

**CITY OF LAKE ELMO
RESOLUTION NO. 2020-043**

A RESOLUTION REVOKING THE CONDITIONAL USE PERMIT (RESOLUTION 2018-077) ALLOWING THE USE OF THE PROPERTY AT 11530 HUDSON BOULEVARD NORTH AS A SCHOOL DISTRICT TRANSPORTATION CENTER

WHEREAS, the City of Lake Elmo (the “City”) is a municipal corporation under the laws of Minnesota; and

WHEREAS, the City adopted its 2030 comprehensive plan in 2010 and amendments thereto in April 2013, to guide the development of the community (“Comprehensive Plan”) (*See* Ex. 19); and

WHEREAS, the City has adopted a zoning ordinance and other official controls to implement the comprehensive plan; and

WHEREAS, Stillwater Area Public Schools – Independent School District 834, 1875 Greeley Street South, Stillwater, MN 55082 (“School District”) is the current owner of property at 11530 Hudson Boulevard North, Lake Elmo, MN 55042, Parcel ID: 36.029.21.43.0001, legally described as Lot 1, Block 1, Four Corners (“Property”); and

WHEREAS, the School District purchased the Property on October 23, 2018 from EN Properties, LLC (“Developer”); and

WHEREAS, prior to the School District’s purchase, the School District and the Developer made several land use applications to the City; and

WHEREAS, on May 4, 2018, the School District applied to the City to rezone the Property from Rural Development Transitional to BP – Business Park (“BP district”); and

WHEREAS, at the time, the School District also sought a zoning text amendment to allow school bus terminals as a conditional use within the BP district; and

WHEREAS, the School District also sought a Conditional Use Permit to operate a school bus terminal, i.e. a school district transportation on the Property; and

WHEREAS, the Developer sought Preliminary and Final Plat approval to subdivide the then-existing parcel at 11530 Hudson Boulevard North to create the 11-acre Property to be purchased by the School District; and

WHEREAS, on July 17, 2018, the City Council approved the subdivision of 11530 Hudson Boulevard North and the creation of the Property, the rezoning of the Property to the BP district,

the zoning text amendment to allow “bus terminals” as conditional uses in the BP district (“Land Use Approvals”); and

WHEREAS, by Resolution 2018-077, the City approved a “Conditional Use Permit for a School District Transportation Center for a Portion of the Property located at 11530 Hudson Boulevard North” (“Conditional Use Permit” or “CUP”)(Ex. 1); and

WHEREAS, the CUP required, among other conditions, that “9) The property shall be connected to sewer and water prior to operation of the bus terminal” (“Condition 9”); and

WHEREAS, the School District occupied the Property and began using it as a school district transportation center/bus terminal in late October 2019; and

WHEREAS, the Property was not then and is not now connected to municipal sewer and water; and

WHEREAS, on November 5, 2019, the School District applied for an amendment to Condition 9 of their CUP as follows: “The School District may operate its bus terminal at the property using the well and septic system (septic tank and temporary toilets) either until the School District connects to City sewer and water or until December 31, 2020, whichever occurs first. The School District agrees to connect to City sewer and water within 30 days after it becomes available.” (“First Amendment Application”) (Ex. 11, p. 2); and

WHEREAS, on January 21, 2020, the City Council denied the First Amendment Application (Ex. 12), and directed staff to institute the process for potential revocation of the CUP; and

WHEREAS, on March 12, 2020, the School District applied for another amendment to Condition 9 of their CUP as follows: “The School District may operate its bus terminal at the property using its existing well and a new septic system as approved by Washington County, which shall be installed by August 30, 2020. The well and septic system may be used until the public services are installed and the connections are made to the Property.” (“Second Amendment Application”); and

WHEREAS, on May 5, 2020, the City Council denied the Second Amendment Application; and

WHEREAS the City Council held a public hearing on April 21, 2020 to review the Conditional Use Permit, following mailed and published noticed as required by law; and

WHEREAS, prior to the public hearing on April 21, 2020, the School District was provided a draft staff report notifying it of the basis for the City Council’s consideration of potential revocation, including supporting documentation, and the School District was provided the opportunity to submit documentation to the Council in advance of its April 21, 2020 meeting; and

WHEREAS, the City Council has reviewed any and all materials submitted by the School District; considered any and all oral and written testimony offered by the School District and all interested parties; considered all historical background of the Property, the City’s Comprehensive

Plan, and Zoning Code; and reviewed all material presented by City Staff, including reports dated April 21, 2020 and May 5, 2020 along with presentations at its April 21, 2020 and May 5, 2020 meetings.

