

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

May 4, 2010

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 April 20, 2010 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. CSAH 13 (Ideal Avenue/Olson Lake Trail) from TH 5 to 50th Street- Resolution No. 2010-018, Supporting an Engineering and Traffic Investigation to Determine the Reasonable and Safe Speed Limit
 - 4. Authorize City Administrator Professional Development
 - 5. Appointments to the Park Commission
 - 6. Authorize Temporary On-Call Building Inspection Services for May-June 2010
 - 7. 2010 Seal Coat Project – Accepting bids, awarding contract and approval of Change Order No. 1

J. REGULAR AGENDA:

8. Keats Avenue Street and Watermain Improvements – Authorization for Geotechnical Services.
9. Street Capital Improvement Program – Authorization to Conduct the Annual Pavement Management Street Rating Services
10. South Washington Watershed District – Request for Resolution of Concurrence for Boundary Adjustment Petition
11. Comprehensive Plan Amendment for Senior Living and Farm School – Resolution No. 2010-017

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 Meeting Minutes

April 20, 2010

Mayor Johnston called the meeting to order at 7:04 p.m.

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

Also Present: Administrator Messelt, City Engineers Griffin and Stempski, Attorney Eid, Planning Director Klatt, Finance Director Bouthilet, and City Clerk Lumby

APPROVAL OF AGENDA

MOTION: Council Member Park moved to approve the April 20, 2010 City Council agenda as presented. Council Member DeLapp seconded the motion. The motion passed 4-0.

GROUND RULES:

APPROVED MINUTES:

The April 6, 2010 City Council minutes were approved by consensus.
The February 16, 2010 City Council minutes were approved by consensus.

PUBLIC COMMENTS/INQUIRIES: None

CONSENT AGENDA:

MOTION: Council Member Smith moved to approve the Consent Agenda as presented. Council Member Park seconded the motion. The motion passed 4-0.

- Approve payment of disbursements and payroll in the amount of \$123,218.24
- Approve the purchase of approximately 245 new water meters at a total price not to exceed \$70,000.00
- Approve donation from the City's General Fund in the amount of \$1,000.00 to the Firefighters' Relief Association and to authorize the Mayor and direct City staff to prepare and execute the necessary Budget Adjustment
- Approve Resolution No. 2010-016 support Bond Referendum Resolution Supporting the Mahtomedi Public Schools

REGULAR AGENDA

Promotion of Andrea Friedrich and Tom Steinman from probation member to Firefighter
Chief Malmquist requested the City Council approve the promotion of two probationary members to Firefighters.

MOTION: Council Member DeLapp moved to promote probationary members Andrea Friedrich and Tom Steinman from probation to Firefighter status. Council Member Smith seconded the motion. The motion passed 4-0.

Presentation of CSAH13 (Ideal Ave./Olson Lake Trail) – Driver feedback sign and roadway study

Joe Gustafson, Washington County Traffic Engineer, provided a presentation on the Driver Feedback sign and Roadway Study for CSAH 13 (Ideal Avenue/Olson Lake Trail) completed by Washington County.

Bob VanZandt, 8110 Hidden Bay Trail, Tri-Lakes Assoc. rep, stated he thought more than 3,000 cars a day travelled on this road with PINS and Target located off of Highway 5. He pointed out how unsafe it was for the homeowners backing out of their driveways onto Ideal Avenue due to the speed of the travelling cars and the inability to see the cars coming up the hill.

The Council discussed the results of the speed study and safety issues.

The Council asked the City Administrator to prepare a resolution requesting a speed study with the support of the City of Oakdale and requested the temporary speed sign be left in place as long as possible, perhaps even until the time of the study.

Eder's Century Pines preliminary and final plat: Resolution No. 2010-014

The City Council is being asked to review a preliminary and final plat for a subdivision to be called Eder's Century Pines on Keats Avenue. Staff has found that the subdivision complies with all applicable zoning and subdivision requirements, and is recommending approval of both the preliminary plat and final plat as submitted.

MOTION: Mayor Johnston moved to adopt Resolution No. 2010-014 approving a Preliminary and Final Plat for Eder's Century Pines subject to the conditions outlined in the staff report. Council Member Park seconded the motion. The motion passed 4-0.

Approval of proposed encroachment easement agreements

The City Council is being asked to authorize the execution of four easement encroachment agreements allowing residents to construct improvements (in these case fences) within drainage and utility easements on private property.

