

FILE

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

December 1, 2009

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 November 17, 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. Approve 2010 Liquor license renewals
 - 4. Consider approval of Resolution No. 2009-046 Approve the renewal of an Interim Use Permit Application from Common Ground Church to permit the keeping of horses.
- J. REGULAR AGENDA:
 - 5. Update on Friends of Washington County – Marc Hugunin
 - 6. Final 2009 Tax Levy Certification, Payable 2010, Resolution No. 2009-048
 - 7. Proposed 2010 Operating Budget and 2010-14 Capital Improvement Program; Resolution No. 2009-049
 - 8. Public Hearing: Delinquent water and wastewater utility bills; Resolution No. 2009-50

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9. Consider an application from James Burns for a variance from the front yard setback requirement in an R1 zoning district to allow the construction of a building addition; Resolution No. 2009-045
10. Consider application for a CUP to allow and Agricultural Entertainment Business, a rezoning request, and an amendment to a CUP for Country Sun Farm and Greenhouse, Resolution No. 2009-047, 51, 52 Ordinance No. 08-021

K. REPORTS AND ANNOUNCEMENTS:

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

- Mayor and City Council
- Administrator
- City Engineer
- Planning Director

L. Adjourn

A social gathering may or may not be held at the Lake Elmo Inn following the meeting.

City of Lake Elmo
City Council Minutes

November 17, 2009

Mayor Johnston called the meeting to order at 7:00 p.m.

PRESENT: Mayor Johnston and Council Members DeLapp, Emmons, Park and Smith

Also Present: City Administrator Messelt, Planning Director Klatt, City Engineer Griffin, Attorney Kevin Sandstrom and City Clerk Lumby

APPROVAL OF AGENDA:

MOTION: Council Member Smith moved to approve the November 17, 2009 City Council Agenda as presented. Council Member DeLapp seconded the motion. The motion passed 5-0.

ORDER OF BUSINESS:

GROUND RULES:

APPROVED MINUTES:

The November 4, 2009, City Council minutes were approved by consensus.

PUBLIC COMMENTS/INQUIRIES:

Charlie Stockwell, Regatta Chair of the Minnesota Boat Club, thanked the City Council and staff for their support and enthusiasm in allowing the Club to host the 106th Annual NWIRA Championship Regatta at Lake Elmo on August 21 and 22, 2009.

David Moore, 8680 Stillwater Blvd., would like to talk to the Planning Director about his shed that is now in the fringe district according to the new FEMA flood plain maps.

CONSENT AGENDA:

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

- Approve payment of disbursements and payroll in the amount of \$432,590.15
- Approve an 18 month extension to the variance issue for 8961 37th Street N, Thomas Dufresne
- Adopt Ordinance No. 08-020 repealing a moratorium on wireless telecommunications towers

- Authorize American Engineering Testing, Inc. to proceed Geotechnical Services for the 2010 Street and Water Quality Improvements Feasibility Report in the amount of \$5,800
- Approve Partial Payment N. 3 to Tower Asphalt Inc. in the amount of \$142,116.86 for the 2009 Street Improvements Project
- Approve Resolution No. 2009-044 supporting efforts to secure State bonding funds to design and construct an East Metro Regional Firefighter Training Facility
- Approve contractors application for payment and change order #1 for Carriage Station picnic shelter project
- Approve grant agreements with the State of Minnesota for Sunfish Lake Park Prairie Restoration Project and Sunfish Lake Park Natural Resource Management Plan

REGULAR AGENDA:

Response to the Metropolitan Council on 2030 Comprehensive Plan Update

City Administrator Bruce Messelt reported the City Council is being asked to review the context of the City's proposed response to the Metropolitan Council regarding its June 19, 2009 letter to the City indicating that the 2030 Comprehensive Plan update the City submitted earlier in the year is incomplete with respect to compliance with Lake Elmo's 2005 systems' statement. Upon completion of its review, the City Council is asked to authorize the City to submit the information included herein response to the notice of incompleteness.

Staff provided and reviewed changes with the Council on pages 3, 4, and 5 of the response to the Metropolitan Council.

MOTION: Council Member Park moved to reword item #1 because the City is more restrictive where noted and amend item #7 to read...of housing cognizant of different levels of affordability. Council Mayor Johnston seconded the motion. The motion passed 5-0.

Council Member DeLapp told Council members about a dispute between the Met Council and Orono as Lake Elmo in regard to the same growth issues and fighting to preserve its rural character. Mayor Johnston agreed that Lake Elmo should observe Orono closely. He noted that the City spend \$365,000 in legal fees and won the best agreement with the Met Council of anyone in the seven county metro areas.

MOTION: Council Member Park Smith moved to direct staff to contact the Orono staff to discuss current events with the Met Council and keep the City Council posted. Council Member Park seconded the motion. The motion passed 5-0.

MOTION: Council Member Park moved that City staff be directed to submit the information presented as amended/modified tonight in response to the Met Council's notice of incompleteness regarding the 2030 Comprehensive Plan Update. Council Member Emmons seconded the motion. The motion passed 5-0.

Consider developer's request for an extension of the completion deadline for Whistling Valley I, II, III

City Administrator Bruce Messelt reported that the City Council is being asked to consider request by the developer to extend the required completion date for the remaining improvements of Whistling Valley I, II, and III. Per the Whistling Valley III Development Agreement, all items were to be completed by October 31, 2009. Staff has worked with the developer to create an acceptable schedule to complete the remaining improvements. The proposed schedule required all items to be completed by June 30, 2010.

MOTION: Council Member DeLapp moved to allow an extension to complete all remaining items in Whistling Valley I, II, and III in accordance with the schedule with a final completion date of June 30, 2010. Council Member Smith seconded the motion. The motion passed 5-0.

Authorization to proceed with formulation of 2010 Street Assessments and Overall Update of City Assessment Policies by Finance Subcommittee

City Administrator Bruce Messelt reported the City Council is being asked to approve formulation of the City's 2010 Street Assessments, based upon the information provide at the November 10th workshop. Once formulated, this information will be provided to the Finance Committee for consideration and review and to the City Council for final approvals.

In addition, the Council is asked to assign the review of the City's overall Assessment Policies to its Finance Review Committee. This Subcommittee, comprised of Council members Emmons and Smith, will work with the City Administrator, City Engineer and City Attorney to review and update the overall City Assessment Policy for full Council consideration.

MOTION: Council Member DeLapp moved to direct preparation of 2010 Street Assessments, as presented, and to charge the Finance Subcommittee and City staff with reviewing and updating the City's overall Assessment Policies so as to bring such into grater conformance with current laws, practices and City objectives. Council Member Smith seconded the motion. The motion passed 5-0.

Reports:

City Engineer Griffin reported there will be a rain garden workshop by Angie Hong, December 2, 6-7:30 p.m. at Lake Elmo city hall.

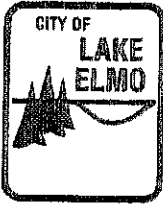
Council Member Smith volunteered to be the liaison between the City Council and Fire Department.

MOTION: Council Member DeLapp moved to appoint Council Member Smith as the liaison between the City Council and the Fire Department. Council Member Park seconded the motion. The motion passed 5-0.

The meeting adjourned at 8:00 p.m.

Respectfully submitted by Sharon Lumby, City Clerk

DRAFT



MAYOR & COUNCIL COMMUNICATION

DATE: 12/01/09
CONSENT AGENDA
ITEM #: 2

AGENDA ITEM: Approve Disbursements in the Amount of \$ 310,149.37

SUBMITTED BY: Tom Bouthilet, Finance Director

THROUGH: Bruce Messelt, City Administrator *BAM*

REVIEWED BY: City Staff

SUMMARY AND ACTION REQUESTED: As part of its Consent Agenda, the City Council is asked to approve disbursements in the amount of \$ 310,149.37.

STAFF REPORT: The City of Lake Elmo has fiduciary authority and responsibility to conduct normal business operations. Below is a summary of current claims to be disbursed in accordance with State law and City policies and procedures.

<u>Claim #</u>	<u>Amount</u>	<u>Description</u>
ACH	\$ 1,313.73	Payroll Taxes to IRS 11/19/2009
ACH	\$ 7,488.61	Payroll Taxes to Mn Dept. of Revenue 11/19/09
ACH	\$ 230.60	Payroll Tax to Wis. Dept of Revenue 11/19/09
DD2493 - DD2530	\$ 24,401.65	Payroll Dated 11/19/2009 (Direct Deposit)
34978 - 34987	\$ 7,477.66	Payroll Dated 11/19/2009 (Payroll)
34988 - 35024	\$ 269,237.12	Accounts Payable Dated 12/01/2009

Total: \$ 310,149.37

ADDITIONAL INFORMATION: City staff has compiled and reviewed the attached set of claims. It is also noted that the City purchased certain materials and supplies ordered in preparation for a possible H1N1 flu outbreak. No significant additional supplies relating to a possible H1N1 flu outbreak are anticipated to be ordered and the last claim is for these supplies is included herein.

In order to address the potential or perceived apparent conflict of interest relating to the selected vendor, who also serves as a volunteer on a City Commission, the City Administrator requested and reviewed competitive quotes relating to the items purchased. It has been determined that no legal conflict of interest exists and that the City received either the lowest or a reasonably competitive price for the materials and supplies purchased. Other considerations, such as immediate availability and reasonable support for local vendors also were noted.

Concerns regarding this potential or perceived apparent conflict of interest will be addressed in the future by "pre-approving" use of such vendors and requiring similar demonstration of competitive pricing, availability and the like. A copy of this particular assessment is on file with the City Administrator, should a member of the Council be interested in further review.

RECOMMENDATION: It is recommended that the City Council approve as part of its Consent Agenda proposed disbursements in the amount of \$ 310,149.37.

ATTACHMENTS:

11/24/2009 Accounts Payable

SUGGESTED ORDER OF BUSINESS (if removed from Consent Agenda):

- Questions from Council to Staff Mayor Facilitates
- Call for Motion Mayor & City Council
- Discussion Mayor & City Council
- Action on Motion Mayor Facilitates

Accounts Payable To Be Paid Proof List

User: Administrator
 Printed: 11/24/2009 - 1:04 PM
 Batch: 004-11-2009

Invoice #	Inv Date	Amount	Quantity	Pmt Date	Description	Reference	Task	Type	PO #	Close POLine #
ACS Animal Control Services										
529	11/14/2009	1,030.57	0.00	12/01/2009	Animal Control Serv	10/5-11/5/2009	-	No		0000
101-420-2700-43150	Contract Services									
	529 Total:	1,030.57								
	ACS Total:	1,030.57								
ANDERNIC Nicholas Anderson										
11/17/2009	11/17/2009	58.78	0.00	12/01/2009	CC Cable	11/17/2009	-	No		0000
101-410-1320-43620	Cable Operation Expense									
11/17/2009	11/17/2009	-3.78	0.00	12/01/2009	CC Cable	11/17/2009	-	No		0000
101-000-0000-20201	Use Tax Payable									
	11/17/2009 Total:	55.00								
11/4/2009	11/04/2009	58.78	0.00	12/01/2009	CC Mig Cable	11/4/2009	-	No		0000
101-410-1320-43620	Cable Operation Expense									
11/4/2009	11/04/2009	-3.78	0.00	12/01/2009	CC Mig Cable	11/4/2009	-	No		0000
101-000-0000-20201	Use Tax Payable									
	11/4/2009 Total:	55.00								
	ANDERNIC Total:	110.00								
ARAM Aramark, Inc.										
629-6865299	11/16/2009	51.01	0.00	12/01/2009	Linen City Hall-Annex		-	No		0000
101-410-1940-44010	Repairs/Maint Contractual Bldg									
	629-6865299 Total:	51.01								
629-6868347	11/19/2009	28.72	0.00	12/01/2009	Uniforms		-	No		0000
101-430-3100-44170	Uniforms									
	629-6868347 Total:	28.72								
629-9863286	11/12/2009	59.96	0.00	12/01/2009	Uniforms		-	No		0000
101-430-3100-44170	Uniforms									
	629-9863286 Total:	59.96								
	ARAM Total:	139.69								

Invoice #	Inv Date	Amount	Quantity	Print Date	Description	Reference	Task	Type	PO #	Close POLine #
CDW CDW Government Inc.										
QPC4971	10/16/2009	192.33	0.00	12/01/2009	Computer Monitor		-	No		0000
410-480-8000-45700	Office Equipment & Furnishings									
	QPC4971 Total:	192.33								
	CDW Total:	192.33								
CENCOLLE Century College										
349323	10/27/2009	600.00	0.00	12/01/2009	Public Safety Leadership 11 X 2		-	No		0000
101-420-2220-44370	Conferences & Training									
	349323 Total:	600.00								
349346	10/27/2009	1,226.48	0.00	12/01/2009	Firefighter 1 & Hazmat Oprs A. Friedrich		-	No		0000
101-420-2220-44370	Conferences & Training									
	349346 Total:	1,226.48								
349347	10/27/2009	1,226.48	0.00	12/01/2009	Firefighter 1 & Hazmat Oprs, B. Cunnien		-	No		0000
101-420-2220-44370	Conferences & Training									
	349347 Total:	1,226.48								
349389, 350407	10/27/2009	1,246.48	0.00	12/01/2009	Firefighter 1 & Hazmat Oprs, T. Steinman		-	No		0000
101-420-2220-44370	Conferences & Training									
	349389, 350407 Total:	1,246.48								
349393	10/27/2009	1,246.48	0.00	12/01/2009	Firefighter 1 & Hazmat Oprs, J. Sinclair		-	No		0000
101-420-2220-44370	Conferences & Training									
	349393 Total:	1,246.48								
	CENCOLLE Total:	5,545.92								
CTYOAKDA City of Oakdale										
10000460-01	11/30/2009	5,523.56	0.00	12/01/2009	Water service I94		-	No		0000
601-494-9400-43820	Water Utility									
	10000460-01 Total:	5,523.56								
	CTYOAKDA Total:	5,523.56								
DADSPULM Dad's Plumbing LLC										
11/13/2009	11/13/2009	168.40	0.00	12/01/2009	Repair roof drain at station #1		-	No		0000
101-420-2220-44010	Repairs/Maint Bldg									
	11/13/2009 Total:	168.40								
	DADSPULM Total:	168.40								
FIRE Fire Instruction & Rescue Educ										
08011	11/04/2009	315.00	0.00	12/01/2009	Annual FIT Testing		-	No		0000
101-420-2220-44370	Conferences & Training									
	08011 Total:	315.00								

Invoice #	Inv Date	Amount	Quantity	Pmt Date	Description	Reference	Task	Type	PO #	Close POLine #
FIRE Total:		315.00								
FREDS Fred's Tire	11/23/2009	21.09	0.00	12/01/2009	Repair Tire -Fire		-	No		0000
461913	Repairs/Maint Eqpt	21.09								
101-420-2220-44040	461913 Total:	21.09								
FREDS Total:		21.09								
FRONTIER Frontier Precision, Inc		142.04								
80206	11/10/2009	142.04	0.00	12/01/2009	Snow Plow Route Markers		-	No		0000
101-430-3125-42250	Landscaping Materials	142.04								
80206 Total:		142.04								
FRONTIER Total:		142.04								
FXL FXL, Inc.		2,000.00								
12.01.09	11/24/2009	2,000.00	0.00	12/01/2009	Assessing Services - December 09		-	No		0000
101-410-1550-43100	Assessing Services	2,000.00								
12.01.09 Total:		2,000.00								
FXL Total:		2,000.00								
HARTMAN Hartman Homes		2,000.00								
Chk Req	11/19/2009	2,000.00	0.00	12/01/2009	Escrow Return 9906 Tapestry #6927		-	No		0000
803-000-0000-22900	Deposits Payable	2,000.00								
Chk Req Total:		2,000.00								
HARTMAN Total:		2,000.00								
KOOTENIA Kootenia Homes		1,500.00								
Chk Req	11/17/2009	1,500.00	0.00	12/01/2009	Escrow Return-2907 Jonquil Pmt 6434		-	No		0000
803-000-0000-22900	Deposits Payable	1,000.00								
Chk Req	11/17/2009	1,000.00	0.00	12/01/2009	Escrow Return-2928 Jonquil Pmt 6273		-	No		0000
803-000-0000-22900	Deposits Payable	1,000.00								
Chk Req	11/17/2009	1,000.00	0.00	12/01/2009	Escrow Return-2923 Jonquil Pmt 5657		-	No		0000
803-000-0000-22900	Deposits Payable	1,000.00								
Chk Req	11/17/2009	1,000.00	0.00	12/01/2009	Escrow Return-2935 Jonquil Pmt 4890		-	No		0000
803-000-0000-22900	Deposits Payable	1,000.00								
Chk Req	11/17/2009	1,000.00	0.00	12/01/2009	Escrow Return-2897 Jonquil Pmt 5458		-	No		0000
803-000-0000-22900	Deposits Payable	5,500.00								
Chk Req Total:		5,500.00								
KOOTENIA Total:		5,500.00								

Invoice #	Inv Date	Amount	Quantity	Pmt Date	Description	Reference	Task	Type	PO #	Close POLine #
LSCVFD LOWER ST CROIX VALLEY FIRE										
Chk Req	11/18/2009	159.50	0.00	12/01/2009	Vol Comb Conference Rental Car		-		No	0000
101-420-2220-44370	Conferences & Training	159.50								
	Chk Req Total:	159.50								
	LSCVFD Total:									
MALMQ Malmquist Greg										
11/18/2009	11/18/2009	872.00	0.00	12/01/2009	Volunteer combination officer conference		-		No	0000
101-420-2220-44370	Conferences & Training	872.00								
	11/18/2009 Total:	872.00								
	MALMQ Total:	872.00								
MFRa McCombs Frank Roos Assoc Inc.										
66005	11/01/2009	700.20	0.00	12/01/2009	Planning Services & Code Enforcement		-		No	0000
101-410-1910-43150	Contract Services	700.20								
	66005 Total:	700.20								
	MFRa Total:	700.20								
MNDOHEDU Minnesota Dept. of Health										
4th Qtr	11/23/2009	1,439.00	0.00	12/01/2009	4th Qtr. Water Supply Connection Fees		-		No	0000
601-494-9400-44370	Conferences & Training	1,439.00								
	4th Qtr Total:	1,439.00								
	MNDOHEDU Total:	1,439.00								
MNNAT MN Dept. of Natural Resources										
09/17/2009	09/17/2009	9.30	0.00	12/01/2009	Shipping missed on previous invoice		-		No	0000
101-420-2220-44040	Repairs/Maint Eqpt	9.30								
	09/17/2009 Total:	9.30								
	MNNAT Total:	9.30								
NEXTEL Nextel Communications										
761950227-080	11/23/2009	101.52	0.00	12/01/2009	Cell Phone Service - Admin		-		No	0000
101-410-1940-43210	Telephone	105.20							No	0000
761950227-080	11/23/2009	34.72	0.00	12/01/2009	Cell Phone Service - Bldg		-		No	0000
101-420-2220-43210	Telephone	59.08							No	0000
761950227-080	11/23/2009	17.36	0.00	12/01/2009	Cell Phone Service - Public Works		-		No	0000
101-430-3100-43210	Telephone								No	0000
761950227-080	11/23/2009								No	0000
101-450-5200-43210	Telephone								No	0000

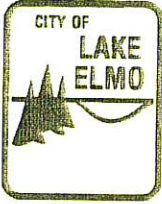
Invoice #	Inv Date	Amount	Quantity	Pmt Date	Description	Reference	Task	Type	PO #	Close POLine #
761950227-080 Total:		317.88								
NEXTTEL Total:		317.88								
<hr/>										
OSWALD Oswald Hose & Adapters										
9100	11/20/2009	37.16	0.00	12/01/2009	Repair Hose Coupling		-	No		0000
101-420-2220-44040 Repairs/Maint Eqpt										
9100 Total:		37.16								
OSWALD Total:		37.16								
<hr/>										
PETERSO Peterson Fram & Bergman Corp										
11140-030001	10/31/2009	2,891.23	0.00	12/01/2009	Legal Services - Criminal invoice		-	No		0000
101-420-2150-43045 Attorney Criminal					1140M					
11140-030001 Total:		2,891.23								
PETERSO Total:		2,891.23								
<hr/>										
PETTYCI Petty Cash										
LE City Hall	11/18/2009	21.41	0.00	12/01/2009	Best Buy Wall mount kit-cable		-	No		0000
410-480-8000-45800 Other Equipment										
LE City Hall	11/18/2009	7.08	0.00	12/01/2009	Menards Womens lavatory		-	No		0000
101-410-1940-44040 Repairs/Maint Contractual Eqpt										
LE City Hall	11/18/2009	6.00	0.00	12/01/2009	Reimburse Contractor O/Payment		-	No		0000
101-420-2400-44300 Miscellaneous										
LE City Hall Total:		34.49								
PETTYCI Total:		34.49								
<hr/>										
PLANTH PLANT HEALTH ASSOCIATES, INC										
979-09	11/12/2009	528.00	0.00	12/01/2009	Forester Services - October 2009		-	No		0000
101-430-3250-43150 Contract Services										
979-09	11/12/2009	168.00	0.00	12/01/2009	Forester Services -Development		-	No		0000
203-490-9070-43150 Contract Services										
979-09 Total:		696.00								
PLANTH Total:		696.00								
<hr/>										
ROGERS Rogers Printing Services, Corp										
16775	11/23/2009	390.09	0.00	12/01/2009	Utility envelopes and billing paper		-	No		0000
101-410-1320-43040 Legal Services										
16775 Total:		390.09								
ROGERS Total:		390.09								

Invoice #	Inv Date	Amount	Quantity	Pmt Date	Description	Reference	Task	Type	PO #	Close POLine #
RUD Prince-Rud Diane										
11/17/2009	11/17/2009	342.00	0.00	12/01/2009	Cleaning City Hall & Annex		-	No		0000
101-410-1940-44010	Repairs/Maint Contractual Bldg									
11/17/2009	11/17/2009	256.50	0.00	12/01/2009	Cleaning Fire Hall		-	No		0000
101-420-2220-44010	Repairs/Maint Bldg									
11/17/2009	11/17/2009	-38.50	0.00	12/01/2009	Use Tax		-	No		0000
101-000-0000-20201	Use Tax Payable									
	11/17/2009 Total:	560.00								
	RUD Total:	560.00								
S&T S&T Office Products, Inc.										
01NR7209	11/24/2009	497.59	0.00	12/01/2009	Office Supplies		-	No		0000
101-410-1320-42000	Office Supplies									
	01NR7209 Total:	497.59								
	S&T Total:	497.59								
SAMSCLUB Sam's Club										
5508	11/24/2009	47.98	0.00	12/01/2009	Station Supplies - Fire		-	No		0000
101-420-2220-44010	Repairs/Maint Bldg									
	5508 Total:	47.98								
	SAMSCLUB Total:	47.98								
SPRINT Sprint										
837908817-24	11/24/2009	79.98	0.00	12/01/2009	Phone Card for Laptops		-	No		0000
101-420-2220-43210	Telephone									
	837908817-24 Total:	79.98								
	SPRINT Total:	79.98								
STILLMED Stillwater Medical Group										
11/14/2009	11/14/2009	25.00	0.00	12/01/2009	Preplacement/annual physicals, Hep B		-	No		0000
101-420-2220-43050	Physicals									
	11/14/2009 Total:	25.00								
	STILLMED Total:	25.00								
STOIKO Stotko Speeding Construction										
Pay Cert. 1	10/16/2009	15,067.95	0.00	12/01/2009	Partial Pay Shelter - Carriage Park		-	No		0000
404-450-8000-45200	Buildings & Structures									
	Pay Cert. 1 Total:	15,067.95								
	STOIKO Total:	15,067.95								

Invoice #	Inv Date	Amount	Quantity	Pmt Date	Description	Reference	Task	Type	PO #	Close POLine #
TACHNEY Jason Tachney										
Chk Req	11/17/2009	1,000.00	0.00	12/01/2009	Escrow Return-8009 Hill Trl Permit		-	No		0000
803-000-0000-22900	Deposits Payable	1,000.00			5111					
Chk Req Total: 1,000.00										
TACHNEY Total: 1,000.00										
TDS METROCOM - LLC										
651-779-8882	11/13/2009	156.09	0.00	12/01/2009	Analog Lines - Fire		-	No		0000
101-420-2220-43210	Telephone	153.15	0.00	12/01/2009	Analog Lines - Public Works		-	No		0000
651-779-8882	11/13/2009	104.13	0.00	12/01/2009	Analog Lines - Lift Station Alarms		-	No		0000
101-430-3100-43210	Telephone	42.03	0.00	12/01/2009	Alarm - Well House #2		-	No		0000
651-779-8882	11/13/2009	455.40								
602-495-9450-43210	Telephone	455.40								
651-779-8882	11/13/2009									
601-494-9400-43210	Telephone									
651-779-8882 Total: 455.40										
TDS Total: 455.40										
TKDA TKDA, Inc.										
000200903363	11/11/2009	1,278.40	0.00	12/01/2009	Development Whistling Valley		-	No		0000
203-490-9070-43030	Engineering Services	1,278.40								
000200903363	11/11/2009	3,075.26	0.00	12/01/2009	Lake Elmo Farms		-	No		0000
203-490-9070-43030	Engineering Services	3,075.26								
000200903365	11/11/2009	476.75	0.00	12/01/2009	Sanctuary		-	No		0000
203-490-9070-43030	Engineering Services	476.75								
000200903366	11/11/2009	476.75	0.00	12/01/2009	SW Area Water System Extension		-	No		0000
601-494-9400-43030	Engineering Services	1,262.49	0.00	12/01/2009	Surface Water Mgmt Plan		-	No		0000
000200903367	11/11/2009	1,262.49	0.00	12/01/2009	General Engineering		-	No		0000
603-496-9500-43030	Engineering Services	469.88	0.00	12/01/2009	General Engineering		-	No		0000
000200903368	11/11/2009	469.88	0.00	12/01/2009	General Engineering		-	No		0000
101-430-3100-43030	Engineering Services	185.14	0.00	12/01/2009	General Engineering		-	No		0000
000200903368	11/11/2009	3,780.71	0.00	12/01/2009	General Engineering		-	No		0000
101-410-1930-43030	Engineering Services	3,491.54	0.00	12/01/2009	General Engineering		-	No		0000
000200903368	11/11/2009	7,457.39	0.00	12/01/2009	General Engineering		-	No		0000
101-410-1910-43030	Engineering Services	2,204.95	0.00	12/01/2009	General Engineering		-	No		0000
000200903369	11/11/2009									
409-480-8000-43030	Engineering Services									

Invoice #	Inv Date	Amount	Quantity	Pmt Date	Description	Reference	Task	Type	PO #	Close POLine #
000200903369	11/11/2009	106.48	0.00	12/01/2009	General Engineering		-	No		0000
404-480-8000-43030	Engineering Services									
000200903369	11/11/2009	4,475.84	0.00	12/01/2009	General Engineering		-	No		0000
603-496-9500-43030	Engineering Services									
000200903369	11/11/2009	2,331.73	0.00	12/01/2009	General Engineering		-	No		0000
601-494-9400-43030	Engineering Services									
000200903369	11/11/2009	185.14	0.00	12/01/2009	General Engineering		-	No		0000
602-495-9450-43030	Engineering Services									
000200903370	11/11/2009	9,304.14	0.00	12/01/2009	2009 Crack Sealing		-	No		0000
409-480-8000-43030	Engineering Services									
000200903370	Total:	851.89								
000200903371	11/11/2009	851.89	0.00	12/01/2009	2009 Street Improvements-final Design		-	No		0000
415-480-8000-43030	Engineering Services									
000200903371	11/11/2009	11,152.10	0.00	12/01/2009	2009 Street Improvements-final Design		-	No		0000
416-480-8000-43030	Engineering Services									
000200903371	Total:	1,593.61	0.00	12/01/2009	Tablyn Portion		-	No		0000
000200903372	11/11/2009	12,745.71	0.00	12/01/2009	LE 2010 Street and Water Quality		-	No		0000
417-480-8000-43030	Engineering Services									
000200903372	Total:	3,375.00								
TKDA Total:		40,296.91								
TOWER Tower Asphalt, Inc.										
Cert 3	11/11/2009	123,302.01	0.00	12/01/2009	2009 Street Improvements		-	No		0000
415-480-8000-45300	Improvements Other Than Bldgs									
Cert 3	11/11/2009	18,814.85	0.00	12/01/2009	Tablyn Project		-	No		0000
416-480-8000-45300	Improvements Other Than Bldgs									
Cert 3 Total:		142,116.86								
TOWER Total:		142,116.86								
USBANK US Bank Trust										
33402400	01/01/2010	35,000.00	0.00	12/01/2009	Principal		-	No		0000
310-480-8000-46010	Bond Principal									
33402400	01/01/2010	2,581.25	0.00	12/01/2009	Interest		-	No		0000
310-480-8000-46110	Bond Interest									
33402400	Total:	37,581.25								
USBANK Total:		37,581.25								
VANZANDT Van Zandt Distributing										
3883	11/06/2009	105.85	0.00	12/01/2009	EMS Supplies fo HINI Protection		-	No		0000
101-420-2220-42080	EMS Supplies									
3883	Total:	105.85								

Invoice #	Inv Date	Amount	Quantity	Pmt Date	Description	Reference	Task	Type	PO #	Close POLine #
VANZANDT Total:		105.85								
WASRADIO WASHINGTON COUNTY										
64621	11/01/2009	1,166.90	0.00	12/01/2009	Monthly user fee for 800 MHz radios		-			0000
101-420-2220-43230	Radio									No
64621 Total:		1,166.90								
WASRADIO Total:		1,166.90								
Report Total:		269,237.12								



MAYOR & COUNCIL COMMUNICATION

DATE: 12/01/2009
CONSENT
ITEM #: 3
MOTION:

AGENDA ITEM: Consider Approval of Liquor License Renewals for 2010

SUBMITTED BY: Sharon Lumby, City Clerk

THROUGH: Bruce Messelt, City Administrator *BAM*

SUMMARY AND ACTION REQUESTED: The City has received liquor applications for 2010, required fees, and insurance certificates. As all applications are in order, it is recommended that the City Council consider the following Motion:

Move to approve 2010 Liquor License Renewals, as presented, and an On-sale intoxicating liquor license for the Lake Elmo Inn Event Center

STAFF REPORT: The City is being asked to grant the following 2010 liquor applications:

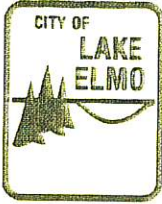
- On-sale intoxicating liquor and On-sale Sunday intoxicating license to 3M Club of St. Paul (Operators of Tartan Park) and to the Machine Shed Restaurant by Heart of America Restaurants; conditioned upon approval by the Washington County Sheriff's Dept.
- On-sale intoxicating liquor, Off-sale intoxicating liquor and On-sale Sunday intoxicating liquor license to the Twin Point Tavern and Lake Elmo Inn conditioned upon approval by the Washington County Sheriff's Dept.
- New application for On-Sale intoxicating liquor license for the Lake Elmo Inn Event Center including the outside patio on the Southside of the property.

RECOMMENDATION: Staff recommends approval of the 2010 liquor license renewals and approval of the new On-sale intoxicating liquor license for the Lake Elmo Inn Event Center.

ATTACHMENTS: None.

SUGGESTED ORDER OF BUSINESS (if removed from Consent Agenda):

- Questions from Council to StaffMayor Facilitates
- Call for MotionMayor & City Council
- Discussion.....Mayor & City Council
- Action on Motion.....Mayor Facilitates
- Discussion/ActionMayor facilitates



MAYOR & COUNCIL COMMUNICATION

DATE: 12/01/2009
CONSENT
ITEM #: 4
MOTION: Resolution 2009-046

AGENDA ITEM: Consider approval of Resolution 2009-046 Approving the Renewal of an Interim Use Permit (IUP) Application from Common Ground Church to Permit the Keeping of Horses.

SUBMITTED BY: Kelli Matzek, Planner
Common Grounds Church, Applicant

THROUGH: Bruce Messelt, City Administrator *BAM*

REVIEWED BY: Kyle Klatt, Planning Director

SUMMARY AND ACTION REQUESTED: The City Council is being asked to consider a renewal request from Common Ground Church to allow the keeping of two horses as an interim use at 10240 Stillwater Blvd N. The applicants were granted an IUP (Resolution 2008-012) on February 19th, 2008 with a set expiration of December 31, 2009 at which time the applicants could reapply for another two year IUP. Based upon the application and review of relevant facts and applicable City Code, City staff is recommending approval of Resolution 2009-046, with certain conditions denoted below. As such, the suggested motion is as follows:

Move to approve Resolution 09-046 allowing the keeping of horses with an Interim Use Permit at 10240 Stillwater Blvd N. with conditions.

STAFF REPORT: In the two years since the original IUP was granted, one complaint was received regarding the lack of an enclosed structure for the horses to enter to get out of severe weather. The Animal Control Officer (ACO) was informed of these concerns, went to the site, and stated that all applicable requirements are being met at the site and the horses were not being neglected. The ACO suggested requesting the water supply have electricity to keep it from freezing over. The applicants have stated in their current application that they are looking at alternatives such as placing the horses in another facility temporarily during the winter months to address the concern.

The zoning of the subject property is Public Facilities (PF) which would allow the use as an IUP. The applicants have identified approximately four acres of the property for grazable land for horses and are proposing to maintain caring for the two horses that were permitted previously.

Staff continues to find all eight criteria for an Interim Use Permit to be met for two horses. The eight general criteria for all Interim Use Permits are:

1. *Is the use allowed as an interim use in the respective zoning district and does it conform to standard zoning regulations?*
2. *Use will not adversely impact nearby properties through nuisance, noise, traffic, dust, or unsightliness and will not otherwise adversely impact the health, safety, and welfare of the community.*
3. *Use will not adversely impact implementation of the comprehensive plan.*
4. *The date or event that will terminate the use is identified with certainty.*
5. *The applicant has signed a consent agreement agreeing that the applicant, owner, operator, tenant and/or user has no entitlement to future reapproval of the Interim Use Permit as well as agreeing that the interim use will not impose additional costs on the public if it is necessary for the public to fully or partially take the property in the future.*
6. *The user agrees to all conditions that the City Council deems appropriate for permission of the use including the requirement of appropriate financial surety to cover the cost of removing the interim use and any interim structures upon the expiration of the interim use permit.*
7. *There are no delinquent property taxes, special assessments, interest, or City utility fees due upon the subject parcel.*
8. *The term of the interim use does not exceed two (2) years.*

The three specific criteria for horses as an Interim Use in the PF zoning district:

1. *The keeping of horses does not constitute a feedlot per Minnesota Rules.*
2. *The property is directly adjacent to only Agricultural (A) and Rural Residential (RR) zoned properties that are not developed as open space preservation subdivisions. Roadways shall be considered an adequate buffer.*
3. *Evidence is provided to show adherence to all livestock and horse regulations in the Lake Elmo city code.*

ADDITIONAL INFORMATION: The property is approximately 24.5 acres in size with four acres identified for the pasture of horses.

