

FILE

City of Lake Elmo
3800 Laverne Avenue North
Lake Elmo, Minnesota

Wednesday, November 4, 2009
*(**Date has been changed due to November 3rd election day**)*

7:00 p.m.

- A. CALL TO ORDER
- B. PLEDGE OF ALLEGIANCE:
- C. ATTENDANCE: ___ Johnston ___ DeLapp, ___ Emmons, ___ Park
___ Smith
- D. APPROVAL OF AGENDA: (The approved agenda is the order in which the City Council will do its business.)
- E. ORDER OF BUSINESS: (This is the way that the City Council runs its meetings so everyone attending the meeting or watching the meeting understands how the City Council does its public business.)
- F. GROUND RULES: (These are the rules of behavior that the City Council adopted for doing its public business.)
- G. APPROVE MINUTES:
 - 1. Approval of the October 20, 2009 City Council minutes
- H. PUBLIC COMMENTS/INQUIRIES: In order to be sure that anyone wishing to speak to the City Council is treated the same way, meeting attendees wishing to address the City Council on any items NOT on the regular agenda may speak for up to three minutes.
- I. CONSENT AGENDA: (Items are placed on the consent agenda by City staff and the Mayor because they are not anticipated to generate discussion. Items may be removed at City Council's request.)
 - 2. Approve payment of disbursements and payroll
 - 3. Resolution No. 2009-042 allowing detached garage closer to road right-of-way, Robert Bliss
- J. REGULAR AGENDA:
 - 4. Hiring of Public Works Maintenance Operator
 - 5. Adopt Ordinance no. 08-018, amending Section 50.40 regarding water use restrictions
 - 6. Approval of 2010 water conservation rates

7. Adopt Ordinance No. 08-019, Wireless Telecommunication Ordinance, Resolution No. 2009-043

K. REPORTS AND ANNOUNCEMENTS:

(These are verbal updates and do not have to be formally added to the agenda.)

- Mayor and City Council
- Administrator
- Planning Director
 - a. Update on Whistling Valley
 - b. Update on Flood Plain Ordinance

L. Adjourn

City of Lake Elmo
City Council Minutes

October 20, 2009

Mayor Johnston called the meeting to order at 7:000 p.m.

PRESENT: Mayor Johnston and Council Members DeLapp, Emmons (arrived at 7:04 p.m.), Park and Smith

Also Present: City Administrator Mussel, Planning Director Klatt, Attorney Snyder, Finance Director Bouthilet and City Clerk Lumby

APPROVAL OF AGENDA:

MOTION: Council Member DeLapp moved to approve the October 20, 2009 City Council Agenda as presented. Council Member Park seconded the motion. The motion passed 4-0.

ORDER OF BUSINESS:

GROUND RULES:

APPROVED MINUTES:

The October 6, 2009, City Council minutes were approved by consensus.

PUBLIC COMMENTS/INQUIRIES: None

CONSENT AGENDA:

MOTION: Council Member DeLapp moved to approve the Consent Agenda as presented. Council Member Smith seconded the motion. The motion passed 5-0.

- Approve payment of disbursements and payroll in the amount of \$142,779.46

REGULAR AGENDA:

Consider an application from Greg and Kathy Lohmer for a variance from the maximum impervious coverage ratio to permit the construction of an addition at 8199 Hill Trail N.

Kyle Klatt, Planning Director, reported the City Council is being asked to consider a request from Greg and Kathy Lohmer for a variance to allow the construction of 147 sq.ft. addition and associated breezeway to the house at 8199 Hill Trail N. that would add 112 sq.ft. of additional impervious surface coverage to a lot that already exceeds the maximum of 25% coverage allowed under the R-1 Zoning District. The variance has

been requested to allow an expansion and improvement of the primary structure on this site that would otherwise be limited to the existing footprint of the building.

Staff determined all criteria were met as strict adherence to the code and that the request was deemed reasonable as the addition would have no impact on adjacent properties. The Planning Commission recommended approval of the request by a vote of eight to one.

As a condition of approval for property in the shoreland district, the following wording was suggested and will be reviewed by City Attorney Snyder "The property will be verified as compliant with the DNR shoreland buffer regulations in effect at the time of approval, by the Washington Conservation District."

MOTION: Council Member Smith moved to approve Resolution No. 2009-040, A Resolution approving for Greg and Kathleen Lohmer, 8199 Hill Trail N., to allow the construction of a 147 sq.ft. addition and related breezeway structure to the house at 8199 Hill Trail N. that would add 112 sq.ft. of additional impervious surface coverage to a lot that already exceeds the maximum of 25% coverage allowed under the R-1 Zoning District, with the inclusion of two conditions:

- 1. Require proper redirection of water away from any neighbors*
- 2. Make sure that additional impervious surfaces are not added after the project is complete.*

Council Member Park seconded the motion. The motion passed 5-0.

Public Hearing – Tablyn Park Improvement

Tom Bouthilet, Finance Director, reported the City Council adopted Resolution 2009-039, authorizing the issuance and award of sale for the payment of \$575,000 General Obligation Improvement Bonds, Series 2009B, at its October 6, 2009 meeting. The resolution was contingent of the completion of the 429 proceeding which is the inclusion of the Tablyn Park portion of the project. The 429 Public Hearing for the 2009 street improvements was conducted by the Council on April 7, 2009. It was determined that the City would benefit by including the Tablyn Park improvements with the 2009 Street Improvements.

Staff recommended inclusion of the Tablyn Park Entrance to the Bond issue due to favorable interest rates.

Mayor Johnston opened the public hearing at 7:11 p.m.

Dave Moore, 8680 Stillwater Blvd. N., stated the improvement to the parking lot and entrance looks very nice.

Mayor Johnston closed the public hearing at 7:12 p.m.

MOTION: Council Member Emmons moved to approve Resolution No. 2009-041, A Resolution Consolidating and Ordering Improvements. Council Member Smith seconded the motion. The motion passed 5-0.

Authorization to proceed on the Feasibility Report for the 2010 Street and Water Quality Improvements

Bruce Messelt, City Administrator, reported the City Council is being asked to proceed with the first step to implement the 2010 Street Improvements, which is to authorize the preparation of a Feasibility Report.

The 2009-2013 Street Capital Improvements Program (CIP) was adopted by the City Council on February 17, 2009. The approved street CIP also identifies the improvement of 28th Street from a gravel roadway to a paved bituminous roadway. Staff recommends removing the proposed 28th Street Imp from the 2010 Street program until staff and Council can determine the appropriate improvement process and assessment methodology for residential local gravel roadways. This investigation will also aid in preparation of scheduled improvements to the gravel portion of 50th Street.

The 2010 Street Improvements include the following street segments:

57th Street N. from 55th Street to Julep Way
53rd Street N. from east side of Foxfire Addition to Keats Avenue N.
Isle Avenue North from Jamaca Avenue N. to South End
Jane Road North from Jamaca Avenue N. to West End

Preparation of the Feasibility Report will cost \$13,500 and there are sufficient funds within the City's CIP to undertake this project.

In 2009, the Council indicated a desire to revisit the City's current assessment policy and practices. It is anticipated that this item will be scheduled for the November 10th workshop as part of preparing for implementation of the 2010 Street Capital Improvement Program.

MOTION: Council Member Smith moved to authorize TKDA to prepare the feasibility report for the 2010 Street and Water Quality Improvements in the amount of \$13,500. Council Member Park seconded the motion. The motion passed 5-0.

General Fund Revenues/Expenditures through 3rd Quarter 2009 (Unaudited)

Bruce Messelt, City Administrator, reported this item was for information purposes only. The report details year-to-date City of Lake Elmo General Fund revenues and expenditures through September 30, 2009. Staff will provide Council quarterly financial reports.

Tom Bouthilet, Finance Director, reported the City was on the identical course as last year. In 2008, \$155,000 was contributed to reserves.

The meeting was adjourned at 7:43 p.m.

Respectfully submitted by Sharon Lumby, City Clerk

DRAFT

The meeting was adjourned at p.m.

City Council
11/4/2009
CONSENT
Item: 2

AGENDA ITEM: Approve disbursements in the amount of : \$ 103,321.94

SUBMITTED BY: Tom Bouthilet, Finance Director

THROUGH: Bruce A Messelt, City Administrator *BAM*

REVIEWED BY: City Staff

<u>Claim #</u>	<u>Amount</u>	<u>Description</u>
ACH	\$ 6,881.39	Payroll Taxes to IRS 10/22/2009
ACH	\$ 1,298.49	Payroll Taxes to Mn Dept.of Revenue 10/22/09
ACH	\$ 230.60	Payroll Taxes to WI Dept.of Revenue 10/22/09
DD2462 - DD2478	\$ 20,865.26	Payroll Dated 10/22/2009 (Direct Deposit)
34855 - 34860	\$ 7,584.31	Payroll Dated 10/22/2009 (Payroll)
34861 - 34905	\$ 66,461.89	Accounts Payable Dated 11/04/2009

Total: \$ 103,321.94

SUMMARY AND ACTION REQUESTED: The City Council is being asked to approve disbursements in the total amount of \$103,321.94