NOW, THEREFORE, the City Council of the City of Lake Elmo makes the following:

FINDINGS

I. RECITALS

The above recitals are incorporated as if fully set forth herein.

II. APPLICABLE ZONING LAW AND REGULATIONS

A. Minn. Stat. § 462.351, *et seq.* grants the City, for the purpose of promoting the public health, safety, morals and general welfare, the authority to regulate the use of land within the City through zoning and other regulations.

B. City Code § 154.002 outlines the purposes of the city's zoning code, which include:

- A. Protecting the public health, safety, comfort, convenience, and general welfare;
- B. Implementing the City of Lake Elmo Comprehensive Land Use Plan;
- C. Promoting orderly development of the residential, commercial, industrial, recreational and public areas;

Comprehensive Plan

C. The Comprehensive Plan and, specifically its Land Use Plan, has several purposes, including:

4. The Land Use Plan is intended to be used as a basis for public facilities planning. A major function of municipal government is planning for and establishment of public facilities such as sewer, water, roads, stormwater facilities, and parks. These physical improvements require extensive initial investment and a long term maintenance commitment that can become a financial burden when such systems are overbuilt or prematurely installed. The Land Use Plan therefore plays an important role in determining each neighborhood's ultimate population, the required capacity of public facilities, and an appropriate capital improvements program. The level of services and facilities required by this Plan are consistent with the exiting or planned capacity of the applicable regional systems . . .

6. The Land Use Plan is intended to clearly delineate how Lake Elmo complies with the memorandum of understanding between the City and the Metropolitan Council. . . .

(Ex. 19, at pp. III-3.)

D. The Comprehensive Plan states that, “[t]he assigned land use designations are intended to shape the character, type and density of future development according to sound planning principles. Any new development, redevelopment, change in land use or change in zoning is required to be consistent with the official land use guidance for each parcel.” (Ex. 19, at p. III-8.)

E. Map 3-3 in the Comprehensive Plan shows the Property and surrounding parcels guided for Business Park. (Ex. 19, at Map 3-3.)

F. The Comprehensive Plan includes a Staging Plan for the provision of municipal water and sewer (a requirement of the City’s MOU with the Metropolitan Council) to ensure that the City is able to deliver the required municipal services and public infrastructure that will be needed to support new development. (Ex. 19, at p. III-15.) Stage II contemplates, “New sewer development located west of Manning Avenue and south of the Forest residential subdivision that will connect to the MCES Cottage Grove Ravine regional interceptor.” (Ex. 19, at p. III-15.) Stage II is shown on Map 3-4, and includes the Property. (Ex. 19, at Map 3-4)(See also Map 6-1)

G. Importantly here, the Comprehensive Plan notes the following about the stages subsequent to Stage 1:

The City will monitor growth by assessing market conditions, land capacity, and the availability of public infrastructure in order to determine when development may occur in stages subsequent to the first stage. The acceleration of development in any of the latter stages may be permitted by the City provided it is demonstrated that adequate public infrastructure exists to support this development. The availability of infrastructure and any necessary utility extensions and transportation improvements needed to support new development will be considered in deciding whether or not to open up the next staging area to development. In order to accelerate the development of latter stages, there must be a commitment that the development will pay its proportionate share of the infrastructure costs to extend services to any new development. (Ex. 19, at III-15)(emphasis added.)

H. The Comprehensive Plan addresses “Conditions Under which Septic Systems are Allowed” and states, “Septic Systems are allowed for all land uses within the City outside of the planned sewer service areas in accordance with Chapter 4: *Subsurface Sewage Treatment System Regulations* of the Washington County Development code as adopted by reference by the City of Lake Elmo. (Ex. 19, at VI-6.)

Zoning Code

I. City Code § 154.106(A) defines a “Conditional Use” as a “land use or development as defined by ordinance that would not be appropriate generally but may be allowed with appropriate restrictions as provided by official controls only” after the City makes specific findings required by that section, which include:

2. The use or development conforms to the City of Lake Elmo Comprehensive Plan. . . .

7. The proposed use will not be hazardous or create a nuisance as defined under this Chapter to existing or future neighboring structures.

