



## City of Lake Elmo

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Lake Elmo, Minnesota 55042

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### NOTICE OF MEETING

The City of Lake Elmo  
Planning Commission will conduct a meeting on  
**Monday, August 10, 2009, at 7:00 p.m.**

#### AGENDA

1. Pledge of Allegiance
2. Approve Agenda
3. Approve Minutes
  - a. July 13, 2009
4. Public Hearings
  - a. VARIANCE: Consideration of an application to permit the construction of a covered stoop within the 30 foot front yard setback at 8618 Ironwood Trail North; PID: 21-029-21-12-0028.
5. Business Items
  - a. Wireless Communication Ordinance Draft
  - b. Open Space Setback Buffers
  - c. Economic Development Activities
6. City Council Updates
  - a. July 21, 2009
    - i. Demontreville Trail Road Reconstruction Project
    - ii. Sign Ordinance - Approval
  - b. August 4, 2009 – CDBG Gas Line Replacement Project in Cimarron Neighborhood
7. Adjourn

**City of Lake Elmo  
Planning Commission Meeting  
Minutes of July 13, 2009**

Chairman Van Zandt called to order the meeting of the Lake Elmo Planning Commission at 7:00 p.m. COMMISSIONERS PRESENT: Anderson, Bidon, Britz, Fliflet (7:04), Hall, Pearson, Van Erem, Van Zandt, Williams, Ziertman. Absent: McGinnis. STAFF PRESENT: Planner Matzek, Planning Director Klatt.

**Introduction of New Commissioner – Todd Williams.**

Mr. Williams provided his background and experience to the commission as he introduced himself.

**Agenda**

M/S/P, Hall/Anderson, to approve the agenda as presented. Vote 9:0.

**Minutes** – *None.*

**Public Hearings** – *None.*

**Business Items** – *Wireless Telecommunication Tower Ordinance*

Planning Director Klatt provided a summary of what work had been done to date and raised some questions for the Planning Commission to consider and provide feedback. Mr. Klatt introduced consultant Garrett Lysiak with Owl Engineering.

Mr. Lysiak described his work experience and his thoughts on city requirements for wireless tower applications, placement, search areas, and setback requirements.

Commissioner Bidon asked if companies pick locations that make the most economical sense for their coverage as the towers are expensive for the company to build. He believed it was important to provide service in parks.

Mr. Lysiak said a clear ordinance is necessary to identify the city's priority in placement of the towers. He also said that monopoles in which the technology is located inside the structure results in more towers as it limits the ability to update the antennas. He stated that a height requirement of 199 feet or less would not require lighting under current FAA guidelines.

Commissioner Hall asked if there was a threshold of service reduction that the city could not or should not ask of the applicant if requesting them to move their proposed tower to another location.

Mr. Lysiak said that if he helps to write the ordinance, it will be fair with possible wording added such as "reasonable accommodation."

Commissioner Williams asked if Mr. Lysiak could provide a table of coverage based on tower height to help evaluate how many more towers would be required based on the height requirement.

Mr. Lysiak said he could provide some general information, but it depends upon vegetation and elevation as well. He did not recommend that the City study individual sites as it would be very costly and provide little benefit to the City versus responding to individual applications from wireless carriers. He said that generally, at one hundred feet, four towers would be needed to substitute one tower at 199 feet.

Planning Director Klatt asked the commission to discuss the current minimum lot size requirement of 10 acres.

Commissioner Fliflet said properties less than 10 acres could be suitable, but her opinion would be to maintain a drop zone setback requirement. She suggested leaving a minimum acreage requirement out of the code.

A straw vote was held: eight in favor of fewer, taller towers; eight in favor of removing the minimum acreage (Pearson was against because he believed there should be some minimum acreage required).

Commissioner Fliflet said she would like to see performance standards for the associated equipment building located on the ground. She suggested they maintain a rural appearance.

Chairman Van Zandt took a straw poll to suggest expediting this item despite a moratorium until the end of the year. 9:0.

A five minute break was taken at 9:00 p.m.

**Business Items** – *Buffer Setback in Open Space Preservation Developments*

Planner Matzek introduced the item by saying that staff has found that a number of non-conformities have been created by the 2001 revision to the Buffer Setback in Open Space Preservation developments. In most cases, it appears this was unintentional as the older developments now have entire lots that would be considered unbuildable. Unfortunately, many of the newer developments also do not have reduced setbacks, thereby making vacant, platted lots unbuildable as well.

Commissioner Williams suggested adding the buffer setback information to the setback chart and not providing a City Council with too much authority in reducing or eliminating a buffer setback requirement in any future change to the ordinance.

Commissioner Fliflet said she would prefer to view each OP development individually to address non-conformities rather than providing a generic setback.

Commission Ziertman expressed a concern in reducing the buffer setbacks for existing OP developments and suggested taking into account the neighbors of those living adjacent to OP developments.

**Business Items** – *Recommendation on Economic Development Activities* – Tabled.

**Business Items** – *Special Event Permit Ordinance* - Tabled

**City Council Updates**

Planning Director Klatt stated that the City Council tabled the sign ordinance and approved the Storm Water Management and Erosion and Sediment Control Ordinance at the June 16<sup>th</sup> Council meeting. He said that the buffer setback was discussed at the July 7<sup>th</sup> Council meeting which resulted in the withdrawal of an appeal application from Mr. Pelletier for the denial of a building permit due to the setback and the approval of a setback reduction in the Tana Ridge and Parkview Estates developments.

Meeting adjourned 10:14 p.m.

Respectfully submitted,

Kelli Matzek  
Planner

ITEM: Hold a public hearing to consider an application to allow construction of a covered porch five feet into the required 30 foot front yard setback at 8618 Ironwood Trail North – R-1 zoning – PID 21-029-21-12-0028.

SUBMITTED BY: Kelli Matzek, City Planner

REVIEWED BY: Kyle Klatt, Planning Director

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#### SUMMARY AND ACTION REQUESTED

The Planning Commission is being asked to conduct a public hearing and consider a variance request from Vernon and Vicky Reichow to allow the construction of a covered porch five feet into the required 30 foot front yard setback at 8618 Ironwood Trail North. The existing home currently is located eight feet from the setback line, but the attached garage extends to the setback line. The applicants are proposing to add a foyer to the home which would be eight feet deep and would abut the setback line. This would be a permitted addition to the home without a variance. However, the property owner is also interested in building an additional five foot covered front porch onto the foyer, which would then encroach into the setback. The covered porch would encroach five feet into the front yard setback.

Staff is recommending denial of the variance application as the applicants have eight feet in which to construct a permitted addition to their home. In addition, the applicants also have the option, should they chose to maintain the size and layout of the proposed foyer and porch, of removing the cover to the porch, which would then be permitted under Section 154.081 Permitted Encroachments on Required Yards.

The applicant has stated that the variance is justified due to the following (applicant's narrative is attached):

- The property owners desire to live the remainder of their lives in their home and believe it a necessity to have a foyer deep enough for a wheelchair to turn around and maneuver. They contend that the covered porch would need to be covered to prevent any injuries caused by the elements such as snow and ice and would need to be a depth of five feet to again allow a wheelchair to maneuver safely without accident.

For variance applications, the burden is on the applicant to demonstrate why this situation is unique and necessitates flexibility to code requirements. To make this case, a variance can only be granted by the city when strict enforcement of the code would cause undue hardship on a property owner. "Hardship" is broken down into the following three components:

- a. *The proposed use of the property and associated structures in question cannot be established under the conditions allowed by the city's zoning regulations and no other reasonable alternative use exists;*
- b. *The plight of the landowner is due to the physical conditions unique to the land, structure, or building involved and are not applicable to other lands, structures, or buildings in the same zoning district; The unique conditions of the site were not*

*caused or accepted by the landowner after the effective date of the city's zoning regulations;*

- c. *And the approval of the variance would not alter the essential character of the neighborhood.*

In reviewing the request against the three criteria listed above, staff determined all criteria were not met, as more completely explained in the attached full staff report.

**ADDITIONAL INFORMATION:**

- The existing home is currently built eight feet from the eastern side property line where there is a ten foot side yard setback. This was approved by a variance in 1982 and the home is otherwise in a conforming location.

**RECOMMENDATION:**

In following a strict review of the variance criteria outlined in city code, Staff is recommending that Planning Commission recommend denial of the proposed variance for Vernon and Vicky Reichow to allow construction of a covered porch five feet within the 30 foot front yard setback at 8618 Ironwood Trail North.

**ORDER OF BUSINESS:**

- Introduction..... Kelli Matzek, City Planner
- Report by staff ..... Kelli Matzek, City Planner
- Questions from the Commission ..... Chair & Commission Members
- Applicant Comments .....Chair facilitates
- Questions of the Applicant ..... 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 Commission..... Chair & Commission Members

**ATTACHMENTS (4):**

1. Staff Report
2. Applicant's Narrative
3. Area Map
4. Proposed Site Plan

City of Lake Elmo Planning Department  
**Variance Report**

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*To:* **Planning Commission**  
*From:* Kelli Matzek, City Planner  
*Meeting Date:* **8-10-09**  
*Applicant:* **Vernon and Vicky Reichow**  
*Owner:* Same  
*Location:* **8618 Ironwood Trail North**  
*Zoning:* R-1

***Introductory Information***

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<b><i>Proposed Project:</i></b>	The applicant is seeking to construct a covered porch five feet into the required thirty-foot front yard setback at 8618 Ironwood Trail North. The resulting structure, if approved, would be twenty-five feet from the front property line.
<b><i>Variance Request(s):</i></b>	A <b>5-foot variance</b> from the required 30' setback from the front yard property line.
<b><i>Applicable Codes:</i></b>	<b>Section 154.041 Zoning Districts (R-1).</b> <u>Subd. C – Minimum district requirements.</u> Requires that all structures be setback a minimum of 30 feet from a front property line.  <b>Section 154.081 Permitted Encroachments on Required Yards.</b>  The following shall be permitted encroachments into setback and height requirements, except as restricted by other sections of this chapter.  (A) <i>In any yards.</i> Posts, off-street open parking, flutes, leaders, sills, pilasters, lintels, cornices, eaves (up to 3 feet), gutters, awnings, open terraces, steps, chimneys, flag poles, open fire escapes, sidewalks, fences, essential services exposed ramps (wheelchair), uncovered porches, stoops, or similar features, provided they do not extend above the height of the ground floor level of the principal structure or to a distance less than 5 feet from any lot line nor less than 1 foot from any existing or proposed driveway; yard lights and nameplate signs; trees, shrubs, plants, floodlights or other sources of light

illuminating authorized illuminated signs, or light standards for illuminating parking areas, loading areas, or yards for safety and security reasons; provided the direct source of light is not visible from the public right-of-way or adjacent residential property.