Accounts Payable To Be Paid Proof List

User: Administrator
 Printed: 10/29/2009 - 2:53 PM
 Batch: 005-10-2009

Invoice #	Inv Date	Amount	Quantity	Pmt Date	Description	Reference	Task	Type	PO #	Close POLine #
AIRGAS Airgas North Central										
105874588	10/26/2009	13.02	0.00	11/03/2009	Acetylene/Oxygen tank lease		-	No		0000
101-430-3100-43150	Contract Services	13.02								
	105874588 Total:	13.02								
	AIRGAS Total:	13.02								
ANDERNIC Nicholas Anderson										
1013/2009	10/13/2009	44.09	0.00	11/03/2009	Council Workshop	10/13/09	-	No		0000
101-410-1320-43620	Cable Operation Expense									
1013/2009	10/13/2009	-2.84	0.00	11/03/2009	Tax		-	No		0000
101-000-0000-20201	Use Tax Payable	41.25								
	10/13/2009 Total:	41.25								
	ANDERNIC Total:	41.25								
ARAM Aramark, Inc.										
629-6806609	10/19/2009	40.86	0.00	11/03/2009	Monthly rug service, station #1	August	-	No		0000
101-420-2220-44010	Repairs/Maint Bldg									
	629-6806609 Total:	40.86								
629-6806611	10/19/2009	42.56	0.00	11/03/2009	Monthly rug service, station #2	August	-	No		0000
101-420-2220-44010	Repairs/Maint Bldg									
	629-6806611 Total:	42.56								
629-6825837	10/19/2009	40.86	0.00	11/03/2009	Monthly rug service, station #1	Sept	-	No		0000
101-420-2220-44010	Repairs/Maint Bldg									
	629-6825837 Total:	40.86								
629-6825838	10/19/2009	42.56	0.00	11/03/2009	Monthly rug service, station #2	Sept	-	No		0000
101-420-2220-44010	Repairs/Maint Bldg									
	629-6825838 Total:	42.56								
629-6848431	10/22/2009	36.26	0.00	11/03/2009	Uniforms		-	No		0000
101-430-3100-44170	Uniforms	36.26								
	629-6848431 Total:	36.26								
	ARAM Total:	203.10								

Invoice #	Inv Date	Amount	Quantity	Pmt Date	Description	Reference	Task	Type	PO #	Close PO Line #
BATTYPL Batteries Plus Woodbury, Corp										
32-182976	10/26/2009	26.61	0.00	11/03/2009	Garage Door Batteries		-	No		0000
101-450-5200-44010	Repairs/Maint Bldg	26.61								
	32-182976 Total:	26.61								
	BATTYPL Total:	26.61								
BIFFS Biffs Inc.										
W393833-W393838	10/21/2009	429.02	0.00	11/03/2009	Portable Restrooms		-	No		0000
101-450-5200-44120	Rentals - Buildings	429.02								
	W393833-W393838 Total:	429.02								
	BIFFS Total:	429.02								
BRYAN Bryan Rock Products, Inc.										
32601	10/15/2009	1,243.38	0.00	11/03/2009	Base Gravel for Carriage Station Shelter		-	No		0000
404-480-8000-45300	Improvements Other Than Bldgs	1,243.38								
	32601 Total:	1,243.38								
	BRYAN Total:	1,243.38								
BUELOW Buelow Excavating										
6391	10/29/2009	735.00	0.00	11/03/2009	Silt Fence Install 11771 56th		-	No		0000
803-000-0000-22900	Deposits Payable	735.00			Compliance					
	6391 Total:	735.00								
	BUELOW Total:	735.00								
CARQUEST Car Quest Auto Parts										
2055-169779	10/13/2009	446.09	0.00	11/03/2009	Oil/Air/wiper blades		-	No		0000
101-430-3100-42210	Equipment Parts	446.09								
	2055-169779 Total:	446.09								
2055-170576	10/21/2009	157.98	0.00	11/03/2009	Oil/Air Filter		-	No		0000
101-430-3100-42210	Equipment Parts	157.98								
	2055-170576 Total:	157.98								
	CARQUEST Total:	604.07								
CSS Systems Specialists Communication										
90080	10/03/2009	97.50	0.00	11/03/2009	Repair phone lines at station #1		-	No		0000
101-420-2220-44010	Repairs/Maint Bldg	97.50								
	90080 Total:	97.50								
	CSS Total:	97.50								

Invoice #	Inv Date	Amount	Quantity	Pmt Date	Description	Reference	Task	Type	PO #	Close PO Line #
DESIGNF Design Forum Inc 00-483 09/27/2009 404-480-8000-45200 Buildings & Structures 00-483 Total: DESIGNF Total:		2,687.00 2,687.00 2,687.00	0.00	11/03/2009	Design Carriage Station Park Shelter		-	No		0000
FXL FXL, Inc. 11/1/2009 11/01/2009 101-410-1320-43100 Assessing Services 11/1/2009 Total: FXL Total:		2,000.00 2,000.00 2,000.00	0.00	11/03/2009	Assessing Services November 2009		-	No		0000
G.S.T. G.S.T. DBA Arena Systems AS 17307 10/21/2009 404-480-8000-45300 Improvements Other Than Bldgs AS 17307 Total: G.S.T. Total:		879.53 879.53 879.53	0.00	11/03/2009	Rink Shelter protective floor mats		-	No		0000
HERITAGE Heritage Printing 19128 10/09/2009 101-420-2400-42000 Office Supplies 19128 Total: HERITAGE Total:		68.93 68.93 68.93	0.00	11/03/2009	Paper - Building permit Application		-	No		0000
Hewlett Hewlett Packard 46537104 09/29/2009 410-480-8000-45700 Office Equipment & Furnishings 46537104 Total: Hewlett Total:		1,199.14 1,199.14 1,199.14	0.00	11/03/2009	Computer Replacement		-	No		0000
KLINE Kline Motorsports 904716 10/20/2009 101-420-2220-44040 Repairs/Maint Eqpt 904716 Total: KLINE Total:		18.20 18.20 18.20	0.00	11/03/2009	Hardware for Ranger Windshield		-	No		0000
KRIEGLER Carol Krieger 10/22/2009 10/22/2009 410-480-8000-45800 Other Equipment		23.15	0.00	11/03/2009	Return of un-needed Audio equipment		-	No		0000

Invoice #	Inv Date	Amount	Quantity	Pmt Date	Description	Reference	Task	Type	PO #	Close PO Line #
10/22/2009	10/22/2009	128.54	0.00	11/03/2009	Monitor for cable equipment		-			0000
410-480-8000-45800	Other Equipment									No
10/22/2009	10/22/2009	15.24	0.00	11/03/2009	Refreshments for Buckthorn event		-			0000
101-450-5200-44300	Miscellaneous									No
	10/22/2009 Total:	166.93								
	KRIEGLER Total:	166.93								
LERELIEF Lake Elmo Fire Relief Assn.										
09/30/2009	09/30/2009	34,527.00	0.00	11/03/2009	Fire State Aid Reimbursement		-			0000
101-420-2250-44920	Fire State Aid									No
	09/30/2009 Total:	34,527.00								
	LERELIEF Total:	34,527.00								
MALMQ Malmquist Greg										
Travel Expense	10/19/2009	551.46	0.00	11/03/2009	MN State Fire chief Assoc.		-			0000
101-420-2220-44370	Conferences & Training									No
	Travel Expense Total:	551.46								
	MALMQ Total:	551.46								
MARONEYS Maroney's Sanitation, Inc										
308212	10/06/2009	103.66	0.00	11/03/2009	Waste Removal - City Hall		-			0000
101-410-1940-43840	Refuse									No
308212	10/06/2009	45.62	0.00	11/03/2009	Waste Removal - Fire		-			0000
101-420-2220-43840	Refuse									No
308212	10/06/2009	151.26	0.00	11/03/2009	Waste Removal - Public Works		-			0000
101-430-3100-43840	Refuse									No
308212	10/06/2009	224.65	0.00	11/03/2009	Waste Removal - Parks		-			0000
101-450-5200-43840	Refuse									No
308212	10/06/2009	128.72	0.00	11/03/2009	Dumpster Fall Festival		-			0000
204-450-5200-43150	Contract Services									No
	308212 Total:	653.91								
	MARONEYS Total:	653.91								
MENARDSO Menards - Oakdale										
3867	10/28/2009	170.97	0.00	11/03/2009	Emergency/Exit Lighting for Station 1		-			0000
101-420-2220-44010	Repairs/Maint Bldg									No
	3867 Total:	170.97								
98643	10/13/2009	12.78	0.00	11/03/2009	Hockey Board Screws		-			0000
101-450-5200-44030	Repairs/Maint Imp Not Bldgs									No
	98643 Total:	12.78								