8. The proposed use will be served adequately by essential public facilities and services, including streets, police and fire protection, drainage structures, refuse disposal, water and sewer systems and schools or will be adequately served by such facilities and services provided by persons or agencies responsible for the establishment of the proposed use.

9. The proposed use will not create excessive additional requirements at public costs for public facilities and services and will not be detrimental to the economic welfare of the community.

J. City Code § 154.106(E) provides, in relevant part, that the, “Council may attach whatever reasonable conditions they deem necessary to mitigate anticipated adverse impacts associated with these uses, to protect the value of property within the district and to achieve the goals and objectives of the Comprehensive Plan.”

K. City Code § 154.106(E) further provides,

3. In addition, conditions may include, but are not limited to, the following:

. . .

b. Regulating ingress and egress to the property and the proposed structures thereon with particular references to vehicle and pedestrian safety and convenience, traffic flow, and control and access in case of fire or other catastrophe; . . .

d. Controlling the location, availability, and compatibility of utilities;

e. Requiring berming, fencing, screen, landscaping or other means to protect nearby property; and

f. Requiring other conditions to create compatibility of appearance with surrounding uses.

L. City Code § 154.1006(B) provides, “*Conflict*. Where the conditions imposed by any provision of this chapter are either more restrictive or less restrictive than comparable conditions imposed by any other law, chapter, statute, resolutions or regulation of any kind, the regulations which are more restrictive or which impose higher standards or requirements shall prevail.”

M. City Code § 154.005 requires that, “Except as in this chapter specifically provides, no structure shall be erected, converted, enlarged, reconstructed or altered and no structure or land shall be used for any purpose in any manner which is not in conformity with this chapter.”

N. City Code § 154.106(J) provides that the City Council possesses sufficient cause to terminate a Conditional Use Permit, following a public hearing, for “[f]ailure to comply with any condition set forth in a conditional use permit, or any other violation of this chapter.”

O. City Code § 10.99 provides general standards for compliance with the City Code, including Chapter 154. City Code §10.99(A)(1)), which includes, prohibiting the following:

....

(b) Violate, fail to comply with, or assist, authorize, or permit the violation of the terms and conditions of a city approval, including permits and licenses, required or granted under this Code.

(c) Knowingly make or submit a false statement, document, or material omission in connection with an application or procedure required by this code.

P. Furthermore, City Code § 10.99(B)(5): “Action prohibited by Division (A) above may, at the option of the city, void a city approval that is related to the violation.

III. LAND USE APPROVALS

A. Prior to July 2018, the Property was zoned Agricultural Business Park Holding Strict (“HD-A-BP”) and later Rural Development Transitional (“RT”).

B. The Property was subject to a Consent Agreement/Interim Use Permit (“IUP”)(Ex. 5.) The IUP allowed the previous occupant of the Property to operate a truck terminal at the site with a well and septic system. The Interim Use Permit contained numerous conditions, including the following:

~~C. The interim use shall be located on that portion of the Applicant’s Property illustrated on the Site Plan. The remainder of the Applicant’s Property shall continue to be used for agricultural purposes.~~

...

E. The Interim Use Permit is valid until the first occurring following event:

1. For five (5) years from the date of the renewal of the Interim Use Permit (December 2, 2019)....
3. Until a change in the City's zoning regulations, which renders the interim use non-conforming; or
4. Until the redevelopment of the Property for a permitted or conditional use as allowed by the City's zoning regulations. (Ex. 5, pp. 2-3.)

C. At the time of the land use approvals, the School District represented that it did not want to operate under the current Interim Use Permit (Ex. 6, p. 11.)

D. Prior to July 2018, the Property was zoned Rural Development Transitional ("RT"). The RT designation provides landowners with interim use options as they wait for the availability of sewer or until such time as the property owners requests a zoning change to a new district consistent with future guided land use. (Ex. 6, p. 2.)

E. The School District requested that the Property be rezoned to the BP district, which the land was guided for in the 2030 Comprehensive Plan. (Ex. 6, p. 2). The BP district is considered a sewer district in the Comprehensive Plan. (Ex. 19, at Map 6-3.)