**Findings & General Site Overview**

**Site Data:** Lot Size: 0.92 acres (40,273 square feet)  
 Existing Use: Single Family Dwelling  
 Existing Zoning: R-1  
 Property Identification Number (PID): 21-029-21-12-0028  
 Legal Description: Lot 8, Block 3, Tablyn Park, Washington County, Minnesota

**Application Review:**

**Applicable Definitions:**

**BUILDING LINE.** A line parallel to a lot line or the ordinary high water level at the required setback beyond which a structure may not extend.

**BUILDING SETBACK LINE.** A line within a lot parallel to a public right-of-way line, a side or rear lot line, a bluff line, or a high water mark or line, behind which buildings or structures must be placed.

**DWELLING, SINGLE-FAMILY.** A residential structure designed for or used exclusively as 1 dwelling unit of permanent occupancy.

**HARDSHIP.** The proposed use of the property and associated structures in question cannot be established under the conditions allowed by the city's zoning regulations and no other reasonable alternative use exists; that the plight of the landowner is due to the physical conditions unique to the land, structure, or building involved and are not applicable to other lands, structures, or buildings in the same zoning district; and that these unique conditions of the site were not caused or accepted by the landowner after the effective date of the city's zoning regulations.

**Property/ Application Info:** The existing home at 8618 Ironwood Trail North is currently located an additional eight feet beyond the required 30 foot front yard setback in the location the applicant is proposing an addition. The applicant is proposing to add an eight foot by eighteen foot foyer to the front of the home in a conforming location. In addition to the foyer, the applicant is proposing to add a five foot by eighteen foot covered porch in front of the foyer, which would extend into the front yard setback by five feet.



**Variance  
Criteria:**

An applicant must establish and demonstrate compliance with the variance criteria set forth in Lake Elmo City Code Section 154.017 before an exception or modification to city code requirements can be granted. For ease of review, staff provides a three-part breakdown of the definition of "hardship" in Lake Elmo City code to ensure the requests are meeting the spirit and intent of the ordinance.

1. *The proposed use of the property and associated structures in question cannot be established under the conditions allowed by the city's zoning regulations and no other reasonable alternative use exists;*

Staff finds the addition of a five foot covered porch within the front yard setback is not essential to continue a reasonable use of the property. The homeowners can continue to use the dwelling for residential purposes without the granting of the requested variance.

The applicants have written in a narrative (attached to this report) that the size of both the proposed (conforming) foyer and the proposed non-conforming covered porch is necessary for future use of the property to ensure adequate space to maneuver a wheelchair, should that come to be needed for those inhabiting the home. However, an exposed wheelchair ramp and/or an uncovered porch would both be permitted to be built within the setback without the need of a variance.

**Staff finds this criterion is NOT met.**

2. *The plight of the landowner is due to the physical conditions unique to the land, structure, or building involved and is not applicable to other lands, structures, or buildings in the same zoning district. The unique conditions of the site were not caused or accepted by the landowner after the effective date of the city's zoning regulations.*

The applicants' home (in the proposed addition location) is currently eight feet from the 30 foot front yard setback line. The applicants' are proposing to add an eight foot foyer which would be located within a conforming location and then a five foot covered porch beyond the foyer, which would then extend into the required setback. Because the applicants' have eight feet in which to construct a revised configuration of a conforming foyer and covered porch, staff would suggest the site is not unique, and in fact, offers more opportunities for a conforming addition than other homes in that neighborhood which are currently built up to the setback.

In addition, the city code has a list of permitted exceptions to encroachments for setback requirements which includes uncovered porches, stoops, or other similar features. If the applicants were interested in maintaining the proposed size of both the foyer and porch and the applicants were to remove the cover from the porch, a

(cont.)

variance would not be needed.

As such, **staff finds this criterion is NOT met.**

3. *The approval of a variance would not alter the essential character of the neighborhood.*

A foyer and covered porch would not be out of character for the neighborhood as it is entirely single family dwellings. **Staff finds this criterion is met.**

**Variance  
Conclusions:**

Based on our analysis of the review criteria in City Code, staff would recommend **denial** of the variance request to allow construction of a covered porch five feet into the thirty foot front yard setback at 8618 Ironwood Trail.

**Resident  
Concerns:**

Staff is not aware of any resident concerns surrounding the requested variances.

**Additional  
Information:**

- The existing home is currently built eight feet from the eastern side property line where there is a ten foot side yard setback. This was approved by a variance in 1982 and the home is otherwise in a conforming location.

**Conclusion:**

The applicants are seeking approval of the following variance:

A **5-foot variance** from the required 30' setback from the front yard.

**Commission  
Options:**

The Planning Commission has the following options:

- A) Recommend approval of the variance request;
- B) Recommend denial of the variance request;
- C) Table the item and request additional information.

The 60-day review period for this application expires on 9-21-09, but can be extended an additional 60 days if more time is needed.

**Staff Rec:**

**Staff is recommending denial** of the variance requests to allow construction of a covered porch five feet into the 30 foot front yard setback at 8618 Ironwood Trail based on the following:

- Denial of the request would not deny the owners reasonable use of the property as the home could continue to be used for residential purposes;

- The applicants have eight feet in which to construct an addition in a conforming location on the property in the proposed location;
- The applicants could build the proposed foyer and porch in the size and shape requested if the porch were to be uncovered;
- A wheelchair ramp and an uncovered porch are permitted encroachments into the setback should the applicants choose to alter their plans and eliminate the need for a variance.

**Denial  
Motion**

To deny the request, you may use the following motion as a guide:

**Template:**

**I move we recommend that Council deny the requested variance based on the findings of fact provided by staff.** *(use staff's findings provided or cite your own). please site reasons for the recommendation)*

**Approval  
Motion**

To approve the requested variance, you may use the following motion as a guide:

**Template:**

**I move we recommend that Council approves the requested variance(s) based on the following findings of fact...***(please site reasons for the recommendation)*

**...with the following condition:**

1. **The variance shall expire one year from the date of resolution if not acted upon; City Council approval will be required for any subsequent extension.**

cc: Vern and Vicky Reichow, Applicant  
Joe Kurle, Applicants' Contractor

To whom this may concern:

Vern and Vicky Reichow, property owners of 8618 Ironwood Trail, are seeking a variance to the front setback of there property. They are working with R.P. Vogel Remodeling as the builder, along with Joe Kurlle from Joe's Drafting and Design.

The legal description of the property is:  
8618 Ironwood Trail N., Lake Elmo, MN 55042  
Tablyn Park, Lot 8, Block 3  
Parcel ID# 2102921120028  
Parcel size: 40,273 sq. ft. (0.92 acres)  
Residential use and zoned Residential

We are proposing to change the front setback requirement of 30'-0" for a covered porch to 25'-0". Currently, an uncovered porch can exceed the 30'-0" requirement, but a covered porch cannot.

The application for a variance came up during the design phase of a functional foyer addition with a covered porch. The front garage wall currently is at the required setback and the house wall is 8'-0" behind the garage. It quickly became clear that for a functional foyer with a covered porch to work, a variance was required.

Explanation for request of variance:

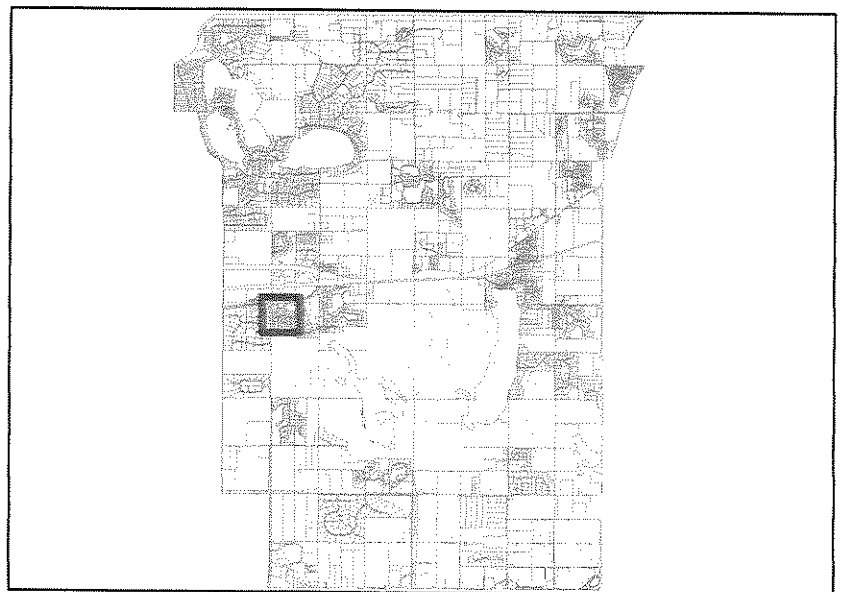
Vern and Vicky Reichow, life long residence of Lake Elmo, desire to live the remainder of their lives in their home on 8618 Ironwood Trail. Because they are retirement age, planning ahead is a good idea. While they hope never to be in a wheelchair, Vern's family has experience with being in a wheelchair. Having a foyer that is deep enough for a wheelchair to turn around and maneuver in was essential in the design. The covered porch, the reason for the request of the variance, was also a necessity to prevent any injuries caused by the elements, like snow and ice. The depth of the porch, 5'-0", was needed to allow a wheelchair to maneuver safely without accident. They also like the neighborhood and not wanting to change the look of it have kept with the design and character similar to other houses in the area. Because they wish to live their later years in this house, they want to enter it safely, without injury. Since there are no nursing homes in Lake Elmo, the Reichows' are faced with few options without the variance. They are asking to allow the covered porch to extend into the setback by only 5'-0".