If approved, the proposal would authorize horses to be kept on the property throughout the year as part of the "Hoof Prints" organization which is a non-profit, faith-based, volunteer run group. The purpose of the organization is to benefit people who may be dealing with abuse, sickness or other troubles through work with horses.

Guests and volunteers care for the horses by exercising, grooming and feeding them; which in turn is meant to provide a sense of accomplishment and improved self-confidence. The proposed hours of operation would be primarily "after school" and weekends by appointment.

RECOMMENDATION: Based on our analysis of the request, staff is recommending approval of Resolution 2009-046 (with conditions identified below) as the keeping of horses is listed as an interim permitted use in the PF zoning district and limiting the site to two horses would comply with applicable regulations.

- a) No more than two horses shall be allowed;
- b) All riding of horses shall be done in accordance with section 95.01 and 95.02 of city code;
- c) The Interim Use Permit shall expire on December 31, 2011; at such time, the applicants may apply for another two year IUP.
- d) Applicant must sign a consent agreement with the city.

The City Council does have the option to not renew the Interim Use Permit and, should this prove the desired course of action, may simply not take action on Resolution 2009-046, thereby allowing the current Interim Use Permit to expire. The City Council could also formally move to deny the

ATTACHMENTS:

- 1. Resolution 2009-046
- 2. Applicant's Written Narrative
- 3. Location Map

SUGGESTED ORDER OF BUSINESS (if removed from Consent Agenda):

- Questions from Council to StaffMayor Facilitates
- Call for MotionMayor & City Council
- Discussion.....Mayor & City Council
- Action on Motion.....Mayor Facilitates
- Discussion/ActionMayor facilitates

CITY OF LAKE ELMO
WASHINGTON COUNTY, MINNESOTA

RESOLUTION NO. 2009-046

**A RESOLUTION GRANTING AN INTERIM USE PERMIT TO ALLOW THE KEEPING
OF HORSES AT 10240 STILLWATER BOULEVARD NORTH**

WHEREAS, Common Ground Church has requested an Interim Use Permit at 10240 Stillwater Boulevard North to allow the keeping of horses in conjunction with the Hoof Prints Ministry Program in the PF zoning district.

WHEREAS, the required mailing was completed in compliance with Section 154.019. No objections were received within ten days of the mailed notice.

WHEREAS, the applicants are not requesting any changes to the originally approved permit.

FINDINGS

1. Two horses would be in compliance with all livestock requirements and MPCA requirements for this type of facility;
2. A maximum of two horses will be in conformance with all interim use permit criteria outlined in code.

NOW, THEREFORE, BE IT RESOLVED that the Lake Elmo City Council hereby approves an Interim Use Permit at 10240 Stillwater Boulevard North to allow the keeping of horses, based on the Findings and subject to the following conditions:

1. No more than two horses shall be allowed;
2. All riding of horses shall be done in accordance with section 95.01 and 05.02 of city code;
3. The Interim Use Permit shall expire on December 31, 2011; at such time, the applicants may apply for another two year IUP.
4. The applicant must sign a consent agreement before expiration of the existing permit on December 31, 2009.

This resolution was adopted by the City Council of the City of Lake Elmo on the 1st day of December 2009, by a vote of ___ Ayes and ___ Nays.

Dean A. Johnston, Mayor

ATTEST:

Bruce A. Messelt, City Administrator

(SEAL)

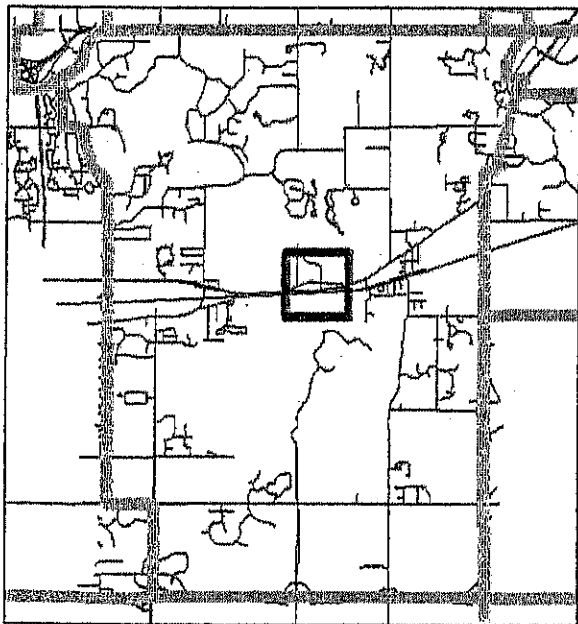
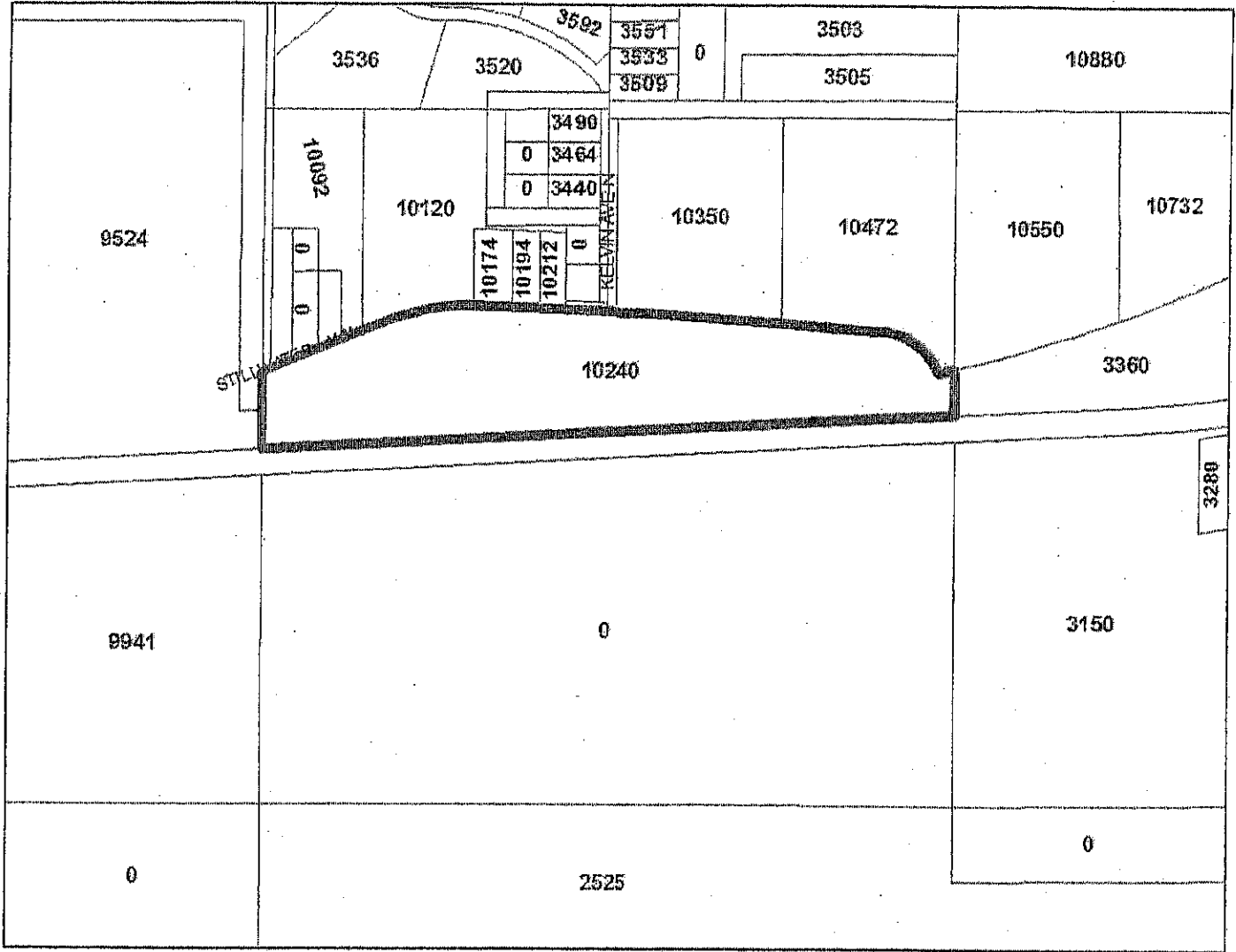
The members of Common Ground take great care in looking after both horses, Jasmine and Opal. Designated members have selected times where we each take turns mornings and evenings to provide food and check their water supply, as well as an overview of the land. Some members go more than 2 or 3 times a week to spend additional time to brush and work with the horses, in addition to looking after the grounds.

We are currently looking at alternatives that will ensure the horses have proper care during the winter months. In doing so, we are considering options that will either place the horses in another facility temporarily until the spring or continuing with their stay at Common Ground. Our goal in researching alternatives is to ensure their well-being. Water and protection is our main concern. Since there is no electricity that reaches the pasture, we are looking at how we can accomplish this through viable options.

In the past year, the horses and the land have been well taken care of. Since their arrival, the horses have reached a healthier status than when they first came to Common Ground. They are friendly, approachable and provide a comfort to those who come to the pasture.

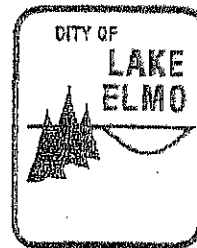
Through the Hoof Prints Ministry we have successfully engaged groups of young teenagers and adults to come and meet the horses under the supervision of Common Ground members, while spending time caring for them in an environment that offers acceptance and comfort. Having the horses and maintaining the land in its most natural state helps provide a backdrop that touches the life of Lake Elmo residents .

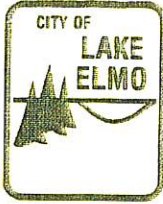
We look forward to continuing to be part of the community and a backdrop to the rural beauty of Lake Elmo and providing an environment where the horses and people find comfort and peace.



Location within the City of Lake Elmo

Common Grounds Church
 10240 Stillwater Blvd N.
 (PID 14-029-21-32-0024)





MAYOR & COUNCIL COMMUNICATION

DATE: 12/01/2009
REGULAR
ITEM #: 5
INFORMATION

AGENDA ITEM: Update on Friends of Washington County by Marc Hugunin

SUBMITTED BY: Friends of Washington County

THROUGH: Bruce Messelt, City Administrator *BAM*

SUMMARY AND ACTION REQUESTED: The City Council is asked to receive and update from Mr. Marc Hugunin, Executive Director of the Friends of Washington County regarding efforts to address state-wide rulemaking on landfills that will have an impact on the proposed Xcel fly ash landfill in West Lakeland Township.

Recommended Motion – None, for information purposes only.

STAFF REPORT: On March 17th, 2009, Mr. Marc Marc Hugunin, Executive Director of the Friends of Washington County reported on efforts to address state-wide rulemaking on landfills that will have an impact on the proposed Xcel fly ash landfill in West Lakeland Township.

At that time, the City Council unanimously adopted Resolution 2009-008 in support of these efforts and authorized City expenditure of \$2,500 from the General Fund to the Friends for technical services and for the Friends' participation in the MPCA's Landfill Advisory Group.

RECOMMENDATION: Mr. Hugunin has requested time on the City Council's agenda to update the Council on the efforts of the Friends relating to this issue. It is recommended that the City Council receive Mr. Hugunin's report and update.

ATTACHMENTS: Meeting Minutes from March 17th, 2009 City Council Meeting.

SUGGESTED ORDER OF BUSINESS:

- Introduction..... Bruce Messelt, City Administrator
- Report by Friends..... Marc Hugunin
- Questions from the Council Mayor & Council Members
- Discussion/Action Mayor facilitates

REGULAR AGENDA:

Requests by Friends of Washington County (Resolution and Funding)

Marc Hugunin, Executive Director of The Friends of Washington County, reported his organization was seeking support for its efforts related to state-wide rulemaking on landfills that will have an effect on the proposed Xcel fly ash landfill in West Lakeland Township. It is requesting that the City Council adopt a resolution to support the Friends' efforts to participate in the rule-making process and to authorize \$2,500 toward its funding of technical support by a hydrogeologist.

MOTION: Council Member DeLapp moved to adopt Resolution No. 2009-008 supporting the efforts of the Friends of Washington County in the Landfill Advisory Group of the MPCA to protect groundwater resources in the siting of landfills and authorize \$2,500 from the General Fund for The Friends to use for technical services for its participation in the MPCA's Landfill Advisory Group. Council Member Smith seconded the motion. The motion passed 5-0.

Consider an application from Vladimir and Silvia Hucec to allow construction of a pool, pergola, fireplace, and spa within the required 100 foot buffer setback in Open Space Preservation (OP) development at 2931 Jonquil Trail North

This agenda item was postponed to the April 7th Council meeting per the request of applicants, Vladimir and Silvia Hucec.

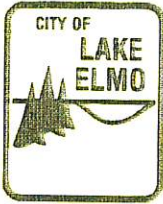
Presentation of the 2009 Street Improvements Feasibility Report – Resolution accepting the report and calling of a public improvement hearing

City Engineer Griffin provided three options for repairing the streets. The first is to repair the streets, leaving the current curb in place; the second is to repair the streets and build new bituminous curbs; and the third is to repair the streets and build concrete curbs into the project. The City Engineer recommended the second option, although all three options remain on the table until after the City's public hearing.

Council Member DeLapp asked why should each property owner pay the same amount, when some property owners live on large cul-de-sacs and others live on smaller lots with less frontage. He also asked that the City Engineer present at the public hearing the cost per each project.

Council Member Emmons suggested the integrating of rain gardens as part of this project.

City Engineer Griffin explained an open house will be held on March 30, 2009, from 6:00-7:30 p.m. to present the property owners/residents the scope of the proposed project,



MAYOR & COUNCIL COMMUNICATION

DATE: 12/01/09
REGULAR
ITEM #: 6
MOTION: Resolution 2009-048

AGENDA ITEM: Final 2009 Tax Levy Certification, Payable 2010

SUBMITTED BY: Tom Bouthilet, Finance Director

THROUGH: Bruce Messelt, City Administrator *BAW*

REVIEWED BY: Joe Rigdon, Financial Consultant
Dave Snyder, City Attorney

SUMMARY AND ACTION REQUESTED: Pursuant to State law and following its September 1st, 2009 adoption of the *proposed* 2010 Budget and Levy Certification, subsequent deliberations by and recommendations emanating from the Budget & Finance Sub-committee, and Council discussion of the proposed 2010 Budget, CIP and Tax Levy at a recent Workshop, the City Council is asked to affirmatively consider and adopt the Final 2009 Tax Levy Certification, Payable 2010. To do so, the Council motion and consideration/action should be to:

Move to approve Resolution 2009-048 authorizing certification to the Washington County Auditor of the 2009 Tax Levy (collectible in 2010)

STAFF REPORT: On September 1st, 2009, the City of Lake Elmo adopted for submission to the Washington County Auditor the *proposed* 2010 general fund budget (discussed as Agenda Item #7 immediately following this item) and *proposed* 2009 Levy Certification, payable 2010. The specific elements of September's *proposed* 2009 Levy Certification, Payable 2010 included:

General Fund Levy	\$2,360,790
2008 Unallotment Recovery	19,365
2009 Unallotment Recovery	35,475
2004 G.O. Capital Improvement Plan Bonds	319,764
2006 G.O. Equipment Certificates of Indebtedness	56,716
<u>2009B G.O. Improvement Bonds</u>	<u>51,000</u>
TOTAL	\$2,843,110

Subsequent to the preliminary levy certification, it was determined that approximately \$1,000,000 of unspent 2004 bond proceeds may be transferred from the City Facilities capital projects fund to the 2004 G.O. Capital Improvement Plan Bonds debt service fund in 2009, thereby increasing the debt service fund balance and reducing the pay 2010 and future scheduled annual property tax levies to \$220,000.

This proposal was introduced by the Budget and Finance Sub-committee and received positive feedback from the City Council at its Workshop. In addition, the City Attorney and Bond Counsel have reviewed and concurred with this proposed action with respect to both legal and fiduciary authority and prudence. As such, the recommended Final 2009 Levy Certification, Payable 2010, is as follows:

General Fund Levy	\$2,360,790
2008 Unallotment Recovery	19,365
2009 Unallotment Recovery	35,475
2004 G.O. Capital Improvement Plan Bonds	220,000
2006 G.O. Equipment Certificates of Indebtedness	56,716
<u>2009B G.O. Improvement Bonds</u>	<u>51,000</u>
TOTAL	\$2,743,346

ADDITIONAL INFORMATION: The overall 2010 property tax levy of \$2,743,346 is 1.3% higher than the 2009 total levy of \$2,708,203. The general fund levy of \$2,360,790 for 2010 (not including unallotment recovery levies) is 1.2% higher than the 2009 general fund levy of \$2,332,130.

While maintaining basic levels of government services, the City is proposing to only marginally increase the payable 2009 city tax rate by 2.5% from 19.878% in 2009 to 20.376% in 2010. In other words, property owners with no change in market values from payable 2009 to payable 2010 should experience a 2.5% increase in the city portion of their overall property tax bill. For example, a \$500,000 home that has experienced no net increase or decrease in market value over the last year would see its City property tax bill by approximately \$25, or some \$2 per month.

However, in the event of a market value decrease or increase for this same home from payable 2009 to payable 2010, City property taxes would change proportionately. As Washington County has noted an overall market value decrease of approximately -4.9%, the proposed 2009 Levy Certification for the City of Lake Elmo should actually decrease average property taxes paid to the City by approximately 2.5%, or approximately a \$25 decrease in City property taxes the same home. This information is shown in greater detail in Table 1 on Page 3 of this report.

RECOMMENDATION: It is recommended that the City Council approve Resolution 2009-048, authorizing certification to the Washington County Auditor of the 2009 Tax Levy (collectible in 2010). Alternatively, the City Council does have the authority to adjust the Final

2009 Tax Levy Certification, Payable 2010, either tonight or during subsequent action prior to December 17th, 2009. However, the City may not increase its Tax Levy higher than that submitted to Washington County on September 1st, 2009.

ATTACHMENTS: Resolution 2009-048

SUGGESTED ORDER OF BUSINESS:

- Introduction..... Bruce Messelt, City Administrator
- Staff Report/Presentation Tom Bouthilet, Finance Director
Joe Rigdon, Financial Consultant
- Questions from Council to Staff..... Mayor Facilitates
- Call for Motion Mayor & City Council
- Discussion..... Mayor & City Council
- Action on Motion..... Mayor Facilitates

2009 CITY PROPERTY TAXES						
Market Value 2009	Tax Capacity * 2009	City Local Tax Capacity Rate Pay 2009	City Property Taxes 2009			
\$100,000	\$1,000	19.878%	\$199			
\$300,000	\$3,000	19.878%	\$596			
\$600,000	\$5,000	19.878%	\$994			
\$700,000	\$7,500	19.878%	\$1,491			
2010 CITY PROPERTY TAXES (WITH NO MARKET VALUE CHANGE)						
Market Value 2010 <i>NO CHANGE</i>	Tax Capacity * 2010	City Local Tax Capacity Rate Pay 2010	City Property Taxes 2010	Property Taxes Increase (Decrease)	Percentage Tax Increase (Decrease)	
\$100,000	\$1,000	20.376%	\$204	\$5	2.5%	
\$300,000	\$3,000	20.376%	\$611	\$15	2.5%	
\$500,000	\$5,000	20.376%	\$1,019	\$25	2.5%	
\$700,000	\$7,500	20.376%	\$1,528	\$37	2.5%	
2010 CITY PROPERTY TAXES (WITH 4.9% MARKET VALUE DECREASE)						
Market Value 2010 <i>DECREASE OF -4.9%</i>	Tax Capacity * 2010	City Local Tax Capacity Rate Pay 2010	City Property Taxes 2010	Property Taxes Increase (Decrease)	Percentage Tax Increase (Decrease)	
\$95,100	\$951	20.376%	\$194	(\$5)	-2.5%	
\$285,300	\$2,853	20.376%	\$581	(\$15)	-2.5%	
\$475,500	\$4,755	20.376%	\$969	(\$25)	-2.5%	
\$665,700	\$7,071	20.376%	\$1,441	(\$50)	-3.4%	

(Table 1)

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

**RESOLUTION NO. 2009-048
RESOLUTION ADOPTING FINAL TAX LEVY**

BE IT RESOLVED by the City Council of the City of Lake Elmo, County of Washington, Minnesota, that the following sums of money be levied for the current year, collectible in 2010, upon the taxable property in the City of Lake Elmo for the following purposes:

General Fund Levy	\$ 2,360,790
2008 MVHC Unallotment Recovery	\$ 19,365
2009 MVHC Unallotment Recovery	\$ 35,475
2004 G.O Capital Improvement Plan Bond	\$ 220,000
2006 G.O Equipment Certificate of Indebtedness	\$ 56,716
2009B G.O. Improvement Bond	<u>\$ 51,000</u>
Total Levy	\$ 2,743,346

ADOPTED, by the Lake Elmo City Council on the 1st day of December, 2009.

Dean Johnston, Mayor

ATTEST:

Bruce Messelt, City Administrator



MAYOR & COUNCIL COMMUNICATION

DATE: 12/01/09

PUBLIC HEARING

ITEM #: 7

MOTION: Resolution 2009-049

AGENDA ITEM: Public Hearing - 2010 Budget and Action on 2010 Budget & 2010-14 CIP

SUBMITTED BY: Tom Bouthilet, Finance Director

THROUGH: Bruce Messelt, City Administrator

REVIEWED BY: Joe Rigdon, Financial Consultant
Dave Snyder, City Attorney

SUMMARY AND ACTION REQUESTED: Pursuant to State law and following its September 1st, 2009 adoption of the *proposed* 2010 Budget, subsequent deliberations by and recommendations emanating from the Budget & Finance Sub-committee, and Council discussion of the proposed 2010 Budget and CIP at a recent Workshop, the City Council is asked to convene a Public Hearing on the proposed 2010 Budget and then take action on the 2010 Budget and 2010-2014 CIP.

Following said Public Hearing, the City Council is asked to affirmatively consider and adopt the 2010 Budget and 2010-14 CIP, as presented and attached herein. To do so, the Council motion and consideration/action should be to:

Move to approve Resolution 2009-049 adopting the 2010 Budget and 2010-2014 Capital Improvement Plan.

STAFF REPORT: The City of Lake Elmo has both the legal and fiduciary responsibility under Minnesota State Statute to adopt a final Budget and Capital Improvement Program (CIP). On September 1st, 2009, the City of Lake Elmo adopted for submission to the Washington County Auditor the *proposed* 2010 general fund budget and CIP, as required under state law.

The specific **revenue** elements of September's *proposed* 2010 Budget and CIP included:

- Constrained Tax revenues due to levy limits the Governor's unallotting of Market Value Homestead Credit;
- Limited or no growth in non-tax revenues due to the economic recession; and

- Flat or lower property tax capacity due to market value adjustments to most residential and commercial properties and land.

The specific **expenditure** elements of September's proposed 2010 Budget and CIIP included:

- Leaving unfunded the position of Building Official, saving some \$101,600;
- 1 week of unpaid furloughs for employees, saving approximately \$18,000 and a 1.5% economic adjustment for employees, based upon budget performance costing \$22,500;
- Additional required City contribution of \$17,864 to the Lake Elmo's Firefighters' Relief Association;
- Additional expense of \$11,000 for 2010 municipal elections;
- Additional across-the-board reductions of \$58,400; and
- No transfer to capital infrastructure or equipment funds; the latter is particularly problematic due to aging infrastructure and equipment.

At the time, and at the request of the City Council and its Budget & Finance Sub-committee, City staff identified an additional \$96,830 in possible additional cuts in an effort to decrease the potential Tax Levy. Fortunately, a projected 5% decrease in tax capacity preliminarily calculated by Washington County did not materialize, as a lag in recently-constructed properties coming on line for taxation offset much of the market value adjustments and resulted in a net decrease in overall tax capacity of approximately 1.1%.

As a result, the Budget & Finance Subcommittee was able to ameliorate many of the more draconian budget cutting measures and restore key program support in certain areas, even while reducing the proposed Tax Levy. Included, therefore in the proposed Final Budget and CIP are:

- No employee furloughs but also no pay grade or cost of living increases;
- Reduction in Assistant Planner position from 1.0 FTE to 0.8 FTE;
- Reduction in Parks/Public Works seasonal positions from 4 to 3 FTE;
- Reduction in Forestry Program from \$14,000 to \$10,000;
- Utilization of the reapplication of 2004 Bond proceeds against remaining debt to reallocate General Fund monies to needed capital infrastructure and equipment funds;
- Prioritization and identification of funding sources for the 2010 year of the 2010-2014 CIP; and
- Development of a strategy to address structural deficiencies in the Water Utility Budget.

As a result, the overall 2010 general fund expenditures and transfers out are budgeted at \$2,849,011, or a 1.5% decrease from the 2009 general fund budget. The 2010 general fund budget is considered balanced, with overall general fund budgeted revenues also at \$2,849,011, or a 1.5% decrease.

The 2010 CIP is recommended at approximately \$2.2 million, with significant programs and related expenditures emanating from Parks (Park Dedication Fees), Seal-coating and Transportation Improvements (General Fund, MSA Funds, Property Tax Levy and Special Assessments), Water utility Improvements (MDH Loan or other revenue source).

ADDITIONAL INFORMATION: State law requires the holding of a public hearing, commonly referred to as "Truth in Taxation," for the purposes of allowing public input and discussion on the proposed Budget. Official Notice for tonight's Public Hearing was published in the Oakdale / Lake Elmo Review on November 26th, 2009 (attached).

As required by State law, the Planning Commission held a Public Hearing on the proposed 2010-2014 CIP on November 23rd, 2009. The CIP was also reviewed in detail prior to tonight's presentation by the Parks Commission, Planning Commission, City Council, City Engineer and City Departments.

State law requires submission to Washington County of the City's final 2010 Budget and 2010-2014 CIP by December 23rd, 2009.

RECOMMENDATION: It is recommended that the City Council convene the required Public Hearing on the 2010 Budget. Upon completion and closure of the Public Hearing, it is recommended that the City Council pass Resolution 2009-049, thereby approving the 2010 Budget and 2010-14 CIP. The suggested motion is as follows:

*Move to approve Resolution 2009-049 adopting the 2010 Budget and 2010-2014
Capital Improvement Plan [as amended (if needed)].*

Alternatively, the City Council does have the authority to adjust the Final Budget, either tonight or during subsequent action prior to December 23rd, 2009. However, the City may not increase its Tax Levy higher than that submitted to Washington County on September 1st, 2009, thereby constraining somewhat major increases in the City's budget. It should also be noted that both the Annual Budget and 2010 CIP can be amended and/or modified by the City Council during the 2010 fiscal year.

ATTACHMENTS:

1. Resolution 2009-049
2. 2010 Budget and 2010-14 CIP
3. Public Notice

SUGGESTED ORDER OF BUSINESS:

- Introduction..... Bruce Messelt, City Administrator
- Staff Report/Presentation..... Tom Bouthilet, Finance Director
Joe Rigdon, Financial Consultant
- Questions from Council to Staff..... Mayor Facilitates
- Public Hearing Mayor Facilitates
- Call for Motion Mayor & City Council
- Discussion..... Mayor & City Council
- Action on Motion..... Mayor Facilitates

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

**RESOLUTION NO. 2009-049
RESOLUTION ADOPTING THE 2010 GENERAL FUND BUDGET &
2010-2014 CAPITAL IMPROVEMENT PLAN**

WHEREAS, the City of Lake Elmo is required to adopt a formal budget for the general fund expenditures; and

WHEREAS, the City of Lake Elmo is required to adopt an annual Capital Improvement Plan; and

WHEREAS, the City of Lake Elmo held a Budget & Tax Hearing on December 1, 2009; and

WHEREAS, the Lake City Council closed the public hearing on the 2010 general fund budget at the close of the meeting on December 1, 2009 without need for continuation.

NOW, THEREFORE, BE IT RESOLVED that the Lake Elmo City Council adopts the 2010 general fund budget in the amount of \$2,849,011 and the 2010-2014 Capital Improvement Plan.

ADOPTED, by the Lake Elmo City Council on this, the 1st day of December, 2009.

Dean Johnston, Mayor

ATTEST:

Bruce Messelt, City Administrator

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Notice of Proposed Total Budget and Property Taxes

The Lake Elmo City Council will hold a public hearing on its budget and on the amount of property taxes it is proposing to collect to pay for the costs of services the city will provide in 2010.

Attend the Public Hearing

All Lake Elmo City residents are invited to attend the public hearing of the City Council to express their opinions on the budget and on the proposed amount of 2010 property taxes. The hearing will be held on:

Tuesday, December 1, at 7:00 p.m.
Lake Elmo City Hall
3800 Laverne Avenue
Lake Elmo, Minnesota

You are invited to send your written comments to:
City of Lake Elmo, Mayor's Office
3800 Laverne Avenue, Lake Elmo, Minnesota 55042

(Oakdale-Lake Elmo Review: Nov. 25, 2009)

Victorian Christmas event.
Community Services
 Approval of the following actions:
 - 2010-2011 contracts with East Suburban Resources Opportunity Services, and Phoenix Alternatives for day training and habilitation and related services for persons with disabilities;
 - 2010-2011 contract with Lifeworks Services, Inc., Orion ISO, Inc., and Partners in Community Supports for services for individuals on Medical Assistance.
General Administration
 Approval of the following actions:
 - October 20, 2009 Board meeting minutes;
 - Executive Session held to discuss the Land and Water Legacy Program for the Daley conservation easement acquisition;
 - Board correspondence was received and placed on file;
 - Board workshop held to discuss next steps in the 2010 budget development.
Housing and Redevelopment Authority
 Adoption of Resolution No. 2009-130, proposed amendment to the custodial agreement HRA governmental housing revenue refunding bonds (Washington County General Obligation - Woodland Park Apartments Project) Series 2002 and affirming the Pledge of the General Obligation of Washington County.
Human Resources
 Approval to ratify the 2010 health insurance for Teamsters CO/911 employees.
Public Health and Environment
 Board workshop held to review the Washington Conservation District's 2010 budget and program services; and, the Watershed Management Organizations' 2010 budgets and

Location	Approximate Refinancing Amount
5570 - 129th Drive N., Hugo, MN	\$183,457
5572 - 129th Drive N., Hugo, MN	\$183,169
600 La Bore Road, Little Canada, MN	\$165,576
410 E. Little Canada Road, Little Canada, MN	\$365,697
549 Allen Avenue, Little Canada, MN	\$241,304
2083 Arcade Street, Maplewood, MN	\$ 80,817
785 Belmont Lane E., Maplewood, MN	\$233,101
2707 - 9th Avenue E., North St. Paul, MN	\$294,862
2137 Hale Avenue N., Oakdale, MN	\$136,091
2646 Virginia Avenue, Roseville, MN	\$ 73,933
1492 Bremer Avenue, Roseville, MN	\$174,098
457 Minnesota Avenue, Roseville, MN	\$187,368
909 Edgewater Street, Shoreview, MN	\$259,640
4430 Morningside Avenue, Vadnais Heights, MN	\$157,977
1995 Oak Knoll Avenue, White Bear Lake, MN	\$ 67,569
3518 Rollingview Court, White Bear Lake, MN	\$ 80,817
4095 White Bear Avenue, White Bear Lake, MN	\$121,103
1485 Highway 96, White Bear Lake, MN	\$224,826
2420 - 5th Street, White Bear Township, MN	\$150,283
2580 Norway Pine Drive, White Bear Township, MN	\$260,130
5317 Cedarwood Court, White Bear Township, MN	\$204,267

Stacy Lauzon, Books, Castle - use for the kids
 Jack Anderson, Markers and tape, Castle - student
 Kemps Nickels for Schools, \$137.50, Oakdale - general use
 Oakdale PTO, \$1,077.84, Oakdale - student field trips and other activities relating to learning and curriculum
 Target Take Charge of Education, \$701.57, Oakdale - general use
 Anonymous, \$100.00, Oakdale - student use in 5th grade
 622 Education Foundation, \$405.00, Oakdale - assist students whose education may be in jeopardy because of family's financial situation
 Lowe's Charitable and Educational Foundation, \$5,000.00, Richardson - purchase
 Wells Fargo, \$274.05, Skyview elementary - literacy materials for grade 4
 Kim Elvecrog, Clarinet and case, Weaver - Weaver diversity band
 Webster PTO, \$3,000.00, Webster - two (2) smartboards
 Webster PTO, \$2,069.64, Webster - field trips
 Costco @ Maplewood, 700 Backpacks loaded with school supplies, Webster - each student to have a backpack for the 2009-2010 school year
 Crystal Harrington, Music stand, John Glenn
 Richard Surbeck, \$25.00, Skyview Middle - supporting grandson in school fundraiser instead of purchasing a magazine or food item
 Abdalla & Debra Battah, \$50.00, Skyview Middle - student use
 Joe & Sandra Payne, \$400.00, North - Northern Lights scholarships
 Ben Dexter, 1986 Oldsmobile Cutlass, North - education
 Candy Peterson, \$500.00, North -

FOR PUBLICATION ONE TIME – Oakdale-Lake Elmo Review – November 11, 2009
Planning Commission Public Hearing Notice for November 23, 2009 (Original notice)
Kelli Matzek – Planner
11-6-09

PUBLIC HEARING NOTICE

DATE: November 23, 2009

TIME: 7:00 p.m. or after

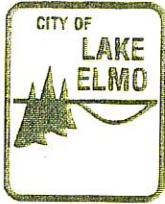
PLACE: Lake Elmo City Hall
3800 Laverne Avenue North
Lake Elmo, MN 55042
Phone: 651-777-5510
Fax: 651-777-9615

PURPOSE: The Lake Elmo Planning Commission is holding public hearings to consider the following items:

1. **CAPITAL IMPROVEMENT PLAN:** Review of a capital improvement plan for the city of Lake Elmo for the years 2010 to 2014.
2. **BUFFER SETBACKS IN OPEN SPACE PRESERVATION DEVELOPMENTS:** Consideration of an ordinance to amend the buffer setbacks for the following developments: St. Croix's Sanctuary; Discover Crossing; Whistling Valley I, II, and III; Farms of Lake Elmo; Prairie Hamlet; Fields of St. Croix I and II (including Little Bluestem); The Homestead; Tapestry at Charlotte's Grove; Tamarack Farm Estates; Sunfish Ponds; Hamlet on Sunfish Lake; Cardinal Ridge; Wildflower Shores; Heritage Farms; Tana Ridge; and Parkview Estates. The buffer setback is measured from the edge of the development and precludes the construction of a building.

Written comments regarding the proposals may be submitted to the City no later than noon on the day of the meeting. Materials regarding the above items are available for review at City Hall (Monday – Friday; 8:00 a.m. – 4:30 p.m.). Please call City Hall if you have any questions.