F. In describing its use of the Property as a transportation center, the School District stated that approximately 200 people work at the facility, with morning and afternoon shifts of drivers and attendants, along with vehicle maintenance and administrative staff. Hours of operation are approximately 6:00 a.m. to 6:00 p.m. during the weekdays with occasional Saturday use. Parking for the school buses (total of 140) transportation vans (about 20) and personal vehicles of the employees (about 200) is provided on-site (Ex. 4.)

G. In its application for the CUP, the School District acknowledged that:

Water and sanitary sewer infrastructure are also proposed to this area of the City as part of the adjacent re-development and re-alignment of Hudson Boulevard, eliminating the need for septic systems for treatment of wastewater from this facility. As the water for the facility is switched from the well to municipal water, the existing well would be abandoned in accordance with Minnesota Health Department requirements. (Ex. 4, p. 2.)

H. As noted above, in July 2018, the School District also sought a zoning text amendment to add a Bus Terminal as a conditional use in the BP District. The

addition to the BP District was approved by the City as a conditional use provided that certain specific conditions were met, including that it must be on property of at least 10 acres in size or more. *See* City Code § 154.550(O).

I. At the time of the CUP approval, the City Council approved the Preliminary and Final Plat to allow the Four Corners development, which included the Property, and created an 11-acre parcel for the School District. (*See* Ex. 6, Preliminary Plat Application.)

J. As part of the School District's applications, it provided a Plan for Bus Facility Improvements, which included significant paving over the 11-acre Property, the inclusion of stormwater ponds, a watermain easement, a 10-foot small utility easement, and a utility plan. (Ex. 7.)

K. The Staff Report for Agenda Item #17, on July 17, 2018, noted "Because the property is guided in the City's Comprehensive Plan for 2020-2030 Regional Sewer Staging Plan and would discharge to the MCES Cottage Grove Ravine Interceptor, provisions for connecting to the municipal sanitary sewer service must be included with this application," and "Because the property is located in the MUSA, provisions for connecting to the municipal water supply must be included." (Ex. 6.)

L. The City Engineer provided a Memorandum, dated May 30, 2018, which was an engineering review of the plans for the Four Corners development, including the Stillwater Bus Facility Site Plans. (Ex. 8.) The Memorandum provided comments and recommendations for Stormwater Management, Streets and Transportation, Municipal Sanitary Sewer, and Municipal Water Supply.

M. The CUP, i.e., Resolution No. 2018-077, includes, but is not limited to, the following conditions relevant to the current use of the Property:

Condition # 2: No construction or use of the bus terminal (unless in accordance with the Interim use Permit approved by the City by Resolution 2014-095) may commence until all items as outlined in the City Engineer review memo regarding the Four Corners Preliminary & Final Plat (Stillwater Transportation Center) dated May 30, 2018 and all other subsequent construction plan memos regarding the Stillwater Transportation Center have been addressed; the Four Corners 1st Addition Final Plat has been recorded. (Ex. 1, p. 4.)

Condition # 3: The applicant must obtain all other necessary City, State, and other governing body permits prior to the commencement of any construction activity on the parcel including but not limited to an approved stormwater management plan, utility plans, grading plan, street construction plans (if required), parking lot permit, building permits, etc. (Ex. 1, p. 4.)

Condition # 9: The property shall be connected to City sewer and water prior to operation of the bus terminal." (Ex. 1, p. 4.)

N. The CUP does not require the School District to pay for all improvements to the Property; it simply requires all the improvements to be constructed as a prerequisite to the occupation and use of the Property.

O. At the time of the City Council's consideration of the land use applications discussed above, including the CUP, the School District's representatives were provided with all staff reports and the proposed CUP. The School District did not make objection to the CUP or any of its conditions.

IV. IMPROVEMENTS SINCE CONDITIONAL USE PERMIT APPROVAL

A. The Developer and the City negotiated a Developer's Agreement, dated October 22, 2018, which required the Developer to build the water and sewer infrastructure and bring it to the Property.

B. The School District closed on its purchase of the Property on October 23, 2018. The CUP was granted months before the closing and the School District was aware of its requirements. The provision of water and sewer to the Property by the Developer was contemplated in the Purchase Agreement between the School District and the Developer. The City was not a party to the Purchase Agreement.

