



STAFF REPORT

DATE: 12/17/2019

REGULAR

TO: City Council
FROM: Ben Prchal, City Planner
AGENDA ITEM: Stillwater School District Conditional Use Permit Amendment
REVIEWED BY: Ken Roberts, Planning Director
Sarah Sonsalla, City Attorney
Planning Commission

BACKGROUND:

The Stillwater School District is requesting an amendment to its conditional use permit (“CUP”) to operate a school district transportation center (bus terminal) on its property located at 11530 Hudson Boulevard North. The CUP was issued by the City to the School District on July 17, 2019 through Resolution #2018-077. One of the conditions in the CUP is that “[t]he property shall be connected to City sewer and water prior to the operation of the bus terminal.” The School District’s property is part of the Four Corners 1st Addition plat that was approved by the City Council in 2018. A condition of the plat approval was that the developer (who is not the School District) was to construct sanitary sewer and water facilities which would have brought sanitary sewer and water service to the School District’s property. The developer was to complete these improvements no later than October 31, 2019. As of this date, construction has not yet commenced. The School District has made all of the improvements on the property that were required by the CUP conditions with the exception of connecting the property to sanitary sewer and water services.

ISSUE BEFORE THE CITY COUNCIL:

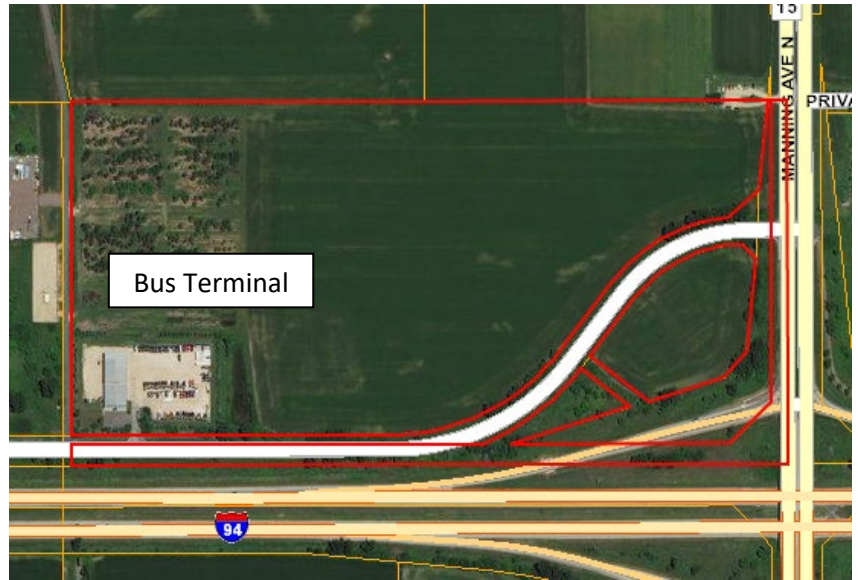
The School District is requesting an amendment to the CUP to amend Condition #9 of the CUP from “*the property shall be connected to City Sewer and Water prior to operation of the bus terminal*” to “*[t]he School District may operate its bus terminal at the property using the well and septic system (septic tank and temporary toilets) either until the School District connects to City sewer and water or until December 31, 2020, whichever comes first. The School District agrees to connect to City sewer and water within 30 days after it becomes available.*” The Council is being asked approve or deny the requested amendment to the CUP.

PROPOSAL DETAILS/ANALYSIS:

<i>Applicants:</i>	Stillwater Area Public Schools (Kristen Hoheisel), 1875 Greeley Street South, Stillwater,
<i>Property Owners:</i>	Stillwater School District
<i>Location:</i>	11530 Hudson Boulevard North (PID# 36.029.21.43.0001)
<i>Request:</i>	Conditional Use Permit – Amendment
<i>Existing Land Use:</i>	School Bus Terminal
<i>Existing Zoning:</i>	BP – Business Park
<i>Surrounding Land Use / Zoning:</i>	South – I-94 and Woodbury; West – Outdoor Storage (RT – Rural Development Transitional); East – Vacant land (RT – Rural Development Transitional); North – Vacant land (RT – Rural Development Transitional)
<i>Comprehensive Plan Guidance:</i>	BP – Business Park
<i>Deadline(s) for Action:</i>	Application Complete – 11/5/2019 60 Day Deadline – 1/4/2018 120 Day Deadline – N/A
<i>Applicable Regulations:</i>	Article V: Zoning Administration and Enforcement Article XIV: Commercial Districts