Kelli Matzek
Planner



MAYOR & COUNCIL COMMUNICATION

DATE: 12/01/09
PUBLIC HEARING
ITEM #: 8
MOTION: Resolution 2009-050

AGENDA ITEM: Public Hearing - Action on Delinquent Water and Wastewater Utility Bills

SUBMITTED BY: Tom Bouthilet, Finance Director

THROUGH: Bruce Messelt, City Administrator *BM*

REVIEWED BY: Joe Rigdon, Financial Consultant
Dave Snyder, City Attorney

SUMMARY AND ACTION REQUESTED: The City Council is asked to convene a public hearing, as required under State law, to consider recommended action to assess property owners for delinquent 2009 Water and Wastewater Utility bills.

Recommended Motion #1 – Move to open Public Hearing

Recommended Motion #2 – Moved to close Public Hearing

Recommended Motion #3 – Move to Approve Resolution # 2009-50

STAFF REPORT: The City of Lake Elmo has the legal and fiduciary authority under Minnesota State Statue 444.075, subd.3, and City Ordinance to assess property owners for unpaid utilities and services. Exhibit A provides a listing of those properties with delinquent water and wastewater utility bills for 2009.

ADDITIONAL INFORMATION: All affected homeowners with past due balances have been sent formal notification of the proposed property assessment, following previous unpaid billings. Official Notice of tonight's Public Hearing for unpaid utilities was published in the Oakdale / Lake Elmo Review on November 25th, 2009 (attached).

Even following tonight's action, homeowners will still have until December 10th, 2009 to pay their bills without additional fees or incurring of said assessment. Payments received after December 10th, 2009 through December 31st, 2009 will be subject to an eight percent interest charge on the balance due, or a fee of \$25.00, whichever is greater.

After December 31st, 2009, all unpaid accounts will be certified with Washington County for assessment against the property, including the eight percent interest charge on the balance due, or a fee of \$25.00, whichever is greater.

RECOMMENDATION: It is recommended that the City Council convene the required public hearing to receive public comment and, upon closure of said hearing, move to approve Resolution 2009-050, authorizing certification to the Washington County Auditor for unpaid Utility (water and wastewater) Bills.

While assessment of such delinquent utility bills against the serviced property is both the predominant industry norm and the past practice of the City of Lake Elmo, the City Council does have the discretion to not assess these properties. Such action would still require the City to either write-off this lost revenue or seek remuneration through alternative means, such as private bill collection or perhaps civil action. However, it is staff's assessment that any action other than assessment of delinquent bills against the services property will be both more expensive and less successful.

ATTACHMENTS:

Resolution 2009-050
Exhibit A
Public Hearing Notice

SUGGESTED ORDER OF BUSINESS:

- Introduction..... Bruce Messelt, City Administrator
- Staff Report/Presentation Tom Bouthilet, Finance Director
Joe Rigdon, Financial Consultant
- Questions from Council to Staff Mayor Facilitates
- Public Hearing Mayor Facilitates
- Call for Motion Mayor & City Council
- Discussion Mayor & City Council
- Action on Motion..... Mayor Facilitates

CITY OF LAKE ELMO
WASHINGTON COUNTY, MINNESOTA

RESOLUTION NO. 2009 – 050
RESOLUTION AUTHORIZING CERTIFICATION TO
WASHINGTON COUNTY AUDITOR FOR
UNPAID UTILITY BILLS

WHEREAS, Minn. Stat. 444.075, subd. 3, permits certification of unpaid charges to the county auditor for collection with taxes payable;

WHEREAS, the Municipal Code for the City of Lake Elmo contains a provision to certify delinquent accounts to the County Auditor for collection with taxes payable.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LAKE ELMO, MINNESOTA, THAT:

1. The list of delinquent accounts, a copy of which is attached hereto as Exhibit A, and made a part hereof, is hereby accepted and shall be certified to the Washington County Auditor for collection with taxes payable.
2. The certified amount shall be payable over a period of one year, and one installment with interest as provided in Exhibit A.
3. The owner of the property may, at any time prior to certification to the County Auditor, pay the delinquent amount to the City Finance Director.
4. The Deputy Clerk shall forthwith transmit a certified duplicate of Exhibit A to the County Auditor to be extended on the property tax lists of Washington County. Such delinquent accounts shall be collected and paid over in the same manner as other municipal taxes.

ADOPTED, by the Lake Elmo City Council on the 1st day of December, 2009

Dean Johnston, Mayor

ATTEST:

Bruce Messelt, City Administrator

Exhibit A

Address	Total Due	Property ID No.
10867 33RD ST	\$ 90.24	1402921410018
11240 32ND ST.	\$ 94.05	1302921310013
11328 32ND ST.	\$ 47.25	1302921310014
11267 32ND ST.	\$ 103.21	1302921340004
10941 32ND ST.	\$ 731.67	1402921440012
10865 32ND ST.	\$ 110.20	1402921440018
11334 31ST ST.	\$ 113.39	1302921340015
11259 30TH ST.	\$ 162.35	2402921210004
11356 30TH ST.	\$ 65.17	1302921340007
11397 30TH ST.	\$ 385.15	2402921210009
3624 LAYTON AV.	\$ 264.94	1302921240005
3604 LAYTON AVE.	\$ 201.39	1302921240003
3617 LAVERNE AVE.	\$ 76.57	1302921230016
3417 LAKE ELMO AVE.	\$ 491.00	1302921320032
3258 LAKE ELMO AVE.	\$ 88.98	1302921320084
2813 LAKE ELMO AVE.	\$ 285.70	2402921220003
3250 KRAFT CIRCLE	\$ 98.57	1402921440004
3265 KRAFT CIRCLE	\$ 200.32	1402921410012
10902 33RD ST.LANE	\$ 154.38	1402921410016
2939 LEGION AVE.	\$ 290.00	2402921120004
2903 LEGION AVE.	\$ 108.77	2402921120009
2764 LEGION AVE.	\$ 613.98	2402921210027
2932 LEGION AVE.	\$ 75.30	2402921210013
11223 32ND ST.	\$ 360.16	1302921330005
3010 LISBON AVE.	\$ 588.44	1302921430007
3040 LISBON AVE.	\$ 139.73	1302921430010
11229 STILLWATER BLVD	\$ 77.54	1302921240017
11090 UPPER 33RD ST	\$ 144.59	1302921320048
3537 LAKE ELMO AVE.	\$ 53.13	1302921230054
3515 LAKE ELMO AVE.	\$ 690.31	1302921230056
3459 LAKE ELMO AVE.	\$ 123.22	1302921320041
10961 32ND ST. NO.	\$ 159.27	1402921440010
3328 KRAFT CIRCLE	\$ 178.06	1402921410027
3100 LAKE ELMO AVE	\$ 76.57	1302921330019
10925 33RD ST LN	\$ 775.45	1402921440020
8004 50TH STREET	\$ 165.00	502921440016
7990 50TH STREET	\$ 300.00	502921440015
9393 JANE ROAD N.	\$ 567.00	1002921240008
9395 JANE ROAD N.	\$ 100.00	1002921210016
2952 30TH STREET CIR N	\$ 51.50	2402921110010
2632 LISBON AVE CT	\$ 187.29	2402921140010
2660 LISBON AVE CT	\$ 261.17	2402921140008
2753 LISBON AVE CT	\$ 89.99	2402921110013
2769 LISBON AVE CT	\$ 293.89	2402921110012
8921 HIGHWAY 5	\$ 3,854.66	
8925 HIGHWAY 5	\$ 112.68	1602921410025
8839 36TH STREET N	\$ 287.66	1602921140025
9165 JAMACA COURT	\$ 69.73	1502921320020
9115 JAMACA COURT	\$ 58.00	1502921320021
9089 JAMACA COURT	\$ 542.48	1502921320022
3351 JAMACA AVENUE	\$ 462.26	1502921320031
8914 37TH ST	\$ 141.32	1602921140005
8928 36TH ST BACK	\$ 189.83	1602921140015
9340 STILLWATER BLVD	\$ 67.48	1502921310002
9402 STILLWATER BLVD FRONT	\$ 144.52	1502921310011
3455 ISLE COURT N.	\$ 272.49	1602921410012
3435 ISLE CT	\$ 65.17	1602921410010
4605 LILY AVE N.	\$ 434.74	1202921130010
4758 LILY AVE N.	\$ 589.38	1202921120017
4938 LILY AVE N.	\$ 189.54	1202921120020
11792 44TH STREET N.	\$ 373.20	1202921410009
11598 44TH STREET	\$ 479.76	1202921420019
4415 LILY AVE	\$ 571.00	1202921420020
4488 LILY AVE N.	\$ 676.30	1202921420024
4442 LILY AVE N.	\$ 1,178.25	1202921420026
4365 LILY AVE	\$ 708.83	1202921420031
11622 LITTLE BLUESTEM CIR. N.	\$ 341.50	1202921430018
5061 MARQUESS TRAIL CIR N.	\$ 566.33	
5091 MARQUESS TRAIL CIRCLE N.	\$ 402.79	602920320057
5203 MARQUESS TRAIL N.	\$ 188.28	602920320055
5294 MARQUESS TRAIL N.	\$ 487.08	602920320011
5307 MARQUESS TRAIL N.	\$ 142.66	602920320051
5328 MARQUESS TRAIL N.	\$ 215.59	602920320013
12038 MARQUESS LANE N.	\$ 923.71	602920320040
12324 MARQUESS WAY N.	\$ 395.36	602920310020

12521 MARQUESS WAY N.	\$	146.14	602920310035
12415 55TH STREET N.	\$	201.68	602920310051
12425 55TH STREET N.	\$	156.40	
2936 JONQUIL TRAIL N.	\$	713.72	2202921220026
11839 58TH STREET N.	\$	394.35	102921110012
10071 TAPESTRY ROAD N.	\$	593.25	1102921330021
11703 58TH STREET	\$	724.49	102921130027
5725 LILY AVENUE N.	\$	1,582.43	102921130034
5712 LILY AVENUE N.	\$	368.28	102921130010
11671 56TH STREET N.	\$	712.80	102921130008
11833 56TH STREET N.	\$	358.44	102921140013
5693 LINDEN AVENUE N.	\$	506.12	102921140011
11980 58TH STREET	\$	816.19	102921110008
5647 57TH STREET N.	\$	451.95	
2965 LAKE ELMO AVE	\$	130.42	
2995 JONQUIL TRL	\$	79.59	2202921210008
10929 57TH STREET N.	\$	139.35	202921140018
5647 57TH STREET CIRCLE N.	\$	75.00	202921140011
8565 EAGLE POINT CIRCLE	\$	4,441.64	3302921430008
8615 EAGLE POINT BLVD	\$	338.59	3302921440029
8657 EAGLE POINT BLVD	\$	606.00	3302921440023
9260 31ST STREET N.	\$	135.20	
9224 31ST STREET N.	\$	75.00	
9240 31ST STREET N	\$	75.00	
3010 JANERO AVE N.	\$	96.50	1502921330021
2990 JANERO AVE N.	\$	379.08	1502921330022
2940 JAMLEY AVENUE N.	\$	62.90	2202921220012
2935 JAMLEY AVENUE N.	\$	118.80	2202921220005
2809 JAMLEY AVENUE N.	\$	148.10	2202921220014
2751 JAMLEY AVENUE N.	\$	79.30	2202921220013
2742 IVY AVENUE N.	\$	75.00	
9065 28TH STREET N.	\$	103.75	2202921230013
8740 STILLWATER BLVD N.	\$	67.20	1602921430007
8659 STILLWATER BLVD N.	\$	131.34	2102921120004
8308 STILLWATER BLVD N.	\$	163.95	2102921210023
8255 STILLWATER BLVD N.	\$	122.30	2102921210004
2876 INNSDALE AVENUE N.	\$	125.25	2102921210008
3033 INWOOD AVENUE N.	\$	79.30	1602921430010
2961 INWOOD AVENUE N.	\$	225.50	2102921120001
2773 INWOOD AVENUE N.	\$	122.30	2102921120017
8284 26TH STREET N.	\$	116.65	2102921240013
8226 26TH STREET N.	\$	139.50	2102921230014
8154 26TH STREET N.	\$	300.75	2102921230013
2528 IMPERIAL AVENUE N.	\$	259.90	2102921230006
2580 IMPERIAL AVENUE N.	\$	135.20	2102921230007
2760 IMPERIAL AVENUE N.	\$	412.88	2102921220005
8352 27TH STREET N.	\$	95.15	2102921210016
2621 INNSDALE AVENUE N.	\$	266.35	2102921240006
8570 27TH STREET N.	\$	853.63	2102921130019
8605 27TH STREET N.	\$	221.20	2102921130016
8685 27TH STREET N.	\$	257.75	2102921130004
8780 27TH STREET COURT N.	\$	82.25	2102921140007
2770 IRISH AVENUE N.	\$	133.05	2102921120056
8648 28TH STREET N.	\$	105.90	2102921120046

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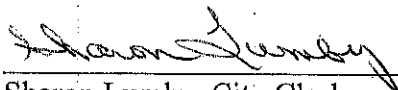
CITY OF LAKE ELMO
NOTICE OF HEARING
ON PROPOSED ASSESSMENT FOR
CURRENT MUNICIPAL SERVICES AND/OR MUNICIPAL UTILITIES

TO WHOM IT MAY CONCERN:

Notice is hereby given that the City Council of the City of Lake Elmo, Minnesota, will meet in the Council Chambers in the City of Lake Elmo, Minnesota, on the 1st day of December, 2009 at 7:00 p.m. to consider, and possibly adopt the proposed assessment for unpaid municipal services or municipal utilities.

You may prior to certification of assessment to the County Auditor, pay the entire assessment. If the assessment is not prepaid before December 10, 2009, the rate of eight percent (8%) interest or a charge of \$25.00, whichever is greater, will be applied to the assessment balance. The assessment will be due in full for the taxes payable 2010 calendar year.

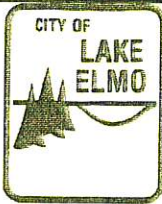
The proposed assessment roll is on file for public inspection at the Finance Director's office. Written or oral objections will be considered at the meeting. No appeal may be taken as to the amount of an assessment unless a signed, written objection is filed with the City Administrator prior to the hearing or presented to the presiding officer at the hearing. The Council may, upon such notice, consider any objection to the amount of a proposed individual assessment to the affected owners as it deems advisable.



Sharon Lumby, City Clerk

November 11, 2009

Publish in the November 18, 2009 Oakdale/Lake Elmo Review



MAYOR & COUNCIL COMMUNICATION

DATE: 12/01/2009
REGULAR
ITEM #: 9
MOTION: **Resolution 2009-45**

AGENDA ITEM: Consider an Application from James Burns for a Variance from the Front Yard Setback Requirement in an R1 Zoning District to Allow the Construction of a Building Addition – PID 09-029-21-23-0006

SUBMITTED BY: Kyle Klatt, Planning Director

THROUGH: Bruce Messelt, City Administrator 

REVIEWED BY: Kelli Matzek, City Planner

SUMMARY AND ACTION REQUESTED: The City Council is asked to consider a request from James Burns for a variance allowing the construction of an addition to an existing residence at 11140 20th Street Court North. The addition would be set back 22.8 feet from a front property line, or 3.2 feet closer to this line than allowed under the R-1 Single Family Residential Zoning District requirements and related provisions for established neighborhood setbacks.

Recommended Motion – *Move to approve Resolution 2009-45 relating to a requested Setback Variance for James Burns*

STAFF REPORT: The variance has been requested to allow an expansion and improvement of the primary structure on this site that would otherwise not be able to take advantage of access to sunlight from the south.

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

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

- c. The variance, if granted, will not change the essential character of the neighborhood.*

In reviewing the request against the three criteria listed above, staff determined all criteria were not met, as *strict adherence to the code* would still allow reasonable use of the property. As such, Planning Staff's recommendation was for **denial** of the variance request. The basis for staff's findings is included in the attached report.

PLANNING COMMISSION REPORT: The Planning Commission reviewed the request at its November 9th and 23rd meetings and is recommending that the Council **approve** the request based on the following findings:

- 1) That the applicant is not able to build elsewhere on the site and still provide for access to direct sunlight.
- 2) That previous placement of fill and the resulting topography greatly limits the ability to construct an addition to the living areas within the home.
- 3) That the placement of the paved road surface within the street right-of-way has created an unusually large boulevard area in front of the applicant's home and that the proposed addition will still be set back further than other structures along the street in relation to the curb line of the road.

ADDITIONAL INFORMATION:

- Two of the neighboring property owners have submitted letters in support of the requested variance. These letters are attached for consideration by the Council.
- The applicant provided the Planning Commission with a folder of material that has been reproduced for the Council.

RECOMMENDATION: It is recommended that the City Council consider the variance request and take appropriate action. While not as strict an interpretation as that of the City's Planning staff, the Planning Commission's discussion and recommendation represents an equally reasonable interpretation and application of the City Code. City staff also notes that there is no undue precedent set or inconsistency created by following the Planning Commission's recommendation. As such, it is recommended that the City Council:

More to approve Resolution 2009-45 relating to a setback variance request for James Burns, 11140 20th Street Court North, to allow the construction of an addition to an existing residence at this address that would be set back 22.8 feet from a front property line, or 3.2 feet closer to this line than allowed under the R-1 Single Family Residential Zoning District requirements and related provisions for established neighborhood setbacks.

Should the City Council elect to not follow the recommendation of the Planning Condition, the motion should be to *“Deny the requested Setback Variance for James Burns based upon the original findings and justifications of the City Planning Department.”*

ATTACHMENTS:

1. Resolution No. 2009-045
2. Staff Report
3. Area Map
4. Application Form
5. Applicant’s Narrative(1 page)
6. Certificate of Survey
7. Letters from Neighboring Property Owners (2)
8. Aerial Image of Site
9. Representation of 26’ Setback Line on site plan
10. Information Package from Applicant

SUGGESTED 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 applicant..... Mayor facilitates
- Questions/Comments from the public Mayor facilitates
- Call for a Motion (required for further discussion;
does not imply approval of the motion) Mayor facilitates
- Discussion Mayor facilitates
- Action on motion City Council

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

RESOLUTION NO. 2009-045

*A RESOLUTION APPROVING A VARIANCE FROM THE REQUIRED FRONT YARD
SETBACK AT 11140 20th STREET COURT NORTH*

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

WHEREAS, James Burns, 11140 20th Street Court North (the "Applicant") has submitted an application to the City of Lake Elmo (the "City") for a variance to allow the construction of an addition to an existing residence that would be set back 22.8 feet from a front property line, a copy of which is on file with the City; and

WHEREAS, notice has been published, mailed and posted pursuant to the Lake Elmo Zoning Ordinance, Section 154.017; and

WHEREAS, the Lake Elmo Planning Commission held a public hearing on said matter on November 9, 2009 and continued this hearing to its November 23, 2009 meeting; and

WHEREAS, the Lake Elmo Planning Commission has submitted its report and recommendation to the City Council as part of a Staff Memorandum dated December 1, 2009; and

WHEREAS, the City Council considered said matter at its December 1, 2009 meeting.

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

FINDINGS

- 1) That the procedures for obtaining said Variance are found in the Lake Elmo Zoning Ordinance, Section 154.017.
- 2) That all the submission requirements of said 154.017 have been met by the Applicant.
- 3) That the proposed variance is to allow the construction of an addition to the existing residence at 11140 20th Street Court North that would be set back 22.8 feet from a front property line, which is 3.2 feet closer than would be required using the average setback of the immediately adjacent structures.

- 4) That the Variance will be located on property legally described as Lot 2, Block 2, Schwartz-Martinco Addition, Washington Co., Minnesota.
- 5) The proposed addition cannot be established under the conditions allowed by the city's zoning regulations and no other reasonable alternative use exists. *It is not possible to build an addition in another location on the property and still have adequate access to sunlight. The applicant had to reconfigure his plans for the house when it was built due to the previous placement of fill material on the property and the proposed addition follows the current topography of the site. The additional living area cannot be moved to another location and still connect properly to the existing living areas in the home. The paved portion of the cul-de-sac is not centered within the public right-of-way and leaves an unusually large boulevard area in front of the applicant's house.*
- 6) The plight of the landowner is due to the physical conditions unique to the land and are not applicable to other lands, structures, or buildings in the same zoning district. *The previous placement of fill on the property before the home was built and the irregular placement of the paved street within the right-of-way (and resulting large boulevard area) are unique to this site.*
- 7) The unique conditions of the site were not caused or accepted by the landowner after the effective date of the city's zoning regulations. *The applicants' lot was created before the City's current zoning regulations were adopted. The placement of fill on their property and the construction of the street took place before the home was built on the site. The reconfiguration of the house due to the previous placement of fill limits access to the sun due to the orientation of the lot.*

CONCLUSIONS AND DECISION

Based on the foregoing, the Applicants' application for a Variance is granted.

Passed and duly adopted this 1st day of December 2009 by the City Council of the City of Lake Elmo, Minnesota.

ATTEST:

Dean A. Johnston, Mayor

Bruce Messelt, City Administrator

City of Lake Elmo Planning Department
Variance Review

To: City Council

From: Kyle Klatt, Director of Planning

Meeting Date: 12/1/09

Applicant: James Burns

Location: 11140 20th Street Ct. North

Current Zoning: R1 – One Family Residential

Introductory Information

Request: The City of Lake Elmo has received an application from James Burns, 11140 20th Street Court North, for a variance from the front yard setback requirement in an R-1 Single Family Residential distinct to allow the construction of a new addition to the existing home at this address. Specifically, a variance has been requested as follows:

- To permit an addition to the applicant's house that will extend to within 22.8 feet at one corner and 28 feet at another corner from the front property line. The City's R-1 Single Family Residential zoning district requires a front yard setback of 30 feet; however, the Zoning Ordinance allows for the averaging of the two adjacent structures which in this case means the required front yard setback is 26 feet.

Please note that the site plan as submitted also indicates that a front entry porch will also encroach into the required front setback area; however, a recent amendment to the City Code approved by the Council will allow for this encroachment as long as it is for an open porch that will not encroach more than 6 feet into the required setback. The proposed porch addition will meet this requirement and is therefore in compliance with the City's regulations.

Background: The applicant's property is located within the Schwartz-Martinco Addition and at the end of the 20th Street Court North cul-de-sac about 700 feet east of Lake Elmo. There are only four homes located along this street, which provides access to these properties from 20th Street. The neighboring house immediately to the west of the applicant's site was built at a setback of approximately 20 feet, while all of the other homes have maintained the required front yard setback. There is no record on file that this property received a variance from the City, and staff is not sure why this property would not have been required to build at the required front yard setback.

The proposed addition is shown on the attached site survey, and would add space to the house around the northwest corner of the structure. At its furthest point, the new

addition would extend 18 feet from the current front wall of the house and 9.5 feet from the side exterior wall. The additional space would be used to accommodate a larger kitchen, great room, and would provide space for a new sun room addition as well. It is the sun room addition that encroaches into the required setback area, and is the focus of much of the applicant's suggested justification for the variance.

The applicant has provided the City with a large packet of information with details concerning the history of the site and the rationale for the variance request. As part of this packet, Mr. Burns has indicated that when the street was built in the mid 1970's, fill material from the street construction project was pushed beyond the edge of the cul-de-sac and onto his property. He notes that this alteration of the topography on the lot caused him to reconsider the original plans for the site and to eliminate much of the planned southern exposure for the home. The initial issues associated with the past placement of fill on this lot and the subsequent changes to his building plans to accommodate these conditions forms the basis of the applicant's suggested hardship.

Other hardships that are cited by the applicant as part of the reason for making the variance request can be summarized as follows:

- The inability to build any where else on the property to achieve a reasonable level of sun exposure.
- The additional expense that would be required to move the proposed addition to the back portion of the house due to the previous placement of sand in this area.
- The incompatibility of an addition elsewhere on the premises with the rest of the house, and specifically, that a sun room would not fit within the current floor plan in any other location.
- The additional cost that would be incurred due to the reconfiguration of the addition to meet setback requirements.
- The loss of value associated with the project to accommodate the required front yard setback.
- The change in topography that does not allow the addition to be moved elsewhere on the property and still fit architecturally with the rest of the structure.
- The location of the paved street in relation to the right-of-way line, which in this case results in an unusually large boulevard area in front of the home.

The applicant further notes that the adjoining property owner was allowed to build at a reduced setback in part due to the inability to move the home further back on the lot due to the previously placement of fill in this area.

In order to support his request, Mr. Burns has provided historic drawings, photographs, and other information related to this property as part of the submission packet to the City. In addition, the applicant has constructed a scale model of the house that he would like to display at the Council meeting to further illustrate the changes being proposed to the house.

Applicable Codes:

Section 154.041 R-1 One-Family Residential Zoning District

Subd. C. Minimum District Requirements

The R-1 Zoning District has a building setback of 30 feet from the front property line, 10 feet from the side (interior) property lines, and 40 feet from the rear property line.

Section 152.048 Setbacks

(A) Front setbacks. Where adjacent residential structures on the same side of the street between intersections have front yard setbacks different from those required, the front yard minimum setback shall be the average of the immediately adjacent structures. If there is only 1 immediately adjacent structure, the front yard minimum setback shall be the average of the required setback and the setback of the adjacent structure. In no case shall the required front yard setback exceed the required minimum established within the districts of this chapter.

Findings & General Site Overview

Site Data:	<p>Existing Zoning – R-1 (One Family Residential)</p> <p>Land Use Guidance – NC (Neighborhood Conservation District)</p> <p>Parcel size – 43,560 square feet (1.0 acres)</p> <p>Property Identification Number (PID): 24-029-21-33-0009</p>
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Application Review:

Applicable Code Definitions:

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

BUILDING SETBACK. The minimum horizontal distance between 1 building and the lot line.

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

LOT LINE, FRONT. The boundary of a lot which abuts a public street. In the case of a corner lot, it shall be the shortest dimension of a public street. If the dimensions of a corner lot are equal, the front lot line shall be designated by the owner. In the case of a corner lot in a non-residential area, the lot shall be deemed to have frontage on both streets.

LOT LINE. A lot line is the property line bounding a lot except that where any portion of a lot extends into a public right-of-way or a proposed public right-of-way, the line of the public right-of-way shall be the lot line.

LOT. A parcel of land designated by plat, metes and bounds, registered land survey, auditors plot, or other accepted means and separated from other parcels or portions by the description for the purpose of sale, lease or separation.

SETBACK. The minimum horizontal distance between a structure, sewage treatment system, or other facility and an ordinary high water level, sewage treatment system, top of a bluff, road, highway, property line, or other facility. Distances are to be measured perpendicularly from the property line to the most outwardly extended portion of the structure at ground level.

VARIANCE. A modification of a specific permitted development standard required to allow an alternative development standard not stated as acceptable in the official control, but only as applied to a particular property for the purpose of alleviating a hardship as defined in Section 300.06, Subd. 3. Economic considerations alone shall not constitute a hardship. [sic]

**Variance
Review:**

Staff has reviewed the materials submitted by the applicant and the City's criteria that must to be met in order to grant a variance. In this case, the applicant has provided several reasons to support the request, which have been summarized in one of the preceding sections. Based on the information presented and Staff's review of the City's variance criteria, Staff recommended denial of the request because the information presented does not appear to adequately establish that there is a hardship associated with the City's setback requirements. In order to document that a hardship exists, the applicant needs to demonstrate that the property cannot be put to reasonable use without granting the variance. It is staff's opinion that the property can be put to reasonable use under the zoning regulations for the following reasons:

1. The house in its current location meets all applicable setback requirements and the City's regulations allow for the continued use of a single family residence in this location.
2. An addition can be constructed to extend the existing footprint outwards on nearly every side of the structure, including up to 11 feet from the front of the building.

3. While the topography and soil conditions, whether natural or a result of previous filling on the site, may increase the cost to build in other locations, these conditions would not otherwise prohibit building from occurring on the lot. The City Code is clear that economic considerations alone cannot be used to justify a hardship.

After reviewing the submitted materials, it is clear that the applicant does not prefer to reduce the size or location of the sunroom portion of the addition; however, in lieu of these preferences, there are other ways to build an addition on the lot that complies with the City's zoning requirements.

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

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

As staff notes above, there does appear to be reasonable use of the property should the variance not be granted by the City, and that specifically, there is a fair amount of space around the current structure that could accommodate an expansion. In response to each of the hardships suggested by the applicant, Staff offers the following comments:

- a. **Soil conditions.** The proposed site plan and architectural drawings show that there are three sides of the structure that will be expanded out from the current footprint (east, north, and west). The issues associated with building in these areas will need to be addressed whether or not the variance is granted. Denial of the variance would not prohibit an expansion to occur on other portions of the site, and it appears that sub-grade issues need to be considered on any portion of the site around the home.
- b. **Solar access.** Although the City's Comprehensive Plan does encourage the City to allow for access to solar energy in residential areas, it does not specifically address the siting and design issues associated with passive heating and cooling mechanisms on a property. The applicant's proposed site plan would clearly allow more sunlight into the addition area, but not having this particular configuration of rooms with the associated south-facing windows does not mean the property cannot be out to reasonable use.
- c. **Building expense.** The current soil conditions on the site will need to be addressed regardless of where an addition will be built. It does appear that while there is less fill in the front of the lot based on the old topographic information provided, the sand in other portions of the site would not otherwise prohibit an addition from being built.
- d. **Incompatibility with existing floor plan.** Although it might be an

inconvenience to the property owner, there is room on the site to reconfigure an addition to better integrate with the rest of the house. An addition built elsewhere on the site may not have the same level of access to sunlight.

- e. **Expenses associated with the reconfiguration of sun room.** As a potential solution to the setback issue, the applicant has considered cutting off the front portion of the addition and angling it roughly parallel with the setback line. There would be additional expenses associated with this change in plans, including the loss of windows that would have otherwise been provided for free to the applicant. As noted in the previous staff comments, there is nothing in the City Code that would prohibit the relocation of this room to another portion of the site (albeit without as much southern exposure).
- f. **Loss of value.** The applicant has stated that the inability to construct the addition as proposed would reduce the value of the project by \$20,000. All properties in Lake Elmo are subject to zoning restrictions, which by their nature reduce a property owner's ability to use certain portions of their site for buildings and other activities. The inability to construct a specific improvement does not take away other reasonable use of the property.
- g. **Topography of site.** Even with the fill that was placed on the applicant's site, the land in back of the house levels off fairly quickly. An addition to the side of the house may require some additional excavation, but could otherwise match the existing grade of the rear building line of the house. The topography was likely more of an issue during the initial planning for the location and orientation of the house.

Of the issues noted above, the topography/soil conditions and sunlight access were two issues that the Planning Commission considered as findings of fact for an approval of the request.

Staff otherwise finds that there are other alternatives available that would allow for an expansion of this home and that granting the variance is not required to assure reasonable use of the property. **Staff found that this criteria is therefore not met.**

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

The fact that the applicant bought a lot that later had fill placed on it is somewhat unique and could form the basis of a finding that there are unique physical conditions on the property, and that the location of this fill very likely impacted the placement and orientation of the home on the lot. The applicant does not appear to have had any responsibility for the resulting topography of the lot. **This criteria is met.**

The property owner was not responsible for the fill placed on the property, and has indicated that this placement of fill impacted his ability to build his preferred

orientation for the house (which reduced the ability to take advantage of natural sunlight).

3. *The variance, if granted, will not change the essential character of the neighborhood.*

In the area immediately surrounding the applicant's property 1) there are few homes along the street, 2) the neighboring property is set back approximately 20 feet from the front property line, and 3) none of the homes share the same orientation with regards to the street. Based on these existing conditions, the front yard setback reduction will not alter the character of the neighborhood in any manner. **Staff finds this criteria is also satisfied.**

**Variance
Conclusions:**

Based on an analysis of the review criteria in City Code, staff recommended denial of variance to allow a building addition to be located 22.8 feet from a front property line at 11140 20th Street Court North.

**Resident
Concerns:**

The Planning Commission conducted a public hearing on this matter on November 9, 2009 to consider testimony from neighboring property owners. The applicant has submitted letters from two of his immediate neighbors along 20th Street Court North, both of which are supportive of granting the request.

Two of the neighbors also spoke at the public hearing in favor of the request, and noted that the proposed addition would not have any negative effects on the neighborhood and would improve the appearance and aesthetics of the area.

Staff is not aware of any other concerns or issues from other residents regarding this proposal.

**Additional
Information:**

- There were no other comments submitted from reviewing agencies or other City Staff.

**Planning
Commission
Report**

The Planning Commission reviewed the proposed request at its meetings on November 9th and 23rd of 2009. At its second meeting, the Commission received additional information regarding the City's zoning provisions that allow for the averaging of setbacks based on the location of adjacent structures along the same street. Staff was able to confirm that the measurements provided by the applicant were correct, and in particular, that the two adjacent structures are set back 20 and 32 feet from the front property line. The resulting setback for the applicant's property is therefore the average of these amounts or 26 feet.

The Commission adopted findings that did not match the ones provided by Staff. Specifically, the Commission found that the applicant's inability to build an addition

elsewhere on the property that would provide for direct access to sunlight constituted a hardship. The Commission further indicated that the existing topography of the lot and the location of the house in relation to the street also represented a hardship for the property owner. These conditions were not created by the home owner and were the result of decisions that were made during the construction of the street.

Conclusion

The applicants is seeking approval of a variance to allow the construction of an addition to an existing residence that would be set back 22.8 feet from a front property line, or 3.2 feet closet to this line than allowed under the R-1 Single Family Residential Zoning District requirements with allowances for averaging based on adjacent structure setbacks.

Planning Commission Rec.:

The Planning Commission recommends that the City Council approve the variance request by James Burns, 11140 20th Street Court North, to allow the construction of an addition to an existing residence at this address that would be set back 22.8 feet from a front property line, or 3.2 feet closet to this line than allowed under the R-1 Single Family Residential Zoning District requirements and related provisions for established neighborhood setbacks, based on the following:

1. That the applicant is not able to build elsewhere on the site and still provide for access to direct sunlight.
2. That previous placement of fill and the resulting topography greatly limits the ability to construct an addition to the living areas within the home.
3. That the placement of the paved road surface within the street right-of-way has created an unusually large boulevard area in front of the applicant's home and that the proposed addition will still be set back further than other structures along the street in relation to the curb line of the road.

The deadline for a Council decision on this item is December 23, 2009 which can be extended an additional 60-day if needed.