Invoice #	Inv Date	Amount	Quantity	Pmt Date	Description	Reference	Task	Type	PO #	Close POLine #
MENARDSO Total:		183.75								
MENARDST Menards - Stillwater										
46372	10/20/2009	62.41	0.00	11/03/2009	Hockey Board T Posts		-	No		0000
101-430-3100-42400	Small Tools & Minor Equipment									
46372	10/20/2009	2.98	0.00	11/03/2009	Water Tower II Mouse Traps		-	No		0000
101-450-5200-44030	Repairs/Maint Imp Not Bldgs									
	46372 Total:	65.39								
47236	10/23/2009	6.81	0.00	11/03/2009	Bags for Waste		-	No		0000
101-420-2220-42080	EMS Supplies									
47236	10/23/2009	27.92	0.00	11/03/2009	Flor-Dri for Auto Accidents		-	No		0000
101-420-2220-44040	Repairs/Maint Eqpt									
	47236 Total:	34.73								
	MENARDST Total:	100.12								
MN CORP Minnesota Corporate Mechanical										
13125	08/17/2009	1,961.00	0.00	11/03/2009	Repairs to A/C Unit- Annex		-	No		0000
101-410-1940-44040	Repairs/Maint Contractual Eqpt									
	13125 Total:	1,961.00								
	MN CORP Total:	1,961.00								
MN Fall MN Fall Expo										
5974Mb	10/13/2009	90.00	0.00	11/03/2009	Maint. Expo/Conference		-	No		0000
101-430-3100-44370	Conferences & Training									
	5974Mb Total:	90.00								
	MN Fall Total:	90.00								
MNRURAL MN Rural Water Association										
2009-2010 Memb	09/29/2009	200.00	0.00	11/03/2009	Membership Renewal		-	No		0000
601-494-9400-44370	Conferences & Training									
	2009-2010 Memb Total:	200.00								
	MNRURAL Total:	200.00								
NEXTEL Nextel Communications										
761950227-079	10/18/2009	101.52	0.00	11/03/2009	Cell Phone Services - Admin		-	No		0000
101-410-1940-43210	Telephone									
761950227-079	10/18/2009	77.61	0.00	11/03/2009	Cell Phone Services - Fire Dept		-	No		0000
101-420-2220-43210	Telephone									
761950227-079	10/18/2009	34.72	0.00	11/03/2009	Cell Phone Services - Building Dept		-	No		0000
101-420-2400-43210	Telephone									

Invoice #	Inv Date	Amount	Quantity	Pmt Date	Description	Reference	Task	Type	PO #	Close PO Line #
761950227-079	10/18/2009	59.08	0.00	11/03/2009	Cell Phone Services - Public Works Dept.		-	No		0000
101-430-3100-43210	Telephone									
761950227-079	10/18/2009	17.36	0.00	11/03/2009	Cell Phone Services - Parks Dept		-	No		0000
101-450-5200-43210	Telephone									
	761950227-079 Total:	290.29								
	NEXTEL Total:	290.29								
OAKDRC Oakdale Rental Center										
10067426	09/30/2009	68.35	0.00	11/03/2009	Propane - patching Trailer		-	No		0000
101-430-3100-42240	Street Maintenance Materials									
	10067426 Total:	68.35								
	OAKDRC Total:	68.35								
PETERSO Peterson Fram & Bergman Corp										
11140-030001M	09/30/2009	2,752.56	0.00	11/03/2009	Legal Services - Criminal		-	No		0000
101-420-2150-43045	Attorney Criminal									
	11140-030001M Total:	2,752.56								
	PETERSO Total:	2,752.56								
PIONEERP Pioneer Press										
219071	11/01/2009	181.48	0.00	11/03/2009	Annual Newspaper Subscription		-	No		0000
101-410-1320-44330	Dues & Subscriptions									
	219071 Total:	181.48								
	PIONEERP Total:	181.48								
PRESS Press Steven										
10/14/2009	10/14/2009	62.93	0.00	11/03/2009	Planning commission mtg 10/14/2009		-	No		0000
101-410-1910-43620	Cable Operation Expense									
10/14/2009	10/14/2009	-4.05	0.00	11/03/2009	Planning commission mtg 10/14/2009		-	No		0000
101-000-0000-20201	Use Tax Payable									
	10/14/2009 Total:	58.88								
10/20/2009	10/20/2009	62.93	0.00	11/03/2009	Cable CC meeting 10/20/2009		-	No		0000
101-410-1320-43620	Cable Operation Expense									
10/20/2009	10/20/2009	-4.05	0.00	11/03/2009	Use Tax		-	No		0000
101-000-0000-20201	Use Tax Payable									
	10/20/2009 Total:	58.88								
10/26/2009	10/26/2009	-4.05	0.00	11/03/2009	Use Tax		-	No		0000
101-000-0000-20201	Use Tax Payable									
	10/26/2009 Total:	62.93								
101-410-1910-43620	Cable Operation Expense									
	10/26/2009 Total:	58.88								

Invoice #	Inv Date	Amount	Quantity	Pmt Date	Description	Reference	Task	Type	PO #	Close POLine #
10/27/09	10/27/2009	47.20	0.00	11/03/2009	Cable Planning Comm.	10/26/09	-	No		0000
101-410-1910-43620	Cable Operation Expense									
10/27/09	10/27/2009	-3.04	0.00	11/03/2009	Cable Planning Comm.	10/26/09	-	No		0000
101-000-0000-20201	Use Tax Payable									
	10/27/09 Total:	44.16								
	PRESS Total:	220.80								
<hr/>										
READYWAT Ready Watt Electric										
94580	09/17/2009	186.00	0.00	11/03/2009	Repair Warning Siren		-	No		0000
101-410-1940-44040	Repairs/Maint Contractual Eqpt									
	94580 Total:	186.00								
	READYWAT Total:	186.00								
<hr/>										
RUD Prince-Rud Diane										
11/3/2009	11/03/2009	342.00	0.00	11/03/2009	Cleaning City Hall & Annex		-	No		0000
101-410-1940-44010	Repairs/Maint Contractual Bldg									
11/3/2009	11/03/2009	256.50	0.00	11/03/2009	Cleaning Fire Hall		-	No		0000
101-420-2220-44010	Repairs/Maint Bldg									
11/3/2009	11/03/2009	-38.50	0.00	11/03/2009	Tax		-	No		0000
101-000-0000-20201	Use Tax Payable									
	11/3/2009 Total:	560.00								
	RUD Total:	560.00								
<hr/>										
S&T S&T Office Products, Inc.										
01NP8606	10/08/2009	317.95	0.00	11/03/2009	Office Supplies		-	No		0000
101-410-1320-42000	Office Supplies									
	01NP8606 Total:	317.95								
01NQ6278	10/23/2009	188.63	0.00	11/03/2009	Office Supplies-Toner Cartridges		-	No		0000
101-410-1320-42000	Office Supplies									
	01NQ6278 Total:	188.63								
	S&T Total:	506.58								
<hr/>										
SAFEASSU Safe Assure Consultants Inc.										
220	10/22/2009	500.00	0.00	11/03/2009	Annual OSHA safety & Training Compliance		-	No		0000
101-410-1320-44370	Conferences & Training									
220	10/22/2009	1,000.00	0.00	11/03/2009	Annual OSHA safety & Training Compliance		-	No		0000
101-430-3100-44370	Conferences & Training									
220	10/22/2009	800.00	0.00	11/03/2009	Annual OSHA safety & Training Compliance		-	No		0000
601-494-9400-44370	Conferences & Training									
220	10/22/2009	600.00	0.00	11/03/2009	Annual OSHA safety & Training Compliance		-	No		0000
602-495-9450-44370	Conferences & Training									
	220 Total:	2,900.00								

Invoice #	Inv Date	Amount	Quantity	Pmt Date	Description	Reference	Task	Type	PO #	Close POLine #
	SAFEASSU Total:	2,900.00								
SAMSClub Sam's Club	10/09/2009	24.06	0.00	11/03/2009	Restock station supplies		-	No		0000
1453-6487	Repairs/Maint Bldg									
101-420-2220-44010	1453-6487 Total:	24.06								
	SAMSClub Total:	24.06								
SPRING SPRINGSTED	10/08/2009	50.00	0.00	11/03/2009	New Manager Training		-	No		0000
1	Miscellaneous									
101-410-1320-44300	1 Total:	50.00								
	SPRING Total:	50.00								
SPRINT Sprint	10/18/2009	79.98	0.00	11/03/2009	Phone Cards for Laptops		-	No		0000
837908817-023	Telephone									
101-420-2220-43210	837908817-023 Total:	79.98								
	SPRINT Total:	79.98								
STCROIXR ST.CROIX RECREATION CO.	09/30/2009	1,731.38	0.00	11/03/2009	Reid Park Playground Surfacing		-	No		0000
16261	Improvements Other Than Bldgs									
404-480-8000-45300	16261 Total:	1,731.38								
	STCROIXR Total:	1,731.38								
STILLMED Stillwater Medical Group	10/09/2009	1,609.00	0.00	11/03/2009	Preplacement/Annual Physicals, Hep B		-	No		0000
101-420-2220-43050	Physicals				vac					
	10/09/2009 Total:	1,609.00								
	STILLMED Total:	1,609.00								
STILLMOT Stillwater Motors	09/18/2009	25.99	0.00	11/03/2009	Door Handle 98-1		-	No		0000
CVW 55425	Equipment Parts									
101-430-3100-42210	CVW 55425 Total:	25.99								
	STILLMOT Total:	25.99								