CONDITIONAL USE PERMIT

Previous Interim Use Permit. The School District's property previously operated with an interim use permit which was granted by City Council Resolution No. 2014-095, which was for a bus/truck terminal. The use was similar but focused more on the maintenance of larger trucks. This interim use permit would have expired on December 2, 2019. In this instance, the interim use permit was terminated upon the rezoning of the School District property which was affiliated with the Four Corners First Addition development. Another condition of the IUP was that a portion of the property would need to be used for agricultural purposes or left available for agriculture. Development discussions lead to the realization that this might not be practical; and so, the School District also no longer wanted to operate under the interim use permit for this reason.



Existing Conditions. The School District received an approved CUP on July 17th, 2018 and since has moved into the building/site and have been operating there since October/November of this year (see School District's narrative). The School District has completed all of the on-site improvements that were required by the CUP with the exception of the connection of the property to sanitary sewer and water, along with other various improvements in the amount of more than two million dollars. For sewage disposal, the School District has installed a temporary septic tank that is supplemented by temporary toilets (this has been approved by the County). For water, the School District has been using the existing well on the property (the well was approved by the Minnesota Department of Health for use). Currently, the School District is in violation of the CUP because Condition # 9 states that City sewer and water shall be connected to the building/site prior to the commencement of formal operations.

Current Building. The current building was constructed in the 1990s and was used for office space by E&H Earthmovers and also provided bus storage for the School District. It was then used by Kenworth Diesel Trucks for sales, repairs and service of diesel trucks. As mentioned earlier, the building and site has received a two-million-dollar investment by the School District over the course of the past year.

Previous Bus Terminal Operation. The previous location for the School District's bus terminal was in Oak Park Heights in the Old Junker Landfill.

Bus Washing. The School District indicated on its application that the property use will include washing buses. The School District has indicated that the buses will be washed at the facility's wash bay and that waste water from the wash bay will run in to an oil separator with all of the shop drains, which will go in to a holding tank, which is then disposed of by a sewer transport service. The oil separator is then emptied and maintained by a licensed transporter. The School District indicates that once the property is connected to the City's sanitary sewer system that the wastewater will go directly to the treatment plant after passing through the oil separator, and the oil separator will be emptied and maintained by a licensed transporter. The disposal of this water is addressed in the engineering comments.

City Engineer Review. Engineering concerns were finalized during the preliminary and final plat of Four Corners 1st Addition and the initial approval of the School District's CUP.

Fire Chief and Building Official Review. The Fire Chief and Building Official are concerned that that the building is sprinklered yet not connected to City water. Therefore, if there was a fire in the building, the sprinkler system would not function.

FINDINGS: Staff is recommending denial of the amendment to the CUP for the transportation center at 11530 Hudson Blvd N based on the following findings:

1. The developer of Four Corners 1st Addition has had more than one year to construct the sanitary sewer and water facilities that are needed for the School District's bus facility and has not done so. In fact, the developer has not started construction of the project. To date, there has been no written assurances given to the City by the developer of the Four Corners project that the sanitary sewer and water facilities that are needed for the operation of the bus terminal will be constructed at any time in the near future.
2. Properties that are within a MUSA district are required to connect to City water and sanitary sewer when they are developed. The School District's property is located within a MUSA district. Since it is not connected to City water and sanitary sewer services, it is in conflict with the requirements of the MUSA district, as outlined by the Comprehensive Plan and the use should not be allowed to continue due to this conflict.
3. The building on the property is sprinklered yet not connected to City water. There is a safety hazard to the occupants of the building if the building is allowed to operate without the sprinkler system functioning, even if it is for a limited amount of time.

Recommended Conditions of Approval.

None – All conditions from Resolution 2018-77 shall remain in place.