C. By e-mailed dated April 16, 2019, the City Administrator stated that, "We are allowing you to work under the IUP (Interim Use Permit) as referenced in Condition 2 of the CUP but that expires this year. I honestly don't think Terry is going to have water and sewer to you by the end of the year so then you would not be in compliance with the terms of the CUP and you wouldn't be able to operate it as a school bus garage." (Ex. 20, p. 2) (emphasis added.)

D. On July 11, 2019, the School District entered into a Site Improvement Agreement with the City to govern its construction of improvements required of the School District by the CUP. Their improvements include landscaping, stormwater management, and drainage facilities, grading, utility work, plumbing, and water main installation. (Ex. 21.) The Site Improvement Agreement addressed improvements that were the financial responsibility of the School District.

E. The Site Improvement Agreement provides, "9. The [School District] is responsible, at its own cost, for installing any private utilities that may be required for the Project. The installation of such private utilities is not considered part of the Improvements for the purposes of this Agreement." (Ex. 22, at p. 2.) Accordingly, the Site Improvement Agreement did not address or approve of the installation of a fire suppression system, fire alarm system, including heat and smoke detection, and a temporary septic system.

F. The Site Improvement Agreement requires: "10. The Developer shall construct the Project and the Improvements in accordance with the Approval and all applicable laws, rules, regulations, and ordinances and shall obtain all other permits and permissions that may be required." (Ex. 22, at p. 3.)

G. On July 16, 2019, the City Administrator e-mailed the School District and their Engineer, and noted in relevant part:

Perhaps we should touch base on Terry's project and the status of water and sewer being extended to the site. Terry has asked for the City council to review a change to the plans at their August work session. This may result in water and sewer not being extended this year. I wanted to make sure you were aware of this before moving ahead with the millions of dollars in improvements that may not be operational without the extension of water and sewer. (Ex. 20.)

H. Despite the City Administrator's two warnings, the School District proceeded with improvements both contemplated and not contemplated by the Site Improvement Agreement.

I. The School District paved over approximately 3.8 acres of previously Agricultural land to the north of the building for its bus parking lot (i.e. its primary use). The School District landscaped the Property and installed a watermain and the additional improvements below.

Fire Suppression and Fire Detection

J. The School District installed a fire alarm system, which included heat and smoke detection.

K. The School District installed a fire suppression (sprinkler) system within the building. (Exs. 23- 25.) That system is not connected and not available for use. (*Id.*)

L. According to the City's Interim Building Official, while neither the fire suppression nor the fire alarm system were required to be installed by the School District the installation triggered permitting and code compliance requirements. (Ex. 23.) The Minnesota State Fire Code Section 105.1.1 provides that when work is undertaken that it is regulated by the code (i.e. fire suppression and detection), permits are required. (Exs. 23; 24.)

M. The fire alarm system (including heat and smoke detection) was installed without a permit.

N. The fire suppressions system was installed pursuant to a permit. However, as noted by the Interim Building Official, "it is a requirement of the fire code that all installed fire sprinkler systems be maintained and operational, or they are to be removed (if they are not required)." Specifically Minnesota State Fire Code Section 901.45 states, "Any device that has the physical appearance of life-safety or fire protection equipment, but that does not perform that life-safety or fire suppression function shall be prohibited." (Ex. 23, at pp. 1-2.)

O. Following a March 11, 2020 inspection, on April 21, 2020 the State Fire Marshal notified the City of Lake Elmo and the School District that (consistent with

the Interim Building Official's review), the fire protection sprinkler system has to be addressed and suggested several alternatives, including provision of municipal water supply, installation of an on-site automatic water supply/tank connected to a fire pump; installation of an additional on-site private well and pump; or demolishing the sprinkler system. (Ex. 25, pp 3-4.) The letter noted that "Further investigation is pending the verification of the building construction, building height and area, and occupancy use classifications as they relate to the possible requirements for the installation of a fire protection system." (Ex. 25, p. 4.)

Temporary Septic Tank

P. Prior to moving onto the Property, the School District installed a temporary septic tank and temporary toilets (i.e. porta potties).

Q. The School District admitted that the temporary septic tank was not permitted by Washington County. Washington County confirmed that it did not approve the temporary septic tank.