Invoice #	Inv Date	Amount	Quantity	Pmt Date	Description	Reference	Task	Type	PO #	Close POLine #
TASCH T. A. Schifsky & Sons Inc										
48118	10/08/2009	134.34	0.00	11/03/2009	Asphalt		-		No	0000
101-430-3120-42240	Street Maintenance Materials	134.34								
	48118 Total:	134.34								
	TASCH Total:	134.34								
TOWER Tower Asphalt, Inc.										
42868	10/20/2009	4,350.00	0.00	11/03/2009	Paved parking lot expansion Reid Park		-		No	0000
404-480-8000-45300	Improvements Other Than Bldgs	4,350.00								
	42868 Total:	4,350.00								
	TOWER Total:	4,350.00								
TRKUJI Truck Utilities										
203935	10/13/2009	15.99	0.00	11/03/2009	Grab Hooks		-		No	0000
101-430-3100-42150	Shop Materials	15.99								
	203935 Total:	15.99								
204335	10/23/2009	106.88	0.00	11/03/2009	Brake Control 09-1		-		No	0000
101-430-3100-42210	Equipment Parts	106.88								
	204335 Total:	106.88								
	TRKUJI Total:	122.87								
VANZANDT Van Zandt Distributing										
3824	10/12/2009	421.41	0.00	11/03/2009	EMS Supplies for HINI Protection		-		No	0000
101-420-2220-42080	EMS Supplies	421.41								
	3824 Total:	421.41								
	VANZANDT Total:	421.41								
WASRADIO WASHINGTON COUNTY										
64507	10/26/2009	1,166.90	0.00	11/03/2009	Monthly User Fee for 800 MHz Radios		-		No	0000
101-420-2220-43230	Radio	1,166.90								
	64507 Total:	1,166.90								
	WASRADIO Total:	1,166.90								
ZACK Zack's, Inc.										
25371	10/15/2009	97.98	0.00	11/03/2009	Flat Towels - City Hall		-		No	0000
101-410-1940-42110	Cleaning Supplies	97.98								
25371	10/15/2009	75.98	0.00	11/03/2009	Multi fold towels (park Shelter)		-		No	0000
101-450-5200-42150	Shop Materials	75.98								
25371	10/15/2009	71.92	0.00	11/03/2009	D - Rings		-		No	0000
101-430-3100-42210	Equipment Parts	71.92								

Invoice #	Inv Date	Amount	Quantity	Pmt Date	Description	Reference	Task	Type	PO #	Close POLine #
25371	10/15/2009	154.10	0.00	11/03/2009	Misc shop supplies		-		No	0000
101-430-3100-42150	Shop Materials	399.98								
	25371 Total:	399.98								
	ZACK Total:	399.98								
	Report Total:	66,461.89								

City Council
Date: 11/04/09
CONSENT
Item: 3
MOTION: Res. 2009-042

AGENDA ITEM: Consider Resolution 2009 – 042 approving the construction of a 192 square-foot accessory building to be located closer to the road right-of-way than the existing house and attached garage by 138 feet on the 1.04 acre parcel at 7910 DeMontreville Trail North.

SUBMITTED BY: Robert Bliss, Applicant and Property Owner

THROUGH: Bruce A Messelt, City Administrator

REVIEWED BY: Kyle Klatt, Planning Director
Dave Snyder, City Attorney
Kelli Matzek, City Planner

SUMMARY AND ACTION REQUESTED:

The City Council is being asked to consider approving a resolution to allow the construction of an accessory structure to be located 54 feet from the road right-of-way at 7910 DeMontreville Trail North. This location, while it meets the setback requirements of the R-1 zoning district, would place the new accessory building at a location closer to the road right-of-way than the existing house. The proposed 192 square-foot building is proposed to enclose equipment such as a boat and trailers, thereby meeting the definition of a garage according to the city code. The existing house and attached garage are 160 feet from the road right-of-way. The proposed building is 54 feet from the road right-of-way.

The zoning ordinance only allows a detached garage to be located closer to a front lot line than a principal building upon approval by the City Council. This action does not require Planning Commission consideration nor does it require notifying adjacent property owners.

Suggested Motion: **“I move to Approve Resolution 2009-042.”**

STAFF REPORT:

Staff finds that this request is permissible under the code and that the location of the new building would not negatively impact neighboring properties as it is screened by trees to the west and by trees on the property to the east. This is not a request for a variance, so the applicant does not need to demonstrate a hardship.

APPLICABLE SECTION OF CODE

- Section 154.092, Subd.I

“No detached garages or other accessory buildings in residential districts shall be located nearer the front lot line than the principal building on that lot, except in AG, RR, and R1 districts where detached garages may be permitted nearer the front lot line than the principal building by resolution of the City Council, except in planned unit developments or cluster developments.”

STAFF RECOMMENDATION:

Based on our analysis of the request, staff is recommending approval of Resolution 2009-042 to allow the construction of a detached building 54 feet from the right-of-way at 7910 DeMontreville Trail North.

The City Council also has the option to deny the Applicant’s request or to remand this application for further analysis and preparation, with reason specified or specific direction provided.

ATTACHMENTS:

1. Resolution 2009 – 042
2. Applicant’s Site Plan
3. Aerial Image of Property

ORDER OF BUSINESS (if removed from the proposed Consent Agenda):

- Introduction..... Bruce Messelt, City Administrator
- Report/Presentation..... Kyle Klatt, Planning Director
- Questions & Action/Direction from the Council Mayor & Council Members

CITY OF LAKE ELMO
WASHINGTON COUNTY, MINNESOTA

RESOLUTION NO. 2009-042

A RESOLUTION APPROVING THE PLACEMENT OF A NEW DETACHED
GARAGE CLOSER TO THE ROAD RIGHT-OF-WAY THAN THE EXISTING
HOUSE AT 7910 DEMONTREVILLE TRAIL NORTH

WHEREAS, pursuant to Section 154.092 Subd. I of the Lake Elmo Municipal Code, Robert and Carol Bliss, the property owners, have requested approval to place a new detached garage closer to the road right-of-way than the existing house and attached garage by 138 feet at 7910 DeMontreville Trail North, in accordance with plans received by staff dated October 27, 2009.

WHEREAS, the location of the proposed detached garage is appropriate as it is screened from the neighboring homes by vegetation, meets the setback requirements in the R-1 zoning district, and is in keeping with the character of the neighborhood.

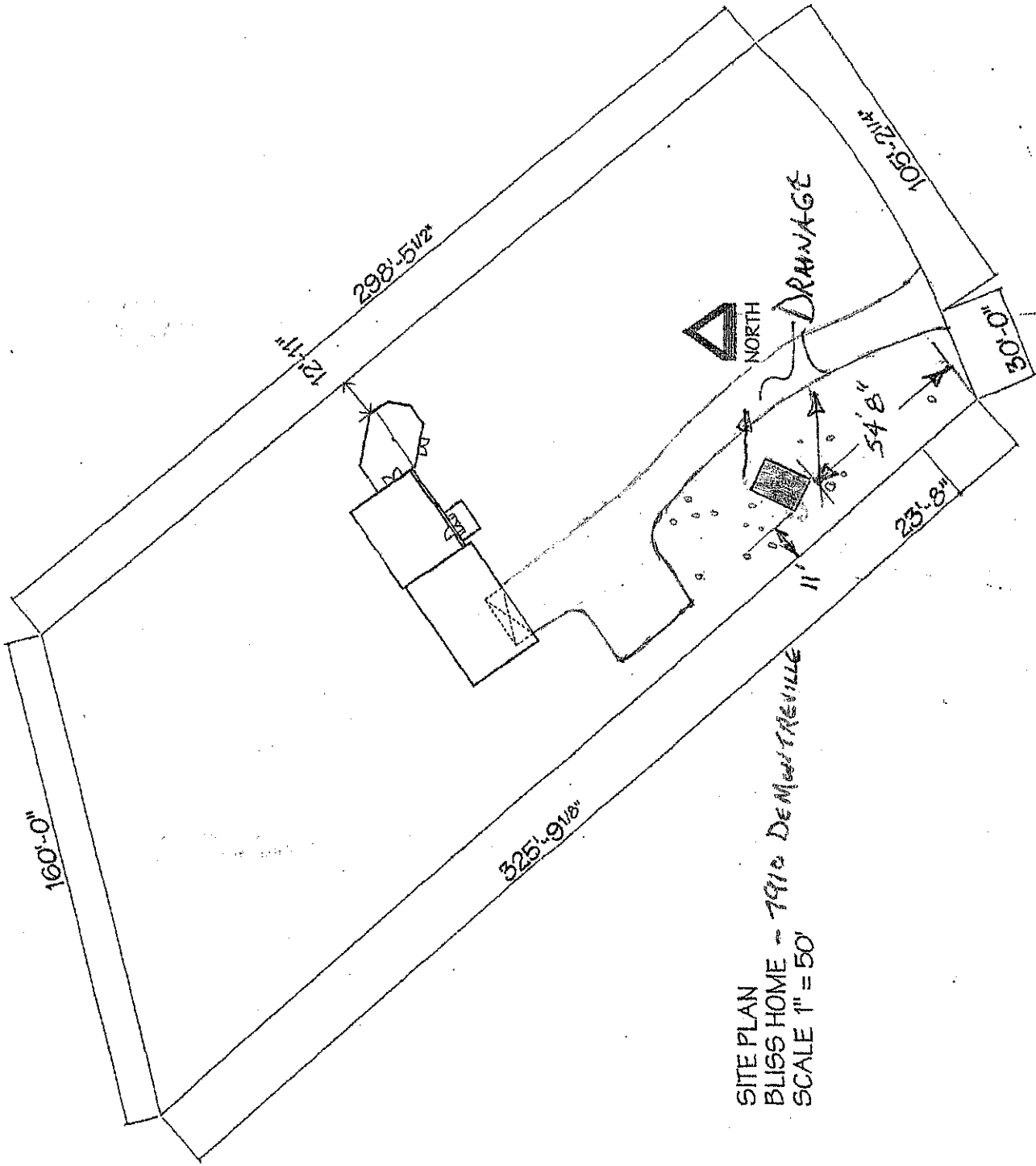
NOW, THEREFORE, BE IT RESOLVED, that the City Council for the City of Lake Elmo hereby grants permission for construction of a 192 square-foot detached garage 54 feet from the road right-of-way on the property at 7910 DeMontreville Trail North.

