise modified by the City Council as necessary to allow the applicant to construct a wireless telecommunication tower that better blends into the surrounding environment.

(4) Where possible, all proposed wireless telecommunication towers must be designed to allow for future rearrangement of antennas upon the tower and to accept antennas mounted at various heights.

(5) All facilities shall be designed to minimize the visual impact to the greatest extent feasible by means of placement, screening, landscaping with native species whenever feasible, and camouflage, and to be compatible with existing architectural element, building materials, and other site characteristics. The applicant shall use the least visible antennas possible to accomplish the coverage objectives.

(C) *Adverse effects on properties.*

(1) New wireless communications facilities shall be configured and located in a manner that shall minimize adverse effects, including visual impacts on adjacent properties. The applicant shall demonstrate that alternative locations, configurations, and facility types have been examined and shall address in narrative and graphic form the feasibility of any alternatives that may have fewer adverse effects on adjacent properties than the facility, configuration, and location proposed.

(2) The following attributes shall be considered from vantage points at adjacent properties, roadways, and occupied structures: height and location, mass and scale, materials and color, existing and proposed vegetation and intervening structures.

(3) An applicant shall demonstrate through the photo-simulation requirements under Section 150.114 that the project design employs each of these attributes in a manner that minimizes adverse effects to the greatest extent possible.

(4) All facilities that have the potential for high visibility shall be sited in such a manner as to cause the least detriment to the viewshed of adjoining properties.

(D) ~~Setbacks from lot lines.~~

~~(1) No communications tower shall be located in the required front, side, or rear yard setback of any parcel.~~

~~(2) No freestanding communications tower shall be located ~~be located~~ closer than 125% of the tower height from any lot lines with the following exceptions:~~

~~(a) Towers in a side or rear yard that are adjacent to parcels zoned commercial, industrial, or public facility.~~

~~In all zoning districts, towers may encroach into the rear or side yard setback areas, provided that the rear or side yard property line abuts a commercial or business-zoned property and the wireless telecommunication tower does not encroach upon any easements.~~

~~(a) In all residential zoning districts, wireless telecommunication towers shall be set back 1 foot for each foot of tower height plus 20 feet.~~

~~(3) Setbacks from buildings:~~

~~(a) In residential zoning districts, wireless communications towers shall be set back a minimum of 100% of the tower height from a residential dwelling ~~except for dwellings on the subject property.~~~~

~~(b) In all other zoning districts, the minimum setback between structures as required by the building code shall be observed.~~

~~(b) No setbacks shall be required from commercial and industrial or agricultural buildings provided all other requirements of this code are met.~~

~~(4) Wireless telecommunication towers shall not be located between a principal structure and a public street.~~

~~(d) A required setback may be reduced or its location in relation to a public street varied, at the sole discretion of the City Council, to allow for the integration of a wireless telecommunication tower with an existing or proposed structure such as a church steeple, power line support device, or light standard.~~

~~(5) Use of existing light poles, high voltage poles or towers, and other existing structures are exempt from the setback requirements provided that such pole, tower, or structure is not increased in height.~~

~~(6) Wireless Communications Towers located within an existing public utility power line right-of-way or other public right-of-way that contains utility poles over 75 feet in height or within 100 feet of said right-of-way shall be exempt from the setbacks as herein required.~~

~~(7) A required setback may be reduced or its location in relation to a public street~~

varied upon providing the city with a licensed professional engineer's certification that the wireless telecommunication tower is designed to collapse or fail within a distance or zone shorter than the required setback distance.

(E) *Height.*

~~_____ (a) In all residential zoning districts, the maximum height of any wireless telecommunication tower including all antennas and other attachments, shall not exceed 1 foot for each 1 foot the tower is setback from a residential dwelling unit up to a maximum of 195 feet for parcels of 40 acres or more and 125 feet for parcels between 10 to 40 acres in size.~~

~~_____ (b) In all non-residential zoning districts, wireless telecommunication tower and antennae shall not exceed 195 feet in height above ground for a freestanding wireless telecommunication tower, and 195 feet in height above ground as measured by the lowest ground elevation adjacent to a building on which the tower/antenna is located, including all antennas and other attachments where the zoning district is adjacent to a residential zoning district. The setback from a common lot line shall be 2 feet for each 1 foot of tower height. (1997 Code, § 1390.11) (Ord. 97-24, passed 1-21-1998) Penalty, see § 10.99~~

(1) The maximum height of a wireless communications tower shall be determined based on the underlying zoning district and will be the amount specified in Section 150.114.

§ 150.121 LIGHTING.

(F) *Lighting.* At night, wireless telecommunication towers shall not be illuminated by artificial means, unless otherwise required by the Federal Aviation Administration (FAA).

~~(1) White strobe lighting shall be prohibited.~~

~~(2) The applicant shall document the need for lighting as part of a new wireless communications facility application.~~

(G) *Landscaping and Screening.* All wireless communications towers and related building facilities shall be landscaped and screened with natural vegetation to lessen the visual impact. The natural vegetation on the site shall be documented on the site plans. Suitable existing vegetation shall be retained to the maximum extent possible based on an analysis of the site. New landscaping shall be selected that includes coniferous and deciduous plants and trees that are hardy for conditions on the site without the use of augmented water.

(1) Landscaping shall include ground cover, lower story, mid-story, and upper story plants. Plant density shall be sufficient to provide 80 percent opacity year round from the ground up to a distance of 5 feet high for 60 percent or more of the site with the planting to be located based on an analysis of the site in relation to the surrounding area. Greater or lesser amounts and percentages may be required or allowed based on the City's review.

(1997 Code, § 1390.12) (Ord. 97-24, passed 1-21-1998) Penalty, see § 10.99

~~§ 150.122 SIGNS AND ADVERTISING.~~

~~(H) *Signs and Advertising.* The use of any portion of a wireless telecommunication tower for signs other than warning or equipment information sign is prohibited.~~

~~(1997 Code, § 1390.13) (Ord. 97-24, passed 1-21-1998) Penalty, see § 10.99~~

~~§ 150.123 INTERFERENCE WITH PUBLIC SAFETY TELECOMMUNICATION.~~

~~(I) *Interference with public safety communication.* No wireless telecommunication facility shall interfere with public safety telecommunications. All wireless telecommunication towers/antennas shall comply with F.C.C. regulations and licensing requirements.~~

~~(1997 Code, § 1390.14) (Ord. 97-24, passed 1-21-1998) Penalty, see § 10.99~~

~~§ 150.124 PROHIBITED SUBDIVISIONS.~~

~~—Where a wireless telecommunication facility has been located on a residentially or agriculturally zoned parcel greater than 10 acres, except when the facility is located within a power line easement, or within 100 feet of the easement, the parcels shall not be further subdivided unless the resulting parcel on which the wireless telecommunication facility is located continues to be more than 10 acres in size.~~

~~(1997 Code, § 1390.15) (Ord. 97-24, passed 1-21-1998) Penalty, see § 10.99~~

~~§ 150.125 ACCESSORY UTILITY BUILDINGS.~~

~~(J) *Accessory utility buildings.* All utility buildings and structures accessory to a tower shall be architecturally designed to blend in with the surrounding environment and shall be permitted in addition to the number of accessory buildings otherwise allowed in each zoning district.~~

~~(1997 Code, § 1390.16) (Ord. 97-24, passed 1-21-1998) Penalty, see § 10.99~~

~~(1) Control buildings. The control buildings shall be designed to be architecturally compatible with the adjacent buildings. The control buildings shall not be placed in required setback areas nor shall they encroach into required landscape areas.~~

~~(2) Ground mounted equipment. Ground mounted equipment shall not be visible from beyond the boundaries of the site and shall be screened by a solid wall or fence and dense landscaping materials described in paragraph G above.~~

~~(3) Accessory utility buildings shall observe the minimum setback requirements for accessory buildings in the underlying zoning district as well as all other applicable zoning and building requirements for accessory buildings.~~

~~(K) *Maintenance.* All buildings and structures on the premises of the wireless~~

communications facility shall observe the City's property maintenance standards of the City Code.

