



City of Lake Elmo

3800 Laverne Avenue North
Lake Elmo, Minnesota 55042

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www.lakeelmo.org

NOTICE OF MEETING

The City of Lake Elmo
Planning Commission will conduct a meeting on
Monday, March 9, 2009, at 7:00 p.m.

AGENDA

1. Pledge of Allegiance
2. Approve Agenda
3. Approve Minutes
 - a. None
4. Public Hearings
 - a. VARIANCE: Consideration of an application to permit the construction of an in-ground pool, spa, pergola and fireplace within the 100 foot buffer setback from the edge of the development at 2931 Jonquil Trail North; PID: 22-029-21-21-0024.
 - b. SIGN ORDINANCE: Consideration of an ordinance to update all sign regulations in all zoning districts throughout the City.
5. Business Items
 - a. Wireless Communications Tower Ordinance Update
6. General Updates
 - a. Planning Commission 2009 Work Plan
 - b. Comprehensive Plan Update
 - c. MnDOT Highway 5 Project
 - d. Village AUAR; Document Status
 - e. Urban Land Institute; Community Research Project
7. City Council Updates
 - a. None.
8. Adjourn

ITEM: Hold a public hearing to consider an application from Vladimir and Silvia Hucec to allow construction of a pool, pergola, fireplace, and spa within the required 100 foot buffer setback in Open Space Preservation (OP) developments at 2931 Jonquil Trail North – A zoning - PID 22-029-21-21-0024.

SUBMITTED BY: Kelli Matzek, City Planner

REVIEWED BY: Kyle Klatt, Planning Director

SUMMARY AND ACTION REQUESTED

The Planning Commission is being asked to conduct a public hearing and consider a variance request from Vladimir and Silvia Hucec to allow the construction of a pergola, fireplace, spa, and in-ground pool within the required 100 foot buffer setback from the edge of an Open Space Preservation (OP) development at 2931 Jonquil Trail North. The property currently has a home, garage, deck, and screened porch on the property which conforms to the setback requirements. The property has approximately 24 feet in the rear yard between the required structure separation (six feet) from the home and the 100 foot buffer setback.

The Hucec's property is located in the Farms of Lake Elmo development which was approved as an OP development in 2005. The Lake Elmo OP development requirements include a provision for a buffer setback from the edge of the development for any structure or driving surface not constructed at a 90 degree angle. At the time of the review for the Farms of Lake Elmo development, the required buffer setbacks were addressed. The City Council at that time had approved a reduction from a 200 foot buffer setback to 100 foot buffer setback from the West, South, and East edges of the development because the neighborhood was adjacent to the Lake Elmo Regional Park Reserve and would not be developed.

Although the Hucec's property does not abut the edge of the development and is buffered from the southern edge of the development by sixty feet of Outlot A of the development, the buffer setback still encroaches into their rear yard by forty feet.

The variance has been requested in order to build the planned pool, spa, fireplace, and open pergola in the location originally designed. The applicant has stated that the variance is justified due to the following:

- They bought the existing home with the intention of building a pool in the back yard for their children to practice for competitive swimming. The back yard was chosen as the windows at the back of the home allow viewing the pool for safety purposes.
- They were not aware of the 100 foot buffer setback at the time of the initial design of the pool, spa, pergola, and fireplace.
- Sixty feet of Outlot A exists between their property and the Lake Elmo Regional Park Reserve and effectively serves as a preserved, undisturbed space. The land slopes uphill approximately 2' to 6' over a 60' distance to the park boundary.

- The neighbor directly to the east was allowed to build their home and pool within the 100 foot buffer setbacks from both the south and eastern borders of the development. This property has a much smaller outlot between the property and the Park Reserve.
- The placement of the home to the east pushed the building of their home further back on the lot to be in line with that home, thereby reducing the amount of buildable area in their rear yard.
- The neighbor directly to their west also has a pool.
- The proposed pool would be completely obscured from view of the street and greatly obscured from many adjacent properties with existing trees. Additional trees that would further reduce any visibility are being proposed in the new pool landscape as well.
- No other location on the property is free from both restrictions and undesirable conditions that prohibit a pool. The 30 feet between the house and setback line, which given the shape of the floor plan of the house, the setbacks needed, and the proper drainage needed from the house, the pool and landscape would be impossible.

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; and*
- c. *The unique conditions of the site were not caused or accepted by the landowner after the effective date of the city's zoning regulations.*

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 proposed hardcover is 23.7%, therefore the applicant is seeking ways to mitigate the extra allowed impervious surface through rain gardens. This will be reviewed with the City Engineer through the building permit process should the application be approved.
- The DNR and Valley Branch Watershed District did not submit any comments concerning the application.
- The Washington County Parks and Planning Department submitted a letter with some concerns regarding the view of the proposed pergola and fire pit from the park.
- The Minnesota Land Trust which co-holds a conservation easement over Outlot A with the city, submitted a letter stating their only concern would be the storage of material during construction on the outlot. They expressed no concerns regarding the proposed structure locations.

RECOMMENDATION:

Although this application does provide some substantive arguments for approval of the variances requested, in following a strict review of the variance criteria outlined in city code, Staff is

recommending that Planning Commission recommend denial of the proposed variances for Vladimir and Silvia Hucec to allow construction of a pool, spa, pergola, and fireplace within the 100 foot buffer setback in OP developments at 2931 Jonquil Trail North.

If the Planning Commission chooses to recommend approval of the application, a template motion for approval with findings and conditions has been provided in the full staff report on page 10. Staff will provide a resolution of both approval and denial to the City Council at their meeting for consideration in addition to the Planning Commission's recommendation.

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 (9):

1. Staff Report
2. Area Map
3. Proposed Survey
4. Application Form
5. Applicant's Narrative
6. Applicant's Photograph
7. Aerial Photo
8. Comment from Washington County Parks
9. Comment from Minnesota Land Trust

City of Lake Elmo Planning Department
Variance Review

To: Planning Commission

From: Kelli Matzek, City Planner

Meeting Date: 3-9-09

Applicant: Vladimir and Silvia Hucec

Location: 2931 Jonquil Trail North

Current Zoning: A – Agricultural (Open Space Preservation Development)

Introductory Information

Request: The applicant is seeking approval of a variance from the required 100 foot buffer setback from the edge of the Open Space Preservation development to allow the construction of a pergola, pool, fireplace and spa at 2931 Jonquil Trail North. Specifically, the pergola and fireplace would be located 31 feet within the setback, the spa would be 12 feet, and the in-ground pool would be 6 feet.

Background: *Farms of Lake Elmo Development*
The applicant's property is Lot 12, Block 1 within the Farms of Lake Elmo development which was approved on October 18, 2005 as an Open Space Preservation (OP) development. OP developments are allowed by code as a Conditional Use Permit (CUP) in the Agricultural, Rural Residential, and Residential Estate zoning districts.

Application
The applicants have provided a description of their request for a variance as a part of the application materials submitted to the City. The existing house, garage, and screen porch at 2931 Jonquil Trail North was built in 2006 with an approved building permit from the city.

Outlot A Adjacent to the Rear Yard of the Property
The property at 2931 Jonquil Trail North has a rear yard that abuts Outlot A of the development which is restricted by a Conservation Easement. The easement is co-held by the City of Lake Elmo and the Minnesota Land Trust. In that area, Outlot A is approximately sixty feet wide and serves as a contiguous open space buffer to the Lake Elmo Regional Park Reserve.

Applicable Codes: § 150.175 **PURPOSE.**

(A) The purpose of open space preservation (OP) is to maintain the rural character

(cont.) 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.

§ 150.180 DEVELOPMENT STANDARDS.

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

(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.*

(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.

(h) *Minimum district requirements.* The requirement states that a side yard setback for a single-family home is 15 feet or 10% of lot width, whichever is greater.

(cont.) **§ 151.085 SWIMMING POOLS; GENERALLY.**
(C) *Application for permit.*
(3) Pools shall not be located within 20 feet of any septic tank/drainfield nor within 6 feet of any principal structure or frost footing. Pools shall not be located within any required front or side yard setbacks.

(K) *Location.*
All Swimming pools or appurtenances to swimming pools shall be located in the rear yard and meet the setback requirements of the district in which it is located....

Findings & General Site Overview

Site Data: Existing Zoning – A (Agricultural); OP use with a CUP
Land Use Guidance – RAD – 0.45 DU/Acre (Rural Agricultural Density)
Parcel size – 0.94 acres
Property Identification Number (PID): 22-029-21-21-0024

Application Review:

Applicable Code Definitions: **§ 11.01 DEFINITIONS.**
ACCESSORY STRUCTURE. A use or structure on the same lot with, and of a nature customarily incidental and subordinate to, the principal use or structure.
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.
BUILDING. Any structure, either temporary or permanent, having a roof and used or built for the shelter or enclosure of any person, animal, or movable property of any kind. When any portion of a building is completely separated from every other part of a building by area separation, each portion of the building shall be deemed as a separate building.
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.
SETBACK. The minimum horizontal distance between a structure, sewage treatment system, or other facility and an ordinary high water level, sewage treatment system, top

(cont.) of a bluff, road, highway, property line, or other facility. Distances are to be measured perpendicularly from the property line to the most outwardly extended portion of the structure at ground level.

STRUCTURE. Anything constructed or erected on the ground or attached to the ground or on-site utilities, including, but not limited to, buildings, factories, sheds, detached garages, cabins, manufactured homes, signs, and other similar items.

SWIMMING POOL, PRIVATE OR RESIDENTIAL. Any pool which is used, or intended to be used, as a swimming pool in connection with a single-family residence, and which is available only to the family of the household and private guests.

USE, ACCESSORY. A use subordinate to and serving the principal use or structure on the same lot and customarily incidental to the principal use.

VARIANCE. A modification of a specific permitted development standard required to allow an alternative development standard not stated as acceptable in the official control, but only as applied to a particular property for the purpose of alleviating a hardship as defined in the zoning code. Economic considerations alone shall not constitute a hardship.

**Variance
Review:**

The applicants are proposing to build an in-ground pool, spa, pergola, and fireplace within the required 100 foot buffer setback from the edge of the development.

Farms of Lake Elmo Development Review History

The city staff report for the Farms of Lake Elmo development identified early on in the development review process that the lots in the west, east, and south side of the proposed development would not be buildable with the 200 foot buffer setback required from the edge of the development.

In the March 28, 2005 staff report, the planner noted:

“It appears that several of the proposed lots along the east and south peripheries of the Concept would also fail to meet the 200 foot buffer requirements once house pads are identified. In both cases the lots will back onto the Lake Elmo Regional Park Reserve. In a recent similar situation lots of the Tapestry OP backed onto the City’s Sunfish Park. In that case staff found that the Intent and Purposes of the OP ordinance would be complied with without a buffer to a major natural park environment.”

The City Council approved a 4/5 waiver of the requirement (as outlined in the city code). The City Council minutes from April 5, 2005:

“M/SP Conlin/Johnson – to waive the 200 foot buffer requirement and require the 100 foot buffering setback standards to the west, south and east based on the findings of the size of lots, adjoins the majority of the Regional Park, trees are planted on the top and the elevation difference.

(cont.)

(Motion passed 4-0." [Sic]

Therefore, the City Council reduced the setback from the edge of the Farms of Lake Elmo development and Lake Elmo Regional Park Reserve border from 200 feet to 100 feet.

Purpose of the 100 foot buffer setback

In reading through section 150.180 B 2 D regarding buffer zones in OP developments, the implied intent of the buffer area is to provide a physical and visual buffer of structures from existing residences of development.

This property and others on the southeast side of the development abut an open space outlot and the regional park, which will not be used for residences or development now or in the future. However, as mentioned previously, the City Council was made aware of this situation and made the decision at that time to require a 100 foot buffer setback.

Other homes in the Farms Neighborhood

Of the twelve properties in the neighborhood currently with homes, two were built within the setback buffer. Five properties subject to the same 100 foot buffer setback were built on and currently meet that requirement. The remaining five homes were built on lots that were outside 100 feet (or 200 feet from the north) of the development borders.

Vacant Lots to be Affected in the Future

Staff has identified an additional nine lots in this development that are impacted to any degree by the 100 foot buffer setbacks from the west, south, or east edge of the development or by the 200 foot buffer setback from the north edge of the development. Although staff has not conducted a full analysis at the time of this report, it is possible that some of those lots may not be buildable without a variance.

Additional Information

Outlot A as mentioned before is restricted by a conservation easement co-held by the Minnesota Land Trust and the City of Lake Elmo. Within the easement document, it outlines as one of the Conservation Values that "The Protected Property provides continuity with nearby Lake Elmo Regional Park Preserve, which preserves wildlife habitat within the wetlands and open space in this region of rapidly developing residential communities." The applicant is not proposing to add any improvements within the outlot, nor are they proposing any improvements within 9 feet of the outlot. However, it is important to establish that the rear yard abuts the outlot and the intent of the MN Land Trust's easement on the outlot.

Application Submittal

(cont.)

The applicant has stated that the variance is justified due to the following:

- They bought the existing home with the intention of building a pool in the back yard for their children to practice for competitive swimming. The back yard was chosen as the windows at the back of the home allow viewing the pool for safety purposes.
- They were not aware of the 100 foot buffer setback at the time of the initial design of the pool, spa, pergola, and fire pit.
- Sixty feet of Outlot A exists between their property and the Lake Elmo Regional Park Reserve and effectively serves as a preserved, undisturbed space. The land slopes uphill approximately 2' to 6' over a 60' distance to the park boundary.
- The neighbor directly to the east was allowed to build their home and pool within the 100 foot buffer setbacks from both the south and eastern borders of the development. This property has a much smaller outlot between the property and the Park Reserve.
- The placement of the home to the east pushed the building of their home further back on the lot to be in line with that home, thereby reducing the amount of buildable area in their rear yard.
- The neighbor directly to their west also has a pool.
- The proposed pool would be completely obscured from view of the street and greatly obscured from many adjacent properties with existing trees. Additional trees that would further reduce any visibility are being proposed in the new pool landscape as well.
- No other location on the property is free from both restrictions and undesirable conditions that prohibit a pool. The 30 feet between the house and setback line, which given the shape of the floor plan of the house, the setbacks needed, and the proper drainage needed from the house, the pool and landscape would be impossible.

Criteria Review

A review of the City's variance criteria follows, focusing on the information submitted by the applicants. By code, a variance can only be granted where the city finds the request can successfully address all three criteria as outlined below for the proposed structures.

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;*

The property is currently used for residential purposes by the Hugec family; therefore the applicants are allowed a reasonable use of the property.

The design and location of the proposed pool, spa, fireplace and pergola was established by a professional landscaper. At the time of his design, the contractor

(cont.)

was not made aware of the 100 foot setback from the edge of the OP development. However, although the proposed pool, spa, fireplace and pergola are unable to be built in a conforming location on the lot in its current configuration, there is a small conforming location in which at least the in-ground pool could potentially be constructed. The city's pool ordinance calls for a six foot setback from a building or frost footing. The result is approximately 24 feet between the existing home and the 100 foot setback line. Without consideration to aesthetics and pending conformance with other requirements (impervious surface, building/structure separation, grading, etc.), and if revisions to the size, design and location were redesigned, a pool, spa, fireplace and pergola may be placed in a conforming location on the site. It should be noted that an alternate site plan was not designed by staff and this alternative located is based on the knowledge that a typical rectangular in-ground pool is often 20 feet by 40 feet in size.

Therefore other locations on the site could be an option and **this criteria is not met.**

2. *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 applicants' property is not unique. Ten other properties within the Farms of Lake Elmo development have a shorter distance between the edge of the development (from which the setback applies) to their front property line. Therefore these ten properties have the 100 foot setback affect more of their rear yard than the applicant's property. All ten properties are similar in shape to the applicant's property and all ten are smaller in lot size, providing additional challenges.

Three of these ten properties are built on, one of which currently has a structure that encroaches into this 100 foot buffer setback. [An additional property adjacent to the Huges's was also built within the buffer setback, but was not included in this calculation due to the lot's size and shape.] However, although the setback was not enforced on previous properties in this development and most likely other developments, this is not considered a hardship as defined in the city code. City staff must enforce the city code requirements as they exist.

Twelve lots in the development are not impacted to any degree by a buffer setback.

As mentioned on page 4, this development was reviewed in a similar manner to the Tapestry at Charlotte's Grove OP development which abuts a City Park. The 200 foot buffer setback was reduced by the City Council to 100 feet to acknowledge the adjacent preserved open space.

Recent applications made by other property owners in the OP developments have been required to comply with this regulation.

Therefore, this criteria is not met.

3. *The unique conditions of the site were not caused or accepted by the landowner after*

(cont.)

the effective date of the city's zoning regulations.

The applicants bought the property after the existing home, deck, and screen porch was built in the summer of 2006. The home was built further back on the lot to be more in line with the home directly to the east, which was built in the 100 foot buffer setback. This reduced the area available for a structure to be built in the rear yard of the property.

Therefore, staff finds this criteria is met.

**Variance
Conclusions:**

Based on our analysis of the review criteria in City Code, staff recommends **denial of the variance requests** for 2931 Jonquil Trail North.

**Resident
Concerns:**

The city has received no objection of the proposal by any neighbor within the Farms of Lake Elmo. The applicant submitted as part of their application a letter signed by three neighbors in support of their application.

**Additional
Information:**

- The Department of Natural Resources and the Valley Branch Watershed District did not provide any comments on the application.
- The Minnesota Land Trust has reviewed the application and has no specific comments or concerns with the variance being requested. Staff has added as a condition of approval, per the Land Trust's written submittal, that the easement area must not be used for material storage, vehicle travel, or other activities that would be in violation of the conservation easement during the construction process.
- The Washington County Parks manager submitted a written statement with concern regarding the intensity of the proposed uses and the potential visual impact of the pergola and outdoor fire place structure as viewed from the Lake Elmo Park Reserve boundary. They suggest placing the pergola and fireplace structure outside the required setbacks to minimize the visual impact from the park. Additional screening with fencing, berms and coniferous trees may also lessen the visual impact of the pool facility.
- The City Engineer has submitted a review with comments regarding the application. The items outlined can be addressed at the building permit stage if the variance is approved and is thus not added as a condition of approval.

Conclusion

The applicant is seeking approval of a variance from the required 100 foot buffer setback from the edge of the Open Space Preservation development to allow the construction of a pergola, pool, fireplace and spa at 2931 Jonquil Trail North. Specifically, the pergola and fireplace would be located 31 feet within the setback, the spa would be 12 feet, and the in-ground pool would be 6 feet.

**Commission
Options:**

The Planning Commission must examine the proposed variances to determine whether it meets all conditions of approval outlined by city code. The Planning Commission should consider the following options:

- A) Recommend that the Council approve the requested variances based on the applicants' submission and findings of fact.
- B) Recommend that the Council deny the requested variance based on the applicants' submission and findings of fact.
- C) Table the request and ask for additional information.

The deadline for a Council decision on this item is April 10, 2009 which can be extended an additional 60-day if needed.

**Recommended
Action:**

Staff recommended option A: Denial of the requested variance with the following findings of fact:

- 1) The applicant has reasonable use of the property as it is currently used for residential purposes.
- 2) A swimming pool, spa, pergola and fireplace of a different configuration and size could potentially be located on the lot in a conforming location.
- 3) Thirteen lots within the Farms of Lake Elmo development are subject to the 100 foot buffer setback. Therefore, this property is not unique.
- 4) Although two homes within the Farms of Lake Elmo development were permitted to be built within the 100 foot buffer setback, this does not constitute a hardship as the city staff must enforce the existing regulations.

Should the Planning Commission choose to recommend approval of the requested variances, the following findings of fact may be used in addition to any found by the commission at the meeting.

- 1) The proposed variances would be in keeping with the neighborhood as the two adjacent properties currently have in-ground swimming pools and other accessory structures in their rear yards.
- 2) The home directly to the east currently encroaches further into the 100 foot buffer setback than the applicant is proposing. The home and pool are closer to the Lake Elmo Park Reserve than the applicant is proposing to place the structures.
- 3) The rear yard of the property abuts Outlot A which is restricted by a

conservation easement intended to be utilized for open space. The county park is on the other side of Outlot A.

- 4) Existing and proposed vegetation, the slope of the rear yard, and the location of the structures in the rear yard reduce or in some cases eliminate the visual impact to others.
- 5) Outlot A serves as a sixty foot open space buffer and undisturbed area between the Huges's property and the Lake Elmo Regional Park Reserve which meets the intent of the buffer setback.
- 6) The home on the property was built further back on the property to be in keeping with the property to the east, thereby reducing the buildable area in the rear yard.
- 7) The home at 2931 Jonquil Trail North was built to match adjoining setbacks and is thus located further back on the lot than required.
- 8) The applicable setbacks from the edge of the development, from existing structures, and from the property lines leave limited room in the back yard of the property for the proposed structures. By city code, swimming pools are required to be located in the rear yard of a property, further reducing the potential conforming locations on the property.

**Denial Motion
Template (as
recommended
by staff):**

To deny the requested variances as recommended by staff, you may use the following motion as a guide:

Move to recommend denial of the variance application for 2931 Jonquil Trail North based on the findings provided in the staff report: (or cite your own findings)

**Approval
Motion
Template:**

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

Move to recommend approval of the variances for the in-ground swimming pool, spa, pergola and fireplace as outlined in the staff report for 2931 Jonquil Trail North based on the findings listed in the staff report and as articulated tonight, subject to the conditions recommended by staff. (use staff's findings provided above or cite your own)

with the following conditions:

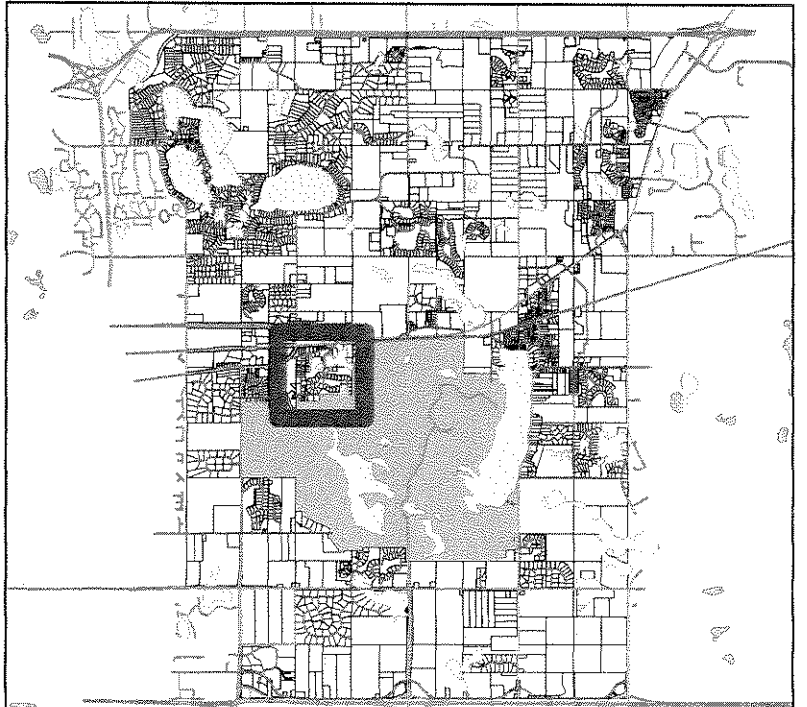
1. A building permit must be received from the city prior to any work taking place. A certified survey in addition to any information requested by the City

- Engineer, City Planner, and Building Official must be provided before a building permit is issued.
2. The City Engineer must review and approve mitigation measures for the increase of impervious coverage beyond 20% prior to issuance of a building permit.
 3. A revised landscape plan approved by the Planning Director prior to issuance of a building permit.
 4. Outlot A must not be used for material storage, vehicle travel, or other activities that would be in violation of the conservation easement during the construction process.

cc: Vladimir and Silvia Hucec, 2931 Jonquil Trail North
David Sonka, Applicant's Contractor



2931 Jonquil Trail North
Lake Elmo, MN



JUNQUIL TRAIL NORTH
X 937.34

936.58

R=25.00
L=31.80
Tan=16.99

N89°52'47"W 94.81

Lot 12, Block 1, Farms of Lake Elmo, Washington County, Minnesota

Parcel ID number: 2202921210024

Parcel Size: 41,340 SF or .95 acres

13

Existing Use of Land: Single Family Detached

HARDCOVER CALCULATION W/IN PROPERTY BOUNDARY:

EXIST. LOT: 41,340 SF
DRIVE, HOUSE, WALK: 7423 SF
EXIST. HARDCOVER: 17.95%

ADD POOL LANDSCAPE: 2,369 SF
PROPOSED HARDCOVER: 23.70%

100' SETBACK

100' SETBACK

SILT FENCE

FENCE

DRAINAGE EASEMENT & UTILITY

RAIN GARDEN:
115 SF OF SURFACE AREA FOR 560 SF OF ROOF. HANDLES 1" RAIN

PLUG CURRENT ERODED AREA WITH NATIVE PLANTS

RAIN GARDEN:
300 SF OF SURFACE AREA FOR 900 SF OF ROOF. HANDLES 2" RAIN

UNDISTURBED OUTLOT

OUTLOT A

HUGE POOL LANDSCAPE

PARK BOUNDARY

PARK BOUNDARY

EXIST. SPRUCE TREES IN ROW

EXIST. SPRUCE TREES IN ROW

EXIST. SPRUCE TREES IN ROW

DESIGNED BY DAVID SONKA, MN LA C LP
2-04-08

Dr. Vladimir "Vlad" and Silvia Huges
2931 Jonquil Trail N
Lake Elmo, MN 55042
651-777-3333
v@huges.com

BUILDER TO VERIFY USE DIMENSIONS, SEWER DEPTH AND FOUNDATION DE

HOUSE DIAGONAL:
(9 FOOT POI



UNLAWFUL REPRODUCTION OR DISTRIBUTION

Fee \$ 725

City of Lake Elmo DEVELOPMENT APPLICATION FORM

- Comprehensive Plan Amendment
- Variance * (See below)
- Residential Subdivision Preliminary/Final Plat
- Zoning District Amendment
- Minor Subdivision
- 01 - 10 Lots
- Text Amendment
- Lot Line Adjustment
- 11 - 20 Lots
- Flood Plain C.U.P. Conditional Use Permit
- Residential Subdivision Sketch/Concept Plan
- 21 Lots or More
- Conditional Use Permit (C.U.P.)
- Site & Building Plan Review
- Excavating & Grading Permit
- Appeal
- PUD

APPLICANT: ^{c/o DAVID SONKA} VLADIMIR HUGOEC 2931 JONGMIL TR, N., LAKE ELMO, MN 55042
 (Name) (Mailing Address) (Zip)

TELEPHONES: 651-777-3333
 (Home) (Work) (Mobile) (Fax)

FEE OWNER: _____
 (Name) (Mailing Address) (Zip)

TELEPHONES: _____
 (Home) (Work) (Mobile) (Fax)

PROPERTY LOCATION (Address and Complete (Long) Legal Description): LOT 12, BLOCK 1,
FARMS OF LAKE ELMO, WASHINGTON COUNTY, MINNESOTA

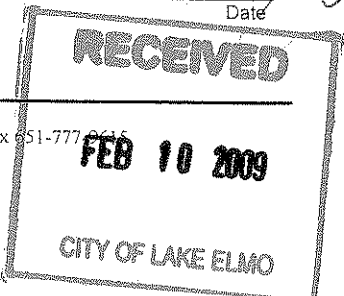
DETAILED REASON FOR REQUEST: (PLEASE SEE ATTACHED SUPPLEMENT)

*VARIANCE REQUESTS: As outlined in Section 301.060 C. of the Lake Elmo Municipal Code, the Applicant must demonstrate a hardship before a variance can be granted. The hardship related to this application is as follows:
(PLEASE SEE ATTACHED SUPPLEMENT)

In signing this application, I hereby acknowledge that I have read and fully understand the applicable provisions of the Zoning and Subdivision Ordinances and current administrative procedures. I further acknowledge the fee explanation as outlined in the application procedures and hereby agree to pay all statements received from the City pertaining to additional application expense.

Hugoec 2/7/09
 Signature of Applicant Date

S. J... 02/07/09
 Signature of Applicant Date



Supplemental Information for 2931 Jonquil Trail Variance Application:

Detailed Reason for Request:

Vladimir and Silvia Hucec have lived at 2931 Jonquil Trail North for two years. They purchased their home with the intention of adding an in-ground swimming pool and landscape into the flat, sodded area of the back yard directly behind their home. They have sought this as a way to better enjoy their property, to entertain neighborhood friends, and to provide a place for their children a safe place to practice for competitive swimming.

The Hucec's were only recently made aware of the 100' setback that exists from the Lake Elmo Park Preserve in January of 2009. This 100' setback extends through a 60' wide Outlot for an additional 40' into their property, which would prohibit a pool and useable landscape that they had been planning for years. (150.180 Development Standards, (B), (2), (d) Buffer zones)

Between their property and the Lake Elmo Park Preserve is a buffer area, Outlot A. They had assumed that this area was established to preserve an undisturbed space between the park and their property, as it effectively does. But they were unaware of any setback from the park boundary that would extend an additional 40' through the middle of their back yard, to within 30' of their home. It was not indicated on the Certificate of Survey and As-Built Survey they had received. (See Appendix A, B)

Their neighbors and friends on both sides of them have swimming pools. The neighbors to the east, the Gustafson's at 2395 Jonquil Trail, have a beautiful swimming pool and fountain feature that is well within this same setback, on two sides of the park boundary. This property, as well as the next one to the north, appear to have homes which seem very much on, or within, the same setback. They both also do not have the presence of an Outlot buffer to the park preserve. (See Appendix C) Therefore, the existence of this code was unrecognizable, nor could be interpreted by them. It was not brought to their attention until considerable time and money had been invested into the plans for the pool landscape, long after conversations had been initiated with the city about their desire for a pool landscape.



Variance Request. (Hardship is described.)

Here is the portion of building code that was recently cited to address the proposed pool project at 2931 Jonquil Trail North:

"...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."

(150.180 Development Standards, (B), (2), (d) Buffer zones)

The enforcement of the 100' setback from Lake Elmo Park Preserve would prohibit the ability for of an in-ground swimming pool, spa, and landscape at 2931 Jonquil Trail North. This property is occupied by the family of Vladimir and Silvia Hucec. Dr. Hucec relocated his family to the area two years ago from eastern Europe as a cancer research doctor.

The location for any kind of pool on their lot would be the logical area in the flat, buildable portion of the back yard, situated directly behind the house. This would be in violation of the 100' setback requirement that was recently cited to us six weeks after it was originally brought to the attention of the city. This setback line extends an additional 40' into their property beyond Outlot A, within 30' of their house. Outlot A currently serves as an effectively buffer to their back yard from the Lake Elmo Park Preserve. It consists of an uphill slope of 3' to 7' over a 60' distance to the park boundary. Along the inside edge of the park boundary is also a fencerow planting of black hills spruce trees that are currently growing from 10 to 16' in height. (See Appendix D)

In this backyard location, the pool would seem in a recessed location that is 80' to 90' from the park property. It would also be completely obscured from view of the street, and greatly obscured from any adjacent properties with existing spruce trees planted along the boundary between the properties. Additional trees that would further reduce any visibility are being proposed in the new pool landscape as well.

No other location on the property is free from both restrictions and undesirable conditions that prohibit a pool. The setback leaves less than 30' at the back of the house, which cannot support a pool design considering the required setbacks from the home itself with its staggered footprint. A combination of issues such as conforming to

setbacks from the side lots, setbacks from the house, grading and drainage issues, and utility service connections to the house also compound any other options. There simply is not other viable alternative than in the logical place in the backyard.

The backyard location is the only area on the property where sufficient space is currently available for the pool, drainage patterns on the lot can be maintained, and the pool can be supervised from all windows along the back of the house. This will ensure safety and security for their children, neighbors, friends, and family members visiting to use the pool and surrounding landscape.

Vladimir and Silvia Hucec's children are both active in competitive swimming. Their intention is to create a pool, spa, and useable landscape which would provide their young children a place to enjoy and practice swimming. They want the swimming area to be large enough to allow lap swimming, but intimate enough where they can dine and sit, relax and enjoy the outdoors. The proposed pool is 18 x 46' with an extended shallow area for entry. They intend to employ some of the most recent energy-efficient heating technologies where they can extend the pool season and use it in after-school and after-business hours of the day. The pool landscape will provide an attached spa, a dining area, and an intimate place for a fire to keep warm in cooler temperatures while their children use the pool.

As Dr. Hucec describes, he moved to this home in Lake Elmo with the intention of having a nice, safe home with wonderful neighbors, a nice, peaceful place to enjoy being outside, and great place to spend time with his kids while the play and practice what they love to do. This is all part of his American dream.

(Please see attached Appendices, A, B, C, D)

Additional Information for Variance Procudure:

Supplemental Information for 2931 Jonquil Trail Variance Application:

Item List:

1. A completed land use application form:
– Please see the enclosed sheet and supplemental information.

2. Written Statements:

a. A list of all current property owners:
Dr. Vladimir and Silvia Hugec

b. Site Data:

Legal Description:

Lot 12, Block 1, Farms of Lake Elmo, Washington County, Minnesota

Parcel ID number: 2202921210024

Parcel Size: 41,340 SF or .95 acres

Existing Use of Land: Single Family Detached Residential

Current Zoning:

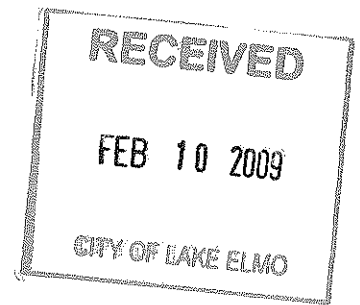
The 2007 Zoning Map for Lake Elmo lists it as A-Agricultural, as shown on the current zoning map on the City of Lake Elmo website.

Assumption is that it has since been re-zoned as OP/OS since the 2007 Survey.

c. The provisions of the City of Lake Elmo Code for which a variance is sought:

"...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."

(150.180 Development Standards, (B), (2), (d) Buffer zones)



Also, for compliance with recent updates to the hardcover provisions (which was not available online) :

Maximum Impervious Surface of Gross Lot Area: "20%. This percentage may be increased to 25% provided a pervious paver or comparable system is installed consistent with the City of Lake Elmo Engineering Standards Manual 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 approved by the City Engineer."

d. Specific written description of the proposal and how it varies from the application provisions of Lake Elmo code:

Vladimir and Silvia Hucec have lived at 2931 Jonquil Trail North for two years. They purchased their home with the intention of adding an in-ground swimming pool and landscape into the flat, sodded area of the back yard directly behind their home. They have sought this as a way to better enjoy their property, to entertain neighborhood friends, and to provide a safe place for their children to be outdoors and practice their sport of competitive swimming. Their neighbors and friends on either side of their property have built in-ground pools. Given the varying setbacks of these pools, and the varying setback of the houses from Lake Elmo Park Preserve as other pools and homes are well within this setback, there was no way for them to discern that building a pool at their home would be prohibited. So they purchased this home and proceeded to invest time and money into their plans for the pool. They had many conversation with their neighbors and initiated conversation with the city to gather information on Outlot A, and existing utility easements.