ADOPTED, by the Lake Elmo City Council on the 4th day of November, 2009.

Dean Johnston, Mayor

ATTEST:

Bruce Messelt, City Administrator



SITE PLAN
 BLISS HOME - 7912 DE MEVILLE
 SCALE 1" = 50'




Approximate Proposed
Location

City Council
Date: 11/04/09
REGULAR
Item: 4
MOTION:

AGENDA ITEM: Approval to City Contingent-Offer of Employment for Public Works Maintenance Operator.

SUBMITTED BY: Mike Bouthilet, Public works Supervisor

THROUGH: Bruce A Messelt, City Administrator 

REVIEWED BY: Tom Bouthilet, Finance Director

SUMMARY AND ACTION REQUESTED:

G.T. Magnuson, who has served the City Public Works for six years, will be leaving the City to work for Lake County Highway Dept. in Two Harbors, MN. The City began the advertizing process immediately, due to the oncoming of winter and anticipated increase in demand on Public Works for snow removal, parks preparation and maintenance, and the like.

The position is fully funded in the City's FY 2009 General Fund budget and is anticipated to be fully funded in the City's proposed FY 2010 General Fund budget. City staff will provide Council with a brief update on the selection process Wednesday Evening and announce the recommended candidate.

Suggested Motion: **"I move to approve an offer of Employment to _____ as Public Works Maintenance Operator, consistent with the already-budgeted compensatory parameters for this position and contingent upon completion of reference checks and an appropriate background investigation."**

STAFF REPORT:

Staff reports receipts of over 220 applications for the Public Works Maintenance Operator position. Applicants were screened by City staff for qualifications and experience and 11 applicants were invited to Lake Elmo to undertake both an equipment operating text and a written exam. Interviews for the top five candidates took place on Friday, October 29 and on Tuesday, November 3rd. The Interview Panel included City representatives from Administration, Finance and Public Works, as well as an outside panelist from Oakdale Public Works.

STAFF RECOMMENDATION:

Based on our interviews, staff is recommending approval for the City to make an offer of employment for the position of Public works Maintenance Operator, consistent with current City employment policies and procedures, the approved 2009 and *projected* 2010 General Fund budgets, and contingent upon completion of an appropriate check of references and background investigation.

The City Council also has the option to deny or delay the offer of employment for further analysis and preparation, with reason(s) specified or specific direction provided. One such reason may be any lingering council concern regarding preparation of the 2010 General Fund budget.

ATTACHMENTS:

Finalist's Application Material (to be handed out at meeting)

ORDER OF BUSINESS:

- Introduction..... Bruce Messelt, City Administrator
- Report/Presentation..... Mike Bouthilett
- Questions & Action/Direction from the Council Mayor & Council Members

City Council
Date: 11/04/09
REGULAR
Item: 5
MOTION:

AGENDA ITEM: Consider Adoption of Ordinance 08-018 Amending City Code and Implementing Water Conservation Measures for the Municipal Water System

SUBMITTED BY: Kyle Klatt, Planning Director

THROUGH: Bruce A Messelt, City Administrator

REVIEWED BY: Ryan Stempiski, City Engineer

BAW

SUMMARY AND ACTION REQUESTED:

The City Council is being asked to consider adoption of the attached Ordinance 08-018 that would implement certain water conservation measures for the municipal water system. This ordinance has been drafted in response to the following:

- To comply with the recently adopted Water Supply Plan and associated regulations administered by the Department of Natural Resources.
- To promote best operating practices within the municipal water system.
- To minimize the water system well and storage facility requirements on a City-wide basis.

As noted previously by the City Engineer, Minnesota Statutes 103G.291 requires public water suppliers serving more than 1,000 people to employ water use reduction measures and implement a conservation rate structure (which must be implemented by January 1, 2010).

The City Council reviewed the proposed Ordinance at its workshop meeting on October 13, 2009 and did not suggest any changes to the document at this time.

MOTION FOR CONSIDERATION:

“Move to adopt Ordinance 08-018 implementing certain water conservation measures.”

STAFF REPORT:

Additional conservation measures are being recommended to help alleviate the peak water demands being placed on the municipal water system during the summer dry months, primarily

due to lawn irrigation. Water shortages are recorded by the Public Works Department each year. During dry periods, Well No. 2 cannot maintain the operating water level in Water Tower No. 2.

RECOMMENDATION:

Your City Staff is recommending that the City Council adopt Ordinance 08-018 implementing water conservation measures for the municipal water system.

ATTACHMENTS:

Ordinance 08-018

ORDER OF BUSINESS:

- Introduction..... Bruce Messelt, City Administrator
- Report by staff..... City Engineer/Planning
- Questions from the Council Mayor & Council Members
- Questions/Comments from the public Mayor facilitates
- Call for a Motion Mayor & City Council
- Discussion Mayor facilitates
- Action on motion Mayor Facilitates

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

ORDINANCE NO. 08-018

AN ORDINANCE TO AMEND SECTION 50.40 REGARDING

WATER USE RESTRICTIONS

Section 1. The City Council of the City of Lake Elmo hereby ordains that Section 50.40 is hereby amended to read as follows:

~~§ 50.40 RESTRICTIONS CAUSED BY WATER SHORTAGE.~~

~~(A) Whenever the Council determines that a shortage of water supply threatens the city, it may, by resolution, limit the times and hours during which water may be used from the water system for lawn and garden sprinkling, irrigation, car washing, and other uses specified in the resolution.~~

~~(B) Notice of the limitation shall immediately be mailed to each water consumer.~~

~~(C) Two days after the mailing of the notice, any water consumer who shall cause or permit water to be used in violation of the provisions of the notice shall be charged a fee as set forth from time to time by Council resolution for each day of the violation.~~

~~(D) This charge shall be added to the water consumer's next water bill. Continued violation is prohibited and shall be cause for discontinuance of water service.~~

50.40 WATER USE RESTRICTIONS

(A) EMERGENCY AUTHORITY: To protect the health and safety of the consumers, as well as the general welfare, the Mayor or City Council may impose emergency regulations pertaining to City water use. Whenever the City shall determine that a critical water deficiency prevails, it may limit the times and hours during which water may be used from the City water system for lawn and garden sprinkling, irrigation, car washing, air conditioning, and other non-essential uses. It is unlawful for any water consumer to cause or permit water to be used in violation of such determination after public announcement thereof has been made through publication or by posting in the City Hall and City website specifically indicating the restrictions thereof.

(1) The Mayor or City Council may declare a critical water deficiency to prevail within the City whenever it finds and determines that the ordinary demands and requirements of water consumers cannot be satisfied without depleting the water supply of the City to the extent that there would be insufficient water for human consumption, sanitation, and fire protection.

- (2) The Mayor or City Council shall thereupon enact such regulations and restrictions on the delivery of water and the consumption within the City to conserve the water supply for the greatest public benefit with particular regard to domestic use, sanitation, and fire protection.
- (3) When the Governor of the State of Minnesota declares a critical water deficiency, the Mayor or City Council will enact and enforce water conservation restrictions in accordance with Minnesota Statute 103G.291.
- (4) Water use regulations and restrictions may include the right to deny applications for new or additional service connections, and provisions for their enforcement by discontinuing service to customers willfully violating the regulations and restrictions.

(B) **PERMANENT WATER USE RESTRICTIONS:** To encourage water conservation and allow flexibility in the City's water system in meeting peak demands, and to reduce the required water supply and storage capacity requirements allowing for a lower cost water system, certain limitations must be placed on the City's water supply.

(1) **Odd/Even Sprinkling Ban:** Property owners having even numbered postal addresses may water, sprinkle, or irrigate their lawns only on even numbered days, and property owners having odd numbered postal addresses may water, sprinkle, or irrigate their lawns only on odd numbered days.

(2) **Time of Day Sprinkling Ban:** All property owners are prohibited from watering, sprinkling, or irrigating their lawns between the hours of 10 A.M. and 5 P.M. daily.

(3) **Exceptions:** The permanent water use restrictions do not apply in the following situations:

1. Private wells.
2. Recently established lawns if permission is granted through a Watering Restriction Waiver form, allowing daily watering for up to 30 days after installation. Watering must still adhere to the restricted hours for the Time of Day Sprinkling Ban. New sod or seeded lawns or other landscaping requiring watering, sprinkling, or irrigation, shall not be installed during a water shortage emergency.
3. Attended hand watering of plants, shrubs, trees, and gardens.

(C) **LAWN WATERING, SPRINKLING, AND IRRIGATION:** All lawn sprinkler systems and irrigation systems connected to the municipal water system, whether such systems are aboveground or underground, shall require a permit for connection and shall be installed in accordance with the Minnesota State plumbing code. To conserve water, all lawn sprinkler systems and irrigation systems which are automatic or are equipped to operate automatically and which are connected to the municipal water system, shall be equipped with a rain-detection device such to prevent the system from operating when it rains (per MN Statute 103G.298). All lawn sprinkler systems and irrigation systems connected to the municipal water system shall be constructed and operated to prevent water waste resulting from inefficient landscape irrigation by prohibiting runoff, low head drainage, over spray, or other similar conditions where water flows onto adjacent property, non-irrigated areas, walks, roadways, or structures.