MOTION: Council Member DeLapp moved to authorize the execution of Easement Encroachment Agreements for:

Mendez Property - 5650 57th Street Circle N. – fence

Koepke Property - 3435 Isle Court N. – fence

Myers Property - 11711 56th Street N. – fence

Hoagland Property - 10024 Tapestry Road – fence

Council Member Park seconded the motion. The motion passed 4-0.

Amending Chapters 94, 150, 151, 152, 153 and 154 of the City Code to bring them into conformance with the Storm Water and Erosion Sediment Control ordinance; Ordinance 08-024, Resolution No 2010-013

The City Council is being asked to review and approve proposed minor amendments to Chapters 94, 150, 151, 152, 153, 154 of the City Code to incorporate references go and improve consistency with Chapter 150. Chapter 150 regulates storm water and erosion and sediment control throughout the City.

The proposed changes are not intended to alter regulations, but instead to consolidate the information, as applicable, into one area of the code.

MOTION: Council Member Smith moved to approve Ordinance 08-024 approving the code amendments and Resolution No. 2010-013 authorizing summary publication of this Ordinance. Council Member DeLapp seconded the motion. The motion passed 4-0.

2010 Street and Water Quality Improvements – Approval of Plans and Specifications and Ordering Advertisement for Bids, Resolution No. 2010-015

Ryan Stempski, Assistance City Engineer, reported the City Council is being asked to approve the plan and specifications for the 2010 Street and Water Quality Improvements and order advertisement for bids.

There are six rainwater gardens proposed for the 2010 Street and Water Quality Improvements. At the April 8th Valley Branch Watershed District Board meeting the City received approval of the VBWD Community Grant and will receive 50% reimbursement for these water quality improvements.

MOTION: Council Member Smith moved to approve Resolution No. 2010-015 Approving the Plans and Specifications for the 2010 Street and Water Quality Improvements and Ordering the Advertisement for Bids. Council Member Park seconded the motion. The motion passed 4-0.

Minnesota State Building Permit Surcharge

The Building Dept. is requesting the City Council prepare a change to the surcharge fee schedule for one year in response to recent state of Minnesota Action. The temporary fee would increase effective July 1st, 2010 from the fixed rate of \$0.50 for permits based on fixed fees, to an increase of \$5.00 for "Permits based on fixed fees".

MOTION: Council Member Smith moved to direct staff to prepare an amendment to the current fee schedule for permits based on fixed Fees from \$0.50 to \$5.00, effective July 1st, 2010, forced upon by State of Minnesota. Council Member Park seconded the motion. The motion passed 4-0.

The Council adjourned the meeting at 8:50 p.m.

Respectfully submitted by Sharon Lumby, City Clerk

DRAFT



MAYOR & COUNCIL COMMUNICATION

DATE: 5/04/2010
CONSENT
ITEM #: 2
MOTION *as part of Consent Agenda*

AGENDA ITEM: Approve Disbursements and Payroll in the Amount of \$ 169,394.16

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 and payroll in the amount of \$ 169,394.16. No specific motion is needed, as this is recommended to be part of the overall approval of the *Consent Agenda*.

BACKGROUND INFORMATION: The City of Lake Elmo has fiduciary authority and responsibility to conduct normal business operation. Below is a summary of current claims to be disbursed and payroll to be paid in accordance with State law and City policies and procedures.

Claim #	Amount	Description
ACH	\$ 7,333.55	Payroll Taxes to IRS 04/22/2010
ACH	\$ 1,111.27	Payroll Taxes to MN Dept. of Revenue 04/22/2010
DD 2713 --DD 2747	\$ 24,713.08	Payroll Dated 04/22/2010 (Direct Deposit)
35540 - 35550	\$ 7,867.15	Payroll Dated 04/22/2010
35551 - 35587	\$ 128,369.11	Accounts Payable Dated 05/04/2010
TOTAL	\$ 169,394.16	

STAFF REPORT: City staff has complied and reviewed the attached set of claims. All appears to be in order and consistent with City budgetary and fiscal policies and Council direction

RECOMMENDATION: It is recommended that the City Council approve as part of the Consent Agenda proposed disbursements in the amount of \$ 169,394.16.

Alternatively, the City Council does have the authority to remove this item from the Consent Agenda or a particular claim from this item and further discuss and deliberate prior to taking action. If done so, the appropriate action of the Council following such discussion would be:

“Move to approve the April 20th, 2010 Disbursement and Payroll, as Presented [*and modified*] herein.”