The ideas for the pool they have discussed since moving into their home, and after becoming friends with their neighbors, have developed into more formalized plans. These plans include an in-ground swimming pool of a free-form shape to allow for lap swimming, with an attached spa. The plan would also provide a place to prepare food and dine in the outdoors, as it will be used often in the after-business hours. The plan also offers a place to be in the shade of a 24'L x 10'W x 8.5'H pergola with open sides and open canopy. The pergola is centered on a fireplace that will be used for when the pool season is extended into the spring and late summer to fall months.

As the 100' setback has recently been brought to their attention, the restriction on building any kind of pool would extend 40' into their property from Outlot A. This invisible line would fall within the body of the pool. This would leave less than 30' between the house and setback line, which given the shape of the floor plan of the house, the setbacks needed, and the proper drainage needed from the house, their pool and landscape would be impossible.

e. Preapplication discussions with the City of Lake Elmo:

The Huges's were only recently made aware of the 100' setback that exists from the Lake Elmo Park Preserve, in January of 2009, six weeks into the process, and after at least two years that they had been discussing the pool project among themselves and their neighbors. They had purchased this home with the intent of adding a pool, so in saving money for two years and allowing their children to get older, they engaged in starting plans for the pool and continued dialog with their neighbors.

In Fall of 2008, they hired a landscape designer, David Sonka MNLA CP, through a school fundraiser to work on getting the plans started. The first meeting with David was in December of 2008. As David started investigating the site, he almost immediately emailed the City of Lake Elmo office to ask Kyle or Kelly about the Outlot A buffer area which showed up on a plat, and whether they had a Survey which would describe this and what it was for. He had been familiar with Kyle and Kelly and has always found them helpful to work with. In his initial questioning, he asked about the specifics of this outlot, whether there was any utility usage of it, or if it was just setup as a buffer zone. In this early communication, he mentioned the swimming pool and hardcover issue for this area.

David received a phone call the very next day and was told of the hardcover and the existence of this Outlot as part of the open space provision. He was told that the City of Lake Elmo had the Certificate of Survey and an As-Built Grading Survey for the property, as it was in the hand of the official while conducting the phone conversation. The pool project was specifically mentioned in this conversation. It was also discussed that constructing raingardens to collect runoff, or incorporating permeable pavers, could allow for an additional 5% of hardcover, from 20% to 25%, given they are adequately constructed for performance and maintenance.

David received another phone call right before the new year, on December 30 or 31, 2008. However, David was away with family over the holidays and was not able to call back or return to the City of Lake Elmo office until January. The voicemail message was very brief, and so it was assumed that all questions had been answered appropriately from the conversation on December 17. David was already 40 + hours into the plan by this point.

On January 28, David picked up paperwork for filing permits for the pool and the landscape features with the City of Lake Elmo. He received applications for the building permit, fence permit, and asked about any other permits that might apply for which to collect applications. He talked with two of the city officials on the classification of the pergola and fireplace structure, and the grades and setbacks of the utility easements. After this point of the conversation, it was indicated that this lot might have a setback or easement that extends into the property from the Lake Elmo Park Preserve. This was the first mention of this setback, to which he was a bit surprised. The following afternoon, January 29, he received a phone call confirming this setback that would not allow for the construction of the pool, or other landscape features within the setback. David was shocked, so he reassessed the design and the implications on

the project with the homeowner, and it was determined that this effectively would not permit a pool on this property given this and other setbacks.

In the homeowner's amazement and dismay, he is hoping for the opportunity afforded to both of his neighbor's a friends, for the chance to be able to implement a pool landscape of his own, which was his intention in buying this house. The city officials have been gracious and supportive, and a bit apologetic that this project and all of the time and energies that have been put forth, have gotten trapped by this code.

It has also been made apparent that a great deal of information regarding the Open Space designation is not fully available online, nor is the recent zoning classification of this development property. According to the 2007 Zoning Map currently found online, it has this development still classified as agricultural.

f. Explain why the property cannot be put to reasonable use under the zoning code:

The Huges moved into their home with the intention of putting in a pool, just as their neighbors and friends on both sides have a pool and landscape. This 100' setback extends through a 60' wide Outlot (Outlot A) for an additional 40' into their property at 2931 Jonquil Trail North, which would prohibit any pool and useable landscape. (150.180 Development Standards, (B), (2), (d) Buffer zones) This would leave less than 30' between the house and setback line, which given the shape of the floor plan of the house, the setbacks needed, and the proper drainage needed from the house, their pool and landscape would be impossible.

Vladimir and Silvia Huges's children are both active in competitive swimming. Their intention is to create a pool and useable landscape which would provide their young children a place to enjoy and practice swimming. They want the swimming area to be large enough to allow lap swimming, but intimate enough where they can dine and sit, relax and enjoy the outdoors. The proposed pool is 18 x 46' with an extended shallow area for entry. They intend to employ some of the most recent energy-efficient heating technologies where they can extend the pool season and use it in after-school and after-business hours of the day. The pool landscape will provide an attached spa, a dining area, and an intimate place for a fire to keep warm in cooler temperatures while their children use the pool.

With the prohibition of installing the pool, there is also a restrictive hardcover code which would allow very minimal surface area to create places to be around the edge of the pool. The lot is currently at just under 18% hardcover including the driveway. To have useable space around the pool, they want to incorporate a concrete paver pool deck to allow for a dining area and a place to sit in the shade of an open pergola by a fire. With these surrounding landscape improvements, the hardcover would be 23.5%.

However, the intention is to also construct stormwater rain gardens which would collect, store, and infiltrate the water coming from the gutters along the entire back of the house. Under the supervision of Rusty Schmidt, Natural Resource Specialist with

the Washington County Conservation Office, a raingarden of this scale was designed for this site.

g. Explain why the plight of the landowner is due to circumstances unique to the property and not created by the landowner.

The location for any kind of pool on their lot would be the logical, flat, buildable portion of the back yard that is situated directly behind their house. This would be in violation of the 100' setback requirement, but no other location on the property is free from both restrictions and undesirable conditions that prohibit a pool. The setback leaves less than 30' at the back of the house, which cannot support a pool design considering the required setbacks from the home itself with its staggered footprint. A combination of issues such as conforming to setbacks from the side lots, setbacks from the house, grading and drainage issues, and utility service connections to the house compound issues and rule out any other options. There simply is not other viable alternative than in the logical place in the backyard.

The backyard location is the only area on the property where sufficient space is currently available, where drainage patterns on the lot can be maintained, and where the pool can be supervised from all windows along the back of the house. This will ensure safety and security for their children, neighbors, friends, and family members visiting to use the pool and surrounding landscape. Both neighbors on either side of their property have a pool in the same scenario, and they hope that the same circumstances could be afforded to their family.

h. Justify that granting of the variance would not alter the essential character of the neighborhood:

The Farms of Lake Elmo development blends well into pastoral landscape of the Lake Elmo Park Preserve, and other hamlet characteristics of the area. Outlot A currently serves as an effective buffer to their back yard from the Lake Elmo Park Preserve. It consists of an uphill slope of approximately 2' to 6' over a 60' distance to the park boundary. Along the inside edge of the park boundary is also a fencerow planting of black hills spruce trees that are currently growing from 10 to 16' in height.

In this backyard location, the pool would seem in a recessed location that is generally 70' to 100' from the park property. It would also be completely obscured from view of the street, and greatly obscured from any adjacent properties with existing spruce trees planted along the boundary between the properties. Additional trees that would further reduce and almost totally obstruct any visibility from the park, street, and adjacent properties, are being proposed in the new pool landscape as well.

With these improvements and enhancements, the long open views afforded in the Farms of Lake Elmo neighborhood will remain intact. Just as the neighbors to the east

and west, a pool landscape will be tucked behind their home in the useable space. This pool will have a high aesthetic value with a free-form shape, natural building materials, lots of perennial color and planting beds, strategically-placed trees, and a low profile to ensure that views toward the horizon line to the south will be maintained.

Dr. Huges moved to this home in Lake Elmo from eastern Europe, as a cancer research doctor. As he describes, his intention is to have a nice, safe home in Minnesota with wonderful neighbors; a nice, peaceful place to enjoy being outside; and a great place to spend time raising his kids while they play and practice what they love to do. This is all part of his American dream.

3. Verification of Ownership (Title report or purchase agreement, property tax statement, etc.)
SEE ENCLOSED

4. Address Labels: A list of property owners located within 350' of the subject property obtained by a licensed abstractor.
SEE ENCLOSED

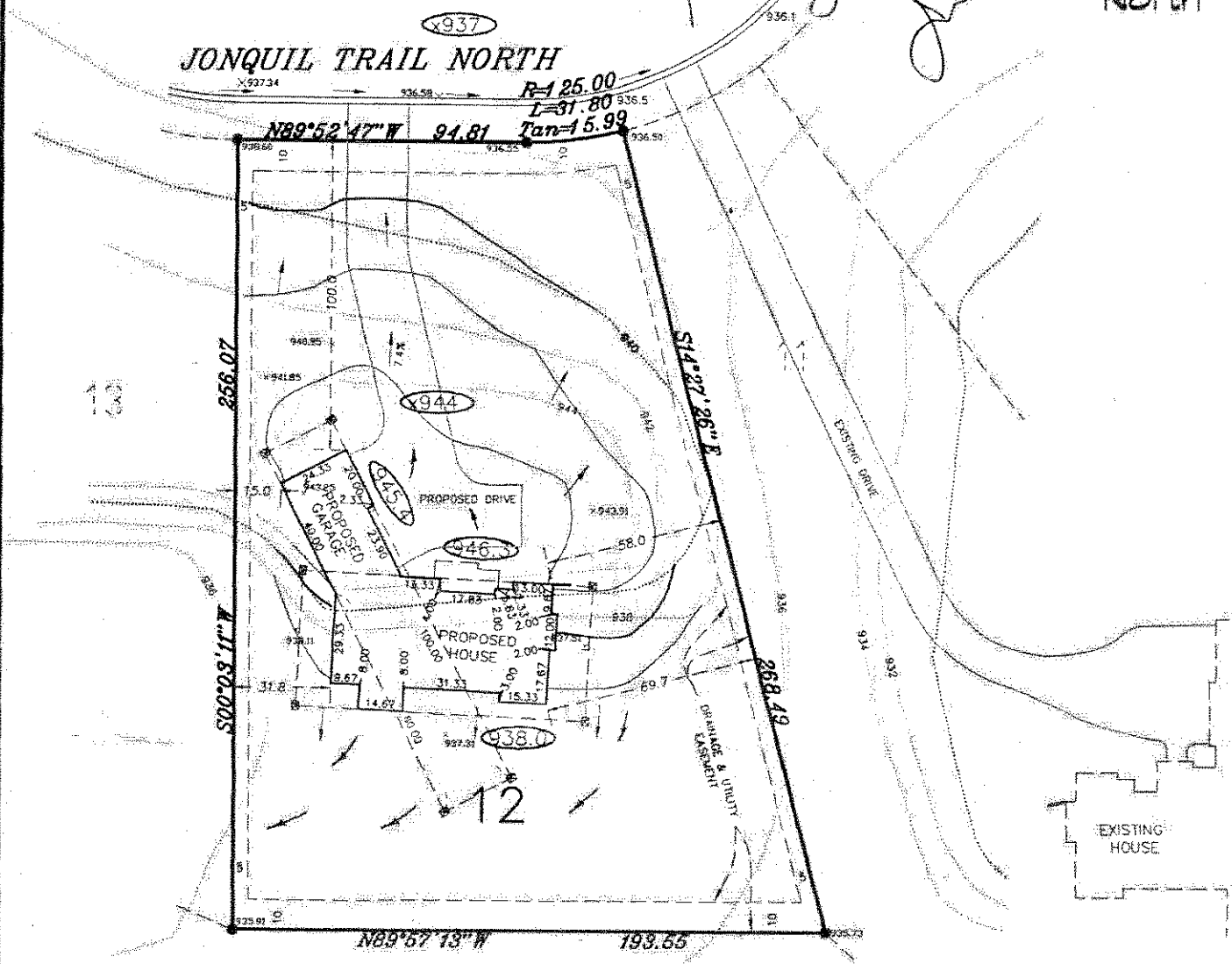
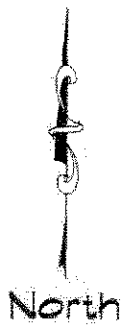
5. Fifty Copies of a certified survey; includes the required information on the lot with proposed plan.
SEE ENCLOSED

CERTIFICATE OF SURVEY

FOR: KOOTENIA HOMES

"APPENDIX A"

New 2-24-06



(NOTE: NO SETBACK FROM LAKE ELMO PARK PRESERVE IS INDICATED ON THE SURVEY)

OUTLOT A

RECEIVED
 FEB 10 2009
 CITY OF LAKE ELMO

*BUILDER TO VERIFY HSE DIMENSIONS, SEWER DEPTH AND FOUNDATION DEPTH

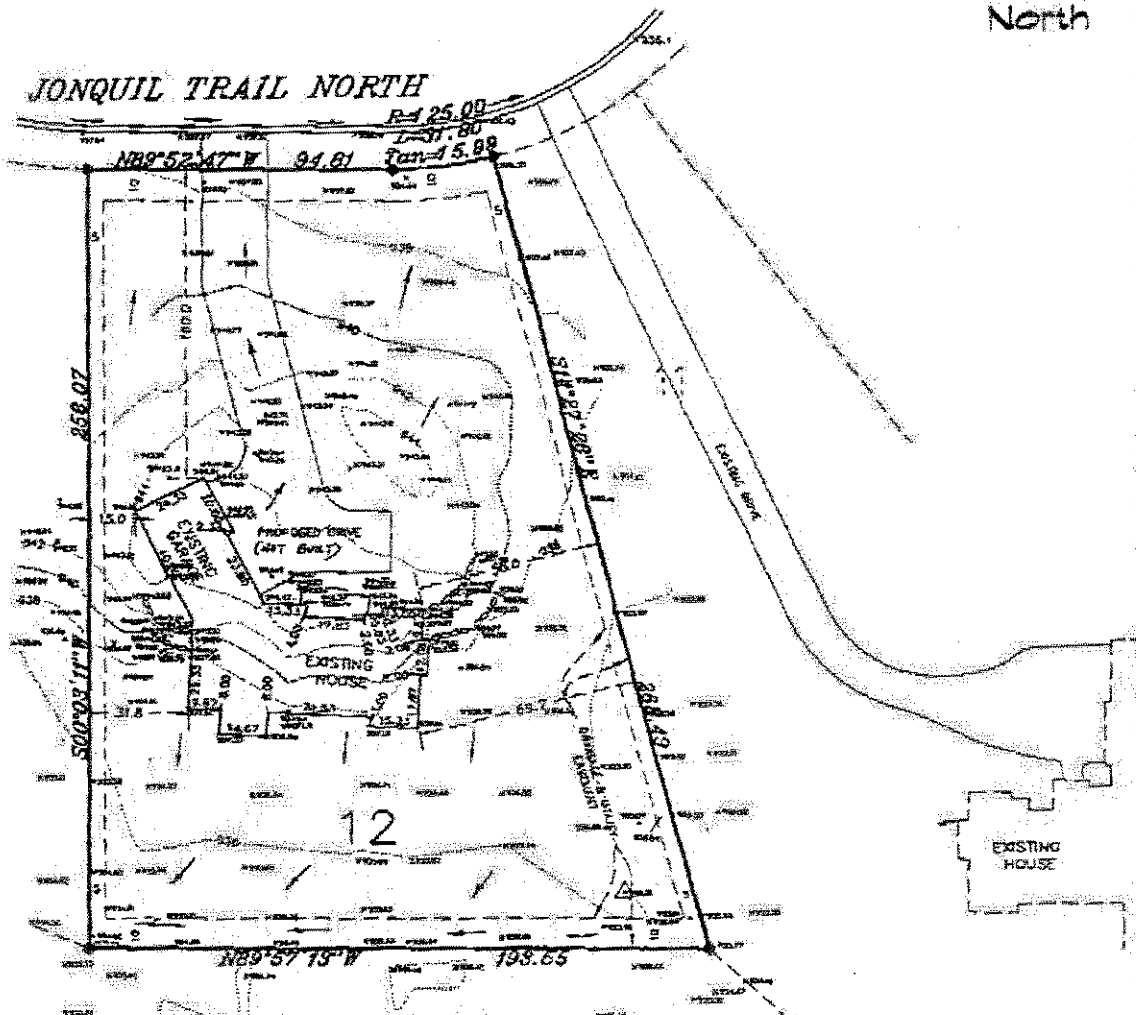
- * 999.90 Denotes Existing Elevation.
- Denotes Wood Hub / Metal Spike at 11 foot offset.
- (1023) DENOTES PROPOSED ELEVATIONS.
- Denotes DIRECTION OF DRAINAGE.
- Denotes RETAINING WALL

HOUSE DIAGONAL: $44.33 \times 95.00 = 104.83$
 (9 FOOT POURED WALL WALKOUT)
PROPOSED ELEVATIONS:
 TOP OF WALL = 947.0
 GARAGE FLOOR = 945.7 (drop 1.3')
 LOWEST FLOOR = 938.3
 TOP OF FOOTING = 938.0

GRADING AS-BUILT

FOR: KOOTENIA HOMES

"APPENDIX B"



(NOTE: NO MENTION OF SETBACK FROM LAKE ELMO PARK PRESERVE INDICATED ON SURVEY)

RECEIVED
 FEB 10 2009
 CITY OF LAKE ELMO

(9 FOOT POURED WALL WALKOUT)
PROPOSED ELEVATIONS:

TOP OF WALL = 947.0
 GARAGE FLOOR = 945.7 (drop 1.3')
 LOWEST FLOOR = 938.3
 TOP OF FOOTING = 938.0

(MEASURED 08/22/06)
AS-BUILT ELEVATIONS:

TOP OF WALL = 946.3
 GARAGE FLOOR = 944.9
 LOWEST FLOOR = 937.6

- X 999.90 Denotes Existing Elevation.
- DENOTES DIRECTION OF DRAINAGE.
- DENOTES RETAINING WALL.

Lot 12, Block 1, FARMS OF LAKE ELMO, Washington County, Minnesota.

Scale 1" = 40'	Drawn By: OMW	Project Manager: JER	Job No.: 06075AB
o Denotes Iron Set	• Denotes Iron Found	Bearings shown are on an assumed datum.	

I hereby certify that this plan, survey or report was prepared by me or under my direct supervision and that I am a duly Registered Land Surveyor under the laws of the State of Minnesota. Dated this 22nd day of August, 2006.

[Signature]

License No. 41578

EGRUD & SONS, INC.
 LAND SURVEYORS
 6716 LAKE DRIVE SUITE 100
 LINO LAKES, MINNESOTA 55014-3628
 TEL 763-786-8856 FAX 763-786-8807

"APPENDIX C"

2931 JONQUIL TRAIL NORTH

LOCATION OF UNKNOWN SETBACK FROM LAKE ELMO PARK PRESERVE

LOCATION OF UNKNOWN SETBACK FROM LAKE ELMO PARK PRESERVE

EXISTING FENCEROW OF 10-15' SPRUCE TREES FOR SCREENING

LAKE ELMO PARK PRESERVE

LAKE ELMO PARK PRESERVE

OUTLOT A



CONTOUR LEGEND

10 FOOT INTERVAL CONTOUR

2 FOOT INTERVAL CONTOUR

DEPRESSION

DASHED CONTOURS INDICATE QUESTIONABLE ACCURACY DUE TO GROUND VEGETATION

LEGEND

ENR PROTECTED WATERS

ENR PROTECTED WETLAND

ONR PROTECTED WATERCOURSE

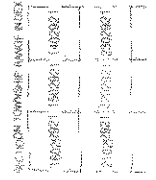
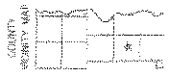
MUNICIPAL BOUNDARY

PARK BOUNDARY

RECEIVED

FEB 10 2009

CITY OF LAKE ELMO



PROPERTY IDENTIFICATION NUMBER (EPCRA) SERIAL NUMBER

SECTION NUMBER

QUARTER NUMBER

RANGE

TOWNSHIP

STATE

DATE

SCALE

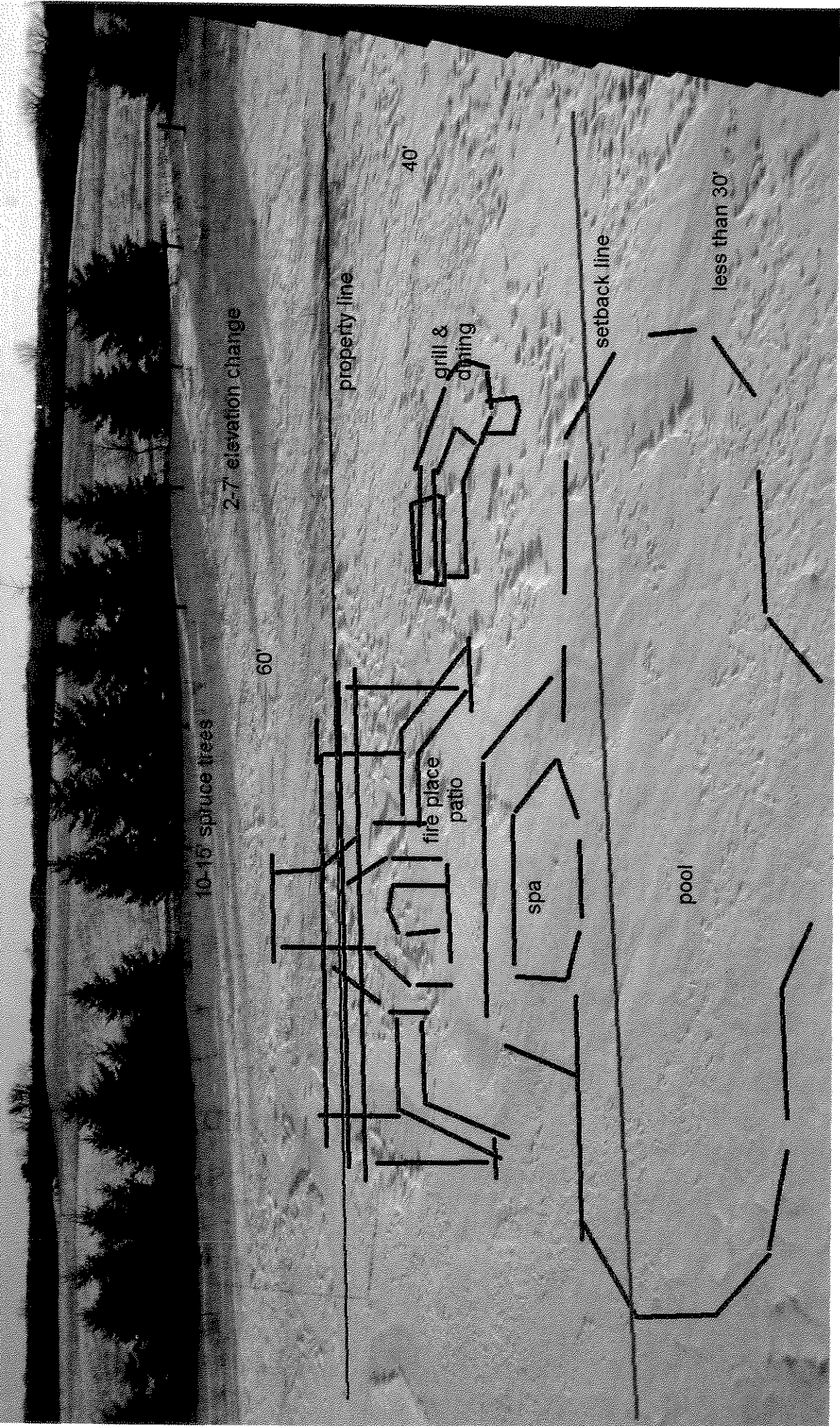
BY

DATE

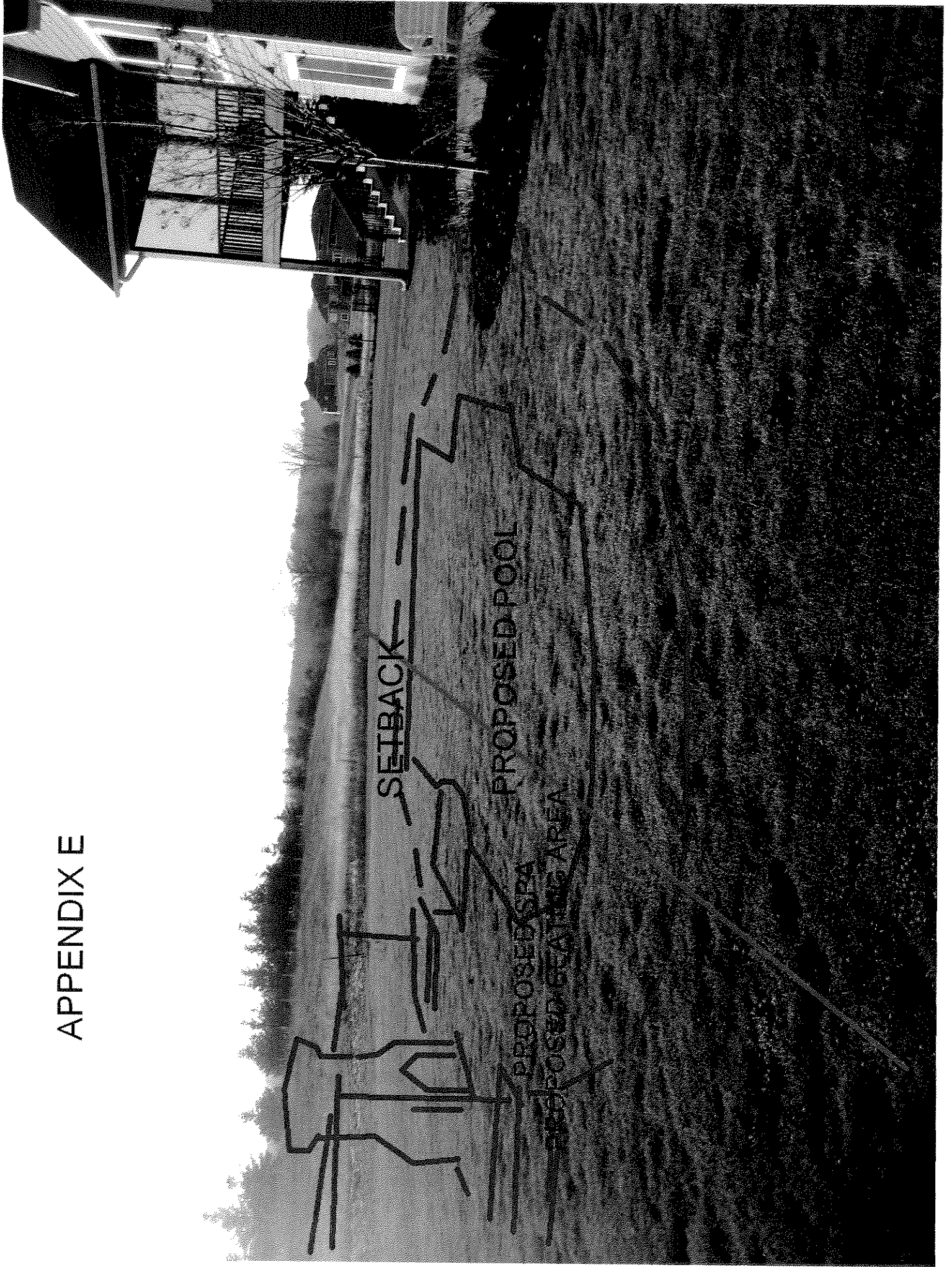
PROJECT: LAKE ELMO PARK PRESERVE



APPENDIX D



APPENDIX E



APPENDIX F





Jongqui Trail N

Applicant's Home
↓

Jongqui Trail N



Public Works Department

Donald J. Theisen, P.E.
Director/County Engineer

Wayne H. Sandberg, P.E.
Deputy Director/Assistant County Engineer

February 27, 2009

Kelli Matzek, Planner
City of Lake Elmo
3800 Laverne Avenue North
Lake Elmo, MN 55042

Ms. Matzek,

Washington County has reviewed the development application submitted by Vladimir and Silvia Huceg for a variance request for the construction of a spa, in-ground swimming pool, pergola and outdoor fire place structure. The property is located at 2931 Jonquil Trail North in Lake Elmo adjacent to the Lake Elmo Park Reserve. The proposal raises a number of concerns regarding the intensity of the proposed uses and the potential visual impact of the pergola and outdoor fireplace structure as viewed from the Lake Elmo Park Reserve boundary.

A Master Plan for the park reserve was adopted by the County Board in May, 2006. The Master Plan process included several opportunities for public involvement and input. In addition, the Plan was developed with assistance from a Technical Advisory Committee, which included local officials, residents, and professional staff. One result of the planning process involved retaining the 'park reserve' status of the park. The 'park reserve' status requires that no more than 20% of the entire park can be developed. The remaining 80% is to remain undeveloped and natural. The park area directly adjacent to 2931 Jonquil Trail North is within the 80% undeveloped and natural area of the park reserve and the site contains a restored native tall grass prairie. This environment provides for very natural and scenic experiences for park visitors.

In review of the site plan, there may be opportunities to place the pergola and outdoor fireplace structure within the required setbacks to minimize the visual impact. Additional screening with fencing, berms and coniferous trees may also lessen the visual impact of the pool facility from the park.

Thank you for your request to comment on this variance request. We look forward to working with the City of Lake Elmo as we implement our park plan.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter A. Mott".

Peter A. Mott, Park Manager
Washington County Parks

Kelli Matzek

From: Sarah Strommen [sstrommen@mnland.org]
Sent: Tuesday, March 03, 2009 3:30 PM
To: Kelli Matzek
Subject: Farms of Lake Elmo variance request

Dear Kelli:

Thank for you sending the Land Use Review packet regarding a request for a variance at 2931 Jonquil Trail North in the Farms of Lake Elmo development. I have reviewed the packet and do not see that any activity is proposed to occur within the Outlot A, which is covered by a conservation easement held by the Minnesota Land Trust. Therefore, the Land Trust has no specific comments on or concerns with the variance being requested.

However, we would like to take this opportunity to remind the City and the applicant that the easement area must not be used for material storage, vehicle travel, or other activities that would be in violation of the conservation easement during the construction process. If there are any questions related to the conservation easement, I would be happy to address them.

Thanks again for contacting me. The Land Trust very much appreciates the up-front communication and cooperative relationship.

Sincerely,

Sarah Strommen

Sarah Strommen

Conservation Director, Central Region

Minnesota Land Trust

2356 University Ave. W.

Suite 240

St. Paul, MN 55114

Phone: 651-647-9590

Fax: 651-647-9769

www.mnland.org <<http://www.mnland.org>>

Planning Commission
Date: 3/9/09
Item: 4b
Public Hearing

ITEM: SIGN CODE REVISIONS ORDINANCE – An ordinance repealing existing sign code regulations and adopting new regulations to govern signs in all zoning districts.

SUBMITTED BY: Ben Gozola, Senior Planner

REVIEWED BY: Kyle Klatt, Planning Director
Kelli Matzek, Assistant City Planner

SUMMARY AND ACTION REQUESTED:

The planning commission is asked to conduct a public hearing to review a proposed ordinance to repeal all existing sign code regulations in favor of a new set of revised sign controls. The new controls are intended to modernize the City's sign regulations in preparation of anticipated development guided in the current comprehensive plan. The new regulations outline the purpose behind all sign codes, the procedures for obtaining sign permits, how sign codes will be enforced, and the minimum standards that signs must meet in order to be approved. Regulations focus on time (when signs may be erected), place (the physical location of allowed signs), and manner (sign types, height, size, number, lighting, etc).

All proposed regulations have been drafted in response to public input that has been gathered since December of 2008 either through email or at one of two (2) public open houses held to date. Staff was careful throughout this process to ensure the public understood that consensus on sign regulations is typically not possible due to the diverging interests that exist within every city. We have made ourselves continuously available throughout the drafting of this ordinance, and have been in constant communication with all interested parties via an email distribution list. The resulting ordinance (and optional language contained therein) is before the commission now for consideration.

You will find the following documents attached to this executive summary:

1. A summary of public feedback received to-date which helped to shape the draft ordinance currently under consideration.
2. A clean copy of the proposed ordinance language which is color coded to identify NEW language, EXISTING language, MODIFIED language, and OPTIONAL language. This will be the ideal document to review prior to the meeting, and also to consult as the ordinance is being reviewed.

3. A copy of the City's existing sign regulations with references identifying where current regulations are located within the new code.
4. The proposed language formatted as an Ordinance for consideration.

In reviewing the draft ordinance, the Planning Commission is asked to:

- Consider the proposed language and determine whether the new ordinance adequately balances the many interests of the citizens of Lake Elmo relating to signs.
- Determine which (if any) of the "optional" provisions should be passed onto Council for consideration in the final ordinance.
- Make a recommendation for staff to revise the draft ordinance for consideration at a later date, or to pass on a version of the ordinance for consideration and possible adoption by the City Council.

RECOMMENDATION:

Staff is recommending the Planning Commission recommend approval of an ordinance option to update the City of Lake Elmo sign regulations. The final version will be dependent upon the Planning Commission's positions related to a number of "optional" requirements provided for consideration.

ORDER OF BUSINESS:

- Introduction..... Ben Gozola, Senior Planner
- Report by staff..... Ben Gozola, Senior Planner
- Questions from the Commission..... Chair & Commission Members
- Open the Public Hearing..... Chair
- Close the Public Hearing Chair
- Call for a motion Chair Facilitates
- Discussion of Commission on the motion Chair Facilitates
- Action by the Planning Commission Chair & Commission Members

ATTACHMENTS:

- A Summary of Public Feedback
- A color-coded CLEAN COPY of the Draft Sign Code
- A copy of the existing sign code regulations
- The proposed sign code language formatted as a formal Ordinance.