(D) ENFORCEMENT: Failure to comply with restrictions or prohibitions imposed under this ordinance shall result in a surcharge for water service for each violation in an amount determined by resolution of the City Council, which shall be added to the water bill for the property on which such violation occurs. Each day of violation shall be deemed a separate violation. Continued violation shall be cause for discontinuing water service.

Section 2. Adoption Date

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

This Ordinance No. 08-018 was adopted on this 4th day of November, 2009, by a vote of ___ Ayes and ___ Nays.

Mayor Dean Johnston

ATTEST:

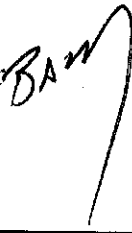
Bruce Messelt
Administrator

This Ordinance No. 08-018 was published on the ___ day of ___, 20__.

City Council
Date: 11/04/09
REGULAR
Item: 6.
MOTION:

AGENDA ITEM: Approval of 2010 Water Conservation Rates

SUBMITTED BY: Tom Bouthielett, Finance Director

THROUGH: Bruce A Messelt, City Administrator 

REVIEWED BY: Dave Snyder, City Attorney

SUMMARY AND ACTION REQUESTED:

At the October 13, 2009 Council workshop, Staff noted the need for implementation of water conservation measures for municipal water systems, in accordance with the required Water Supply Plan. Minnesota Statute 106G.291 requires public water suppliers serving more than 1,000 consumers to adopt a conservation water rate structure by January 1, 2010.

The City Council was subsequently provided with three draft scenarios for review. While the Council indicated a preference for scenario #2 at the October 27th, 2009 Workshop and direct staff to proceed accordingly, a fourth scenario was also still under construction, with no base charge and a pure ad valorem rate structure. This scenario is attached herein, should Council wish to reconsider its decision.

Action is required as soon as possible in order for timely Minnesota DNR review and approval of the City's Water Plan (the City is currently not in full compliance with DNR regulations). Please also note, the rate structure approved tonight will not only be submitted to Minnesota DNR as part of the City's Water Plan, but also will be placed on the proposed 2010 fee schedule, to be formally reviewed and approved by the City Council later this year.

MOTION FOR CONSIDERATION:

“Move to adopt a water conservation rate structure for 2010, as depicted in Scenario #2 attached herein.”

STAFF REPORT:

Enclosed please find the three draft rate schedules presented at the October 27th workshop, as well as the additional fourth scenario requested by Council, which removes the base charge and incorporates the base rate through the per gallon charges.

- **Scenario #1** proposes the base and first tier to remain at the current rate. The additional tiers are at 26% increments with an overall increase to the average residential bill of 8%.
- **Scenario # 2** proposes the base and first tier remain at the current rate along with a 33% increase to the incremental steps resulting in an overall increase of 7% to the average bill (\$6 per year for the average water customer). This scenario also modifies the per use gallons tiers.
- **Scenario #3** proposes using the existing base charge with a reduction of the first tier by five cents. The incremental increases are 32.5% resulting in an average bill increase of 9% (approximately \$8 per year for the average water customer).
- **Scenario # 4** eliminates the base rate charge and incorporates the base fees throughout the remaining tiers, resulting in the same general revenue stream at Scenario #2 (an approximate \$6.30 per year for an average water user).

STAFF RECOMMENDATION:

Based upon Council discussion at the October 27th workshop, staff continues to recommend Scenario #2, as it minimizes overall changes to the water rate structure by leaving in place the base charge, it modestly increases projected water revenues under the desired conservation ethic, it still rewards low water users, and it allows the City to comply fully with State statutes and DNR regulations. Of note, according to the American Water Works Association and the League of Minnesota Cities, some form of base charge is norm for the vast, vast majority of water providers.

The City Council also has the option to select or construct another Scenario or to remand this item for further analysis and preparation, hopefully with specific direction provided.

ATTACHMENTS:

Water Conservation Rate Scenarios #s 1 - 4

ORDER OF BUSINESS:

- Introduction..... Bruce Messelt, City Administrator
- Report/Presentation..... Tom Bouthilet, Finance Director
- Call for Motion Mayor & City Council
- Discussion..... Mayor Facilitates
- Action on Motion..... Mayor Facilitates

City of Lake Elmo

Scenario #1

Current Quarterly Information:

Base Charge	\$25.00	
Rate per 1,000 gallons	\$2.15	
Average Residential Bill	\$91.20	
Average Residential Quarterly Consumption (gallons)	30,166	

Hypothetical Quarterly Conservation Rates:

Base Charge	\$25.00	
Rate per 1,000 gallons:		
0 - 15,000 gallons	\$2.15	
15,000 - 30,000 gallons	\$2.70	26%
30,000 - 50,000 gallons	\$3.40	26%
50,000 - 80,000 gallons	\$4.30	26%
80,000+ gallons	\$5.40	26%

Average Residential Bill Using Conservation Rates: (30,166 gallons):

Base Charge	\$25.00	
0 - 15,000 gallons	\$32.25	
15,000 - 30,000 gallons	\$40.50	
30,000 - 50,000 gallons	\$0.56	
	<u>\$98.31</u>	

Increase to Average Residential Bill Using Conservation Rates

8%

City of Lake Elmo

Scenario #2

Current Quarterly Information:

Base Charge	\$25.00
Rate per 1,000 gallons	\$2.15
Average Residential Bill	\$91.20
Average Residential Quarterly Consumption (gallons)	30,166

Hypothetical Quarterly Conservation Rates:

Base Charge	\$25.00	
Rate per 1,000 gallons:		
0 - 20,000 gallons	\$2.15	
20,000 - 30,000 gallons	\$2.85	33%
30,000 - 50,000 gallons	\$3.80	33%
50,000 - 80,000 gallons	\$5.05	33%
80,000+ gallons	\$6.70	33%

Average Residential Bill Using Conservation Rates: (30,166 gallons):

Base Charge	\$25.00
0 - 20,000 gallons	\$43.00
20,000 - 30,000 gallons	\$28.50
30,000 - 50,000 gallons	\$0.63
	<u>\$97.13</u>

Increase to Average Residential Bill Using Conservation Rates 7%

City of Lake Elmo

Scenario #3

Current Quarterly Information:

Base Charge	\$25.00	
Rate per 1,000 gallons	\$2.15	
Average Residential Bill	\$91.20	
Average Residential Quarterly Consumption (gallons)	30,166	

Hypothetical Quarterly Conservation Rates:

Base Charge	\$25.00	
Rate per 1,000 gallons:		
0 - 15,000 gallons	\$2.10	
15,000 - 30,000 gallons	\$2.80	33%
30,000 - 50,000 gallons	\$3.70	32%
50,000 - 80,000 gallons	\$4.90	32%
80,000+ gallons	\$6.50	33%

Average Residential Bill Using Conservation Rates: (30,166 gallons):

Base Charge	\$25.00	
0 - 15,000 gallons	\$31.50	
15,000 - 30,000 gallons	\$42.00	
30,000 - 50,000 gallons	\$0.61	
	<u>\$99.11</u>	

Increase to Average Residential Bill Using Conservation Rates

9%

City of Lake Elmo

Scenario #4

Current Quarterly Information:

Base Charge	\$25.00	
Rate per 1,000 gallons	\$2.15	
Average Residential Bill	\$91.20	
Average Residential Quarterly Consumption (gallons)	30,166	

Hypothetical Quarterly Conservation Rates:

Base Charge	\$0.00	
Rate per 1,000 gallons:		
0 - 15,000 gallons	\$2.80	
15,000 - 30,000 gallons	\$3.65	30%
30,000 - 50,000 gallons	\$4.75	30%
50,000 - 80,000 gallons	\$6.25	32%
80,000+ gallons	\$8.25	32%

Average Residential Bill Using Conservation Rates: (30,166 gallons):

Base Charge	\$0.00	
0 - 15,000 gallons	\$42.00	
15,000 - 30,000 gallons	\$54.75	
30,000 - 50,000 gallons	\$0.79	
	<u>\$97.54</u>	

Increase to Average Residential Bill Using Conservation Rates

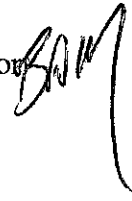
7%

City Council
Date: 11/04/09
REGULAR
Item: 7
MOTION:

AGENDA ITEM: Adopt Revisions to the Wireless Communications Ordinance – Repeal Wireless Communications Tower Moratorium

SUBMITTED BY: Planning Commission

THROUGH: Bruce A Messelt, City Administrator



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

SUMMARY AND ACTION REQUESTED:

The City Council reviewed the draft Wireless Communications Ordinance, as recommended for approval by the Planning Commission, at its workshop meeting on October 27, 2009. The changes that were requested by the Council during the workshop have been incorporated into an updated draft (attached), and, at this time, the Council is being asked to approve the *proposed* Wireless Communications Ordinance, as amended. As a related action item, the Council is also asked to repeal the moratorium on the construction of new wireless telecommunications towers, currently in effect, once the new ordinance is approved and published.

SUGGESTED MOTION:

“Move to approve Ordinance 08-019, amending the wireless communications ordinance as presented, and to repeal Ordinance 08-012 establishing a moratorium on the construction of new wireless communications towers, effective upon the publication and effective date of Ordinance 08-019.”

ORDINANCE SUMMARY:

The City Council was provided with a copy of the most recent Planning Commission report regarding the Wireless Communications Ordinance at its workshop meeting. Excerpts from the ordinance summary portion of this report are included below.