Approval Motion Template:

To approve the requested variances as recommended by staff, the City Council may use the following motion as a guide:

Move to recommend approval of a variance to allow the construction of an addition to an existing residence that would be set back 22.8 feet from a front property line, or 3.2 feet closet to this line than allowed under the R-1 Single Family Residential Zoning District requirements and related provisions for established neighborhood setbacks based on the findings as recommended by the Planning Commission.

cc: James Burns, 11140 20th Street Court North

City of Lake Elmo
DEVELOPMENT APPLICATION FORM

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

APPLICANT: JAMES A BURNS 1140 20TH ST. CT. NORTH 55042
(Name) (Mailing Address) (Zip)

TELEPHONES: 651-770-6154 651-402-1160
(Home) (Work) (Mobile) (Fax)

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

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

PROPERTY LOCATION (Address and Complete (Long) Legal Description): PROPERTY I. D. :
~~SEE ATTACHED~~ R24.029-21.33-0009
SCHWARTZ - MARTINGO ADDITION LOT 002 -
BLOCK 001 & UNDIVIDED 1/4 INT OUTLOT D

DETAILED REASON FOR REQUEST: SEE ATTACHED

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

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

James A Burns 10-14-09
Signature of Applicant Date

Signature of Applicant Date

DETAILED REASON FOR REQUEST: Our house was originally built under extreme hardship because of sand illegally dumped on the lot after we had purchased. (pictures, documentation, clarification to be included in multiple booklets provided at planning meeting) This created a ravine like slope that forced us to alter our plan and location and to forego a Southern exposure that was inherent in the original plan. After 35 years of wishing and dreaming, hundreds of design hours, five architects/designers, eight contractor bids/estimates, we finalized the plans with completed drawings, knowing there was no setback problems as the neighbor's entire front of the house is much closer to the centerline of the cul-de-sac than one corner of our proposed addition. (The neighbors home was built a year later-- after the road was completed -no road when we built)

VARIANCE REQUEST: Fundamental to our remodeling plan is the ability to have some small amount of natural light and warmth with a southern exposure. This was one of the main items when we prepared our wants for the architects – and certainly desirable in today's need for energy conservation. No other location for the sun room addition works, or it is prohibitively expensive. On the back north east side for example, 13 levels (8'-8") of blocks are required *below* the basement floor level to reach virgin soil, because of all the sand that was pushed onto our lot. (pictures). This represents a \$ hardship of about \$6000. Also, because the house sits at 30 degrees northwest/southeast, the sun room would only see sun in the morning until about 10 A.M. It also does not flow with the floor plan. Another option would be to mount a cubicle on top of the roof to see the sun. This also represents a huge \$ hardship, as an extra entire floor, stairs, would be required, plus the final appearance would be disastrous. To have a severely truncated odd shaped appendage on the desired north east corner would eliminate our ability to utilize two free (\$850 value each) windows, would cost \$2000 more for the now six smaller windows, and \$1000 more to build, and a loss of \$20,000 in value. (Costs are from Steve Standish @ Arrow Building Center in Stillwater.) Plus the "sunroom" would now be like a closet (3' 4") long. Finally, to extend the room farther north would force the addition down the slope, causing extra foundation depth (\$ 3000), and completely destroy the cohesiveness of the plan (\$) – it would be more like an outbuilding. All we are asking for is 60 % of the deviation that our neighbor was accorded - and for the same reason – both lots were rendered impractical to build on between the constraints of the lot set-back and the altered topography. (pictures, clarification to be provided in multiple booklets)

NOTES REGARDING THE FOLLOWING PAGES;

Page 4 is the topographical map of the four lots when we purchased lot #2 in 1974. Note the green line as it proceeds north within the boundary of 20th. St. Court. North, then at the center of the cul-de-sac, proceeds northeast at 40 degrees from North. This was the intended location for our first (and as it turns out –only home we have ever owned)

Page 5 illustrates the contour of the land as you proceed north along the green line to the center of the cul-de-sac. The elevation rises from 916 ft. to 934 ft., then drops to 919 at the center of the cul-de-sac.

Page 6 shows the contour of the land as you proceed northeast at the 40 degrees. Note how the slope of the land was quite gentle, and ideal for a walk-out style home. See Page 7, picture "A" of this land along the 40 degree line, showing wife Beth with our new son Mark, and the gentle sloping land that was a corn field. Also note on page 5 how the contour is derived from the perpendicular lines dropped of the 40 degree green line, with the centerline coinciding at the same 119 ft. cul-de-sac centerline as from the previous page 4.

Page 5,6 Combined shows the combined contours of page 5 and 6, and also shows the contour in a red line that we found after we had purchased the land. Lake Elmo had declared that the rise was too great (18') along the north – south section, as so the land (sand) was bulldozed unto lot #2 (ours) and lot #3, leaving us with a flat section of 15 ft beyond the perimeter of the cul-de-sac, and then a 9 ft. drop –off ! a totally altered lot that was now hugely impractical , if now impossible to build on.

See Page 7, picture "B" of the contour we now had to deal with. Note the stakes showing the boundary of the 120 ft. diameter cul-de-sac, with the 15 feet beyond before the drop off. How can we build here, with a 30 ft. setback from these boundary's? We can't. So we now had to completely change the location and layout of our new home, forcing us to forgo the very southeast exposure that we had planned, moving the house as far south as possible, and forcing us to spend an additional \$9,700 in today's money (\$13,000 if compounded at a conservative 5%) for the huge amount of extra foundation and block work that was required to reach virgin soil

Page 8 gives some idea of the issues and magnitude of the dumped sand..

Page 9 (looking south) shows the stepped foundation and extra block work at the front of the house after we were forced to abandoned our original plan layout, and move the location of the house as far south as possible.

Page 10 (looking north) - Picture "G" shows the stepped foundation and "H" the extra block work at the back of the house. Note Beth's head below Mark on "H". There are 13 rows of blocks *below* the basement floor at this corner. Picture "I" illustrates a sink hole after a rainfall four years after the house was built – a result of the sand below.

CONTINUED – NOTES REGARDING THE FOLOWING PAGES;

Page 11 is a partial listing of documentation of the five architects/designers that we consulted with to come up with a design that allowed natural light and warmth with a southern exposure.

Page 12 is the front view of the home we had planned to build, with the garage on the northwest end. The set of drawings accompanying this elevation were used to obtain financing (50% down was required at that time for a construction loan.)

Page 13 shows the above drawing turned over. With the blue print machines of that time, the paper was essentially transparent , so all that was required was to erase the written dimensions, etc on the bottom side, re-write on the top side, and the drawings remained relevant for the financing and construction bid. The house was then shifted with the garage on the south end, and driven as close as possible to the lot line – to minimize the extra costs of the foundation system, and allow some sort of front lawn.

Page 14 . Picture “J” shows our existing home. Please note: Beth is holding a vertical Board at the location of the nearest corner of the proposed addition to the center of the cul-de-sac. Please compare that distance to picture “K” and “K2” (Pg. 15) of our neighbor’s home.

A glance at the side view of our neighbors home -Page 15 (picture “L” (and also a look again at picture “B” – page 7) reveals why they were accorded a shortened distance to the center of the cul-de-sac. It was impossible/impractical to build further back.

Page 16, Picture “M” shows our drop-off – (and the effects of a newly installed septic system) Picture “N” is another view of the distance from the nearest corner of the proposed addition to the cul-de-sac. Please see the vertical surveyor stake, with small flag, somewhat in line with the distant ash tree.

Page 17 is the front elevation of our proposed remodeling and addition.

Page 18 is the upper floor plan .

Page 19 shows the relationship and distance to the existing cul-de-sac.

920

18

16

14

12

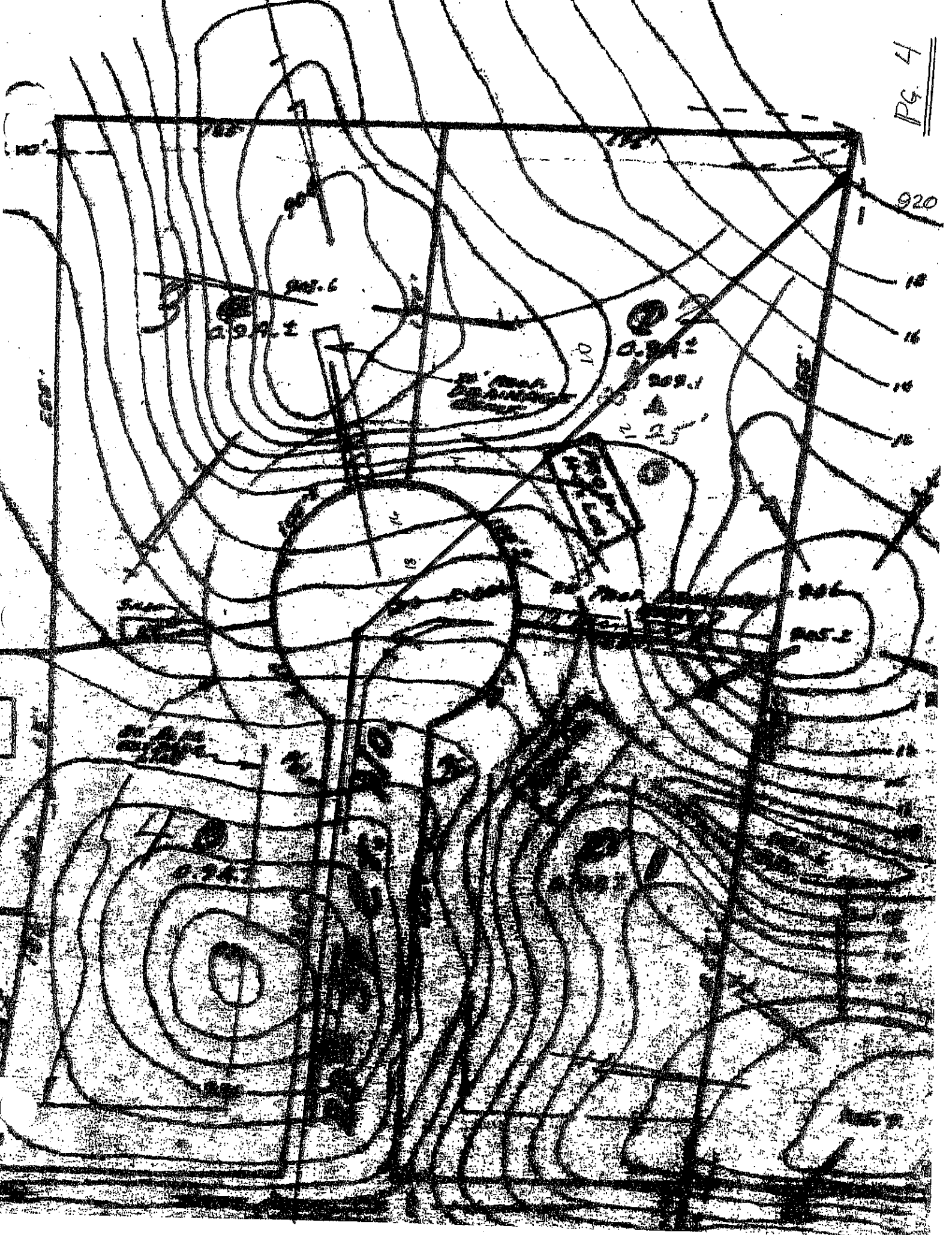
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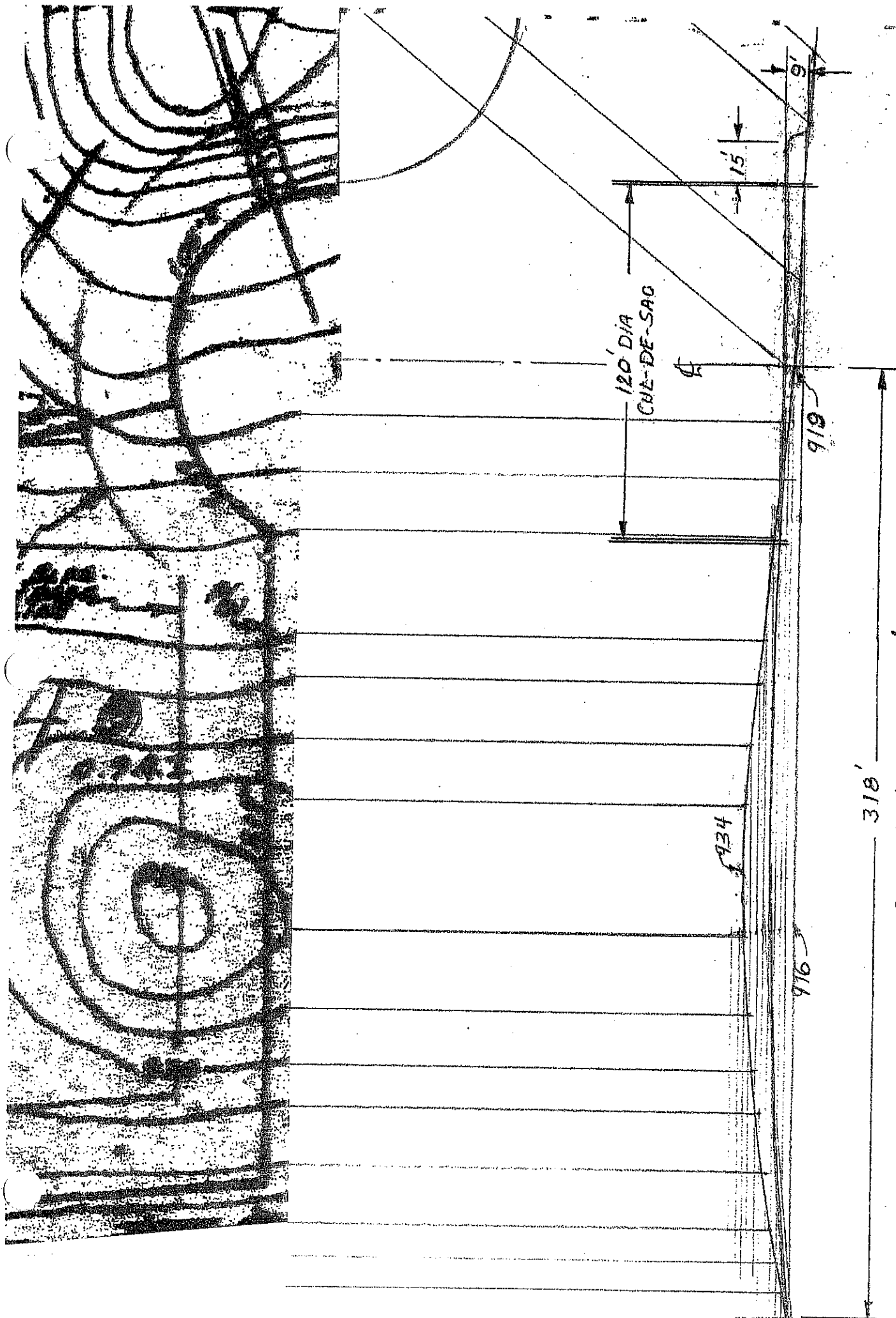
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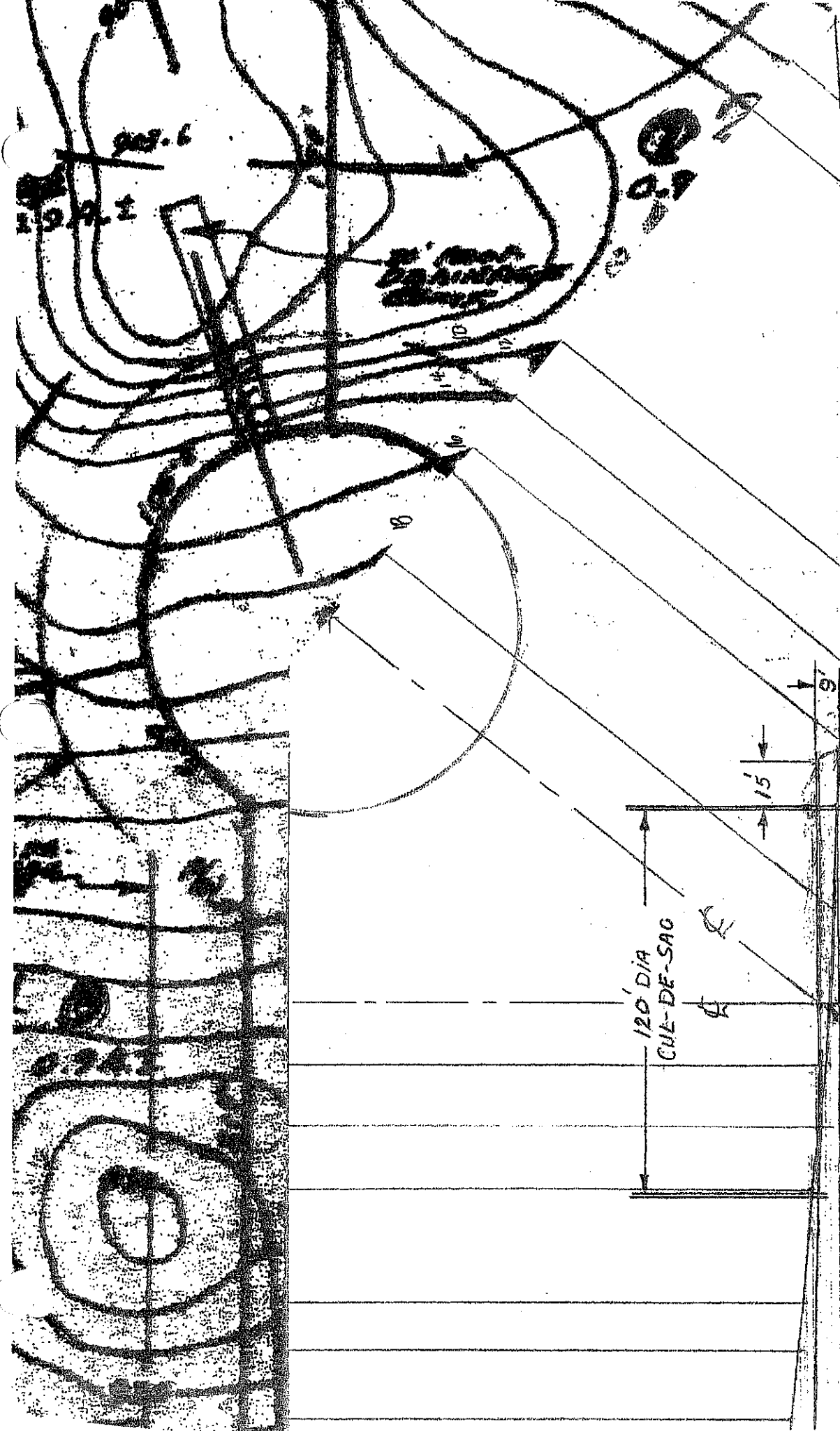
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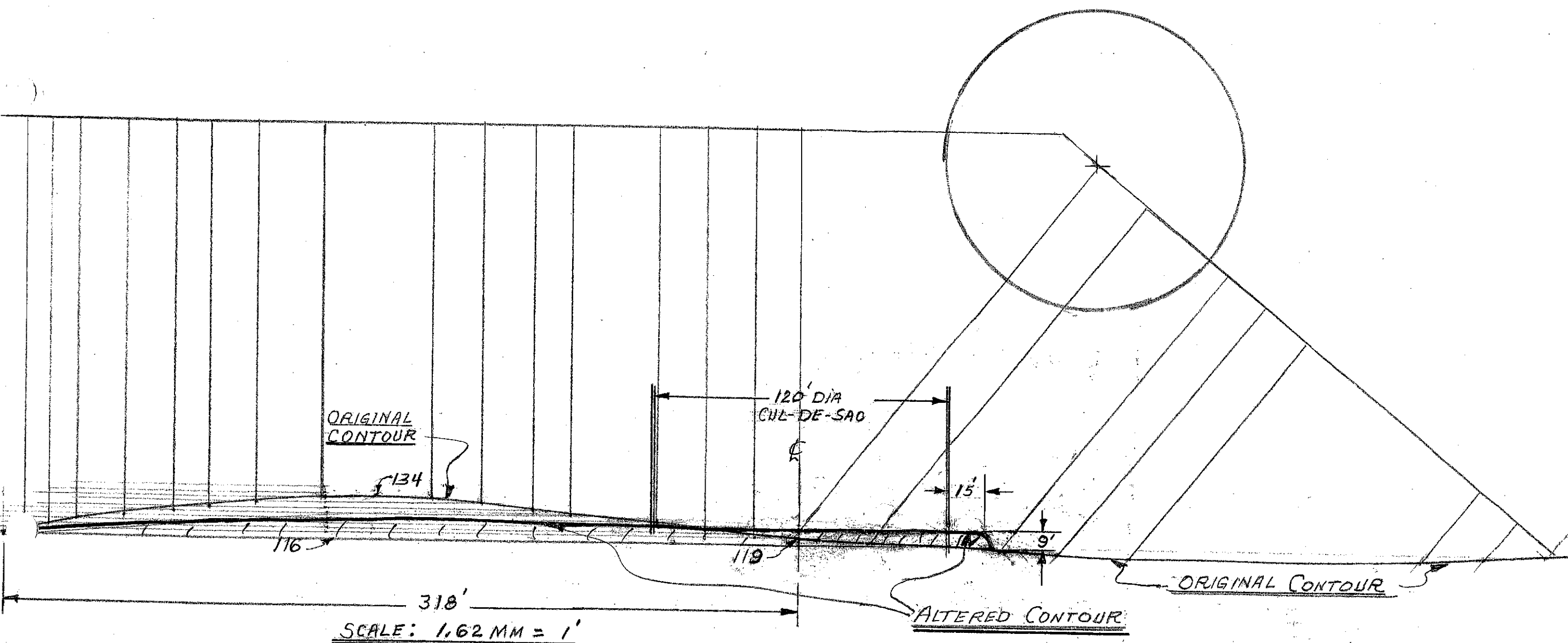




SCALE: 1.62 MM = 1'



2 MM = 1'



ORIGINAL
CONTOUR

120' DIA
CUL-DE-SAC

134

116

119

15'

9'

ORIGINAL CONTOUR

ALTERED CONTOUR

318'

SCALE: 1.62 MM = 1'

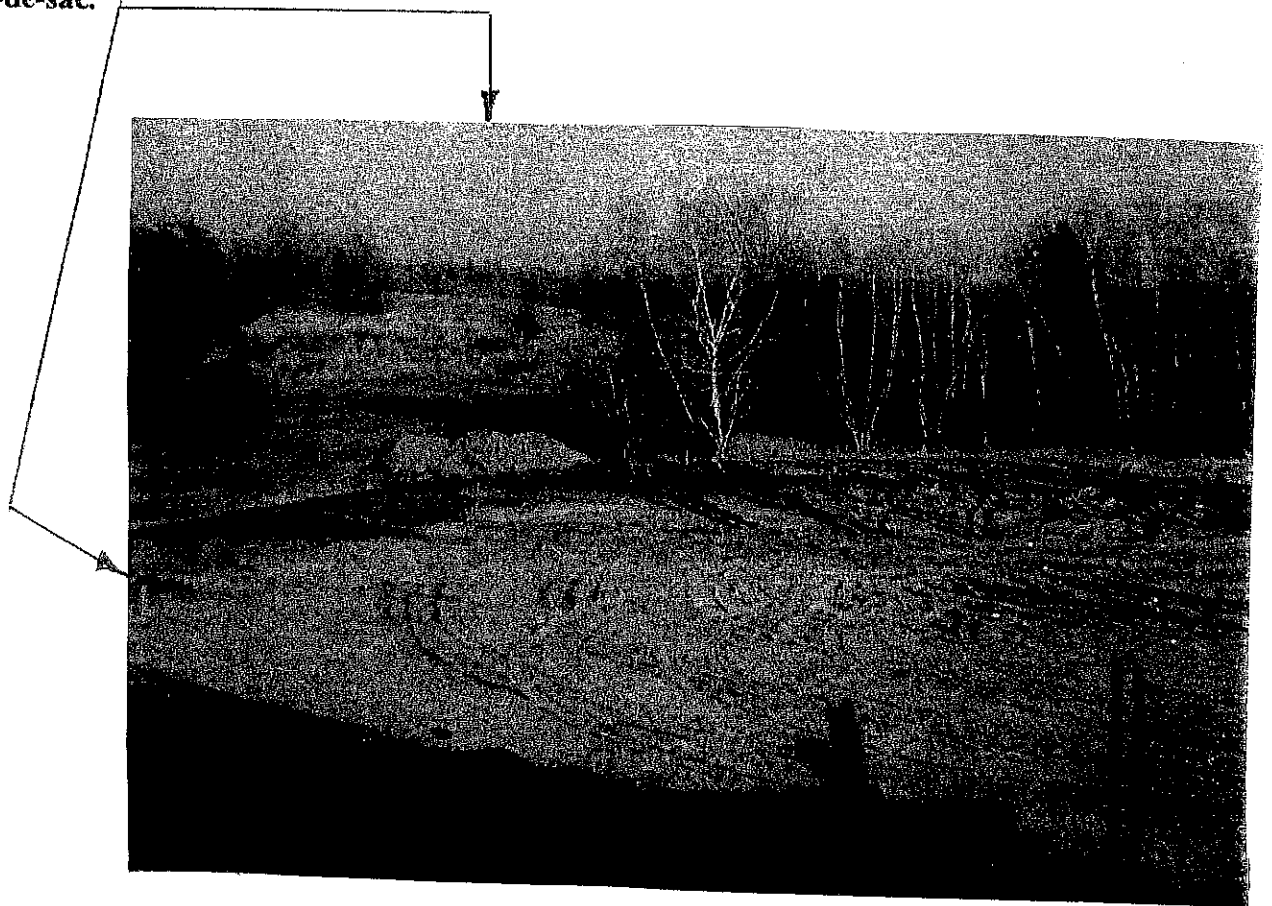
PG. 5, 6, COMBINED

Picture "A"



Picture "B"

Note the stakes defining the boundary of the 120 ft. diameter Cul-de-sac.



Picture "C"

**Some of the sand washed out
after a rain storm**



Picture "D"

**Note the new level of the
cul-de-sac.**

**Note also, that even after
Moving the location of the
house to higher Virgin soil,
the huge amount of extra
Foundation depth**

**Note also the hill from
points X to Y that was
removed and shoved
unto the cul-de-sac
and our lot.**

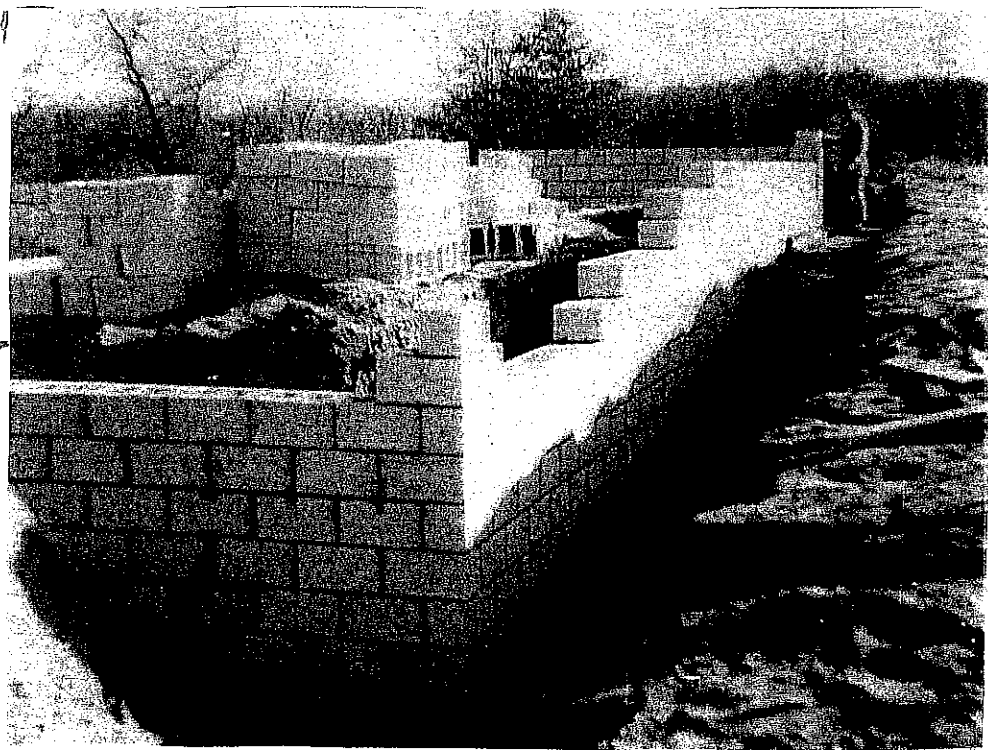


Picture "E"

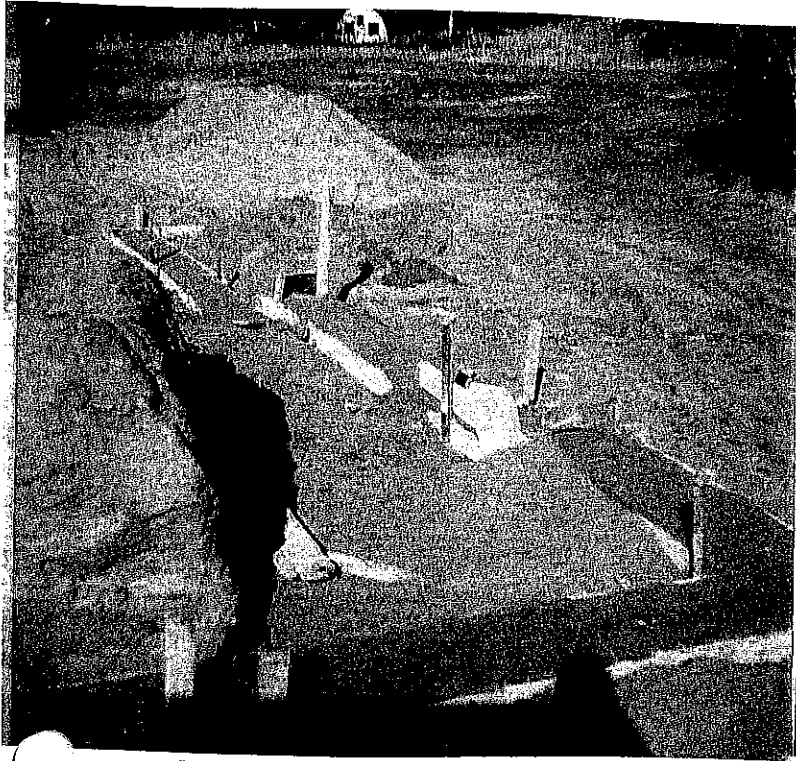


Picture "F"

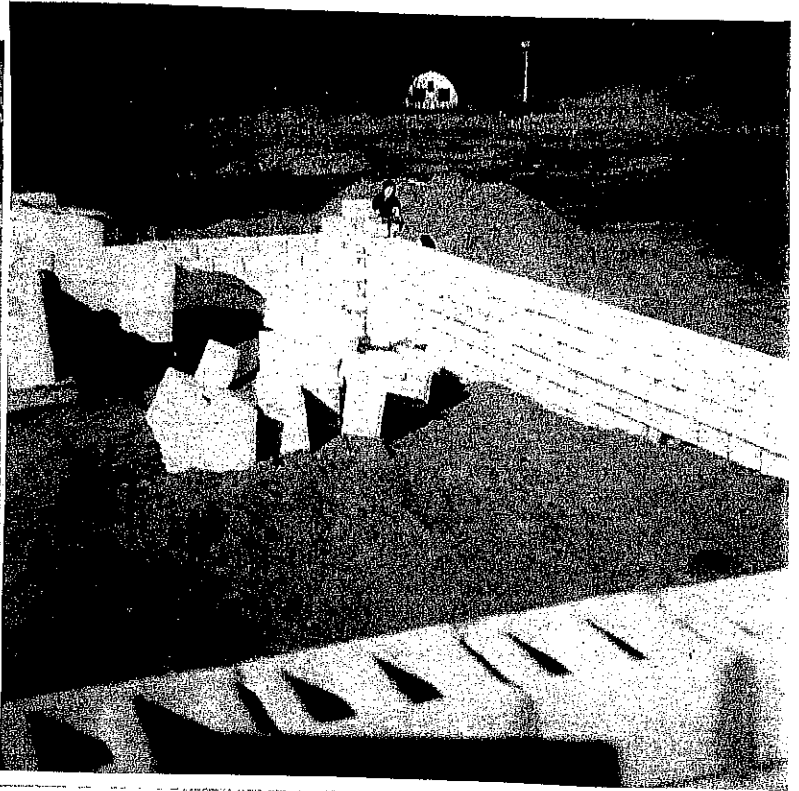
This is the height
Of the basement floor.