Signs: Summary of Public Feedback

- Rockpoint Church concerns:
 - Directional signage needed as it is difficult to find if you're not familiar with the entry point, the ¼ intersection, etc.
 - Consider regulation that would allow an entry sign in cases like this.
 - Wall sign needed for the Church.
 - Check the downtown area as the downtown church allegedly has directional signs.

- General Developer concerns:
 - Neighborhood entry monument signs should be reconsidered.

- Multi-Tenant Building concerns:
 - City should consider a regulation that would allow for more signage based on leased square footage.

- Political sign concerns:
 - Can the city regulate the number and size of such signs?
 - Can the city regulate placement of such signs?

- Future zoning district concerns:
 - How will the current update impact future zoning districts that have yet to be created for guided development south of 10th Street.

- Use of natural materials concern:
 - The proposed prohibition on painting signs on natural surfaces such as trees or rocks should not preclude the use of natural materials in a sign.

- Enforcement concern:
 - Be sure the final ordinance can be easily enforced

- Amount of signage concerns:
 - Desires expressed to limit overall signage; desires expressed to expand allowed signage types and sizes.
 - Desires expressed for more sign options; desires expressed for tighter regulations.

- Home Occupation concerns:
 - Desires expressed to allow reasonable signage for home occupations.

- Economy related concerns:
 - Directional signage needed to advertise properties for sale in today's down market.

- I-94 concerns:
 - Desire for the city to adopt special regulations for the I-94 corridor based on the higher Interstate traffic speeds and the resulting need for larger signs.

Color Legend:

GREEN language = existing language that has NOT been edited

ORANGE language = existing language that has been edited

BLUE language = optional language for consideration

BLACK language = new language

RED language = needs to change or be edited

SIGNS

§ 151.115 PURPOSE

(A) Purpose and Findings

(1) Purpose.

- (a) The Lake Elmo Sign Regulations are intended to establish a comprehensive and balanced system of sign control that accommodates the need for a well-maintained, safe, and attractive community, and the business community's need for effective communication and identification. It is not the purpose or intent of these regulations to favor commercial messages or speech over non-commercial messages or speech or to discriminate between types of non-commercial speech or the viewpoints represented therein. It is the intent of these regulations to promote the health, safety, general welfare, and desirable rural community image through the regulation of signs with the following objectives in mind:
- a. Signs shall demonstrate a high standard of aesthetic character and encourage the use of monument and individual letter-style signs;
 - b. Permit large enough copy/graphic area to effectively convey the intended message but not so large as to unduly distract the reader and insist on lettering large enough to be easily read to encourage simple, uncluttered messages;
 - c. Signs shall be proportioned to the size of, and architecturally compatible with, the structures and other signs on the premises;
 - d. Permanent signs shall only advertise on-premise businesses, services, facilities, etc;

- e. Allow temporary business signs for grand openings and occasional sales events; allow temporary signs to advise the public of the seasonal sale of agricultural and horticultural products in keeping with the City's rural image; and to allow temporary directional signs permitting the public to more easily locate land conservation developments which enhances the City's rural image, without creating continuous visual clutter or traffic hazards along streets or at intersections; and
- f. Signs shall be properly maintained.
- g. Signs that distract drivers, cyclists and pedestrians shall not be permitted. Studies conducted by public and private agencies have identified that dynamic signs, including multi-vision signs, electronic signs and video displays can be highly distracting to drivers, pedestrians, and cyclists and that distraction is a significant underlying cause of traffic accidents. With respect to electronic signs, including video display signs, the City finds that they are highly visible from long distances and at very wide viewing angles both day and night and are designed to catch the eye of persons in their vicinity and hold it for extended periods of time. If left uncontrolled, electronic signs, including video display signs, constitute a serious traffic safety threat. Studies conducted by the Federal Highway Administration (FHWA), *Research Review of Potential Safety Effects of Electronic Billboards on Driver Attention and Distraction*, Sept. 11, 2001, and *The Role of Driver Inattention in Crashes: New Statistics from 1995*; the University of North Carolina Highway Safety Research Center, *Distractions in Everyday Driving*, May 2003 and *The Role of Driver Distraction in Traffic Crashes*, May 2001; the Wisconsin Department of Transportation, *Synthesis Report of Electronic Billboards and Highway Safety*, June 10, 2003; the Municipal Research and Services Center of Washington, *Sign Control Provisions*, Jan. 2006; the Veridan Group, *Video Signs in Seattle*, Gerald Wachtel, May 2001, reveal that electronic signs are highly distracting to drivers and that driver distraction continues to be a significant underlying cause of traffic accidents.

(2) Findings.

The City of Lake Elmo hereby finds that regulation of the construction type, location, size, and maintenance of signs is necessary to accomplish the above referenced objectives, because:

- (a) The presence of permanent and temporary signage affects the rural image of the City of Lake Elmo;

- (b) Properly regulated signage can create an atmosphere of prosperity, stimulate commercial activity, and consequently, lead to increased employment and a healthier tax base;
- (c) The safety of motorists, cyclists, and pedestrians can be threatened by signage that interferes with necessary sight-distances and/or unduly diverts the attention of such persons.
- (d) Signs that are too bright, overly illuminated, flash, blink, scroll, twirl, change messages or color, or imitate movement, including video displays, can distract drivers, cyclists and pedestrians and impact traffic safety.

(B) Severability. If any section, subsection, sentence, clause, or phrase in sections 151.115 through 151.119 are for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Sign Ordinance. The City Council hereby declares that it would have adopted the Sign Ordinance in each section, subsection, sentence, or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid.

(C) Definitions. The definitions set forth in this Section are in addition to the definitions set forth in Section 11.01. In the event of a conflict between the Sections, the definitions in this section shall apply.

Abandoned sign - any sign and/or its supporting sign structure which remains without a message or whose display surface remains blank for a period of one (1) year or more, or any sign which pertains to a time, event or purpose which no longer applies, shall be deemed to have been abandoned. Signs applicable to a business temporarily suspended because of a change in ownership or management of such business shall not be deemed abandoned unless the property remains vacant for a period of one (1) year or more. Any sign remaining after demolition of a principal structure shall be deemed to be abandoned. Signs which are present because of being legally established nonconforming signs or signs which have required a conditional use permit or a variance shall also be subject to the definition of abandoned sign.

animation -- The movement or the optical illusion of movement of any part a sign, sign structure, design, or pictorial segment, including the movement of any illumination or the flashing or varying of light intensity; the automatic changing of all or any part of the facing of a street sign.

Awning means a shelter supported entirely from the exterior wall of a building.

Awning sign - a sign or graphic printed on or in some fashion attached directly to the awning material.

Back lit (sign illumination) means a direct source of light which illuminates a sign by shining through a translucent surface of a sign, including plastic signs, lit from an internal light source.

Banner - A temporary sign typically made of cloth, plastic or vinyl materials. Banner signs shall not be used as permanent signage.

Billboard - A sign structure with a surface area over one hundred (100) square feet per surface that identifies or communicates a commercial or non-commercial message.

Business Vehicle Identification Sign – A sign that is permanently mounted or otherwise permanently affixed to a vehicle, trailer, or semitrailer which identifies the business, products, or services with which the vehicle, trailer, or semitrailer is related. For purposes of this definition, magnetic and adhesive signs shall be considered as being permanently affixed. This definition shall also include non-permanently affixed signs that do not exceed 32 square feet erected in concert with a legally operating wayside stand. Bumper stickers and similarly sized adhesive decals shall not be considered business vehicle identification signs.

Canopy means a detachable, rooflike cover, supported from the ground or deck, floor or walls of a structure, for protection from the sun or weather.

Canopy sign means a sign that is mounted, painted, or otherwise applied on or attached to a freestanding canopy or structural protective cover over an outdoor service area. An awning or a marquee is not a canopy.

Changeable copy sign - A sign designed to allow the changing of copy through manual, mechanical, or electrical means including time and temperature.

Commercial Speech – Speech or graphics advertising a business, profession, commodity, service or entertainment.

Direct illumination (sign illumination) means a sign whose light source is either located in the interior of the sign so that the rays go through the face of the sign, or which is attached to the face of the sign and is perceived as a design element of the sign.

Directional sign – An on-site sign for the purpose of making specific locations known and to assist in finding these locations (e.g. “Parking,” “Shipping Receiving Area”).

Electronic Variable Message Sign – Signs whose message are changed at reasonable intervals by electronic process or remote control and whose movement is the periodic changing of information against a solid, colorless background, engineered for maximum legibility and readability, and having a constant light level and glare reduced screens. This definition does not include static time and temperature displays which only change when necessary for accuracy.

External Illumination Illumination of a sign that is affected by an artificial source of light not contained within the sign itself.

Flag” - any fabric or similar lightweight material attached at one end of the material, usually to a staff or pole, so as to allow movement of the material by atmospheric changes and which contains distinctive colors, patterns, symbols, emblems, insignia, or other symbolic devices.

Freestanding sign means a sign that is attached to, erected on, or supported by some structure (such as a pole, mast, frame, or other structure) that is not itself an integral part of or attached to a building or other structure whose principal function is something other than the support of a sign. Monument, pole, and ground signs are all freestanding signs.

Governmental Sign – a sign erected and maintained by or on behalf of the United States, the state, the county, or the city for the purpose of regulating traffic or for other civic purposes; the size, location, and height of which is dictated by the applicable agency to fulfill the intended civic purpose.

Ground sign” - any freestanding sign with its sign face mounted on the ground or mounted on a base at least as wide as the sign and which has a total height not exceeding six (6) feet.

Historic sign means an existing sign which has a special historical, architectural, cultural, or aesthetic value to the community.

Illuminated sign” - any sign which contains an element designed to emanate artificial light directly or indirectly.

Indirect illumination (sign illumination) means a sign whose light source is external to the sign and which casts its light onto the sign from some distance.

Monument sign” - any freestanding sign with its sign face mounted on the ground or mounted on a base at least as wide as the sign and which has a height exceeding six (6) feet.

multi-tenant building – A grouping of two or more business establishments that either share common parking on the lot where they are located, or that occupy a single structure or separate structures that are physically or functionally related or attached.

Mural Sign – Any mural or pictorial scene painted on a wall or building or painted on a sign board affixed to a wall, and in which mural or scene has as its purpose an artistic effect.

Non-commercial Speech – A sign that contains a non-commercial message. Examples of non-commercial messages include, but are not limited to, messages concerning political, religious, social, ideological, public service and informational topics.

“Off-premise sign” – a commercial speech sign which directs the attention of the public to a business, activity conducted, or product sold or offered at a location not on the same lot where such sign is located. A sign located within an easement or other appurtenance to a lot on which a business is located shall be deemed an off-premises sign.

~~“On-premise sign” – a sign which identifies or advertises an establishment, person, activity, goods, products or services located on the premises where the sign is installed.~~

“Permanent Sign” – A sign constructed of durable materials designed to exist for the duration of time that the use or occupant is located on the premises.

Pole sign” - any freestanding sign which has its supportive structure(s) anchored in the ground and which has a sign face elevated above ground level by pole(s) or beam(s) and with the area below the sign face open

portable sign – A sign not permanently attached to the ground or a building or designed to be permanently attached to the ground or a building.

Projecting sign – A sign attached to and projecting out from a building face or wall, generally at a right angle.

Reverse lit (sign illumination) means a direct source of light which illuminates a sign by shining off an opaque surface of a sign thereby casting the light off the wall behind the sign creating a halo effect.

Roof sign” - any sign erected and constructed wholly on and above the roof of a building, supported by the roof structure, and extending vertically above the highest portion of the roof.

“Sign” – Any letter, word or symbol, device, poster, picture, statue, reading matter or representation in the nature of an advertisement, announcement, message, or visual communication, whether painted, posted, printed, affixed or constructed, which is displayed for informational or communicative purposes and is visible to the general public.

“Sign, Real Estate Development” – A sign offering for sale, lease, or rent a single-family or multiple-family residential project of 10 or more dwelling units or lots. Real estate development signs shall be administered as permanent signs subject to all removal requirements outlined in code.

“Sign, Agricultural Sales” – A sign placed on a lot or parcel of land advertising an operating and permissible agricultural sales business. Off-premises agricultural sales signs shall be administered as temporary signs subject to all removal requirements outlined in code.

~~**“Sign, Wayside Stand”** – A sign located on a temporary structure or vehicle being used to sell agricultural, floricultural, or horticultural products.~~

Snipe sign means an off-premises sign that is tacked, nailed, posted, pasted, glued, or otherwise attached to trees, poles, stakes, fences, or to other object

“Temporary Sign” – Any sign intended for display over a short period of time.

Unified Residential Area – A residential grouping of lots that share a plat name over one or more additions.

Wall sign – A sign attached to or erected against the wall of a building with the exposed face of the sign on a plane parallel to the plane of the wall, and which displays only one (1) sign surface.

Warning sign – A sign located on private property posting such property for warning or prohibitions on trespassing, hunting, or other activity.

Window sign” - any building sign, pictures, symbol, or combination thereof, designed to communicate information about an activity, business, commodity, event, sale, or service, that is placed inside a window or upon the window panes or glass and is visible from the exterior of the window.

151.116 Administration and Enforcement

(A) Permit Required.

No sign shall be erected, altered, reconstructed, maintained or moved in the city without first securing a permit from the city. The content of the message or speech displayed on the sign shall not be reviewed or considered in determining whether to approve or deny a sign permit.

- (1) Permanent Signs.** To apply for a permanent sign permit, a complete application shall be submitted to the City containing the following:
- (a) Names and addresses of the applicant, owners of the sign, and lot;
 - (b) The address at which the sign(s) are to be erected;
 - (c) The legal description of the property on which the sign(s) are to be erected and the street on which they are to front;
 - (d) A complete set of scaled plans showing the sign dimensions, area, height, ground elevations, applicable setbacks, and other details to fully and clearly represent the safe construction and placement of the proposed sign(s);
 - (e) Type of sign(s) being requested (i.e. wall sign, monument sign, etc.);
 - (f) The permit fee; and
 - (g) The following if applicable:
 - i. Written authorization from the property owner upon who's land the sign is to be erected.
 - ii. A permit from either MnDOT or Washington County if the proposed sign is along a state highway or county road.
 - iii. A sign plan showing signs for all businesses if the sign is located on a building with more than one business.
 - iv. Photographs of the building face and the building faces of both adjacent buildings if the sign is being placed on an existing structure.
 - v. If replacing a historical sign, pictorial proof or other information that the sign is of historical significance or is a reproduction of a historic sign.
- (2) Temporary Signs.** To apply for a permit to allow a temporary sign, a complete application shall be submitted to the City containing the following:

- (a) Names and addresses of the applicant, owners of the sign, and lot;
 - (b) The address at which the sign(s) are to be erected;
 - (c) A generalized plan set showing the sign dimensions and height, and a notation of the materials to be used.
 - (d) A scaled site plan which clearly represents the placement of the proposed sign(s) on the applicable property;
 - (e) The proposed timeframe(s) over which the sign(s) will be posted;
 - (f) The permit fee; and
 - (g) The following if applicable:
 - i. Written authorization from the property owner upon who's land the sign is to be erected.
 - ii. A permit from either MnDOT or Washington County if the proposed sign is along a state highway or county road.
- (3) **Temporary Sign Renewal.** A temporary sign permit issued by the City may be renewed provided the sign design, size, location, or other previously approved details are not proposed to change. A sign renewal application shall include the following:
- (a) Names and addresses of the applicant, owners of the sign, and lot;
 - (b) The address at which the sign(s) are to be erected;
 - (c) The date of issuance of the permit being renewed;
 - (d) The proposed timeframe(s) over which the sign(s) will be posted;
 - (e) Written authorization from the property owner upon who's land the sign is to be erected (if applicable); and
 - (f) The permit renewal fee.
- (4) **Review.** The planning department shall approve or deny complete sign permit applications upon receipt of a complete application. If the permit is denied, the planning department will send a written notice of denial to the applicant. The written notice will indicate the reason(s) for denial and a description of the applicant's appeal rights.

(B) Exemptions.

The following signs shall not require a permit. However, these exemptions shall not be construed as relieving the owner of the sign from the responsibility of its erection and maintenance, and its compliance with the provisions of this ordinance or any other law or ordinance regulating signs.

- (1) The changing of the display surface on a previously approved sign.
- (2) Signs six (6) square feet or less in size, per surface if double sided.
- (3) Window Signage that does not cover more than 1/3 of the total area of the window in which the sign is displayed
- (4) Governmental Signage.

(C) Fees.

The fee for a sign permit is established yearly in the City's adopted fee schedule as indicated in section 11.02.

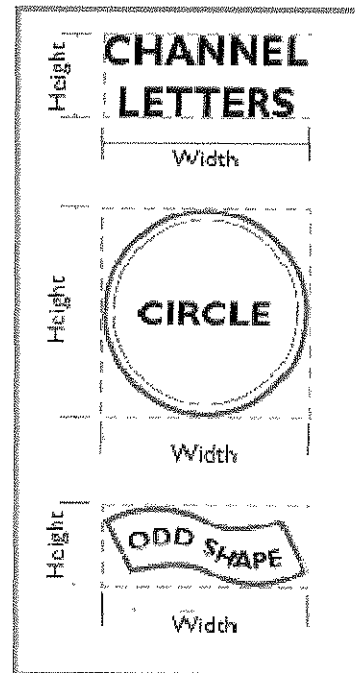
(D) Computations.

- (1) Sign Area Measurement.

The area of a sign shall be computed by means of the smallest rectangle within which a single sign face can be enclosed. When a sign has two back-to-back sign faces containing sign copy, the sign area for both faces are counted toward the total allowed sign area. Poles, bases, and other supports shall not be included in the sign area calculation.

OPTIONAL LANGUAGE: The area of a sign shall be computed by means of the smallest circle, rectangle or triangle that will encompass the extreme limits of the writing, representation, emblem, or other display, together with any material or color forming an integral part of the background of the display or used to differentiate the sign from the building facade against which it is placed. When a sign has two back-to-back sign faces containing sign copy, the sign area for both faces are counted toward the total allowed sign area. Poles, bases, and other supports shall not be included in the sign area calculation.

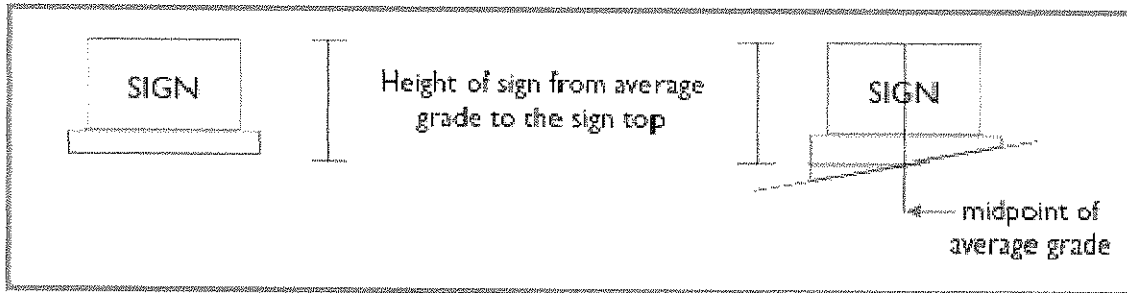
Figure 1: Sign Area Measurement



(2) Sign Height Measurement

The height of the sign shall be computed as the vertical distance measured from the average grade at the base of the sign to the top of the highest attached component of the sign.

Figure 2: Sign Height Measurement



(3) Total Sign Area Calculation

The total square footage of all sign surfaces shall be computed by adding together the sign areas of all signs on a property.

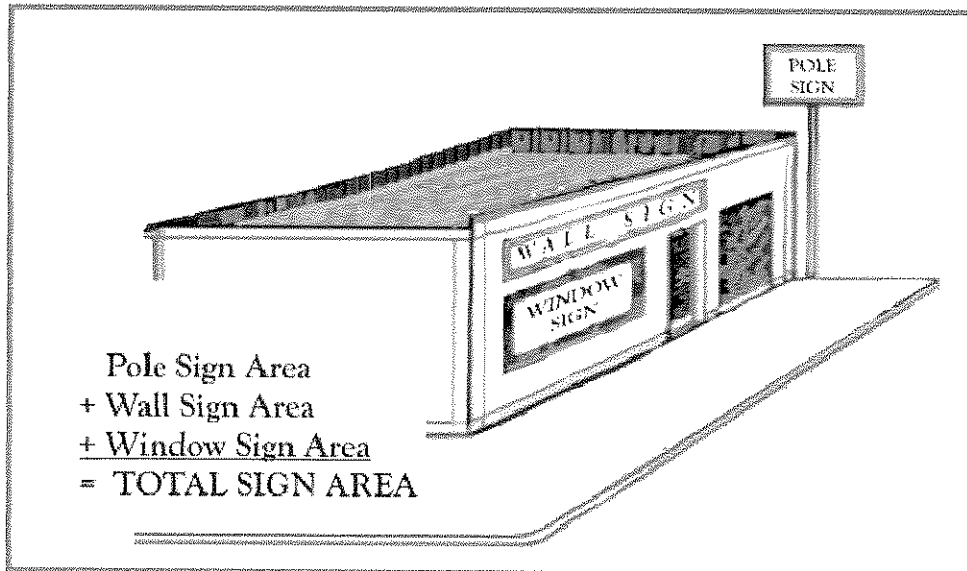


Figure 3: Total Sign Area Measurement Example

(E) Construction, Maintenance and Repairs.

- (1) The construction of all signs, unless otherwise stated herein, shall be in conformance with the provisions of the Uniform Sign Code published by the International Conference of Building Officials, 1997 Edition, as may be amended, which is hereby adopted by reference and made a part of this ordinance.
- (2) All signs and structures shall be properly maintained and shall be constructed of sufficiently permanent material so that they shall not succumb to deterioration from weathering.
- (3) Any existing sign or sign structure which is rotted, unsafe, deteriorated, defaced, or otherwise altered, shall be repainted, repaired, replaced, or removed if repair is not feasible. Sign maintenance shall be the responsibility of the underlying fee owner.

(F) Abatement.

If the City finds that any sign has been erected without the necessary approvals or any sign is being maintained in violation of any zoning provision, the City may give written notice of such violation to the installer of said sign; to the permit holder; and/or to the owner, lessee or manager of said property. If after receiving said notice such person fails to remove or alter said sign so as to comply with the provisions of the zoning ordinance, the sign shall be deemed to be a nuisance and may be abated by the City under Minnesota Statutes, Chapter 429. The cost of such abatement, including administrative expenses and reasonable attorneys' fees, may be levied as a special assessment against the property upon which the sign is located.

151.117 General Standards

(A) Abandoned Signs

Abandoned signs shall be removed.

(B) Building identification.

- (1) A building address, date of construction, commemorative tablet, etc; shall not count towards the overall permitted signage on a building or parcel. All forms of building identification, except for the building address, shall be cut into a masonry surface or be constructed of bronze or other incombustible material.
- (2) Posting of a building address identifying the correct property number as assigned by the City shall be required on each principal building in all districts. The number shall be at least three (3) inches in height, but no larger than twelve (12) inches in height.

- (C) **Building Official Review.** No sign shall be attached to or be allowed to hang from any building until all necessary wall and roof attachments have been approved by the City Building Official.
- (D) **Changeable Copy Signs.** A changeable copy sign, such as a reader board, may be integrated into an allowable sign subject to the following restrictions:
 - (1) The message conveyed by the sign face shall not blink, flash, scroll or be so animated as to be deemed a distraction to passing motorists;
 - (2) Copy on the sign shall not change more than once per day on average (except for time, temperature, and price information which must change when necessary for accuracy);
 - (3) Characters and backgrounds depicted on a changeable copy sign shall not use florescent coloring.
 - (4) All changeable copy sign faces shall be limited to a maximum of 25 square feet in sign area, or the maximum size of the type of sign on which the face is placed, whichever is less.
- (E) **Flags.** No more than 3 flags may be displayed on any given parcel. Individual flags shall not exceed one-hundred (100) square feet in size per surface.
- (F) **Illumination.**
 - (1) Illumination of signs shall comply with Chapter 150 code requirements governing Lighting, Glare Control, and Exterior Lighting Standards.
 - (2) Indirect illumination for signs shall be so constructed and maintained that the source of light is not visible from the public right-of-way or residential property.
 - (3) Back-lit awnings are prohibited.
- (G) **Ingress or egress.** No sign or structure shall be erected or maintained if it prevents free ingress or egress from any door, window, or fire escape. No sign or sign structure shall be attached to a standpipe or fire escape.
- (H) **Landscaping.** Sign owners shall be required to maintain the appearance of the ground around all signs detached from buildings and to landscape where possible.

(I) Master Sign Program.

A Master Sign Program shall be reviewed and approved for all multi-tenant commercial buildings and for all business park development to coordinate all signage for current and future tenants. The Master Sign Program shall be reviewed as a permanent sign permit, but shall only authorize the general locations and sizes of signs to be erected within a development or on a multi-tenant building. Individual permanent sign permits shall still be needed for the placement of permanent signs in accordance with an approved Master Sign Program. Master Sign Programs shall be subject to the following requirements:

- (1) A Master Sign Program shall include a to-scale site plan which identifies the overall sign types, sizes, and locations for all proposed signage on the site(s). The site plan shall not contain the names of any current or future tenants or occupants of the center or overall development.
- (2) The Master Sign Program shall include a calculation of allowable sign square footage for the site(s) based on applicable zoning requirements and lot characteristics.
- (3) The Master Sign Program shall include square footage calculations for individual signs proposed for the site(s), along with a total sign square footage area calculation.
- (4) All signs within a Master Sign Program shall be visually consistent in location, design, and scale.
- (5) The Master Sign Program may be reviewed concurrently with a separate permanent sign permit for the individual sign(s) identified in the Master Sign Program. The separate permanent sign permit shall include all information required by section 151.116(A)(1), and may only be approved if the Master Sign Program is approved.

(J) Multi-Tenant Buildings.

- (1) Multi-tenant buildings are herein considered a single commercial establishment, and shall be limited to one (1) freestanding sign amongst all planned/allowed signage subject to the following requirements:
 - (a) If the multi-tenant commercial building has a floor area of 40,000 square feet or less, the sign shall not exceed forty (40) square feet (per side) and shall not exceed eight (8) feet in height.
 - (b) If a multiple tenant commercial building has a floor area greater than 40,000 square feet but less than 100,000 square feet, the sign shall not exceed seventy-five (75) square feet (per side) and shall not exceed nine (9) feet in height.

(c) If a multiple tenant commercial building has a floor area of greater than 100,000 square feet, the sign shall not exceed 120 square feet (per side) and shall not exceed fifteen (15) feet in height.

(2) Where a building, group of attached buildings on the same block, or center contains more than one business, the allowable sign area for any single business shall be its portion of the gross square footage of the building or center applied as a percentage to the allowable sign area of the entire building or center, subject to size limitations for specific signs within an approved Master Sign Program.

(K) Neighborhood Identification Signs (optional)

Independent of the total allowable sign area for individual residences within a residential zoning district, two (2) ground signs for a unified residential area with six (6) or more lots may be allowed consistent with the following provisions:

(1) New subdivisions:

(a) Neighborhood identification sign(s) shall be approved as a component of a preliminary and final plat to be included as part of a new subdivision.

(b) Each sign may not exceed a total of thirty-two (32) square feet in area.

(c) Signs are to be located on outlots of sufficient size and area to accommodate them or within a dedicated permanent sign easement. A homeowners or neighborhood association is required for the area identified by the signs which shall own and be responsible for the upkeep, perpetual maintenance, taxes, insurance, utilities, and other costs associated with the sign(s) and their property. The association rules or by-laws shall specify how the aforementioned sign responsibilities will be delegated and paid for. City staff shall review the proposed bylaws to ensure that they specify the aforementioned responsibilities.

(d) Outlots or easements for signs are to be considered and planned for at the time of preliminary plat application and shall be included in the final plat. A developers agreement shall specify the designated use of the outlot or easements, its ownership, and the respective home owners association responsibilities regarding the proposed improvements.

(e) Only indirect lighting of neighborhood identification may be approved. The electric costs and maintenance of such lighting shall be the responsibility of the homeowners association or neighborhood association of the area identified by the sign(s) and shall be clearly noted in the association's rules or bylaws.

- (f) The area around the sign is to be landscaped and maintained in such a manner to accent and enhance the sign while remaining sensitive to the natural features of the site. Detailed site and landscape plans shall be included with each sign permit application and shall be subject to review by the Planning Commission and City Council at the time of Preliminary Plat.
 - (g) The design and construction of neighborhood area identification signs shall be done with the highest quality materials and workmanship to keep maintenance and upkeep costs to a minimum and to minimize the potential for vandalism. Neighborhood area identification signs are to be aesthetically pleasing when designed and constructed. The signs shall be compatible with nearby or potential homes and other structures in the area. Detailed construction plans and a materials list shall be included with the preliminary plat application.
 - (h) The City reserves the right to require the removal—at the owner's expense—of any sign when the requirements of this Section and this Ordinance are not completely followed and adhered to or if the sign is not properly maintained or falls into a state of disrepair. The City shall not have any obligation or liability to replace any sign or nearby landscaping when removed by the City.
- (2) Existing Unified Residential Areas: A neighborhood identification sign may be allowed by Conditional Use Permit for existing unified residential areas. If no outlots or easements were originally designated for signs, the plat may be amended to provide for such a proposal and shall meet the same criteria and requirements as set forth for new subdivisions.
- (L) **Non-commercial speech signs.** Notwithstanding any other provisions of this sign ordinance, all signs of any size containing non-commercial speech may be posted from August 1 in any general election year until ten (10) days following the general election and thirteen (13) weeks prior to any special election until ten (10) days following the special election.
- (M) **Private on-premises directional signs.** Signs located on, above or beside entrances or exits to buildings or driveways which direct pedestrians or vehicles (e.g. “employees entrance,” “exit only,” “rest rooms,” etc) shall not count towards the overall permitted signage on a site provided such signs are no more than four (4) square feet in area.

(N) Prohibited Signs

The following signs are prohibited in all zoning districts.

- (1) **Signs obstructing vision.** Any sign which obstructs the vision of drivers or pedestrians or detracts from the visibility of any official traffic-control device. This includes indoor signs that are visible from public streets.
- (2) **Unofficial traffic signs or signals.** Any sign which contains or imitates an official traffic sign or signal, except for private, on-premises directional signs which do not interfere with traffic flows on public roads.
- (3) **Off premises advertising signs.** Off premises advertising signs except as specifically allowed.
- (4) **Signs with moving parts, moving lighting or animation.** No sign shall display any moving parts, be illuminated with any flashing or intermittent lights, use changing light intensity, utilize spotlights giving off an intermittent or rotating beam existing as a collection or concentration of rays of light (including but not limited to revolving beacons, beamed lights, or similar devices), or be animated. The only exceptions to this provision include static time and temperature information changing only when necessary (which shall be allowed provided the message depicted is reasonably accurate), allowable changeable copy signs and barbershop poles.
- (5) **Roof signs.**
- (6) **Banners, pennants, ribbons, streamers.** No sign which contains or consists of banners, pennants, ribbons, streamers, string of light bulbs, spinners, or similar devices, except when used for non-commercial purposes, as a governmental sign, or as part of an approved master sign program.
- (7) **Portable signs.** Including but not limited to signs with wheels removed, attached temporarily or permanently to the ground, structure or other signs, mounted on a vehicle for advertising purposes, parked and visible from the public right-of-way, hot air or gas filled balloons or semitruck umbrellas used for advertising. This prohibition shall not include business vehicle identification signs when the vehicle is being used for the normal day-to-day operations of a permitted business.
- (8) **Signs supported by a guy wire.**
- (9) **Billboards.**
- (10) **Electronic Variable Message Signs.**

(11) Signs on natural surfaces. No sign shall be painted, attached or in any other manner affixed to trees, rocks, or similar naturally occurring surfaces within the City of Lake Elmo. This shall not prohibit the use of natural building materials (e.g. boulders) in the construction of a legally permitted sign.

(12) Snipe signs.

(O) Public lands and rights-of-way. No signs other than governmental signs shall be erected or temporarily placed within any street right-of-way or upon public lands or easements or rights-of-ways without Council approval.

(P) Regulations for Specific Sign Types

(1) Wall signs

(a) A wall sign shall be located on the outermost wall of any principal building but shall not project more than 16 inches from the wall to which the sign is to be affixed.

(b) A wall sign shall not project higher than the parapet line of the wall to which the sign is to be affixed.

(c) Wall signs authorized by a Master Sign Program shall not exceed 25 square feet per business, and all signs shall be visually consistent in location, design, and scale.

(d) Wall signs may be placed on not more than three walls of rectangular shaped structures or not more than 75 percent of the major walls on non-rectangular shaped buildings.

(2) Mural Sign.

(a) Mural signs shall not be limited in size, but any commercial or non-commercial language incorporated into the mural sign shall be limited in size by the restrictions established for the applicable zoning district.

(b) In addition to the standard conditional use criteria in section 154.018, mural signs shall also be subject to the following:

i. The location for the proposed mural sign shall be viewable by the public and be accessible;

ii. The scale and suitability of the mural sign shall be appropriate in the context of the surrounding properties;

iii. The artist(s) commissioned to complete the mural must provide documentation of demonstrated craftsmanship on similar projects;

iv. The applicant shall provide sureties to the city guaranteeing completion of the project within the proposed timeframe;

- v. The applicant shall demonstrate that the necessary funds are available for the proposed project;
- vi. The applicant must be able to show the final mural will last a minimum of five years and be reasonably resistant to vandalism and weather.

(3) Projecting, Awning, and Canopy Signs.

- (a) Projecting signs and awning signs shall be located on street level.
- (b) If lighted, projecting, awning, and canopy signs shall use indirect illumination.
- (c) Awning or canopy signs shall not project higher than the top of the awning or canopy or below the awning or canopy.
- (d) Clearance. The bottom of a projecting sign or awning shall be a minimum of eight feet (8') above the ground surface when projecting over a private or public walkway.

(4) Freestanding Signs. Freestanding signs shall not be erected or maintained any closer than three feet to any building.

(Q) Separation Angle. So as not to create a double exposure or increase sign size limitations, there shall be a maximum separation angle of forty-five degrees for signs which are back to back. In all residential districts, double-faced signs shall be parallel.

(R) Signs needing electricity. Signs needing electricity shall be subject to all applicable electrical codes as may be amended. Overhead wiring for such signs is prohibited.

(S) Special Sign Districts.

(1) Old Village.

- (a) Boundary. The boundary of the Old Village Sign District is depicted on the city's official sign district map. Modifications to the district boundary may be completed using the zoning map amendment process.
- (b) Illumination. Indirect illumination or reverse lit letters shall be the permitted techniques for lighting all signs within the Old Village Sign District. Other forms of direct illumination are prohibited.