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

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

The overall organization of the proposed ordinance is very similar to the existing ordinance, with some added sections to accomplish the objectives noted above. A brief summary of each section is noted below:

- *Purpose and Intent.* This section has been modified by including some additional language to clarify the overall purpose of the ordinance.
- *Definitions.* This section includes new and updated definitions that describe various elements related to wireless communications. These definitions will be added to the general definitions found in Section 11.01 of the City Code. A definition for "utility pole" is now included.
- *Permit Requirements.* This section breaks down the review process into two separate actions, one of which requires a Conditional Use Permit (the construction of a new tower) while the other can be reviewed and approved administratively (co-location or construction on existing structures). The goal of this two-tiered system is to encourage co-location and reduce the demand for new towers by making it much easier to locate facilities on existing structures.
- *Proof of Need.* This new section requires that a wireless carrier provide adequate documentation that a new tower site is needed before it can be approved by the City. Under the proposed provisions, the City would obtain much more information than was required under the previous ordinance in order to establish need.
- *Location Requirements and Site Ranking Analysis.* This section provides clear rankings for each type of facility and requires that an analysis be submitted that documents why one of the City's preferred locations is not feasible. Co-location and existing structures are at the top of the rankings, with public lands also preferred over private property.
- *Co-location requirements.* This section proposes minor changes from the existing language that requires co-location if there are suitable existing structures for a wireless communications facility within the applicant's search area.

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

PLANNING COMMISSION REPORT:

The Planning Commission conducted a public hearing on the proposed wireless communications ordinance on September 28, 2009 and again on October 14, 2009. No one spoke at these hearings, and the Commission ultimately recommended approval of the draft ordinance considered by the Council at its workshop meeting.

As part of the findings associated with its recommendation, the Commission noted that one of its objectives in drafting the proposed ordinance was to increase opportunities for the City to consider new tower proposals that could provide expanded coverage in areas that met the City's preferred siting objectives. While the proposed ordinance does increase the number of potential tower sites within the community, it also strives to clearly rank the City's preferred locations for

such facilities, require proper documentation that the need for a tower exists, and limit the proliferation of towers by allowing the City to consider taller structures and to steer towers towards locations with potentially lower impacts on residents. In cases where there is a demonstrated need for service but limited options for concealing or minimizing the impact of a tower, the City will be able to reject proposals on private property when a public site is available within the proposed service area.

Of primary concern to the Commission were statements from the City's RF engineering consultant that indicated that, as a general rule, reducing a given tower's height by half would require four smaller towers to provide the same coverage objectives. While the Commission as a whole did not specifically advocate for taller towers, it did want to preserve some flexibility in the code so that the City could accept taller towers in locations where such a tower was deemed appropriate through the Conditional Use review process. The ordinance as drafted clearly gives the City the right to require a smaller tower structure; however, these smaller towers may not be suitable for co-location of future antennas. With multiple carriers providing service in Lake Elmo, the Commission was concerned that new towers could proliferate the landscape and create a larger impact than if several carriers were located on a centralized facility.

CITY COUNCIL WORKSHOP:

The City Council reviewed the draft ordinance at its October 27, 2009 workshop meeting and provided the following comments/direction regarding the ordinance:

- The project consultant suggested that a provision be added to the ordinance to require that all new towers be approved by the FAA and registered with the FCC.
- The Council suggested that towers be regulated in the same manner across all zoning districts, including the City's OP – Open Space Preservation Districts. The Ordinance has been revised so that towers are regulated the same in OP district with regards to height and minimum parcel area as other residential zoning districts.
- The Council suggested lowering the maximum heights specified in the zoning district table, but adding a provision that the City could permit a taller structure in cases when a clear need or public benefit can be demonstrated.

Staff has drafted proposed language to address these concerns in the attached ordinance draft, highlighting all changes since the Council workshop in yellow.

ADDITIONAL INFORMATION:

- A resolution authorizing summary publication is attached for consideration by the Council.
- The moratorium on the construction of wireless communications towers will be expiring on January 28, 2010. The City Council will need to take action on the proposed ordinance at or prior to its January 19, 2010 meeting in order to avoid the termination of the moratorium before the new ordinance is adopted. Under state law, the City could extend the moratorium for another six months if deemed necessary.

RECOMMENDATION:

Based upon the significant effort put into this draft, as well as the timeline for publication and implementation of the new Ordinance, your Planning Commission and City Staff recommends approval of Ordinance 08-019 amending the wireless communications ordinance as presented.

The Planning Commission and City Staff further recommends that the City Council repeal Ordinance 08-012 establishing a moratorium on the construction of new wireless communications towers, effective upon the publication and effective date of Ordinance 08-019.

The City Council also has the option of further amending this proposed Ordinance, delaying final action, if necessary, or remanding this item for further analysis and revision, hopefully with specific Council direction provided.

ATTACHMENTS:

1. Ordinance 08-019
2. Resolution No. 09-043 authorizing summary publication
3. Wireless Communications Ordinance – Clean Version

ORDER OF BUSINESS:

- Introduction..... Bruce Messelt, City Administrator
- Report by staff..... Kyle Klatt, Planning Director
- Questions from the Council Mayor & Council Members
- Questions/Comments from the public Mayor facilitates
- Call for a Motion..... Mayor & City Council
- Discussion Mayor facilitates
- Action on motion Mayor Facilitates

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

ORDINANCE NO. 08-019

**AN ORDINANCE TO AMEND REGULATIONS PERTAINING TO WIRELESS
COMMUNICATIONS FACILITIES**

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:

ANTENNAE. The portion of any equipment used to radiate or receive radio frequency energy for transmitting or receiving radio or television waves. ANTENNAE may consist of metal, carbon fiber, or other electromagnetically conductive rods or elements.

PUBLIC LAND. Land owned and/or operated by a governmental unit, including school districts.

WIRELESS TELECOMMUNICATION FACILITY. The combination of a wireless telecommunication tower, antennae, and tower accessory equipment.

WIRELESS TELECOMMUNICATION TOWER. Any pole, spire, structure, or combination thereof, including supporting lines, cables, wires, braces, and masts, intended primarily for the purpose of mounting an antenna or to serve as an antenna.

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:

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

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

PUBLIC LAND. Land owned or operated by a municipality, school district, county, state, or other governmental unit.

SATELLITE DISH OR SATELLITE EARTH STATION ANTENNA. A round, conical, or cone-shaped device more than 18 inches in diameter and placed outdoors on the ground or on a structure and used to transmit and/or receive radio or electromagnetic waves.

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

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

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

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

SECTION 3. The City Council of the City of Lake Elmo hereby ordains that Title XV: Land Usage; Chapter 150: General Provisions, Sections 150.110 through 150.126 are amended to read as follows:

WIRELESS TELECOMMUNICATION TOWER PERMIT COMMUNICATIONS FACILITIES

§ 150.110 PURPOSE AND INTENT.

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

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

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

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

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

(D) Strictly control the location and design of wireless communications facilities so that allowed facilities will not be obtrusive or visually unpleasant, and in particular, to protect

residential property and neighborhoods from visually intrusive tower installations where reasonably possible.

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

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

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

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

§ 150.111 PERMIT REQUIREMENTS~~D~~.

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

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

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

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

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

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

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

(3) Receive only antennas;

(4) Amateur radio facilities, subject to other City Code requirements;

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

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

- (1) Satellite dishes more than one meter (39 inches) in diameter;
- (2) Ground mounted antennas not exceeding the maximum height allowed for structures in the underlying zoning district;
- (3) Building mounted antennas not exceeding 25 feet above the highest part of the building to which they are attached;
- (4) Utility pole-mounted antennas not exceeding 25 feet above the highest part of the utility pole to which they are attached;
- (5) Antennas co-located on an existing wireless communications facility structure.

150.112 PROOF OF NEED

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

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

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

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

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

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

(b) Private property with signal strength values (expressed in dBuv) for on street

level and in building level with said analysis indicating the protection afforded property within one-half mile of the proposed facility and site.

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

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

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

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

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

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

§ 150.113 LOCATION REQUIREMENTS AND SITE RANKING ANALYSIS

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

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

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

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

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

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

(6) Private property within the City of Lake Elmo subject to the Location and Zoning requirements of this chapter and the following criteria:

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

(b) Sites with the least visual impact on residential areas and which are the most consistent with the community's rural character shall be given preference.

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

§ 150.1147- CO-LOCATION REQUIREMENTS.

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

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

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

equipment at a reasonable cost;

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

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

~~—(D)— (4) Other unforeseen reasons make it infeasible to locate the antennae and/or tower accessory equipment upon an existing or approved tower or building.~~

§ 150.1152 PROHIBITED AREAS.

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

~~(A) Residentially zoned parcels (R-1, R-2, R-3, R-4, and RE Zoning Districts) of less than 10—2.5 acres or Rural Residential parcels of less than 5 acres unless the wireless telecommunication tower and ground facilities accessory thereto are located within 100 feet of the right-of-way of a public utility transmission line or existing public utility power line right-of-way or other public right-of-way that contains utility poles over 75 feet in height or within 100 feet of said right-of-way;~~

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

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

~~(D) Open Space Preservation zoning districts.~~

§ 150.1163 ~~ALLOWED TOWER SITES~~ ZONING REQUIREMENTS.