~~§ 150.126 GROUND MOUNTED EQUIPMENT.~~

~~—All ground mounted equipment accessory to a wireless telecommunication tower shall be enclosed in a building with brick walls and have a dark colored standing seam metal roof and be further screened with sufficient trees, as determined by the City Planner, and shrubs to substantially reduce the visual impact.~~

~~(1997 Code, § 1390.17) (Ord. 97-24, passed 1-21-1998) Penalty, see § 10.99~~

~~§ 150.12216 CITY COUNCIL REVIEW WIRELESS COMMUNICATIONS TOWER AGREEMENT.~~

~~(A) Upon receipt of Planning Commission recommendations, the City Council shall review the application. The City Council may approve the application subject to conditions, table its review until a date certain, or deny the application for a wireless telecommunication tower permit. If the application is approved by the City Council, a wireless telecommunications tower permit and a building permit shall be issued upon the execution of a wireless telecommunication tower agreement.~~

(B) The agreement shall be signed by the applicant and property owner and the terms of the agreement shall include the following:

(1) A list of the conditions of approval to the wireless telecommunication tower permit;

(2) A statement indicating that failure to comply with the conditions of approval shall result in the removal of the wireless telecommunication tower, antennae, or tower accessory equipment;

(3) A statement indicating that the expenses incurred by the city to enforce the provisions of the wireless telecommunication tower agreement shall be reimbursed by the applicant;

(4) A statement, which requires the applicant to utilize the procedures established by the F.C.C. to resolve any complaints received relating to interference allegedly caused by the wireless telecommunication tower; and

(5) A statement indicating that a wireless telecommunication tower which has not been used for 12 consecutive months shall be deemed abandoned and may be required to be removed in the same manner and pursuant to the same procedures as for hazardous and substandard buildings accordance with Section 150.117 below. (M.S. §§ 463.15 through 463.261, as they may be amended from time to time). To ensure compliance with this provision, the applicant must submit a performance bond or letter of credit in an amount sufficient to cover the removal or reduction costs.

(1997 Code, § 1390.07) (Ord. 97-24, passed 1-21-1998)

§ 150.123 ABANDONMENT AND REMOVAL

(A) Towers and antennae shall be removed, at the owner's expense, within 180 days of cessation of use.

(B) An owner wishing to extend the time for removal or reactivation shall submit an application stating the reason for such extension. The Planning Director may extend the time for removal or reactivation up to 60 days showing of a good cause. If the tower or antennae is not removed in a timely fashion, the City may give notice that it will contract for removal within 30 days following written notice to the owner. Thereafter, the City may cause removal and be reimbursed for all costs associated with said removal by drawing on the funds provided with the financial guarantee at the owner's expense.

(C) Upon removal of the wireless communications facility, the site shall be returned to its natural state and topography and vegetated consistent with the natural surroundings.

§ 150.124 MINIMUM CONDITIONS

(A) Minimum conditions on a wireless communications permit may include, but not be limited to the following:

- (1) An agreement providing for co-location and 12-month removal of unused and/or obsolete towers shall be attached and become part of the permit.
- (2) The tower shall be set back a distance equal to the tower height from all property lines. All accessory structures shall be setback a minimum of twenty (20) feet from all side yard and rear yard property lines
- (3) Zoning Permits shall be applied for and issued before any construction is started.
- (4) Prior to application for a conditional use permit, applicant must obtain FAA approval and/or provide documentation that FAA approval is not needed.
- (5) Applicant must obtain FCC licensure and approval as required for various communications applications. No interference with local television and radio reception will be allowed.
- (6) Applicant must submit proof of liability and Worker's compensation Insurance.
- (7) Proof that towers and their antennas have been designed by, and following completion of construction were inspected by a qualified and licensed professional engineer (at the applicant's expenses) to conform to applicable state structural building standards and all other applicable reviewing agencies and to conform with accepted electrical engineering methods and practices as specified in applicable provisions of the National Electrical Code.
- (8) Metal towers shall be constructed of, or treated with, corrosive resistant material.
- (9) The addition of antennas and associated equipment of an additional provider to an existing permitted tower shall be considered co-location and shall require a zoning permit and site plan approval. An amendment to a conditional use permit shall

typically not be required

- (10) All towers shall be reasonably protected against unauthorized climbing. The area around the base of the tower and guy wire anchors shall be enclosed by a fence with a minimum height of six (6) feet chain link fence with a locked gate.
- (11) All towers and their antennas shall utilize building materials, colors, textures, screening and landscaping that effectively blend the tower facilities within the surrounding natural setting and built environmentally to the greatest extent possible.
- (12) No part of any antenna or tower, nor any lines, cable, equipment, wires, or braces shall at any time extend across or over any part of the right of way, public street, highway, or sidewalk, without approval by the City through the zoning permit approval process.
- (13) All obsolete or unused towers and accompanying accessory facilities shall be removed within 12 months of the cessation of operations at the site unless a time extension is approved by the City. After the facilities are removed, the site shall be restored to its original or an improved state which includes removal of all concrete to 6-feet below normal grade and surrounding area returned to normal grading. Electronic equipment shall not be removed in advance of removal of obsolete or unused towers. To ensure compliance, the applicant must submit a performance bond or letter of credit in the amount of \$100,000 prior to the issuance of a building permit for the facility to cover the removal costs. Failure to remove the structure shall be cause for the City to remove the tower and associated equipment and assess the cost against the required bonding or letter of credit instrument.
- (14) Yearly report showing compliance with RF Radiation Hazard Standard and certification of required removal bond is required to be received before December 31 of each year.
- (15) The City of Lake Elmo shall conduct a final inspection of the site to ensure that all requirements of the City Code and all conditions of approval attached as part of the wireless communications permit are met prior to the start of operation of the facility.
- (16) For installations of a facility in an area that could potentially be accessed by the public (including rooftop installations or other locations that would be considered public verses occupational) a yearly report must be submitted before December 31 of each year showing the results of on-site measurements at the site. A Registered Professional Engineer must sign these measurements and report. (MOVED FROM "PROOF OF NEED" SECTION)

WIRELESS COMMUNICATIONS FACILITIES

§ 150.110 PURPOSE AND INTENT.

The purpose of this ordinance is to allow for and regulate the design, location, placement, construction, maintenance, and removal of Wireless Communications Towers and antennas and to:

(A) Reasonably accommodate the provision of wireless telecommunication services to the general public;

(B) Provide safety/emergency service through the use of wireless communications facilities;

(C) Minimize adverse visual effects of wireless telecommunication towers, antennae, or accessory equipment through careful design and siting standards;

(D) Strictly control the location and design of wireless communications facilities so that allowed facilities will not be obtrusive or visually unpleasant;

(E) Provide clear standards governing all aspects of such facilities;

(F) Avoid potential damage to adjacent properties from tower failures through structural standards and setback requirements; and

(G) Maximize the use of existing and approved towers, structures, and/or buildings for the location of new wireless telecommunication towers in order to reduce the number of the structures needed to accommodate wireless telecommunication services.

(H) Allow new facilities only when a documented proof of need satisfactory to the City can be shown;

(I) Protect residential property and neighborhoods from visually intrusive tower installations where reasonable possible.

(1997 Code, § 1390.01) (Ord. 97-24, passed 1-21-1998)

§ 150.111 DEFINITIONS

Antenna. A device placed outdoors on a building or structure and used to transmit and/or receive radio or electromagnetic waves, excluding: satellite dishes, ten (10) feet or shorter whip antennas one inch or less in diameter, and television antennas having a total length of not more than six feet which are located on a dwelling or other permitted building.

Monopole. A freestanding, self-supporting tower that uses a single pole, does not use a

lattice design and has no guy wires.

Satellite Dish or Satellite Earth Station Antenna. A round, conical, or cone-shaped device more than 18 inches in diameter and placed outdoors on the ground or on a structure and used to transmit and/or receive radio or electromagnetic waves.

Wireless Communication Facility. Cables, wires, lines, wave guides, antennas, and any other equipment or facilities associated with the transmission or reception of communications located or installed on or near a tower or antenna support structure but not including a satellite earth station antenna (satellite dish) 7 feet or less in diameter.