(c) Wall Signs.

- i. Wall signs in the Old Village Sign District shall not project higher than the parapet line of the wall to which the sign is to be affixed or 15 feet as measured from the base of the building wall to which the sign is affixed, whichever is lower.
- ii. Wall signs in the Old Village Sign District authorized by a Master Sign Program shall not exceed 20 square feet per business, and all signs shall be visually consistent in location, design, and scale.

(d) Freestanding Signs.

- i. The area of a freestanding sign in the Old Village Sign District shall not exceed thirty (30) square feet.
- ii. Freestanding signs in the Old Village Sign District shall not project higher than 6 feet, as measured from the average grade at the base of the sign or grade of the nearest roadway, whichever is lower.

(2) Agricultural Sales District

(a) Boundary. The Agricultural Sales District shall include all properties zoned Agricultural or Rural Residential.

(b) On-premises sign(s). Independent of the total allowable sign area for an individual property within the agricultural sales district, one or more additional on-premises signs may be erected on a property in conjunction with an operating agricultural sales business subject to the following requirements and restrictions:

- i. Agricultural sales businesses utilizing less than 10 acres of land specifically for the growing of agricultural crops for the business are allowed 1 on-premises sign not to exceed 32 gross square feet of advertising surface;
- ii. Agricultural sales businesses utilizing more than 10 acres of land but less than 40 acres of land specifically for the growing of agricultural crops for the business are allowed 1 or 2 on-premises signs not to exceed 48 gross square feet of advertising surface (with no sign surface exceeding 32 square feet in size);
- iii. Agricultural sales businesses utilizing more than 40 acres of land specifically for the growing of agricultural crops for the business are allowed 1, 2 or 3 on-premises signs not to exceed 64 gross square feet of advertising surface (with no sign surface exceeding 32 square feet in size);
- iv. Sign(s) shall be in the form of an allowable sign type in the underlying zoning district.

- v. No dimension of any sign shall exceed 15 feet exclusive of supporting structures.
 - vi. All signs shall be bordered with a decorative material compatible with the surrounding area.
 - vii. Any illuminated sign shall be illuminated only during those hours when business is open to the public for conducting business.
- (c) Temporary off-premises sign(s). Independent of the total allowable sign area for an individual property anywhere within the city, a temporary off-premises sign may be erected on a property in conjunction with an operating agricultural sales business subject to the following requirements and restrictions:
- i. Maximum Number. Every agricultural sales business shall have no more than two off-premises signs at any given time to direct the public to the location of the business.
 - ii. Timeframe of use. Temporary off-premises signs may be erected for 45-day time periods no more than four times in any given calendar year. The required temporary sign permit shall stipulate the range of dates for each of the four allowable time periods in any given calendar year.
 - iii. Size and Height. An off-site agricultural sales advertising sign shall not exceed 50 square feet in area and shall not be taller than 10 feet in height;
 - iv. Setbacks. Off-premises signs shall be a minimum of 25' from all side property lines, and a minimum of 50' from other off-premises advertising signs;
 - v. Permission Required. Applicants for off-premises signs shall acquire permission from the property owner upon whose land the sign is to be erected.

(3) I-94 District (optional)

- (a) **Boundary.** The I-94 district shall include the following parcels:
- i. All buildable properties to the south of Hudson Boulevard and to the north of Interstate 94.
 - ii. All properties whose southern boarder abuts Hudson Boulevard, but excluding those directly north of a developable parcel lying between Hudson Boulevard and Interstate 94.
- (b) **Illumination.** All forms of illumination shall be the permitted within the I-94 Sign District.

- (c) **Maximum total square footage of ALL sign surfaces.** The maximum total square footage of all sign surfaces in the I-94 district shall be dictated by the maximum sign sizes for allowable sign types.
 - (d) **Wall Signs.** The least restrictive of the following may be used to determine the allowable area for wall signs in the I-94 District:
 - i. The total area of all wall signs on any wall shall not exceed ten percent of the area of the wall with a maximum allowable area of 80 square feet; or
 - ii. The total area of all wall signs on any wall shall not exceed five percent of the area of the wall with a maximum allowable area of 300 square feet.
 - (e) **Freestanding Signs.** A building site within the I-94 District may have freestanding signs in accordance with the following:
 - i. One freestanding sign within 50 feet (“of the property line nearest the Interstate” OR “of Hudson Boulevard”) is allowed provided the sign does not exceed 150 square feet in size nor 30 feet in height. The base of such a sign shall be at least 75 percent of the width of the sign and be constructed of materials that match those used on the building for which the sign is installed.
 - ii. One additional freestanding sign, in conformance with the underlying zoning requirements for height, location, and maximum size may also be erected along each additional roadway frontage.
 - (f) **Window Signs.** Window signs in the I-94 district shall not cover more than 25% of the window area.
 - (g) **Awning, Canopy, and Projecting Signs.** One awning, canopy or projecting sign, in conformance with the underlying zoning requirements for height, location, and maximum size may also be erected for each business on a building site in the I-94 District.
- (T) **Substitution Clause.** The owner of any sign which is otherwise allowed by this sign ordinance may substitute non-commercial speech signs in lieu of any other commercial speech sign or other non-commercial speech sign. The purpose of this provision is to prevent any inadvertent favoring of commercial speech over non-commercial speech, or favoring of any particular non-commercial speech over any other non-commercial speech. This provision prevails over any more specific provision to the contrary.

(U) Temporary Signs.

- (1) **Special Events.** Temporary signs may be allowed upon issuance of a permit for on-site advertising of special events such as openings and closings, change in management, sales events, or other special occasions. No more than four temporary sign permits may be issued in any calendar year for a given destination, and each temporary sign permit shall run for 15 days. Temporary signs for special events shall be subject to the following regulations:
- (a) Only one on-premises temporary sign shall be allowed per business or event.
 - (b) Temporary signs shall be in the form of an allowable sign type in the underlying zoning district.
 - (c) Temporary signs shall not exceed 32 square feet in area and shall not be taller than 10 feet in height.
- (2) **Residential development advertising signs.** Independent of the total allowable sign area for individual properties or residences within a residential zoning district, one or more additional ground signs may be erected within a newly established unified residential area development subject to the following:
- (a) **Minimum Development Size**
 - i. Projects of less than 25 acres which create ten or more dwelling units are allowed one (1) on-premises ground sign not to exceed 100 square feet of advertising surface;
 - ii. Projects of 26 through 50 acres which create ten or more dwelling units are allowed 1 or 2 on-premises ground signs not to exceed 200 aggregate square feet of advertising surface on the project site; and
 - iii. Projects over 50 acres which create ten or more dwelling units are allowed 1, 2, or 3 on-premises ground signs not to exceed 200 aggregate square feet of advertising surface on the project site.
 - (b) **Restrictions.**
 - i. No dimension shall exceed 25 feet exclusive of supporting structures.
 - ii. The sign shall not remain once 90% of the lots in the development have been issued building permits.
 - iii. The permit for the sign must be renewed annually by the Council.
 - iv. All signs shall be bordered with a decorative material compatible with the surrounding area.

- v. Only indirect illumination is permitted and shall only occur during those hours when an on-site sales office or model home is open for conducting business.

(3) Temporary Off-Premises Signs (optional). Temporary off-premises signs may be erected if all of the following criteria are met:

- (a) The destination to which the off-premises sign is advertising is a property for sale;
- (b) An agent must be present at the destination property for sale, and the property must be open for viewing.
- (c) The sign must be located on private property, and permission must have been obtained from the private property owner to erect the temporary sign;
- (d) The temporary off-premises sign shall not exceed six (6) square feet in size;
- (e) The temporary off-premises sign shall not cause the total square feet of signage on a property to exceed the allowed maximum in the underlying zoning district.

(V) Warning Signs. Warning signs which do not exceed the minimum statutory requirements for size and number may be posted, and shall not count towards the overall permitted signage on a given property. Increases in either size or number over minimum statutory requirements shall count against the overall permitted signage on a given property unless authorized by conditional use permit which finds sufficient evidence that larger or more frequent signage is necessary to provide the intended warning.

151.118 Specific Regulations by Zoning District

- (A) **Sign Setbacks.** Signs shall conform to the set back regulations listed in table 1 for the zoning district in which the signs are located except as may be specifically exempted or restricted in sections 151.117 and 151.118.

Table 1: SETBACKS BY ZONING DISTRICT [1]														
	Base Zoning Districts													
	A	RR	RI	R2	R3	R4	RE	OP	GB	HB	CB	LB	BP [2]	PF
Front Lot Line	5	5	5	5	5	5	5	5	1	1	1	1	1	5
Side Lot Line	5	5	5	5	5	5	5	5	5	5	5	5	5	5
Rear Lot Line	5	5	5	5	5	5	5	5	10	10	10	10	10	5
Vehicular Access	5	5	5	5	5	5	5	5	15	15	15	15	15	5

[1]: Awning/Canopy signs, mural signs, projecting signs, wall signs, or window signs proposed to be located on a building legally non-conforming to setback requirements shall be permitted without a variance provided all other zoning code provisions are met.

[2]: Signs within Business Parks shall also adhere to the requirements of a master sign program approved by the City Council in conjunction with the business park establishment.

(B) **Allowable Sign Area.** The maximum allowable sign area for an individual sign and for total site signage is listed in table 2 by zoning district. These maximums shall apply except as may be specifically exempted or restricted in sections 151.117 and 151.118.

Table 2: ALLOWABLE SIGN AREA BY ZONING DISTRICT									
District(s)	Maximum sign area in square feet (per surface) by sign type [1]								Maximum total square footage of ALL sign surfaces
	Awning/Canopy Sign	Ground Sign [2]	Monument Sign [2]	Mural Sign	Pole Sign [2]	Projecting Sign	Wall Sign	Window Sign	
A, RR, RI, R2, RE, OP [3]		6		C	6		6	6	12 square feet
R3 & R4 [3]		12		C	12		12	12	24 square feet
GB, HB, CB, LB, BP, & PF	[4]	30	60	C	30	6	[5]	No max	1.0 square foot per lineal foot of building parallel or substantially parallel to public road frontage (excluding alleys). [6]

[1]: Sign types with shaded cells are prohibited in the applicable zoning district(s). Sign types with a maximum sign area of "C" shall require a conditional use permit.

[2]: Ground, monument, or pole signs, where permitted, shall be limited to one (1) per commercial establishment.

[3]: All sign types in residential districts shall have no more than two (2) surfaces.

[4]: The gross surface of an awning or canopy sign shall not exceed 30% of the gross surface area of the smallest face of the awning or canopy of which the sign is to be affixed.

[5]: On any wall parallel or substantially parallel to a public roadway, the gross surface area of a wall sign shall not exceed 0.75 square feet for each lineal foot of building facing the applicable roadway. For walls not facing a public roadway, the maximum wall sign size shall be twelve (12) square feet.

[6]: Open sales lots or other approved uses on lots without a building shall be limited to thirty (30) square feet of total sign surfaces.

- (C) **Freestanding Sign Height.** The maximum allowable sign height for a freestanding sign is listed in table 3 by zoning district. These maximums shall apply except as may be specifically exempted or restricted in sections 151.117 and 151.118.

Table 3: ALLOWABLE FREESTANDING SIGN HEIGHT IN FEET BY ZONING DISTRICT

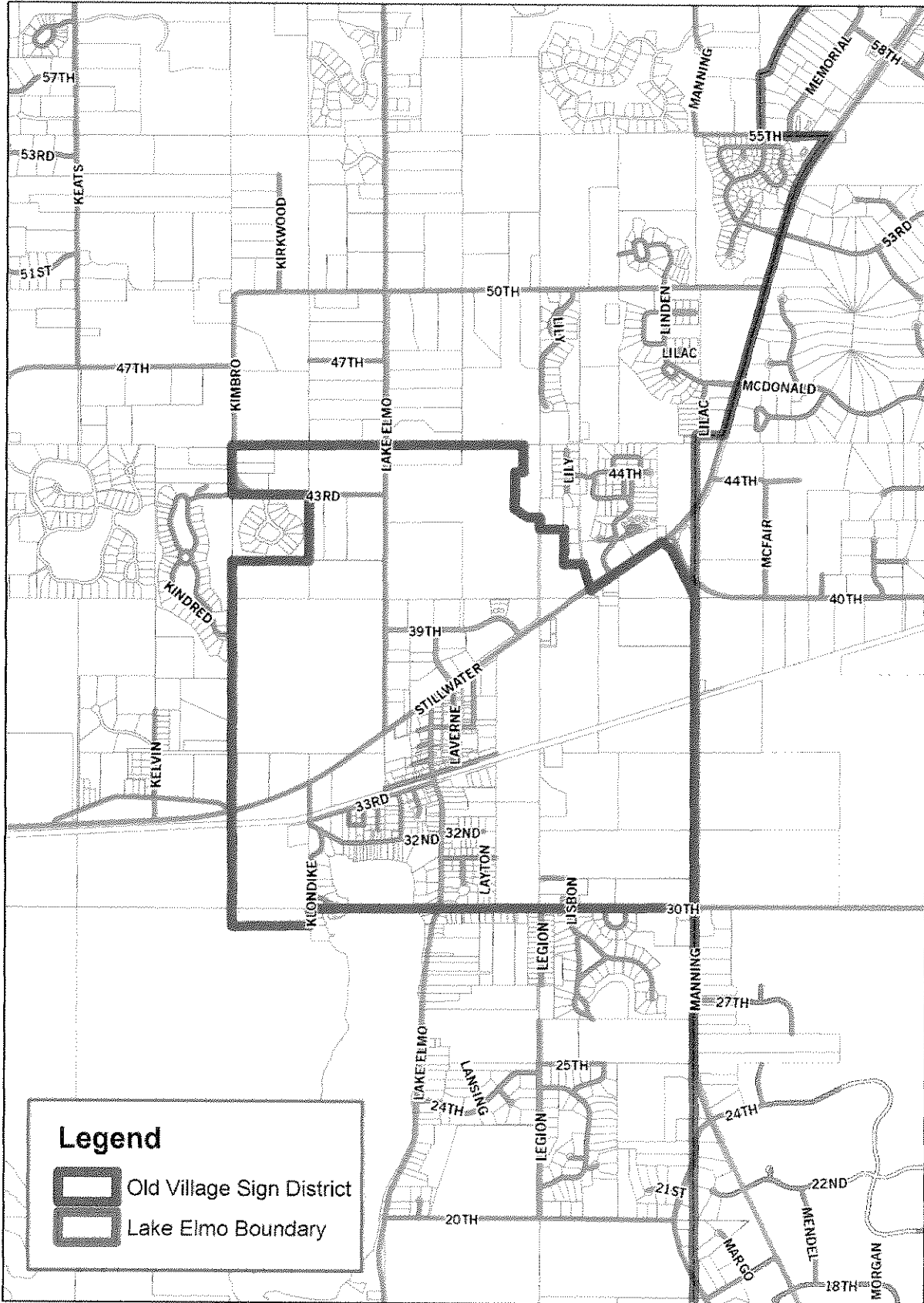
	Base Zoning Districts													
	Residential Districts								Business Districts					
	A	RR	R1	R2	R3	R4	RE	OP	GB	HB	CB	LB	BP	PF
Allowable Height in feet	5	5	5	5	8	8	5	5	20	20	20	20	20	20

151.119 Sign Variances



Variances from sign provisions shall be administered in accordance with section 154.017, and shall be subject to the following additional requirements:

- (a) The sign(s) shall be compatible with the character of the adjacent buildings and with the character of the adjacent neighborhood;
- (b) The sign(s) shall have good scale and proportion in the visual relationship to buildings and adjacent areas;
- (c) The material, size, color, lettering, location, and arrangement of the sign(s) is an integral part of the site and building design; and/or
- (d) The colors, materials, and lighting of the sign(s) are restrained and harmonious, as interpreted by the City Planner.

Exhibit A: Official Sign District Map



Legend

-  Old Village Sign District
-  Lake Elmo Boundary

SIGNS

§ 151.115 PURPOSE.

Signs have an impact on the rural character and quality of the environment in Lake Elmo. They may attract or repel the viewing public and affect the safety of vehicular traffic. As a rural community, Lake Elmo is unique. The proper control of signs is of particular importance because of this rural quality and uniqueness. Signs should be kept within reasonable boundaries consistent with the objectives and goals of the community to retain its special character and economic advantages which rest in part on the quality of its appearance. The following standards in the section are adopted to regulate signs.

(1997 Code, § 535.01)

Comment [b1]: This language was revised by the 2008 Ordinance update for Agricultural signs, and is included in section 151.115(A)(1) in the new ordinance.

§ 151.116 PERMIT REQUIRED.

- (A) No sign shall be erected, altered, reconstructed, maintained or moved in the city without first securing a permit from the city. The content of the message or speech displayed on the sign shall not be reviewed or considered in determining whether to approve or deny a sign permit.
- (B) **Permanent Signs.** To apply for a permanent sign permit, a complete application shall be submitted to the City containing the following:
1. Names and addresses of the applicant, owners of the sign, and lot;
 2. The address at which the sign(s) are to be erected;
 3. The legal description of the property on which the sign(s) are to be erected and the street on which they are to front;
 4. A complete set of scaled plans showing the sign dimensions, area, height, ground elevations, applicable setbacks, and other details to fully and clearly represent the safe construction and placement of the proposed sign(s);
 5. Type of sign(s) being requested (i.e. wall sign, monument sign, etc.);
 6. The permit fee; and
 7. The following if applicable:
 - a. Written authorization from the property owner upon who's land the sign is to be erected.
 - b. A permit from either MnDOT or Washington County if the proposed sign is along a state highway or county road.

Comment [b2]: Language requiring sign permits is still located in section 151.116 within the new code.

Comment [b3]: Now in section 151.116 (A) in the new ordinance

- c. A sign plan showing signs for all businesses if the sign is located on a building with more than one business.
- d. Photographs of the building face and the building faces of both adjacent buildings if the sign is being placed on an existing structure.
- e. If replacing a historical sign, pictorial proof or other information that the sign is of historical significance or is a reproduction of a historic sign.

Comment [b4]: Now in section 151.116 (A)(1) in the new ordinance

(C) **Temporary Signs.** To apply for a permit to allow a temporary sign, a complete application shall be submitted to the City containing the following:

- 1. Names and addresses of the applicant, owners of the sign, and lot;
- 2. The address at which the sign(s) are to be erected;
- 3. A generalized plan set showing the sign dimensions and height, and a notation of the materials to be used.
- 4. A scaled site plan which clearly represents the placement of the proposed sign(s) on the applicable property;
- 5. The proposed timeframe(s) over which the sign(s) will be posted;
- 6. The permit fee; and
- 7. The following if applicable:
 - a. Written authorization from the property owner upon who's land the sign is to be erected.
 - b. A permit from either MnDOT or Washington County if the proposed sign is along a state highway or county road.

Comment [b5]: Now in section 151.116 (A)(2) in the new ordinance

(D) **Temporary Sign Renewal.** A temporary sign permit issued by the City may be renewed provided the sign design, size, location, or other previously approved details are not proposed to change. A sign renewal application shall include the following:

- 1. Names and addresses of the applicant, owners of the sign, and lot;
- 2. The address at which the sign(s) are to be erected;
- 3. The date of issuance of the permit being renewed;
- 4. The proposed timeframe(s) over which the sign(s) will be posted;

5. Written authorization from the property owner upon who's land the sign is to be erected (if applicable); and
6. The permit renewal fee.

Comment [b6]: Now in section 151.116 (A)(3) in the new ordinance

(E) **Review.** The planning department shall approve or deny complete sign permit applications upon receipt of a complete application. If the permit is denied, the planning department will send a written notice of denial to the applicant. The written notice will indicate the reason(s) for denial and a description of the applicant's appeal rights.

Comment [b7]: Now in section 151.116 (A)(4) in the new ordinance

§ 151.117 DEFINITIONS.

Unless specifically defined within §§ 151.115 *et seq.*, common definitions, words, and phrases used in this code shall be interpreted so as to give them the same meaning throughout this code, and are found in § 11.01.

(1997 Code, § 535.03)

Comment [b8]: This section will be revised throughout the ordinance process in accordance with changes being made in any given section. It must be reviewed last to ensure all needed definitions are in place.

"Off-premise sign" – a commercial speech sign which directs the attention of the public to a business, activity conducted, or product sold or offered at a location not on the same lot where such sign is located. A sign located within an easement or other appurtenance to a lot on which a business is located shall be deemed an off-premises sign.

"On-premise sign" – a sign which identifies or advertises an establishment, person, activity, goods, products or services located on the premises where the sign is installed.

"Permanent Sign" – A sign constructed of durable materials designed to exist for the duration of time that the use or occupant is located on the premises.

"Sign" – Any letter, word or symbol, device, poster, picture, statue, reading matter or representation in the nature of an advertisement, announcement, message, or visual communication, whether painted, posted, printed, affixed or constructed, which is displayed for informational or communicative purposes and is visible to the general public.

"Sign, Real Estate Development" – A sign offering for sale, lease, or rent a single-family or multiple-family residential project of 10 or more dwelling units or lots. Real estate development signs shall be administered as permanent signs subject to all removal requirements outlined in code.

“Sign, Agricultural Sales” – A sign placed on a lot or parcel of land advertising an operating and permissible agricultural sales business. Off-premises agricultural sales signs shall be administered as temporary signs subject to all removal requirements outlined in code.

“Sign, Wayside Stand” – A sign located on a temporary structure or vehicle being used to sell agricultural, floricultural, or horticultural products.

“Temporary Sign” – Any sign intended for display over a short period of time.

Comment [b9]: All definitions were added to 151.115 (C) within the new ordinance

§ 151.118 SIGNS; GENERALLY.

(A) The following provisions apply to signs located in all zoning districts.

Comment [b10]: General standards are now located in section 151.117

(B) (1) *Maintenance.* All signs and structures shall be properly maintained and shall be constructed of sufficiently permanent material so that they shall not succumb to deterioration from weathering any existing sign or sign structure which is rotted, unsafe, deteriorated, defaced, or otherwise altered, shall be repainted, repaired, replaced, or removed as necessary.

Comment [b11]: This language was split into two requirements, and placed in sections 151.116(E)(1&2)

(2) *Electrical signs.* When electrical signs are installed, the installation shall be subject to the state's electrical code. Overhead electrical wiring is not allowed.

Comment [b12]: Now in section 151.117(R) -- edited for clarity to include codes "as may be amended"

(3) *Public lands and rights-of-way.* No signs other than governmental signs shall be erected or temporarily placed within any street right-of-way or upon public lands or easements of rights-of-ways without Council approval.

Comment [b13]: Now in section 151.117(O)

(4) *Ingress or egress.* No sign or structure shall be erected or maintained if it prevents free ingress or egress from any door, window, or fire escape. No sign or sign structure shall be attached to a standpipe or fire escape.

Comment [b14]: Same language maintained in section 151.117(G)

(5) *Temporary signs.* Temporary signs may be allowed upon issuance of a permit for on-site advertising of special business events such as openings and closings, change in management, sales events, or other special occasions. No more than four temporary sign permits may be issued in any calendar year for a given destination, and each temporary sign permit shall run for 15 days. Temporary signs shall be subject to the following regulations:

- a. Only one on-premises temporary sign shall be allowed per business or event.
- b. Temporary signs shall not exceed 32 square feet in area and shall not be taller than 10 feet in height.

Comment [b15]: Now in section 151.117 (U)(1) -- minor edit to switch sign type from "ground sign" to "allowed sign types in the underlying zoning district."

(6) *Abandoned sign structures.* Sign structures not used for signing for 12 consecutive months shall be considered abandoned and shall be removed.

Comment [b16]: Edited and placed in section 151.117 (A)

(7) *Compatibility.* All signs shall be compatible with the building and area in which they are located. (Too vague – Removed)

(8) *Flags.* No more than 3 properly displayed flags may be displayed outside of the building.

Comment [b17]: Now in section 151.117 (E) -- edited to include a maximum flag size

(9) *Preservation of visual impact of architectural features.* A sign shall not obscure architectural features of a building to which the sign is attached. (Too vague; architectural features can be practically anything...need to differentiate types of features to be protected if this is included – Removed)

(10) *Building address.* A building address shall not be considered a sign.

Comment [b18]: Now in section 151.117 (B) -- edited to address number height and building identification markers/plaques

(11) *Graphic design signs.* Graphic design signs shall require a conditional use permit.

Comment [b19]: Replaced with section 151.117 (P)(2) -- edited to require greater scrutiny over "mural" signs

(12) *Conditions of waiver.* The terms of §§ 151.115 *et seq.* may be waived if the sign is a historic resource or if the sign is a proposed reproduction of a historic sign. (removed – variance would now be needed for any waiver of sign requirements)

(13) *Computations.* Dimensions of signs shall be calculated in the following manner:

a. **Sign Area Measurement.**

The area of a sign shall be computed by means of the smallest rectangle within which a single sign face can be enclosed. When a sign has two back-to-back sign faces containing sign copy, the sign area for just one face is counted toward the allowed sign area. Poles, bases, and other supports shall not be included in the sign area calculation.

b. **Sign Height Measurement**

The height of the sign shall be computed as the vertical distance measured from the average grade at the base of the sign to the top of the highest attached component of the sign.

Comment [b20]: Now in section 151.116 (D)

§ 151.119 PERMITTED SIGNS.

(A) The following signs are allowed without a permit in all zoning districts, but shall comply with all other applicable provisions of §§ 151.115 *et seq.*:

(B) (1) *Public signs.* Signs of public, non-commercial nature including safety signs, danger signs, trespassing signs, traffic signs, signs indicating scenic or historical points of interest, memorial plaques and the like, when signs are erected by or on order of a public officer or employee in the performance of official duty.

Comment [b21]: Now in sections 151.116 (B)(4) and 151.117(O) -- now just covered by the definition for governmental signage along with language allowing such signs on public lands and ROWs

(2) *Integral signs.* Names on buildings, date of construction, commemorative tablet, and the like, which are permanent construction and which are an integral part of the building or the structure.

Comment [b22]: Now in section 151.117 (B) -- edited for clarity and combined with language governing house numbers

(3) *Political signs.* Signs or posters announcing candidates seeking political office or issues to be voted upon at a public election, the signs must contain the name and address of person(s) responsible for its removal. (Based on content – removed) These signs shall be erected no more than 45 days before any election and be removed 10 days after the general election for which they are intended. The city shall have the right to remove and destroy signs after the 10-day limit.

Comment [b23]: Now in section 151.117 (L) -- edited for clarity

(a) Size.

1. *Residential Districts.* The maximum sign size shall be 6 square feet in area with a maximum height of 4 feet.

Comment [b24]: Now in sections 151.118 (B & C) -- residential height raised to 5 feet in general for residential signs

2. *Commercial Districts.* The maximum size shall be 35 square feet in area. (eliminated in favor of general size restrictions during non-election times)

(b) Notwithstanding these provisions, all non-commercial signs of any size may be posted from August 1 in a state general election year until 10 days following the state election.

Comment [b25]: Now in section 151.117 (B) -- edited for clarity

(4) *Holiday messages.* Signs or displays which contain or depict messages pertaining to a national, state, or local holiday and no other matter and which are displayed for a period not to exceed 60 days; (Based on content – removed)

(5) *Construction signs.* A non-illuminated sign announcing the names of architects, engineers, contractors, or other individuals or firms involved with the construction, alteration, or repair of a building (but not including any advertisement of any product) or announcing the character of the building enterprise or the purpose for which the building is intended. The signs shall be confined to the site of the construction, alteration, or repair and shall be removed within 2 years of the date of issuance of the first building permit or when the particular project is completed, whichever is sooner. One sign shall be permitted for each street the project abuts. No sign may exceed 32 square feet in multi-family residential, commercial, and industrial districts, and 12 square feet in single-family residential districts; **(Based on content – removed)**

(6) *Individual property sale, lease, or rental sign.* An on-premise sign announcing the name of the owner, manager, realtor, or other person directly involved in the sale or rental of the property or announcing the purpose for which it is being offered. The signs are limited to 6 square feet in residential districts and 32 square feet in commercial districts. Signs must be removed within 10 days after sale or rental of property; **(Based on content – removed)**

(7) *Rummage sale signs.* Signs advertising a rummage sale not exceeding 4 square feet located on private property which conform to the applicable provisions of this title and are removed at the termination of the sale; **(Based on content – removed)**

(8) *Name plate signs.* **(Based on content – removed)**

(a) One name plate sign, placed on a wall of the structure, for each dwelling not exceeding 2 square feet in area per structure. No signs shall be constructed to have more than 2 surfaces.

(b) One name plate sign for each dwelling group of 6 or more units. The sign shall not exceed 6 square feet in area per surface. No signs shall be constructed to have more than 2 sides.

(9) *Real estate development project advertising signs.*

On premises real estate development project advertising signs may be used if the following requirements are met:

1. **Minimum Development Size:**

- i. Projects of less than 25 acres which create ten or more dwelling units are allowed 1 on-premises sign not to exceed 100 square feet of advertising surface;
- ii. Projects of 26 through 50 acres which create ten or more dwelling units are allowed 1 or 2 on-premises signs not to exceed 200 aggregate square feet of advertising surface on the project site; and

- iii. Projects over 50 acres which create ten or more dwelling units are allowed 1, 2, or 3 on-premises signs not to exceed 200 aggregate square feet of advertising surface on the project site.
2. On-premises sign requirements:
- i. No dimension shall exceed 25 feet exclusive of supporting structures.
 - ii. The sign shall not remain once 90% of the lots in the development have been issued building permits.
 - iii. The permit for the sign must be renewed annually by the Council.
 - iv. All signs shall be bordered with a decorative material compatible with the surrounding area.
 - v. Any illuminated sign shall be illuminated only during those hours when business is in operation or when the model homes or other development are open for conducting business.

Comment [b26]: Now in section 151.117(U)(2)

(10) Agricultural sales advertising signs.

- a. **On-Premises.** On-premises agricultural sales advertising signs may be used subject to the following requirements:
 - 1. Acreage dedicated to agricultural production:
 - i. Agricultural sales businesses utilizing less than 10 acres of land specifically for the growing of agricultural crops for the business are allowed 1 on-premises sign not to exceed 32 gross square feet of advertising surface;
 - ii. Agricultural sales businesses utilizing more than 10 acres of land but less than 40 acres of land specifically for the growing of agricultural crops for the business are allowed 1 or 2 on-premises signs not to exceed 48 gross square feet of advertising surface (with neither sign exceeding 32 square feet in size);
 - iii. Agricultural sales businesses utilizing more than 40 acres of land specifically for the growing of agricultural crops for the business are allowed 1, 2 or 3 on-premises signs not to exceed 64 gross square feet of advertising surface (with no sign exceeding 32 square feet in size);

2. On-premises sign requirements:
 - i. No dimension of any sign shall exceed 15 feet exclusive of supporting structures.
 - ii. The permit for the sign must be renewed annually by the Council.
 - iii. All signs shall be bordered with a decorative material compatible with the surrounding area.
 - iv. Any illuminated sign shall be illuminated only during those hours when business is open to the public for conducting business.
- b. **Off-premises.** An off-premises agricultural sales advertising sign may be used if the following requirements are met:
 1. **Maximum Number.** Every agricultural sales business shall have no more than two off-premises signs at any given time to direct the public to the location of the business.
 2. **Off-premises sign requirements:**
 - i. An off-site agricultural sales advertising sign shall not exceed 50 square feet in area and shall not be taller than 10 feet in height;
 - ii. Off-premises signs shall be a minimum of 25' from all side property lines, and a minimum of 50' from other off-premises advertising signs;
 - iii. Applicants for off-premises signs shall acquire permission from the property owner upon who's land the sign is to be erected.
 3. **Timeframe of use.** Either one or two off-premises agricultural sales advertising sign(s) may be erected for a 45-day time period no more than four times in any given calendar year. The required yearly permit shall stipulate the range of dates for each of the four allowable time periods.

Comment [b27]: Now in section 151.117(S)(2)

(11) *Wayside Stand sign.* Temporary wayside stands permitted by code may have one non-illuminated sign (exempt from permitting requirements) not to exceed 32 gross square feet of advertising surface.

Comment [b28]: Addressed by "Business Vehicle Identification Signs" in the new ordinance

(12) *Window signs.* No sign permit is required for window signage that does not cover more than 1/3 of the total area of the window in which the sign is displayed; and

Comment [b29]: Now in section 151.116 (B)(3) -- removed the 1/3 threshold as part of the transition such that window signage in general will no longer require a permit.

(13) *No trespassing/no hunting signs.* No trespassing and no hunting signs shall be no larger than 2 square feet.

Comment [b30]: Now in section 151.117 (N)

(1997 Code, § 535.05) Penalty, see § 10.99

§ 151.120 PROHIBITED SIGNS IN ALL ZONING DISTRICTS.

Comment [b31]: Prohibited signs are now listed in section 151.117(N)

(A) The following signs are prohibited in all zoning districts.

(B) (1) *Signs obstructing vision.* Any sign which obstructs the vision of drivers or pedestrians or detracts from the visibility of any official traffic-control device.

Comment [b32]: Now in section 151.117 (N)(1)

(2) *Unofficial traffic or signals.* Any sign which contains or imitates an official traffic sign or signal, except for private, on-premises directional signs.

Comment [b33]: Now in section 151.117 (N)(2)

(3) *Off premises advertising signs.* Off premises advertising signs except as regulated in §§ 151.115 *et seq.*

Comment [b34]: Now in section 151.117 (N)(3)

(4) *Moving or rotating signs.* Any sign which moves or rotates, including electronic reader board signs, except approved time and temperature information signs and barber poles.

Comment [b35]: Now in section 151.117 (N)(4) -- combined with other prohibited sign language for clarity

(5) *Illuminated or flashing lights.* No sign shall display any moving parts, be illuminated with any flashing or intermittent lights or shall be animated, except time and temperature information. All displays shall be shielded to prevent any light to be directed at oncoming traffic in the brilliance as to impair the vision of any driver. No device shall be illuminated in a manner as to interfere with or obscure an official traffic sign or signal. This includes indoor signs that are visible from public streets.

Comment [b36]: Now in section 151.117 (N)(4) -- combined with other prohibited sign language for clarity

(6) *Roof signs.*

Comment [b37]: Now in section 151.117 (N)(5)

(7) *Banners, pennants, ribbons, streamers.* No sign which contains or consists of banners, pennants, ribbons, streamers, string of light bulbs, spinners, or similar devices, except where used for non-commercial purposes or part of an approved sign plan.