FISCAL IMPACT:

When the School District connects to City water and sanitary sewer, it will be required to pay the City sewer and water availability charges and will be responsible at its sole cost for bringing sewer and water into the site. The City will collect Sewer Accessibility Charges (SAC) and Water Accessibility Charges (WAC) and building permit fees.

OPTIONS:

The City Council may:

- ❖ Approve of the amendment to the CUP as proposed by the School District.
- ❖ Approve the amendment to the CUP with changes.
- ❖ Deny the amendment to the CUP.

If the request is denied by the City Council, it would mean that the School District would be in violation of Condition #9 of its CUP. The City Council could then take separate action to revoke the CUP by holding a public hearing on the revocation. If the City Council revokes the CUP, the School District would no longer be able to operate its bus terminal on the property.

CITY STAFF/PLANNING COMMISSION RECOMMENDATION:

Planning Commission Recommendation:

On December 9th, 2019 the Planning Commission held a public hearing and after discussion voted 6-0 to recommend approval of the amendment request with a change to their request. The Commission suggests striking "...~~within 30 days after it becomes available.~~" And replace it with "...as soon as practical." City Staff believes this statement could potentially open up a conversation of "what becomes practical?" but is not concerned with there being difficulty enforcing the condition, if approved. The Commission further thought if the request had ground for approval. Furthermore, there was expressed sympathy for the District because they were at the mercy of the overall Four Corners developer falling through on their responsibilities. Which inevitably caused the need for an amendment.

City Staff Recommendation:

Staff acknowledges that the Commission generated good arguments but still maintains the original recommendation to deny the amendment to condition #9 of the CUP. Staff suggests the following motion;

"Motion to adopt Resolution 2019-099 denying the Stillwater School Districts request to amend condition number 9 of their existing Condition Use Permit, for the property at 11530 Hudson Boulevard"

ATTACHMENTS:

- Narrative
- Resolution 2018-77
- Resolution 2019-099
- Site Plan



November 5, 2019

Ken Roberts
Planning Director
City of Lake Elmo
3800 Laverne Ave. N.
Lake Elmo, MN 55042

11-5-19

RE: Stillwater Area Schools Amended CUP Application

Dear Mr. Roberts:

This letter is intended to supplement the information being submitted for a requested amendment to the School District's approved CUP, Resolution 2018-077. Enclosed you will find the following:

- Land Use Application Form
- Resolution 2018-077
- Escrow Agreement
- Acknowledgement of Responsibility Form
- Affirmation of Sufficient Interest
- Copy of Deed
- 10 copies of the Utility Plan – clean copy
- 10 copies of the Utility Plan – highlighted showing temporary and permanent utilities
- Address labels for property owners within 350 feet
- \$500 application fee

The Stillwater Area Public Schools now owns the property located at 11530 Hudson Blvd. N., in the City of Lake Elmo. Prior to the School District's ownership, the property was used as a bus/truck terminal pursuant to an Interim Use Permit. The IUP allowed the truck terminal to operate at the site with a well and septic system. The IUP was set to expire either on December 2, 2019 or *until any portion of the Property was rezoned* or when public sanitary sewer was provided to the site.

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. At the same meeting, the School District was granted the CUP to use the property as a "School District Transportation Center."

One of the conditions in the approved CUP is that the School District connects to City sewer and water. (Condition No. 9, which states: "The property shall be connected to City sewer and water prior to operation of the bus terminal"). Unfortunately, the School District is dependent upon a developer to complete the extension of sewer and water to the property. As the City is aware, the developer has failed to perform these obligations as required by the developer's development agreement with the City.

Obviously, the default by the developer to timely perform under its development agreement with the City has caused significant and direct consequences to the School District. At the end of October, the School District was forced out of its former site due to the sale of that former site, and out of necessity, has moved its operations to the property. 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. The School District has expended more than \$2 million for these improvements.
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.

The School District is, therefore, requesting an amendment to its existing Conditional Use Permit, specifically asking that condition No. 9 of the CUP be amended 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.