V. OCCUPATION OF THE PROPERTY

A. On August 29, 2019, the School District Board considered Agenda Item: IX.E. related to "Additional Transportation Facility Design." The staff report provided, "Because the planned development has not progressed, interim changes will be necessary for the District's students transportation provider to occupy the facility," and, "Based on the need to occupy the Transportation Facility prior to public utilities being available, Administration recommends proceeding with the proposal from Larson Engineering, Inc." (Ex. 10.)

B. At that time, in August 2019, and up until November 2019, City staff was unaware of plans by the School District to occupy the Property.

C. In Fall 2019, the School District began utilizing the property as its bus terminal. (Exs. 9, 10, 11.)

D. In its November 5, 2019 application to amend its CUP, the School District acknowledged that it was not occupying the Property pursuant to the IUP, stating, "The School District applied for and received approval for the rezoning of the property to Business Park on July 17, 2018, thereby automatically terminating the IUP." (Ex. 11, p. 1.)

E. Its November 5, 2019 letter stated the following:

It is important to point out a few significant facts:

1. The School District will complete all of the on-site improvements by December 1, 2019, as required in its Site Improvement Agreement with the City. . . .

2. Prior to construction, the City informed the School District that it could request an extension of the IUP to operate at the property using a well and septic system for a temporary period of time. Based on that direction, the School District installed a temporary septic tank, supplemented by temporary toilets. The existing well has been approved by the Minnesota Department of Health and the temporary septic services have been approved by Washington County, pending acceptance by the City and a timeline for when City services will become available. The City and School District now know that the IUP was terminated upon the event of the rezoning, thereby making the extension of the IUP impossible. (Ex. 11, p. 2)(emphasis added.)

F. In the letter, the School District further opined on the temporary septic:

1. The temporary services will not be detrimental to or endanger the public health, safety or general welfare. The existing well have been tested and approved by MDH. The septic tank and temporary toilets are a short-term solution and have been accepted by Washington County, pending city approval and a timeline for connection to City sewer. Well and septic systems have long been used in this area and the School District's short-term solution will not endanger the public.

G. By e-mail dated February 20, 2020, the City Administrator was alerted of a potential issue with the temporary septic tank relied upon by the School District. (Ex. 16.) The City Administrator reached out to the Washington County Department of Public Health & Environment regarding the temporary septic. By e-mailed date March 17, 2020, Gary Bruns, Environmental Program Supervisor, stated, "The only permit we have issued the district is for the abandonment of one old septic tank on the property. We have been told a design for a septic system will be submitted, but we do not have that at this time." (Ex. 17.)

H. On April 1, 2020, on behalf of Washington County, Mr. Bruns provided a letter to the City which commented on the School District's Second Amendment Application. Relevant to the compliance with the CUP, the letter states:

1. The District states "The current 3,000 gallon septic tank is sufficient to accommodate those employees." This tank size is not sufficient as it does not meet the requirements of MN Rule Chapter 7080 or Washington County Ordinance # 206 requirements.

I. By e-mail dated March 9, 2020, a representative from the Minnesota Department of Labor contacted the City Building Inspector regarding the improvements made by the School District noting, "A structure funded for a school district, of which the cost is \$100,000 or more, is considered a public building. This project would be required to be reviewed, permitted and inspected." (Ex. 18, p. 2.)

J. The City Administrator acknowledged that, according to representations from the School District, they installed sprinklers, fire alarms and heat and smoke detectors (Ex. 18, p. 1.)

K. The School District continues to use the Property as a bus terminal.

L. The School District has acknowledged that EN Properties, LLC has breached its contractual duties to the School District. (Ex. 13, p. 2.) The School District has sued the Developer under its purchase agreement, *Independent School District No. 834, Stillwater Area Public Schools v. EN Properties, LLC & E&E properties, LLC*, 82-CV-20-1422 (“Lawsuit”). In the Lawsuit, the School District is specifically seeking injunctive relief to require the Developer to furnish water and sewer to the Property. The School District asserts that it has a contractual remedy against the Developer which would allow it to accomplish the prerequisites to occupation of the Property as required by the CUP.