Comment [b38]: Now in section 151.117 (N)(6)

(8) *Portable signs.* Including but not limited to signs with wheels removed, attached temporarily or permanently to the ground, structure or other signs, mounted on a vehicle for advertising purposes, parked and visible from the public right-of-way, except signs identifying the related business when the vehicle is being used on the normal day-to-day operations of that business, hot air or gas filled balloons or semitruck umbrellas used for advertising.

Comment [b39]: Now in section 151.117 (N)(7)

(9) *Building walls.* Signs painted directly on building walls unless approved by a sign permit.

Comment [b40]: Replaced with section 151.117 (P)(2) -- edited to require greater scrutiny over "mural" signs

(10) *Illuminated signs or spotlights.* Illuminated signs or spotlights giving off an intermittent or rotating beam existing as a collection or concentration of rays of light.

Comment [b41]: Now in section 151.117 (N)(4) -- combined with other prohibited sign language for clarity

(11) *Revolving beacons, beamed lights, or similar devices.*

Comment [b42]: Now in section 151.117 (N)(4) -- combined with other prohibited sign language for clarity

(12) *Signs supported by a guy wire.*

Comment [b43]: Now in section 151.117 (N)(8)

(13) *Graphic design signs without conditional use permit.*

Comment [b44]: Replaced with section 151.117 (P)(2) -- edited to require greater scrutiny over "mural" signs

(14) *Billboards.*

Comment [b45]: Now in section 151.117 (N)(9)

(1997 Code, § 535.06) Penalty, see § 10.99

§ 151.121 PERMITTED SIGNS BY ZONING DISTRICT.

Comment [b46]: The table in 151.118(B) identifies allowable sign types by zoning district.

(A) *Permitted signs in residential districts.*

(1) Professional name plate wall signs, not exceeding 2 square feet in area;
(Based on content -- removed)

(2) Memorial signs or tablets, names of buildings, and the date of erection when cut into a masonry surface or when constructed of bronze or other incombustible material;

Comment [b47]: Now in section 151.117 (B)(1)

(3) Political signs as regulated in §§ 151.115 *et seq.*; (Based on content -- removed)

(4) Individual property sale, lease, or rental, as regulated in §§ 151.115 *et seq.*; (Based on content -- removed)

(5) Construction signs as regulated in §§ 151.115 *et seq.*; and (Based on content -- removed)

(6) Bulletin boards or public information signs not over 32 square feet located only on the premises of public, charitable, or religious institutions. (Based on content -- removed)

(B) *Permitted signs by a sign permit in the "Old Village" (south of State Highway 5) in the General Business (GB) Zoning District.*

Comment [b48]: Specialized Old Village regulations are now in section 151.117(S)(1)

(1) *Number.* One wall, monument, awning, and canopy or 3-dimensional sign is allow per business. When a building or business abuts 2 or more public streets, an additional sign located on each street building face is allowed. **(eliminated in favor of general total signage and location requirements)**

(2) *Sign plan.* When there is more than 1 business or use in a building with more than 1 sign, a building sign plan shall be provided with the sign permit application.

Comment [b49]: Now in section 151.117(I) which coordinates all existing language requiring a master sign program.

(3) *Other requirements.* See area, location, and height requirements below for type of sign selected.

(4) *Wall signs.*

(a) *Area.* The total building signage shall have an aggregate area not exceeding 0.75 square foot for each foot of the building face parallel or substantially parallel to a street or lot line. **(eliminated in favor of general total signage and location requirements)**

(b) *Location.* A wall sign shall not project more than 16 inches from the wall to which the sign is to be affixed.

Comment [b50]: Addressed in the general sign standards in new section 151.117(P)(1)(a)

(c) *Height.* A wall sign shall not project higher than the parapet line of the wall to which the sign is to be affixed or 15 feet as measured from the base of the building wall to which the sign is affixed, whichever is lower.

Comment [b51]: Now in section 151.117(S)(1)(c)(i)

(d) *Internally illuminated signs.* No internally illuminated signs are allowed.

Comment [b52]: Now in section 151.117(S)(1)(b) -- edited for clarity to allow only indirect illumination and reverse lit letters.

(e) *Special conditions.* Where a principal building is devoted to 2 or more permitted uses, the operator of each use may install a wall sign for their particular use, a sign plan must be submitted for the entire building. The total gross signage for the entire building shall not exceed 0.75 square feet for each foot of the building face parallel, or substantially parallel, to a street lot line **(eliminated in favor of general total signage and location requirements)** with a maximum of 20 square feet per business.

Comment [b53]: Now in section 151.117(I) which coordinates all existing language requiring a master sign program

Comment [b54]: Now in section 151.117(S)(1)(c)(ii) -- edited for clarity

(5) *Freestanding signs.*

(a) *Area.* The area of pedestal type freestanding signs shall not exceed 30 square feet.

Comment [b55]: Now in section 151.117(S)(1)(d)(i)

(b) *Location.* A pedestal sign shall be located in any required yard but shall have a setback of 15 feet from any point of vehicular access, public roadway, or property line.

Comment [b56]: Now handled by the general city standards for signs setbacks in new section 151.118 (A)

(c) *Height.* A pedestal sign shall not project higher than 6 feet, as measured from the base of the sign or grade of the nearest roadway, whichever is lower.

Comment [b57]: Now in section 151.117(S)(1)(d)(ii)

(d) *Landscaping.* The area around a monument sign shall be landscaped.

Comment [b58]: Now in section 151.117 (H) -- edited to require landscaping around all signs in all districts in compliance with the city's existing landscaping codes.

(e) *Lighting.* Externally illuminated or back lit letters are allowed; no internally illuminated signs are allowed.

Comment [b59]: Now located in new section 151.117(S)(1)(b)

(6) *Awning and canopy signs.*

(a) The gross surface of an awning or canopy sign shall not exceed 30% of the gross surface area of the smallest face of the awning or canopy of which the sign is to be affixed.

Comment [b60]: Now in the table within new section 151.118 (B)(2)

(b) The awning or canopy sign shall not project higher than the top of the awning or canopy or below the awning or canopy.

Comment [b61]: Now in section 151.117(P)(3)(c)

(7) *Projecting signs.*

(a) The total area of a projecting sign shall be 6 square feet.

Comment [b62]: Now in the table within new section 151.118 (B)(2)

(b) All projecting signs shall be located on street level and easily visible from the sidewalk.

Comment [b63]: Now in section 151.117(P)(3)(a) as a general sign standard

(c) If lighted, projecting signs shall be externally illuminated.

Comment [b64]: Now in section 151.117(P)(3)(b) -- edited for clarity

(C) *Signs permitted in the Highway Business, Limited Business, General Business, and Business Park Zoning Districts.* All commercial office and industrial signs in Highway Business, Limited Business, General Business, and Business Park Zoning Districts require a sign permit.

(1) *Wall signs.*

(a) *Area.* The gross surface area of a wall sign shall not exceed 0.75 square feet for each foot of building, parallel, or substantially parallel to the front lot line. (eliminated in favor of general total signage and location requirements)

(b) *Location.* A wall sign shall be located on the outermost wall of any principal building but shall not project more than 16 inches from the wall to which the sign is to be affixed. The location and arrangement of all wall signs shall be subject to the review and approval of the City Planner. (removed -- too vague)

Comment [b65]: Now in section 151.117 (P)(1)(a)

(c) *Height.* A wall sign shall not project higher than the parapet line of the wall to which the sign is to be affixed or 20 feet as measured from the base of the building wall to which the sign is affixed, whichever is lower.

Comment [b66]: Now in section 151.117 (P)(1)(b) -- edited to eliminate the 20 foot height maximum in favor of the parapet line maximum only.

(d) *Special conditions.* Where a principal building is devoted to 2 or more uses, the operator of each use may install a wall sign upon his/her proportionate share of the building wall to which the sign is affixed. A sign plan must be submitted for the entire building containing the following information:

Comment [b68]: Now in section 151.117 (I)

Comment [b67]: Now in section 151.117 (J)(2) -- edited for clarity.

1. The total gross signage for the entire building shall not exceed 1 square foot for each foot of building face parallel, or substantially parallel, to a street lot line (eliminated in favor of general total signage and location requirements) or a maximum of 25 square feet per business;

Comment [b69]: Now in section 151.117 (P)(1)(c)

2. The location, sizes, types, and elevations of all signs; and

Comment [b70]: Now in section 151.117 (J)(1)

3. All signs shall be visually consistent in location, design, and scale.

Comment [b71]: Now in section 151.117 (P)(1)(c)

(2) *Freestanding signs.*

(a) The gross surface area of a ground sign shall not exceed 30 square feet for each exposed face nor exceed an aggregate gross surface area of 60 square feet.

Comment [b72]: Now in section 151.118 (B)

(b) A ground sign may be set back 15 feet from front or side property lines.

Comment [b73]: Now in section 151.118 (A)

(c) A ground sign shall not project higher than 6 feet, as measured from base of sign or grade of the nearest adjacent roadway, whichever is lower.

Comment [b74]: Consistent with the new definition for ground sign.

(d) There shall be 1 freestanding sign per development site. (removed – unnecessary for ALL businesses to have a ground, monument, or pole sign)

(3) *Multi-tenant Master Sign Program.* A building Master Sign Program shall be required (for multi-tenant commercial buildings) besides the individual tenant and occupant signs. A building master identification sign may be permitted according to the following requirements.

Comment [b75]: Now in section 151.117 (I) -- edited for clarity

(a) Building master identification signs shall not contain the names of any tenants or occupants of the center.

Comment [b76]: Now in section 151.117 (U)(1) -- edited for clarity

(b) If the multi-tenant commercial building has a floor area of 40,000 square feet or less, the building may have a freestanding sign with a maximum of 1 square foot of sign for each 5 feet of building frontage or 40 square feet maximum in height of 8 feet.

Comment [b77]: Now in section 151.117 (J)(1)(a)

(c) If a multiple tenant commercial building has a floor area greater than 40,000 square feet, but less than 100,000 square feet, the center may have a master identification sign with a maximum of 75 square feet on each side and with a maximum height of 9 feet.

Comment [b78]: Now in section 151.117 (J)(1)(b)

(d) If a multiple tenant commercial building has a floor area of greater than 100,000 square feet, the center may have a master identification sign with a maximum area of 120 square feet on each side and a maximum height of 15 feet.

Comment [b79]: Now in section 151.117 (J)(1)(c)

(1997 Code, § 535.07) Penalty, see § 10.99

§ 151.122 DIRECTORY SIGNS.

(A) *Generally.* Directory signs are used to guide pedestrians to individual businesses within a multiple tenant commercial area and are permitted.

(B) *Placement.*

(1) Sign must be placed on the site of the development.

(2) Sign shall be erected only in internal pedestrian access areas and not in vehicle access areas.

(3) Directory signs area to be used for the purpose of direction and identification only.

(4) Directory signs may be freestanding but shall not exceed 4 feet in height.

(C) *Area.* A directory sign may have maximum area of 1 square foot for each business listed on the sign and 4 square feet for the name of the building or complex.

(1997 Code, § 535.08) Penalty, see § 10.99

Comment [b80]: Replaced by new section 151.117(M)

§ 151.123 AUTOMOBILE SERVICE STATION SIGNS. (This section and all subsections were removed because they are content specific)

(A) Automobile service stations are allowed 1 wall sign and 1 ground sign subject to the following conditions.

(B) (1) *Wall signs.* There shall be no more than 1 wall sign per building face with a maximum sign area of 0.75 square feet for each lineal foot of building frontage.

(2) *Freestanding signs.* There shall be no more than 1 freestanding sign for each principal building. A freestanding sign shall be set back 15 feet from the front and side property line. A freestanding sign shall not project higher than 6 feet as measured from grade or contain more than 30 square feet of signage.

(3) *Service bay and island identification signs.* Service bay and island identification signs are permitted providing direction or instructions to persons using the facility, but shall contain no advertising material of any kind.

(1997 Code, § 535.09) Penalty, see § 10.99

§ 151.124 VARIANCE STANDARDS.

(A) *Variances.* The Planning Commission shall hear requests for a variance to the literal provisions of §§ 151.115 *et seq.* in instances where the strict enforcement would cause an undue hardship because of circumstances unique to the individual property under consideration and to grant the variance only when it is demonstrated that:

- (1) There are extraordinary circumstances that apply to this property which do not generally apply to other properties in the same zone. These circumstances may include the narrowness, shallowness, shape, and topography of the parcel of land or setback from right-of-way;
- (2) The literal interpretation of the provisions of the sign ordinance deprives the applicant rights commonly enjoyed by other properties in the same district under the terms of the sign ordinance;
- (3) The special circumstances are not the result of the applicant;
- (4) The granting of the variances requested do not confer on the applicant a special privilege that is denied by §§ 151.115 *et seq.* to owners of other lands, structures, and building in the same district;
- (5) The variances requested are the minimum variances, which would alleviate the hardship;
- (6) The variance requested would not be materially detrimental to the purposes of the sign ordinance; and/or
- (7) The design of the sign or signs are as follows:
 - (a) Compatible with the character of the adjacent buildings and with the character of the adjacent neighborhood;
 - (b) Have good scale and proportion in the visual relationship to buildings and adjacent areas;
 - (c) The material, size, color, lettering, location, and arrangement of the sign(s) is an integral part of the site and building design; and/or
 - (d) The colors, materials, and lighting of the sign(s) are restrained and harmonious, as interpreted by the City Planner.

(B) *Application.* An application for a variance to §§ 151.115 *et seq.* shall be processed according to the zoning code.

{1997 Code, § 535.10}

Comment [b81]: Now in section 151.119

Section 151.125 SUBSTITUTION CLAUSE.

The owner of any sign which is otherwise allowed by this sign ordinance may substitute non-commercial speech signs in lieu of any other commercial speech sign or other non-commercial speech sign. The purpose of this provision is to prevent any inadvertent favoring of commercial speech over non-commercial speech, or favoring of any particular non-commercial speech over any other non-commercial speech. This provision prevails over any more specific provision to the contrary.

Comment [b82]: Now in section 151.117 (T)

Section 151.126 SEVERABILITY.

If any section, subsection, sentence, clause, or phrase in sections 151.115 through 151.125 are for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Sign Ordinance. The City Council hereby declares that it would have adopted the Sign Ordinance in each section, subsection, sentence, or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid.

Comment [b83]: Now in section 151.115 (B)

CITY OF LAKE ELMO
COUNTY OF WASHINGTON
STATE OF MINNESOTA

ORDINANCE NO. _____

AN ORDINANCE REPEALING EXISTING SIGN CODE REGULATIONS
AND ADOPTING NEW REGULATIONS TO GOVERN SIGNS IN ALL
ZONING DISTRICTS IN THE CITY OF LAKE ELMO

SECTION 1. The City Council of the City of Lake Elmo hereby amends Title I: General Provisions; Chapter 11: General Code Provisions, by amending section 11.01 Definitions to eliminate existing definitions as follows:

~~—**SIGN, 3-DIMENSIONAL.** A type of projecting sign which depicts a physical object, such as a shoe or product sold, as opposed to utilizing lettering to convey the signing message.~~

~~—**SIGN, ADVERTISING.** A sign that directs attention to a business or profession or to a commodity, service, or entertainment not sold or offered upon the premises, where the sign is located or to which it is attached.~~

~~—**SIGN, AGRICULTURAL SALES.** A sign placed on a lot or parcel of land advertising an operating and permissible agricultural sales business. Off-premises agricultural sales signs shall be administered as temporary signs subject to all removal requirements outlined in code.~~

~~—**SIGN AREA.** The area which is framed either physically or visually by the construction, design, or layout of a sign itself but not including supporting structures.~~

~~—**SIGN, AWNING.** Any sign that is painted on or attached to an awning.~~

~~—**SIGN, BANNER.** A temporary sign intended to be hung either with or without a frame possessing characters, letters, illustrations, or ornamentations applied to paper, plastic, or fabric of any kind excluding flags, emblems, and insignia or political, professional, religious, education, or corporate organizations providing that the flags, emblems, and insignia are displayed for non-commercial purposes.~~

~~—**SIGN, BILLBOARD.** A non-accessory sign erected for the purpose of advertising a product, event, person, or subject not usually related to the premises on which the sign is located.~~

~~—**SIGN, BUILDING SIGN PLAN.** An illustration that shows all signs on a building or group of related buildings.~~

~~—**SIGN, BUSINESS.** A sign that direct attention to a business or provision or to the commodity, service, or entertainment sold or offered upon the premises where the sign is located or to which it is attached.~~

—~~**SIGN, CITY IDENTIFICATION.** A sign that contains the name of the city, the city logo, and may also include identification of civic organizations located within the city.~~

—~~**SIGN, CONSTRUCTION.** A temporary sign placed at a construction site identifying the project or the name of the architect, engineer, contractor, financier, or other involved parties.~~

—~~**SIGN, DIRECTIONAL.** A sign which contains no advertising of any kind and provides direction or instruction to guide persons or vehicles to facilities intended to serve the public.~~

—~~**SIGN, ELECTRICAL.** An illuminated sign upon which the artificial light is not kept constant in terms of intensity or color at all times when the sign is illuminated.~~

—~~**SIGN, FLASHING.** An illuminated sign which as a light source not constant in intensity or color at all times while the sign is in use.~~

—~~**SIGN, FREESTANDING.** Any stationary, self-supporting sign standing on the ground not affixed to any other structure. Includes monument, ground, or pedestal signs.~~

—~~**SIGN, GOVERNMENTAL.** A sign which is erected by a governmental unit for identification or traffic.~~

—~~**SIGN, GRAPHIC.** Any mural or pictorial scene painted on a wall or building or painted on a sign board affixed to a wall, and in which mural or scene has as its purpose an artistic effect. A graphic design shall be considered a sign for the purpose of this code.~~

—~~**SIGN, GROUND.** A sign which is supported by 1 or more uprights, poles, or braces in or upon the ground.~~

—~~**SIGN, HISTORICAL.** Any sign that is of historical significance and that is a historical resource within the meaning of M.S. Ch. 116B, as it may be amended from time to time.~~

—~~**SIGN, IDENTIFICATION.** A sign which identifies the inhabitant of the dwelling, not to exceed 2 square feet in size.~~

—~~**SIGN, ILLUMINATED.** Any sign, which is lighted by an artificial light source, either directed upon it or illuminated from an interior source.~~

—~~**SIGN, MARQUEE.** A permanent roof like structure extending from part of the wall of a building but not supported by the ground, and constructed of durable material such as metal or glass.~~

—~~**SIGN, MOBILE.** Signs on wheels or otherwise designed to be transportable.~~

—~~**SIGN, MOTION.** Any sign which revolves, rotates, has any moving parts, or gives the illusion of motion.~~

—~~**SIGN, NAMEPLATE.** A sign which states the name and/or address of the business, industry, or occupant of the site and is attached to the building or site.~~

—~~**SIGN, NEIGHBORHOOD/SECTOR.** A freestanding sign which identifies, by name, the section of the city.~~

~~— **SIGN, OFF PREMISE.** A commercial speech sign which directs the attention of the public to a business, activity conducted, or product sold or offered at a location not on the same lot where such sign is located. A sign located within an easement or other appurtenance to a lot on which a business is located shall be deemed an off premises sign.~~

~~— **SIGN, ON PREMISES.** A sign which identifies or advertises an establishment, person, activity, goods, products or services located on the premises where the sign is installed.~~

~~— **SIGN, PEDESTAL.** A ground sign usually erected 1 central shaft or post which is solidly affixed to the ground.~~

~~— **SIGN, PERMANENT.** A sign constructed of durable materials designed to exist for the duration of time that the use or occupant is located on the premises.~~

~~— **SIGN, PORTABLE.** Any sign that is designed to be moved.~~

~~— **SIGN, PROJECTING.** Any sign projecting from a building wall.~~

~~— **SIGN, PUBLIC UTILITY.** Signs which identify public utilities.~~

~~— **SIGN, REAL ESTATE DEVELOPMENT.** A sign offering for sale, lease, or rent a single family or multiple family residential project of 10 or more dwelling units or lots.~~

~~— **SIGN, REAL ESTATE.** A sign offering property (land and/or buildings) for sale, lease, or rent.~~

~~— **SIGN, REAL ESTATE DEVELOPMENT.** A sign offering for sale, lease, or rent a single family or multiple family residential project of 10 or more dwelling units or lots. Real estate development signs shall be administered as permanent signs subject to all removal requirements outlined in code.~~

~~— **SIGN, REVOLVING.** A sign which has moving parts (structural); does not include flashing signs which blink on and off but may include signs which produce moving effect through use of illumination. Signs which revolve or turn on an axis point such as a pedestal, string, or post shall not be considered revolving if less than 2 complete resolutions per minute.~~

~~— **SIGN, ROOF.** A sign erected upon or above a roof or parapet of a building.~~

~~— **SIGN, SEASONAL.** A sign placed on a lot or parcel of land for a period not to exceed 30 days out of any 12 month period. No sign permit fee is required.~~

~~— **SIGN, SHOPPING CENTER, OR INDUSTRIAL PARK.** A business sign designating a group of shops or offices (more than 3).~~

~~— **SIGN, STRUCTURE.** The supports, uprights, braces, and framework of the sign.~~

~~— **SIGN, SUBDIVISION IDENTIFICATION DISPLAY.** A display, illustration, structure, or device which directs attention to or defines a residential subdivision.~~

~~— **SIGN, TEMPORARY.** Any sign intended for display over a short period of time.~~

~~— **SIGN, WALL.** A sign attached to or erected against the wall of a building with the exposed face of the sign on a plane parallel to the plane of the wall.~~

~~—**SIGN, WARNING.** A sign which warns the public of a danger or hazard in the immediate vicinity and is obviously not intended for advertising purposes.~~

~~—**SIGN, WAYSIDE STAND.** A sign located on a temporary structure or vehicle being used to sell agricultural, floricultural, or horticultural products.~~

~~—**SIGN, WINDOW.** A sign affixed to a window glass or door glass. This does not include merchandise on display.~~

~~—**SIGN.** Any letter, word or symbol, device, poster, picture, statue, reading matter or representation in the nature of an advertisement, announcement, message, or visual communication, whether painted, posted, printed, affixed or constructed, which is displayed for informational or communicative purposes and is visible to the general public.~~

SECTION 2. The City Council of the City of Lake Elmo hereby amends Title I: General Provisions; Chapter 11: General Code Provisions, by amending section 11.01 Definitions to add the following definitions in alphabetical order with the already existing definitions:

ANIMATION. The movement or the optical illusion of movement of any part a sign, sign structure, design, or pictorial segment, including the movement of any illumination or the flashing or varying of light intensity; the automatic changing of all or any part of the facing of a street sign.

AWNING. A shelter supported entirely from the exterior wall of a building.

CANOPY. A detachable, rooflike cover, supported from the ground or deck, floor or walls of a structure, for protection from the sun or weather.

COMMERCIAL SPEECH. Speech or graphics advertising a business, profession, commodity, service or entertainment.

MULTI-TENANT BUILDING. A grouping of two or more business establishments that either share common parking on the lot where they are located, or that occupy a single structure or separate structures that are physically or functionally related or attached.

NON-COMMERCIAL SPEECH. A sign that contains a non-commercial message. Examples of non-commercial messages include, but are not limited to, messages concerning political, religious, social, ideological, public service and informational topics.

UNIFIED RESIDENTIAL AREA. A residential grouping of lots that share a plat name over one or more additions.

SIGN, ABANDONED. Any sign and/or its supporting sign structure which remains without a message or whose display surface remains blank for a period of one (1) year or more, or any sign which pertains to a time, event or purpose which no longer applies, shall be deemed to have been abandoned. Signs applicable to a business temporarily suspended because of a change in ownership or management of such business shall not be deemed abandoned unless the property remains vacant for a period of one (1) year or more. Any sign remaining after demolition of a principal structure shall be deemed to be abandoned. Signs which are present because of being legally established nonconforming signs or signs which have required a conditional use permit or a variance shall also be subject to the definition of abandoned sign.

SIGN, AWNING. A sign or graphic printed on or in some fashion attached directly to the awning material.

SIGN, BANNER. A temporary sign typically made of cloth, plastic or vinyl materials. Banner signs shall not be used as permanent signage.

SIGN, BILLBOARD. A sign structure with a surface area over one hundred (100) square feet per surface that identifies or communicates a commercial or non-commercial message.

SIGN, BUSINESS VEHICLE IDENTIFICATION. A sign that is permanently mounted or otherwise permanently affixed to a vehicle, trailer, or semitrailer which identifies the business, products, or services with which the vehicle, trailer, or semitrailer is related. For purposes of this definition, magnetic and adhesive signs shall be considered as being permanently affixed. This definition shall also include non-permanently affixed signs that do not exceed 32 square feet erected in concert with a legally operating wayside stand. Bumper stickers and similarly sized adhesive decals shall not be considered business vehicle identification signs.

SIGN, CANOPY. A sign that is mounted, painted, or otherwise applied on or attached to a freestanding canopy or structural protective cover over an outdoor service area. An awning or a marquee is not a canopy.

SIGN, CHANGEABLE COPY. A sign designed to allow the changing of copy through manual, mechanical, or electrical means including time and temperature.

SIGN, DIRECTIONAL. An on-site sign for the purpose of making specific locations known and to assist in finding these locations (e.g. "Parking," "Shipping Receiving Area").

SIGN, ELECTRONIC VARIABLE MESSAGE. Signs whose message are changed at reasonable intervals by electronic process or remote control and whose movement is the periodic changing of information against a solid, colorless background, engineered for maximum legibility and readability, and having a constant light level and glare reduced screens. This definition does not include static time and temperature displays which only change when necessary for accuracy.

SIGN, FLAG. Any fabric or similar lightweight material attached at one end of the material, usually to a staff or pole, so as to allow movement of the material by atmospheric changes and which contains distinctive colors, patterns, symbols, emblems, insignia, or other symbolic devices.

SIGN, FREESTANDING. A sign that is attached to, erected on, or supported by some structure (such as a pole, mast, frame, or other structure) that is not itself an integral part of or attached to a building or other structure whose principal function is something other than the support of a sign. Monument, pole, and ground signs are all freestanding signs.

SIGN, GOVERNMENTAL. A sign erected and maintained by or on behalf of the United States, the state, the county, or the city for the purpose of regulating traffic or for other civic purposes; the size, location, and height of which is dictated by the applicable agency to fulfill the intended civic purpose.

SIGN, GROUND. Any freestanding sign with its sign face mounted on the ground or mounted on a base at least as wide as the sign and which has a total height not exceeding six (6) feet.

SIGN, HISTORIC. An existing sign which has a special historical, architectural, cultural, or aesthetic value to the community.

SIGN, ILLUMINATED. Any sign which contains an element designed to emanate artificial light directly or indirectly.

SIGN ILLUMINATION, BACK LIT. A direct source of light which illuminates a sign by shining through a translucent surface of a sign, including plastic signs, lit from an internal light source.

SIGN ILLUMINATION, DIRECT. A sign whose light source is either located in the interior of the sign so that the rays go through the face of the sign, or which is attached to the face of the sign and is perceived as a design element of the sign.

SIGN ILLUMINATION, EXTERNAL. Illumination of a sign that is affected by an artificial source of light not contained within the sign itself.

SIGN ILLUMINATION, INDIRECT. A sign whose light source is external to the sign and which casts its light onto the sign from some distance.

SIGN ILLUMINATION, REVERSE LIT. A direct source of light which illuminates a sign by shining off an opaque surface of a sign thereby casting the light off the wall behind the sign creating a halo effect.

SIGN, MONUMENT. Any freestanding sign with its sign face mounted on the ground or mounted on a base at least as wide as the sign and which has a height exceeding six (6) feet.

SIGN, MURAL. Any mural or pictorial scene painted on a wall or building or painted on a sign board affixed to a wall, and in which mural or scene has as its purpose an artistic effect.

SIGN, OFF-PREMISE. A commercial speech sign which directs the attention of the public to a business, activity conducted, or product sold or offered at a location not on the same lot where such sign is located. A sign located within an easement or other appurtenance to a lot on which a business is located shall be deemed an off-premises sign.

SIGN, PERMANENT. A sign constructed of durable materials designed to exist for the duration of time that the use or occupant is located on the premises.

SIGN, POLE. Any freestanding sign which has its supportive structure(s) anchored in the ground and which has a sign face elevated above ground level by pole(s) or beam(s) and with the area below the sign face open

SIGN, PORTABLE. A sign not permanently attached to the ground or a building or designed to be permanently attached to the ground or a building.

SIGN, PROJECTING. A sign attached to and projecting out from a building face or wall, generally at a right angle.

SIGN, ROOF. Any sign erected and constructed wholly on and above the roof of a building, supported by the roof structure, and extending vertically above the highest portion of the roof.

SIGN. Any letter, word or symbol, device, poster, picture, statue, reading matter or representation in the nature of an advertisement, announcement, message, or visual communication, whether painted, posted, printed, affixed or constructed, which is displayed for informational or communicative purposes and is visible to the general public.

SIGN, REAL ESTATE DEVELOPMENT. A sign offering for sale, lease, or rent a single-family or multiple-family residential project of 10 or more dwelling units or lots. Real estate development signs shall be administered as permanent signs subject to all removal requirements outlined in code.

SIGN, AGRICULTURAL SALES. A sign placed on a lot or parcel of land advertising an operating and permissible agricultural sales business. Off-premises agricultural sales signs shall be administered as temporary signs subject to all removal requirements outlined in code.

SIGN, SNIPE. An off-premises sign that is tacked, nailed, posted, pasted, glued, or otherwise attached to trees, poles, stakes, fences, or to other object

SIGN, TEMPORARY. Any sign intended for display over a short period of time.

SIGN, WALL. A sign attached to or erected against the wall of a building with the exposed face of the sign on a plane parallel to the plane of the wall, and which displays only one (1) sign surface.

SIGN, WARNING. A sign located on private property posting such property for warning or prohibitions on trespassing, hunting, or other activity.

SIGN, WINDOW. Any building sign, pictures, symbol, or combination thereof, designed to communicate information about an activity, business, commodity, event, sale, or service, that is placed inside a window or upon the window panes or glass and is visible from the exterior of the window.

SECTION 3. The City Council of the City of Lake Elmo hereby amends Title XV: Land Usage; Chapter 151: Building Regulations, by repealing city code sections 151.115 through 151.126 in their entirety.

SECTION 4. The City Council of the City of Lake Elmo hereby amends Chapter 151 to add the following language:

151.115 PURPOSE

(A) Purpose and Findings.

(1) Purpose.

- (a) The Lake Elmo Sign Regulations are intended to establish a comprehensive and balanced system of sign control that accommodates the need for a well-maintained, safe, and attractive community, and the business community's need for effective communication and identification. It is not the purpose or intent of these regulations to favor commercial messages or speech over non-commercial messages or speech or to discriminate between types of non-commercial speech or the viewpoints represented therein. It is the intent of these regulations to promote the health, safety, general welfare, and desirable rural community image through the regulation of signs with the following objectives in mind:
- a. Signs shall demonstrate a high standard of aesthetic character and encourage the use of monument and individual letter-style signs;
 - b. Permit large enough copy/graphic area to effectively convey the intended message but not so large as to unduly distract the reader and insist on lettering large enough to be easily read to encourage simple, uncluttered messages;
 - c. Signs shall be proportioned to the size of, and architecturally compatible with, the structures and other signs on the premises;
 - d. Permanent signs shall only advertise on-premise businesses, services, facilities, etc;

- e. Allow temporary business signs for grand openings and occasional sales events; allow temporary signs to advise the public of the seasonal sale of agricultural and horticultural products in keeping with the City's rural image; and to allow temporary directional signs permitting the public to more easily locate land conservation developments which enhances the City's rural image, without creating continuous visual clutter or traffic hazards along streets or at intersections; and
- f. Signs shall be properly maintained.
- g. Signs that distract drivers, cyclists and pedestrians shall not be permitted. Studies conducted by public and private agencies have identified that dynamic signs, including multi-vision signs, electronic signs and video displays can be highly distracting to drivers, pedestrians, and cyclists and that distraction is a significant underlying cause of traffic accidents. With respect to electronic signs, including video display signs, the City finds that they are highly visible from long distances and at very wide viewing angles both day and night and are designed to catch the eye of persons in their vicinity and hold it for extended periods of time. If left uncontrolled, electronic signs, including video display signs, constitute a serious traffic safety threat. Studies conducted by the Federal Highway Administration (FHWA), Research Review of Potential Safety Effects of Electronic Billboards on Driver Attention and Distraction, Sept. 11, 2001, and The Role of Driver Inattention in Crashes: New Statistics from 1995; the University of North Carolina Highway Safety Research Center, Distractions in Everyday Driving, May 2003 and The Role of Driver Distraction in Traffic Crashes, May 2001; the Wisconsin Department of Transportation, Synthesis Report of Electronic Billboards and Highway Safety, June 10, 2003; the Municipal Research and Services Center of Washington, Sign Control Provisions, Jan. 2006; the Veridan Group, Video Signs in Seattle, Gerald Wachtel, May 2001, reveal that electronic signs are highly distracting to drivers and that driver distraction continues to be a significant underlying cause of traffic accidents.

(2) Findings.

The City of Lake Elmo hereby finds that regulation of the construction type, location, size, and maintenance of signs is necessary to accomplish the above referenced objectives, because:

- (a) The presence of permanent and temporary signage affects the rural image of the City of Lake Elmo;
- (b) Properly regulated signage can create an atmosphere of prosperity, stimulate commercial activity, and consequently, lead to increased employment and a healthier tax base;

- (c) The safety of motorists, cyclists, and pedestrians can be threatened by signage that interferes with necessary sight-distances and/or unduly diverts the attention of such persons.
 - (d) Signs that are too bright, overly illuminated, flash, blink, scroll, twirl, change messages or color, or imitate movement, including video displays, can distract drivers, cyclists and pedestrians and impact traffic safety.
- (B) **Severability.** If any section, subsection, sentence, clause, or phrase in sections 151.115 through 151.119 are for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Sign Ordinance. The City Council hereby declares that it would have adopted the Sign Ordinance in each section, subsection, sentence, or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid.

151.116 ADMINISTRATION AND ENFORCEMENT

(A) Permit Required.

No sign shall be erected, altered, reconstructed, maintained or moved in the city without first securing a permit from the city. The content of the message or speech displayed on the sign shall not be reviewed or considered in determining whether to approve or deny a sign permit.