The City already approved the transportation center use in 2018 and determined in its findings that the School District met the City's 12-factor test for the conditional use permit. This requested amendment provides a minor modification to one of the conditions in the already approved use as a transportation center. While proving that the School District's request meets the 12-factor test again is not required for an amendment to this condition in the approved CUP, City Staff requested that we address the 12-factor test specifically as it relates to the requested condition. To that end, we address the 12 factors as follows:

1. The temporary services will not be detrimental to or endanger the public health, safety or general welfare. The existing well has 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.
2. The temporary services conform to the Comp. Plan. The requirement that the property be connected to City sewer and water as soon as they become available is included in the proposed amended language and conforms to the Comprehensive Plan.
3. The temporary services are compatible with the existing neighborhood. The neighboring properties suffer the same predicament as the School District's property and they also await the availability of City services; therefore, the School District's situation is compatible with the existing neighborhood.

4. N/A (no development standards for temporary services)
5. N/A (not in a floodplain or shoreland area)
6. The temporary services have been designed and are being operated and maintained so as to be compatible with the intended character of the neighborhood and will not change the character of that area. As soon as the property is able to connect to City services, these temporary services will be removed, and the well will be sealed. The short-term solution will not alter the character of the area.
7. The temporary services will not create a nuisance to existing or neighboring structures. The septic tank is emptied every 10 days, (and can be emptied with 24-hours' notice) and is equipped with an alarm at 75% capacity. The temporary toilets are serviced on a weekly basis. The School District has contracted with service providers who will perform the necessary maintenance and will ensure that these temporary services will not create a nuisance.
8. The temporary service locations are situated such that there is easy access for maintenance. Essential services will not be hindered by the existence of these temporary services.
9. The temporary services will not create any additional requirements or costs for the City or the community. The School District will perform all needed maintenance in a timely manner, as described above.
10. The temporary services will not create excess traffic, noise, smoke, fumes, glare or odors in any way. There is a mandatory protocol for maintenance, and as stated above, the temporary services will be removed, and the well will be sealed upon connection to City services.
11. N/A (traffic congestion)
12. The location of the temporary services will not do any damage to natural or scenic features of the property. The septic tank was strategically placed on the south side of the building for easy removal upon connection to City services.

The School District is committed to performing its transportation operations pursuant to all of the City's approvals, however, in the short term, this interim solution is necessary in order to provide continuous bus service to the students in the Stillwater Area School District. We hope that this request is viewed favorably by the Planning Commission and the City Council and look forward to addressing any of their questions or concerns.

Very truly yours,



Kristen Hoheisel

Executive Director of Finance & Operations

Enclosures

**CITY OF LAKE ELMO
WASHINGTON COUNTY
STATE OF MINNESOTA**

RESOLUTION 2018-077

***A RESOLUTION APPROVING A CONDITIONAL USE PERMIT FOR A SCHOOL DISTRICT
TRANSPORTATION CENTER FOR A PORTION OF THE PROPERTY LOCATED AT 11530
HUDSON BOULEVARD NORTH***

WHEREAS, the City of Lake Elmo is a municipal corporation organized and existing under the laws of the State of Minnesota; and

WHEREAS, Stillwater Area Schools (Kristen Hoheisel), 1875 Greeley Street South, Stillwater, MN 55082 (the "Applicant") has submitted an application to the City of Lake Elmo (the "City") for a Conditional Use Permit for a school district transportation center for a portion of the property located at 11530 Hudson Blvd N (PID# 36.029.21.43.0001) (the "Property"); and

WHEREAS, a request for a Preliminary and Final Plat to subdivide the Property in to Lot 1, Block 1 of Four Corners, with three separate outlots was submitted by Terry Emerson, 2204 Legion Lane Circle North, Lake Elmo, MN 55042; and

WHEREAS, the Applicant also submitted applications to the City for a Zoning Text Amendment to allow local transit as a conditional use within the Business Park zoning district; and a Zoning Map Amendment to re-zone Lot 1, Block 1 of Four Corners from Rural Development Transitional to Business Park; and

WHEREAS, notice has been published, mailed and posted pursuant to the Lake Elmo Zoning Ordinance, Section 154.102; and

WHEREAS, the Lake Elmo Planning Commission held a public hearing on said matter on June 4, 2018 and June 18, 2018; and

WHEREAS, the Lake Elmo Planning Commission has submitted its report and recommendation to the City Council as part of a Staff Memorandum dated July 17, 2018, and

WHEREAS, the City Council considered said matter at its July 17, 2018 meeting; and

NOW, THEREFORE, based on the testimony elicited and information received, the City Council makes the following:

FINDINGS

- 1) That the procedures for obtaining said Conditional Use Permit are found in the Lake Elmo Zoning Ordinance, Section 154.106.