VI. CURRENT USE/VIOLATIONS OF THE CUP

The City makes the following specific findings related to the alleged violations:

A. Condition # 2. Condition No. 2 provides that the no construction or use of the bus terminal may commence until all items as outlined in the City Engineer Review Memo dated May 30, 2018 (i.e. Ex. 8) and all other subsequent construction plan memos have been addressed. *See also* (Ex. 1.)

i. The City finds that the School District violated Condition No. 2, to wit:

Interim Use Permit

a. Condition No. 2 provides an exception, however, if the construction or use, is in accordance with the Interim Use Permit approved by the City by Resolution 2014-095. But the Council finds that the IUP did not govern their use of the Property because it terminated upon rezoning of the property in July 2018. (Exs. 5, 6.) The City Council finds that, at the time of the CUP application, the School District was aware that the IUP would terminate by its terms and represented that it had no plans to use it. (Ex. 6, p. 11.)

b. In its November 5, 2019 letter accompanying its application for CUP amendment, the School District acknowledged that, “The School District applied for and received approval for the rezoning of the property to Business Park on July 17, 2018, thereby automatically terminating the IUP.” (Ex. 11, p. 1.) The School District made this admission, at most, a few weeks after moving onto the Property.

c. The School District contends that the City prompted their use of the Property in Fall 2019 based on an e-mail from the City Administrator to Finance Director Kristin Hoheisel. (*See* Ex. C.) The Council finds that if there was a mistake as to the operative nature of the IUP at that time, it was a mutual mistake. However, the City

Administrator warned the School District, at that time, that the IUP would expire at the end of the year and the CUP would govern. (Ex. C) The City Administrator provided a further warning in July 2019. (Ex. 20.) Even if the IUP had been in place to allow their use, that permission would have expired by December 2, 2019.

d. The invalidity of the IUP after rezoning does not invalidate Condition No. 2 the CUP.

e. Moreover, there is no dispute that from December 2, 2019, there is no exception for construction or use of the Property without compliance with the City Engineer Memorandum.

Compliance with Engineering Memorandum

f. The City Engineer has provided a Memorandum, dated March 19, 2020 (Ex. 15), that addresses the School District's compliance with his previous Memorandum (Ex. 8.)

g. Based upon the foregoing, the Council finds that the School District is using the Property before the following improvements were completed:

- Hudson Boulevard Improvements (Ex. 8, p. 2, Ex. 15)
-including Traffic Impact Study (Ex. 8, p. 2; Ex. 15)
- Municipal Sanitary Sewer (Ex. 8, p. 2; Ex. 15)
- Municipal Water Supply (Ex. 8, p. 2; Ex. 15)
- Storm water management facilities (Ex. 8, p. 1; Ex. 15)

h. The School District does not dispute that the improvements have been not been completed but blames both the Developer for not completing the improvements and the City for requiring them.

i. The City does not dispute that items complained of are the responsibility of the Developer. The CUP does not require that the School District complete them. It simply requires, like any other development or redevelopment, that the redevelopment be complete before final occupancy. Contrary to the suggestion of the School District, that is not an unusual practice.

j. The City further finds that the School District created the conflict with the CUP. There would be no violation of Condition No. 2 absent the School District's determination to move onto and utilize the Property despite the prohibition in the CUP. The School District is responsible for this violation not the City or the Developer.

B. Condition # 3. Condition No. 3 provides that the School District must obtain all other necessary City, State, and other governing body

permits prior to the commencement of any construction activity on the parcel.

- i. The City finds that the School District has violated Condition No. 3.
 - a. The City finds that the School District has constructed a temporary septic tank on the Property without a permit and that Washington County has not approved the School District's use of the temporary septic tank.
 - b. The City also finds that the School District installed a fire alarm (heat and smoke detection) system that required a permit under the Minnesota State Fire Code, but failed to get a permit.
 - c. The City further finds that the School District's decision to occupy and utilize the Property renders the failure to seek the appropriate approvals troubling. The permitting approvals are designed to protect the health, safety, and welfare, of the employees and persons using the Property as a transportation center as well as the public at large. The School District is responsible for this violation not the City or the Developer.

C. Condition No. 9. Condition No. 9 provides that the property shall be connected to City sewer and water prior to the operation of the bus terminal.

- i. This condition does not allow use of the Property under any circumstances until connection to City sewer and water. The requirements are unequivocal.
- ii. The City finds that the School District has violated Condition No. 9.
 - a. The School District has used the Property since at least mid-October 2019. The Property remains unconnected to City sewer and water.
 - b. The City further finds that the School District created the conflict with the CUP. There would be no violation of Condition No. 9 absent the School District's determination to move onto and utilize the Property despite the prohibition in the CUP. The School District is responsible for this violation not the City or the Developer.