The Reichows', R.P. Vogel Remodeling and Joe's Drafting and Design would like to thank you for considering this request and are willing to assist in anyway possible.

Thanks,

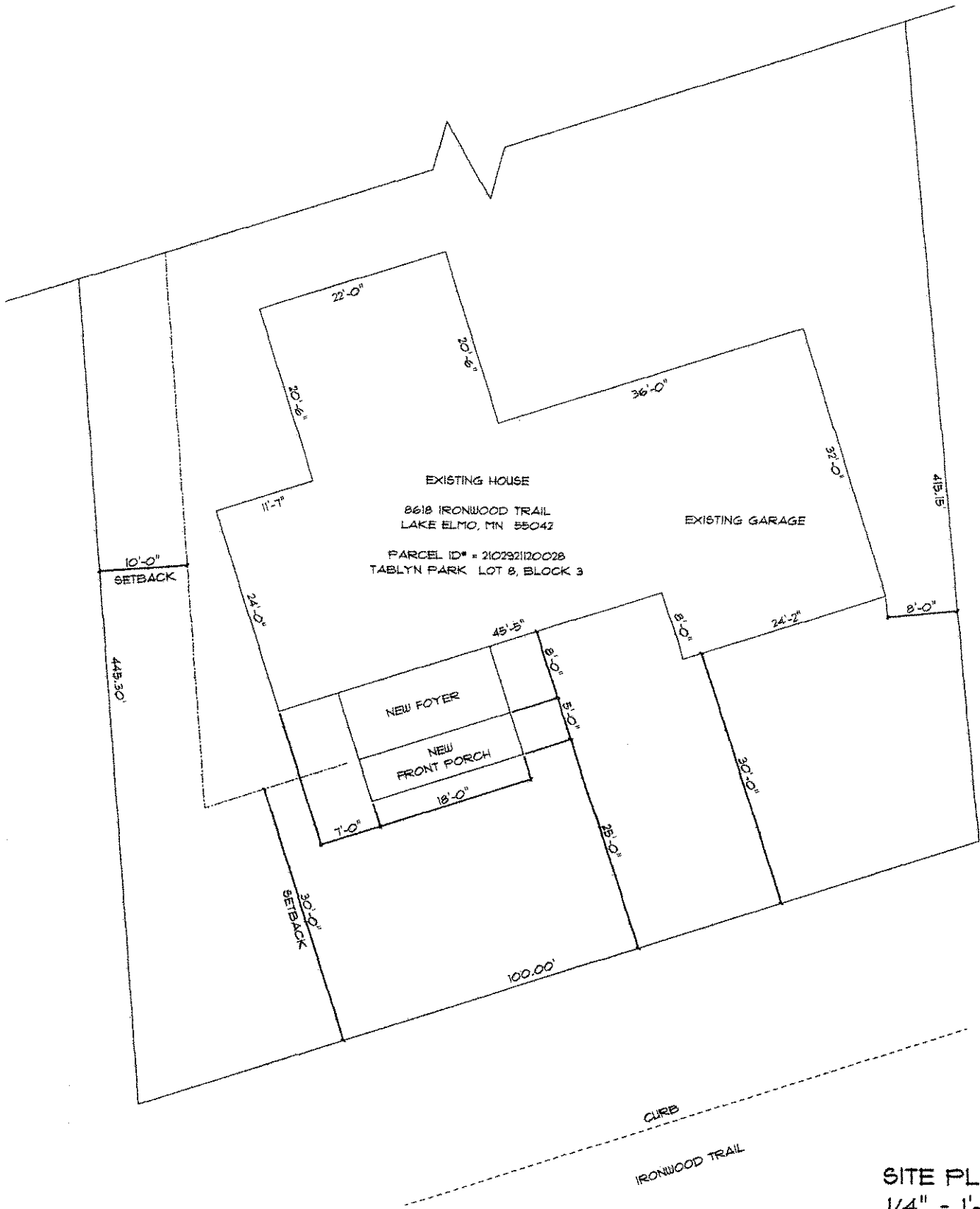
Joe Kurlle  
Joe's Drafting and Design, LLC  
On behalf of Vern and Vicky Reichow

# 8618 Ironwood Trail North



# R.P. VOGEL REMODELING

8618 IRONWOOD TRAIL, LAKE ELMO, MN 55042



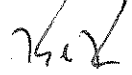
SITE PLAN  
1/4" = 1'-0"

JOE'S DRAFTING & DESIGN  
14835 CAMBRIAN AVE. W.  
ROSEMOUNT, MN 55068

JOE'S DRAFTING & DESIGN

PHONE: (952) 237-3436  
EMAIL: joe@joesdrafting.com  
WEBSITE: www.joesdrafting.com

Planning Commission  
Date: 8/10/09  
**Staff Report**  
Item: 5a

ITEM: Wireless Communications Draft Ordinance Discussion  
SUBMITTED BY: Kyle Klatt, Planning Director   
REVIEWED BY: Kelli Matzek, City Planner  
Craig Dawson, City Administrator

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SUMMARY AND ACTION REQUESTED:

The Planning Commission is being asked to review and provide feedback on a very rough draft of proposed revisions to the Wireless Communication Ordinance. This draft has been assembled based on the initial feedback received at a public open house, preliminary review by the Planning Commission and Council, and discussions with the City's project consultant (Garret Lysiak of Owl Engineering). Please note that additional changes are expected to be made to the document, and that once the Commission has completed its initial review it will be further evaluated by the project consultant and City Attorney.

The new ordinance is organized as follows, with brief comments from Staff regarding the intent of each section:

- *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.
- *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.
- *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.
- *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 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.

With the work that has been performed to date, Staff has attempted to provide the basic structure for the document. Some of the details, including tower design and height standards, can be readily amended after further consideration by the Planning Commission and members of the public.

#### ADDITIONAL INFORMATION:

The next step in the ordinance update process will be to conduct a public open house after the next round of revisions to the draft have been completed by Staff. The goal at this point in time is to conduct the open house in mid to late August, and then to present the final draft to the Planning Commission at a public hearing in September.

#### RECOMMENDATION:

The Planning Commission is asked to review the preliminary draft Wireless Communications Ordinance and to provide guidance to staff concerning and revisions that the Commission would like to see included in the final draft before a public hearing is scheduled for this ordinance.



ATTACHMENTS:

1. Preliminary Draft Ordinance

ORDER OF BUSINESS:

- Introduction ..... Kyle Klatt, Planning Director
- Report/Presentation ..... Kyle Klatt, Planning Director
- Questions from the Commission..... Chair & Commission Members

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;~~

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

~~(FD)~~ 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.

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

~~—(H) Protect residential property and neighborhoods~~

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

**§ 150.110.5 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)

#### **§ 150.111 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 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;

(5) Mobile services providing public information coverage of new 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.

#### **150.111.05 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. The cost of the City's review including the review of the proof of need review is the applicant's responsibility. 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 or each year showing the results of on-site measurements of the site. A Registered Professional Engineer must sign these measurements and report.

(5) Map of Existing and Proposed Facilities. A map showing the location of all existing and any proposed facilities within four (4) 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 four (4) 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 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.

#### § 150.111.10 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 must 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.

(2) Use of Existing Structures. An existing structure over 35 feet high must 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 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 public utility power line right-of-way or within 100 feet of the right-of-way.

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

(6) Less restrictive (heavier) zoning districts shall be given preference over more restrictive zoning districts.

(7) Sites with the least impact on residential areas and which are the least offensive to 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.

#### **§ 150.1127 CO-LOCATION REQUIREMENTS.**

Except as hereinafter providedIn 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;

~~—(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)

#### **§ 150.1132 PROHIBITED AREAS.**

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

(A) Residentially zoned parcels 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;

(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

#### **§ 150.1143 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 within 100 feet of the 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.

#### **§ 150.1154 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 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;
- (2) The buildings 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. 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).

~~(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 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)

~~§ 150.115 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)~~

### **§ 150.119 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

### **§ 150.120 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.

(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.

(D) Setbacks from lot lines.

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

(b)

(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.

(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) 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.~~

~~(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 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 minimum 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.

~~§ 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~~

~~§ 150.116 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)~~

## § 150.117 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 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.XXX MINIMUM CONDITIONS

(A) Minimum conditions on an antenna tower permit should 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 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.

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

SUBMITTED BY: Kelli Matzek, Planner

REVIEWED BY: Kyle Klatt, Planning Director

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**SUMMARY AND ACTION REQUESTED:** At the July Planning Commission meeting, the commission was informed that a number of non-conformities exist in Open Space Preservation (OP) developments with regards to the buffer setback. Staff is now bringing forth information on seven of the nineteen OP developments for review by the commission. Staff has researched what was approved by the City Council at the time of approval for the various developments, provided maps of what this means with respect to structures on the property or buildable area remaining on a lot, and is recommending reduced buffer setbacks in some cases.

The Planning Commission is being asked to review the research and recommendations provided by staff on buffer setbacks in seven OP developments and to provide feedback on the proposed reduced buffer setbacks.

At this time staff is proceeding with addressing the non-conformities in the existing OP developments and will bring back a draft ordinance to revise the language for the buffer setback at a future meeting.