Wireless Communications Tower. A self-supporting monopole, poles, or lattice structure constructed at normal grade and extending into the air at least 20 feet and used to support wireless communications facilities.

Tower Height. The vertical distance from the average grade at the base of a tower to the highest point of a tower or to the highest point of the highest wireless communications facilities on a tower, whichever is higher.

Utility Pole. A structure which is owned by a governmental agency or utility company and which is used to support illumination devices or lines and other equipment carrying electricity or communications.

§ 150.112 PERMIT REQUIREMENTS.

(A) All new wireless communications facilities shall require a Conditional Use Permit in accordance with the Zoning District requirements specified in Section 150.XXX of this Chapter with the exception of those facilities that are exempt from review under this Chapter or that may be approved administratively with a Wireless Communications Permit.

(1) A public hearing for a new wireless communications facility that requires a Conditional Use Permit shall be preceded by 10-days mailed notice to the record owners of property located within 1,000 feet of the parcel on which the tower will be located.

(1997 Code, § 1390.03) (Ord. 97-24, passed 1-21-1998) Penalty, see § 10.99

(B) **Exemptions.** The following are exempt from review under this Chapter:

- (1) Television antennas, satellite dishes one meter (39 inches) in diameter or less;
- (2) Satellite dishes used commercially and three (3) meters in diameter or less;
- (3) Receive only antennas;
- (4) Amateur radio facilities, subject to any compliance or interference restrictions;

(5) Mobile services providing public information coverage of news events or of a temporary or emergency nature.

(C) **Administrative Review.** The following shall be allowed as a permitted use subject to the issuance of a Wireless Communications Permit in accordance with Section 150.XXX of this chapter:

(1) Satellite dishes more than one meter (39 inches) in diameter;

(2) Ground mounted antennas not exceeding the maximum height allowed for structures in the underlying zoning district;

(3) Building mounted antennas not exceeding 25 feet above the highest part of the building to which they are attached;

(4) Utility pole-mounted antennas not exceeding 25 feet above the highest part of the utility pole to which they are attached;

(5) Antennas co-located on an existing wireless communications facility structure.

150.113 PROOF OF NEED

(A) As part of an application for a Conditional Use Permit or Wireless Communications Permit an applicant shall demonstrate proof of need by providing a coverage/interference analysis and capacity analysis, which indicates that the location of the tower or antennas as proposed is necessary to meet the frequency plus other spacing needs of the "cellular communication system" and/or to provide adequate portable radio coverage and capacity to areas which cannot be adequately served by locating the tower/or antenna at another site. The proof of need for the tower or antennae must be demonstrated to the satisfaction of the City by providing the City an analysis from a qualified professional RF engineer with experience in radio frequency analysis work, which is subject to acceptance by the City prior to commencing the work.

(B) The cost of the City's review, including an analysis of the proof of need, is the applicant's responsibility. An escrow shall be established in amount required by Council resolution for this purpose.

(C) The analysis and the material provided by the engineer shall include at least the following:

(1) **Structural Capacity Analysis.** Provide an analysis of the impact of the proposed facility on the tower's carrying capacity of at least three (3) antenna arrays required (using a typical maximum facility) under the co-location provision of this code.

(2) **Coverage/Interference.** Provide an analysis for:

(a) City property and other public property with values (expressed in dBuv) for on street level, in vehicle, and in building level with said interference analysis indicating the protection afforded for all the frequencies in use or which could be in use by the City or other public safety agencies.

(b) Private property with values (expressed in dBuv) for on street level and in building level with said analysis indicating the protection afforded property within one-half mile of the proposed facility and site.

(3) **System Capacity Analysis.** If the system coverage analysis does not show a coverage need, provide a system capacity analysis.

(4) **Radio Frequency Radiation Hazard Analysis.** The analysis must address compliance with the most current FCC Bulletin GET 65 radiation standard.

(5) **Map of Existing and Proposed Facilities.** A map showing the location of all existing and any proposed towers within two (2) miles of the site being considered. Telecommunications equipment and towers within this area shall be identified by type, function, ownership/users, and height. The capacity of existing towers located within two (2) miles (the study area) to carry additional facilities must be provided.

(6) **Map of Existing Buildings and Structures.** A map showing the location of all existing buildings, water towers and structures over seventy-five (75) feet or more in height above the ground within two (2) miles of the site being considered. The potential and efforts undertaken to use these buildings and structures as a supporting base for an antenna or telecommunications facility purpose must be described and analyzed.

(7) **Other Information.** Any other information deemed necessary by the City in order to demonstrate the need for a new wireless communications facility.

(8) **Exception.** If the request is limited to adding an antenna array on an existing tower without increasing the height of the tower support structure or otherwise permitted after an administrative review under Section 150.111, the City may waive some or all of the proof of need requirements listed above.

§ 150.114 LOCATION REQUIREMENTS AND SITE RANKING ANALYSIS

(A) **Location Requirements for New Facilities.** If a new wireless communications facility is needed based on the materials and studies submitted and reviewed by the City, the following preferences, listed in ranked order, shall be followed and each preference shall be analyzed to determine the most appropriate location:

(1) **Use of Existing Towers.** An existing tower may be used to support the proposed facility. If no existing tower has additional capacity, a determination must be made to show how towers in the study area can be modified to accommodate the proposed facility. The co-location requirements specified in Section 150.112 shall be used to help determine whether or not an

existing tower can be used to support a proposed facility.

(2) Use of Existing Structures. An existing structure over 35 feet high may be used. Preference shall be given to existing light poles, high voltage utility towers and water towers.

(3) Use of Existing Buildings Four or More Stories in Height. Public and commercial buildings or structures four or more stories high which can more likely accommodate facilities without obstructing views or being obtrusive to scenic views shall be given preference over shorter buildings.

(4) Within an existing easement that contains utility poles over 75 feet in height or within 100 feet of said right-of-way.

(5) Public Land and Facilities. In situations in which one of the four options listed above is not feasible, land owned by the City or other public property shall have preference to private property.

(6) Less restrictive zoning districts shall be given preference over more restrictive zoning districts. For example, proposed sites in commercial or industrial districts will be given preference over sites in residential, rural residential or agricultural zoning districts.

(7) Sites with the least impact on residential areas and which are the least offensive to and inconsistent with the community's rural character shall be given preference.

(B) In cases where a lower ranked alternative is proposed, the applicant shall file a written analysis demonstrating that despite diligent efforts to adhere to the established hierarchy within the potential service area, as determined by a qualified radio frequency engineer, higher ranked options are not technologically feasible. An application for a lower-ranked site shall be considered incomplete without this written documentation.

§ 150.115 CO-LOCATION REQUIREMENTS.

In accordance with the location requirements and site preferential rankings found in this Chapter, wireless communication services shall be located on existing towers or structures which exceed 35 feet in height and which are located within the potential service area for the site being proposed by the applicant. In the event that co-location is not possible, the applicant must demonstrate that a good faith effort to co-locate on existing towers and structures was made but an agreement could not be reached.

(1997 Code, § 1390.08) (Ord. 97-24, passed 1-21-1998) Penalty, see § 10.99

(A) **Exceptions to Co-location Requirements.** The City Council shall waive any or all of the co-location requirements if it is determined that:

(1) The antennae and/or tower accessory equipment would cause the structural capacity of an existing or approved tower or building to be exceeded, as documented by a qualified and

licensed professional engineer, and the existing or approved tower or building cannot be reinforced, modified, or replaced to accommodate the antennae or tower accessory equipment at a reasonable cost;

(2) The antennae and/or tower accessory equipment would cause interference materially impacting the usability of existing antennae or tower accessory equipment as documented by a qualified radio frequency engineer and the interference cannot be prevented at a reasonable cost, or would otherwise prevent the use of existing antennae or related accessory equipment and structures;

(3) Existing or approved towers and buildings within the applicant's search radius cannot or will not accommodate the antennae and/or tower accessory equipment at a height necessary to function reasonably as documented by a qualified radio frequency engineer; and/or

(4) Other unforeseen reasons make it infeasible to locate the antennae and/or tower accessory equipment upon an existing or approved tower or building.
(1997 Code, § 1390.09) (Ord. 97-24, passed 1-21-1998)

§ 150.116 PROHIBITED AREAS.