ATTACHMENTS:

1. Accounts Payable Dated 05/04/2010

SUGGESTED ORDER OF BUSINESS (*if removed from the 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: joan Z
 Printed: 04/28/2010 - 1:36 PM
 Batch: 004-04-2010

Invoice #	Inv Date	Amount	Quantity	Pmt Date	Description	Reference	Task	Type	PO #	Close POLine #
ACS Animal Control Services										
614	04/24/2010	700.00	0.00	04/06/2010	Animal Control Services 3/29-4/25/2010		-	No		0000
101-420-2700-43150	Contract Services	700.00								
	614 Total:	700.00								
	ACS Total:	700.00								
ARAM Aramark, Inc.										
629-6972893	04/15/2010	57.33	0.00	04/06/2010	Uniforms		-	No		0000
101-430-3100-44170	Uniforms	57.33								
	629-6972893 Total:	54.29								
629-6974717	04/26/2010	54.29	0.00	04/06/2010	Monthly Rug Service Station #2		-	No		0000
101-410-1940-44010	Repairs/Maint Contractual Bldg	79.36								
	629-6974717 Total:	79.36								
629-6974718	04/19/2010	52.14	0.00	04/06/2010	Linen City Hall		-	No		0000
101-410-1940-44010	Repairs/Maint Contractual Bldg	79.36								
	629-6974718 Total:	52.14								
629-6974719	04/26/2010	22.97	0.00	04/06/2010	Monthly Rug Service Station #1		-	No		0000
101-410-1940-44010	Repairs/Maint Contractual Bldg	52.14								
	629-6974719 Total:	22.97								
629-6977723	04/22/2010	22.97	0.00	04/06/2010	Uniforms		-	No		0000
101-430-3100-44170	Uniforms	22.97								
	629-6977723 Total:	38.57								
629-6979612	04/26/2010	38.57	0.00	04/06/2010	Linen City Hall - Annex		-	No		0000
101-410-1940-44010	Repairs/Maint Contractual Bldg	38.57								
	629-6979612 Total:	304.66								
	ARAM Total:									
BATTYPL Batteries Plus Woodbury, Corp										
032-704368	04/09/2010	71.60	0.00	04/06/2010	Patching Trailer Battery		-	No		0000
101-430-3120-44040	Repairs/Maint Eqpt	71.60								
	032-704368 Total:	87.10								
032-704588	04/12/2010	87.10	0.00	04/06/2010	Cushman Battery		-	No		0000
101-450-5200-42210	Equipment Parts									

Invoice #	Inv Date	Amount	Quantity	Pmt Date	Description	Reference	Task	Type	PO #	Close POLine #
	032-704588 Total:	87.10								
	BATTYPL Total:	158.70								
BOUTHMI Bouthilet Michael										
717484	04/26/2010	394.20	0.00	04/06/2010	Reimbursement for Arbor Day Trees		-	No		0000
101-410-1940-44300	Miscellaneous									
	717484 Total:	394.20								
	BOUTHMI Total:	394.20								
CENTPOW Century Power Equipment										
481294	04/13/2010	7.70	0.00	04/06/2010	Blower Repair Parts		-	No		0000
101-430-3120-42210	Equipment Parts									
	481294 Total:	7.70								
	CENTPOW Total:	7.70								
CTYOAKDA City of Oakdale										
10000460-01	04/30/2010	3,056.72	0.00	04/06/2010	Water Service I94		-	No		0000
601-494-9400-43820	Water Utility									
	10000460-01 Total:	3,056.72								
	CTYOAKDA Total:	3,056.72								
DERRICK Derrick Custom Homes										
Chk Req	04/20/2010	2,000.00	0.00	04/06/2010	Escrow Rfd 3572 Kelvin Ct Permit		-	No		0000
803-000-0000-22900	Deposits Payable				6852					
	Chk Req Total:	2,000.00								
	DERRICK Total:	2,000.00								
DONALDSA Donald Salverda & Associates										
P-1012-3	04/20/2010	875.09	0.00	04/06/2010	Effective Management Program		-	No		0000
101-430-3100-44370	Conferences & Training									
	P-1012-3 Total:	875.09								
	DONALDSA Total:	875.09								
FXL FXL, Inc.										
May 2010	05/01/2010	2,000.00	0.00	04/06/2010	Assessing Services - May 2010		-	No		0000
101-410-1320-43100	Assessing Services									
	May 2010 Total:	2,000.00								
	FXL Total:	2,000.00								