*History of the Open Space Preservation Ordinance*

The Open Space Preservation development ordinance was first written for Lake Elmo in the 1990's. The purpose of the ordinance is to provide a developer the ability to cluster more homes than otherwise permitted on smaller lots and to set aside land as preserved open space in perpetuity. Originally, an Open Space Preservation development required an additional step to rezone the property as OP before a development was reviewed and approved. Since then, this approach has been revised so that an OP development could be permitted by a conditional use permit in specific zoning districts, thereby eliminating the additional step of rezoning the property. Although the zoning district code language was repealed, the zoning of the existing developments was never retroactively returned to Agricultural or Rural Residential, and therefore the Open Space district remains on the zoning maps.

As a part of this ordinance from the beginning, a buffer setback (originally called a buffer zone) was identified as an effort to physically buffer the existing adjoining neighbors from the more densely built clustered homes. The buffer setback section of the ordinance has been revised a few times throughout the years to its current form, which was last approved in 2001. A buffer setback has always been required, but has varied in depth from 100 to 200 feet and has been revised from once just requiring "main structures" to be outside the setback to all structures and road surfaces not at a 90 degree angle.

The OP ordinance permits the City Council to modify any of the minimum standards outlined in the ordinance by a 4/5 vote. Staff has found this clause has been used in altering the buffer setback requirement in some of the OP developments.

The current OP ordinance is attached at the end of this report with the buffer setback section on pages four and five.

*Current Issues:*

Staff has found difficulty in implementing the current buffer setback due to its revisions over time and its resulting impact on existing developments as well as the unknown intent at the time of development review. At this time, staff is seeking to clarify this information for existing OP developments by clearly establishing the buffer setback in each development.

**ADDITIONAL INFORMATION:**

- At the July 7, 2009 City Council meeting, a resolution was approved reducing the 200 foot buffer setback in Tana Ridge and Parkview Estates developments from 200 feet to generally 50 feet, although one lot in Parkview Estates was provided an additional reduction to 20 feet.
- Staff received an appeal application on the denial of a building permit application. The applicant lives on Lily Avenue in the Tana Ridge neighborhood and applied to build an in-ground pool in the rear yard. Staff found this would not be permitted as it falls within the buffer setback of the OP development. The City Council approved a buffer setback reduction in the development and the applicant withdrew their appeal application.
- The City Council recently approved a variance for an in-ground pool and spa at 2931 Jonquil Trail North. Due to unique circumstances, the pool and spa were permitted to be 12 feet within the 100 foot buffer setback in the Farms of Lake Elmo development.
- The Open Space Preservation ordinance was revised in 2008 to address concern over the impervious surface requirement in the developments. Staff found numerous non-conformities in existing developments. The impervious surface requirement was raised to twenty percent with an additional five percent permitted if mitigation measures were approved.

**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.

**SUGGESTED MOTION:**

Move to recommend approval of the reduced buffer setbacks provided by staff in the \_\_\_\_\_ development.

**ATTACHMENTS (3):**

1. Staff recommendation table
2. Maps of OP developments
3. Current Open Space Preservation ordinance.

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:
St. Croix's Sanctuary (RR)	200 Ft; all edges	Assuming 200 ft from N and E; 100 ft from S and W	0 Ft from E; 50 Ft from S and W; 200 Ft from N	<p><b>Eastern Edge - Manning Avenue borders</b>            eastern edge of development along with a minimum 100 foot wide outlot covered by a conservation easement and therefore unbuildable</p> <p><b>Southern Edge -</b> The development borders property eligible for OP development based on property size which allows a reduced buffer setback to 100 feet; staff is recommending 50 feet to continue providing a buffer between this development and any future development to the South while allowing the properties platted up to the edge of the development the ability to utilize a backyard for a structure</p> <p><b>Western Edge -</b> Again, the development borders property eligible for OP development based on property size; both properties that would be affected by this reduction back up to an outlot or currently undeveloped city park</p> <p><b>Northern Edge -</b> Whether the setback is 200 feet or 0 feet; the entire area is covered by conservation easements in an outlot and would not have future private structures built on that property, which abuts State Highway 36</p>	

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:
Discover Crossing (RR)	200 ft from S; 100 Ft from W		100 Ft from E and S; 200 Ft from the N; and 50 Ft from the W	<p>Eastern Edge - County Road 13 (Lake Elmo Avenue) borders the development on the Eastern edge; this would reduce the non-conformity existing and would allow the lots to again be buildable while providing a 100 foot setback</p> <p>Southern Edge - While the property to the South of this development is not eligible for OP development due to insufficient parcel size, a buffer already exists in the form of an outlot of over 100 feet in width buffering the existing homes from the future development</p> <p>Northern Edge - Staff is recommending maintaining a 200 foot setback, although would understand if a reduced setback was established. A 200 foot setback was thought to be appropriate at the neighboring property to the North is not eligible for OP development due to lot size and zoning designation. Although the 200 foot setback does encroach on one private property, it does not detract from the buildability of the property.</p> <p>Western Edge - The development borders property eligible for OP development based on property size and was actually platted to stub into that property for future connectivity; the properties affected by this change would have room in the rear yard to place a conforming structure or, in the case of the vacant lots, would have additional options in which to configure a home location</p>	

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 I (Ag)	0 Ft from E; 100 feet from W;	0 Ft from N; 0 Ft from South	0 Ft from S, E, N, and W	<p>Eastern Edge - this has already been approved by Council at the time of the development approval</p> <p>Northern Edge - Staff is recommending a 0 Ft setback; if the goal is to eliminate existing non-conformities, even with a 50 foot setback, the home furthest to the North would remain non-conforming; the Regional Park Reserve is located to the north and serves as a dedicated open space; the Northern</p> <p>Southern Edge - A buffer setback of 200 feet would not impact any private land; staff suggested 0 instead of 200 for consistency - it would be fine to leave it at 200</p> <p>Western Edge - two homes exist in a non-conforming location with a 100 foot setback; reducing the setback to 50 feet would make the homes conforming but would reduce the ability to put a conforming structure in the rear yard of the property; for a majority of the Western edge, the development abuts Whistling Valley III which could be considered an extension of this development and therefore no buffer setback would be required, the remaining West edge abuts a parcel eligible for OP development due to sufficient parcel size which would provide an opportunity for creating a sizeable buffer should that property be developed in the future</p>	Staff report says there should be no setback from regional park, but no Council action to that affect

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>	
Whistling Valley III (RR)	Res. Says CC allows a reduction in 100 ft buffer setback from E	100 ft from N, W, and S	0 foot setback; all edges	<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>	Unclear in Resolution

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; 100 Ft from N and 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)



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:
Prairie Hamlet (OP)	200 Ft; all edges		50 Ft setback from S and W; 0 Ft from N and E	<p>Northern Edge - Whether the setback is 200 feet or 0 feet, the entire area is covered by conservation easements in an outlet and would not have future private structures built on that property, which abuts State Highway 36</p> <p>Western Edge - Although a 100 foot setback could be established without excluding much private land from accessory structure construction, the actual implementation of this would be difficult due to the curve in the development; it would provide minimal buffer setback functionality</p> <p>Southern Edge - in order to eliminate existing non-conformities, a 50 foot setback would suffice while providing minimal back yard area for a permitted accessory structure</p> <p>Eastern Edge - Whether the setback is reduced to 100 feet or 0 feet, the setback would not (or negligibly) encroach on private property and the non-conformities would be eliminated</p>	

staff recommendation of 0 feet is often because there is a significant break between the lot and a neighboring lot (large open space area protected by conservation easement, roadway, etc.) and the area is likely already precluded from development

Fields of St. Croix 2nd Addn (OP)					
Tamarack Farm Estates (OP)					
Fields of St. Croix (RR)					
Sunfish Ponds (RR)					
Hamlet on Sunfish Lake (OP)					
Tapestry at Charlotte's Grove (RR)					
Wildflower Shores (OP)					
Cardinal Ridge (Ag)					
The Homestead (OP)					
Heritage Farms (OP)					
Tana Ridge (OP)	50 Feet from West and East edge of development; 200 ft from South; 0 from North			approved by Council July 7, 2009; Res. 2009-033	
Parkview Estates (OP)	50 feet from North except for Lot 9, Block 5 which has a 20 ft setback from North; 50 ft setback from east boundary of development			approved by Council July 7, 2009; Res. 2009-033	