- (1) **Permanent Signs.** To apply for a permanent sign permit, a complete application shall be submitted to the City containing the following:
- (a) Names and addresses of the applicant, owners of the sign, and lot;
 - (b) The address at which the sign(s) are to be erected;
 - (c) The legal description of the property on which the sign(s) are to be erected and the street on which they are to front;
 - (d) A complete set of scaled plans showing the sign dimensions, area, height, ground elevations, applicable setbacks, and other details to fully and clearly represent the safe construction and placement of the proposed sign(s);
 - (e) Type of sign(s) being requested (i.e. wall sign, monument sign, etc.);
 - (f) The permit fee; and
 - (g) The following if applicable:
 - i. Written authorization from the property owner upon who's land the sign is to be erected.
 - ii. A permit from either MnDOT or Washington County if the proposed sign is along a state highway or county road.
 - iii. A sign plan showing signs for all businesses if the sign is located on a building with more than one business.

- iv. Photographs of the building face and the building faces of both adjacent buildings if the sign is being placed on an existing structure.
- v. If replacing a historical sign, pictorial proof or other information that the sign is of historical significance or is a reproduction of a historic sign.

(2) Temporary Signs. To apply for a permit to allow a temporary sign, a complete application shall be submitted to the City containing the following:

- (a) Names and addresses of the applicant, owners of the sign, and lot;
- (b) The address at which the sign(s) are to be erected;
- (c) A generalized plan set showing the sign dimensions and height, and a notation of the materials to be used.
- (d) A scaled site plan which clearly represents the placement of the proposed sign(s) on the applicable property;
- (e) The proposed timeframe(s) over which the sign(s) will be posted;
- (f) The permit fee; and
- (g) The following if applicable:
 - i. Written authorization from the property owner upon who's land the sign is to be erected.
 - ii. A permit from either MnDOT or Washington County if the proposed sign is along a state highway or county road.

(3) Temporary Sign Renewal. A temporary sign permit issued by the City may be renewed provided the sign design, size, location, or other previously approved details are not proposed to change. A sign renewal application shall include the following:

- (a) Names and addresses of the applicant, owners of the sign, and lot;
- (b) The address at which the sign(s) are to be erected;
- (c) The date of issuance of the permit being renewed;
- (d) The proposed timeframe(s) over which the sign(s) will be posted;
- (e) Written authorization from the property owner upon who's land the sign is to be erected (if applicable); and
- (f) The permit renewal fee.

(4) Review. The planning department shall approve or deny complete sign permit applications upon receipt of a complete application. If the permit is denied, the planning department will send a written notice of denial to the applicant. The written notice will indicate the reason(s) for denial and a description of the applicant's appeal rights.

(B) Exemptions.

The following signs shall not require a permit. However, these exemptions shall not be construed as relieving the owner of the sign from the responsibility of its erection and maintenance, and its compliance with the provisions of this ordinance or any other law or ordinance regulating signs.

- (1) The changing of the display surface on a previously approved sign.
- (2) Signs six (6) square feet or less in size, per surface if double sided.
- (3) Window Signage that does not cover more than 1/3 of the total area of the window in which the sign is displayed
- (4) Governmental Signage.

(C) Fees.

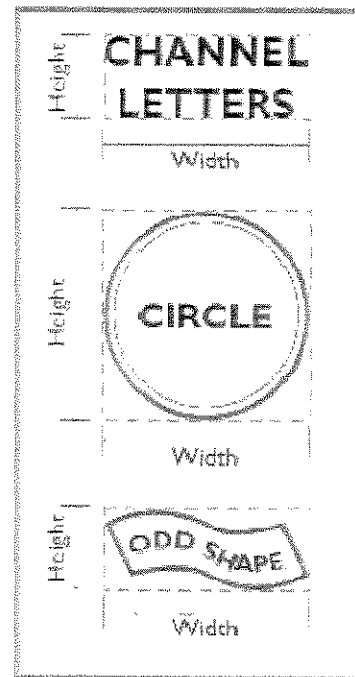
The fee for a sign permit is established yearly in the City’s adopted fee schedule as indicated in section 11.02.

(D) Computations.

(1) Sign Area Measurement.

The area of a sign shall be computed by means of the smallest rectangle within which a single sign face can be enclosed. When a sign has two back-to-back sign faces containing sign copy, the sign area for both faces are counted toward the total allowed sign area. Poles, bases, and other supports shall not be included in the sign area calculation.

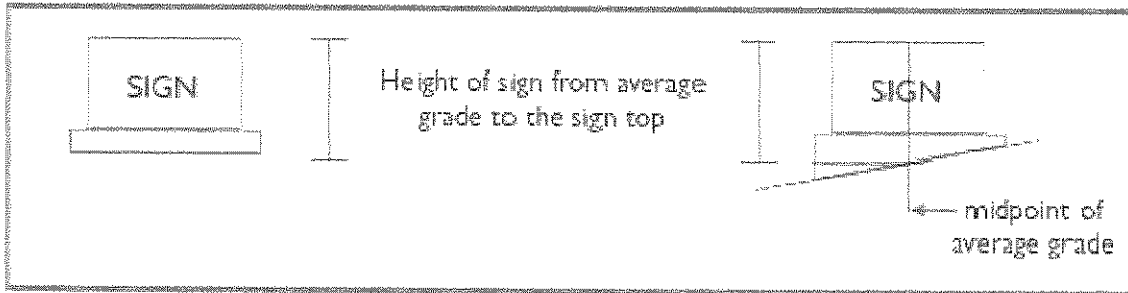
Figure 1: Sign Area Measurement



(2) Sign Height Measurement

The height of the sign shall be computed as the vertical distance measured from the average grade at the base of the sign to the top of the highest attached component of the sign.

Figure 2: Sign Height Measurement



(3) Total Sign Area Calculation

The total square footage of all sign surfaces shall be computed by adding together the sign areas of all signs on a property.

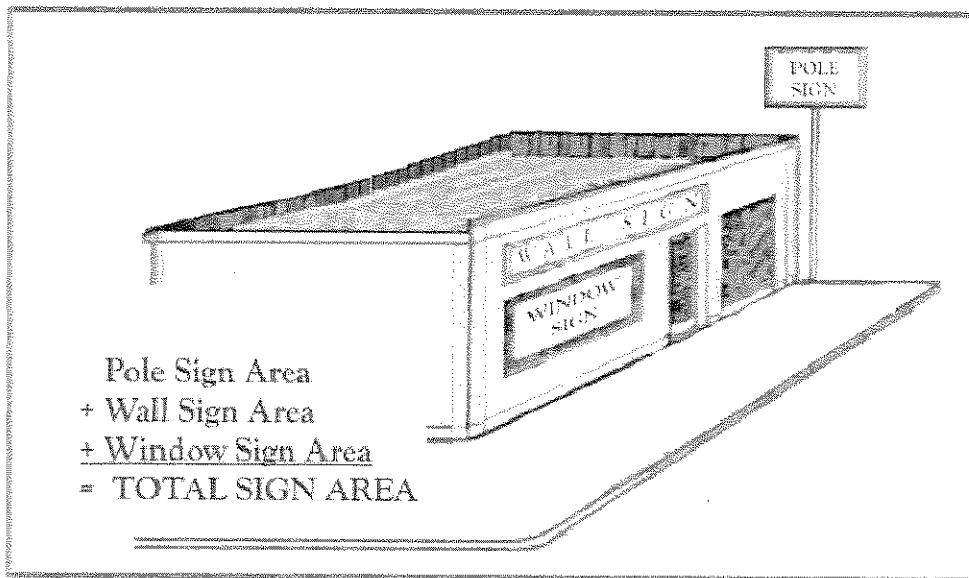


Figure 3: Total Sign Area Measurement Example

(E) Construction, Maintenance and Repairs.

- (1) The construction of all signs, unless otherwise stated herein, shall be in conformance with the provisions of the Uniform Sign Code published by the International Conference of Building Officials, 1997 Edition, as may be amended, which is hereby adopted by reference and made a part of this ordinance.
- (2) All signs and structures shall be properly maintained and shall be constructed of sufficiently permanent material so that they shall not succumb to deterioration from weathering.
- (3) Any existing sign or sign structure which is rotted, unsafe, deteriorated, defaced, or otherwise altered, shall be repainted, repaired, replaced, or removed if repair is not feasible. Sign maintenance shall be the responsibility of the underlying fee owner.

(F) Abatement.

If the City finds that any sign has been erected without the necessary approvals or any sign is being maintained in violation of any zoning provision, the City may give written notice of such violation to the installer of said sign; to the permit holder; and/or to the owner, lessee or manager of said property. If after receiving said notice such person fails to remove or alter said sign so as to comply with the provisions of the zoning ordinance, the sign shall be deemed to be a nuisance and may be abated by the City under Minnesota Statutes, Chapter 429. The cost of such abatement, including administrative expenses and reasonable attorneys' fees, may be levied as a special assessment against the property upon which the sign is located.

151.117 GENERAL STANDARDS**(A) Abandoned Signs**

Abandoned signs shall be removed.

(B) Building identification.

- (1) A building address, date of construction, commemorative tablet, etc; shall not count towards the overall permitted signage on a building or parcel. All forms of building identification, except for the building address, shall be cut into a masonry surface or be constructed of bronze or other incombustible material.
- (2) Posting of a building address identifying the correct property number as assigned by the City shall be required on each principal building in all districts. The number shall be at least three (3) inches in height, but no larger than twelve (12) inches in height.

- (C) Building Official Review.** No sign shall be attached to or be allowed to hang from any building until all necessary wall and roof attachments have been approved by the City Building Official.

- (D) Changeable Copy Signs.** A changeable copy sign, such as a reader board, may be integrated into an allowable sign subject to the following restrictions:
- (1)** The message conveyed by the sign face shall not blink, flash, scroll or be so animated as to be deemed a distraction to passing motorists;
 - (2)** Copy on the sign shall not change more than once per day on average (except for time, temperature, and price information which must change when necessary for accuracy);
 - (3)** Characters and backgrounds depicted on a changeable copy sign shall not use florescent coloring.
 - (4)** All changeable copy sign faces shall be limited to a maximum of 25 square feet in sign area, or the maximum size of the type of sign on which the face is placed, whichever is less.
- (E) Flags.** No more than 3 flags may be displayed on any given parcel. Individual flags shall not exceed one-hundred (100) square feet in size per surface.
- (F) Illumination.**
- (1)** Illumination of signs shall comply with Chapter 150 code requirements governing Lighting, Glare Control, and Exterior Lighting Standards.
 - (2)** Indirect illumination for signs shall be so constructed and maintained that the source of light is not visible from the public right-of-way or residential property.
 - (3)** Back-lit awnings are prohibited.
- (G) Ingress or egress.** No sign or structure shall be erected or maintained if it prevents free ingress or egress from any door, window, or fire escape. No sign or sign structure shall be attached to a standpipe or fire escape.
- (H) Landscaping.** Sign owners shall be required to maintain the appearance of the ground around all signs detached from buildings and to landscape where possible.
- (I) Master Sign Program.**
- A Master Sign Program shall be reviewed and approved for all multi-tenant commercial buildings and for all business park development to coordinate all signage for current and future tenants. The Master Sign Program shall be reviewed as a permanent sign permit, but shall only authorize the general locations and sizes of signs to be erected within a development or on a multi-tenant building. Individual permanent sign permits shall still be needed for the placement of permanent signs in accordance with an approved Master Sign Program. Master Sign Programs shall be subject to the following requirements:

- (1) A Master Sign Program shall include a to-scale site plan which identifies the overall sign types, sizes, and locations for all proposed signage on the site(s). The site plan shall not contain the names of any current or future tenants or occupants of the center or overall development.
- (2) The Master Sign Program shall include a calculation of allowable sign square footage for the site(s) based on applicable zoning requirements and lot characteristics.
- (3) The Master Sign Program shall include square footage calculations for individual signs proposed for the site(s), along with a total sign square footage area calculation.
- (4) All signs within a Master Sign Program shall be visually consistent in location, design, and scale.
- (5) The Master Sign Program may be reviewed concurrently with a separate permanent sign permit for the individual sign(s) identified in the Master Sign Program. The separate permanent sign permit shall include all information required by section 151.116(A)(1), and may only be approved if the Master Sign Program is approved.

(J) Multi-Tenant Buildings.

- (1) Multi-tenant buildings are herein considered a single commercial establishment, and shall be limited to one (1) freestanding sign amongst all planned/allowed signage subject to the following requirements:
 - (a) If the multi-tenant commercial building has a floor area of 40,000 square feet or less, the sign shall not exceed forty (40) square feet (per side) and shall not exceed eight (8) feet in height.
 - (b) If a multiple tenant commercial building has a floor area greater than 40,000 square feet but less than 100,000 square feet, the sign shall not exceed seventy-five (75) square feet (per side) and shall not exceed nine (9) feet in height.
 - (c) If a multiple tenant commercial building has a floor area of greater than 100,000 square feet, the sign shall not exceed 120 square feet (per side) and shall not exceed fifteen (15) feet in height.
- (2) Where a building, group of attached buildings on the same block, or center contains more than one business, the allowable sign area for any single business shall be its portion of the gross square footage of the building or center applied as a percentage to the allowable sign area of the entire building or center, subject to size limitations for specific signs within an approved Master Sign Program.

(K) Neighborhood Identification Signs

Independent of the total allowable sign area for individual residences within a residential zoning district, two (2) ground signs for a unified residential area with six (6) or more lots may be allowed consistent with the following provisions:

- (1) New subdivisions:
 - (a) Neighborhood identification sign(s) shall be approved as a component of a preliminary and final plat to be included as part of a new subdivision.
 - (b) Each sign may not exceed a total of thirty-two (32) square feet in area.
 - (c) Signs are to be located on outlots of sufficient size and area to accommodate them or within a dedicated permanent sign easement. A homeowners or neighborhood association is required for the area identified by the signs which shall own and be responsible for the upkeep, perpetual maintenance, taxes, insurance, utilities, and other costs associated with the sign(s) and their property. The association rules or by-laws shall specify how the aforementioned sign responsibilities will be delegated and paid for. City staff shall review the proposed bylaws to ensure that they specify the aforementioned responsibilities.
 - (d) Outlots or easements for signs are to be considered and planned for at the time of preliminary plat application and shall be included in the final plat. A developers agreement shall specify the designated use of the outlot or easements, its ownership, and the respective home owners association responsibilities regarding the proposed improvements.
 - (e) Only indirect lighting of neighborhood identification may be approved. The electric costs and maintenance of such lighting shall be the responsibility of the homeowners association or neighborhood association of the area identified by the sign(s) and shall be clearly noted in the association's rules or bylaws.
 - (f) The area around the sign is to be landscaped and maintained in such a manner to accent and enhance the sign while remaining sensitive to the natural features of the site. Detailed site and landscape plans shall be included with each sign permit application and shall be subject to review by the Planning Commission and City Council at the time of Preliminary Plat.
 - (g) The design and construction of neighborhood area identification signs shall be done with the highest quality materials and workmanship to keep maintenance and upkeep costs to a minimum and to minimize the potential for vandalism. Neighborhood area identification signs are to be aesthetically pleasing when designed and constructed. The signs shall be compatible with nearby or potential homes and other structures in the area. Detailed construction plans and a materials list shall be included with the preliminary plat application.

- (h) The City reserves the right to require the removal—at the owner's expense—of any sign when the requirements of this Section and this Ordinance are not completely followed and adhered to or if the sign is not properly maintained or falls into a state of disrepair. The City shall not have any obligation or liability to replace any sign or nearby landscaping when removed by the City.
- (2) Existing Unified Residential Areas: A neighborhood identification sign may be allowed by Conditional Use Permit for existing unified residential areas. If no outlots or easements were originally designated for signs, the plat may be amended to provide for such a proposal and shall meet the same criteria and requirements as set forth for new subdivisions.
- (L) Non-commercial speech signs.** Notwithstanding any other provisions of this sign ordinance, all signs of any size containing non-commercial speech may be posted from August 1 in any general election year until ten (10) days following the general election and thirteen (13) weeks prior to any special election until ten (10) days following the special election.
- (M) Private on-premises directional signs.** Signs located on, above or beside entrances or exits to buildings or driveways which direct pedestrians or vehicles (e.g. “employees entrance,” “exit only,” “rest rooms,” etc) shall not count towards the overall permitted signage on a site provided such signs are no more than four (4) square feet in area.
- (N) Prohibited Signs**
- The following signs are prohibited in all zoning districts.
- (1) **Signs obstructing vision.** Any sign which obstructs the vision of drivers or pedestrians or detracts from the visibility of any official traffic-control device. This includes indoor signs that are visible from public streets.
- (2) **Unofficial traffic signs or signals.** Any sign which contains or imitates an official traffic sign or signal, except for private, on-premises directional signs which do not interfere with traffic flows on public roads.
- (3) **Off premises advertising signs.** Off premises advertising signs except as specifically allowed.
- (4) **Signs with moving parts, moving lighting or animation.** No sign shall display any moving parts, be illuminated with any flashing or intermittent lights, use changing light intensity, utilize spotlights giving off an intermittent or rotating beam existing as a collection or concentration of rays of light (including but not limited to revolving beacons, beamed lights, or similar devices), or be animated. The only exceptions to this provision include static time and temperature information changing only when necessary (which shall be allowed provided the message depicted is reasonably accurate), allowable changeable copy signs and barbershop poles.

- (5) **Roof signs.**
 - (6) **Banners, pennants, ribbons, streamers.** No sign which contains or consists of banners, pennants, ribbons, streamers, string of light bulbs, spinners, or similar devices, except when used for non-commercial purposes, as a governmental sign, or as part of an approved master sign program.
 - (7) **Portable signs.** Including but not limited to signs with wheels removed, attached temporarily or permanently to the ground, structure or other signs, mounted on a vehicle for advertising purposes, parked and visible from the public right-of-way, hot air or gas filled balloons or semitruck umbrellas used for advertising. This prohibition shall not include business vehicle identification signs when the vehicle is being used for the normal day-to-day operations of a permitted business.
 - (8) **Signs supported by a guy wire.**
 - (9) **Billboards.**
 - (10) **Electronic Variable Message Signs.**
 - (11) **Signs on natural surfaces.** No sign shall be painted, attached or in any other manner affixed to trees, rocks, or similar naturally occurring surfaces within the City of Lake Elmo. This shall not prohibit the use of natural building materials (e.g. boulders) in the construction of a legally permitted sign.
 - (12) **Snipe signs.**
- (O) **Public lands and rights-of-way.** No signs other than governmental signs shall be erected or temporarily placed within any street right-of-way or upon public lands or easements or rights-of-ways without Council approval.
- (P) **Regulations for Specific Sign Types**
- (1) **Wall signs**
 - (a) A wall sign shall be located on the outermost wall of any principal building but shall not project more than 16 inches from the wall to which the sign is to be affixed.
 - (b) A wall sign shall not project higher than the parapet line of the wall to which the sign is to be affixed.
 - (c) Wall signs authorized by a Master Sign Program shall not exceed 25 square feet per business, and all signs shall be visually consistent in location, design, and scale.
 - (d) Wall signs may be placed on not more than three walls of rectangular shaped structures or not more than 75 percent of the major walls on non-rectangular shaped buildings.

(2) Mural Sign.

- (a) Mural signs shall not be limited in size, but any commercial or non-commercial language incorporated into the mural sign shall be limited in size by the restrictions established for the applicable zoning district.
- (b) In addition to the standard conditional use criteria in section 154.018, mural signs shall also be subject to the following:
 - i. The location for the proposed mural sign shall be viewable by the public and be accessible;
 - ii. The scale and suitability of the mural sign shall be appropriate in the context of the surrounding properties;
 - iii. The artist(s) commissioned to complete the mural must provide documentation of demonstrated craftsmanship on similar projects;
 - iv. The applicant shall provide sureties to the city guaranteeing completion of the project within the proposed timeframe;
 - v. The applicant shall demonstrate that the necessary funds are available for the proposed project;
 - vi. The applicant must be able to show the final mural will last a minimum of five years and be reasonably resistant to vandalism and weather.

(3) Projecting, Awning, and Canopy Signs.

- (a) Projecting signs and awning signs shall be located on street level.
- (b) If lighted, projecting, awning, and canopy signs shall use indirect illumination.
- (c) Awning or canopy signs shall not project higher than the top of the awning or canopy or below the awning or canopy.
- (d) Clearance. The bottom of a projecting sign or awning shall be a minimum of eight feet (8') above the ground surface when projecting over a private or public walkway.

(4) Freestanding Signs. Freestanding signs shall not be erected or maintained any closer than three feet to any building.

(Q) Separation Angle. So as not to create a double exposure or increase sign size limitations, there shall be a maximum separation angle of forty-five degrees for signs which are back to back. In all residential districts, double-faced signs shall be parallel.

(R) Signs needing electricity. Signs needing electricity shall be subject to all applicable electrical codes as may be amended. Overhead wiring for such signs is prohibited.

(S) Special Sign Districts.**(1) Old Village.**

- (a) Boundary. The boundary of the Old Village Sign District is depicted on the city's official sign district map. Modifications to the district boundary may be completed using the zoning map amendment process.
- (b) Illumination. Indirect illumination or reverse lit letters shall be the permitted techniques for lighting all signs within the Old Village Sign District. Other forms of direct illumination are prohibited.
- (c) Wall Signs.
 - i. Wall signs in the Old Village Sign District shall not project higher than the parapet line of the wall to which the sign is to be affixed or 15 feet as measured from the base of the building wall to which the sign is affixed, whichever is lower.
 - ii. Wall signs in the Old Village Sign District authorized by a Master Sign Program shall not exceed 20 square feet per business, and all signs shall be visually consistent in location, design, and scale.
- (d) Freestanding Signs.
 - i. The area of a freestanding sign in the Old Village Sign District shall not exceed thirty (30) square feet.
 - ii. Freestanding signs in the Old Village Sign District shall not project higher than 6 feet, as measured from the average grade at the base of the sign or grade of the nearest roadway, whichever is lower.

(2) Agricultural Sales District.

- (a) Boundary. The Agricultural Sales District shall include all properties zoned Agricultural or Rural Residential.
- (b) On-premises sign(s). Independent of the total allowable sign area for an individual property within the agricultural sales district, one or more additional on-premises signs may be erected on a property in conjunction with an operating agricultural sales business subject to the following requirements and restrictions:
 - i. Agricultural sales businesses utilizing less than 10 acres of land specifically for the growing of agricultural crops for the business are allowed 1 on-premises sign not to exceed 32 gross square feet of advertising surface;
 - ii. Agricultural sales businesses utilizing more than 10 acres of land but less than 40 acres of land specifically for the growing of agricultural crops for the business are allowed 1 or 2 on-premises signs not to exceed 48 gross square feet of advertising surface (with no sign surface exceeding 32 square feet in size);

- iii. Agricultural sales businesses utilizing more than 40 acres of land specifically for the growing of agricultural crops for the business are allowed 1, 2 or 3 on-premises signs not to exceed 64 gross square feet of advertising surface (with no sign surface exceeding 32 square feet in size);
 - iv. Sign(s) shall be in the form of an allowable sign type in the underlying zoning district.
 - v. No dimension of any sign shall exceed 15 feet exclusive of supporting structures.
 - vi. All signs shall be bordered with a decorative material compatible with the surrounding area.
 - vii. Any illuminated sign shall be illuminated only during those hours when business is open to the public for conducting business.
- (c) Temporary off-premises sign(s). Independent of the total allowable sign area for an individual property anywhere within the city, a temporary off-premises sign may be erected on a property in conjunction with an operating agricultural sales business subject to the following requirements and restrictions:
- i. **Maximum Number.** Every agricultural sales business shall have no more than two off-premises signs at any given time to direct the public to the location of the business.
 - ii. **Timeframe of use.** Temporary off-premises signs may be erected for 45-day time periods no more than four times in any given calendar year. The required temporary sign permit shall stipulate the range of dates for each of the four allowable time periods in any given calendar year.
 - iii. **Size and Height.** An off-site agricultural sales advertising sign shall not exceed 50 square feet in area and shall not be taller than 10 feet in height;
 - iv. **Setbacks.** Off-premises signs shall be a minimum of 25' from all side property lines, and a minimum of 50' from other off-premises advertising signs;
 - v. **Permission Required.** Applicants for off-premises signs shall acquire permission from the property owner upon whose land the sign is to be erected.

(3) I-94 District.

- (a) **Boundary.** The I-94 district shall include the following parcels:
- i. All buildable properties to the south of Hudson Boulevard and to the north of Interstate 94.

- ii. All properties whose southern boarder abuts Hudson Boulevard, but excluding those directly north of a developable parcel lying between Hudson Boulevard and Interstate 94.
- (b) **Illumination.** All forms of illumination shall be the permitted within the I-94 Sign District.
- (c) **Maximum total square footage of ALL sign surfaces.** The maximum total square footage of all sign surfaces in the I-94 district shall be dictated by the maximum sign sizes for allowable sign types.
- (d) **Wall Signs.** The least restrictive of the following may be used to determine the allowable area for wall signs in the I-94 District:
- i. The total area of all wall signs on any wall shall not exceed ten percent of the area of the wall with a maximum allowable area of 80 square feet; or
 - ii. The total area of all wall signs on any wall shall not exceed five percent of the area of the wall with a maximum allowable area of 300 square feet.
- (e) **Freestanding Signs.** A building site within the I-94 District may have freestanding signs in accordance with the following:
- i. One freestanding sign within 50 feet (“of the property line nearest the Interstate” OR “of Hudson Boulevard”) is allowed provided the sign does not exceed 150 square feet in size nor 30 feet in height. The base of such a sign shall be at least 75 percent of the width of the sign and be constructed of materials that match those used on the building for which the sign is installed.
 - ii. One additional freestanding sign, in conformance with the underlying zoning requirements for height, location, and maximum size may also be erected along each additional roadway frontage.
- (f) **Window Signs.** Window signs in the I-94 district shall not cover more than 25% of the window area.
- (g) **Awning, Canopy, and Projecting Signs.** One awning, canopy or projecting sign, in conformance with the underlying zoning requirements for height, location, and maximum size may also be erected for each business on a building site in the I-94 District.
- (T) **Substitution Clause.** The owner of any sign which is otherwise allowed by this sign ordinance may substitute non-commercial speech signs in lieu of any other commercial speech sign or other non-commercial speech sign. The purpose of this provision is to prevent any inadvertent favoring of commercial speech over non-commercial speech, or favoring of any particular non-commercial speech over any other non-commercial speech. This provision prevails over any more specific provision to the contrary.

(U) Temporary Signs.

(1) Special Events. Temporary signs may be allowed upon issuance of a permit for on-site advertising of special events such as openings and closings, change in management, sales events, or other special occasions. No more than four temporary sign permits may be issued in any calendar year for a given destination, and each temporary sign permit shall run for 15 days. Temporary signs for special events shall be subject to the following regulations:

- (a) Only one on-premises temporary sign shall be allowed per business or event.
- (b) Temporary signs shall be in the form of an allowable sign type in the underlying zoning district.
- (c) Temporary signs shall not exceed 32 square feet in area and shall not be taller than 10 feet in height.

(2) Residential development advertising signs. Independent of the total allowable sign area for individual properties or residences within a residential zoning district, one or more additional ground signs may be erected within a newly established unified residential area development subject to the following:

(a) Minimum Development Size

- i. Projects of less than 25 acres which create ten or more dwelling units are allowed one (1) on-premises ground sign not to exceed 100 square feet of advertising surface;
- ii. Projects of 26 through 50 acres which create ten or more dwelling units are allowed 1 or 2 on-premises ground signs not to exceed 200 aggregate square feet of advertising surface on the project site; and
- iii. Projects over 50 acres which create ten or more dwelling units are allowed 1, 2, or 3 on-premises ground signs not to exceed 200 aggregate square feet of advertising surface on the project site.

(b) Restrictions.

- i. No dimension shall exceed 25 feet exclusive of supporting structures.
- ii. The sign shall not remain once 90% of the lots in the development have been issued building permits.
- iii. The permit for the sign must be renewed annually by the Council.
- iv. All signs shall be bordered with a decorative material compatible with the surrounding area.
- v. Only indirect illumination is permitted and shall only occur during those hours when an on-site sales office or model home is open for conducting business.

- (3) **Temporary Off-Premises Signs.** Temporary off-premises signs may be erected if all of the following criteria are met:
 - (a) The destination to which the off-premises sign is advertising is a property for sale;
 - (b) An agent must be present at the destination property for sale, and the property must be open for viewing.
 - (c) The sign must be located on private property, and permission must have been obtained from the private property owner to erect the temporary sign;
 - (d) The temporary off-premises sign shall not exceed six (6) square feet in size;
 - (e) The temporary off-premises sign shall not cause the total square feet of signage on a property to exceed the allowed maximum in the underlying zoning district.

- (V) **Warning Signs.** Warning signs which do not exceed the minimum statutory requirements for size and number may be posted, and shall not count towards the overall permitted signage on a given property. Increases in either size or number over minimum statutory requirements shall count against the overall permitted signage on a given property unless authorized by conditional use permit which finds sufficient evidence that larger or more frequent signage is necessary to provide the intended warning.

151.118 Specific Regulations by Zoning District

- (A) **Sign Setbacks.** Signs shall conform to the set back regulations listed in table 1 for the zoning district in which the signs are located except as may be specifically exempted or restricted in sections 151.117 and 151.118.

Table 1: SETBACKS BY ZONING DISTRICT [1]														
	Base Zoning Districts													
	A	RR	R1	R2	R3	R4	RE	OP	GB	HB	CB	LB	BP [2]	PF
Front Lot Line	5	5	5	5	5	5	5	5	1	1	1	1	1	5
Side Lot Line	5	5	5	5	5	5	5	5	5	5	5	5	5	5
Rear Lot Line	5	5	5	5	5	5	5	5	10	10	10	10	10	5
Vehicular Access	5	5	5	5	5	5	5	5	15	15	15	15	15	5

[1]: Awning/Canopy signs, mural signs, projecting signs, wall signs, or window signs proposed to be located on a building legally non-conforming to setback requirements shall be permitted without a variance provided all other zoning code provisions are met.

[2]: Signs within Business Parks shall also adhere to the requirements of a master sign program approved by the City Council in conjunction with the business park establishment.

(B) Allowable Sign Area. The maximum allowable sign area for an individual sign and for total site signage is listed in table 2 by zoning district. These maximums shall apply except as may be specifically exempted or restricted in sections 151.117 and 151.118.

Table 2: ALLOWABLE SIGN AREA BY ZONING DISTRICT									
District(s)	Maximum sign area in square feet (per surface) by sign type [1]								Maximum total square footage of ALL sign surfaces
	Awning/Canopy Sign	Ground Sign [2]	Monument Sign [2]	Mural Sign	Pole Sign [2]	Projecting Sign	Wall Sign	Window Sign	
A, RR, R1, R2, RE, OP [3]		6		C	6		6	6	12 square feet
R3 & R4 [3]		12		C	12		12	12	24 square feet
GB, HB, CB, LB, BP, & PF	[4]	30	60	C	30	6	[5]	No max	1.0 square foot per lineal foot of building parallel or substantially parallel to public road frontage (excluding alleys). [6]

[1]: Sign types with shaded cells are prohibited in the applicable zoning district(s). Sign types with a maximum sign area of "C" shall require a conditional use permit.

[2]: Ground, monument, or pole signs, where permitted, shall be limited to one (1) per commercial establishment.

[3]: All sign types in residential districts shall have no more than two (2) surfaces.

[4]: The gross surface of an awning or canopy sign shall not exceed 30% of the gross surface area of the smallest face of the awning or canopy of which the sign is to be affixed.

[5]: On any wall parallel or substantially parallel to a public roadway, the gross surface area of a wall sign shall not exceed 0.75 square feet for each lineal foot of building facing the applicable roadway. For walls not facing a public roadway, the maximum wall sign size shall be twelve (12) square feet.

[6]: Open sales lots or other approved uses on lots without a building shall be limited to thirty (30) square feet of total sign surfaces.

(C) **Freestanding Sign Height.** The maximum allowable sign height for a freestanding sign is listed in table 3 by zoning district. These maximums shall apply except as may be specifically exempted or restricted in sections 151.117 and 151.118.

Table 3: ALLOWABLE FREESTANDING SIGN HEIGHT IN FEET BY ZONING DISTRICT														
	Base Zoning Districts													
	Residential Districts								Business Districts					
	A	RR	R1	R2	R3	R4	RE	OP	GB	HB	CB	LB	BP	PF
Allowable Height in feet	5	5	5	5	8	8	5	5	20	20	20	20	20	20

151.119 Sign Variances

Variances from sign provisions shall be administered in accordance with section 154.017, and shall be subject to the following additional requirements:

- (a) The sign(s) shall be compatible with the character of the adjacent buildings and with the character of the adjacent neighborhood;
- (b) The sign(s) shall have good scale and proportion in the visual relationship to buildings and adjacent areas;
- (c) The material, size, color, lettering, location, and arrangement of the sign(s) is an integral part of the site and building design; and/or

The colors, materials, and lighting of the sign(s) are restrained and harmonious, as interpreted by the City Planner.

SECTION 5. The City Council of the City of Lake Elmo hereby amends Chapter 151 of City Cody by adopting the map depicted in Exhibit “A” to serve as the City’s official Sign District Map.

SECTION 6. Effective Date

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

SECTION 7. Adoption Date

This Ordinance No. _____ was adopted on this _____ day of _____, 2009,
by a vote of ___ Ayes and ___ Nays.

Mayor Dean Johnston

ATTEST:

Craig Dawson
City Administrator

This Ordinance No _____ was published on the _____ day of _____, 2009.

ITEM: Wireless Communications Tower Ordinance Update

SUBMITTED BY: Kyle Klatt, Planning Director

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

SUMMARY AND ACTION REQUESTED:

The Planning Commission is being asked to review a preliminary report from staff regarding the Wireless Communications Tower Ordinance update project. Staff has prepared an analysis of the existing ordinance and at this time is seeking feedback from the Planning Commission prior to beginning work at drafting a new ordinance.

The City Council has adopted a moratorium on the construction of any new communications towers within the City. The purpose of the moratorium (which extends through the end of 2009) is to provide the City with time to further study the issues associated with wireless communication facilities and to draft revisions to the ordinance that will better represent the community's expectations concerning the design and siting of new facilities in Lake Elmo. The moratorium was adopted for a period of one year, and could be rescinded at an earlier date if the new code is ready for adoption in accordance with the planned schedule.

ADDITIONAL INFORMATION:

The Planning Commission's role in the update process will include reviewing a draft ordinance and conducting a public hearing on the proposed ordinance. The first step in the overall process will include an informational session with the Commission at its next meeting.