- 2) That all the submission requirements of said Section 154.106 have been met by the Applicant.
- 3) That the proposed Conditional Use Permit includes the following components:
 - a) A Conditional Use Permit for a school district transportation center for a portion of the property located at 11530 Hudson Blvd N.
- 4) That the Conditional Use Permit for a school district transportation center will be for the Property legally described as follows: Lot 1, Block 1 of Four Corners.
- 5) That the Zoning Text Amendment that was proposed by the Applicants allows local transit as a conditional use within the Business Park zoning district.
- 6) That the City approved the Applicant's request for a Zoning Text Amendment to allow local transit as a conditional use within the Business Park zoning district.
- 7) That the City approved the Applicant's request for a Preliminary and Final Plat to subdivide the Property in to Lot 1, Block 1 of Four Corners along with three separate outlots.
- 8) That the City approved the Applicant's request for a Zoning Map Amendment to re-zone the Property from Rural Development Transitional to Business Park.
- 9) The proposed use will not be detrimental to or endanger the public health, safety, comfort, convenience or general welfare of the neighborhood or the city. ***Bus traffic is not expected to be detrimental or dangerous, as trips and traffic will be limited to certain times of the day. It is a recommended condition of approval that there be significant berming to provide a sufficient screening of the parking lot.***
- 10) The use or development conforms to the City of Lake Elmo Comprehensive Plan. ***The property is guided for Business Park, in which local transit, which meets certain standards, is a conditional use per the Zoning Code. The use also provides a significant number of jobs per acre, which is a desired trait of the Business Park land use designation per the Comprehensive Plan.***
- 11) The use or development is compatible with the existing neighborhood. ***The use is compatible with the existing neighborhood, as the existing use is a truck terminal, which is similar in use and design to a bus terminal. The surrounding parcels are mostly vacant and undeveloped.***
- 12) The proposed use meets all specific development standards for such use listed in Article 7 of this Chapter. ***The proposal complies with the proposed development standards as recommended in the requested Zoning Text Amendment, although it does not comply with many parking lot, screening, and landscape standards, which have been required as a recommended condition of approval.***
- 13) If the proposed use is in a flood plain management or shoreland area, the proposed use meets all the specific standards for such use listed in Chapter 150, §150.250 through 150.257

(Shoreland Regulations) and Chapter 152 (Flood Plain Management). *The property is located outside the 0.2% annual chance floodplain.*

- 14) The proposed use will be designed, constructed, operated and maintained so as to be compatible in appearance with the existing or intended character of the general vicinity and will not change the essential character of that area. *While the proposed project is a redevelopment/repurposing of an existing site and will not change the existing character of the area, operations are not within a building and so would not meet the intended character of the neighborhood.*
- 15) The proposed use will not be hazardous or create a nuisance as defined under this Chapter to existing or future neighboring structures. *While the proposed use will create a significant amount of traffic, it will be limited to certain times of the day.*
- 16) 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 served adequately by such facilities and services provided by the persons or agencies responsible for the establishment of the proposed use. *There are plans to connect to City sewer and water at the applicant's cost. The use may require the prompt need for the CSAH 15/Hudson Blvd traffic signal, for which the City will be required to share 25% of the cost, and the Hudson Boulevard realignment. It is not yet known if the applicant's stormwater management plan meets all City, State, and Valley Branch Watershed District requirements.*
- 17) The proposed use will not create excessive additional requirements at public cost for public facilities and services and will not be detrimental to the economic welfare of the community. *While the use will not pay property taxes, sewer and water service charges will be paid by the applicant.*
- 18) The proposed use will not involve uses, activities, processes, materials, equipment and conditions of operation that will be detrimental to any persons, property or the general welfare because of excessive production of traffic, noise, smoke, fumes, glare or odors. *The proposed use will generate a significant number of trips per day, though this will be limited to certain times of the day. Minimal noise is expected to come from the site, except during heavy traffic times at specific times within the morning or afternoon.*
- 19) Vehicular approaches to the property, where present, will not create traffic congestion or interfere with traffic on surrounding public thoroughfares. *Traffic congestion could be created from the significant number of trips to the site, though these would be limited to certain times of the day.*
- 20) The proposed use will not result in the destruction, loss or damage of a natural or scenic feature of major importance. N/A