D. Based on the foregoing violations, and pursuant to City Code § 154.106(J) and § 10.99(A)(1)(b)&(B)(5), the City has sufficient grounds to terminate the CUP.

~~E. Misrepresentation. In addition, City Code § 10.99(A)(1)(e) and (B)(5)~~ working together, provide that the City may void an approval if a person knowingly makes or submits a false statement or document or knowingly makes a material omission in connection with an application or procedure required by this Code. The

City makes the following specific findings related to the alleged misrepresentation from the School District:

- i. As found above, at the time of its occupation of the Property in October 2019, the School District had installed a temporary septic system. That septic system was not permitted or approved by Washington County.
- ii. On November 5, 2019, the School District applied for an amendment to the CUP to legitimize its use and occupation of the Property. The letter stated, in relevant part, “the temporary septic services have been approved by Washington County, pending acceptance by the City and a timeline for when City services will become available.”
- iii. The City finds that this statement was knowingly made and was false. The septic tank was not approved by Washington County on November 5, 2019. The temporary septic tank has never been approved by Washington County.
- iv. In defense, the School District has made it clear that it does not regret its wording; nor does it claim a mistake. Instead, it provides an e-mail from a Washington County employee, which they claim supports their statement that they had approval from Washington County.
- v. This e-mail was not provided to the City prior to the revocation process and there was no evidence presented that City staff were aware of the School District’s claim that City staff were a roadblock to approval. Even if City staff had approved the use of temporary toilets and provided a timeline for extension of City sewer and water (which would not have been possible at that time), the e-mail itself states, “If we can get those things, we should be able to move forward with the permitting process.” (Ex. A, p. 2) (emphasis added.) The e-mail does not mention the word “approval” or suggest that if those two issues were satisfied that the tank was approved by Washington County.
- vi. In addition to the fact, admitted by the School District, that the septic tank was not permitted or approved at that time, the April 1, 2020 letter from Washington County (Ex. 21) casts significant doubt on the proposition that it would ever have been approved. The County noted that, “[t]his tank size is not sufficient as it does not meet the requirements of MN Rule chapter 7080 or Washington County Ordinance # 206 requirements.”
- vii. At best, given the e-mail provided by the School District, the phrasing of the sentence, purposefully made, concealed the truth that the permitting process was not complete pending acceptance by the City and a timeline for when City services will become available. The City also finds that this statement, knowingly made, contains a material omission by suggesting that approval was fait accompli.

viii. This omission was material because the School District was relying on it to convince the City to approve their use of the Property, which was in conflict with the clear dictates of the CUP conditions. Furthermore, the School District suggested that “[t]he temporary septic services will not be detrimental to or endanger the public, health, safety, or general welfare.” The purpose of permitting and approval by Washington County, the entity with expertise on this subject, is to ensure adequate safety for employees of the School District and the public at large.

ix. The City finds that this knowingly false statement and material omission were related to the approval, i.e. the CUP.

F. Based on the foregoing misrepresentation, and pursuant to City Code City § 10.99(A)(1)(c)&(B)(5), the City has sufficient grounds to void the CUP.

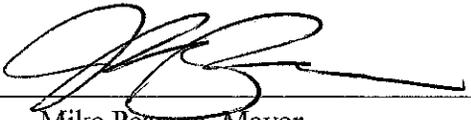
DECISION

NOW, THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LAKE ELMO, MINNESOTA, based upon the information received and the above Findings, that the City Council of the City of Lake Elmo hereby revokes, terminates, and voids the Conditional Use Permit for the Property previously granted by Resolution 2018-077.

BE IT FURTHER RESOLVED, the School District must discontinue its use of the Property as a School District Transportation Center (bus terminal) by May 29, 2020, the last scheduled day of the 2019-2020 school year.

This resolution was adopted by the City Council of the City of Lake Elmo on this 5th day of May 2020, by a vote of 4 ayes and 1 nays, as follows:

VOTE	Pearson	Bloyer	Dorschner	McGinn	Nelson
Aye	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Nay	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Abstain	<input type="checkbox"/>				
Absent	<input type="checkbox"/>				

By: 
Mike Pearson, Mayor

ATTEST: 
Julie Johnson, City Clerk