RECOMMENDATION:

No action is necessary at this time. The moratorium language and work plan are included for review by the Commission

ATTACHMENTS:

1. Staff Report
2. Objectives and Work Plan for the Wireless Communications Facility Ordinance Update
3. Existing Wireless Communications Tower Ordinance
4. Wireless Towers articles from the *Planning Commissioners Journal*

ORDER OF BUSINESS:

- IntroductionKyle Klatt, Planning Director
- Report/PresentationKyle Klatt, Planning Director
- Questions/Comments from the CommissionChair & Commission Members

City of Lake Elmo Planning Department
Wireless Communications Ordinance Amendment

To: Planning Commission

From: Kyle Klatt, Planning Director

Meeting Date: 3-9-09

Introductory Information

Objective: Early this year, the Lake Elmo City Council has adopted a moratorium on the construction of new telecommunications towers within the City, and has previously directed the Planning Department to begin work on an update to the existing wireless communication tower ordinance during the moratorium period. The moratorium was established until the end of 2009; however, the work plan that was approved by the Council for the update project anticipated that the new ordinance would be adopted by July or August. This work plan was previously presented to the Planning Commission for review, and is attached for reference by the Commission.

Early in the process there is time set aside for Planning Commission input as part of the research and issue identification being done by staff. The schedule also indicates that the Commission will be reviewing a draft ordinance sometime in May after an initial open house to receive public feedback.

Staff is presently working to select a consulting firm to provide the City with expertise in the field of wireless communication facilities. The primary role of a consultant will be helping the City develop an ordinance that: 1) helps the City meet its obligations under the Federal Telecommunications Act of 1996, 2) establishes a minimum threshold of information that is needed for the City to adequately determine the need for a new tower or other facility, and 3) that identifies the preferred locations for new towers in the community.

Background: The City of Lake Elmo adopted the current wireless communications tower ordinance on January 21, 1998, shortly after the passage of the Federal Telecommunications act of 1996. Upon the passage of the Act, many communities throughout the country initiated a process to update their zoning regulation in order to ensure compliance with the Act while also protecting and preserving the communities' rights to regulate new cellular towers. Some of the essential components of the Telecommunications Act that pertain to the drafting of a wireless telecommunication tower ordinance include provisions that prohibit local governments from:

- Unreasonably discriminating among providers of functionally equivalent services.
- Taking actions that "prohibit or have the effect of prohibiting the provisions of

personal wireless services”.

- Limiting the placement of wireless facilities “on the basis of the environmental effects of radio frequency emissions”.

The other relevant provision of the Act note that local governments must:

- Act on requests for authorization to locate wireless facilities “within a reasonable period of time”.
- Explain each decision denying such a request “in writing and supported by substantial evidence contained in a written record” and “any person adversely affected by any final action or failure to act” may bring an action in court within 30 days after such action or failure to act.

Within the framework of the Telecommunications Act, cities are still able to make decisions regarding the siting of facilities in the community, the design standards for such facilities, and other factors that could impact the health, safety and general welfare of the public.

(cont.)

Until last year, the City had not received any formal applications for a new wireless telecommunications tower under this ordinance. There have been several antennas placed on existing water towers within the City, and the City has lease agreements with most of the major cellular providers for these antennas. Other towers located around the periphery of the community are currently providing coverage within the City of Lake Elmo.

Staff Review and Analysis

Analysis of Existing Ordinance

The existing ordinance pertaining to wireless communication towers is now over 10 years old, and in this period of time, there have been many changes within the wireless communications industry. Most importantly, there has been a recent move towards providing “gap” coverage amongst the various carriers, and in particular for providing coverage within individual homes, versus the historical focus on covering the major road networks. During the review of the T-mobile request that was ultimately denied by the City Council, it was apparent that sufficient wireless coverage exists near the borders of the City and in the Village area, but that large gaps persist in many of the areas between Highway 36 and CSAH 5 and CSAH 5 and Interstate 94.

A basic outline of the current ordinance, along with a very brief summary of each section is as follows:

- I. Purpose and Intent
 - States the intent of the ordinance to: accommodate wireless telecommunications services, minimize adverse visual effects, avoid potential damage, and maximize use of exiting towers and structures.
- II. Permit Required
 - A permit is required to install a wireless facility or any portion thereof. Unlike other communities, Lake Elmo does not regulate new towers as a

- conditional use permit.
- III. Prohibited Areas
 - Residential areas less than 10 acres, conservation easements, airport impact zones without consent.
 - IV. Allowed Tower Sites
 - On or near power line right-of-way, public property, agriculturally or residentially zoned property. This list was not construed as being presented in order of priority and was later amended by the City Council to clearly rank them in order of preference.
 - V. Application
 - Describes information that must be submitted with an application.
 - VI. Planning Commission Review
 - Hearing requirements and Planning Commission responsibilities.
 - VII. City Council Review
 - Requires an agreement with the land owner as part of the approval process.
 - VIII. Co-location Requirements
 - Antennas must be located on structures that exceed 75 feet and are located within 1/4 mile of the selected site (unless it can be documented that an agreement cannot be reached).
 - IX. Exceptions to Co-location Requirements
 - Reasons for waiving the co-location requirements.
 - X. Construction Permits
 - Compliance with building code required.
 - XI. Tower Standards
 - Design, setbacks, and height.
 - XII. Other Standards
 - No lighting or signs permitted and the antenna cannot cause interference with public safety equipment.
 - XIII. Prohibited Subdivisions
 - A 10-acre minimum size must be maintained for towers on residential property.
 - XIV. Accessory Utility Buildings
 - Must blend into the surrounding environment.
 - XV. Ground Mounted Equipment
 - Design and screening requirements for accessory buildings.

Upon review of the City's ordinance as described above, it appears that the code was written to try to minimize the number of towers located in the community by encouraging co-location of antennas whenever possible. This is supported by the fact the maximum height of towers with co-location are allowed to extend to 125 feet in residential zones and 195 feet on public property. Although the ordinance does encourage location near or within existing utility easements, it is not readily apparent that any utility sites actually work for wireless carriers to provide the coverage that is being sought.

The land use characteristics that make Lake Elmo unique, specifically its rural character and open spaces, also make it more challenging for siting wireless

communication facilities within the City. Unlike other surrounding communities, there is not an abundance of taller structures that could provide suitable co-location opportunities for wireless facilities. Many of Lake Elmo's residential areas that have limited wireless coverage are also located in areas with prime scenic qualities and very few buildings other than single family residences. This leaves a small number of agricultural buildings, power line structures, and water towers that could serve as potential antenna sites outside of the Village Area (which is well-served by the existing water tower).

Other issues that have been identified and are recommended for revision as part of an updated ordinance include the following:

- *Search radius.* The original ordinance specified a search radius of ¼ mile for potential co-location structures (which has since been amended by City Council to 2 miles). The City should further evaluate the distance being used to ensure that all potential alternatives are evaluated with new applications. Given the topography and land uses in Lake Elmo, it may be beneficial for the City to evaluate specific structures rather than relying on an applicant's search information.
- *Submittal documentation.* The current ordinance requires information to support the application and to describe the request, but does not specifically request data that would demonstrate the actual need for a tower. For instance, many ordinances now explicitly ask for field "driving" data will help establish the proposed service level improvements for a given antenna.
- *Location preferences.* Although the Council has recently amended the ordinance to rank the preferred sites, with public land at the top of the list, the City may want to further expand upon this list by actually identifying specific locations for new towers. This could be done in a general way in the ordinance or as a master plan with locations identified on a City map. Alternatively, the City could name areas that should be protected from antennas, including lakes, parks, and general scenic vistas. In Lake Elmo, a balance will need to be reached between visual impacts and the provision of adequate levels of service.
- *Consideration of alternative sites.* The ordinance as presently written does not require a wireless carrier to consider alternative sites as part of its application to the City. A more thorough review of other sites may be appropriate as part of the application process to at least establish whether or not another location could work for an applicant.
- *Maximum height allowed.* The current ordinance sets a relatively high maximum height of 195 feet in certain instances. The City to date has not conducted a study to determine whether or not a lower height could allow adequate service levels in the community. A key part of the ordinance

revision process will involve establishing the City's preference for fewer, larger towers verses more abundant, but smaller towers. This is one decision that would benefit from outside expertise in the area of RF engineering to help the City establish the minimum thresholds for providing coverage.

- *Collocation requirements and incentives.* Currently the application process is the same for antennas being located on an existing structure or someone building a new tower over 75 feet in height. Nearly all wireless communication ordinances provide for a streamlined review of co-location antennas (usually on an administrative level), which provides for an incentive to find suitable co-location sites.
- *Review process.* The City's wireless telecommunications ordinance is not included as part of the Zoning Ordinance, and towers are a permitted use subject to the location requirements of the ordinance. Most tower ordinances regulate new towers as a Conditional Use Permit, and do not require co-located facilities to follow this process. One way to encourage towers in certain areas is to eliminate a lengthy review process for applicants.
- *Outside review and analysis.* Although the City collects an escrow with new applications for wireless communications facilities, there is no specific reference in the code that clearly states the City should or should not seek outside expertise to review new applications.
- *Site demonstration.* The current ordinance states that the City Planner may request a visual impact demonstration; this section of the code could be revised to provide additional clarification concerning the specific information needed to establish the potential impacts of a tower.
- *Impact of future technology.* As technology evolves, the City's ordinance should provide enough flexibility to allow alternatives that may not be feasible at present.

**Alternatives
and Model
Ordinances:**

The ordinance review conducted by staff points to several opportunities to further refine the City's existing ordinance to provide a better balance between the provision of wireless communications services in Lake Elmo and the interests of many in the community to minimize the effects of new towers on the landscape. The City does have a fair amount of flexibility in designing its ordinances, and has several excellent model ordinances to use as examples. To date, staff has reviewed ordinances from Polk and St. Croix Counties, the cities of Afton, Stillwater, Burnsville, Eagan, Minnetonka, Lansing, MI, and the St. Croix Valley Wireless Communication Service Group. Many of these ordinances follow a similar format to Lake Elmo's regulations, while others (like Lansing MI) have recently updated their codes to include additional design and siting requirements.

As part of its discussion on this matter, the Planning Commission will want to

consider the following aspects of the ordinance:

- Which views are important to protect and preserve in Lake Elmo.
- If there are tower designs that are more appropriate for Lake Elmo, for instance if a stealth monopole design is preferable to a tower camouflaged to look like a tree.
- Whether or not towers should be encouraged on public property and if there are sufficient opportunities to locate towers on public land.
- Which sites on private property may provide or preclude opportunities for co-location.
- Where future residential growth is going to occur and to make sure that new communications facilities will be able to serve future growth areas.
- The type of information that will best help the City make an informed decision regarding new antenna and tower proposals.

As part of its presentation to the Planning Commission, staff is planning to review an overview map of the City showing the current areas that towers would be allowed within the City. This map should also help in later meetings as the City discussed the preferred locations for new facilities and the potential opportunities for co-location (or stealth design) within the City.

In order to provide members of the Planning Commission with additional background information concerning wireless communications facilities, a series of articles from the *Planning Commissioners Journal* is attached for your review. Although this report is a little dated, it does contain some excellent information regarding the issues associated with wireless communications facilities and the Federal Telecommunications Act of 1996.

Conclusion/Next Steps:

The Planning Commission is not being asked to take any specific action at this time; however, some initial feedback regarding the issues noted above will be helpful as staff seeks an outside consultant to assist with the project and prepares for a public open house.

The next major steps that are anticipated in the process of developing a revised ordinance include:

- 1) Hiring a consultant to provide technical assistance to the City;
- 2) Conducting a public open house to received public feedback on the issues associated with wireless communication facilities; and

- 3) **Begin drafting a new ordinance with input from a technical consultant, the public open house, and Planning Commission.**

Wireless Telecommunications Tower Ordinance Update – Work Plan
Prepared by the Lake Elmo Planning Department
January 15, 2009

The City of Lake Elmo has adopted a moratorium on the construction of any new wireless telecommunications towers within the City for a period of 12 months. The purpose of the moratorium is to provide the City with additional time to conduct studies and/or to receive engineering input in regard to the effectiveness of the City's current regulations and to ensure that any revisions to the City's current regulations are in compliance with the mandates of the Telecommunications Act of 1996.

The Planning Commission has been asked to update the current ordinance, and will be considering the following objectives as a part of this process:

- Evaluate current trends in wireless communications industry.
- Establish preferred locations for new towers:
 - Using GIS analysis and other available tools.
- Assess community preferences for larger, but fewer towers, or smaller towers that are more densely dispersed on the landscape.
- Provide for a streamlined process when new antennas are co-located on existing facilities.
- Require location on public sites as first option before other sites can be considered.
- Specify design requirements:
 - Determine whether stealth/camouflaged/or other architectural treatments are appropriate in various circumstances.
 - Consider setting a maximum height above surrounding trees/structures.
- Require a conditional use permit for new towers and include them as a specific use on the district charts.
- Identify color preferences for new towers.
- Ensure the revised ordinance does not effectively establish a ban on towers within the City.

The preliminary schedule for accomplishing these objectives is proposed as follows:

Task	Estimated Completion
Background research	3/1/09
- Review model ordinances	
- Review current trends in wireless communications industry	
- Perform analysis of current ordinance	
- Identify and prioritize land and views to be protected	
- Consider outside review of RF issues	

Review Assistance	2/17/09
- Select outside consultant/expert to assist with review process	
Planning Commission review	3/9/09
- Input from planning commission	
Public participation	3/25/09
- Open house no. 1	
- Review current rules, present research, discuss options	
- Establish community preferences	
Complete first draft	5/11/09
- Based on model ordinances, public input, and Planning Commission feedback	
- Planning Commission review of first draft	
Public review	5/11/09
- Open House No. 2	
- Presentation of draft ordinance	
- Public response to draft	
Planning Commission public hearing	6/8/09
- Consider recommendation to Council	
2 nd Planning Commission meeting (optional)	July/August 2009
- Continue public hearing	
- Further review/refinement of draft	
City Council action	July/August 2009
- Adopt revised ordinance	
- Rescind moratorium	

TITLE XV: LAND USAGE / CHAPTER 150: GENERAL PROVISIONS / WIRELESS TELECOMMUNICATION TOWER PERMIT

WIRELESS TELECOMMUNICATION TOWER PERMIT

TITLE XV: LAND USAGE / CHAPTER 150: GENERAL PROVISIONS / WIRELESS TELECOMMUNICATION TOWER PERMIT / § 150.110 PURPOSE AND INTENT.

§ 150.110 PURPOSE AND INTENT.

The wireless telecommunication tower permit regulations are intended to:

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

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

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

(D) 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.

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

TITLE XV: LAND USAGE / CHAPTER 150: GENERAL PROVISIONS / WIRELESS TELECOMMUNICATION TOWER PERMIT / § 150.111 PERMIT REQUIRED.

§ 150.111 PERMIT REQUIRED.

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

TITLE XV: LAND USAGE / CHAPTER 150: GENERAL PROVISIONS / WIRELESS

TELECOMMUNICATION TOWER PERMIT / § 150.112 PROHIBITED AREAS.

§ 150.112 PROHIBITED AREAS.

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

(A) Residentially zoned parcels of less than 10 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

TITLE XV: LAND USAGE / CHAPTER 150: GENERAL PROVISIONS / WIRELESS TELECOMMUNICATION TOWER PERMIT / § 150.113 ALLOWED TOWER SITES.

§ 150.113 ALLOWED TOWER SITES.

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

TITLE XV: LAND USAGE / CHAPTER 150: GENERAL PROVISIONS / WIRELESS TELECOMMUNICATION TOWER PERMIT / § 150.114 APPLICATION.

§ 150.114 APPLICATION.

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

Lake Elmo, MN Code of Ordinances

(A) A sketch drawn to scale acceptable to the City Planner and City Engineer 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 feet of the perimeter of the tower parcel;
- and
- (4) Access easements as necessary to the tower parcel.

(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;

(C) 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.

(D) A 2-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 2-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

Lake Elmo, MN Code of Ordinances

sites within the city for these services by the applicant; and

(3) A presentation size map of the city, which shows the 2-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;

(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)

TITLE XV: LAND USAGE / CHAPTER 150: GENERAL PROVISIONS / WIRELESS TELECOMMUNICATION TOWER PERMIT / § 150.115 PLANNING COMMISSION REVIEW.

§ 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 with 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)

TITLE XV: LAND USAGE / CHAPTER 150: GENERAL PROVISIONS / WIRELESS TELECOMMUNICATION TOWER PERMIT / § 150.116 CITY COUNCIL REVIEW.

§ 150.116 CITY COUNCIL REVIEW.

(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 telecommunication 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 (M.S. §§ 463.15 through 463.261, as they may be amended from time to time).

TITLE XV: LAND USAGE / CHAPTER 150: GENERAL PROVISIONS / WIRELESS TELECOMMUNICATION TOWER PERMIT / § 150.117 CO-LOCATION REQUIREMENTS.

§ 150.117 CO-LOCATION REQUIREMENTS.

Except as hereinafter provided, antenna utilized to provide wireless telecommunication services shall be located on existing towers or structures which exceed 75 feet in height and which are located within 1/4 mile of the antenna 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

TITLE XV: LAND USAGE / CHAPTER 150: GENERAL PROVISIONS / WIRELESS TELECOMMUNICATION TOWER PERMIT / § 150.118 EXCEPTIONS TO CO-LOCATION REQUIREMENTS.

§ 150.118 EXCEPTIONS TO CO-LOCATION REQUIREMENTS.

The City Council shall waive any or all of the co-location requirements if it is determined that:

(A) 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) 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) 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) Other unforeseen reasons make it infeasible to locate the antennae and/or tower

Lake Elmo, MN Code of Ordinances
accessory equipment upon an existing or approved tower or building.

(1997 Code, § 1390.09) (Ord. 97-24, passed 1-21-1998)

**TITLE XV: LAND USAGE / CHAPTER 150: GENERAL PROVISIONS / WIRELESS
TELECOMMUNICATION TOWER PERMIT / § 150.119 CONSTRUCTION PERMITS.**

§ 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

**TITLE XV: LAND USAGE / CHAPTER 150: GENERAL PROVISIONS / WIRELESS
TELECOMMUNICATION TOWER PERMIT / § 150.120 TOWER STANDARDS.**

§ 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) (1) *Design.*

(a) To blend into the surrounding environment through the use of color and architectural treatment;

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

(c) 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; and

(d) 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.

Lake Elmo, MN Code of Ordinances

(2) *Setbacks from lot lines.*

(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) 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.

(c) 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.

(e) 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.

(3) *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

TITLE XV: LAND USAGE / CHAPTER 150: GENERAL PROVISIONS / WIRELESS TELECOMMUNICATION TOWER PERMIT / § 150.121 LIGHTING.

§ 150.121 LIGHTING.

Lake Elmo, MN Code of Ordinances

At night, wireless telecommunication towers shall not be illuminated by artificial means.

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

TITLE XV: LAND USAGE / CHAPTER 150: GENERAL PROVISIONS / WIRELESS TELECOMMUNICATION TOWER PERMIT / § 150.122 SIGNS AND ADVERTISING.

§ 150.122 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

TITLE XV: LAND USAGE / CHAPTER 150: GENERAL PROVISIONS / WIRELESS TELECOMMUNICATION TOWER PERMIT / § 150.123 INTERFERENCE WITH PUBLIC SAFETY TELECOMMUNICATION.

§ 150.123 INTERFERENCE WITH PUBLIC SAFETY TELECOMMUNICATION.

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

TITLE XV: LAND USAGE / CHAPTER 150: GENERAL PROVISIONS / WIRELESS TELECOMMUNICATION TOWER PERMIT / § 150.124 PROHIBITED SUBDIVISIONS.

§ 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.

Lake Elmo, MN Code of Ordinances
(1997 Code, § 1390.15) (Ord. 97-24, passed 1-21-1998) Penalty, see § 10.99

TITLE XV: LAND USAGE / CHAPTER 150: GENERAL PROVISIONS / WIRELESS TELECOMMUNICATION TOWER PERMIT / § 150.125 ACCESSORY UTILITY BUILDINGS.

§ 150.125 ACCESSORY UTILITY BUILDINGS.

All utility buildings and structures accessory to a tower shall be architecturally designed to blend in with the surrounding environment.

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

TITLE XV: LAND USAGE / CHAPTER 150: GENERAL PROVISIONS / WIRELESS TELECOMMUNICATION TOWER PERMIT / § 150.126 GROUND-MOUNTED EQUIPMENT.

§ 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

Planning for Cellular Towers

by Ben Campanelli

Seated in the front row of the meeting room is a group of stern-faced town residents. Sitting to the rear is a tightly knit cadre of business attired people armed with display boards, brightly colored transparency overlays, and stacks of neatly stapled handouts. Are they the Wal-Mart group? No, that's next month. It must be those tower people.

Both groups wait patiently as the items on the agenda are slowly dispensed. The front row participants perk-up when the tower agenda item is read: A public hearing will now be held considering the application of New Age Wireless, a Delaware Limited Partnership request for approval of a 195 foot wireless communication "utility" facility proposed in an R-1 residential district.

WHY SO MANY TOWERS?

As a planning commissioner or zoning board member, if you haven't already been through a tower request, you probably soon will. In fact, chances are you will get to hear quite a few of them. In the early 1980s, the Federal Communications Commission (FCC) granted licenses to two competing cellular phone providers in each community. Over the last 15 years, cellular telephone firms have installed some 22,000 antenna support structures. They have used existing building rooftops, towers, water tanks, and similar structures — and occasionally built new towers when no other alternatives were available.

Starting in late 1995, from three to six additional "next generation" Personal

Communication Service (PCS) licenses have been auctioned-off by the FCC, giving high bidders the right to build digital wireless phone networks which compete with standard cellular service. They have paid substantial sums of money for the right to operate under these licenses. See "Personal Communication Services," on page 10.

Industry analysts predict that between 122,000 and 250,000 new cell sites will be needed to meet the growing demand of cellular phone subscribers in the United States alone. As many as half of these sites will require new towers, especially in suburban and rural areas where few suitable tall structures are available to lease as antenna support platforms.

Did the FCC and Congress know what was coming to American towns and villages? While the landmark Telecommunications Act of 1996 does indicate an intent to preserve the authority of state and local governments over decisions regarding the "placement, construction, and modifications of personal wireless services," Section 704(a) of the Act states:

"The regulation of the placement, construction, and modification of personal wireless service facilities by any State or local government or instrumentality thereof shall not unreasonably discriminate among providers of functionally equivalent services and shall not prohibit or have the effect of prohibiting the provision of personal wireless services." (emphasis added).

The Act also expressly preempts state and local governments from regulating personal wireless communications facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the FCC's regulations concerning such emissions. [Editor's Note: For more on the Telecommunications Act's require-

ments, see pages 7-9 of this issue].

Complicating things further are court rulings in several states which have bestowed "utility use" status to wireless telecommunication facilities, allowing them in all land-use zones as if they were the local utility pole, cable junction box, or electric sub-station facility. The "utility" definition is not far off the mark, however, when one realizes that the new PCS wireless providers are vying not only for the mobile communication marketplace, but for serving as a substitute for the wired phone lines presently in your home or place of business.

TIME IS MONEY

Many wireless providers optimistically plan for only a six to eight month time period for acquiring, permitting, and building their initial set of transmission facilities in order to launch new wireless service in a community. Often two or more wireless providers compete for the same scarce "friendly" sites within the target market, sometimes driving prices up for available antenna space.

With over \$20 billion being spent by wireless carriers for the privilege of operating public frequencies, it's no surprise the industry is attempting to gain quick approvals of their new tower sites to begin offering service to the public. And it is understandable when major wireless telecommunication companies sue local governmental agencies for passing moratoria on new tower site applications while they take a look at their applicable regulatory codes.

What can planning agencies do, given the provisions of the 1996 Telecommunications Act which strongly favor the growth of the wireless communications industry?

Many communities, in consultation with their legal counsel, are developing or modifying zoning ordinances to

ensure local review consistent with the requirements of the Telecommunications Act. Not as often focused on, but in the long-run even more beneficial, is strong county or regional planning for the siting of cellular towers. This is best done through a collaborative effort involving all parties interested in the issue — public and private.

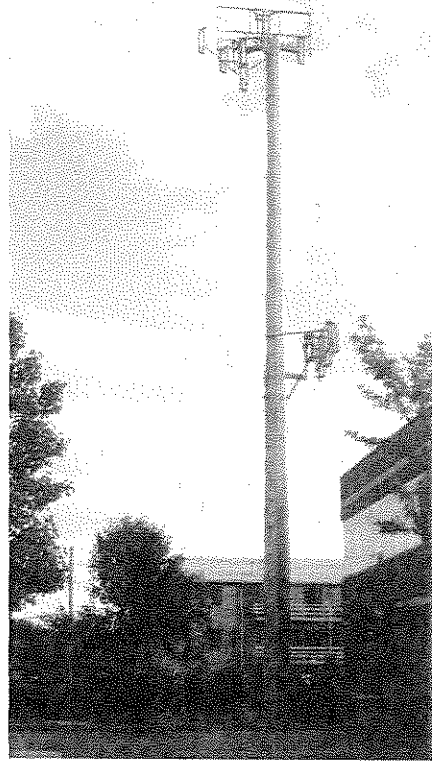
ROLE OF COUNTY & REGIONAL PLANNING

County and regional planning agencies are well-situated to assist communities in making sure that new cellular towers are planned to minimize negative impacts. Given that cellular providers plan their networks from a regional (and broader) perspective, it makes sense for the public to plan for the siting of telecommunications facilities at the same scale — instead of each locality seeking to plan for tower siting independently of neighboring communities.

Based on my experience, the following are some actions that county or regional planning agencies can take to help ensure that the siting of cellular towers meshes with local (and industry) needs.

1. Provide community educational workshops and forums at which planners, industry representatives, and local residents can discuss — and begin to cooperatively plan for — the development of cellular networks in their area.

2. Conduct a county-wide inventory of existing structures suitable for use as antenna support platforms, such as communications towers, buildings 70' or taller, water tanks, and inactive chimneys. As part of the inventory, also identify existing or planned public facilities and lands upon which antennas might be mounted or towers constructed — e.g., government centers, public works operation yards, police and fire stations,



Short monopole -100' w/split panel array (cellular)

surplus highway right-of-ways.

3. Classify and prioritize preferred land use areas for new towers. This step will require cooperation and input not just from local governments within the county/region, but from the wireless communications providers.

4. Maintain a central data-base and map of inventoried existing structures, potentially available public facilities and land, and preferred land use areas.

5. Have wireless service providers submit, and annually update, a county-wide antenna network plan.

6. Develop criteria for tower siting and design, including preferred construction materials, types and colors, setback requirements, height restrictions, accessory equipment location, fencing, access road criteria, co-location capacity certification, FAA lighting requirements, and ground screening.

7. Develop incentives to encourage good tower design and co-location of towers (i.e., having more than one cellular service provider locate their transmit-

ters on a single tower). Incentives might include tax abatements for “stealth” or camouflaged towers, and an expedited review and approval process for towers proposed within preferred land use areas, using public facilities, or co-locating with other providers. *“Stealth” Towers, p. 6*

8. Prepare criteria or a checklist for new tower approval (which can be used at the county/regional level, or adapted for local use). Among items which might be included:

- Review of site search ring analysis reports documenting the scope of the applicant’s search for existing structures or property owners in preferred land use areas and the rationale for selecting the site under consideration.

- Review of visual impact analysis, including “simulations” or digitally reproduced depictions of a “virtual” tower of like size and type viewed from various locations around the proposed site. *See also, “Visual Analysis,” on page 11.*

9. Provide planning and engineering assistance to communities, including help with review of tower applications.

Time to go home. It’s now ten-thirty P.M. Everyone’s patience is wearing a little thin.

The tower applicant’s lawyer didn’t know if the owners of the 440’ FM radio tower on Harris Hill Rd. in the town had been asked if it could be used as an antenna site. The applicant’s radio frequency engineer testified that he didn’t believe the site would work because it was 1 1/2 miles from the site search ring and would interfere with a cell site planned in an adjacent town. He didn’t have signal propagation coverage maps with him to back-up his assertion.

As the night wore on, it only got

continued on page 6

Wireless Network Design

The communications site acquisition process is like right-of-way acquisition work associated with utility facility build-out projects. Both involve land acquisition before the project can proceed. An important difference is that the wireless industry does not have the power of eminent domain. As more wireless carriers "mine" site rings in each community, building and land owners are becoming more familiar with the rules of the game. Even when owners are aware of controversial proposed tower sites in their region, a willing owner with a suitable site can almost always be found within a typical site ring.

There are various techniques for designing wireless communications "grids." A grid is a set of geographic areas or "cells" which organize the radio signals for the specific wireless service so that needs of prospective users operating cellular phones in the system are met.

1. **The Perfect Grid.** A "perfect grid" wireless network plan looks like a honeycomb with each propagation "ring," or cell, having a hexagonal shape which interlocks with adjoining cells forming a seamless grid. See Figure 1.

2. **The Grid-in-Progress.** The construction program is rolled-out in phases with emphasis on providing coverage first to the most lucrative areas within a market. Targeted areas include downtowns, suburban commercial zones, industrial parks, entertainment districts, shipping facilities, inter-state highways, marinas, and airports.

3. **Site Rings.** A coverage ring is the total contiguous land area which is intended to be served by a cell site base station facility. A site search ring is the area inside a coverage ring within which a suitable "friendly" structure or land-lease parcel must be acquired for use as a base station facility. See Figure 2.

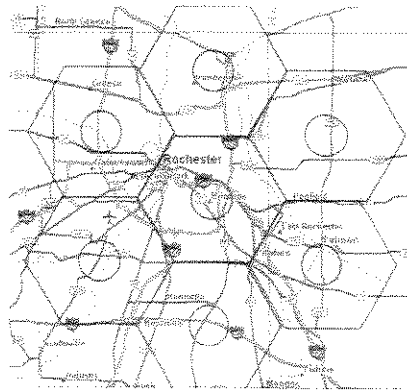


Figure 1—The Perfect Grid

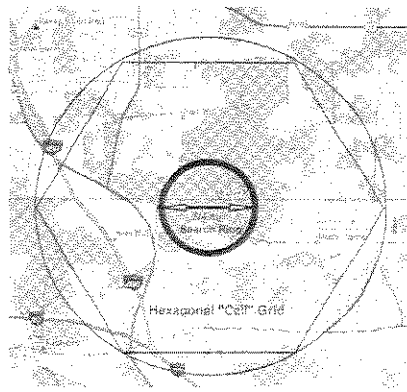


Figure 2—Site Rings



"Stealth" Towers

No, they're not part of a secret Defense Department program. "Stealth" towers are simply towers which are camouflaged in ways to minimize their visibility. For service providers, the often triple costs of building such towers must be weighed against the potential legal and intangible public relations costs associated with an all-out brawl with local government approval agencies, impacted property owners, and neighborhood associations — as well as the lost potential revenue generated by each site during the delayed months it's not on the air. See also "Camouflaging" on page 11.

Planning for Cellular Towers

continued from page 5

worse. The applicant's site acquisition consultant admitted he did not contact the town's public works director to see if the DPW's 40' roof-mounted tower stub could be rebuilt to accommodate both the town's antennas and the applicant's base station equipment.

In response to the neighbors' concern about the health effects from radio signals emitted from the proposed antennas, the applicant's expert consultant told them that the high powered TV broadcast towers and 50,000 watt radio station signals emanating from miles away were far more powerful than what the applicant's signal levels were going to be.

The commission votes to table the tower application so that the applicant can do more homework and answer all the questions put forward at the meeting. The neighborhood folks are outside in the parking lot discussing whether they should hire their own lawyer to fight the proposed tower. Someone's cellular phone rings. It's one of their kids asking his dad to pick-up a pizza they've ordered for a sleep-over party. It's time to go home. ♦

Ben Campanelli heads CommQuest, a communications site acquisition consulting firm which emphasizes working closely with government planning and zoning agencies when siting towers for industry clients. He has



been involved with telecommunications issues the past eleven years. Prior to that, he served in various positions with the City of Rochester, New York, including Deputy Commissioner of Buildings and Property Conservation.

Campanelli is author of the Cellular Tower Guide, a resource manual for local officials, land-use planners and legal professionals on the wireless communication business and site acquisition process. For ordering information, contact Campanelli at: 20 Shaftsbury Rd., Rochester, NY 14610; phone & fax: 716-482-4063; e-mail: cquest@frontiernet.net.



Sticks in the Air, Stakes in the Sand

by R. Todd Hunt, Esq.

Not since the advent of funding for the interstate highway system, has federal legislation had such a visual impact upon the landscape as has a very small section of the federal Telecommunications Act of 1996. Unless a community's municipal officials, by rare circumstance, have not received a tower facility application from a personal wireless telecommunication service provider, they most likely have bumped up against [section 704] of the 1996 Act that deals with personal wireless service facilities and their relation to local land use regulation.

It is imperative that local governments update their local zoning and land use regulations to accommodate the provisions of Section 704 if they hope to have much say in the siting of communication tower facilities. As one of the technical consultants I have worked with over the past year continually reminds me, once "an engineering stake is driven in the sand" for a tower (analogous to the proverbial "drawing of a line in the sand"), the wireless tower technology dictates that the options for the siting of surrounding towers is necessarily reduced.

In assisting various communities over the past year on these issues, I have seen several trends develop. Some communities attempt to deal with the 1996 Act by using traditional zoning methods of confining tower facilities to certain zoning districts, such as industrial and commercial districts, and imposing very restrictive height, setback and aesthetic requirements, such as substantial landscaping, painting of facilities certain colors, or even camouflaging towers to make them appear to be trees in the neighborhood.

Depending upon the size and characteristics of the municipality, these traditional zoning methods can either

effectively eliminate the provision of wireless services in the community or, at the other end of the spectrum, be overly permissive causing proliferation of such facilities in the community.

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A much more effective method of developing zoning and land use regulations has been to seek the assistance of both planning and wireless telecommunication experts to perform a comprehensive study of the community, its topography, its land uses and its proposed land uses in order to pinpoint specific land areas in the community that are more acceptable than others for tower facilities.

The next step is to create a hierarchy of those acceptable land areas that have been identified in the study. The concept of an overlay zoning district works well in this situation. The overlay district retains the underlying zoning regulations, where not specifically superseded by the new regulations, and does not necessarily track existing zoning district lines.

For example, certain large tracts of governmentally-owned land, large industrial sites, limited access highway locations, and high tension electric power line areas may be more acceptable for towers than certain general commercial areas or residentially-zoned areas. Designating some of those more acceptable areas as "permitted use" areas for tower facilities and designating the location or

collocation of antennas on existing tall structures as "permitted uses" in local codes will often provide the wireless telecommunication companies sufficient adequate options for siting tower facilities without facing a long, drawn-out review by a local planning or zoning board.