Wireless telecommunication towers shall not be allowed in the following areas:

(A) Residentially zoned parcels (RR, R-1, R-2, R-3, R-4, and RE Zoning Districts) of less than 2.5 acres unless the wireless telecommunication tower and ground facilities accessory thereto are located within an existing public utility power line right-of-way or other public right-of-way that contains utility poles over 75 feet in height or within 100 feet of said right-of-way;

(B) Open space easements or conservation easements; and/or

(C) Airport impact zones without consent of the F.A.A.

(1997 Code, § 1390.03) (Ord. 97-24, passed 1-21-1998) Penalty, see § 10.99

§ 150.117 ZONING REQUIREMENTS.

(A) Wireless communications facilities that require a Conditional Use Permit, including the installation of a new tower, shall be permitted in the following zoning districts and subject to the following height restrictions provided they meet all other requirements of this ordinance:

Zoning District	Maximum Height (in feet)	Minimum Parcel Area
A – Agriculture	175	10
RR – Rural Residential Zoning	150	5

R-1, R-2, R-3, and R-4 Residential	75	2.5
OP – Open Space	Not Allowed	-
RE – Residential Estates	75	2.5
GB, LB, CB, HB – Business	150	5
BP – Business Park	175	5
PF – Public Facility	175	None

(B) Regardless of zoning district, new facilities may be allowed within an existing public utility power line right-of-way or other public right-of-way that contains utility poles over 75 feet in height or within 100 feet of said right-of-way.

(C) **Public land exemption.** A wireless communications facility may be located on any parcel that is owned by the City or another public entity regardless of the zoning district or size of the property.

§ 150.118 APPLICATION AND REVIEW PROCEDURES.

(A) Wireless Communications Permit (Administrative Approval). An applicant seeking approval of a facility that can be approved administratively with a wireless communications permit shall follow all of the application requirements listed below for a Conditional Use Permit but shall be exempt from those requirements found in section 154.018 of the City Code, including the public hearing requirements. An application found to comply with the provisions of this Chapter may be approved by the Planning Director. Approval shall be in writing, identifying the specific facility approved, the location, mounting height, and other pertinent information and any conditions of approval. If the requested facility is to be located on public property, the agreement allowing the facility shall be approved by the City Council and executed prior to issuing the permit.

(B) Conditional Use Permit. Wireless communications facilities that require a Conditional Use Permit are subject to the requirements specified in Section 154.018 of this Code in addition to all requirements of Section 150.110 of the Code.. Applications shall be submitted on forms provided by the City and shall include the following information:

(B) A site plan drawn to scale acceptable to the Planning Director which illustrates:

- (1) The parcel on which the tower and accessory ground facilities will be located;
- (2) The existing and proposed buildings and structures on the tower parcel;
- (3) The buildings located within 200 feet of the perimeter of the tower parcel; and
- (4) Access easements as necessary to the tower parcel.

(B) A scaled drawing of the exterior of the proposed wireless communications facility, clearly showing the method of fencing, coloration, materials, and camouflage techniques being

used.

(C) Photo-simulated post construction renderings of the proposed wireless communications facilities, equipment enclosures, and ancillary structures as they would look after construction from locations at the periphery of the proposed site, which shall, at a minimum, include renderings from the vantage point of any adjacent roadways and residential neighborhoods. The renderings shall also include photo-simulations of the antenna supporting structure after it has been fully developed with antenna structures (the applicant may assume for the purpose of the simulation that other antenna structures on the facility will resemble their proposed structure size and design). A minimum of two such renderings shall be provided; additional renderings may be required if the City determines that additional views should be considered.

(D) Exterior paint or finish samples of the colors to be used in the construction of the wireless communications facility.

(D) A report from a qualified and licensed professional engineer which:

(1) Describes the wireless telecommunication tower height and design including a cross-section and elevation;

(2) Certifies the wireless telecommunication tower's compliance with structural and electrical standards;

(3) Documents the height above grade for the mounting positions, which can be used for co-location and the minimum separation distances between the co-location positions; and

(4) Describes the wireless telecommunication tower's capacity to support antennae, including an example of the number and type of antennas that can be accommodated on the wireless telecommunication tower.

(E) In conjunction with the information required to demonstrate the proof of need for a new facility under this Chapter, the applicant shall submit a 5-year plan for wireless telecommunication facilities to be located within the city. The city acknowledges that the plans are fluid and in all likelihood will change depending upon market demands for the service. The city will maintain an inventory of all existing and reasonably anticipated cell site installations. The applicant shall provide the following written information in each 5-year plan and the plan must be updated with each submittal for a new wireless telecommunication tower permit as necessary:

(1) A description of the radio frequencies to be used for each technology;

(2) A list of all existing sites to be upgraded or replaced, and proposed cell sites within the city for these services by the applicant; and

(3) A presentation size map of the city, which shows the 5-year plan for cell sites, or if individual properties are not known, the geographic service areas of the cell sites.

(F) An application fee in an amount prescribed from time to time by City Council resolution as necessary to reimburse the city for costs incurred to process the wireless telecommunication tower permit application along with an escrow payment as prescribed by the City Council to cover the costs associated with the City's review of the permit;

(G) Confirmation that the applicant is properly licensed by the F.C.C., or is the authorized representative of a wireless telecommunication provider properly licensed by the F.C.C.;

(H) Written authorization from the property owner describing the area which will be subject to the tower lease and acknowledging that the property owner will be responsible for removal of the wireless telecommunication tower, antennae, and tower accessory equipment which is unused or abandoned for six (6) consecutive months;

(I) Documentation of the steps to be taken by applicant to avoid causing destructive interference to co-located previously established public safety communications facilities; and

(J) A detailed landscape plan, which indicates how tower accessory equipment will be screened.

(1997 Code, § 1390.05) (Ord. 97-24, passed 1-21-1998)

§ 150.119 EXPERT REVIEW

(A) Where due to the complexity of the methodology or analysis required to review an application for a wireless communications facility, the Planning Director may require a technical review by a third party expert. The costs of this review shall be borne by the applicant, and shall be in addition to applicable Conditional Use or Wireless Communications Permit and building permit fees. The applicant shall submit an escrow deposit that may be applied towards the cost of such technical review upon notification from the Director that a technical review is required, and shall remit any outstanding balance to the city for such review prior to issuance of a building permit. The maximum fee for such review and the required escrow deposit shall be in accordance with the fee schedule adopted by the City Council.

(B) The expert review may address any or all of the following:

- (1) The accuracy and completeness of submissions;
- (2) The applicability of analysis techniques and methodologies;
- (3) The validity of conclusions reached;
- (4) Whether the proposed wireless communications facility complies with the applicable approval criteria set forth in these regulations;
- (5) Other matters deemed by the City to be relevant to determining whether a proposed

wireless communications facility complies with the provisions of these regulations.

(C) Based on the results of the expert review, the City may require changes to the applicant's application or submittals.

(D) The applicant shall reimburse the city within 15 working days of the date of receipt of an invoice for expenses associated with the third party expert's review of the application. Failure by the applicant to make reimbursement pursuant to this section shall abate the pending application until paid in full.

§ 150.120 CONSTRUCTION PERMITS.

All wireless telecommunication towers erected, constructed, or located within the city, and all wiring therefore, shall comply with the requirements set forth in the Uniform Building Code. (1997 Code, § 1390.10) (Ord. 97-24, passed 1-21-1998) Penalty, see § 10.99

§ 150.121 TOWER STANDARDS.

(A) Wireless telecommunication towers shall comply with the following standards unless the City Council grants a variance as necessary to reasonably accommodate the wireless telecommunication tower. Variance procedures shall be processed according to the zoning code.

(B) *Design.*

(1) To blend into the surrounding environment through the use of color and architectural treatment techniques that soften the visual impact of the wireless communication tower on the surrounding environment.