Picture "G"



Picture "H"



Picture "I"



JAMES A. OR BETH R. BURNS
 11140 - 20TH ST. CT., N.
 LAKE ELMO, MN 55042

17-1 2073
 910
 7291156437

8660

Date 7/10/02

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 Order of

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 LAKE ELMO, MN 55042
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8261
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1000 Architectural \$350.00
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LAKE ELMO BANK

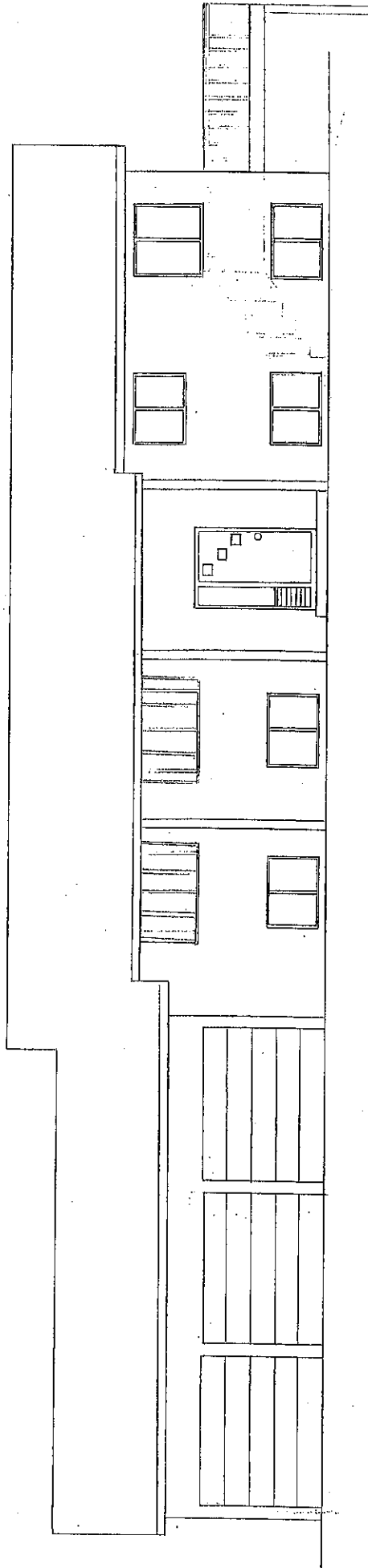
250125

STATEMENT OF WORK 9/20/06

TO

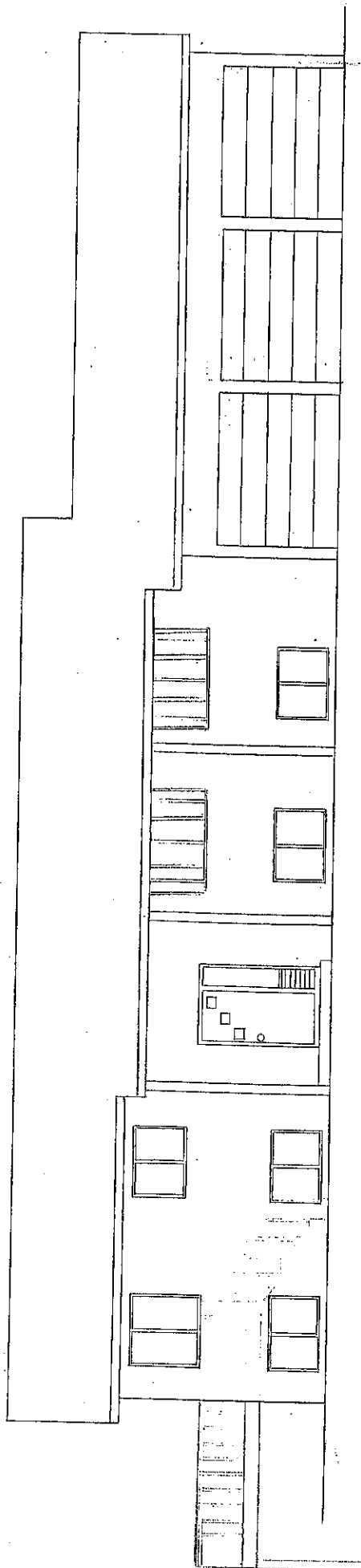
A.H. BAUER

	REMODEL DESIGN CONCEPT	7 hrs	75 HR	\$ 525.00



PG. 12

14



~~PG 13~~

Picture "J"

Note nearest corner of proposed addition

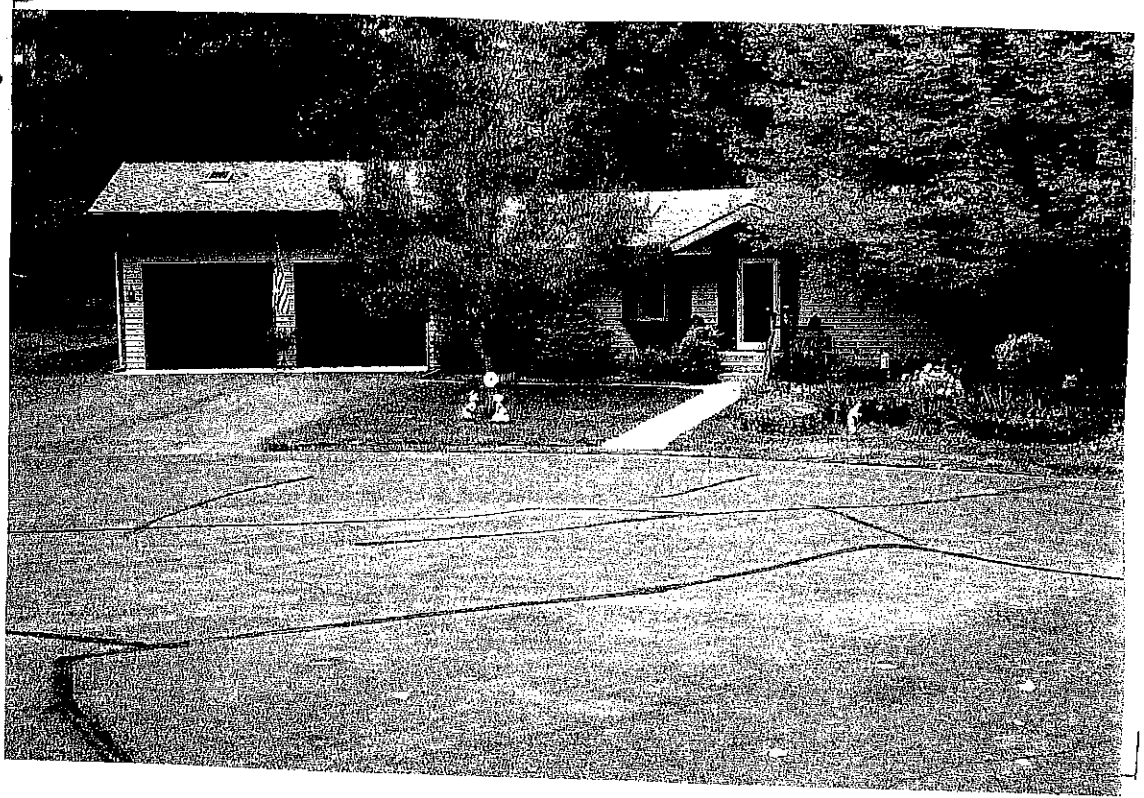


Picture "K"

**Neighbor's
Home**



Picture "K 2"



Picture "L"



Picture "M"



Picture "N" Note surveyor's stake in line with this distant ash tree.





DATE	9-29-09	CO #	11
AUTHORIZED BY	M. Parsh		
DESCRIPTION OF WORK	REVISIONS		
DATE		NO.	

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 LANSING, MI 48201
 DRAWN BY:
 V. C. Africa

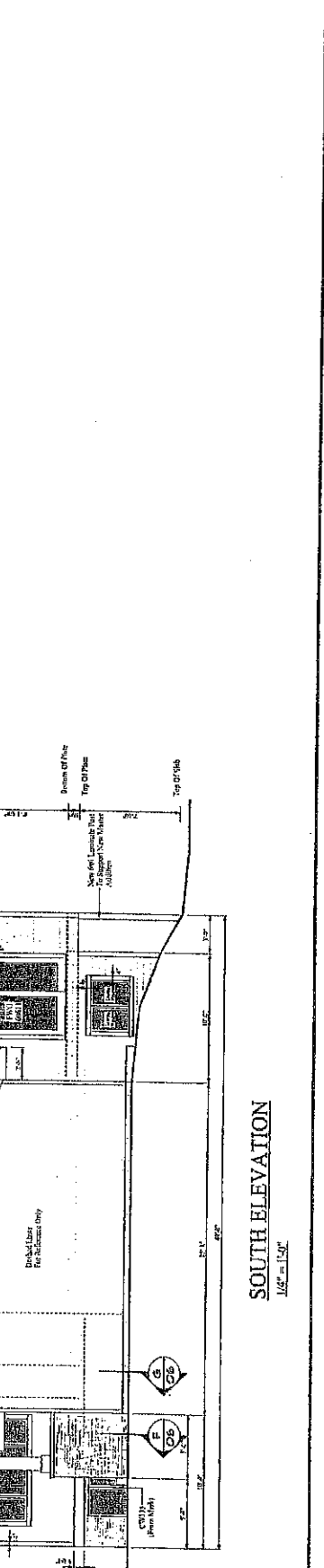
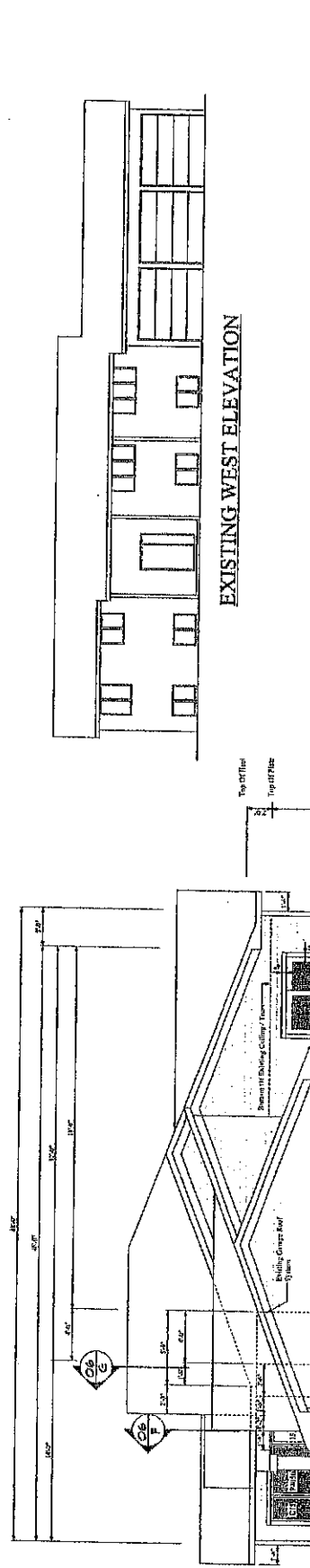
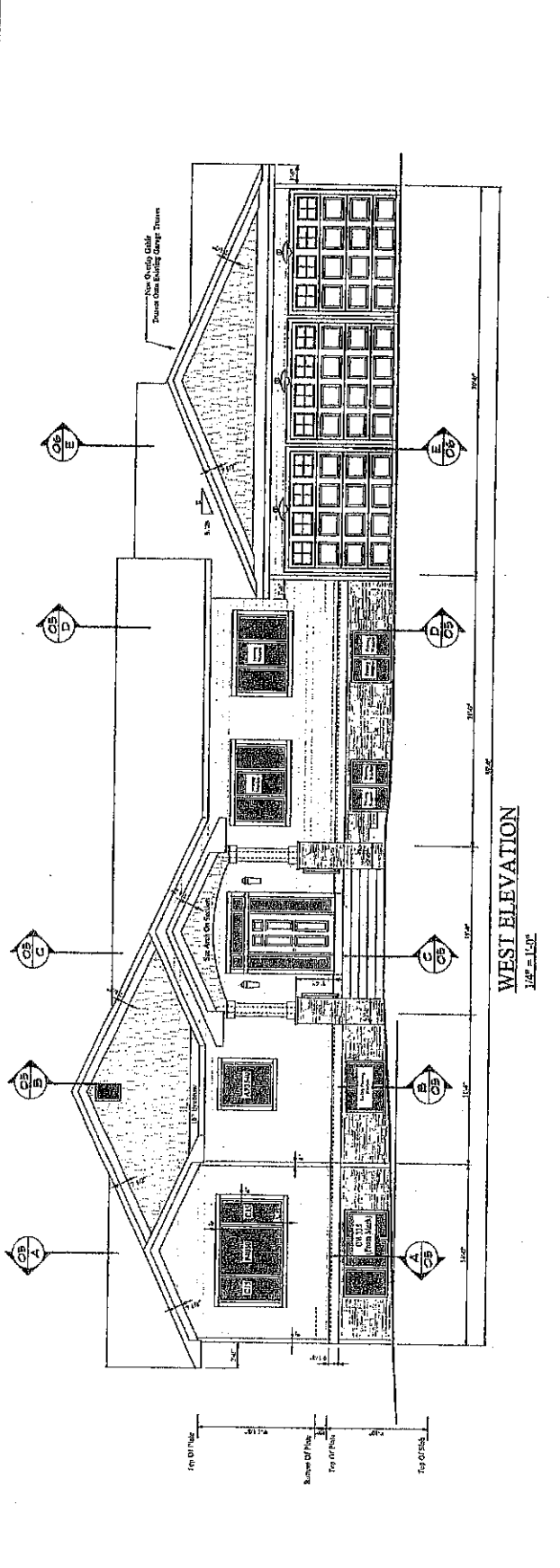
DATE PRINTED:
 12/15/2011

ELEVATIONS

SHEET NUMBER:
 1

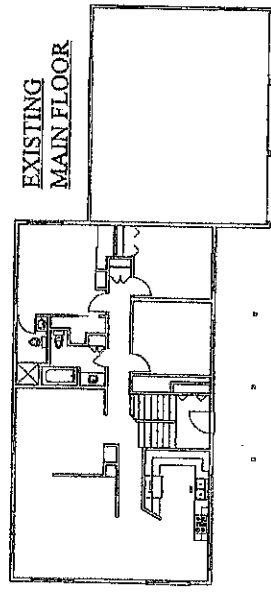
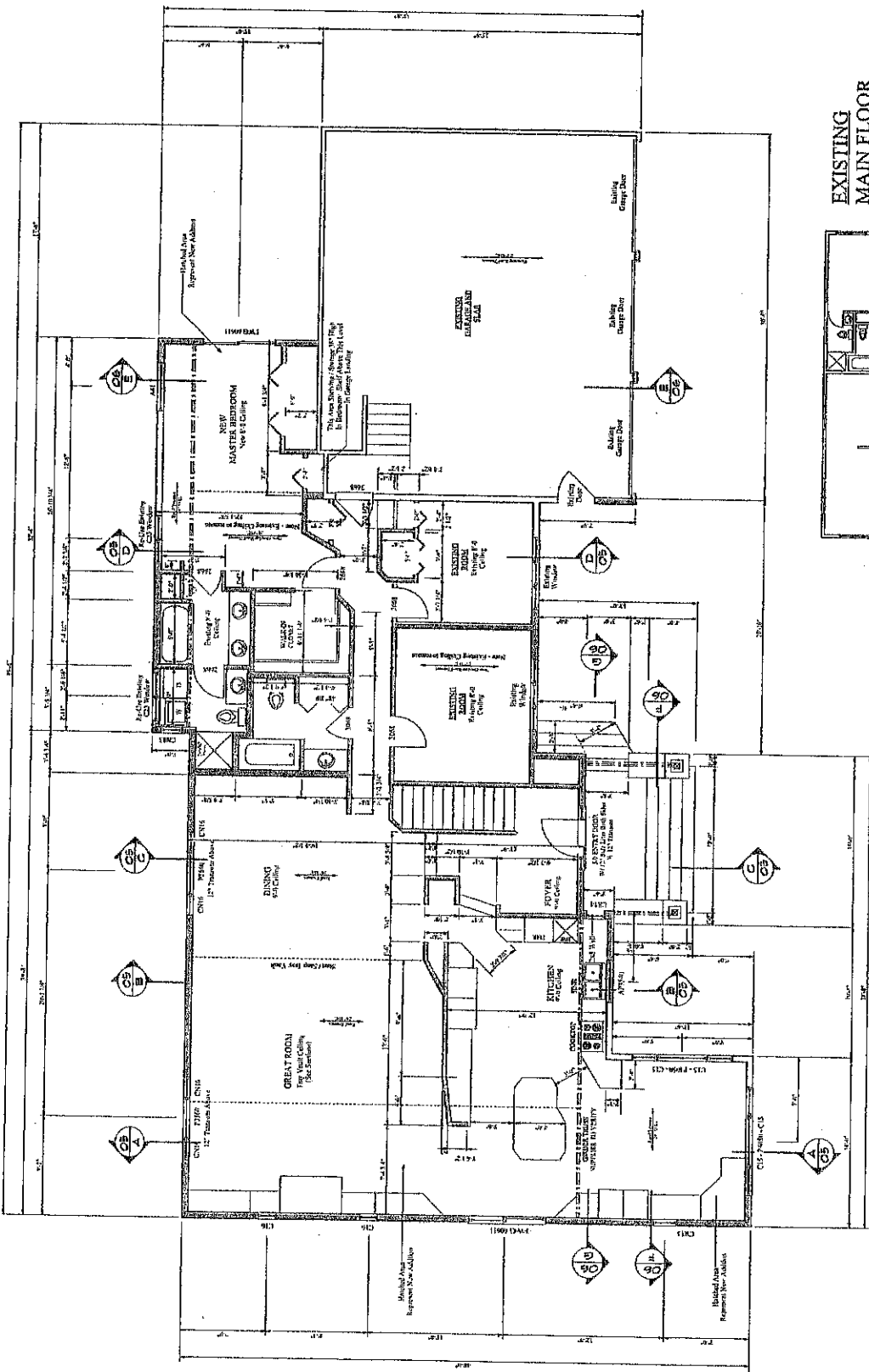
JOB NUMBER:
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pg 17

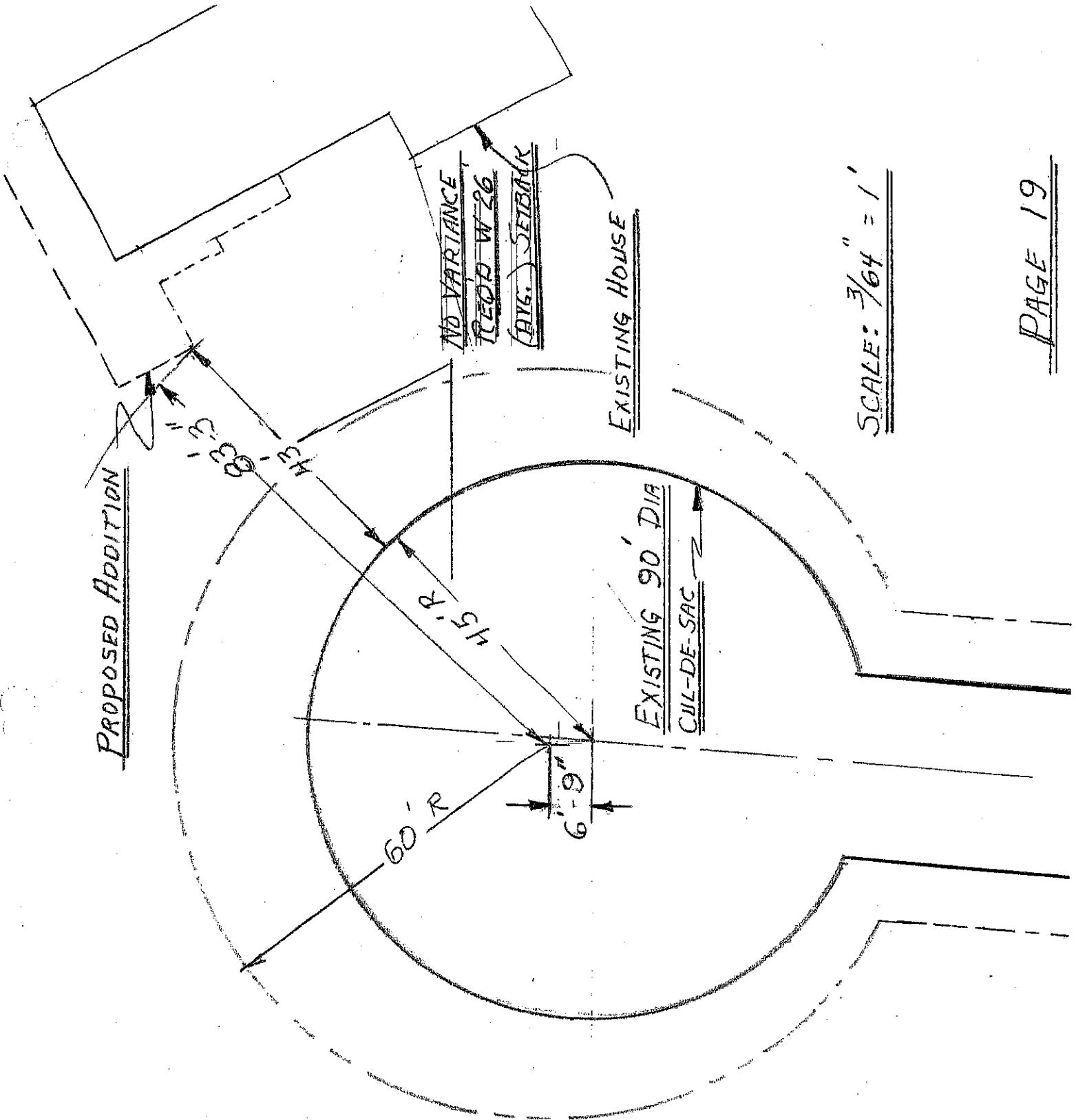
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MAIN FLOOR

1/8" = 1'-0"

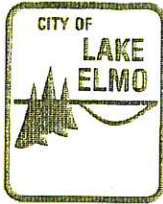
NOTE: All drawings were done in coordination with
 Davnet's design and drawings. Please refer to Owner
 prior to contacting Messer Design Services.



Item 10.

AGENDA ITEM: CUP Amendment Country Sun Farm & Greenhouse

The Lake Elmo Staff is currently drafting the Report for Council which will be sent electronically to City Council members on Friday, November 27 and posted on the City website. A hard copy will be delivered to the Council on Monday, November 30th.



MAYOR & COUNCIL COMMUNICATION

DATE: 12/01/09
REGULAR
ITEM #: 10
MOTION: Resolution 2009-047
2009-052
Ordinance 08-021

AGENDA ITEM: To consider an application for a Conditional Use Permit for 67 acres to allow an Agricultural Entertainment Business, to rezone a portion of the property from Rural Residential to Agricultural, to amend an existing Conditional Use Permit to include approximately 24 acres, and to approve the construction of a 39,900 square foot parking lot (via either CUP) for Country Sun Farm and Greenhouse, which operates at 11211 60th Street.

REQUESTED BY: Country Sun Farm & Greenhouses

SUBMITTED BY: Bruce Messelt, City Administrator
Kelli Matzek, City Planner *BAM*

REVIEWED BY: Kyle Klatt, Planning Director
Dave Synder, City Attorney
Ben Gozola, Planning Advisor

SUMMARY AND ACTION REQUESTED: An application for consideration of potentially significant land use changes, including renewal, update and expansion of an existing Conditional Use Permit, as well as a related re-zoning request and new Conditional Use Permit (CUP) has been received from Sun Country Farm and Greenhouse. Pursuant to State law and City regulations and procedures, the City Council is asked to consider this request from Country Sun Farm & Greenhouse for the following:

- **CONDITIONAL USE PERMIT:** To issue a CUP for the entire 67 acres of property under consideration, or specified portion thereof, thereby allowing an "Agricultural Entertainment Business" on the property. At this time it would be appropriate through the issuance of such CUP to clearly delineate the specific uses existing on the site and to clarify which uses are legally permitted, either outright or under the current and/or proposed updated and expanded CUP. This issuance could include the construction of an overflow parking area of 39,900 square feet (87 parking stalls) which is accessory to the other uses on the site.
- **REZONING:** To rezone a 33.44 acre parcel from Rural Residential (RR) to Agricultural (Ag). This rezoning could allow the future movement of an existing greenhouse from the original CUP area to the new proposed area, as greenhouses are not permitted in the RR zoning district.
- **CONDITIONAL USE PERMIT AMENDMENT:** To amend the existing conditional use permit currently allowing operation of Country Sun Farm & Greenhouses at 11211 60th Street North to add approximately 24 acres of land (as the rest is in a roadway easement) for the "greenhouse"

and "food concession" uses currently permitted. This land would be added to allow the eventual future movement of existing uses for the business. This amendment would include the construction of an overflow parking area of 39,900 square feet (87 parking stalls) which is accessory to the other uses on the site.

The Planning Staff and Planning Commission have reviewed the application and their recommendations are denoted within this report, as are the additional comments and recommendations from the City Attorney, Administrator and Planning Advisor. The City Council is asked to consider the following three separate motions as part of tonight's action:

Action #1 - On the proposed New CUP establishing an Agricultural Entertainment District:

Move to approve Resolution 2009-47 (Option A) whereby issuing a Conditional Use Permit for an Agricultural Entertainment Business for Country Sun Farms & Greenhouse on the entire 67 acres, as recommended by the Planning Commission;

or

Move to approve Resolution 2009-47 (Option B) whereby issuing a Conditional Use Permit for an Agricultural Entertainment Business for Country Sun Farms & Greenhouse on the identified 65 acre portion of the requested 67 acres, with the original conditions identified in the Planning staff report, and to include the construction of an overflow parking area of 39,900 square feet (87 parking stalls) accessory to the other uses on the site, as recommended by the City Administrator, Attorney and Planning Advisor;

or

Move to approve Resolution 2009-047 (Option C) whereby denying the issuance of a Conditional Use Permit for an Agricultural Entertainment Business for Country Sun Farms & Greenhouse, with the specific findings of fact denoted within Resolution 2009-047 (Option C) and herein read into the record by the City Clerk.

Action #2 - On the Re-Zoning of 33.44 Acres from Rural Residential to Agricultural:

Move Ordinance 08-021 approving the rezoning of the identified 33.44 acres of property from Rural Residential to Agricultural.

or

Move Resolution 2009-052 denying the rezoning of the identified 33.44 acres of property from Rural Residential to Agricultural, with the specific findings of fact denoted within Ordinance 08-22 and herein read into the record by the City Clerk.

Action #3 - On the Requested CUP Amendment to Extend CUP uses to newly re-zoned property:

Move Resolution 2009-051 (Option A) approving the CUP amendment request with the conditions identified in the City Planning staff report.

or

Move Resolution 2009-051 (Option B) denying the requested CUP amendment, with the specific findings of fact denoted within Resolution 2009-051 (Option B) and herein read into the record.

In addition, due to recent ordinance changes and the evolving nature of these types of requests, City Staff and the Planning Commission recommend the City Council direct greater scrutiny of this issue as part of the Department's 2010 Workplan. As such, it is recommended that the City Council:

Move to direct the inclusion of the recommendations promulgated by the City staff and Planning Commission and delineated in this Communication in the Planning Department's 2010 Workplan.

BACKGROUND & PLANNING DEPARTMENT RECOMMENDATION: The City's files identify a history of a greenhouse operation at the site dating back to the 1970's. A letter from 1979 to Mr. Bergmann states that a new ordinance was adopted in October of 1979 allowing "agri-business," such as theirs, as a Conditional Use Permit and indicated that Mr. Bergmann must apply for such if he wished to continue that use on the property. This is the first record indicating such a use on the property, though "agri-business" is no longer defined or mentioned in the existing code.

In 1980, a letter was sent to Mr. Bergmann extending the CUP for a greenhouse (the "agri-business"), which was renewed annually until 1983 when the CUP was amended to include "sales lot." Since then, the records at both the City and the County show a number of resolutions amending the CUP to include additional acreage, specific additional uses (such as food sales), and expansion of existing structures. A complete history of the City's actions on this property is included in the Planning Staff Report.

The CUP was reviewed annually for a number of years by City planning staff, primarily in the 80's and 90's. The staff at that time found the uses on the site to be generally acceptable and recommended approval to the City Council of the annual review for the Country Sun Farm & Greenhouse CUP.

However, City staff could not find mention in the existing CUP of the uses on the property beyond the greenhouses, sales lot, and sale of food. Although there was no mention of uses such as the haunted house, hay rides, corn maze, or petting farm in the annual resolutions approving continuance of the CUP, there was mention in past staff reports to both the Planning Commission and the City Council that those uses did exist at that time. The lack of documentation within the CUP or continuing resolutions for those uses was not addressed at the time, though such uses clearly played a large part in the formulation of the new Agricultural Entertainment Business CUP.

It should also be noted that significant volume of sales of produce grown off-site was not mentioned in either staff reports to the Planning Commission and City Council or in annual resolutions granting continuance of the CUP. Staff research and available community history indicates that this is because such activity is relatively new and/or that recent volumes are large enough to warrant recent attention, as has also been the recent addition or expansion of children's games and activities unrelated to agriculture.

Current Application: City Planning Staff reviewed the list of **existing** uses, *as identified by the applicant*, and classified if the uses were permitted, conditionally permitted, or not permitted by code. This review is outlined in the chart on the following page. It is important to clarify this information at this time, as both City staff and the applicant have found no clear record in the existing conditional use permit or its periodic renewal outlining many of the uses that have either been recently added to or existed on the site for some time.

Existing Use Classification	
Agricultural Entertainment Business (CUP)	<p>Corn Maze</p> <p>Hay Ride</p> <p>Petting Zoo / Farm</p> <p>Haunted House</p> <p>Seasonal Sale of related Christmas decorations (such as wreaths or other agricultural-type creations)</p> <p>Children Activities and Games with an Agricultural component</p>
Permitted Use in Agricultural or Rural Residential Zoning District	<p>Growing of Field Crops</p> <p>Housing and Care of Livestock</p> <p>Growing of Flowers</p>
Agricultural Sales Business OR Wayside Stand (Permitted)	<p>Seasonal Sales of fresh flower and plant material (if the products are produced on the premises or can meet the definition of "wayside stand")</p> <p>Seasonal Sales of pumpkins (if the products are produced on the premises or can meet the definition of "wayside stand")</p> <p>Seasonal Sale of Christmas trees (if the products are produced on the premises or can meet the definition of "wayside stand")</p>
Existing CUP	<p>Greenhouse growing range</p> <p>Sale of concessions (as previously outlined in CUP amendment approvals)</p>
Incidental Use (Permitted)	<p>Halloween/Holiday decorations</p>
Not Allowed/Permitted	<p>Children Activities and Games without an Agricultural component</p> <p>Seasonal Sales of fresh flower and plant material (if the products are NOT produced on the premises and can NOT meet the definition of "wayside stand")</p> <p>Seasonal Sales of pumpkins (if the products are NOT produced on the premises and can NOT meet the definition of "wayside stand")</p> <p>Seasonal Sales of Christmas trees (if the products are NOT produced on the premises and can NOT meet the definition of "wayside stand")</p>

As such, City Planning staff is recommending approval of the *New CUP* allowing conduct of an Agricultural Entertainment Business on the entire 67 acres, with the specific conditions identified in the original staff report. Such new CUP, with the specific conditions included in the original staff report, would supplant past confusion by bringing the CUP into conformity with current city codes, cleans up a myriad of past confusion over appropriate use of the property, extends reasonable and compatible use to identified adjoining properties for the purposes intended by the Ag Entertainment District, and represents the good-faith effort of the applicant and the City to address past considerations regarding inappropriate use of the current CUP and covered property.

Similarly, City Planning Staff is recommending approval of the re-zoning request and related conditional use permit amendment, thereby allowing future relocation of the greenhouse to the newly re-zoned property. Justification for this affirmative Planning staff recommendation is that the application appears to meet the technical criteria outlined in code, which is more fully explained on pages 5, 6, and 7 of the full staff report attached. However, it should be noted that the City Planning staff also believes sufficient rationale exists for denial of the re-zoning request, as much of the applicant's purpose for the requested re-zoning is pre-emptive and speculative in nature and no current or anticipated hardship exists in terms of reasonable land use.

PLANNING COMMISSION REVIEW/RECOMMENDATION: The Planning Commission reviewed the application at its November 23rd meeting. At that time, a public hearing was held at which no one spoke for or against the application. The Planning Commission recommended, by majority, approval of all three components to the application (CUP for Agricultural Entertainment Business, Re-zoning, and Re-zoning-related CUP amendment).

In addition, the Planning Commission recommended a more liberal interpretation of the current CUP and applicable City Code than Planning Staff had outlined and recommended the inclusion of the uses identified above by staff as "Not Allowed/Permitted" as a part of the *New Ag Entertainment Business CUP*. The reason identified behind the recommendation was the belief that the children's activities and various and sundry games without an agricultural component are incidental to the other uses on the site and were not intended to be excluded by the ordinance.

In general, the Planning Commission spoke to the belief that the sales of agricultural products - in this case, flowers, pumpkins, and Christmas trees - that were grown off-site and brought to the property for sale was a use that the City had been or should have been aware of in the past and had been allowed on the site for years and, therefore, should be identified as now allowed in the CUP.

RECOMMENDATION OF ADMINISTRATOR (in consult with Attorney and Planning Advisor): Because extensive concern has been expressed regarding existing uses on the site and the future guidance of the property (non-sewered higher density residential - OP development), City Administrative, Legal and external Planning staff has spent extensive time reviewing this request and the issues surrounding the current and historical record as to uses of this property within the parameters of applicable CUPs, ordinances and state law. Below are the findings and recommendation of the City Administrator, in consult with the Attorney and Planning Advisor, with respect to the three actions under consideration:

Action #1 - New CUP establishing an Agricultural Entertainment District: Citywide administrative and legal/planning leadership find the City Planning Department staff's recommendations to be the most appropriate and reasonable approach to the suggested new CUP. Reasons include the following:

- Clearly, the Agricultural Entertainment District is the most appropriate designation for the majority of clearly-identified past and present uses on the property, especially when considering the conditions promulgated by the Planning Department staff;
- As Conditional Use Permits may be reviewed on a periodic basis, City Councils have discretion to evaluate current and past uses against egregious violations and evolving community norms and standards;
- The opinions of the Planning Commission, though well intended, regarding alleged ancillary uses and alleged historical precedent are not well grounded in fact or reflected in the official record. Moreover, "prescriptive use" defense is not well defined with respect to Conditional Use Permits;
- Even a cursory review of recent events indicate a significant increase in commercial and related activity on the site, including expansion of children's activities unrelated to agricultural business and dramatically increase of sales of plants, pumpkins and Christmas trees grown offsite;
- It is incumbent upon the applicant to demonstrate a historical record in variance to that researched and identified by the City. To date, no such record of clear City authorization for such activities or equivalent historical activity has been demonstrated or provided;
- Related, is the failure of the applicant to justify the inclusion of the approximately 2 acres of remote property in the requested Agricultural Entertainment Business.
- As Conditional Use Permits may be reviewed on a periodic basis, City Councils have discretion to evaluate current and past uses against egregious violations and evolving community norms and standards;
- Moreover, applicants own material indicates in a letter from the Washington County Sherriff's Department recently increased concern over traffic issues and enforcement. As such, it is believed that the City has sufficient information to initiate immediate review of the existing Conditional Use Permit, based upon concerns over the health, welfare and safety of the community. Should a reasonable compromise not be reached, it is recommended that the City initiate the official process for the review, and if appropriate, modification/revocation of the existing CUP, based upon these criteria;
- Regardless, approval of additional acreage, while clearly and mutually defining acceptable activities and uses, is a reasonable and defensible compromise. As such, it is highly desirable for the City and applicant to jointly migrate to such new CUP, which fully supplants and updates the existing CUP for the majority of the requested acreage.
- Consideration can then be given at a later date for expansion of the new CUP to the remaining approximately 2 acres, upon clearer demonstration of need.
- Inclusion of approval of the proposed overflow parking is also considered desirable in addressing significant elements of the City's and County's current life, health and safety concerns.
- The recommendation of the City Administrator on Action Item #1 is to ***approve Resolution 2009-047 (Option B) whereby issuing a Conditional Use Permit for an Agricultural Entertainment Business for Country Sun Farms & Greenhouse on the identified +/-64 acre portion of the requested 67 acres, with the original conditions identified in the Planning staff report, and to include the construction of an overflow parking area of 39,900 square feet (87 parking stalls) accessory to the other uses on the site.***

Action #2 – Re-zoning of additional 33.44 Acres from Rural Residential to Agricultural: The City Administrator, upon consultation with Legal/Planning, find the City Planning Department's and Planning Commission's recommendation to be premature and not grounded in good public policy:

- Both the current Rural Residential and Agricultural zoning designation are ultimately consistent with the City's Comprehensive Plan. Little or no effect on current or future land use opportunities within the long-range objectives of the Comprehensive Plans for potential development of specific numbers of non-sewered higher density residential – OP development – are anticipated;
- However, re-zoning to Agricultural may affect, in the long-run, desired open-space development. Additionally, Agricultural re-zoning may result in a significant increase in allowable accessory structures and agricultural uses, both significantly expanding the existing business activity and increasing its inconsistency with long-range Comprehensive Plan objectives for well-planned open space development;
- Relocating the greenhouses would still allow for reasonable use of the current property, thereby resulting in a de facto expansion of business activity and, with it, traffic concerns and other public health, life and safety considerations. This concern with alleged past, suspected current or feared future expansion and more commercial type uses on the site is of significant consideration in this CUP renewal and rezoning and new CUP request.
- The applicant is seeking re-zoning and the related CUP amendment to relocate existing greenhouses out of concern for a potential Highway 36 road project that is neither designed, nor currently even scheduled or in the preliminary planning stages. As such, this zoning would be considered highly premature and speculative and may result in significant redundant efforts, should any future Highway 36 project not be in conformity with the changes made by the applicant;
- Moreover, the applicant misreads and prematurely seeks to establish long-standing legal and policy and procedures by both MNDOT and the City of Lake Elmo in working with the any potentially impacted property or business at the time such potential impacts are identified and become reasonably known. Neither MNDOT nor the City are anywhere near this stage at this time;
- As significant public infrastructure would be significantly impacted by any re-zoning and subsequent access road and greenhouse relocation, the public stands to have such disruption of public services occur on multiple times and at significantly increased cost due to this premature rezoning;
- The applicant retains reasonable use of the affected property today and, with approval of the Agricultural Entertainment Business CUP, is allowed for reasonable expansion of said business within the acceptable parameters established by the City;
- The recommendation of City Administrator on Action Item #2 is to enact *Resolution 2009-052 denying the rezoning of the identified 33.44 acres of property from Rural Residential to Agricultural, with the specific findings of fact denoted within Resolution 2009-52 and herein read into the record by the City Clerk.*

Action #3 – On the Requested CUP Amendment to Extend CUP uses to newly re-zoned property:

- Given the above recommendation for denial of the re-zoning, it is reasonable for the City Council to not approve the CUP Amendment for property for which the CUP no longer applies;

- Should a future legitimate need arise for the applicant to seek re-zoning and a CUP Amendment, such as movement on a planned MNDOT project on MN Highway 36, it would be appropriate to reconsider this request at that time.
- The recommendation of City Administrator on Action Item #3 is to enact ***Resolution 2009-051 (Option B) denying the requested CUP amendment, with the specific findings of fact denoted within Resolution 2009-051 (Option B) and herein read into the record.***

The recommendation of the City Administrator is also to ***direct the inclusion of the recommendations promulgated by the City staff and Planning Commission and delineated in this Communication in the Planning Department's 2010 Workplan.***

OTHER CONSIDERATIONS: The City is bound to address the re-zoning and CUP requests within the legal and timeframe parameters delineated in State Law. While City Council does not have to take final action tonight in order to comply with the 60-day and 120-day rules, a special meeting of the City Council would have to be convened should the Council wish to table this Agenda Item tonight and address it at a later date. Failure of the Council to take timely action results in an automatic approval of the requested re-zoning and CUP actions.