# Discover Crossing; Buffer Setback



50 Foot Buffer Setback



100 Foot Buffer Setback



200 Foot Buffer Setback

# St. Croix's Sanctuary; Buffer Setback



50 Foot Buffer Setback

100 Foot Buffer Setback

200 Foot Buffer Setback

# Whistling Valley I; Buffer Setback



50 Foot Buffer Setback



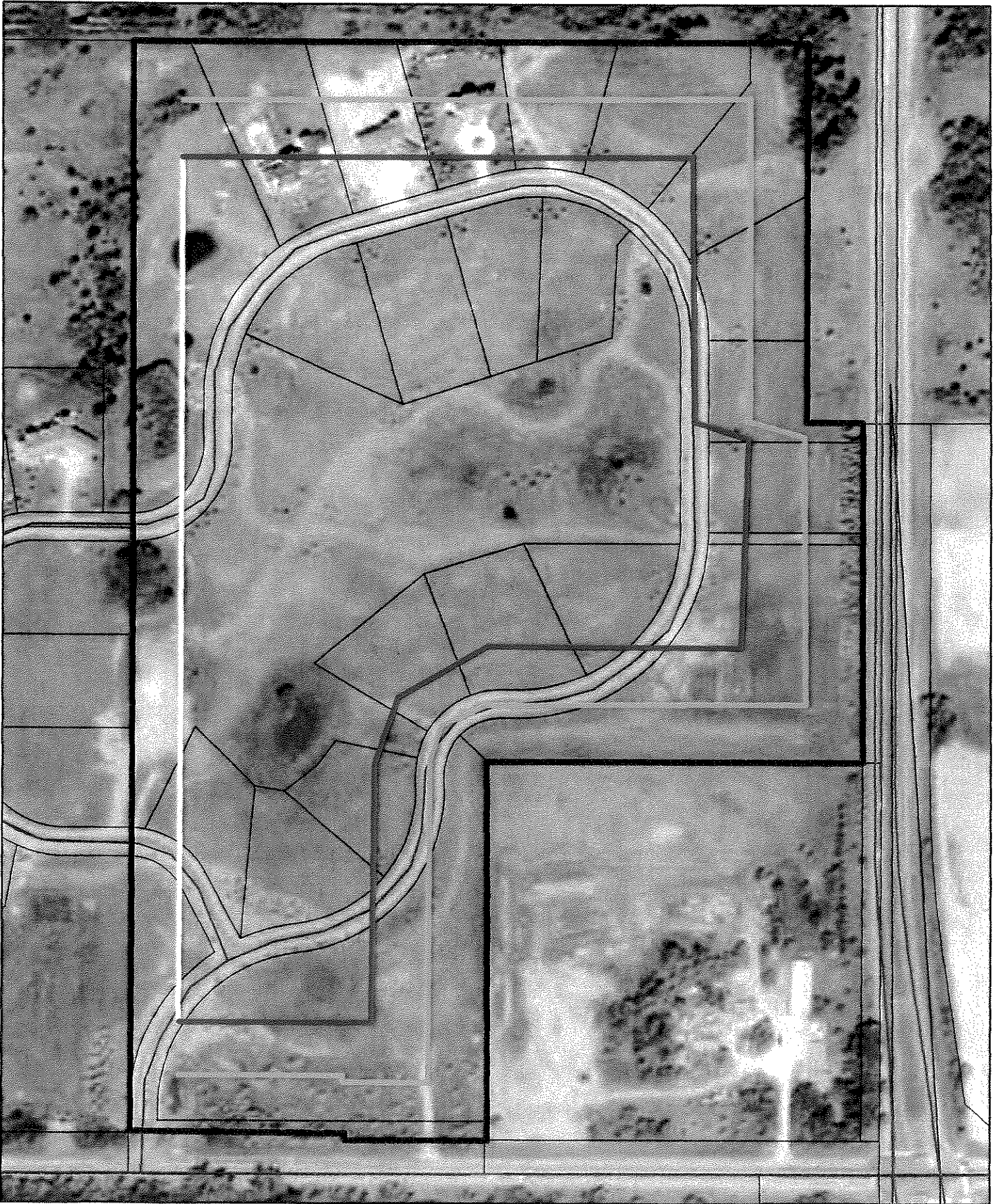
100 Foot Buffer Setback



200 Foot Buffer Setback

0 Ft Setback Approved

# Whistling Valley II; Buffer Setback



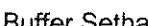
85 Foot Buffer Setback



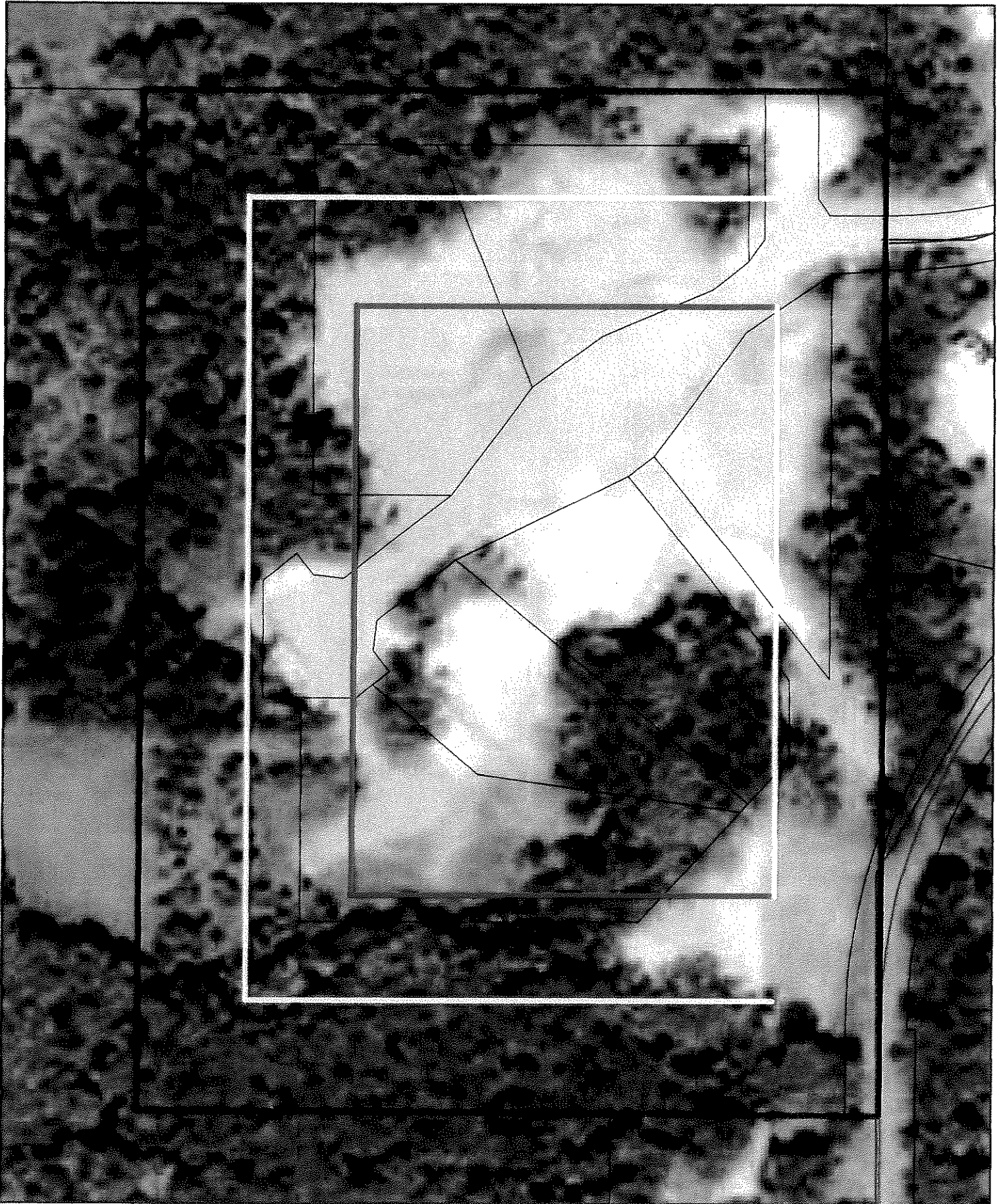
100 Foot Buffer Setback



200 Foot Buffer Setback



# Whistling Valley III; Buffer Setback



100 Foot Buffer Setback



200 Foot Buffer Setback

# Farms of Lake Elmo; Buffer Setback



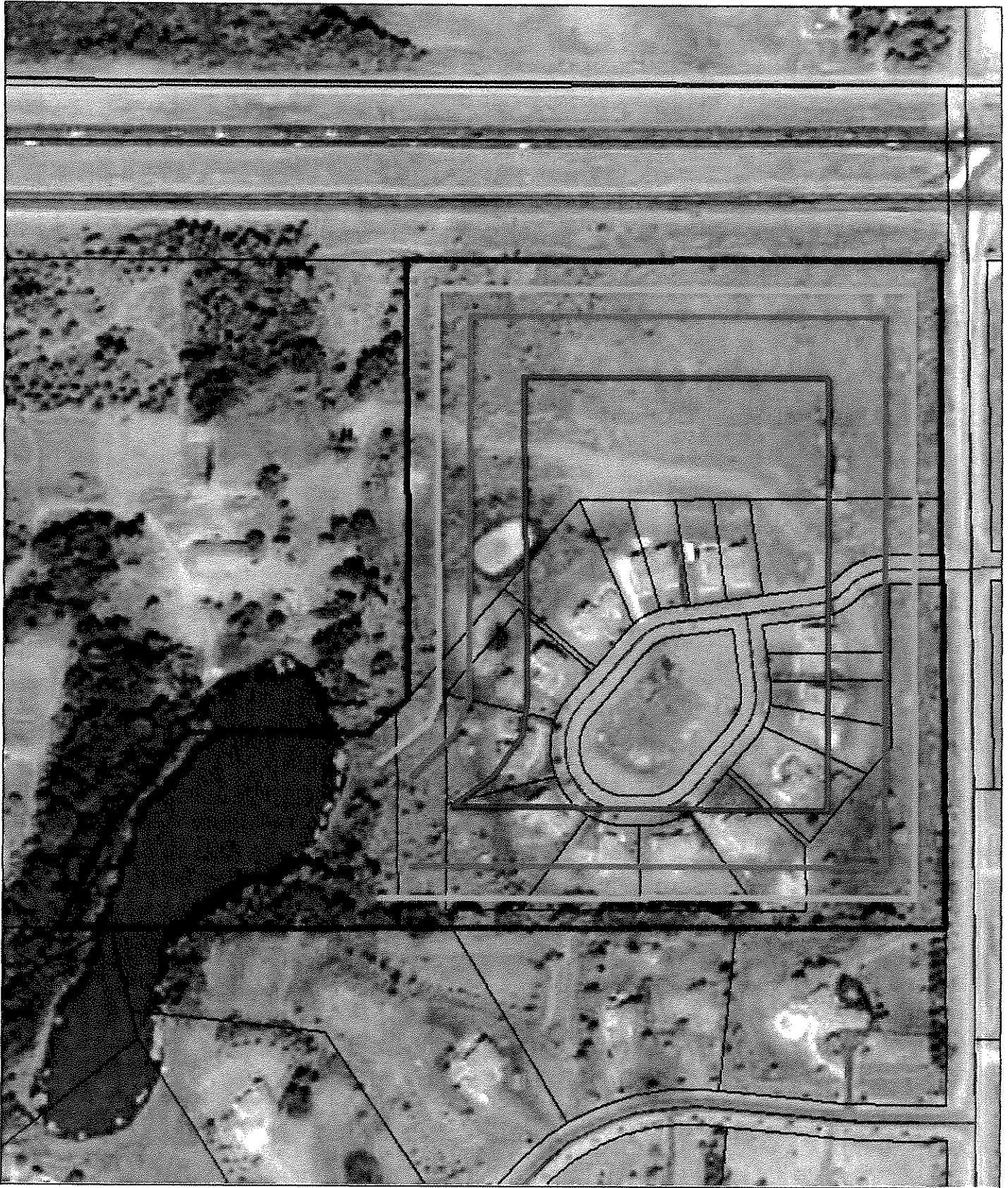
200 Foot Setback




50 Foot Setback

100 Foot Setback



# Prairie Hamlet



-  50 Foot Setback
-  100 Foot Setback
-  200 Foot Setback

## **OPEN SPACE PRESERVATION**

### **§ 150.175 PURPOSE.**

(A) The purpose of open space preservation (OP) is to maintain the rural character of Lake Elmo by preserving agricultural land, woodlands, corridors, and other significant natural features while allowing residential development consistent with the goals and objectives of the city's Comprehensive Plan. This type of development will allow an alternative to large lot, single-family housing and will reduce the cost of constructing and maintaining public facilities and infrastructure.

(B) Protected open space will enhance and preserve the natural character of the community and create distinct neighborhoods.

(Ord. 97-79, passed 5-1-2001)

### **§ 150.176 INTENT.**

(A) It is the intent of the City of Lake Elmo to accomplish the stated purpose of OP by approving a conditional use permit for portions of property currently zoned Agricultural, Rural Residential, and Rural Estate; and by adopting the comprehensive development regulations contained herein.

(B) In return for requiring preserved open space as contained herein; it is the intent of the City of Lake Elmo to allow dwelling unit density that will provide a development density equal to or greater than the prior zoning; AG, Agricultural, RR, Rural Residential, and RE Residential Estate.

(Ord. 97-79, passed 5-1-2001)

### **§ 150.177 DEFINITIONS.**

Unless specifically defined in §§ 150.175 *et seq.*, common definitions, words, and phrases used in §§ 150.175 *et seq.* shall be interpreted so as to give them the same meaning as they have in common usage throughout this code and are found in § 11.01.

(Ord. 97-79, passed 5-1-2001)

### **§ 150.178 USE REGULATIONS.**

Within OP, the following uses are allowed.

(A) *Permitted uses.*

(1) Single-family, detached;

- (2) Preserved open space;
- (3) Conservation easements;
- (4) Agriculture;
- (5) Suburban farms;
- (6) Private stables;
- (7) Single-family, attached;
- (8) Townhouses (no more than 25% in any development); and
- (9) Wayside stand.

(B) *Accessory uses.* Uses that are typically found accessory to a permitted use.

(C) *Prohibited uses.* All other uses are hereby prohibited.

(Ord. 97-79, passed 5-1-2001; Am. Ord. 08-006, passed 6-17-2008) Penalty, see § 10.99

#### **§ 150.179 OP CONDITIONAL USE PERMIT REQUIRED.**

No property may be developed responsive to §§ 150.175 *et seq.* unless approval is obtained from the City Council following its approval of the concept plan, development stage plan, conditional use permit, and final plan described herein. Applications for Council approval shall be submitted on forms provided by the City Administrator together with all required fees, maps, surveys, and planning data. Only completed applications shall be referred to the Planning Commission for review.

(Ord. 97-79, passed 5-1-2001) Penalty, see § 10.99

#### **§ 150.180 DEVELOPMENT STANDARDS.**

(A) OP developments shall comply with the following minimum standards unless modified by 4/5 affirmative votes of the City Council.

(B) (1) *Land area.* Applications for a residential development in the OP District shall meet all the following criteria.

(a) The minimum land area for an OP conditional use permit is a nominal contiguous 40 acres. The ratio of parcel length to width shall not exceed 3 to 1. The total number of dwelling units permitted shall be according to the development density criteria contained in the Comprehensive Plan. The total number of dwelling units within an OP

development shall not exceed the density limitations contained in the Comprehensive Plan for OP Districts.

(b) The total preserved open space area within the OP development shall be at least 50% of the total buildable land area, as defined by § 11.01. Areas not meeting the definition of buildable land area shall not be considered to be preserved open space in determining the amount of preserved open space proposed.

(c) Dwelling units shall be grouped so that at least 50% of the buildable land area of the proposed development remains preserved open space. The preserved open space shall consist of agricultural lands, natural habitat, pedestrian corridors, or neighborhood or community recreational areas.

(2) *Open space easement required.*

(a) *Preserved open space standards.*

1. All preserved open space shall be subject to a conservation easement and used for the purposes as defined by §§ 150.175 *et seq.* The land shall be controlled in 1 or more following manners as determined in the city's sole discretion:

a. Owned by an individual or legal entity who will use the land for preserved open space purposes as provided by permanent conservation restrictions (in accordance with M.S. Ch. 84C.01-.05, as it may be amended from time to time), to an acceptable land trust as approved by the city; and/or

b. Conveyed by conservation easement to the city.

2. Not less than 60% of the preserved open space shall be in contiguous parcels of not less than 10 acres.

3. Parks and recreational facilities shall be provided in addition to preserved open space as specified in the Lake Elmo Parks Plan; and, consistent with the park dedication and fees-in-lieu standards as specified by Chapter 153.

4. The preserved open space land shall be maintained for the purposes for which it was set aside. If preserved open space was set aside for agricultural purposes or for natural habitat, a plan shall be submitted which will indicate how the land will be maintained or returned to a natural state and who will be responsible for plan implementation. Developers shall provide copies of deed covenants to prospective purchasers, and conservation easements to the city, describing land management practices to be followed by the party or parties responsible for maintaining the preserved open space.

5. Where applicable, a homeowner's association shall be established to permanently maintain all residual open space and recreational facilities. The

homeowner's association agreements, guaranteeing continuing maintenance, and giving lien right to the city if there is lack of the maintenance shall be submitted to the city as part of the documentation requirements of §§ 150.175 *et seq.* for a final plan.

6. Preserved open space parcels uses shall be contiguous with preserved open space or public park, on adjacent parcels.

(b) *Lot design.* Lots shall be designed to achieve the following objectives (listed in order of priority):

1. On the most suitable soils for sub-surface septic disposal;
2. On the least fertile soils for agricultural uses, and in a manner which maximizes the usable area remaining for the agricultural use;
3. Within any woodland contained in the parcel, or along the far edges of the open fields, adjacent to any woodland (to reduce impact upon agriculture, to provide summer shade and shelter from winter wind, and to enable new construction to be visually absorbed by natural landscape features);
4. In locations least likely to block or interrupt scenic vistas, as viewed from Highway 36 and Highway 5 corridors, and other local roads as designated in the Comprehensive Plan; and
5. Away from woodlands in open fields.

(c) *Structures.* Homes shall be oriented on the site that meets the criteria of rural hamlet. It is desired that the structures within neighborhoods convey a particular architectural style with similar building components, materials, roof pitches.

(d) *Buffer zones.* Where a proposed OP development abuts an existing residential development or a parcel of land not eligible for future development under the OP ordinance due to insufficient parcel area, a 200 foot setback shall be provided between the property line of the abutting parcel and any structure or driving surface within the OP development. Driving surfaces that cross the setback area at a 90 degree angle shall be the only exception. Where a proposed OP development abuts an existing OP development, or a land parcel eligible for future development under the OP ordinance, a 100 foot setback from any structure within the proposed OP development and the property line of the abutting parcel may be substituted. The setback substitution shall only be approved when there is existing mature vegetation and/or changes in topography occurring on the site proposed for development; and/or where the OP site developer introduces the physical features that provide an effective year round buffer of the structures proposed for the OP site from existing residences or development. The determination of the buffering effectiveness of existing or introduced physical features that qualify a site for a 100 foot buffer shall be at the sole discretion of the City Council.

(e) *Boulevard landscaping.* Boulevard landscaping is required along all streets to consist of at least 1 tree per every 30 feet or placed in dusters at the same ratio. A landscape plan for the entire site is required and shall consist of at least 10 trees per building site; and trees shall not be not less than 1.5 inch in caliper measured at 54 inches above grade level.

(f) *Pathway.* A pathway system or sidewalks shall be identified which will extend through the buildable land area or through the open space land to connect to a planned or developed pathway on adjacent parcels or to a local road. Pathways shall be linked to the "Old Village" to emphasize the connection between existing and new development. Pathways provided shall be at least equal in length to the sum of the centerline length of all public roads within the development. Pathways shall be constructed of asphalt or concrete in compliance with the standard city design plate for OP trails.

(g) *Densities.* The maximum dwelling unit density shall be 18 units per 40 gross acres of buildable land.