NOW, THEREFORE, BE IT FURTHER RESOLVED, that the Lake Elmo City Council hereby approves the request by Stillwater Area Schools for a Conditional Use Permit for a school district transportation center with the following conditions of approval:

- 1) The Zoning Text Amendment to allow local transit (school district transportation center) within the Business Park Zoning District must be approved.
- 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.
- 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.
- 4) The Applicant shall submit a photometric plan, and all lighting must meet requirements of Sections 150.035-150.038 of the City Code.
- 5) The above ground storage tank shall require development of diking around the tank, suitably sealed to hold a leakage capacity equal to 115% of the tank capacity. The applicant shall demonstrate that fire, explosion, or water or soil contamination hazards are not present that would be detrimental to the public health, safety, and general welfare. The applicant shall also fill out an Aboveground Storage Tank Notification of Installation or Change in Status Form as required by the Minnesota Pollution Control Agency (MPCA).
- 6) The Applicant shall submit an updated Landscape Plan and Tree Preservation Plan which includes sufficient berming and screening and addresses the comments in this report to be reviewed and approved by the City's Landscape Architect.
- 7) Parking areas shall be paved with a durable surface including, but not limited to, hot asphalt, bituminous or concrete; spaces shall be marked with painted lines at least four inches wide; required interior and exterior parking lot screening is required; a bumper curb or barrier of normal bumper height shall be provided; and must provide an adequate number of Americans with Disabilities Act (ADA) accessible stalls.
- 8) A sign permit shall be obtained prior to erection of any sign on the property.
- 9) The property shall be connected to City sewer and water prior to operation of the bus terminal.
- 10) A Traffic Impact Study is required to determine timing and extent of improvements required for the CSAH 15 and Hudson Boulevard intersection realignment and traffic signal improvements as well as to determine if an eastbound left turn lane along Hudson Boulevard is also needed at the site access.
- 11) The applicant shall be required to include a description of the sanitary sewer capacity demands including the number of residential equivalency units (REC) based on the Metropolitan Council Sewer Availability Charge (SAC) determination policy as well as a description of the water capacity demands including average day use, peak day use, and fire suppression demands. Demands must account for all planned uses and connections to

the sewer system including bus wash wastewater as well as include potable drinking water, bus washing operations, etc.

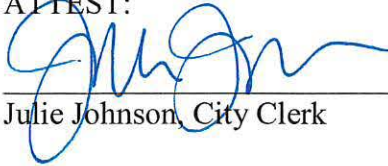
- 12) Applicant shall be responsible to place hydrants throughout the property at the direction of the Fire Department. All fire hydrants shall be owned and maintained by the City.
- 13) That the applicant contribute a onetime payment of \$150,000 in recognition of lost tax revenue as well as the City's cost share of the future traffic signal at the intersection of Manning Avenue (CSAH 15) and Hudson Boulevard North.

Passed and duly adopted this 17th day of July 2018 by the City Council of the City of Lake Elmo, Minnesota.



Mike Pearson, Mayor

ATTEST:



Julie Johnson, City Clerk

**CITY OF LAKE ELMO
WASHINGTON COUNTY
STATE OF MINNESOTA**

RESOLUTION 2019-099

*A RESOLUTION APPROVING A REQUEST BY THE STILLWATER SCHOOL DISTRICT TO AMEND ITS
CONDITIONAL USE PERMIT (RESOLUTION 2018-77) TO OPERATE A SCHOOL DISTRICT
TRANSPORTATION CENTER FOR THE PROPERTY ADDRESSED AS 11530 HUDSON BOULEVARD
NORTH*