Invoice #	Inv Date	Amount	Quantity	Pmt Date	Description	Reference	Task	Type	PO #	Close POLine #
GRACZYK Kevin										
04/20/2010	04/20/2010	55.00	0.00	04/06/2010	CC Cabled Meeting	4/20/2010	-	No		0000
101-410-1450-43620	Cable Operations									
	04/20/2010 Total:	55.00								
	GRACZYK Total:	55.00								
HUMANRIG League of MN Human Rights Corn										
12/31/2009	12/31/2009	55.00	0.00	04/06/2010	Annual Membership Dues		-	No		0000
101-410-1110-44330	Dues & Subscriptions									
	12/31/2009 Total:	55.00								
	HUMANRIG Total:	55.00								
ICC-M International Code Council										
2769548	03/02/2010	100.00	0.00	04/06/2010	Membership Dues		-	No		0000
101-420-2400-44330	Dues & Subscriptions									
	2769548 Total:	100.00								
	ICC-M Total:	100.00								
KAISER Kaiser Manufacturing, Inc										
74779	04/08/2010	64.61	0.00	04/06/2010	2 Hydrant Bags		-	No		0000
101-420-2220-42400	Small Tools & Equipment									
	74779 Total:	64.61								
	KAISER Total:	64.61								
McPhilli Mike McPhillips Inc										
36518	04/19/2010	8,023.00	0.00	04/06/2010	Street Sweeping (Surface Water Protect)		-	No		0000
603-496-9500-44010	Street Sweeping									
	36518 Total:	8,023.00								
	McPhilli Total:	8,023.00								
MENARDSO Menards - Oakdale										
56399	04/26/2010	42.71	0.00	04/06/2010	Bulbs - Outdoor fixtures for well II		-	No		0000
601-494-9400-45200	Building and Structures									
	56399 Total:	42.71								
	MENARDSO Total:	42.71								
MNHWSAF MN Highway Safety Ctr										
629430-1776	04/09/2010	984.00	0.00	04/06/2010	Emergency Apparatus Driving Class X		-	No		0000
101-420-2220-44370	Conferences & Training									
	629430-1776 Total:	984.00								

Invoice #	Inv Date	Amount	Quantity	Pmt Date	Description	Reference	Task	Type	PO #	Close POLine #
MNHWYSAF Total:										
		984.00								
NEWMAN Newman Signs, Inc.										
TI-0220214	04/19/2010	187.76	0.00	04/06/2010	Police and Fire Parking Signs		-	No		0000
101-420-2220-44010	Repairs/Maint Bldg									
	TI-0220214 Total:	187.76								
	NEWMAN Total:	187.76								
NEXTEL Nextel Communications										
761950227-085	04/18/2010	102.00	0.00	04/06/2010	Cell Phone Service - Administration		-	No		0000
101-410-1940-43210	Telephone									
761950227-085	04/18/2010	92.96	0.00	04/06/2010	Cell Phone Service - Fire Dept		-	No		0000
101-420-2220-43210	Telephone									
761950227-085	04/18/2010	34.96	0.00	04/06/2010	Cell Phone Service - Building Dept		-	No		0000
101-420-2400-43210	Telephone									
761950227-085	04/18/2010	60.24	0.00	04/06/2010	Cell Phone Service - Public Works Dept		-	No		0000
101-430-3100-43210	Telephone									
761950227-085	04/18/2010	19.24	0.00	04/06/2010	Cell Phone Service - Parks Dept		-	No		0000
101-450-5200-43210	Telephone									
	761950227-085 Total:	309.40								
	NEXTEL Total:	309.40								
NORTHL Northland Trust Services, Inc.										
LKEL05A	04/08/2010	87,512.50	0.00	04/06/2010	Interest Bond Series 2005A		-	No		0000
601-494-9400-46110	Bond Interest									
	LKEL05A Total:	87,512.50								
LKEL09A	04/08/2010	15,452.50	0.00	04/06/2010	Interest on Bond Series 2009A		-	No		0000
315-470-7000-46110	Bond Interest									
LKEL09A	04/08/2010	425.00	0.00	04/06/2010	Agent Fee		-	No		0000
315-470-7000-46200	Fiscal Agent Fees									
	LKEL09A Total:	15,877.50								
	NORTHL Total:	103,390.00								
PRESS Press Steven										
04/26/2010	04/26/2010	58.88	0.00	04/06/2010	PZ Meeting Cabled 4/26/10		-	No		0000
101-410-1450-43620	Cable Operations									
	04/26/2010 Total:	58.88								
	PRESS Total:	58.88								