(h) *Minimum district requirements.*

<b><i>Open Space Preservation District (OP)</i></b>		
	<b><i>Single-Family</i></b>	<b>Townhouse</b>
Maximum Building Height:		
Primary Structure	2 and ½ stories or 35 feet	2 and ½ stories or 35 feet
Accessory Structure	25 feet	1 story or 20 feet, whichever is less
Minimum Lot Width:	NA	NA
½ acre lot; 1 acre lot		
Maximum Impervious Surface Coverage:  Gross Lot Area	20%. This percentage may be increased to 25% provided a pervious paver or comparable system is installed consistent with the <i>City of Lake Elmo Engineering Standards Manual</i> or storm water mitigation measures are installed to mitigate the runoff created by the additional coverage above the base district amount. All mitigation measures must be	NA

	approved by the City Engineer.	
Minimum Setback Requirements:		
Front Yard	30 feet	20 feet
<b><i>Open Space Preservation District (OP)</i></b>		
	<b><i>Single-Family</i></b>	Townhouse
Side Yard	15 feet or 10% of lot width, whichever is greater	15 feet or 10% of lot width, whichever is greater
Corner Lot Front	30 feet	30 feet
Corner Lot Side Yard	30 feet	30 feet
Well From Septic Tank	50 feet	50 feet
Minimum Lot Size:		
Individual Well and Septic System	1 acre	NA
Individual Well and Communal Drainfield	½ acre	8,000 square feet per unit

(i) *Utilities.*

1. OP developments may be platted to accommodate home site lots with either individual septic tanks and drainfields; or, with individual septic tanks and communal drainfields. Single-family or multiple-family lots under 1 acre shall be constructed with an individual septic tank and a communal drainfield.

2. All septic systems shall conform to the performance standards of the Minnesota Pollution Control Agency's standards for sewage treatment systems WPC-7080 and its appendices, or the M.P.C.A. standards in effect at the time of installation and septic system regulations of the Lake Elmo Municipal Code.

3. Communal drainfields may be partially or completely located in an area designated as preserved open space provided:

a. The ground cover is restored to its natural condition after installation; and

b. Recreational uses are prohibited above or within 50 feet of communal drainfields, or as approved by the City Engineer.

4. No wetland treatment system shall be allowed within the village green.

(j) *Streets.* Streets shall be developed according to the following standards that promote road safety, assure adequate access for fire and rescue vehicles, and promote adequate vehicular circulation.

1. Streets shall be designed according to the following standards; pavement shall be 14 to 16 feet wide for 1-way streets; pavement shall be 22 to 24 feet wide for 2-way streets; and the pavement width shall be 22 to 24 feet for streets where homes are located on 1 side of the street.

2. The minimum street right-of-way for 1-way streets shall be 40 feet and the minimum right-of-way for 2-way street shall be 50 feet.

3. Streets shall not be constructed with a rural cross-section.

(Ord. 97-79, passed 5-1-2001; Am. Ord. 97-184, passed 10-3-2006; Am. Ord. 97-199, passed 11-5-2007; Am. Ord. 08-008, passed 8-19-2008) Penalty, see § 10.99

#### **§ 150.181 HISTORIC PRESERVATION.**

Historic structures on the site shall be identified.

(Ord. 97-79, passed 5-1-2001) Penalty, see § 10.99

#### **§ 150.182 OP DEVELOPMENT/CONCEPT PLAN.**

(A) *Required submittals; OP development/concept plan.* The applicant shall submit 20 copies of a concept plan for a development of an OP that shall include the following information.

(1) An existing conditions plan which identifies the following (drawn to a scale of 1 inch equal to 100 feet):

- (a) Primary conservation areas;
- (b) Secondary conservation areas;
- (c) Site topography at 2 foot contour interval; and
- (d) Location and description of existing vegetative cover.

(2) A general site plan to include the general location of all platted lots, streets, and open space areas, structures, trails, common open spaces, and parks (drawn to scale of 1 inch equal to 100 feet).

(3) The applicant shall submit a schedule of site characteristics, calculated in acres, which shall include the following.



(a) *Environmental resources.* Include map and calculated acreage of the following:

1. Total site;
2. Protected wetlands;
3. Wetland buffer/setback area;
4. 12% - 24% sloped area;
5. 25% + sloped area; and
6. Woodlands.

(b) *Public improvements.* Include map and calculated acreage of the following:

1. Public road right-of-way;
2. Drainage way and ponding areas;
3. Trails/bikeways and sidewalks (outside of road right-of-way);
4. Utility easements; and
5. Public parks.

(c) *Proposed development.* Include map and calculated acreage of the following:

1. Total residential area;
2. Total commercial land area; and
3. Total preserved open space.

(d) *A general landscape plan.*

(e) *Statement of intent.* If applicable, provide a statement of intent establishing a homeowners association with bylaws and deed restrictions to include, but not be limited to, the following:

1. Ownership, management, and maintenance of defined preserved open space;

2. Maintenance of public and private utilities; and
3. General architectural guidelines for principal and accessory structures.

(f) *Proposed staging plan.*

(g) *Historic preservation plan.* Where applicable, an historic preservation plan for any historic structures on the site.

(B) *Planning Commission review.*

(1) Upon receipt of a completed application for an OP development/concept plan as certified to by the City Planner, the Planning Commission shall review OP development concept plan application at a public hearing preceded by 10-days published notice and 2-weeks mailed notice to the recorded owners of each parcel located within 350 feet of the perimeter of the proposed development.

(2) The Planning Commission shall make its recommendations to the City Council within 30 days of receipt of a complete application, and shall include its findings on the following.

(a) The concept plan is consistent with the goals, objectives, and policies of the Comprehensive Plan.

(b) The concept plan is consistent with the purpose of §§ 150.175 *et seq.*

(c) The concept plan complies with the development standards of §§ 150.175 *et seq.*

(C) *City Council review.* The City Council shall review and approve or deny OP development concept plan within thirty days of the receipt of a completed application. The City Council may also table its review a reasonable time, if necessary to obtain information that will enable the Council to make a reasonable decision, and if the extension is consented to the by the applicant on the record. OP development concept plan approval shall require 3 affirmative votes of the City Council.

(D) *Limitation of approval.* Unless an OP development preliminary plan is submitted within 12 months from the date on which the City Council approved the OP development concept plan, the concept plan approval shall expire. The City Council, in its sole discretion, may extend the filing deadline for an OP development preliminary plan and conditional use permit if an application for extension is filed and approved by the City Council before the OP development concept plan approval expires.

(Ord. 97-79, passed 5-1-2001) Penalty, see § 10.99

**§ 150.183 OP DEVELOPMENT PRELIMINARY PLAN, PRELIMINARY PLAT, AND CONDITIONAL USE PERMIT.**

(A) *Submittals.* The OP development preliminary plan shall include the following:

- (1) A statement of city action necessary for implementation of the proposed plan;
- (2) Twenty sets of site plans, drawn to scale of not less than 1 inch equals 100 feet containing at least the following information:
  - (a) Proposed name of the development (which shall not duplicate nor be similar in pronunciation to the name of any plat previously recorded in Washington County);
  - (b) Property boundary lines and dimensions of the property and any significant topographical or physical features of the property that may have an impact on the open space or the development;
  - (c) Location, dimensions, and number of all driveways, entrances, curb cuts, par stalls, loading spaces, and access aisles, and all other circulation elements including bike and pedestrian trails; and the total site coverage of all circulation elements;
  - (d) Location, designation, and total area of all preserved open space;
  - (e) Location, designation, and total area proposed to be conveyed or dedicated for public open space, including parks, playgrounds, school sites, and recreational facilities;
  - (f) Proposed lots and blocks, if any, and numbering system;
  - (g) The location, use, and size of structures and other land use on adjacent properties;
  - (h) Preliminary sketches of proposed landscaping;
  - (i) General grading and drainage plans for the developed OP development;
  - (j) The development plans shall also indicate the results of deep soil test pits and percolation tests, at the rate of no fewer than 2 successful test results for each proposed septic disposal area; and
  - (k) Any other information that may have been required by the City Council in conjunction with the approval of the OP development concept plan.

- (3) An accurate legal description of the entire area within the OP development for which development plans approval is sought;
- (4) Architectural and performance standards for the development;
- (5) Preliminary grading and site alteration plan illustrating changes to existing topography and natural vegetation. The plan should clearly reflect the site treatment and its conformance with the approved concept plan;
- (6) A preliminary plat prepared in accordance with M.S. Ch. 505, as it may be amended from time to time, Chapter 153 of the Lake Elmo Municipal Code, and other applicable laws;
- (7) A Soil Erosion Control Plan clearly illustrating erosion control measures to be used during construction and as permanent measures; and
- (8) Homeowner's Association documents including bylaws, deed restrictions, covenants, and proposed conservation easements.

(B) *Planning Commission review.* Upon receipt of a complete OP development preliminary plan by the city, as certified as complete by the City Planner, the City Planner shall refer the preliminary plan to the appropriate city staff, consultants, and other review agencies. The Planning Commission shall review the OP development preliminary plan and shall schedule public hearings as required for preliminary plat and conditional use permit review within 30 days of the City Planner's receipt of a completed application and shall make its recommendations to the City Council regarding the preliminary plan, conditional use permit, and preliminary plat.

(C) *City Council review.*

(1) Within 60 days of the city receipt of a complete application, the City Council shall review the OP development preliminary plan, conditional use permit, and the preliminary plat. The OP development plan, conditional use permit, and preliminary plat shall require 3 affirmative council votes for approval.

(2) Upon approval, the City Council shall instruct the City Attorney to draw up an OP development agreement that stipulates the specific terms and conditions established and approved by the City Council and accepted by the applicant. This agreement shall be signed by the Mayor, City Administrator, and applicant within 30 days of Council approval of the OP development preliminary plan and conditional use permit.

(D) *Limitation on preliminary plan approval.* Unless a final plan covering the area designated in the preliminary development plan as the first stage of the OP development has been filed within 6 months from the date Council grants approval, or in any case where the applicant fails to file final plans and to proceed with the development

according to the provisions of §§ 150.175 *et seq.*, the preliminary development plan and conditional use permit shall expire. The Council may, at its discretion, extend the filing deadline for any final plan when, for good cause shown, the extension is reasonable. In any case where preliminary development plan and conditional use permit approval expires, the concept plan approval and preliminary development plan approval for that portion of the OP development that has not received final plan approval is void.

(Ord. 97-79, passed 5-1-2001) Penalty, see § 10.99

#### **§ 150.184 OP DEVELOPMENT FINAL PLAN.**

(A) The purpose of the final plans is to provide a complete, thorough, and permanent public record of the OP development and the manner in which it is to be developed. It shall incorporate all prior approved plans and all approved modifications thereof resulting from the OP development process. It shall serve in conjunction with other city ordinances as the land use regulation applicable to the OP development.