(2) To be of a monopole design unless the City Council determines that an alternative design would better blend into the surrounding environment;

(3) All proposed wireless telecommunication tower shall be designed, structurally, electrically, and in all respects, to accommodate both the applicant's antennas and comparable antennas for at least 2 additional users if the tower is over 100 feet in height or for at least 1 additional user if the tower is between 75 feet and 100 feet in height; provided that this standard may be waived or otherwise modified by the City Council as necessary to allow the applicant to construct a wireless communication tower that better blends into the surrounding environment.

(4) Where possible, all proposed wireless telecommunication towers must be designed to allow for future rearrangement of antennas upon the tower and to accept antennas mounted at various heights.

(5) All facilities shall be designed to minimize the visual impact to the greatest extent feasible by means of placement, screening, landscaping with native species whenever feasible, and camouflage, and to be compatible with existing architectural element, building materials,

and other site characteristics. The applicant shall use the least visible antennas possible to accomplish the coverage objectives.

(C) *Adverse effects on properties.*

(1) New wireless communications facilities shall be configured and located in a manner that shall minimize adverse effects, including visual impacts on adjacent properties. The applicant shall demonstrate that alternative locations, configurations, and facility types have been examined and shall address in narrative and graphic form the feasibility of any alternatives that may have fewer adverse effects on adjacent properties than the facility, configuration, and location proposed.

(2) The following attributes shall be considered from vantage points at adjacent properties, roadways, and occupied structures: height and location, mass and scale, materials and color, existing and proposed vegetation and intervening structures.

(3) An applicant shall demonstrate through the photo-simulation requirements under Section 150.114 that the project design employs each of these attributes in a manner that minimizes adverse effects to the greatest extent possible.

(4) All facilities that have the potential for high visibility shall be sited in such a manner as to cause the least detriment to the view shed of adjoining properties.

(D) *Setbacks.*

(1) No communications tower shall be located in the required front, side, or rear yard setback of any parcel.

(2) No freestanding communications tower shall be located closer than 125% of the tower height from any lot lines with the following exceptions:

(a) Towers in a side or rear yard that are adjacent to parcels zoned commercial, industrial, or public facility.

(3) Setbacks from buildings:

(a) In residential zoning districts, wireless communications towers shall be set back a minimum of 100% of the tower height from a residential dwelling except for dwellings on the subject property.

(b) In all other zoning districts, the minimum setback between structures as required by the building code shall be observed.

(5) Use of existing light poles, high voltage poles or towers, and other existing

structures are exempt from the setback requirements provided that such pole, tower, or structure is not increased in height.

(6) Wireless Communications Towers located within an existing public utility power line right-of-way or other public right-of-way that contains utility poles over 75 feet in height or within 100 feet of said right-of-way shall be exempt from the setbacks as herein required.

(7) A required setback may be reduced or its location in relation to a public street varied upon providing the city with a licensed professional engineer's certification that the wireless telecommunication tower is designed to collapse or fail within a distance or zone shorter than the required setback distance.

(E) *Height.*

(1) The maximum height of a wireless communications tower shall be determined based on the underlying zoning district and will be the amount specified in Section 150.114.

(F) *Lighting.* At night, wireless telecommunication towers shall not be illuminated by artificial means, unless otherwise required by the Federal Aviation Administration (FAA).

(1) White strobe lighting shall be prohibited.

(2) The applicant shall document the need for lighting as part of a new wireless communications facility application.

(G) *Landscaping and Screening.* All wireless communications towers and related building facilities shall be landscaped and screened with natural vegetation to lessen the visual impact. The natural vegetation on the site shall be documented on the site plans. Suitable existing vegetation shall be retained to the maximum extent possible based on an analysis of the site. New landscaping shall be selected that includes coniferous and deciduous plants and trees that are hardy for conditions on the site without the use of augmented water.

(1) Landscaping shall include ground cover, lower story, mid-story, and upper story plants. Plant density shall be sufficient to provide 80 percent opacity year round from the ground up to a distance of 5 feet high for 60 percent or more of the site with the planting to be located based on an analysis of the site in relation to the surrounding area. Greater or lesser amounts and percentages may be required or allowed based on the City's review.

(1997 Code, § 1390.12) (Ord. 97-24, passed 1-21-1998) Penalty, see § 10.99

(H) *Signs and Advertising.* The use of any portion of a wireless telecommunication tower for signs other than warning or equipment information sign is prohibited.

(1997 Code, § 1390.13) (Ord. 97-24, passed 1-21-1998) Penalty, see § 10.99

(I) *Interference with public safety communication.* No wireless telecommunication facility shall interfere with public safety telecommunications. All wireless telecommunication

towers/antennas shall comply with F.C.C. regulations and licensing requirements.
(1997 Code, § 1390.14) (Ord. 97-24, passed 1-21-1998) Penalty, see § 10.99

(J) *Accessory utility buildings.* All utility buildings and structures accessory to a tower shall be architecturally designed to blend in with the surrounding environment and shall be permitted in addition to the number of accessory buildings otherwise allowed in each zoning district.

(1997 Code, § 1390.16) (Ord. 97-24, passed 1-21-1998) Penalty, see § 10.99

(1) Control buildings. The control buildings shall be designed to be architecturally compatible with the adjacent buildings. The control buildings shall not be placed in required setback areas nor shall they encroach into required landscape areas.

(2) Ground mounted equipment. Ground mounted equipment shall not be visible from beyond the boundaries of the site and shall be screened by a solid wall or fence and dense landscaping materials described in paragraph G above.

(3) Accessory utility buildings shall observe the minimum setback requirements for accessory buildings in the underlying zoning district as well as all other applicable zoning and building requirements for accessory buildings.

(K) *Maintenance.* All buildings and structures on the premises of the wireless communications facility shall observe the City's property maintenance standards of the City Code.

§ 150.122 WIRELESS COMMUNICATIONS TOWER AGREEMENT.

(A) If the application is approved by the City, a wireless communications permit and a building permit shall be issued upon the execution of a wireless communication tower agreement.

(B) The agreement shall be signed by the applicant and property owner and the terms of the agreement shall include the following:

(1) A list of the conditions of approval to the wireless telecommunication tower permit;

(2) A statement indicating that failure to comply with the conditions of approval shall result in the removal of the wireless telecommunication tower, antennae, or tower accessory equipment;

(3) A statement indicating that the expenses incurred by the city to enforce the provisions of the wireless telecommunication tower agreement shall be reimbursed by the applicant;

(4) A statement, which requires the applicant to utilize the procedures established by

the F.C.C. to resolve any complaints received relating to interference allegedly caused by the wireless telecommunication tower; and

(5) A statement indicating that a wireless telecommunication tower which has not been used for 12 consecutive months shall be deemed abandoned and may be required to be removed in accordance with Section 150.117 below. To ensure compliance with this provision, the applicant must submit a performance bond or letter of credit in an amount sufficient to cover the removal or reduction costs.

(1997 Code, § 1390.07) (Ord. 97-24, passed 1-21-1998)

§ 150.123 ABANDONMENT AND REMOVAL

(A) Towers and antennae shall be removed, at the owner's expense, within 180 days of cessation of use.

(B) An owner wishing to extend the time for removal or reactivation shall submit an application stating the reason for such extension. The Planning Director may extend the time for removal or reactivation up to 60 days showing of a good cause. If the tower or antennae is not removed in a timely fashion, the City may give notice that it will contract for removal within 30 days following written notice to the owner. Thereafter, the City may cause removal and be reimbursed for all costs associated with said removal by drawing on the funds provided with the financial guarantee.

(C) Upon removal of the wireless communications facility, the site shall be returned to its natural state and topography and vegetated consistent with the natural surroundings.