Furthermore, designating certain large tracts of vacant land in residentially-zoned areas, other more sensitive commercial areas, or certain public facility use areas as areas for "conditionally-permitted uses" with stricter standards of review by a local planning or zoning board has proven effective. An effective condition to be placed on such a conditional use permit is to require the company to provide proof that it is unable to locate its tower facility within one of the "permitted use" areas in the local code.

This hierarchy of land use areas and levels of administrative review of permits has already worked effectively in some communities. For example, the new PCS companies which are actively building out their systems have greater flexibility in the siting of such facilities and have readily sought those areas where the use is "permitted" rather than "conditionally permitted."

With the multitude of personal wireless service providers entering the marketplace, municipal officials must direct the tower facility's engineering stake to be driven in a place in the sand which is most desirable to the community and its residents. ♦

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The Telecommunications Act of 1996

by Brian J. Sullivan, Esq.

Through the Telecommunications Act of 1996 (TCA), Congress and the President placed the United States squarely on the information "superhighway." At its core, the TCA seeks to ensure that American consumers and businesses will have access to increasingly sophisticated communications technologies at competitive rates.

During the decade preceding enactment of the TCA, the demand for cellular communications services grew at an annual rate of 30 to 35 percent. In order to meet this demand, the companies licensed by the Federal Communications Commission (FCC) to provide these services sought to construct "cell sites" on buildings and existing communications towers. Despite their efforts, no suitable structures existed in many areas, and the providers sought permission from zoning boards and planning commissions to erect new communications towers. Many of these applications faced opposition from nearby residents who voiced fears of this seemingly new technology.

New Technology or Old?

The TCA attempts to address the localized resistance to this evolving technology by instituting a national standard for the consideration of cellular and personal communications service (PCS) facility applications. See "Personal Communications Services", page 10. That standard contains three main components: (1) regulation of radio frequency radiation (RFR); (2) prohibitions against activities that effectively prohibit the provision of wireless service or discriminate among providers; and (3) mandates to conduct the local hearing process in a manner that ensures due process and timely decision making.

1. Radio Frequency Radiation (RFR)

Only the Federal Communications Commission (FCC) may regulate personal wireless service facilities — cellular and

PCS sites — regarding RFR. As long as the operators of those facilities comply with the applicable FCC regulations, state and local land use authorities are preempted from taking action based on RFR. In contrast, zoning boards and planning commissions may continue to regulate RFR levels for other facilities, such as television and radio stations.

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As the FCC has observed, most tower-mounted cell sites emit RFR at levels that are hundreds to thousands of times below the applicable exposure limits. Therefore, where the tower-mounted antennas are more than 10 meters (about 33 feet) above ground level, the FCC "categorically excludes" cellular providers from having to prove compliance with the FCC's RFR regulations. In other words, the FCC presumes such compliance.

References: 47 U.S.C. 332(c)(7)(B)(iv); In the Matter of Guidelines for Evaluating the Environmental Effects of Radiofrequency Radiation, ET Docket No. 93-62, Report and Order (FCC, Aug. 1, 1996); Second Memorandum Opinion and Order (FCC, Aug. 25, 1997).

2. Activities that Effectively Prohibit the Provision of Wireless Service, or Discriminate Among Providers.

The FCC typically licenses two cellular providers and up to six PCS providers in each "market." The TCA mandates that competition between these providers be open and free. In the land use climate that exists today, it is more difficult to

obtain required permits for towers than it was some years ago. However, cases decided under the TCA demonstrate that state and local governments cannot treat providers who "got there first" differently than those who follow. Such treatment would give an unfair competitive advantage to the early market entrants.

For example, a court has ruled that a zoning board's denial of a permit for a PCS provider because two cellular providers were already providing service in the same area constituted unreasonable discrimination. Similarly, under the TCA a municipality may not simply decide that it already has enough towers and, on that basis, deny an application.

While the TCA makes clear that no municipality may flatly exclude personal wireless service facilities from within its borders, the law also invalidates local regulations and decisions that *have the effect* of preventing a personal wireless service provider from offering effective service.

Thus a court has found that a municipality's denial of permission to construct a PCS site in an area necessary to serve a busy Interstate highway corridor (where competing companies were providing uninterrupted service) violated the TCA. The court reasoned that the denial would have increased the PCS provider's costs — by requiring it to find a less desirable, alternative site — and thereby reduced its ability to compete throughout its entire network.

In another recent example, a state land use court invalidated the zoning regulations of a Vermont town that effectively excluded cell sites from all of the high ground in that town and limited sites to valleys and floodplains. In making this ruling, the Court held that: "In mountainous and forested terrain, and especially in relatively steep and narrow valleys, cellular phone technology

demands a site that is relatively high in comparison to the surrounding topography." Hence, in such areas, municipalities must make reasonable provision for personal wireless service providers to have access to the high ground.

References: 47 U.S.C. 332(c)(7)(B)(i); *Western PCS II Corp. v. Extraterritorial Zoning Authority of the City and County of Santa Fe, et al.*, 957 F.Supp. 1230 (D.N.M. Feb. 27, 1997); *Sprint Spectrum, L.P. v. Jefferson County*, 968 F.Supp. 1457 (N.D. Ala. July 31, 1997); *United States Cellular Corp. v. Board of Adjustment of the City of Des Moines, Iowa*, LACL NO. CL 000 70195 (Iowa District Court for Polk County Dec. 31, 1996); *In re Appeals of Vermont RSA Ltd. Partnership d/b/a Bell Atlantic NYNEX Mobile*, Docket Nos. E96-192 and E96-205 (Vt. Env. Ct. July 18, 1997).

3. Affirmative Obligations on State and Local Decisionmakers

• *Decision Within a Reasonable Period of Time.* Congress, concerned that opposition to applications for cell sites would result in delays in the local hearing process, mandated that zoning and planning authorities act on such applications within a reasonable period of time. Courts determine reasonableness with reference to the type of application involved. For example, the time typically needed to rule on a conditional use application for a personal wireless service facility should be no different than the time needed to rule on any other conditional use application.

In the first months after enactment of the TCA, the delays that Congress feared did materialize in some communities. Because of these delays (and concerns that remanding an overturned denial to a local zoning board would simply result in more delays or another denial), courts have issued writs of mandamus, compelling boards to issue permits as soon as possible. Very recently, a court has invalidated a moratorium that prevented personal wireless providers from filing any

permit applications in that locality.

• *Denials Must Be in Writing and Be Supported by Substantial Evidence.* If there is an appeal from a denial of an application for a personal wireless service facility, the state or local government bears the burden of proof to show that it based its decision on substantial evidence contained in a written record. The courts have made clear that substantial evidence means more than "conclusory statements for which no explanations are provided." Further, the mere existence of opposition, even numerous and outspoken, does not constitute substantial evidence and, by itself, does not suffice to support a decision to deny an application for a personal wireless service facility.

Instead, substantial evidence requires reliance on specific, concrete evidence presented to the state or local boards. The state or local board must "provide written findings of fact which indicate their evidentiary basis."

References: 47 U.S.C. 332(c)(7)(B)(ii); *Bell South Mobility, Inc. v. Gwinnett County, et al.*, 944 F.Supp. 923 (N.D. Ga. 1996); *United States Cellular Corp. v. Des Moines, supra*; *Illinois RSA No. 3, Inc. v. County of Peoria*, 963 F.Supp. 732 (C.D. Ill. Apr. 28, 1997); *Sprint Spectrum v. Jefferson County, supra*; *Seattle SMSA Limited Partnership, et al. v. San Juan County, No. C96-15212* (W.D. Wash. Apr. 11, 1997).

SUMMING UP:

The thrust of Section 704 of the Telecommunications Act is on fostering the growth of cellular and PCS technologies. To help achieve this, the TCA bars local regulations that have the effect of prohibiting the siting of cellular and PCS towers, or discriminating among service providers. Given the continuing surge in demand for personal wireless services and the corresponding increase in local permit applications for personal wireless service facilities, it behooves local zoning and planning officials to follow these developments closely. ♦

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laude. Sullivan's areas of practice include environmental and land use law and telecommunications issues. He has represented communications providers, as well as municipalities, in a variety of environmental and land use matters.

New Technology or Old?

The basic technology employed at cell sites has existed for decades. A cell site consists of radio equipment and antennas that transmit and receive radio signals at the upper end of the ultra high frequency portion of the electromagnetic spectrum. Due to lack of use by television broadcasters, the FCC, in the early 1980s, reallocated these frequencies to be used for cellular service.

Recent technological advances have reduced the price of cellular services and have made more sophisticated options — such as voice mail and alphanumeric messages — available. Nonetheless, cellular service constitutes a natural evolution of an older method of communication rather than a dramatic shift in technology. Since the 1920s, first broadcasters, then two-way radio and paging companies, have been constructing towers on which they have mounted antennas that emit radio waves. Most of those broadcast towers are far taller and emit signals of much greater power than those used at cell sites.



A Wireless Miscellany

Editor's Note: Thanks to those of you who provided us with information about your community's approach to dealing with wireless towers. Much of the material in this "Miscellany" comes from your input. Our apologies if you sent in information we were unable to include.

Cellular Growth Booms

Telecommunications companies continue to report steep growth in wireless customers. During 1995, Ameritech saw its number of cellular customers rise 45.6 percent to almost 1.9 million. Bell Atlantic NYNEX Mobile reported a 43.4 percent increase in customers over the same period. The BellSouth Corporation saw its revenues from wireless communications increase nearly 70 percent between the end of 1993 and 1995, compared to a 13 percent increase from its overall operations.

Personal Communications Services

PCS stands for "personal communications services," a method of communication similar to cellular. One of the attractions of PCS is that it provides higher quality reception and allows for the transmission of data, as well as voice (though cellular providers are developing comparable capabilities). PCS uses higher frequencies than cellular, which results in PCS signals traveling shorter distances than cellular signals. For this reason, a typical PCS system will require more sites than a typical cellular system.

Unlike cellular services, PCS providers are issued a blanket license by the Commission for their entire geographic area, and are not required to individually license with the FCC each transmitter site within the market area. Another distinction is that the FCC uses different geographic market areas for licensing purposes. Instead of using MSAs and RSAs as in the case of cellular, for broadband PCS the Commission adopted Rand McNally's definitions to divide the United States and its Possessions and Territories into 51 major trading areas (MTA) and 493 basic trading areas (BTA).

Moratoria

The FCC is currently considering a petition filed by the Cellular Telecommunications Industry seeking to prohibit all local zoning moratoria affecting the siting of wireless telecommunications facilities.

The FCC's Local and State Government Advisory Committee has opposed this request noting that: "Moratoria have permitted communities, often in close consultation with industry representatives, to modify out-of-date regulations and facilitate the placement of facilities. In many communities, the adoption of a moratorium has been followed by the adoption of clear siting policies and procedures that properly balance local safety and aesthetic concerns with the desire of many local residents to have access to reliable personal wireless services." *Advisory Recommendation Number 4 (June 27, 1997).*

While the FCC has not (as of October 1) ruled on the cel-

lular industry petition, it hinted at its position by "tentatively concluding" in a July 28, 1997 Public Notice (FCC 97-264) that "moratoria of a fixed duration, which permit local officials the opportunity to study and develop a process for handling siting requests would be a legitimate exercise of local land use authority ... moratoria of a relatively short and fixed duration may serve the public interest."

The documents cited above are available on the FCC's Web site: <http://www.fcc.gov/wtb/> — which is also an excellent place to keep up-to-date on FCC policies and rulings.

Co-Location

Co-location (sometimes spelled "collocation") is when more than one antenna or transmitter is located on a single tower. The principal benefit from co-location is that fewer towers are needed to serve a given area. This reduces the overall visual impact of towers on a community. Co-location, however, can necessitate taller towers in order to accommodate multiple transmission devices. It can also raise tricky issues involving "good faith" negotiations between the company owning the tower and potential competitors seeking to share space.

Co-location has become a favored policy in many communities and regions. For example, the City of Solon, Ohio's ordinance provides that "as a condition of issuing a permit to construct or operate a tower in the City, the owner/operator of the tower is required to allow co-location until said tower has reached

full antenna capacity, but in no event fewer than two additional antennas from two additional providers." The owner/operator is also required "to sign a statement that all disputes with future providers concerning co-location and the terms and conditions of co-location shall be submitted to commercial arbitration" Given the City's strong preference for co-location, tower heights up to 199 feet are allowed (in order to accommodate the extra height usually needed for locating additional antennas on a tower).

Daly City, California's, new wireless communications ordinance similarly encourages co-location. When applying for a permit, "the applicant shall specifically state the reasons for not co-locating on any of the existing monopoles and lattice towers within a 3,000 foot radius. ... the applicant may also be asked to provide a letter from the telecommunications carrier owning or operating the existing facility stating reasons for not permitting co-location." The Daly City ordinance also provides that "as a condition of approval for all freestanding monopoles, all telecommunications carriers proposing a monopole shall provide a written commitment to the Director [of Economic & Community Development] that they shall allow other wireless carriers to co-locate antennas on the monopoles where technically and economically feasible."

In Vermont, the Windham Regional Plan includes a policy to "discourage the development of new sites for transmission and receiving stations in favor of utilizing existing



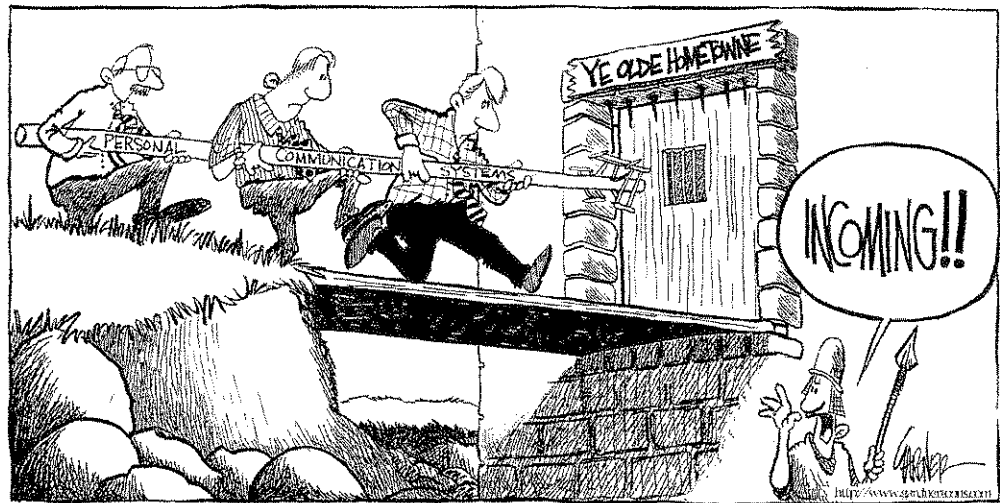
facilities." This policy was recently applied by the state Environmental Board in denying a land use permit for a 110 foot communications tower. The Environmental Board concluded that the applicant failed to adequately identify and assess existing facilities and failed to negotiate in good faith with the owners of other existing facilities. *Gary Savoie, #2W0991-EB (Aug. 27, 1997)* [Note: The Board's decision contains an interesting analysis of some of the issues that can come up in determining whether an applicant has been negotiating in "good faith" to co-locate on another carrier's tower].

The City of Overland Park, Kansas, communications towers ordinance contains several provisions designed to encourage co-location. One limits initial special use permits for towers to five years. "At the time of renewal the applicant shall demonstrate to the satisfaction of the City that a good-faith effort has been made to cooperate with other providers to establish co-location at the tower site." The ordinance defines "good-faith effort" as including "timely response to co-location inquiries from other providers and sharing of technical information to evaluate the feasibility of establishing co-location."

Camouflaging Towers

Another policy encouraged in many new telecommunications tower ordinances is to camouflage towers and related equipment, or make them as inconspicuous as possible.

The City of Liberty, Missouri's wireless communications ordinance encourages the use of "alternative tower structures" (such as grain silos, utility poles, clock towers, and steeples), as well as other



existing buildings, by providing a simpler review process for those applications.

According to city planner Bonnie Johnson: "The plan adopted by the City Council takes the approach of being flexible on location but strict on design. The ordinance allows wireless communication facilities in any zoning district as long as it fits its surroundings. The hope is that by being lenient on location and creating a relatively simple approval process — for example, antennas placed on existing buildings can be approved administratively — telecommunication providers will choose the path of least resistance which are camouflaged facilities or roof tops in commercial areas."

Along similar lines, the Town of Matthews, North Carolina, seeks to encourage "stealth" towers by allowing them within residential districts and by authorizing increased heights for stealth towers in other districts. The Matthews ordinance defines "stealth or concealed structure" as "the support structure for a communications system which is primarily for another principal use or accessory to the principal use on the lot where it is located, and partial-

ly or wholly conceals the antenna or minimizes its appearance in relation to the principal use of the stealth structure."

Planning Director Kathi Ingrish notes that "Duke Power Company has begun offering their transmission towers as antenna locations, so we specifically wrote in allowances to exceed height limits when on existing 'stealth' structures." Ingrish also observes that "for Matthews, what I see as the 'saving grace' is the local power company's participation in the communications game. They are marketing themselves as a host for antennas. Since there are four transmission lines running out from a central point, and their towers are much taller than anything else around, they provide good opportunities for antenna locations without adding new spikes into the horizon."

A number of companies have already recognized that there is a rapidly growing market for camouflaged towers. The Larson Company, based in Tucson, Arizona, has built on its specialty of fabricating artificial landscapes for theme parks and zoos by developing ways of disguising poles so that they look, for example,

like Date Palm or Lodge Pine trees. Similarly, Stealth Network Technologies of North Charleston, South Carolina, designs and installs antenna sites concealed in bell towers, false chimneys, and other custom-made structures.

Visual Analysis

As Ben Campanelli suggests in his article in this issue (see page 5), planners can require tower applicants to provide a visual analysis or simulation of what the tower will look like in its surroundings. A number of communities have incorporated this type of requirement into their telecommunications tower ordinances.

The City of Overland Park, Kansas, for example, requires that a special use permit application for a communications tower include, among other things, "a photo simulation of the proposed facility from effected residential properties and public rights-of-way as coordinated with the Planning staff." Similarly, Daly City, California's ordinance provides for "visual impact demonstrations using photo-simulations ... elevations or other visual or graphic illustrations to determine potential visual impact."

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Visual Analysis

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Sonoma, California's new wireless ordinance requires that applicants "submit a visual analysis, which may include photo montage, field mock up or other techniques, which identifies the potential visual impacts of the proposed facility. Consideration shall be given to views from public areas as well as from private residences. The analysis shall assess the cumulative impacts of the proposed facility and other existing and foreseeable telecommunication facilities in the area, and shall identify and include all feasible mitigation measures consistent with the technological requirements of the proposed telecommunication service. All costs for the visual analysis, and applicable administrative costs, shall be borne by the applicant."

"Tiered" Review

A number of communities that have recently adopted telecommunications tower ordinances have made use of "tiered" review. This approach seeks to encourage new antennas to be located on existing buildings (or co-located on existing towers) by providing for quick approval, often administratively by staff, in those cases. Closer scrutiny is given to applica-

tions

involving the construction of new freestanding towers.

Claremont, California, planners note that this approach "makes it easy to obtain permits for the types of telecommunications facilities that the community prefers, such as facade mounted or concealed roof mounted antennas, and makes it more difficult and expensive to obtain approvals for the types of facilities that the community wants to discourage, such as freestanding monopoles."

The Cape Cod Commission, in a model bylaw (i.e., ordinance) prepared for its member towns, employs a tiered review process. According to the Commission: "New facilities which locate on an existing tower, monopole, electric utility tower or water tower require no special permit under the bylaw, as long as they do not increase the height of the structure and as long as they gain site plan approval. The second tier proposed in the bylaw would allow new ground or building mounts anywhere in town by special permit, provided they meet standards for height, camouflage, setback, safety and design. The third tier is for facilities which exceed the bylaws height restrictions. Such facilities would be allowed by special permit only in a designated overlay district which the town has decided can accommodate the new structures."

In addition, the Cape Cod Commission itself reviews most new tower proposals as "developments of regional impact." The Commission has adopted criteria for evaluating towers based on environ-

mental impacts, community character, and other factors.

To assist wireless providers, the Commission has integrated into its geographic information system (GIS) a Cape-wide inventory of existing buildings and structures which may be suitable for antenna installations. The towns have also provided information on areas in which wireless facilities would be both appropriate and inappropriate. This has been incorporated into the GIS maps (along with water resource and conservation areas, state and federal lands, and electric transmission corridors). The Commission is currently in the process of identifying scenic viewsheds to include on the maps as well.

Environmental Review

In implementing the National Environmental Policy Act (NEPA), the Federal Communications Commission requires applicants to prepare "environmental assessments" for towers that are proposed to be located in certain environmentally sensitive areas, including: officially designated wildlife preserves or wilderness areas; 100-year floodplains; situations which may affect threatened or endangered species or critical habitats; or situations which may cause significant change in surface features, such as wetland fills, deforestation or water diversion. In addition, an environmental assessment must be prepared when sites listed or eligible for listing in the National Register of Historic Places may be affected.

The fact that an environmental assessment is required does not necessarily mean the tower cannot be built. It does, however, call for public notice and opportunity to comment on the environmental impacts

of the proposed tower. If the FCC, after review of the comments, makes a finding of "no significant impact," the project has cleared NEPA scrutiny.

More information on FCC environmental review and other siting questions is available in FCC Fact Sheet #2, National Wireless Facilities Siting Policies. This 39-page document is available by fax: 202-418-2830 (reference document #6508), and on the FCC's Web site: <http://www.fcc.gov/state&local/>

Municipal Profits from Towers

If you can't stop towers from coming in, why not at least profit from them? That's the approach Gastonia, North Carolina (population 62,000) and some other communities have taken by encouraging towers to be located on municipal property, such as parks, golf courses, and school fields.

According to Gastonia planning director Jack Kiser, "the city actively markets municipal property to the cellular industry as site locations." The approval process is much simpler when a site is proposed on municipal land. For example, no public hearings are required. Kiser reports that Gastonia can earn in excess of \$15,000 per year in lease payments for a tower located on city property. Moreover, if a second cellular provider co-locates on a tower (as the city encourages), the city takes in 50 percent of the payment that provider makes to the tower owner. All told, Gastonia will earn \$80,000 next year from the five towers (four of which have co-locators) currently on city-owned land. These towers will yield \$3 million over a 25 year period, not counting taxes, if they stay that long.

The city has also benefited



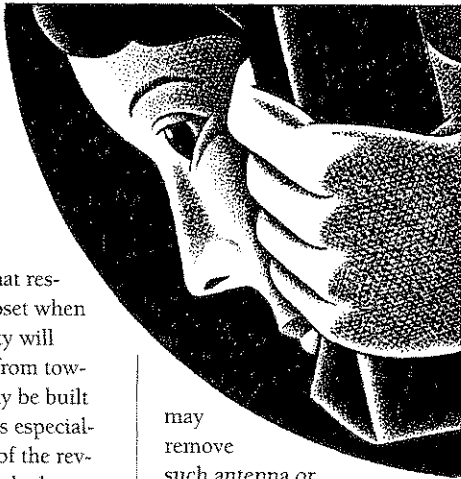
by being able to co-locate, at no cost, all municipal antennas (emergency, non-emergency, and mobile data terminals) on the towers being built.

Kiser believes that residents are not as upset when they see that the city will financially benefit from towers that would likely be built in any event. This is especially the case if some of the revenues can be earmarked to improve the public area within which the tower is located. Kiser also notes that the telecommunications companies have supported the city's policy, since it meets their top priority of getting their facilities installed as quickly as possible.

Abandoned Towers

While right now it's boom times in the wireless communications industry, it's always hard to predict where technology will be ten or twenty years from now. As a result, many communities with new wireless tower ordinances have wisely included provisions making the tower owner responsible for removing the structure if it stops being used for communications purposes.

The Overland Park, Kansas, communications tower ordinance is typical in providing that "any antenna or tower that is not operated for a continuous period of twelve months shall be considered abandoned, and the owner of such antenna or tower shall remove the same within ninety days of a receipt of notice ... If such antenna or tower is not removed within said ninety days, the governing authority



may remove such antenna or tower at the owner's expense."

Public Health Impacts

[From a report published by the Vermont Natural Resources Council]

"The electromagnetic spectrum consists of both ionizing and non-ionizing radiation. Ionizing forms of radiation include ultraviolet rays, X- and Gamma rays, and Cosmic rays from the sun. Their harmful effects, particularly their potential to cause cancer, are well known. ...

Radiofrequency fields, including microwaves, are within the non-ionizing spectrum, but that doesn't mean they're completely safe. Their known danger is that under some circumstances — for example, at the transmission point for FM radio signals — they can produce enough energy to cause heating in conductive materials, including human tissue. The heating, or "thermal," effects of high-frequency, non-ionizing forms of radiation are understood; to prevent them, owners of broadcast towers are required to erect fencing and/or post signs to keep the public at a distance from the facilities.

Where the opinion of science is divided, however, is in

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Some Observations

by Robert Baldwin

Municipal tower regulations can generally be divided into the following broad categories:

1. Regulations that require every request for a tower to go through a zoning process of some sort, either to obtain a special exception, conditional use permit, or some other type of commission approval;
2. Regulations that allow towers by right in some districts, provided that certain development standards, such as setbacks from residential districts, are met, but prohibit towers in residential districts;
3. Regulations that through the use of such stringent locational criteria on the placement of towers essentially prohibit them; or
4. Regulations that are silent as to tower locations or exempt towers from the height regulations established in the zoning regulations.

Most of the municipalities we work in require that every tower be approved on a case-by-case basis. The regulations often do not specifically address wireless communications towers, but the cities have determined that these types of towers fall under the generic land use for radio, television, or microwave towers and, as such, require a specific use permit or are classified as conditional uses.

In my experience, cities that require every tower to be heard and approved by a board or commission tend to have the hardest time with towers. This is especially the case in larger communities, where a board or commission may be facing several tower requests a month. I have been to a meeting where the board of adjustment heard 15 separate tower requests!

If elected and appointed officials are getting tired of this, and are approving most tower requests anyway, it probably makes sense to restructure the regulations to allow towers by right in certain locations, but prohibit them in other areas. For example, a city might allow, by right, communications towers up to 120 feet in height in all industrial zoning districts, as long as the towers are at least 300 feet from the nearest residential zoning district.

This type of approach works well provided that the areas where towers are permitted are distributed across the city. City officials do not have to hear and decide every tower request, residential areas can be protected from new towers in close proximity, and communications companies will know in advance where their towers can go.

I have also worked in communities with ordinances so severe that towers are essentially prohibited. Since the Telecommunications Act now provides that local regulations cannot "prohibit or have the effect of prohibiting the provision of personal wireless services" these ordinances may run afoul of the federal law.

There are also communities whose zoning ordinances are totally silent on towers. Chances are, if an ordinance has not been revised in the last ten years, towers are either not mentioned or exempted with a passage that reads "height limits do not apply to radio or television antennas." If your ordinance falls into this category, it is a good idea to fix it.

Robert Baldwin is a planner with the Dallas, Texas, law firm of Munsch Hardt Kopf Harr & Dinan. He has been involved in the siting of a number of wireless towers.



Public Health Impacts

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regard to exposure to non-thermal (or athermal) energy waves, which do not heat body tissue. ... While proof of danger from exposure to non-thermal RFR [radiofrequency radiation] thus far has remained elusive, theories of negative effects include that such exposure indirectly damages DNA, and, perhaps, the electrical transmissions involved in the nervous system. ... The Cancer Journal (Vol. 8, No. 5) provides a cautious voice, stating: 'Epidemiology has seen a large number of examples where health hazards were initially described with unconvincing and sometimes inadequate experiments which demonstrated a weak association with a given environmental influence. Such associations were found between cholera and drinking water containing fecal contaminants, between smoking and lung cancer or between exposure to vinyl chloride and certain forms of liver cancer. All these associations were highly questioned in the past and are now well recognized.' ...

On August 1, 1996, responding to the Congressional mandate as enunciated in the TCA [Telecommunications Act], the FCC adopted new health and safety regulations for exposure. These are based on standards established by the National Council on Radiation Protection and Measurement, a congressionally chartered organization. ... They are scheduled to become effective September 1, 1997.

It is important to note that the FCC addresses health concerns by controlling for exposure — not emissions. A licensee might simply be required to post signs or erect fences around a microwave transmission facility to keep

the public at a distance. And the new NCRP standards ... calculate only for thermal exposure. Questions about long-term, low-level exposure remain unaddressed. ...

Concern about the health effects of emissions from a cellular tower is not a permissible basis for making local zoning decisions if the tower is in compliance with FCC standards; it is, however, a permissible basis for regulating radio and television towers, and other facilities that do not fall within the definition of 'personal wireless services.' Moreover, local authorities may regulate 'personal wireless service facilities' to the extent they do not comply with the FCC guidelines. ... But first it must be determined that they are out of compliance.

Spot inspections by the FCC are not routine, and long periods of time separate a facility's relicensing procedure, when such an evaluation might be done. Thus it would seem an appropriate investment for Vermont's state government ... to see to it that municipalities were equipped and enabled to periodically determine the compliance status of the towers and transmission facilities within their borders."

Reprinted with permission from Telecommunications and Broadcasting Transmission Facilities in Vermont (August 1997, Vermont Natural Resources Council).

Editor's Note: While this just-released report primarily focuses on wireless communications within Vermont's regulatory context, it does include material which may be of interest to readers outside of Vermont — in particular, two chapters dealing, respectively, with radiofrequency interference and public health impacts (from which the material in this sidebar was excerpted)

The report is available for \$10 from the Vermont Natural Resources Council, 9 Bailey Ave., Montpelier, VT 05602; 802-223-2328; e-mail: VNRC@plainfield.bypass.com

Additional information about the health impacts of exposure to electro-magnetic fields is available at the National Institute of Environmental Health Sciences Web site: <http://www.niehs.nih.gov/emfrapid/html/other.htm>

Wireless Benefits

The Federal Communications Commission on the benefits of wireless technology:

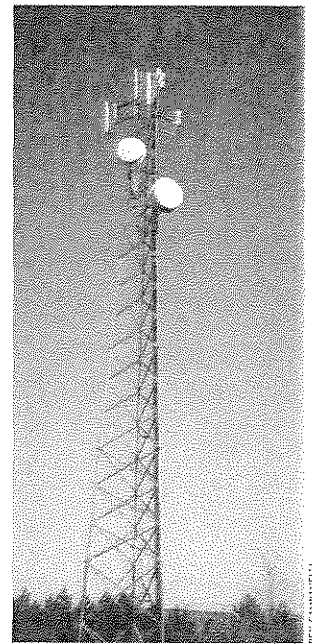
"Personal wireless services are not just car phones for businesses. Due to technological innovation and the continuing availability of additional spectrum, PCS and cellular providers are offering lightweight portable phones at increasingly affordable prices that enable consumers to make and accept calls anywhere and at anytime. It is also anticipated that providers of personal wireless services will offer wireless computer networking and wireless Internet access. Many PCS providers also intend to offer a service that will eventually compete directly with residential local exchange and exchange access services. The inherent flexibility of wireless services makes it possible to introduce new service offerings on a dynamic basis as consumer demands grow and change.

Wireless services are also integral to many businesses that rely on mobility of their operations to provide goods and services to consumers. Communicating by a wireless network enables companies in various businesses, from car rentals to package delivery, to operate in a more efficient manner, and to ultimately lower the cost to the consumer while improving the quality

of service.

It is also worthwhile to keep in mind that the antenna structures required to deploy personal wireless services can be used for other purposes that could benefit your community. For example, a community that has a long-term plan to improve its public safety communications may be able to expedite that process by teaming with personal wireless service providers to construct new sites that could be used for deployment of both public safety and personal wireless communications. Furthermore, wireless telecommunications and data services play an increasing (and increasingly sophisticated) role in providing healthcare services. Personal wireless service providers may also serve as a lower-cost source of advanced telecommunications capabilities for schools and libraries."

From FCC Fact Sheet #2. Information on how to obtain this document is available at the end of the "Environmental Review" note on page 12.



150' Lattice tower with microwave dishes.

On the Horizon

The broadcast industry this August filed a petition with the FCC to drastically curtail state and local review of the siting of DTV (digital television) towers — the “next generation” of broadcast towers.

According to the FCC's notice of rulemaking: “Petitioners state that the accelerated DTV transition schedule [approved by the FCC] will require extensive and concentrated tower construction. They estimate that 66 percent of existing television broadcasters will require new or upgraded towers to support DTV service, involving an estimated 1000 television towers. Moreover, they state, as a result of the increased weight and windloading of DTV facilities and other tower constraints, a number of FM broadcast stations which have collocated their FM antennas on television towers will be forced to relocate to other existing towers or to construct new transmission facilities. ...

Petitioners propose a rule which provides specific time limits for state and local government action in response to requests for approval of the placement, construction or modification of broadcast transmission facilities ... [generally] requests would have to be acted upon within 45 days. Failure to act within these time limits would cause the request to be deemed granted. ... Petitioners would categorically preempt regulations based on the environmental or health effects of radio frequency (“RF”) emissions to the extent a broadcast facility has been determined by the Commission to comply with its regulations and policies concerning emissions; interference with other telecommunications signals and consumer electronics devices as long as

the broadcast antenna facility has been determined by the Commission to comply with its applicable regulations and/or policies concerning interference. ...

Further, the rule would preempt all state and local land use, building, and similar laws, rules or regulations that impair the ability of licensed broadcasters to place, construct or modify their transmission facilities unless the promulgating authority can demonstrate that the regulation is reasonable in relation to a clearly defined and expressly stated health or safety objective.”

The FCC's notice of rulemaking goes on to state that: “To the extent that state and local ordinances result in delays that make it impossible for broadcasters to meet our construction schedule and provide DTV service to the public, important Congressional and FCC objectives regarding prompt availability of this service to the public... would be frustrated. At the same time, we are sensitive to the rights of states and localities to protect the legitimate interests of their citizens and we do not seek to unnecessarily infringe these rights.

The Commission recognizes its obligation to ‘reach a fair accommodation between federal and nonfederal interests.’... Thus, it is incumbent upon the Commission not to ‘unduly interfere with the legitimate affairs of local governments when they do not frustrate federal objectives.’ These include not only certain health and safety regulations, which the Petitioners’ proposed rule recognizes, but also the right of localities to maintain their aesthetic qualities.”

More information on this rule-making is available at the FCC's web site:

<http://www.fcc.gov/state&-local/>



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