(B) (1) *Submittals required.* After approval of the concept plan and preliminary plan for an OP development, the applicant shall submit the following material for review by the city staff prior to the issuance of any building related permits:

- (a) A detailed landscaping plan;
- (b) All easements and restrictive covenants;
- (c) All certificates, seals, and signatures required for the dedication of land and recording of documents;
- (d) General architectural working drawings of all historic structures to be rehabilitated;
- (e) Final engineering plans and specifications for streets, utilities, and other public improvements, together with all required development agreements for the installation of the improvements;
- (f) Any other plans, agreements, or specifications reasonably necessary for the city staff to review the proposed construction; and
- (g) Final plat.

(2) *City Council review.* The final plan is intended only to add administration detail to, and to put in final form, the information contained in the concept plan and the preliminary development plan, and shall conform to the concept plan and preliminary development plan. The city shall review and approve the final plan and final plat within 60 days of receipt of a complete final OP development plan and final plat, as certified as complete by the City Planner.

(Ord. 97-79, passed 5-1-2001) Penalty, see § 10.99

**§ 150.185 RECORDING OF FINAL PLAT.**

The applicant shall submit to the city the recordable final plat drawings; all easements, deeds, plans, fees, financial security, and the other documentation as may be required by the development agreement within 30 days of final plan and final plat approval by the City Council. The recordable Final Plat, approval resolution, and the other documents that require recording shall be released by the city to the applicant for the recording only upon review and approval by appropriate city staff; and, execution by the applicant and required city officials.

(Ord. 97-79, passed 5-1-2001) Penalty, see § 10.99

**§ 150.186 BUILDING AND OTHER PERMITS.**

Except as otherwise expressly provided herein, upon receiving written notice from the City Planner that the approved final plan has been recorded and all conditions of approval satisfied, the City Building official may issue building and other permits to the applicant for development, construction, and other work in the area encompassed by the approved final plan; provided, however, that no permit shall be issued except upon proper application and after the requirements of all other applicable codes and ordinances have been satisfied.

(Ord. 97-79, passed 5-1-2001)

**§ 150.187 LIMITATION ON FINAL PLAT APPROVAL.**

Within 18 months after approval of a final plan for OP development, or the shorter time as may be established by the approved development schedule, construction shall commence according to the approved plan. Failure to commence construction within the period shall automatically render void the OP conditional use permit and all approvals for the final OP development plan. The City Council may at its discretion extend the construction time as necessary when good cause is shown.

(Ord. 97-79, passed 5-1-2001) Penalty, see § 10.99

**§ 150.188 METHOD OF AMENDING AN OP CONDITIONAL USE PERMIT.**

Any desired change involving structural alteration, enlargement, or intensification of the use, not specifically allowed by the specific terms of a previously passed OP conditional use permit, shall require that an application be filed for an amended permit and all procedures shall then apply as if a new permit was applied for.

(Ord. 97-79, passed 5-1-2001) Penalty, see § 10.99

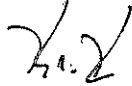
**§ 150.189 INFORMATION REQUIREMENTS; ADDITIONS; EXCEPTIONS.**

The City Administrator shall maintain a record of all permits issued, including information on the use, locations, conditions imposed, time limits, review dates, and the other information as may be appropriate.

(Ord. 97-79, passed 5-1-2001)

Planning Commission  
Date: ~~7/13/09~~ 8/10/09  
**Economic Development Recommendations**  
Business Item  
Item: 5c

ITEM: Request to Develop Recommendations on City Activities for Economic Development Activities

SUBMITTED BY: Kyle Klatt, Planning Director 

REVIEWED BY: Kelli Matzek, City Planner  
Craig Dawson, Interim City Administrator

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**SUMMARY AND ACTION REQUESTED:**

At its last meeting, the Planning Commission worked with staff to develop recommendations regarding the types of activity the City might begin to undertake in terms of economic development in response to a request from the City Council. At this meeting, a preliminary list of activities was presented by staff and further amended by the Planning Commission. Prior to reporting back to the City Council with this information, staff is recommending that the Commission review the final list compiled from the last meeting and make any final adjustments.

The attached sheet contains both the recommended activities and standards that should be considered if the City were to move forward with an Economic Development program. The items in bold have been added or amended since the last Planning Commission meeting. Please note that some of the background information related to this item has not been resubmitted from the last meeting, but will be made available to any Commissioners not present at the last meeting upon request.

**RECOMMENDATION:**

Staff is recommending that the Planning Commission review the revised list and authorize staff to present this document to the City Council as an initial response to the Council's request.

**ATTACHMENTS:**

1. Revised List of Potential Economic Development Activities and Standards

**ORDER OF BUSINESS:**

- Introduction and Presentation by Staff ..... Kyle Klatt, Planning Director
- Questions from the Commission ..... Chair & Commission Members
- Planning Commission Discussion ..... Chair Facilitates
- Action by the Planning Commission ..... Chair & Commission Members



**ECONOMIC DEVELOPMENT ACTIVITIES AND STANDARDS  
PLANNING COMMISSION REVIEW – 7/13/09**

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**RECOMMENDED DISCUSSION TOPICS:**

Based partially on discussions concerning Lake Elmo's long range plans, the Planning Commission has considered the issues that will need to be addressed in the future that likely fall under the definition of economic development. The intent of the list below is to help the City Council begin thinking about the issues that will need to be considered as the City works towards implementation of its Comprehensive Plan. Some of the issues that have been identified by the Planning Commission include the following (please note that these issues are being phrased in a way that provides a response to the Council's initial request for the types of activities the City might begin to undertake):

- 1) Creating an economic development plan as a component of the Comprehensive Plan.
- 2) Determining the types of business that will be appropriate for Lake Elmo and that are most compatible with the City's objectives of maintaining its rural character.
- 3) Identifying where commercial activity should take place within the parameters of the future land use plan and where this activity would be most beneficial to the residents of the community.
- 4) Establishing the role that retail will play in the City's business areas, and how to help promote the retention and/or creation of retail activity that will serve the needs of residents.
- 5) Figuring out how to provide services to businesses in the most efficient manner possible.
- 6) Addressing whether or not the City should be actively promoting the community and attracting businesses into the community.
- 7) Maintaining the character of the Village Area, including the mix of residential and commercial uses that presently exist.
- 8) Meeting the needs of the residents that live and employees that work in the City of Lake Elmo, i.e. providing services to support these people.
- 9) Conducting market studies to help determine what types of business activities could be supported by the community.
- 10) Helping the City Council develop an action plan to accomplish the objectives for employment by 2030 as stated in the Comprehensive Plan.
- 11) Promoting the preservation of a rural/agricultural economy and the City's connections to its rural heritage.
- 12) Assisting with efforts to encourage alternative modes of transportation to ensure residents and businesses are not unduly burdened by long commutes and traffic problems.
- 13) Acting as an agent for the acquisition and development of property for public purposes, including the planned community center within the Village area.

- 14) Providing financing options for the City and private entities to accomplish the goals and objectives that have been established for commercial areas.
- 15) Helping the City develop areas with "high density" jobs with an employment base of 40 employees per area in the planned business park at the intersection of Manning Avenue and Interstate 94.
- 16) Working within a revised organizational chart that incorporates the broader function of community development into the City's structure.
- 17) Developing a master plan for the I-94 business park.
- 18) Preserving the existing tax base and employment in the community by retaining existing businesses and/or attracting new businesses to replace those that have left.
- 19) Putting the City in a position to take advantage of opportunities for park and ride and other mass transit improvements that could benefit Lake Elmo.
- 20) Promoting legislation that will provide tax advantages to businesses locating in Lake Elmo and that will help minimize the loss of business to surrounding states.
- 21) Developing support for a community focal point and supporting Lake Elmo as a destination for residents and businesses.
- 22) Advertising Lake Elmo's assets to promote the businesses that the community would like to attract.
- 23) Determining appropriate measures to help ensure that the City is being inclusive rather than exclusive.
- 24) Helping to develop a vision for the community and those activities necessary to distinguish Lake Elmo from other places.
- 25) Identifying industries and development activity that could set Lake Elmo apart from other communities, i.e. the promotion of green development and buildings.
- 26) Establishing what role the arts or other amenities might play in strengthening the employment base and opportunities in the community.
- 27) Analyzing the results of the 2010 Census to help determine how the community has changed and what needs to be done to meet the current residents' and business' needs.
- 28) Studying the potential impacts associated with the intensification of agricultural uses and how to promote and encourage these uses.
- 29) Defining what "sustainable development" means to the community and developing standards for sustainable businesses.
- 30) Considering the role water-oriented development and recreation activities can play in Lake Elmo's future.
- 31) Discussing issues that are affecting current businesses in the community and acting as a resource to encourage cooperation among these businesses.

The second part of the Council's request of the Planning Commission is to consider what commercial uses and standards for sustainable commercial development should be permitted in the City. Some suggested standards are listed below:

- 1) Projects should follow sustainable development practices:
  - a. Buildings should be designed for long-term use.
  - b. New structures should minimize their environmental footprint.
- 2) New buildings should embrace LEED standards.
- 3) Natural materials should be given preference to alternative designs.
- 4) Buildings should reflect Lake Elmo's rural character.
- 5) Access management should be used to minimize traffic impacts.
- 6) Businesses should be promoted that achieve a high level of employment density.
- 7) Commercial activities should be compatible with surrounding land uses.
- 8) Mixed-use development should be promoted in the Village area.
- 9) Commercial uses and buildings that cater to automobile traffic alone in the Village area should be discouraged.
- 10) Form-based zoning is preferable to standard ordinances that only specify minimum requirements.
- 11) Existing architecture and design should be considered within new development.