§ 150.124 MINIMUM CONDITIONS

(A) Minimum conditions on a wireless communications permit may include, but not be limited to the following:

- (1) An agreement providing for co-location and 12-month removal of unused and/or obsolete towers shall be attached and become part of the permit.
- (2) The tower shall be set back a distance equal to the tower height from all property lines. All accessory structures shall be setback a minimum of twenty (20) feet from all side yard and rear yard property lines
- (3) Zoning Permits shall be applied for and issued before any construction is started.
- (4) Prior to application for a conditional use permit, applicant must obtain FAA approval and/or provide documentation that FAA approval is not needed.
- (5) Applicant must obtain FCC licensure and approval as required for various communications applications. No interference with local television and radio reception will be allowed.
- (6) Applicant must submit proof of liability and Worker's compensation Insurance.
- (7) Proof that towers and their antennas have been designed by, and following completion of construction were inspected by a qualified and licensed professional

engineer (at the applicant's expenses) to conform to applicable state structural building standards and all other applicable reviewing agencies and to conform with accepted electrical engineering methods and practices as specified in applicable provisions of the National Electrical Code.

- (8) Metal towers shall be constructed of, or treated with, corrosive resistant material.
- (9) The addition of antennas and associated equipment of an additional provider to an existing permitted tower shall be considered co-location and shall require a zoning permit and site plan approval. An amendment to a conditional use permit shall typically not be required
- (10) All towers shall be reasonably protected against unauthorized climbing. The area around the base of the tower and guy wire anchors shall be enclosed by a fence with a minimum height of six (6) feet chain link fence with a locked gate.
- (11) All towers and their antennas shall utilize building materials, colors, textures, screening and landscaping that effectively blend the tower facilities within the surrounding natural setting and built environmentally to the greatest extent possible.
- (12) No part of any antenna or tower, nor any lines, cable, equipment, wires, or braces shall at any time extend across or over any part of the right of way, public street, highway, or sidewalk, without approval by the City through the zoning permit approval process.
- (13) All obsolete or unused towers and accompanying accessory facilities shall be removed within 12 months of the cessation of operations at the site unless a time extension is approved by the City. After the facilities are removed, the site shall be restored to its original or an improved state which includes removal of all concrete to 6-feet below normal grade and surrounding area returned to normal grading. Electronic equipment shall not be removed in advance of removal of obsolete or unused towers. To ensure compliance, the applicant must submit a performance bond or letter of credit in the amount of \$100,000 prior to the issuance of a building permit for the facility to cover the removal costs. Failure to remove the structure shall be cause for the City to remove the tower and associated equipment and assess the cost against the required bonding or letter of credit instrument.
- (14) Yearly report showing compliance with RF Radiation Hazard Standard and certification of required removal bond is required to be received before December 31 of each year.
- (15) The City of Lake Elmo shall conduct a final inspection of the site to ensure that all requirements of the City Code and all conditions of approval attached as part of the wireless communications permit are met prior to the start of operation of the facility.
- (16) For installations of a facility in an area that could potentially be accessed by the public (including rooftop installations or other locations that would be considered public verses occupational) a yearly report must be submitted before December 31 of each year showing the results of on-site measurements at the site. A Registered Professional Engineer must sign these measurements and report. *(MOVED FROM "PROOF OF NEED" SECTION)*



8000 West 78th Street, Suite 400
Edina, MN 55439

September 17, 2009

City of Lake Elmo
3800 Laverne Ave. North
Lake Elmo, MN 55042

RE: Proposed Wireless Facility Ordinance

Dear Staff and Council Members,

Although we did not receive official notice of the meeting and the draft was just made available yesterday, we have had a chance to quickly review the proposed wireless facility ordinance.

Overall, the ordinance seems reasonable, but we have taken the time to point out some areas that we feel deserve further scrutiny. We understand the reasons why cities want to limit the number of free-standing wireless facilities in their jurisdiction. We also believe that the citizens of Lake Elmo desire the wireless communications technology that has exploded in growth over the last five years.

T-Mobile strives to co-locate on existing structures whenever possible. The capital cost to build a new wireless facility tower far exceeds the cost to co-locate on an existing structure. However, there needs to be some realistic flexibility in any wireless facility ordinance that allows for wireless communications towers when needed.

The present draft of the ordinance allows for towers to be located in a number of areas and allows for reasonable height structures. We feel the City is smart in adopting a provision similar to Washington County regarding placement of facilities on or near power utility lines. The requirements for co-location design on new towers will also benefit the City in the long-run and reduce the number of new towers.

However, there are some portions of the proposed ordinance that we feel deserve further scrutiny.

Section 150.111.05 (A) states that in-building service is not as critical as outside coverage for analysis purposes. T-Mobile feels in-building coverage is critical to its customer base and network footprint. Consumer data also says in-building coverage is very important to them.

In 2006, minutes of use on cell phones began exceeding the minutes of use on landline phones. In 2007, one out of eight American homes (13.6%) had only wireless phones

instead of landline phones. The number of people expected to “cut the cord” on landline service continues to grow. According to the USA Today (April 23rd, 2007), 60% of all cell phone calls are made at home.

In addition, T-Mobile handles over 60,000 E911 calls per day. If you don't have reliable in-building coverage, you don't have access to E911 on your cell phone.

In Section 150.111.05 (2)(b) the City is asking for “protective information” on properties within ½ mile of the proposed facility. Under the Telecommunications Act of 1996, cities may not take into account health effects of a proposed facility. You may want to have your city attorney carefully review the legality of this requirement.

Section 150.111.05 (4) requires a yearly radio frequency hazard report. It is our understanding the FCC controls and regulates the operation of licensed PCS carriers. A new wireless facility is considered a federal undertaking. It is our belief that cities only have authority on local zoning/siting issues and any radio frequency emissions regulation is the exclusive jurisdiction of the FCC. Again, you may want to have your city attorney carefully review the legality of this requirement.

Section 150.111.05 (6) requires a list of all buildings and structures over 75 feet within a 2 mile radius. We feel this is an over-burdensome requirement. Our search rings for new wireless facilities are often a ½ mile radius or smaller. We do not pursue existing structures if they will not fit our coverage need for the search area.

Section 150.111.10 (2) requires preference for existing structures as low as 35 feet. It is our opinion that a structure needs to be approximately 75 feet to provide a reasonable coverage footprint to justify the investment of capital. We would request this height be re-evaluated.

Section 150.111.10 (7) requires an arbitrary analysis on the impact to residential areas. How does one determine the impact of a wireless communications facility on a residential area and more importantly what are the scientific parameters that would be used to measure this requirement? In our opinion, this clause amounts to a ‘popularity contest’ of where to place the proposed facility.

Section 150.112 again refers to a 35 foot height that we feel is unfeasible for providing reasonable coverage to an area.

Section 150.114 (H) requires the property owner to guarantee the removal of the tower. This is an incredible burden on the landlord. It would make logical sense to have the tower builder/owner provide a removal bond to be held by the city to guarantee the removal of the tower structure, which the ordinance mentions farther on. We feel this requirement should be removed.

Section 150.120 (D)(3) (a) requires a setback of 100% the height of the structure from residential buildings. We feel the landlord's residence should be exempted from this

setback requirement. They will have signed a lease and may want the facility located on the property in a certain area. In addition, this setback requirement may make a large number of parcels unusable purely from a setback situation.

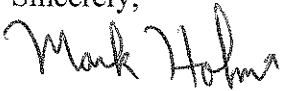
Section 150.120 (F) does not allow for lighting of towers. The FAA requires lights on towers that are in or near an airport zone even if they are under 200'. Thus, some proposed towers may require such lighting .We would propose that an applicant submit a TOWAIR or ASAC report documenting the need for any lighting required by the FAA for a proposed tower.

Section 150.XXX requires a yearly radio frequency hazard report. As pointed out above, we feel this is not in the jurisdiction of the city to require.

We understand the City has worked hard on this proposed draft ordinance. T-Mobile feels the ordinance is reasonable, but could use further scrutiny on the items listed above.

Thank you for your time in reviewing this letter.

Sincerely,

A handwritten signature in black ink that reads "Mark Holm". The signature is written in a cursive, slightly slanted style.

Mark Holm
Real Estate Manager
T-Mobile USA
8000 W. 78th Str.
Suite 400
Edina, MN 55439

Planning Commission
Date: 9/28/09
Item: 5a

ITEM: Addressing Buffer Setbacks in Open Space Preservation (OP) Developments (Cont.)