In accordance with the discussions at the time the ordinance was approved regarding Agricultural Entertainment Businesses and Agricultural Sales, the Planning Commission felt it was appropriate for the Commission and City Council to add the evaluation of these (and similar) uses to the 2010 Planning Commission Work Plan. This would allow the Commission and Council to:

- Evaluate the effectiveness of the existing ordinance;
- Further review how agriculture sales businesses should be regulated within the community;
- Study options for regulating these uses as a commercial business;
- Investigate alternative regulation mechanisms that would allow specific activities on an interim basis (i.e. a special event permit or interim use permit);
- Review the differences between wayside stands and seasonal sales, and specifically whether or not the sale of produce grown off-site should be allowed;
- Consider adding greenhouses as an allowed use in rural residential and other zones and establishing a size limitation for "residential" greenhouses; and
- Evaluate greater use of Interim or Temporary Use Permits, as opposed to Conditional Use Permits, where the City believes such permits will allow for greater immediate applicant and community benefit while still preserving long-term community-wide goals and objectives.

SUGGESTED MOTIONS: Notwithstanding the good work of the Planning Commission and Planning Department staff, as larger considerations are at play here, it is the recommendations of the City's Administrator, in consult with its Legal and Planning staff, that the City Council undertake the following:

- **Action #1 - New CUP establishing an Agricultural Entertainment District:** *Move to approve Resolution 2009-047 (Option B) whereby issuing a Conditional Use Permit for an Agricultural Entertainment Business for Country Sun Farms & Greenhouse on the identified +/-64 acre portion of the requested 67 acres, with the original conditions identified in the Planning staff report, and to include the construction of an overflow parking area of 39,900 square feet (87 parking stalls) accessory to the other uses on the site.*

- **Action #2 – Re-zoning of additional 33.44 Acres from Rural Residential to Agricultural:** *Move to enact Resolution 2009-52 denying the rezoning of the identified 33.44 acres of property from Rural Residential to Agricultural, with the specific findings of fact denoted within Ordinance 08-22 and herein read into the record by the City Clerk.*
- **Action #3 – On the Requested CUP Amendment to Extend CUP uses to newly re-zoned property:** *Move Resolution 2009-51 (Option B) denying the requested CUP amendment, with the specific findings of fact denoted within Resolution 2009-051 (Option B) and herein read into the record by the City Clerk.*
- **Additional Action:** *Move to direct the inclusion of the recommendations promulgated by the City staff and Planning Commission and delineated in this Communication in the Planning Department’s 2010 Workplan.*

ORDER OF BUSINESS:

- Introduction.....Bruce Messelt, City Administrator
- Report by staffKyle Klatt, Planning Director
- Questions from the Council Mayor & Council Members
- Applicant CommentsMayor facilitates
- Questions of the Applicant Mayor & Council Members
- Call for a motion.....Mayor Facilitates
- Discussion of Council on the motion.....Mayor Facilitates
- Action by the City Council Mayor & Council Members

ATTACHMENTS (7):

1. Staff Report
2. Applicant’s Submittals (Narratives & Maps)
3. Resolution 2009-047 (Option A – Planning Commission Recommendation on Ag Entertainment District)
4. Resolution 2009-047 (Option B – City Staff’s Recommendation on Ag Entertainment Business)
5. Resolution 2009-047 (Option C – Denying Ag Business CUP)
6. Ordinance 08-021 (Approving Re-Zoning)
7. Resolution 2009-052 (Denying Re-Zoning)
8. Resolution 2009-051 (Option A – Approving CUP Amendment)
9. Resolution 2009-051 (Option B – Denying CUP Amendment)
10. Letter from MnDOT
11. Resolution 83-8
12. Resolution 2004-039

City of Lake Elmo Planning Department
**Conditional Use Permit Amendment, Rezoning,
And Additional Conditional Use Permit Request**

To: **City Council**

From: Kelli Matzek, City Planner

Meeting Date: **12-01-09**

Applicant: **Country Sun Farm & Greenhouses**

Owner: Richard and Eileen Bergmann; Keith Bergmann

Location: **11211 60th Street North**

Zoning: A – Agricultural and RR – Rural Residential

Introductory Information

***Requested
Application:***

The applicants have submitted an application for consideration of the following three components:

- **REZONING:** To rezone a 33.44 acre parcel from Rural Residential (RR) to Agricultural (Ag). This rezoning could allow the future movement of an existing greenhouse from the original CUP area to the new proposed area as greenhouses are not permitted in the RR zoning district.
- **CONDITIONAL USE PERMIT AMENDMENT:** To amend the existing conditional use permit currently allowing operation of Country Sun Farm & Greenhouses at 11211 60th Street North to add approximately 24 acres of land (as the rest is in a roadway easement) for the “greenhouse” and “food concession sales” uses currently permitted. This land is proposed to be added to allow the eventual future movement of existing uses for the business to this property. This amendment would include the construction of an overflow parking area of 39,900 square feet (87 parking stalls) which is accessory to other uses on the site.
- **CONDITIONAL USE PERMIT:** To add a CUP for the entire 67 acres (original 43 plus 24 proposed) of property allowing an “Agricultural Entertainment Business” on the property as conditionally permitted. At this time it would be appropriate to list the specific existing and proposed uses on the site to clarify which current uses are permitted under the existing and/or proposed CUP.

***Property
Information:***

The City’s files identify a history of a greenhouse operation at the site dating back to the 1970’s. A letter from 1979 to Mr. Bergmann states that a new ordinance was adopted in October of 1979 allowing “agri-business” such as theirs as a CUP and

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indicated that Mr. Bergmann must apply for such if he wished to continue that use on the property. This is the first record indicating such a use on the property, though "agri-business" is no longer defined or mentioned in the existing code. In 1980, a letter was sent to Mr. Bergmann extending the CUP for a greenhouse (the "agri-business") which was renewed annually until 1983 when the CUP was amended to include "sales lot." Since then, the records at both the city and the county show a number of resolutions amending the CUP to include additional acreage, additional uses (such as food sales), and expansion of existing structures.

Abbreviated History of the CUP amendments:

Resolution 83-8 (January 1983): authorizes the operation of a greenhouse and sales lot

Resolution 84-43 (July 1984): expanding the area covered by the CUP for the use of greenhouses and sales lot; to relocate the greenhouse and sales building; variance approval to side yard setback

Resolution 87-27: allowing a temporary use for the operation of an asphalt mix plant (since expired)

Resolution 2003-070: allows the sale of food items such as snacks and carnival type foods/beverages

Resolution 2004-039: allows the expansion of the greenhouses

The CUP was reviewed annually for a number of years by city staff, primarily in the 80's and 90's. The staff at that time found the uses on the site to be acceptable and recommended approval to the City Council of the annual review for the Country Sun Farm & Greenhouse CUP.

Staff could not find mention in the existing CUP of the uses on the property beyond the greenhouses, sales lot, and sale of food. Although there was no mention of uses on the site such as the haunted house, hay rides, corn maze, or petting farm in the resolution, there was mention in past staff reports to both the commission and the council that those uses did exist at that time. The lack of documentation for those uses was not addressed at the time.

The applicant has identified with this application a list of existing uses on the site which will be analyzed later in this report for conformance with the current city code.

Existing Uses on the Site as identified by the applicant:

Greenhouse growing range
Corn maze
Petting zoo/farm
Growing of field crops
House and care for livestock

(cont.)

Raise flowers
Hayrides
Halloween decorations
Haunted House
Children Activities and Games
Seasonal Sales of fresh flower and plant material
Seasonal Sale of Christmas trees and related Christmas decorations
Seasonal Sale of pumpkins
Sale of concessions (as previously outlined in CUP amendment approval)

Activity locations are depicted in the applicant's submittals which are attached at the end of the report.

Applicable § 154.018 CONDITIONAL USE PERMITS.
Codes:

- (A) *Granting/denial.* Conditional use permits may be granted or denied in any district by action of the governing body according to the standards for that district in granting a conditional use permit, the governing body shall consider the advice and recommendations of the Planning Commission and the effect of the proposed use upon the health, safety, morals, convenience, and general welfare of occupants of surrounding lands, existing and anticipated traffic conditions including parking facilities on adjacent streets and land, the effect on utility and school capacities, the effect on property values of property in the surrounding area, and the effect of the proposed use on the Comprehensive Plan. If it determines that the proposed use will not be detrimental to the health, safety, convenience, morals, or general welfare of the community nor will cause serious traffic congestion, nor hazards, nor will seriously depreciate surrounding property values, and that the use is in harmony with the general purpose and intent of this chapter and the Comprehensive Plan, the Council may grant the permits.

§ 154.020 AMENDMENTS.

- (H) *Zoning and the Comprehensive Plan.* Any amendment to this chapter shall amend the Comprehensive Plan in accordance with the amendment. The Planning Commission shall inform the Council of any zoning proposal which does not conform to the Comprehensive Plan and inform the Council as to why the plan should or should not be amended.
- (J) *Conformance with Comprehensive Plan.* In granting or recommending any rezoning or other permit provided for in this chapter, the Zoning Administrator, the Planning Commission, or Council shall find that the proposed development conforms substantially to the policies, goals, and standards of the Comprehensive Plan.

§ 11.01 DEFINITIONS.

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AGRICULTURAL ENTERTAINMENT BUSINESS. An agricultural sales business that combines the elements and characteristics of agriculture and tourism, which is not necessarily located in an existing building. Examples of agricultural entertainment include: corn mazes, hay rides, sleigh rides, petting farms, on-farm tours, agricultural related museums, demonstrations of farming practices, techniques and methods, fee-based fishing and hunting, horseback riding, nature trails, haunted barns and similar activities which are related to agriculture.

AGRICULTURAL SALES BUSINESS. The retail sale of fresh fruits, vegetables, flowers, herbs, trees, or other agricultural, floricultural, or horticultural products produced on the premises. The operation may be indoors or outdoors, include pick-your-own opportunities, and may involve accessory sales of unprocessed foodstuffs; home processed food products such as jams, jellies, pickles, sauces; or baked goods and homemade handicrafts. The floor area devoted to the sale of accessory items shall not exceed 25% of the total floor area. No commercially packaged handicrafts or commercially processed or packaged foodstuffs shall be sold as accessory items. No activities other than the sale of goods as outlined above shall be allowed as part of the **AGRICULTURAL SALES BUSINESS**.

OPEN SALES LOTS. Lands devoted to the display of goods for sale, rent, lease, or trade, where the goods are not enclosed within a building.

WAYSIDE STAND. A temporary structure or vehicle used for the seasonal retail sale of agricultural goods, floriculture, and horticulture produced by the operator of the **WAYSIDE STAND** on site or on other property in Lake Elmo.

§ 154.033 AG OR A – AGRICULTURAL.

(A) *Permitted uses and structures.*

(8) Wayside stands;

(9) Agricultural sales businesses subject to performance standards outlined in § 154.110;

(B) *Uses permitted by conditional use permit.*

(1) Greenhouses;

(8) Agricultural entertainment businesses subject to the following performance standards: {see analysis on page 7 below}

§ 154.036 RR – RURAL RESIDENTIAL.

(A) *Permitted uses and structures.*

(3) Wayside stands; and

(4) Agricultural sales businesses subject to performance standards outlined in § 154.110.

(C) *Conditionally permitted uses.*

(4) Agricultural entertainment businesses subject to the requirements outlined in § 154.033(B)(8).

Findings & General Site Overview

Site Data:	<p>Existing CUP Property <i>Lot Size:</i> Approximately 43 acres <i>Existing Use:</i> Country Sun Farm & Greenhouse operations <i>Existing Zoning:</i> A (Agricultural) <i>Property Identification Number (PID):</i> 01-029-21-22-0002, 01-029-21-22-0008, 01-029-21-23-0004 Parcel 01-029-21-22-0002 is taxed at both an agricultural and commercial rate.</p> <p>Proposed Additional Land for CUP <i>Lot Size:</i> Approximately 24 acres (this does not include the road right-of-way which when added totals 33.44 acres) <i>Existing Use:</i> Farm/Construction Site for Northern Natural Gas Project <i>Existing Zoning:</i> RR (Rural Residential) <i>Proposed Zoning:</i> Ag (Agricultural) <i>Property Identification Number (PID):</i> 01-029-21-21-0007</p>
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Application Review:

Rezoning:	<p><i>Rezoning from Rural Residential to Agricultural</i></p> <p>The applicants are requesting the currently farmed property at 01-029-21-21-0007 be rezoned from Rural Residential to Agricultural. The entire property (including State Highway 36 road right-of-way) is 33.44 acres.</p> <p>The property currently may be subdivided into at least two, if not three, 10-acre parcels with regards to lot size only. The applicants are requesting this property's zoning be changed to Agricultural which has a 40 acre minimum lot size. This significant change in minimum lot size eliminates the ability of the property to be subdivided. The applicants are aware of this change, but are requesting the rezoning to occur as the intent is to leave the property intact and to utilize the land for the Country Sun Farm & Greenhouse business. The applicants state in their application that the intent is to move the <u>existing</u> greenhouse, corn maze, and hayride area to this new property in the event that the potential future reconfiguration of the Lake Elmo Avenue (CSAH 17) and State Highway 36 interchange and additional frontage road would eliminate the area the uses are currently occupying. Because this parcel is zoned Rural Residential (the property on which the business runs is currently zoned Agricultural), the applicants do not have the option of moving the existing greenhouse to this property.</p> <p>In looking strictly at the rezoning request without consideration of the intent, the rezoning of this parcel is consistent with the Comprehensive Plan with regards to the future land use guidance. The Land Use Plan classifies this area as guided for Rural Agricultural Density (RAD), which is consistent with <u>both</u> the Rural Residential and Agricultural zoning districts.</p>
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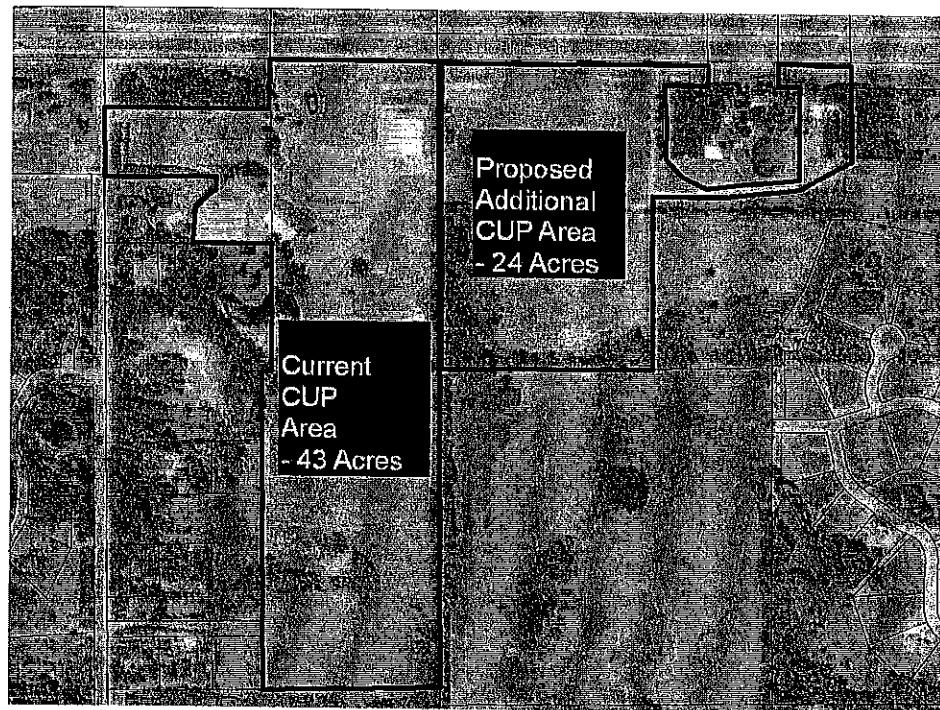
Staff would recommend **approval of the rezoning** from Rural Residential to Agricultural as it is in conformance with the Comprehensive Plan. The applicants request that if the CUP amendment is not approved, that the property be retained as a Rural Residential parcel and not rezoned.

The approval of the rezoning request would not outright allow the movement of the greenhouse as it is a conditionally permitted use in the Agricultural zoning district. The proposed CUP amendment would also need to be approved.

**CUP
Amendment
Review:**

Land Addition, Overflow Parking

The applicants are requesting to add an additional approximately 24 acres to the area currently operating under a CUP (33.44 acres minus the State Highway 36 road right-of-way area).



The reasoning for the request as stated by the applicant is to prepare for a future improvement to the Lake Elmo Avenue and State Highway 36 interchange. The alteration to the intersection and a potential service road could displace some of the applicant's property currently utilized for the hay ride, corn maze, and greenhouses. That land would instead be utilized as a frontage road for Highway 36. The existing uses (greenhouse, hay ride area, and corn maze) that would be displaced are proposed to be relocated to the proposed additional land to the East.

The applicants are also interested in adding an overflow parking area. The proposed 39,900 square foot area is to be created of crushed limestone and/or recycled pavement millings. The parking lot is being proposed at this time to take advantage

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of work recently completed in that area by the Northern Natural Gas company within their easement. The company has utilized that portion of the applicant's land as a parking area for vehicles associated with the work. The property owners would like to utilize a portion of this as an overflow parking area as the area is already compacted and disturbed. The remaining area will be restored. If additional overflow parking is needed beyond what is proposed, the grassy area will be utilized. This will minimize the impervious surface area, the resulting runoff, and reduce or eliminate the potential for vehicles visiting their business from parking on State Highway 36.

However, the land on which the current CUP operates is zoned Agricultural while the property proposed to be added to the CUP is currently zoned Rural Residential. While the Agricultural zoning district currently identifies greenhouses as a conditional use, the Rural Residential zoning district does not – thus the earlier identified rezoning request.

Although neither zoning district currently identifies a "sales lot" as either permitted or conditionally permitted, the CUP for the existing Agricultural zoned property will continue to allow that use on the existing property if, and until, it is discontinued for a year at which time that use will no longer be permitted.

If the property is rezoned to Agricultural, a greenhouse could be conditionally permitted on the additional 24 acre property. Staff would find that the movement of the existing greenhouse to the property would meet the requirements of a conditional use permit and would **therefore recommend approval**.

The movement of a corn maze and hay ride area will be analyzed in the third section of this application – the reclassification of existing uses as an Agricultural Entertainment Business.

CUP Review: *Reclassification of Some Existing Uses as Agricultural Entertainment Business*

Country Sun Farm & Greenhouse has existed in some form since at least the 1970s according to previous staff reports and other city documents. Since then, the land area and the uses on the site have evolved over time. The original CUP was for the greenhouse to be utilized at the property on just a few acres. Resolution 83-8 identifies granting of a conditional use permit to allow a greenhouse and sales lot at the Bergmann's property. Other amendments have allowed the expansion of the existing greenhouses and sale of limited foods and beverages.

Although there are a few gaps in documentation, staff's interpretation is that the current operation of Country Sun Farm & Greenhouse occupies the existing approximately 43 acres under the resolution conditionally permitting greenhouses, sales lot, and food sales (as specified). It is assumed that previous staff interpreted the uses such as the corn maze, petting zoo, hay rides, agricultural sales, and children's activities being utilized on the existing site as being considered permitted under the conditional use permit or an incidental and accessory use to those permitted

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uses.

Staff sees this as an opportunity to clarify and catalog the acceptable uses on the site and to put in place reasonable conditions to protect adjacent properties. At this time, staff will reevaluate the existing uses on the site and suggest clarifying what uses are permitted on the site – either through the existing CUP or through the proposed Agricultural Entertainment Business CUP being proposed.

In 2008, the city code was amended (Ordinance 08-006) to include definitions for *Agricultural Entertainment Business* and *Agricultural Sales Business*. The Agricultural Entertainment Business use was added as conditionally permitted in both the Agricultural and Rural Residential zoning districts at that time. The Agricultural Sales Business use was added as a permitted use (not a CUP) in both districts.

As mentioned earlier in the report, staff suggests taking time to clarify what existing uses on the site will be considered conditionally permitted as an Agricultural Entertainment Business, what existing uses (if any) are outright permitted as an Agricultural Sales Business, and what existing uses (if any) are not permitted on the site. This analysis is intended to provide further clarity for both the city and the property owners in the future as to what is acceptable on the property.

This separate Agricultural Entertainment Business CUP would function in parallel with the existing CUP for the greenhouse, sales lot, and food sales as permitted on the “original” 43 acres and for the amended CUP, should that be approved.

Analysis of Existing Uses on the site:

Staff recommends that the following uses fall under the classification of an Agricultural Entertainment Business as defined in the code:

- Corn maze
- Hayrides
- Petting zoo/farm
- Haunted House
- Seasonal Sale of related Christmas decorations (such as wreaths or other agricultural-type creations)
- Children Activities and Games with an Agricultural component

Staff recommends that the following uses fall under the category of a permitted use in the Agricultural or Rural Residential zoning district (a CUP not required):

- Growing of field crops
- Housing and care for livestock
- Growing flowers

Staff recommends the following uses fall under the category of Agricultural Sales Business OR Wayside stands (which is allowed/permitted):

- Seasonal Sales of fresh flower and plant material [if the products are produced on the premises or can meet the definition of “wayside stand”]
- Seasonal Sale of pumpkins [if the products are produced on the premises or

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- can meet the definition of “wayside stand”
- Seasonal Sale of Christmas trees [if the products are produced on the premises or can meet the definition of “wayside stand”]

Staff recommends that the following uses be analyzed as part of proposed amendment to the existing CUP. The City’s records indicate that these uses have previously been granted approval.

- Greenhouse growing range
- Sale of concessions (as previously outlined in CUP amendment approval)

Staff recommends the following use be classified as incidental to the property as residents are allowed to celebrate holidays with outside decorations:

- Halloween/Holiday decorations

Staff recommends the City clarifies that the following uses are not allowed/permitted, nor conditionally permitted on the site:

- Children Activities and Games without an Agricultural component
- Seasonal Sales of fresh flower and plant material [if the products are NOT produced on the premises and can NOT meet the definition of “wayside stand”]
- Seasonal Sale of pumpkins [if the products are NOT produced on the premises and can NOT meet the definition of “wayside stand”]
- Seasonal Sale of Christmas trees [if the products are NOT produced on the premises and can NOT meet the definition of “wayside stand”]

Staff utilized the previous analysis in moving forward with which uses to utilize in the following review:

CUP Review Criteria (Section 154.018):

The following review criteria (in italics) are taken directly out of the Lake Elmo City Code for all CUPs:

- *Effect of the proposed use upon the health, safety, morals, convenience, and general welfare of occupants of surrounding lands.*

The permitting of an Agricultural Entertainment Business on the entire 67 acres (existing plus proposed acreage) would not have a negative impact on the health, safety, morals, convenience, or general welfare of occupants of surrounding lands.

The proposed addition of approximately 24 acres for movement of existing uses and the inclusion of an overflow parking area will not negatively effect the health, safety, morals, convenience, or general welfare of occupants of surrounding lands. The movement of the existing uses (hay ride, corn maze, etc.) in the future to this site will create more of a buffer between the seasonal uses and the existing residential homes along Lake Elmo Avenue. The property being requested to be considered for inclusion is currently bordered to the North by State Highway 36, to the South by vacant land previously used for agricultural purposes and to the East by a residential

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home owned by the applicant's son and dedicated open space property owned by the applicants. Therefore, it can be reasonably assumed that the movement of the uses further from the more densely built homes along Lake Elmo Avenue (County Road 17) would reduce the impact of the uses. At this time the applicants are not proposing to increase the intensity of the uses on the existing property, but to maintain what is on the site.

- *Existing and anticipated traffic conditions (incl. parking facilities on adjacent streets and land)*

The applicants' proposal includes the construction of a 39,900 square foot overflow parking area of 87 designated parking stalls as well as a designation of an additional grassy area if additional parking is necessary. This proposal will address existing and anticipated parking needs by providing additional parking for visitors on the site. By allowing additional parking, the applicants are working to address concerns expressed in the past of parking that has occurred on State Highway 36. A letter received from MnDOT regarding the application confirms that the owner's plan for parking expansion should provide enough parking on site to eliminate the need for parking on the TH 36 shoulder, which has serious safety concerns.

The letter also briefly mentions that a future interchange at the interchange of Lake Elmo Avenue (CSAH 17) and TH 36 will impact this property and its current access locations. At this time, staff believes the applicant's proposal does not warrant addressing the access to the site.

- *Effect on utility and school capacities*

The addition of land and an overflow parking area to the existing CUP will have no effect on utilities or school capacities.

- *Effect on property values of property in the surrounding area*

The property values of the surrounding properties will not be negatively impacted by the addition of the land to the existing CUP or the continued uses on the existing land. The Bergmanns' or their relatives own property to the East of the proposed additional land, State Highway 36 is to the North, and vacant/agricultural land is to the South. Should the land to the South be developed someday as an Open Space Preservation development (for which it is eligible by standards of minimum lot size), a buffer setback will likely be established which will serve as a barrier to the seasonal uses nearby, should that be a concern in the future.

- *Effect of the proposed use on the Comprehensive Plan (in harmony with the general purpose and intent of this chapter and the Comp Plan)*

Both the property under the existing CUP and the proposed additional property are guided in the Future Land Use for "RAD - 0.45 DU/Acre" as designated in the Lake Elmo Comprehensive Plan. The RAD designation stands for Rural Agricultural Density and is related to the zoning classifications Agricultural (AG or A) and Rural Residential (RR).

The city does not have a slated timeframe for which this property (or any property

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outside of the future sewerred areas) is scheduled to convert to a higher density residential use as an Open Space Preservation development, which is the 0.45 DU/Acre mentioned in the Land Use guidance section of the Comprehensive Plan.

The Comprehensive Plan states that the city has a “desire to preserve its rural character, open space and green corridors.” In keeping with this statement and the verbally stated intent to allow owners of larger properties in the city to continue to make a living from their land, staff is interpreting the continued use of the existing Country Sun Farm & Greenhouse activities as compliant with the city’s intent for large rural lots, agricultural-type uses, and the Comprehensive Plan.

The Agricultural Entertainment Business use was specifically included as a conditionally permitted use in the A and RR zoning districts in 2008, but not the commercially oriented zoning districts (HB, LB, GB) in the city. This action taken by the city provides direction to staff to continue the interpretation that an Agricultural Entertainment Business is considered, in fact, agricultural in nature and not commercial. Because the city code must be in harmony with the Comprehensive Plan, staff would find the addition of this language to the code in 2008 to be in accordance with the intent of the Comprehensive Plan.

Because the city code has listed Agricultural Entertainment Businesses as a conditionally permitted use and as the city has received an application for such, the city must permit the use if it is found to meet all the outlined requirements for both a conditional use permit as well as the individual requirements listed for an Agricultural Entertainment Business.

Staff’s interpretation that the corn maze, hayride, petting zoo/farm, haunted house, and seasonal sale of related Christmas decorations that are agricultural in nature at Country Sun Farm & Greenhouse are in accordance with the Agricultural Entertainment Business use as defined and allowed by CUP in the A and RR zoning districts and therefore compliant with the Lake Elmo Comprehensive Plan.

The following review criteria (in italics) are taken directly out of the Lake Elmo City Code for all Agricultural Entertainment Businesses:

Agricultural and Rural Residential Zoning District Review Criteria (Section 154.033)

(a) The property proposed to be used for agricultural entertainment must be located with direct access to a collector or arterial street as identified in the comprehensive plan;

Currently, the property has right-in right-out access off TH 36 as well as reasonable access off of County Road 17.

(b) All parking must occur on-site, be on a primary surface such as class five gravel or pavement; and must be set back at least 30 feet from all property lines;

As mentioned previously in this staff report, the applicants are proposing to add two overflow parking areas – one of which would be improved and the other to remain grass.

The applicants are proposing to construct the improved parking lot of crushed limestone and/or recycled pavement millings. This is consistent with the requirement for surface type.

Staff will add as a condition of approval that the parking area be 30 feet from all property lines.

(c) No more than 25% of the site may be covered with impervious surface and the remainder shall be suitably landscaped;

The applicants are nowhere near the 25 percent maximum impervious surface coverage as all the area proposed to be covered under this CUP is largely open or used for agricultural purposes.

(d) Roof top or outside building mechanical equipment must be screened from view from adjacent properties and rights-of-way with an opaque material architecturally compatible with the building(s);

The applicants are not requesting to add any buildings at this time.

(e) Trash containers must be located inside or screened in an acceptable manner;

Staff will add this as a condition of approval.

(f) Discharge of firearms, including blanks, shall not be allowed on the property;

The applicants are requesting this condition be modified to allow the discharge of firearms during times and dates that the business is not open to the public. This would allow the property owners to continue utilizing their land for private hunting purposes.

Staff would find this request to be reasonable and would recommend adding this to an approved CUP.

(g) The property owner shall give the city permission to conduct inspections of the property in order to investigate complaints;

Staff will add this as a condition of approval.

(h) The property owner must take reasonable steps to prevent trespassing on adjacent properties by employees, contractors or patrons;

Existing buffers such as a tree line as well as a fence do provide a vegetative and fenced buffer of the property.

(i) Usable primary and alternate well and septic sites sized for the maximum anticipated usage of the property shall be identified on the property. Alternate sites shall be protected in the site plan design, and will only need to be used upon failure of a primary site; and

The applicants are currently operating with an existing well and septic system. Because they are not asking to add any buildings at this time which would require sanitary facilities or a water supply, staff would suggest this be addressed in the future if such a building is added.

(j) Adherence to the general review criteria applicable to all CUP applications. Staff finds this criteria is met, as analyzed earlier in this report.

**Resident
Concerns:**

Staff has been made aware there are concerns regarding what uses have been allowed to occur on the site for the Country Sun Farm & Greenhouse property as well for the rezoning request.

**Additional
Information:**

- The applicants may choose to perform such activities as listed in the Agricultural Sales Business definition on either properties as that is listed in both Agricultural and Rural Residential zoning districts as permitted uses. A greenhouse connected to a sales area may be considered an Agricultural Sales Business. Assuming the standards outlined in code are met, the applicants are allowed to do so without a conditional use permit.
- Neither the watershed district nor the DNR provided comment in opposition to the proposed application.
- The proposed overflow parking area will require a permit from the Valley Branch Watershed District as the impervious surface area proposed would exceed 6,000 square feet.
- A Mn/DOT drainage permit will be required to ensure that current drainage rates to Mn/DOT right-of-way will not be increased.

**Future
Consideration:**

Because some concern has been expressed regarding existing uses on the site and the future guidance of the property (non-sewered higher density residential – OP development), staff has suggested multiple options for consideration if the city is concerned with past or future expansions and more commercial type uses on the site (page 11 and 12 of the full staff report).

In accordance with the discussions at the time the ordinance was approved regarding Agricultural Entertainment Businesses and Agricultural Sales, it is recommended that the Planning Commission and City Council add the evaluation of the these (and similar) uses to the 2010 Planning Commission Work Plan. This would allow the

commission and council to:

- evaluate the effectiveness of the existing ordinance
- further review how agriculture sales businesses should be regulated within the community
- study options for regulating these uses as a commercial business
- investigate alternative regulation mechanisms that would allow specific activities on an interim basis (i.e. a special event permit or interim use permit)
- review the differences between wayside stands and seasonal sales, and specifically whether or not the sale of produce grown off-site should be allowed
- consider adding greenhouses as an allowed uses in rural residential and other zones and establishing a size limitation for "residential" greenhouses

Given the discussions resulting from the application, we understand the Council may wish to discuss other future options for consideration.

Option One: One option would be to change the zoning for all Agricultural and Rural Residential zoned properties guided for this unsewered higher density residential land use in the future into a holding district. This holding district could restrict what can be done on the properties to ensure they are in keeping with the planned future residential development on the property. The Comprehensive Plan identifies approximately 1,000 properties within the city as guided for this type of land development (although this number includes some existing OP development parcels, which would not be included).

Option Two: A second option would be to re-evaluate what is considered an agricultural use and identify if an Agricultural Entertainment Business is something the city would like to see in the rural areas of the city.

Option Three: An option would be to explore the interim use of properties guided for higher density non-sewered development – Open Space Preservation Developments. This would require amendments to the existing code to identify interim uses in the Agricultural and Rural Residential zoning district. In this particular situation, a legal opinion would be requested to identify if there are any legal rights of the applicant to continue those uses not specified in the CUP (such as the corn maze, haunted house, etc.).