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

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

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

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

~~(A) Wireless communications facilities that require a Conditional Use Permit, including the~~

installation of a new tower, shall be permitted in the following zoning districts and subject to the following height restrictions provided they meet all other requirements of this ordinance:

<u>Zoning District</u>	<u>Maximum Height (in feet)</u>	<u>Minimum Parcel Area</u>
A – Agriculture	125	10
RR – Rural Residential Zoning	125	5
R-1, R-2, R-3, and R-4 Residential	125	2.5
OP – Open Space	125	2.5
RE – Residential Estates	125	2.5
GB, LB, CB, HB – Business	125	5
BP – Business Park	125	5
PF – Public Facility	125	None

(B) The City Council may increase the maximum height of a wireless communications facility by 25 feet in all Residential and Open Space Districts and 50 feet in Agriculture, Business, and Public Facility districts provided that an applicant is able to demonstrate a need for a higher facility and/or that the additional height will serve a public interest in allowing fewer towers to serve a given area.

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

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

§ 150.1174 APPLICATION AND REVIEW PROCEDURES.

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

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

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

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

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

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

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

~~(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;~~

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

(G) 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.

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

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

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

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

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

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

~~(JG)~~ 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.;

~~(KH)~~ 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;

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

~~(MJ)~~ A detailed landscape plan, which indicates how tower accessory equipment will be

screened.

§ 150.118 EXPERT REVIEW

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

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

(1) The accuracy and completeness of submissions;

(2) The applicability of analysis techniques and methodologies;

(3) The validity of conclusions reached;

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

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

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

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

§ 150.115 PLANNING COMMISSION REVIEW.

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

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

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

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

§ 150.119 CONSTRUCTION PERMITS.

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

§ 150.120 TOWER STANDARDS.

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

(B) *Design.*

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

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

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

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

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

accomplish the coverage objectives.

(C) Adverse effects on properties.

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

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

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

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

(D) Setbacks from lot lines.

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

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

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

~~In all zoning districts, towers may encroach into the rear or side yard setback areas, provided that the rear or side yard property line abuts a commercial or business zoned property and the wireless telecommunication tower does not encroach upon any easements.~~ (a) In all residential zoning districts, wireless telecommunication towers shall be set back 1 foot for each foot of tower height plus 20 feet.

(3) Setbacks from buildings:

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

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

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

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

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

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

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

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

(E) *Height.*

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

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

(1) The maximum height of a wireless communications tower shall be determined based on the underlying zoning district and will be the amount specified in Section 150.117.

§ 150.121 LIGHTING.

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

(1) White strobe lighting shall be prohibited.

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

(3) A site that requires lighting shall only be accepted when no other suitable alternative exists. A new tower may be rejected on the grounds that lighting will be a visual nuisance to surrounding properties.

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

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

~~§ 150.122 SIGNS AND ADVERTISING.~~

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

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

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

~~§ 150.124 PROHIBITED SUBDIVISIONS.~~

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

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

~~§ 150.125 ACCESSORY UTILITY BUILDINGS.~~

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

~~(1) Control buildings. The control buildings shall be designed to be architecturally compatible with the adjacent buildings. The control buildings shall not be placed in required~~

~~setback areas nor shall they encroach into required landscape areas.~~

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

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

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

~~§ 150.126 GROUND MOUNTED EQUIPMENT.~~

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

~~§ 150.12116 CITY COUNCIL REVIEW WIRELESS COMMUNICATIONS TOWER AGREEMENT.~~

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

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

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

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

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

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

(5) A statement indicating that a wireless telecommunication tower which has not been used for ~~12~~ six (6) consecutive months shall be deemed abandoned and may be required to be removed in the same manner and pursuant to the same procedures as for hazardous and substandard buildings accordance with Section 150.123 below. (M.S. §§ 463.15 through 463.261, as they may be amended from time to time). To ensure compliance with this provision, the applicant must submit a performance bond or letter of credit in an amount sufficient to cover the removal or reduction costs.

§ 150.122 ABANDONMENT AND REMOVAL

(A) Towers and antennae shall be removed, at the owner's expense, within six (6) months of cessation of use.

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

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

§ 150.123 MINIMUM CONDITIONS

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

- (1) An agreement providing for co-location and six (6) month removal of unused and/or obsolete towers shall be attached and become part of the permit.
- (2) The tower shall be set back a distance equal to the tower height from all property lines. All accessory structures shall be setback a minimum of twenty (20) feet from all side yard and rear yard property lines
- (3) Zoning Permits shall be applied for and issued before any construction is started.
- (4) Prior to application for a conditional use permit, applicant must obtain FAA approval and/or provide documentation that FAA approval is not needed.
- (5) Applicant must obtain FCC licensure and approval as required for various communications applications.

- (6) Applicant must submit proof of liability and Worker's compensation Insurance.
- (7) Proof that towers and their antennas have been designed by, and following completion of construction were inspected by a qualified and licensed professional engineer (at the applicant's expenses) to conform to applicable state structural building standards and all other applicable reviewing agencies and to conform with accepted electrical engineering methods and practices as specified in applicable provisions of the National Electrical Code.
- (8) Metal towers shall be constructed of, or treated with, corrosive resistant material.
- (9) The addition of antennas and associated equipment of an additional provider to an existing permitted tower shall be considered co-location and shall require a zoning permit and site plan approval. An amendment to a conditional use permit shall typically not be required
- (10) All towers shall be reasonably protected against unauthorized climbing. The area around the base of the tower and guy wire anchors shall be enclosed by a fence with a minimum height of six (6) feet with a locked gate.
- (11) All towers and their antennas shall utilize building materials, colors, textures, screening and landscaping that effectively blend the tower facilities within the surrounding natural setting and built environmentally to the greatest extent possible.
- (12) No part of any antenna or tower, nor any lines, cable, equipment, wires, or braces shall at any time extend across or over any part of the right of way, public street, highway, or sidewalk, without approval by the City through the zoning permit approval process.
- (13) All obsolete or unused towers and accompanying accessory facilities shall be removed within six (6) months of the cessation of operations at the site unless a time extension is approved by the City. After the facilities are removed, the site shall be restored to its original or an improved state which includes removal of all concrete to 6-feet below normal grade and surrounding area returned to normal grading. Electronic equipment shall not be removed in advance of removal of obsolete or unused towers. To ensure compliance, the applicant must submit a performance bond or letter of credit in an amount sufficient to cover all removal costs as determined by the City prior to the issuance of a building permit for the facility. Failure to remove the structure shall be cause for the City to remove the tower and associated equipment and assess the cost against the required bonding or letter of credit instrument.
- (14) The City of Lake Elmo shall conduct a final inspection of the site to ensure that all requirements of the City Code and all conditions of approval attached as part of the wireless communications permit are met prior to the start of operation of the facility.

(15) For installations of a facility in an area that could potentially be accessed by the public (including rooftop installations or other locations that would be considered public verses occupational) a radio frequency hazard analysis and a yearly report must be submitted before December 31 of each year showing the results of on-site measurements at the site. A Registered Professional Engineer hired by the provider must sign these measurements and report. At a minimum, the report must document any changes to the site over the course of the previous year.

(16) All towers must be approved by the FAA and registered with the FCC prior to the issuance of a building permit for a new facility.

SECTION 4. Effective Date

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

SECTION 5. Adoption Date

This Ordinance No. 08-019 was adopted on this 4th day of November 2009, by a vote of ___ Ayes and ___ Nays.

Mayor Dean Johnston

ATTEST:

Bruce Messelt
City Administrator

This Ordinance No 08-019 was published on the ___ day of _____, 2009.

CITY OF LAKE ELMO

RESOLUTION NO. 2009-043

**RESOLUTION AUTHORIZING PUBLICATION OF
ORDINANCE NO. 08-019 BY TITLE AND SUMMARY**

WHEREAS, the city council of the city of Lake Elmo has adopted Ordinance No. 08-019, an ordinance to amend certain provisions of the zoning ordinance concerning wireless communications facilities; and

WHEREAS, the ordinance is lengthy; and

WHEREAS, Minnesota Statutes, section 412.191, subd. 4, allows publication by title and summary in the case of lengthy ordinances or those containing charts or maps; and

WHEREAS, the city council believes that the following summary would clearly inform the public of the intent and effect of the ordinance.

NOW, THEREFORE, BE IT RESOLVED by the city council of the city of Lake Elmo, that the city administrator shall cause the following summary of Ordinance No. 08-019 to be published in the official newspaper in lieu of the entire ordinance:

Public Notice

The City Council of the city of Lake Elmo has adopted Ordinance No. 08-019. This ordinance represents a major update to Sections 150.110 through 150.126 regulating wireless communications facilities within the City of Lake Elmo, and incorporates the following significant changes:

- Documentation concerning the proof of need for a new wireless communication facility must be provided as part of the application process. The ordinance provides the City with the authority to hire an outside RF consultant working on behalf of the City to help verify that a new facility would be necessary to provide adequate coverage over a specific search area.

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

The full text of Ordinance No. 08-019 is available for inspection at Lake Elmo city hall during regular business hours.

Mayor Dean Johnston

BE IT FURTHER RESOLVED by the city council of the city of Lake Elmo that the city administrator keep a copy of the ordinance in his office at city hall for public inspection and that she post a full copy of the ordinance in a public place within the city.

Dated: _____, 20__.

Dean Johnston, Mayor

ATTEST:

Bruce Messelt, City Administrator

(SEAL)

The motion for the adoption of the foregoing resolution was duly seconded by member

_____ and upon vote being taken thereon, the following voted in favor thereof:

and the following voted against same:

Whereupon said resolution was declared duly passed and adopted.