SUBMITTED BY: Kelli Matzek, Planner

REVIEWED BY: Kyle Klatt, Planning Director

Summary of Recommendations Resulting from September 14th meeting:

	North Edge	South Edge	West Edge	East Edge
St. Croix's Sanctuary	200	50	50	100
Discover Crossing	200	100	50	100
Whistling Valley I	0	200	0	0

ACTION REQUESTED: The Planning Commission is being asked to review recommended buffer setbacks for three additional OP developments and to provide a recommendation.

RECOMMENDATION:

At this time, staff is asking the Planning Commission to review the research and recommendations provided by staff and to provide feedback on the proposed reduced buffer setbacks.

ATTACHMENTS (1):

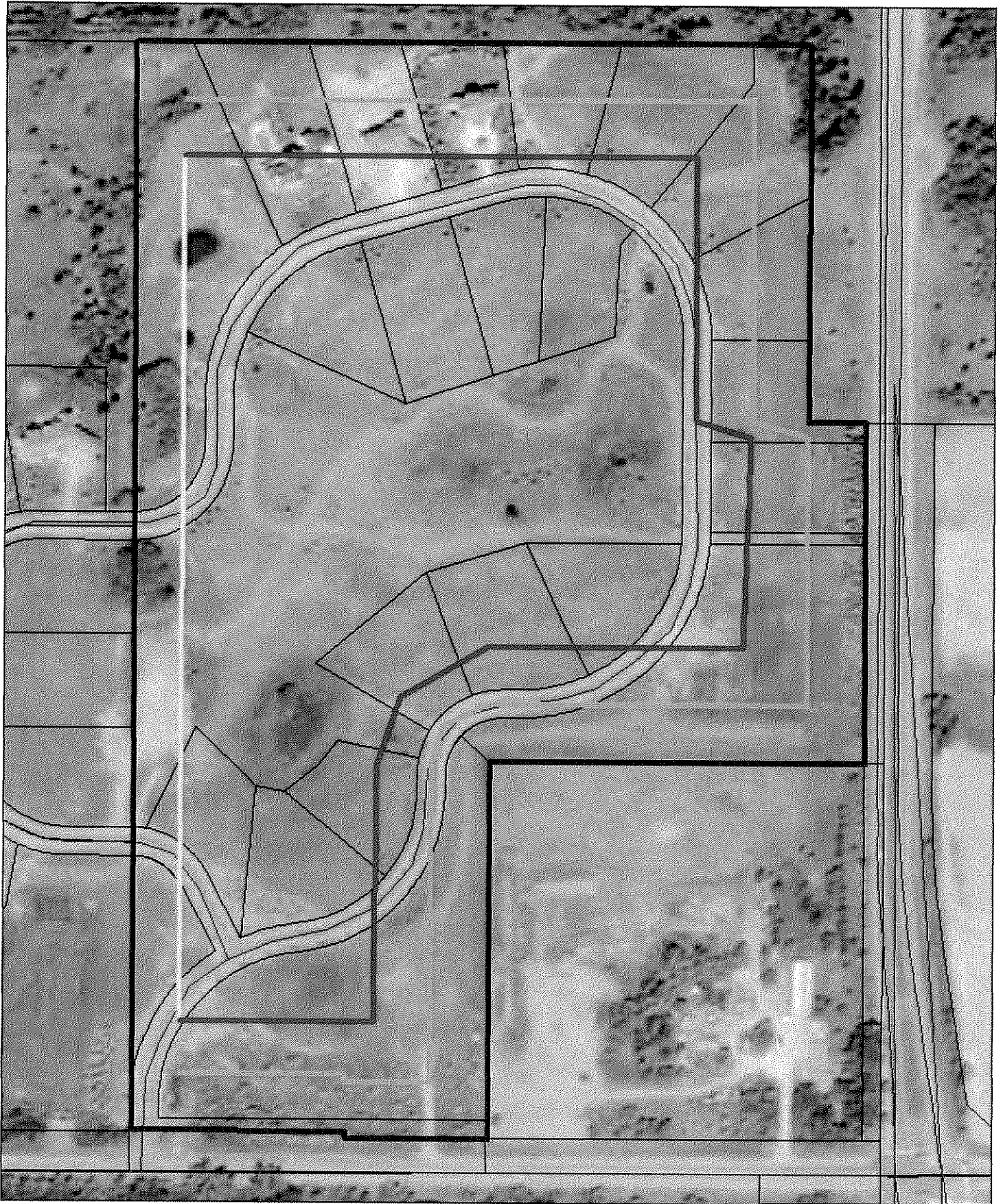
1. Staff recommendation table
2. OP Development Maps

Existing OP Development	Existing Buffer Setback (200 Ft unless otherwise noted)	What we think was approved, but was not officially approved by the Council	Proposed Buffer Setback	Reasoning behind Recommendation:	Notes:
Whistling Valley II (RR)	85 Ft for Lot 1, Block 1 from W edge	0 Ft from N and E edge	85 Ft from W, 100 from S, 0 from E and N	<p>Northern Edge - the property abuts the Regional Park which provides a dedicated open space; a reduction to 100 ft would not eliminate all non-conforming houses</p> <p>Western Edge - maintain the reduced buffer setback approved by Council at the time of the development</p> <p>Southern Edge - This would eliminate additional, greater front yard setbacks for three properties; the lots are already separate from County Road 10 (10th Street) by an outlet with a conservation easement</p> <p>Eastern Edge - Staff is recommending a 0 foot setback as the lots abut either Keats Avenue North or a strip of land that is part of the Regional Park Reserve - a protected open space; establishing a buffer setback in this location greater than 50 feet would severely impact the buildability of at least two platted lots</p>	

<p>Whistling Valley III (RR)</p>	<p>Res. Says CC allows a reduction in 100 ft buffer setback from E</p>	<p>100 ft from N, W, and S</p>	<p>0 foot setback; all edges</p>	<p>Staff is recommending a 0 foot setback from all edges of the development as the lots are clustered toward the center of the parcel. However, the development was given a 4/5 exception to minimum size parcel needed to be developed as an OP, thereby reducing the amount of space available to buffer the platted lots. The property to the North, West, and Most of the South are eligible for OP development based on lot size. The setback from the W, S, and E could be left at 100 feet as it would no longer impact the residential lots. This development stubs to the North to create a connection for future development of that parcel, which could provide additional buffering, if necessary at that time.</p> <p>Eastern Edge - The property to the East is Whistling Valley I.</p>	<p>Unclear in Resolution</p>
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Existing OP Development	Existing Buffer Setback (200 Ft unless otherwise noted)	What we think was approved, but was not officially approved by the Council	Proposed Buffer Setback	Reasoning behind Recommendation:	Notes:
Farms of Lake Elmo (RR)	100 ft from W, S, and E; 200 ft from N		50 Ft from S and E; 200 Ft from N and 100 Ft from West	<p>Southern Edge - Although the City Council already reduced this buffer setback to 100 feet at the time of the development, if the intention is to eliminate non-conformities; the setback would need to be reduced to 50 feet and even then it is close for the Southwest corner lot</p> <p>Northern Edge - this setback only applies to a few properties and that is due to a neighbor's parcel that is landlocked inside the borders of this development (an unusual situation); a 200 foot setback could be retained without maintaining any non-conformities or eliminating the ability to build a home, but would reduce the buildability of a few rear yards</p> <p>Western Edge - A 100 foot setback would not encumber a lot to make it unbuildable, but would reduce the area for a conforming accessory structure; a 50 foot buffer exists in the form of an outlot to provide a physical barrier from the adjacent properties</p> <p>Eastern Edge - a 50 foot setback would eliminate the non-conformities with regards to the home, but not the existing accessory structure in the Southeast corner of the development (pool); while staff would support a 0 foot setback from this edge of the development as it abuts the Regional Park Reserve, the 50 foot was suggested as a previous City Council had established a 100 foot setback</p>	(CC minutes 4-5-05)