Option Four: An option would be to consider those properties along major roadways such as Interstate 94 and State Highway 36 that are operating as more of a commercial type use to be rezoned. This would require major changes to the Comprehensive Plan, zoning map, and zoning ordinance.

Option Five: To direct staff to research if a different taxing system could be used on properties that are zoned of a rural or residential nature, but function more like a semi-commercial property seasonally or year-round.

Conclusion:

The applicants are seeking approval of the following for Country Sun Farms & Greenhouses:

- **REZONING:** To rezone a 33.44 acre parcel from Rural Residential (RR) to Agricultural (Ag). This rezoning could allow the movement of an existing greenhouse from the original CUP area to the new proposed area as greenhouses are not permitted in the RR zoning district.
- **CONDITIONAL USE PERMIT AMENDMENT:** To amend the existing conditional use permit currently allowing operation of Country Sun Farm & Greenhouses at 11211 60th Street North to add approximately 24 acres of land (as the rest is in a roadway easement) for the "greenhouse" and "sale of concessions" uses currently permitted. This land would be added to allow the eventual movement of existing uses for the business. This amendment would include the construction of an overflow parking area of 39,900 square feet (87 parking stalls).
- **CONDITIONAL USE PERMIT:** To add a CUP for the entire 67 acres of property allowing an "Agricultural Entertainment Business" on the property as conditionally permitted. At this time it would be appropriate to list the specific existing and proposed uses on the site to clarify which current uses are permitted under the existing and/or proposed CUP. A CUP Amendment to add approximately 24 acres to the existing CUP for Greenhouses and Open Sales Lot.

Council Options:

The City Council has the following options:

- A) **Approve** the rezoning request, CUP amendment and improved overflow parking area, and additional CUP for Agricultural Entertainment Business uses including those uses specified in the staff report as not allowed (*as recommended by the Planning Commission*);
- B) **Deny** the rezoning request, CUP amendment, improved overflow parking area, and additional CUP for Agricultural Entertainment Business uses request;
- C) **Deny** the rezoning request and CUP amendment, but **approve** the CUP for the Agricultural Entertainment Business uses and the overflow parking area.

The 60-day review period for the CUP amendment and CUP for Agricultural Entertainment Business application expired on 10-19-09, but was extended an additional 60 days to 12-18-09. If an additional extension is needed, the applicants must approve the request. The 60-day review period for the rezoning will also expire on 12-18-09, but can be extended an additional 60 days if necessary.

**Planning
Commission
Rec.:**

The Planning Commission recommended **approval** of the request to rezone the 33.44 acre property at 01-029-21-21-0007 from Rural Residential to Agricultural.

The Planning Commission recommended **approval** of the CUP amendment request (dependent upon approval of the previously stated rezoning) as the Agricultural zoning district conditionally permits greenhouses. This would include approval of the improved overflow parking area of 39,900 square feet.

The Planning Commission recommended **approval** of an Agricultural Entertainment Business for Country Sun Farms & Greenhouses at 11211 60th Street North for the entire 67 acres. The commission recommended by majority to add to the CUP the following uses identified previously by staff as not allowed/permited:

- Children Activities and Games without an Agricultural component
- Seasonal Sales of fresh flower and plant material [if the products are NOT produced on the premises and can NOT meet the definition of "wayside stand"]
- Seasonal Sale of pumpkins [if the products are NOT produced on the premises and can NOT meet the definition of "wayside stand"]
- Seasonal Sale of Christmas trees [if the products are NOT produced on the premises and can NOT meet the definition of "wayside stand"]

The reason identified behind the recommendation was the belief that the children activities and games without an agricultural component are incidental to the other uses on the site and were not intended to be excluded by the ordinance. A commissioner spoke to the belief that the sales of agricultural products - in this case flowers, pumpkins, and Christmas trees - that were grown off-site and brought to the property for sale was a non-conforming use that had been allowed on the site for years and thus should be identified as allowed in the CUP.

**Summary
Rec.:**

The Planning Commission and staff are recommending approval of the request to rezone the 33.44 acre parcel from Rural Residential to Agricultural based on the following:

1. The rezoning would be in conformance with the land use guidance identified in the Comprehensive Plan.
2. By allowing the rezoning, the minimum lot size would increase (a "down-zoning" of the property) thereby eliminating the ability to subdivide and retaining larger agricultural lots. This parcel would be retained in its current configuration, easing the transition to its future guided use as an Open Space Preservation development as specified in the Comprehensive Plan.

The Planning Commission and staff are recommending approval of the CUP amendment to add 24 acres and an overflow parking area based on the following:

1. If the rezoning is approved, the Agricultural zoning district conditionally permits the use of greenhouses on the property.

(cont.)

2. The movement of a greenhouse to a location more remote from existing residential homes will reduce negative impacts.
3. The applicants are proposing to have the additional 24 acres available for use by Country Sun Farm & Greenhouse in anticipation of needing to relocate existing uses from one property to another in response to potential future construction of a frontage road and reconfiguration of the intersection of County Road 17 and State Highway 36.
4. The proposed overflow parking areas (both improved and grass) would reduce or eliminate the parking that may take place on State Highway 36 by visitors to the site.

Staff is recommending approval of the additional CUP for the entire 67 acres (existing 43 acres plus proposed 24 acres) to reclassify some of the existing uses (as specified earlier in the report) on the property to Agricultural Entertainment Business:

1. In 2008, the City of Lake Elmo approved Ordinance 08-006 which defined Agricultural Entertainment Business and identified the use as conditionally permitted in the Agricultural and Rural Residential zoning districts.
2. The expansion of land and potential movement of existing uses would reduce the impact to adjacent neighbors.
3. The addition of the overflow parking area would take advantage of existing disrupted areas as a result of work done by Northern Natural Gas.
4. The CUP for an Agricultural Entertainment Business at this time does not permit the increase of intensity of the uses, but instead clarifies the permissible uses on the site for staff and the property owners.
6. The conditions outlined in both Section 154.018 for Conditional Use Permits and Section 154.033 for Agricultural Entertainment Businesses are met.

As mentioned on the previous page, the Planning Commission also recommended approval of the CUP for the Agricultural Entertainment Business on the entire 67 acres, but has recommended the following uses (identified as not allowed/permitted by code) to be included in the CUP for the property for clarification.

- Children Activities and Games without an Agricultural component
- Seasonal Sales of fresh flower and plant material [if the products are NOT produced on the premises and can NOT meet the definition of "wayside stand"]
- Seasonal Sale of pumpkins [if the products are NOT produced on the premises and can NOT meet the definition of "wayside stand"]
- Seasonal Sale of Christmas trees [if the products are NOT produced on the premises and can NOT meet the definition of "wayside stand"]

With the following conditions:

1. The applicants must obtain any required permits from the Valley Branch Watershed District and the Minnesota Department of Transportation.
2. The designated parking area shall be 30 feet from all property lines.
3. Trash containers must be located inside or screened in an acceptable manner.
4. The property owners may allow the discharge of firearms during times and

dates that the business is not open to the public. This would allow the property owners to continue utilizing their land for private hunting purposes. The discharge of weapons must be in conformance with Lake Elmo City Code requirements.

5. The property owner shall give the city permission to conduct inspections of the property in order to investigate complaints or to provide necessary updates to the city files or City Council.
6. The physical relocation of the existing greenhouse would not require a further conditional use permit amendment as the applicant has identified a future location with this application. Instead the applicant must comply with the process outlined in Section 151.070 Plan Review.
7. If the approved activities are expanded or additional activities or buildings are added, a Conditional Use Permit Amendment must first be approved.
8. If dust complaints are received from the improved parking lot being proposed, the property owner shall implement an acceptable dust abatement technique.

**Motion
Template:**

To recommend denial of the requests, you may use the following motion as a guide:

Move to recommend denial of the CUP for an Agricultural Entertainment Business for Country Sun Farms & Greenhouse on the entire 67 acres.

Move to recommend denial of the rezoning from Rural Residential to Agricultural.

Move to recommend denial of the CUP amendment request.

...(please site reasons for the recommendation)

**Approval
Motion
Template:**

To recommend approval of the requests, you may use the following motion as a guide:

Move to recommend approval of the CUP for an Agricultural Entertainment Business for Country Sun Farms & Greenhouse on the entire 67 acres with the conditions identified in the staff report.

Move to recommend approval of the rezoning from Rural Residential to Agricultural.

Move to recommend approval of the CUP amendment request with the conditions identified in the staff report.

...(use staff's findings provided or cite your own)

cc: Richard and Eileen Bergmann, applicants
Keith Bergmann

To whom it may concern:

After recent discussions with City Staff, I have prepared some additional maps of Country Sun Farm's layout, to better describe the activities taking place at Country Sun Farm.

First, we are actually asking about two different issues with respect to what we are requesting on our CUP requests. First we would like to place additional property which we own into our CUP as the highway 36, Lake Elmo Ave. intersection plans we have been looking at with the city, county and state, essentially wipe out a large portion of our property which is currently in CUP. Basically, when the project goes through, our greenhouse growing range, corn maze, and most of our petting zoo area will be part of a road system. It is for these reasons that we are requesting to add the additional land under our CUP so that when the time comes, we can make plans with the city on how to best move some of these activities from one location to another. We would like to do this at this time, and not wait for the roads to actually start pushing their way through, so that we can make better plans and preparations as we await this project's arrival and completion.

Secondly, we are asking that we be placed under the Agricultural Entertainment Business category, as it was brought to our attention that this new category was created to basically address businesses such as ours. Our current CUP does not outline very well what we are and are not allowed to do on the property, and it would seem that what we have previously been allowed to do would fit very well into this new category. Essentially we are not asking that we change anything other than to categorize our business as something which the city has recently so well defined.

Finally, the maps included:

The red highlighted area shows our existing area under the current CUP. Within this area, we grow field crops, house and care for livestock, and raise flowers. Our fall hayrides also drive around this area and show people our fields and animals, and Halloween decorations which we seasonally put up and take down.

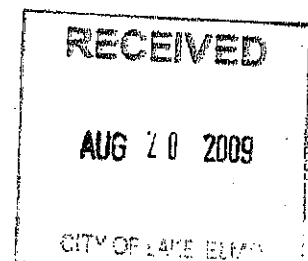
The orange highlighted area shows where on the property we have activities and decorations for the public to walk around at their leisure and explore. Included in this area is our haunted house (which is only viewed from the outside), our petting zoo, our corn maze, the loading and unloading area for the hay ride, and area for kids activities and games.

The blue highlighted area depicts the property which we are asking be placed under our current CUP. The plans for this area would be to move some or all of the existing activities from the orange area to this location depending on what is done with the highway 36, Lake Elmo Ave. intersection project. Also, the greenhouse growing range, and some parking area would possibly have to be moved due to the road project. Finally, the hayrides would drive through fields in this area as the pick up and drop off location for the hayride would possibly also need to be moved.

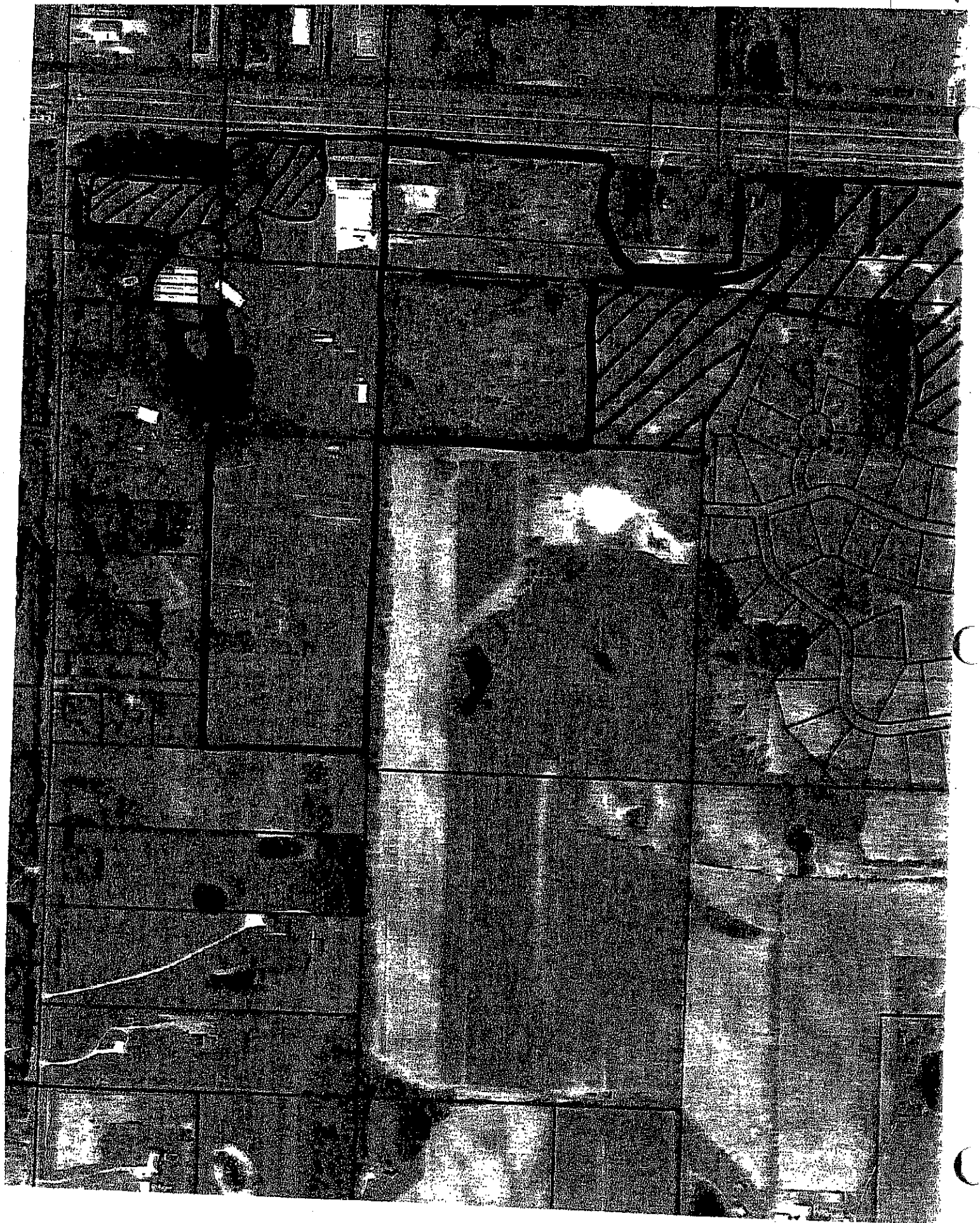
The green highlighted area shows property owned by Country Sun Farm which will be maintained as a buffer area between the activities taking place at Country Sun Farm, and newly built houses in recently added developments. This land is currently in the Minnesota Land Trust, and has been set aside to perpetuate and maintain its current green space and natural elements and features.

Legend

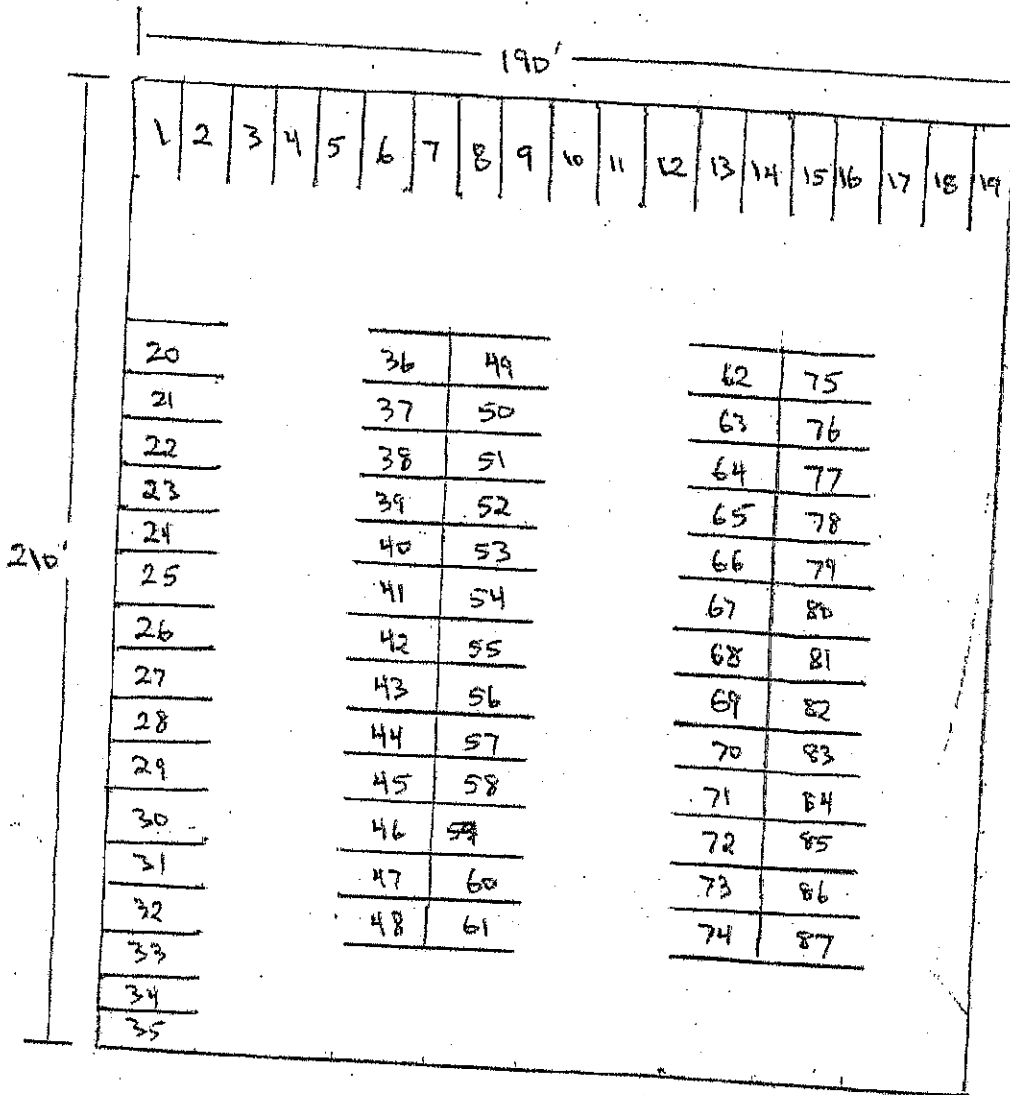
- Current C.U.P. property
- proposed property to be entered in C.U.P.
- A possible greenhouse space 150' x 144'
- B proposed overflow parking area to be covered in crushed limestone and/or recycled pavement millings 210' x 350'
- C proposed overflow parking area to remain grass field 210' x 350'
- D possible future corn maze/display area/hayride area











1/4" = 10'

B - Proposed parking lot layout
 stall size 10' x 20'
 aisle ways 30' wide

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

Resolution No. 2009-047

**A RESOLUTION APPROVING A CONDITIONAL USE PERMIT FOR AN
AGRICULTURAL ENTERTAINMENT BUSINESS ON 67 ACRES FOR COUNTRY
SUN FARM AND GREENHOUSE**

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

WHEREAS, Richard and Eileen Bergmann on behalf of Country Sun Farm and Greenhouse (the "Applicants"), 11211 60th Street North, have submitted an application to the City of Lake Elmo (the "City") for an Agricultural Entertainment Business Conditional Use Permit for the entire 67 acres, to clarify existing uses on the site, and to build an overflow parking lot; a copy of which is on file at city hall;

WHEREAS, notice has been published, mailed and posted pursuant to the Lake Elmo Zoning Ordinance, Section 154.017; and

WHEREAS, the Lake Elmo Planning Commission held a public hearing on said matter on November 23, 2009; and

WHEREAS, the Lake Elmo Planning Commission has submitted its report and recommendation to the City Council as part of a Staff Memorandum dated December 1, 2009; and

WHEREAS, the City Council considered said matter at its December 1, 2009, meeting.

NOW, THEREFORE, based on the testimony elicited and information received, the Board of Adjustment makes the following findings:

FINDINGS

- 1) That the procedures for obtaining said Conditional Use Permit are found in the Lake Elmo Zoning Ordinance, Section 154.018.
- 2) That all the submission requirements of said Section 154.018 have been met by the Applicant.
- 3) That the proposed Conditional Use Permit for an Agricultural Entertainment Business would include the construction of a 39,900 square foot parking lot.

- 4) The proposed Conditional Use Permit for an Agricultural Entertainment Business would encompass all 67 acres and supplant and update all previous CUP permits for this or portions of this property and permit the following uses:
 - a. Corn Maze
 - b. Hay Ride
 - c. Petting Zoo / Farm
 - d. Haunted house
 - e. Seasonal Sales of related Christmas decorations (such as wreaths or other agricultural-type creations)
 - f. Children Activities and Games (both agricultural and non-agricultural in nature) as it is considered incidental to the primary uses on the site

- 5) That the proposed Agricultural Entertainment Business Conditional Use Permit meets the review criteria for Conditional Use Permits (Section 154.018) and the review criteria for Agricultural Entertainment Businesses (Section 154.033).
 - a. In 2008, the City of Lake Elmo approved Ordinance 08-006 which defined Agricultural Entertainment Business and identified the use as conditionally permitted in the Agricultural and Rural Residential zoning districts.
 - c. The addition of the overflow parking area would take advantage of existing disrupted areas as a result of work done by Northern Natural Gas.
 - d. The CUP for an Agricultural Entertainment Business at this time does not permit the increase of intensity of the uses, but instead clarifies the permissible uses on the site for staff and the property owners.
 - e. The conditions outlined in both Section 154.018 for Conditional Use Permits and Section 154.033 for Agricultural Entertainment Businesses are met.
 - f. The proposed overflow parking areas (both improved and grass) would reduce or eliminate the parking that may take place on State Highway 36 by visitors to the site.

- 6) That the following uses on the site are identified as a permitted use in the Agricultural or Rural Residential Zoning Districts:
 - a. Growing of field crops
 - b. Housing and Care of Livestock
 - c. Growing of Flowers

- 7) That the following uses on the site are identified as an Agricultural Sales Business or a Wayside stand, both of which are allowed/permitted within the Agricultural or Rural Residential Zoning District:
 - a. Seasonal Sales of fresh flower and plant material [if the products are produced on the premises or can meet the definition of "wayside stand"]
 - b. Seasonal Sale of pumpkins [if the products are produced on the premises or can meet the definition of "wayside stand"]
 - c. Seasonal Sale of Christmas trees [if the products are produced on the premises or can meet the definition of "wayside stand"]

- 8) That the following use on the site is identified as incidental to the property and is permitted in all zoning districts.
 - a. Halloween / Holiday decorations

CONCLUSIONS AND DECISION

Based on the foregoing, the Applicants' application for a Conditional Use Permit is granted, provided the following conditions are met:

- 1) The applicants must obtain any required permits from the Valley Branch Watershed District and the Minnesota Department of Transportation.
- 2) The designated parking area shall be 30 feet from all property lines.
- 3) Trash containers must be located inside or screened in an acceptable manner.
- 4) The property owners may allow the discharge of firearms during times and dates that the business is not open to the public. This would allow the property owners to continue utilizing their land for private hunting purposes. The discharge of weapons must be in conformance with Lake Elmo City Code requirements.
- 5) The property owner shall give the city permission to conduct inspections of the property in order to investigate complaints or to provide necessary updates to the city files or City Council.
- 6) No additional structures or facilities related to the operation of agricultural entertainment activities shall be installed or utilized without written approval of the City.
- 7) Prior to the commencement of any further agricultural entertainment activities on the land approved hereunder, the applicant shall furnish a detailed sketch depicting the placement of structures and activities for review and approval by the City for conformity with the approval.
- 8) No activity that is not authorized or permissible on the existing lands shall be expanded or relocated onto the additional land approved for an agricultural entertainment use hereunder.
- 9) If dust complaints are received from the improved parking lot being proposed, the property owner shall implement an acceptable dust abatement technique.

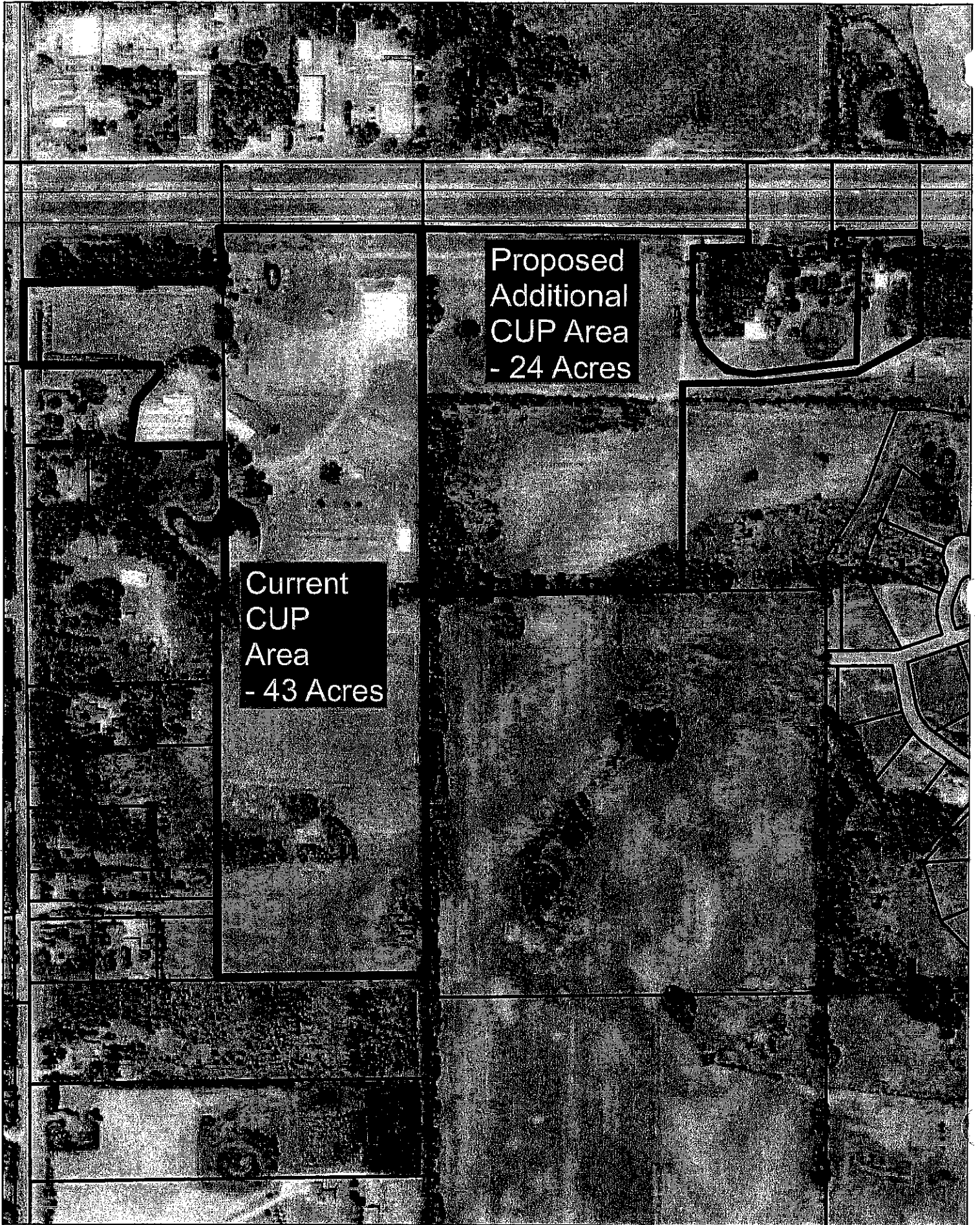
Passed and duly adopted this 1st day of December 2009 by the City Council of the City of Lake Elmo, Minnesota.

Dean A. Johnston, Mayor

ATTEST:

Bruce Messelt, City Administrator

Attachment A; Resolution 2009 - 047



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

Resolution No. 2009-047

**A RESOLUTION APPROVING A CONDITIONAL USE PERMIT FOR AN
AGRICULTURAL ENTERTAINMENT BUSINESS ON 65 ACRES FOR COUNTRY
SUN FARM AND GREENHOUSE**

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

WHEREAS, Richard and Eileen Bergmann on behalf of Country Sun Farm and Greenhouse (the "Applicants"), 11211 60th Street North, have submitted an application to the City of Lake Elmo (the "City") for an Agricultural Entertainment Business Conditional Use Permit for the entire 67 acres, to clarify existing uses on the site, and to build an overflow parking lot; a copy of which is on file at city hall;

WHEREAS, notice has been published, mailed and posted pursuant to the Lake Elmo Zoning Ordinance, Section 154.017; and

WHEREAS, the Lake Elmo Planning Commission held a public hearing on said matter on November 23, 2009; and

WHEREAS, the Lake Elmo Planning Commission has submitted its report and recommendation to the City Council as part of a Staff Memorandum dated December 1, 2009; and

WHEREAS, the City Council considered said matter at its December 1, 2009, meeting.

NOW, THEREFORE, based on the testimony elicited and information received, the Board of Adjustment makes the following findings:

FINDINGS

- 1) That the procedures for obtaining said Conditional Use Permit are found in the Lake Elmo Zoning Ordinance, Section 154.018.

- 2) That all the submission requirements of said Section 154.018 have been met by the Applicant.
- 3) That the proposed Conditional Use Permit for an Agricultural Entertainment Business would include the construction of a 39,900 square foot parking lot.
- 4) That the proposed Conditional Use Permit for an Agricultural Entertainment Business would encompass 65 acres (this does not include the approximately two acres of the parcel that falls to the south and east of 11459 60th Street).
- 5) The proposed Conditional Use Permit for an Agricultural Entertainment Business would supplant and update all previous CUP permits for this property and permit the following uses:
 - a. Corn Maze
 - b. Hay Ride
 - c. Petting Zoo / Farm
 - d. Haunted house
 - e. Seasonal Sales of related Christmas decorations (such as wreaths or other agricultural-type creations)
 - f. Children Activities and Games with an Agricultural component
- 6) That the proposed Agricultural Entertainment Business Conditional Use Permit meets the review criteria for Conditional Use Permits (Section 154.018) and the review criteria for Agricultural Entertainment Businesses (Section 154.033).
 - a. In 2008, the City of Lake Elmo approved Ordinance 08-006 which defined Agricultural Entertainment Business and identified the use as conditionally permitted in the Agricultural and Rural Residential zoning districts.
 - c. The addition of the overflow parking area would take advantage of existing disrupted areas as a result of work done by Northern Natural Gas.
 - d. The CUP for an Agricultural Entertainment Business at this time does not permit the increase of intensity of the uses, but instead clarifies the permissible uses on the site for staff and the property owners.
 - e. The conditions outlined in both Section 154.018 for Conditional Use Permits and Section 154.033 for Agricultural Entertainment Businesses are met.
 - f. The proposed overflow parking areas (both improved and grass) would reduce or eliminate the parking that may take place on State Highway 36 by visitors to the site.
- 7) That the following uses on the site are identified as a permitted use in the Agricultural or Rural Residential Zoning Districts:
 - a. Growing of field crops
 - b. Housing and Care of Livestock
 - c. Growing of Flowers

- 8) That the following uses on the site are identified as an Agricultural Sales Business or a Wayside stand, both of which are allowed/permitted within the Agricultural or Rural Residential Zoning District:
 - a. Seasonal Sales of fresh flower and plant material [if the products are produced on the premises or can meet the definition of "wayside stand"]
 - b. Seasonal Sale of pumpkins [if the products are produced on the premises or can meet the definition of "wayside stand"]
 - c. Seasonal Sale of Christmas trees [if the products are produced on the premises or can meet the definition of "wayside stand"]
- 9) That the following use on the site is identified as incidental to the property and is permitted in all zoning districts.
 - a. Halloween / Holiday decorations
- 10) That the following uses on the site are not allowed/permitted, nor conditionally permitted on the site:
 - a. Children Activities and Games without an Agricultural component
 - b. Seasonal Sales of fresh flower and plant material [if the products are NOT produced on the premises and can NOT meet the definition of "wayside stand"]
 - c. Seasonal Sale of pumpkins [if the products are NOT produced on the premises and can NOT meet the definition of "wayside stand"]
 - d. Seasonal Sale of Christmas trees [if the products are NOT produced on the premises and can NOT meet the definition of "wayside stand"]

CONCLUSIONS AND DECISION

Based on the foregoing, the Applicants' application for a Conditional Use Permit is granted, provided the following conditions are met:

- 1) The Applicants must obtain any required permits from the Valley Branch Watershed District and the Minnesota Department of Transportation.
- 2) The designated parking area shall be 30 feet from all property lines.
- 3) Trash containers must be located inside or screened in an acceptable manner.
- 4) The property owners may allow the discharge of firearms during times and dates that the business is not open to the public. This would allow the property owners to continue utilizing their land for private hunting purposes. The discharge of weapons must be in conformance with Lake Elmo City Code requirements.
- 5) The property owner shall give the city permission to conduct inspections of the property in order to investigate complaints or to provide necessary updates to the city files or City Council.
- 6) No additional structures or facilities related to the operation of agricultural entertainment activities shall be installed or utilized without written approval of the City.
- 7) Prior to the commencement of any further agricultural entertainment activities on the land approved hereunder, the applicant shall furnish a detailed sketch depicting the placement

of structures and activities for review and approval by the City for conformity with the approval.

- 8) No activity that is not authorized or permissible on the existing lands shall be expanded or relocated onto the additional land approved for an agricultural entertainment use hereunder.
- 9) If dust complaints are received from the improved parking lot being proposed, the property owner shall implement an acceptable dust abatement technique.