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

WHEREAS, Stillwater Area School District, 1875 Greeley Street South, Stillwater, MN 55082 (the “Applicant”) has submitted an application to the City for an amendment to the Applicant’s existing conditional use permit for the Applicant to operate a transportation center (bus terminal) (the “CUP”) located on the property at 11530 Hudson Blvd N (PID# 36.029.21.43.0004) (the “Property”); and

WHEREAS, by Resolution 2018-077, on July 17, 2018, the City Council approved the Applicant’s CUP to operate the transportation center on the Property; and

WHEREAS, one of the conditions in the CUP is that the Property must be connected to City sanitary sewer and water prior to the operation of the bus terminal; and

WHEREAS, the Property is a part of the Four Corners 1st Addition plat that was approved by the City Council in 2018 and a condition of the plat approval was that the developer was to construct sanitary sewer and water facilities in order to bring sanitary sewer and water service to the Property (the “Improvements”); and

WHEREAS, the developer of Four Corners 1st Addition was to complete the Improvements no later than October 31, 2019, but as of this date, construction has not commenced; and

WHEREAS, because the Improvements have not been installed and the Applicant has not been able to connect the Property to sanitary sewer and water, the Applicant requested an amendment to its CUP to amend Condition #9 of the CUP in order to allow the Applicant to operate the bus terminal on the Property using the well and septic system (septic tank and temporary toilets) either until the Applicant connects to City sewer and water or until December 31, 2020, whichever comes first; and

WHEREAS, notice of the Applicant’s proposed amendment to its CUP has been published, mailed, and posted pursuant to the Lake Elmo Zoning Ordinance, Section 154.102; and

WHEREAS, the Lake Elmo Planning Commission held a public hearing on said matter on December 9, 2019; and

WHEREAS, the Lake Elmo Planning Commission has submitted its report and its recommendation of approval of the amendment to the CUP to the City Council as part of a Staff Memorandum dated December 17, 2019; and

WHEREAS, the City Council considered said matter at its December 17, 2019 meeting; and

NOW, THEREFORE, based on the testimony elicited, staff reports, information received, and the record presented, the City Council makes the following:

FINDINGS

- 1) That the procedures for obtaining an amendment to the CUP are found in the Lake Elmo Zoning Ordinance, Section 154.106.
- 2) That all the submission requirements of said Section 154.106 have been met by the Applicant.
- 3) That Applicant's proposed amendment to Condition #9 of the CUP consists of the following:

"[t]he 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 comes first. The School District agrees to connect to City sewer and water within 30 days after it becomes available."

- 4) That the proposed amendment to the Applicant's CUP is approved for the following reasons:
 - a) The developer of Four Corners 1st Addition has failed to install the Improvements. This failure by the developer to install the Improvements is not something that is in the control of the Applicant.
 - b) Properties that are within a MUSA district are required to connect to City water and sanitary sewer when they are developed. With the Property being located within a MUSA district, this standard does apply to the Property. However, with Property being a subset of the overall development of Four Corners 1st Addition, the City does not believe it is reasonable to hold the Applicant accountable to the responsibilities of the developer. Given the requirements made of the developer of Four Corners 1st Addition, the City fully believes that the Property will become connected to sanitary sewer and water within the near future and does not find issue with allowing the Applicant to maintain use of the existing well and septic system (septic tank and temporary toilets) on the Property until sanitary sewer and water become available.
 - c) The Applicant has been able to meet all of the other requirements imposed on it by the CUP.
 - d) The City does not believe that by approving the amendment to the CUP that it will cause a burden to the City, the surrounding property owners, or the public.

NOW, THEREFORE, BE IT FURTHER RESOLVED, that the Lake Elmo City Council hereby approves the request by Applicant for an amendment to the CUP.

Passed and duly adopted this 17th day of December 2019 by the City Council of the City of Lake Elmo, Minnesota.