Whistling Valley II; Buffer Setback



85 Foot Buffer Setback

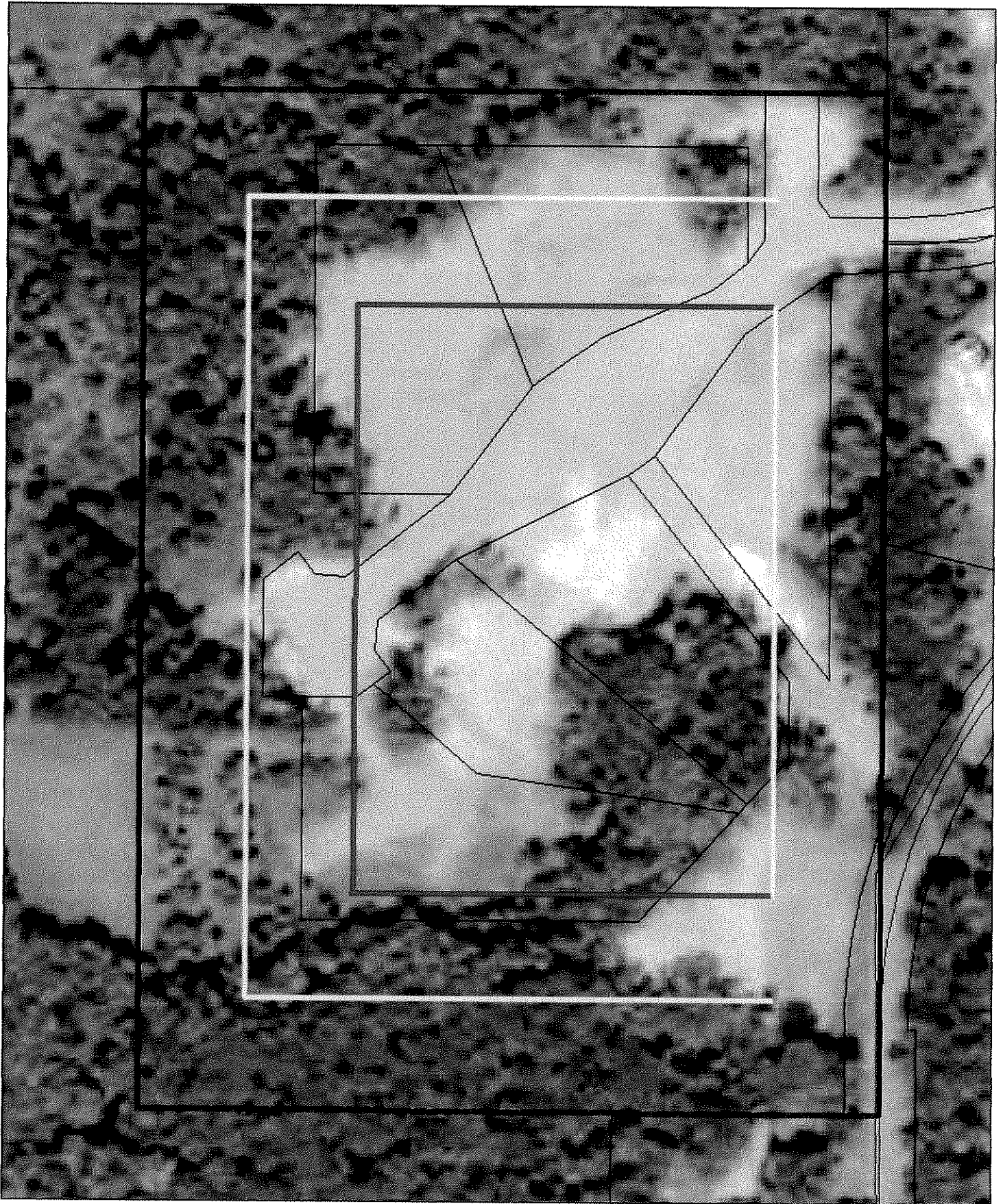


100 Foot Buffer Setback



200 Foot Buffer Setback

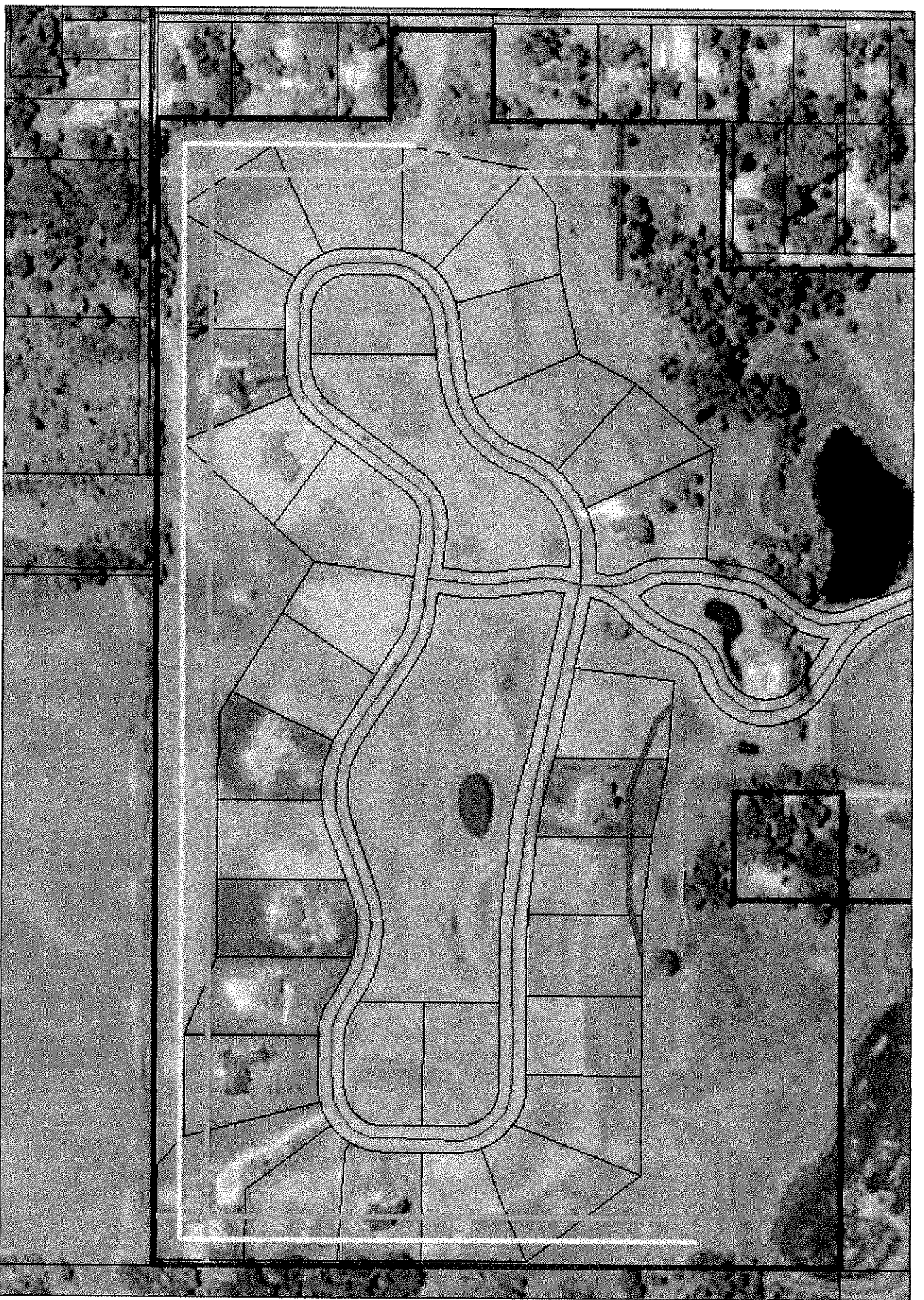
Whistling Valley III; Buffer Setback



----- 100 Foot Buffer Setback

————— 200 Foot Buffer Setback

Farms of Lake Elmo; Buffer Setback



200 Foot Setback

100 Foot Setback

50 Foot Setback