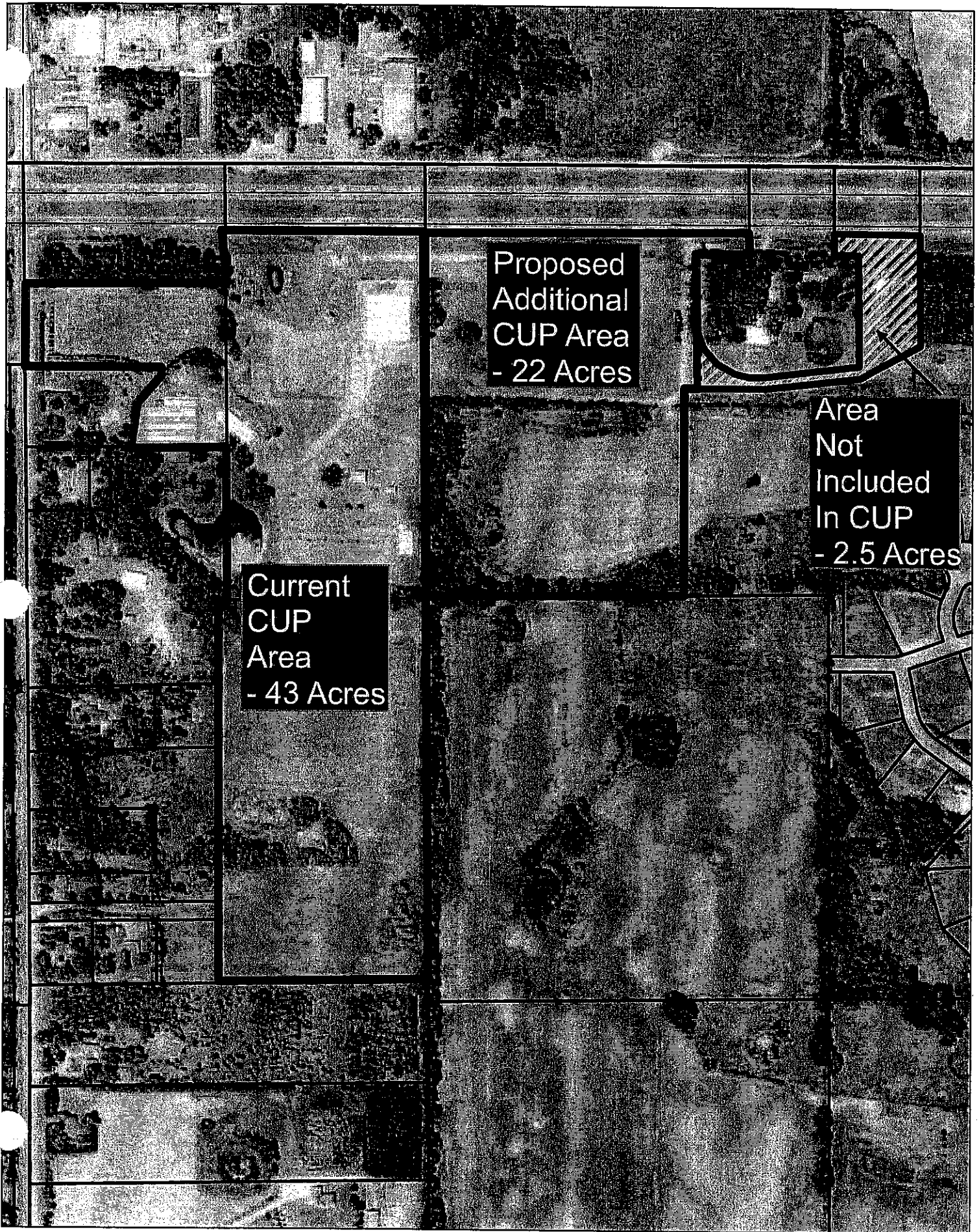
Passed and duly adopted this 1st day of December 2009 by the City Council of the City of Lake Elmo, Minnesota.

Dean A. Johnston, Mayor

ATTEST:

Bruce Messelt, City Administrator

Attachment A; Resolution 2009 - 047



Current
CUP
Area
- 43 Acres

Proposed
Additional
CUP Area
- 22 Acres

Area
Not
Included
In CUP
- 2.5 Acres

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

Resolution No. 2009-047

**A RESOLUTION DENYING A CONDITIONAL USE PERMIT FOR AN
AGRICULTURAL ENTERTAINMENT BUSINESS ON 67 ACRES FOR COUNTRY
SUN FARM AND GREENHOUSE**

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

WHEREAS, Richard and Eileen Bergmann on behalf of Country Sun Farm and Greenhouse (the "Applicants"), 11211 60th Street North, have submitted an application to the City of Lake Elmo (the "City") for an Agricultural Entertainment Business Conditional Use Permit for the entire 67 acres, to clarify existing uses on the site, and to build an overflow parking lot; a copy of which is on file at city hall;

WHEREAS, notice has been published, mailed and posted pursuant to the Lake Elmo Zoning Ordinance, Section 154.017; and

WHEREAS, the Lake Elmo Planning Commission held a public hearing on said matter on November 23, 2009; and

WHEREAS, the Lake Elmo Planning Commission has submitted its report and recommendation to the City Council as part of a Staff Memorandum dated December 1, 2009; and

WHEREAS, the City Council considered said matter at its December 1, 2009, meeting.

NOW, THEREFORE, based on the testimony elicited and information received, the Board of Adjustment makes the following findings:

FINDINGS

- 1) That the procedures for obtaining said Conditional Use Permit are found in the Lake Elmo Zoning Ordinance, Section 154.018.
- 2) That all the submission requirements of said Section 154.018 have been met by the Applicant.
- 3) That the proposed Conditional Use Permit for an Agricultural Entertainment Business would include the construction of a 39,900 square foot parking lot.

- 4) That the proposed Conditional Use Permit for an Agricultural Entertainment Business would encompass 67 acres. However, the applicant has failed to justify the inclusion of approximately 2.5 acres of remote property in the requested Agricultural Entertainment Business.
- 5) The proposed Conditional Use Permit for an Agricultural Entertainment Business would permit the following uses:
 - a. Corn Maze
 - b. Hay Ride
 - c. Petting Zoo / Farm
 - d. Haunted house
 - e. Seasonal Sales of related Christmas decorations (such as wreaths or other agricultural-type creations)
 - f. Children Activities and Games with an Agricultural component
- 6) That the proposed Agricultural Entertainment Business Conditional Use Permit does not meet the review criteria for Conditional Use Permits (Section 154.018) and the review criteria for Agricultural Entertainment Businesses (Section 154.033).
 - a. The inclusion of the 67 acres as an Agricultural Entertainment Business is not in conformance with the Comprehensive Plan as the use is commercial in nature whereas the property is guided for residential development.
 - b. Moreover, applicants own material indicates in a letter from the Washington County Sherriff's Department recently increased concern over traffic issues and enforcement. As such, it is believed that City has sufficient concern over the health, welfare and safety of the community, which will increase with expanded operations.
- 7) That the following uses on the site are identified as a permitted use in the Agricultural or Rural Residential Zoning Districts:
 - a. Growing of field crops
 - b. Housing and Care of Livestock
 - c. Growing of Flowers
- 8) That the following uses on the site are identified as an Agricultural Sales Business or a Wayside stand, both of which are allowed/permitted within the Agricultural or Rural Residential Zoning District:
 - a. Seasonal Sales of fresh flower and plant material [if the products are produced on the premises or can meet the definition of "wayside stand"]
 - b. Seasonal Sale of pumpkins [if the products are produced on the premises or can meet the definition of "wayside stand"]
 - c. Seasonal Sale of Christmas trees [if the products are produced on the premises or can meet the definition of "wayside stand"]
- 9) That the following use on the site is identified as incidental to the property and is permitted in all zoning districts.
 - a. Halloween / Holiday decorations

10) That the following uses on the site are not allowed/permitted, nor conditionally permitted on the site:

- a. Children Activities and Games without an Agricultural component
- b. Seasonal Sales of fresh flower and plant material [if the products are NOT produced on the premises and can NOT meet the definition of "wayside stand"]
- c. Seasonal Sale of pumpkins [if the products are NOT produced on the premises and can NOT meet the definition of "wayside stand"]
- d. Seasonal Sale of Christmas trees [if the products are NOT produced on the premises and can NOT meet the definition of "wayside stand"]

CONCLUSIONS AND DECISION

Based on the foregoing, the Applicants' application for a Conditional Use Permit is denied.

Passed and duly adopted this 1st day of December 2009 by the City Council of the City of Lake Elmo, Minnesota.

Dean A. Johnston, Mayor

ATTEST:

Bruce Messelt, City Administrator

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

ORDINANCE NO. 08-021

**AN ORDINANCE APPROVING THE REZONING APPLICATION OF THE 33.44
ACRE PROPERTY AT 01-029-21-21-0007 FROM RURAL RESIDENTIAL TO
AGRICULTURAL FOR COUNTRY SUN FARM AND GREENHOUSE**

WHEREAS, the City Council of the City of Lake Elmo received an application from Richard and Eileen Bergmann to rezone from Rural Residential to Agricultural the 33.44 acre parcel found at:

Sect-01 Twp-029 Range-021 PT NE1/4-NW1/4 & PT W1/2-NW1/4 NE1/4 012921 EXC THEREFROM PT DESC AS FOLL COM AT NE COR SD W1/2-NW1/4-NE1/4 THN S01DEG09' E ALG E LN SD W1/2 DIST 293.43 FT TO INTER WITH SLY R/W HWY 36 THN S88DEG57'44"W ALG SD SLY R/W DIST 557.70FT TO POB THN S01DEG09'E PARL WITH SD E LN OF W1/2 DIST 360.83FT THN S82DEG28'34"W DIST 318.69FT THN WLY & NWLY DIST 333.51FT ALG TCRV TO RT RAD 197.62FT CENT ANG 96DEG41'43" THN N0DEG 49'38"W TANG TO SD CRV DIST 199.75FT TO INTER WITH SD SLY R/W THN N88DEG57'44"E ALG SD R/W DIST 535.14FT TO POB SUBJ TO EASE EXCEPT THAT PT NE1/4-NW1/4 & PT OF W1/2-NW1/4-NE1/4 S01T29R21 AS FOLL: BEG AT NE COR OF SD W1/2-NW1/4-NE1/4 THN ON BRG S89DEG47'30"W ALG N LN OF SD W1/2-NW1/4-NE1/4 DIST 353.59FT THN S0DEG19'54"E DIST 294.59FT TO INTER OF SLY R/W LN STATE HWY 36 THN CONT S0DEG19'54"E DIST 292.32FT THN S61DEG31'55" W DIST 226.42FT THN S83DEG20' 18"W DIST 323.13FT THN S89DEG 45'35"W DIST 257.62FT THN S0DEG00'32"E DIST 675.77FT TO S LN OF SD NE1/4-NW1/4 THN N88DEG59'11"E ALG S LN 474.94 FT TO SE COR OF SD NE1/4-NW1/4 THN N88DEG58'56"E ALG S LN OF SD W1/2-NW1/4-NE1/4 DIS 660.99 FT TO SE COR OF SD W1/2-NW1/4- NE1/4 THN N0DEG19'54"W ALG E LN OF SD W1/2-NW1/4-NE1/4 DIST 1095.94FT TO INTER OF SD STATE HWY 36 THN N0DEG19'54"W DIST 294.39FT TO POB SUBJ TO EASEMENT

WHEREAS, the Planning Commission reviewed the application, held a public hearing at their regular meeting held November 23, 2009, and recommended approval of the rezoning request;

NOW, THEREFORE, BE IT ORDAINED, by the City Council of the City of Lake Elmo, Washington County, Minnesota, the rezoning of the parcel from Rural Residential to Agricultural is approved for the following reasons:

1. The rezoning of the property from Rural Residential to Agricultural is in conformance with the Lake Elmo Comprehensive Plan.
2. By allowing the rezoning, the minimum lot size would increase, thereby eliminating the ability to subdivide the property. This parcel would be retained in

its current configuration, easing the transition to its future guided use as identified by the Comprehensive Plan for RAD – 0.45 DU/Acre (Rural Agricultural Density).

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. 08-021 was adopted on this 1st day of December, 2009, by a vote of ____ Ayes and ____ Nays.

Dean Johnston, Mayor

ATTEST:

Bruce Messelt, City Administrator

This Ordinance No. 08-021 was published on the ____ day of ____, 2009.

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

Resolution No. 2009-052

**A RESOLUTION DENYING A REZONING APPLICATION OF THE 33.44 ACRE
PROPERTY AT 01-029-21-21-0007 FROM RURAL RESIDENTIAL TO
AGRICULTURAL FOR COUNTRY SUN FARM AND GREENHOUSE**

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

WHEREAS, Richard and Eileen Bergmann on behalf of Country Sun Farm and Greenhouse (the "Applicants"), 11211 60th Street North, have submitted an application to the City of Lake Elmo (the "City") to rezone a 33.44 acre parcel from Rural Residential to Agricultural. The parcel is described as follows:

Sect-01 Twp-029 Range-021 PT NE1/4-NW1/4 & PT W1/2-NW1/4 NE1/4 012921
EXC THEREFROM PT DESC AS FOLL COM AT NE COR SD W1/2-NW1/4-NE1/4
THN S01DEG09' E ALG E LN SD W1/2 DIST 293.43 FT TO INTER WITH SLY R/W
HWY 36 THN S88DEG57'44"W ALG SD SLY R/W DIST 557.70FT TO POB THN
S01DEG09'E PARL WITH SD E LN OF W1/2 DIST 360.83FT THN S82DEG28'34"W
DIST 318.69FT THN WLY & NWLY DIST 333.51FT ALG TCRV TO RT RAD
197.62FT CENT ANG 96DEG41'43" THN N0DEG 49'38"W TANG TO SD CRV DIST
199.75FT TO INTER WITH SD SLY R/W THN N88DEG57'44"E ALG SD R/W DIST
535.14FT TO POB SUBJ TO EASE EXCEPT THAT PT NE1/4-NW1/4 & PT OF
W1/2-NW1/4-NE1/4 S01T29R21 AS FOLL: BEG AT NE COR OF SD W1/2-NW1/4-
NE1/4 THN ON BRG S89DEG47'30"W ALG N LN OF SD W1/2-NW1/4-NE1/4 DIST
353.59FT THN S0DEG19'54"E DIST 294.59FT TO INTER OF SLY R/W LN STATE
HWY 36 THN CONT S0DEG19'54"E DIST 292.32FT THN S61DEG31'55" W DIST
226.42FT THN S83DEG20' 18"W DIST 323.13FT THN S89DEG 45'35"W DIST
257.62FT THN S0DEG00'32"E DIST 675.77FT TO S LN OF SD NE1/4-NW1/4 THN
N88DEG59'11"E ALG S LN 474.94 FT TO SE COR OF SD NE1/4-NW1/4 THN
N88DEG58'56"E ALG S LN OF SD W1/2-NW1/4-NE1/4 DIS 660.99 FT TO SE COR
OF SD W1/2-NW1/4- NE1/4 THN N0DEG19'54"W ALG E LN OF SD W1/2-NW1/4-
NE1/4 DIST 1095.94FT TO INTER OF SD STATE HWY 36 THN N0DEG19'54"W
DIST 294.39FT TO POB SUBJ TO EASEMENT

WHEREAS, notice has been published, mailed and posted pursuant to the Lake Elmo Zoning Ordinance, Section 154.017; and

WHEREAS, the Lake Elmo Planning Commission held a public hearing on said matter on November 23, 2009; and

WHEREAS, the Lake Elmo Planning Commission has submitted its report and recommendation to the City Council as part of a Staff Memorandum dated December 1, 2009; and

WHEREAS, the City Council considered said matter at its December 1, 2009, meeting.

NOW, THEREFORE, based on the testimony elicited and information received, the Board of Adjustment makes the following findings:

FINDINGS

- 1) That the procedures for obtaining said Map Amendment are found in the Lake Elmo Zoning Ordinance, Section 154.020.
- 2) That all the submission requirements of said Section 154.020 have been met by the Applicant.
- 3) That the proposed rezoning of the property is from Rural Residential to Agricultural for the entire 33.44 acres.
- 4) The Rural Residential zoning district has a 10 acre minimum lot size requirement while the Agricultural zoning district has a 40 acre minimum lot size. The rezoning of the parcel to Agricultural would result in non-conformance to the minimum lot size as the parcel is 33.44 acres.
- 5) Relocating the greenhouses would still allow for reasonable use of the current property, thereby resulting in a de facto expansion of business activity and, with it, traffic concerns and other public health, life and safety considerations.
- 6) The proposed rezoning would be preemptive in nature as the applicant's intent is to move a greenhouse to the property which may or may not be in conflict with a currently unknown, unplanned or unscheduled future reconfiguration of the intersection of County Road 17 and State Highway 36.
- 7) As public infrastructure would be significantly impacted by any re-zoning and subsequent access road and greenhouse relocation, the public stands to have such disruption of public services occur on multiple times and at significantly increased cost due to this premature rezoning;
- 8) The applicant retains reasonable use of the affected property today and, with approval of the Agricultural Entertainment Business CUP, is allowed for reasonable expansion of said business within the acceptable parameters established by the City.

CONCLUSIONS AND DECISION

Based on the foregoing, the Applicants' application for rezoning the 33.44 acre parcel is denied.

Passed and duly adopted this 1st day of December 2009 by the City Council of the City of Lake Elmo, Minnesota.

Dean A. Johnston, Mayor

ATTEST:

Bruce A. Messelt, City Administrator

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

Resolution No. 2009-051

**A RESOLUTION APPROVING THE CONDITIONAL USE PERMIT AMENDMENT
TO INCLUDE 24 ACRES TO THE EXISTING 43 ACRES FOR COUNTRY SUN FARM
AND GREENHOUSE AT 11211 60TH STREET NORTH**

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

WHEREAS, Richard and Eileen Bergmann on behalf of Country Sun Farm and Greenhouse (the “Applicants”), 11211 60th Street North, have submitted an application to the City of Lake Elmo (the “City”) for an amendment to the existing Conditional Use Permit to add 24 acres to the existing 43 acres and to build an overflow parking lot;

WHEREAS, notice has been published, mailed and posted pursuant to the Lake Elmo Zoning Ordinance, Section 154.017; and

WHEREAS, the Lake Elmo Planning Commission held a public hearing on said matter on November 23, 2009; and

WHEREAS, the Lake Elmo Planning Commission has submitted its report and recommendation to the City Council as part of a Staff Memorandum dated December 1, 2009; and

WHEREAS, the City Council considered said matter at its December 1, 2009, meeting.

NOW, THEREFORE, based on the testimony elicited and information received, the Board of Adjustment makes the following findings:

FINDINGS

- 1) That the procedures for obtaining said Conditional Use Permit Amendment and are found in the Lake Elmo Zoning Ordinance, Section 154.018.
- 2) That all the submission requirements of said Section 154.018 have been met by the Applicant.
- 3) That the proposed Conditional Use Permit Amendment is to include an additional 24 acres to the existing 43 acres (See Attachment A) and to allow construction of a 39,900 square foot overflow parking lot. The applicants are intending to move existing structures (greenhouses) and uses (hay ride and corn maze) to this area at a time in the future if and when the reconfiguration of County Road 17 and State Highway 36 and a subsequent frontage road displaces those uses and structures. The Conditional Use Permit amendment would allow the movement of the following use and structure:

- a. Greenhouse growing range
 - b. Sale of concessions
 - c. Seasonal Sales of fresh flower and plant material, pumpkins, and Christmas trees
(This is **not** contingent upon whether or not the produce was grown on the site.
Produce can be grown elsewhere and sold on this property.)
- 4) That the Conditional Use Permit Amendment meets the review criteria for Conditional Use Permits (Section 154.018).
- a. The movement of a greenhouse to a location more remote from existing residential homes will reduce negative impacts.
 - b. The proposed overflow parking areas (both improved and grass) would reduce or eliminate the parking that may take place on State Highway 36 by visitors to the site.

CONCLUSIONS AND DECISION

Based on the foregoing, the Applicants' application for a Conditional Use Permit amendment is granted, provided the following conditions are met:

- 1) The applicants must obtain any required permits from the Valley Branch Watershed District and the Minnesota Department of Transportation.
- 2) The designated parking area shall be 30 feet from all property lines.
- 3) The property owner shall give the city permission to conduct inspections of the property in order to investigate complaints or to provide necessary updates to the city files or City Council.
- 4) The physical relocation of the existing greenhouse would not require a further conditional use permit amendment as the applicant has identified a future location with this application. Instead the applicant must comply with the process outlined in Section 151.070 Plan Review.
- 5) If the approved activities are expanded or additional activities or buildings are added, a Conditional Use Permit Amendment must first be approved.
- 6) If dust complaints are received from the improved parking lot being proposed, the property owner shall implement an acceptable dust abatement technique.

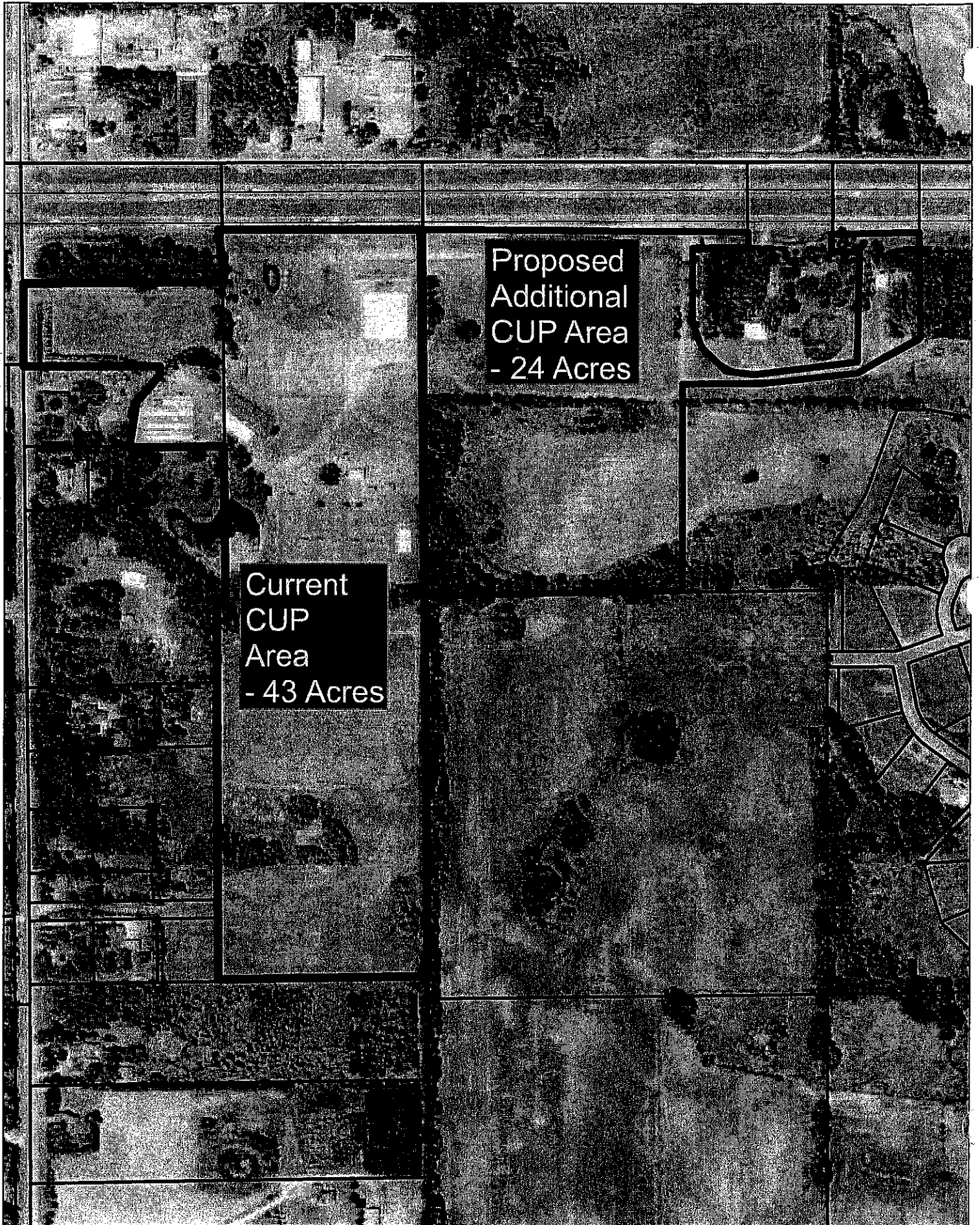
Passed and duly adopted this 1st day of December 2009 by the City Council of the City of Lake Elmo, Minnesota.

ATTEST:

Dean A. Johnston, Mayor

Bruce A. Messelt, City Administrator

Attachment A; Resolution 2009 - 051



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

Resolution No. 2009-051

**A RESOLUTION DENYING THE CONDITIONAL USE PERMIT AMENDMENT TO
INCLUDE 24 ACRES TO THE EXISTING 43 ACRES FOR COUNTRY SUN FARM
AND GREENHOUSE AT 11211 60TH STREET NORTH**

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

WHEREAS, Richard and Eileen Bergmann on behalf of Country Sun Farm and Greenhouse (the "Applicants"), 11211 60th Street North, have submitted an application to the City of Lake Elmo (the "City") for an amendment to the existing Conditional Use Permit to add 24 acres to the existing 43 acres and to build an overflow parking lot;

WHEREAS, notice has been published, mailed and posted pursuant to the Lake Elmo Zoning Ordinance, Section 154.017; and

WHEREAS, the Lake Elmo Planning Commission held a public hearing on said matter on November 23, 2009; and

WHEREAS, the Lake Elmo Planning Commission has submitted its report and recommendation to the City Council as part of a Staff Memorandum dated December 1, 2009; and

WHEREAS, the City Council considered said matter at its December 1, 2009, meeting.

NOW, THEREFORE, based on the testimony elicited and information received, the Board of Adjustment makes the following findings:

FINDINGS

- 1) That the procedures for obtaining said Conditional Use Permit Amendment and are found in the Lake Elmo Zoning Ordinance, Section 154.018.
- 2) That all the submission requirements of said Section 154.018 have been met by the Applicant.
- 3) That the proposed Conditional Use Permit Amendment is to include an additional 24 acres to the existing 43 acres (See Attachment A) and to allow construction of a 39,900 square foot overflow parking lot. The applicants are intending to move existing structures (greenhouses) and uses (hay ride and corn maze) to this area at a time in the future if and when the reconfiguration of County Road 17 and State Highway 36 and a subsequent frontage road displaces those uses and structures. The Conditional Use Permit amendment would allow the movement of the following use and structure:

- a. Greenhouse growing range
 - b. Sale of concessions
- 4) That the uses identified in the existing Conditional Use Permit are not allowed without the rezoning of the property to the Agricultural zoning district.
 - 5) The proposed amendment, as stated by the applicant, is intended to allow the movement of an existing greenhouse to the property due to a future reconfiguration of County Road 17 and State Highway 36. This is preemptive in nature as a plan for the reconfiguration has not been approved, nor is a timeline identified for when the project will take place.
 - a. The area identified for movement of the greenhouse may be in conflict with a future frontage road, public utilities, or other improvements in conjunction with a future reconfiguration of the interchange.
 - 6) That the Conditional Use Permit Amendment does not meet the review criteria for Conditional Use Permits (Section 154.018).
 - a. Without road reconfiguration, and/or until such road reconfiguration occurs, the applicant would still have reasonable use of existing property, in addition to the property identified within this CUP.
 - 7) The expansion of the CUP property will likely lead to an expansion of the existing uses which would negatively impact traffic conditions on the site.
 - a. Applicants own application material includes MNDOT concern over increased traffic problems, leading the City to conclude serious community life, health and safety considerations would be detrimentally harmed by approval of this CUP.

CONCLUSIONS AND DECISION

Based on the foregoing, the Applicants' application for a Conditional Use Permit amendment is denied.

Passed and duly adopted this 1st day of December 2009 by the City Council of the City of Lake Elmo, Minnesota.

Dean A. Johnston, Mayor

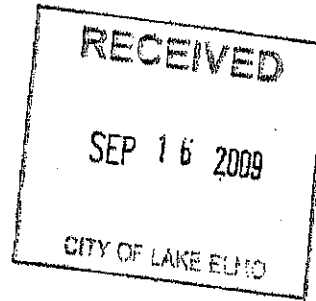
ATTEST:

Bruce A. Messelt, City Administrator



Minnesota Department of Transportation

Metropolitan District
Waters Edge
1500 West County Road B-2
Roseville, MN 55113-3174



September 15, 2009

Mr. Kyle Klatt
Planning Director
City of Lake Elmo
3800 Laverne Avenue North
Lake Elmo, MN 55042

SUBJECT: Country Sun Farm and Garden Center
(Mn/DOT) Review #S09-034
SE Quadrant of TH 36 and Lake Elmo Ave (CR 17)
Lake Elmo/Washington County
Control Section 8204

Dear Mr. Klatt:

The Minnesota Department of Transportation (Mn/DOT) has reviewed the above referenced site plan. Please address the following comments before any further development:

Mn/DOT supports the owner's plan for parking expansion. This should provide enough parking on-site accessibility to eliminate the need for parking on the TH 36 shoulder, which has serious safety concerns. Currently, the property has right-in right-out access off TH36 as well as reasonable access off CSAH 17. Washington County has been reviewing concepts for a potential interchange at Lake Elmo Ave (CSAH17) /TH36 in the future. A future interchange at this location will impact this property and its current access locations.

Water Resources:

A Mn/DOT drainage permit will be required to ensure that current drainage rates to Mn/DOT right-of-way will not be increased. The additional parking area will add impervious surface, which could increase flow to Mn/DOT Right-of-Way. Also, with the current submittal it is unknown if any drainage work or grading is proposed on Mn/DOT Right-of-Way.

The drainage permit application along with a current plan sheets, site layout, and copies of the information listed below, should be submitted to:

Minnesota Department of Transportation
Metropolitan District - Permit Office
1500 W. County Road B-2
Roseville, MN 55113

The following information must be submitted with the drainage permit application:

- 1) A grading plan showing existing and proposed contours,
- 2) Drainage area maps for the proposed project showing existing and proposed drainage areas. Any off-site areas that drain to the project area should also be included in the drainage area maps. The direction of flow for each drainage area must be indicated by arrows,
- 3) Drainage computations for pre and post construction conditions during the 2, 10, 50 and 100 year rain events, and

4) An electronic copy of any computer modeling used for the drainage computations.

Please direct questions concerning drainage issues to Bryce Fossand (651-234-7529) or (bryce.fossand@dot.state.mn.us) of Mn/DOT's Water Resources section.

Permits:

As noted previous, a drainage permit is required. Further, any work that impacts Mn/DOT right-of-way will require a permit. Permit forms are available from MnDOT's utility website at <http://www.dot.state.mn.us/utility/forms/index.html>. Please include 1 full size plan set and 1 11x17 plan set for each application. Please direct any questions regarding permit requirements to Buck Craig, MnDOT's Metro Permits Section, at (651) 234-7911.

As a reminder, please address all initial future correspondence for development activity such as plats and site plans to:

Development Reviews
Mn/DOT - Metro Division
Waters Edge
1500 West County Road B-2
Roseville, Minnesota 55113

Mn/DOT document submittal guidelines require either:

1. One (1) electronic pdf. version of the plans (the electronic version of the plan needs to be developed for 11" x 17" printable format with sufficient detail so that all features are legible);
2. Seven (7) sets of full size plans.

If submitting the plans electronically, please use the pdf. format. Mn/DOT can accept the plans via e-mail at metrodevreviews@state.mn.us provided that each separate e-mail is less than 20 megabytes. Otherwise, the plans can be submitted on a compact disk.

If you have any questions regarding this review please feel free to contact me at (651) 234-7792.

Sincerely,

Jon F. Solberg
Senior Planner



Copy via Groupwise to:

Ann Braden
Richard Scarrow
Adam Josephson
Buck Craig
Douglas Nelson
Wayne Lemaniak
Tod Sherman
Bryce Fossand

RESOLUTION
CITY OF LAKE ELMO
WASHINGTON COUNTY, MINNESOTA

Document
442652
1/4/83

A RESOLUTION GRANTING A CONDITIONAL USE PERMIT
TO Richard Bergmann - Berry Farm Greenhouse
FOR Greenhouse and sales lot
IN THE AG ZONING DISTRICT FROM JANUARY 1, 1983 through
DECEMBER 31, 1983.

WHEREAS, Richard Bergman
has applied for a Conditional Use Permit for a Greenhouse & sales lot
on S 534.9 ft of the N 925.9 ft of the W 1/2 of the NW 1/4 of
Sec. 1. T 29, R21W.

at 5833 Lake Elmo Ave. N.
in the City of Lake Elmo from January 1, 1983 through December 31,
1983; and has submitted all required information and fees for the
application for such permit; and,

WHEREAS, Section 301.070 D. 1. b. (1) and (5) of the
Municipal Code of Lake Elmo requires a Conditional Use Permit to
operate a greenhouse and sales lot
in the City of Lake Elmo; and,

WHEREAS, Sections 301.130 C. D. E. F. G.
of the Municipal Code of Lake Elmo sets forth the conditions under
which said permit may be granted and such use permitted; and,

WHEREAS, the applicant meets or exceeds all the conditions
set forth above;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the
City of Lake Elmo,

THAT, the Conditional Use Permit for a greenhouse and sales lot
at 5833 Lake Elmo Ave. N.

is hereby granted to Richard Bergman
from January 1, 1983 through December 31, 1983, subject to
the following conditions:

This Conditional Use Permit may be rescinded,
after a 2 week notice and a public hearing,
if the City Council finds that the public health,
safety, or welfare is jeopardized.

ADOPTED, this the 4th day of January,
1983, by the City Council of the City of Lake Elmo,
Washington County, Minnesota

Signed:

Maynard L. Eder
Maynard L. Eder, Mayor

Attest:

Laurence E. Whittaker
Laurence E. Whittaker
City Administrator

CITY OF LAKE ELMO
WASHINGTON COUNTY, MINNESOTA

RESOLUTION NO. 2004-039

A RESOLUTION AMENDING THE COUNTRY SUN FARM GREENHOUSE
CONDITIONAL USE PERMIT AND APPROVING THE SECTION 520 SITE PLAN

WHEREAS, Richard Bergman, Country Sun Farm Greenhouses, at 11211 60th Street North, has made application to amend their Conditional Use Permit to add green house structures of 1,920 square feet (each) to either end (east and west) of the existing retail structure.

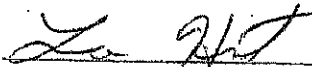
WHEREAS, at its April 26, 2004 meeting, the Planning Commission recommended approval of Richard Bergman's request to amend the Conditional Use Permit for the addition of two green houses at Country Sun Farm based on the following Findings:

1. Although the additional growing function at this facility may also result in additional retail function, the traffic safety concern is mitigated by the traffic light that is about to be installed at Highway 36 and Lake Elmo Avenue.
2. The planned addition to the facility will be used as a growing space, though it may have a duplicate retail use
3. The applicants are a family whose business is deeply rooted in agriculture. They are trying to pass on an agricultural business from one generation to another, and with the hope to pass it on to the next generation in the future. Their business is primarily growing and the sale of agricultural products grown on site.

WHEREAS, at its May 4, 2004 meeting, the Lake Elmo City Council reviewed the application for a Section 520 Site Plan amendment of Richard Bergmann and Country Sun Farm, plans staff dated April 22, 2004.


NOW, THEREFORE, BE IT RESOLVED, that the Lake Elmo City Council approves the application of Richard Bergman, Country Sun Farm Green houses, to amend the Conditional Use Permit and Site Plan for two additions to the retail sales building of approximately 2,000 square feet each, per plans staff dated April 22, 2004, and based on the Findings recommended by the Planning Commission.

ADOPTED by the Lake Elmo City Council on the 4th day of May, 2004.



Lee Hunt, Mayor

ATTEST:



Charles E. Dillerud
Acting City Administrator