Mike Pearson, Mayor

ATTEST:

Julie Johnson, City Clerk

**CITY OF LAKE ELMO
WASHINGTON COUNTY
STATE OF MINNESOTA**

RESOLUTION 2019-099

*A RESOLUTION DENYING A REQUEST BY THE STILLWATER SCHOOL DISTRICT TO AMEND ITS
CONDITIONAL USE PERMIT (RESOLUTION 2018-77) TO OPERATE A SCHOOL DISTRICT
TRANSPORTATION CENTER FOR THE PROPERTY ADDRESSED AS 11530 HUDSON BOULEVARD
NORTH*

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

WHEREAS, Stillwater Area School District, 1875 Greeley Street South, Stillwater, MN 55082 (the “Applicant”) has submitted an application to the City for an amendment to the Applicant’s existing conditional use permit for the Applicant to operate a transportation center (bus terminal) (the “CUP”) located on the property at 11530 Hudson Blvd N (PID# 36.029.21.43.0004) (the “Property”); and

WHEREAS, by Resolution 2018-077, on July 17, 2018, the City Council approved the Applicant’s CUP to operate the transportation center on the Property; and

WHEREAS, one of the conditions in the CUP is that the Property must be connected to City sanitary sewer and water prior to the operation of the bus terminal; and

WHEREAS, the Property is a part of the Four Corners 1st Addition plat that was approved by the City Council in 2018 and a condition of the plat approval was that the developer was to construct sanitary sewer and water facilities in order to bring sanitary sewer and water service to the Property (the “Improvements”); and

WHEREAS, the developer of Four Corners 1st Addition was to complete the Improvements no later than October 31, 2019, but as of this date, construction has not commenced and the City has not received any written assurance from the developer that the Improvements will be constructed any time in the near future; and

WHEREAS, because the Improvements have not been installed and the Applicant has not been able to connect the Property to sanitary sewer and water, the Applicant requested an amendment to its CUP to amend Condition #9 of the CUP in order to allow the Applicant to operate the bus terminal on the Property using the well and septic system (septic tank and temporary toilets) either until the Applicant connects to City sewer and water or until December 31, 2020, whichever comes first; and

WHEREAS, notice of the Applicant’s proposed amendment to its CUP has been published, mailed, and posted pursuant to the Lake Elmo Zoning Ordinance, Section 154.102; and

WHEREAS, the Lake Elmo Planning Commission held a public hearing on said matter on December 9, 2019; and

WHEREAS, the Lake Elmo Planning Commission has submitted its report and recommendation to the City Council as part of a Staff Memorandum dated December 17, 2019; and

WHEREAS, the City Council considered said matter at its December 17, 2019 meeting; and

NOW, THEREFORE, based on the testimony elicited, staff reports, information received, and the record presented, the City Council makes the following:

FINDINGS

- 1) That the procedures for obtaining an amendment to the CUP are found in the Lake Elmo Zoning Ordinance, Section 154.106.
- 2) That all the submission requirements of said Section 154.106 have been met by the Applicant.
- 3) That Applicant's proposed amendment to Condition #9 of the CUP consists of the following:

"[t]he 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 comes first. The School District agrees to connect to City sewer and water within 30 days after it becomes available."

- 4) That the proposed amendment to the Applicant's CUP must be denied for the following reasons:
 - a) The developer of Four Corners 1st Addition has had more than one year to construct the sanitary sewer and water facilities that are needed for the Applicant's bus terminal and has not done so. In fact, the developer has not started construction of the project. To date, there has been no written assurances given to the City by the developer of the Four Corners 1st Addition project that the sanitary sewer and water facilities that are needed for the operation of the Applicant's bus terminal will be constructed at any time in the near future.
 - b) Properties that are within a MUSA district are required to connect to City water and sanitary sewer when they are developed. The Property is located within a MUSA district. Since it is not connected to City water and sanitary sewer services, it is in conflict with the requirements of the MUSA district, as outlined by the Comprehensive Plan and the use should not be allowed to continue due to this conflict.
 - c) The building on the Property is sprinklered yet not connected to City water. There is a safety hazard to the occupants of the building if the building is allowed to operate without the sprinkler system functioning, even if it is for a limited amount of time.

NOW, THEREFORE, BE IT FURTHER RESOLVED, that the Lake Elmo City Council hereby denies the request by Applicant for an amendment to the CUP.

Passed and duly adopted this 17th day of December 2019 by the City Council of the City of Lake Elmo, Minnesota.

Mike Pearson, Mayor

ATTEST:

Julie Johnson, City Clerk