Invoice #	Inv Date	Amount	Quantity	Pmt Date	Description	Reference	Task	Type	PO #	Close POLine #
REED Reed Business Information										
4368636	04/14/2010	167.28	0.00	04/06/2010	2010 Seal Coat Project		-			No 0000
101-410-1450-43510	Public Notices									
	4368636 Total:	167.28								
	REED Total:	167.28								
RIVRCOOP River Country Cooperative										
04/16/2010	04/16/2010	6.42	0.00	04/06/2010	Car Wash		-			No 0000
101-420-2400-44040	Repairs/Maint Eqpt									
	04/16/2010 Total:	6.42								
	RIVRCOOP Total:	6.42								
ROBERTSC ROBERTS COMAPNY INC.										
223364A	04/14/2010	22.50	0.00	04/06/2010	Service Awards X 4		-			No 0000
101-420-2220-44300	Miscellaneous									
	223364A Total:	22.50								
	ROBERTSC Total:	22.50								
ROTARYLE Lake Elmo Rotary Club										
1st Quarter	04/22/2010	225.00	0.00	04/06/2010	Membership Dues - City Administrator		-			No 0000
101-410-1320-44330	Dues & Subscriptions									
	1st Quarter Total:	225.00								
	ROTARYLE Total:	225.00								
RUD Prince-Rud Diane										
05/04/2010	05/04/2010	320.00	0.00	04/06/2010	Cleaning City Hall & Annex		-			No 0000
101-410-1940-44010	Repairs/Maint Contractual Bldg									
05/04/2010	05/04/2010	240.00	0.00	04/06/2010	Cleaning Fire Hall		-			No 0000
101-420-2220-44010	Repairs/Maint Bldg									
	05/04/2010 Total:	560.00								
	RUD Total:	560.00								
SAMSClub Sam's Club										
000786	04/26/2010	120.85	0.00	04/06/2010	Food for Arbor Day Celebration		-			No 0000
101-410-1940-44300	Miscellaneous									
	000786 Total:	120.85								
	SAMSClub Total:	120.85								

Invoice #	Inv Date	Amount	Quantity	Pmt Date	Description	Reference	Task	Type	PO #	Close PO Line #
SCHLOMKA Schlomka										
10100	02/18/2010	210.00	0.00	04/06/2010	Pump Holding Tank		-	No		0000
101-430-3100-44010	Repairs/Maint Bidg									
	10100 Total:	210.00								
	SCHLOMKA Total:	210.00								
SPRINT Sprint										
837908817-029	04/18/2010	79.98	0.00	04/06/2010	Phone Cards for Laptops		-	No		0000
101-420-2220-43210	Telephone									
	837908817-029 Total:	79.98								
	SPRINT Total:	79.98								
STDELANO State Bank of Delano										
05/01/2010	05/01/2010	1,587.75	0.00	04/06/2010	G.O. Equip of Certificate 2006A		-	No		0000
314-480-8000-46110	Bond Interest				Interest					
	05/01/2010 Total:	1,587.75								
	STDELANO Total:	1,587.75								
TASCH T.A. Schifsky & Sons Inc										
49086	04/15/2010	100.09	0.00	04/06/2010	Asphalt		-	No		0000
101-430-3120-42240	Street Maintenance Materials									
	49086 Total:	100.09								
	TASCH Total:	100.09								
TDS TDS METROCOM - LLC										
651-7798882	04/13/2010	163.95	0.00	04/06/2010	Analog Lines - Fire		-	No		0000
101-420-2220-43210	Telephone									
651-7798882	04/13/2010	155.68	0.00	04/06/2010	Analog Lines - Public Works		-	No		0000
101-430-3100-43210	Telephone									
651-7798882	04/13/2010	104.76	0.00	04/06/2010	Analog Lines - Lift Station Alarms		-	No		0000
602-495-9450-43210	Telephone									
651-7798882	04/13/2010	42.24	0.00	04/06/2010	Analog Lines - Well House #2		-	No		0000
601-494-9400-43210	Telephone									
	651-7798882 Total:	466.63								
	TDS Total:	466.63								
WASH-REC Washington County										
1009571	04/26/2010	8.57	0.00	04/06/2010	Copies - Boundry of Lake Elmo		-	No		0000
101-410-1910-44300	Miscellaneous									
	1009571 Total:	8.57								

Invoice #	Inv Date	Amount	Quantity	Pmt Date	Description	Reference	Task	Type	PO #	Close POLine #
WASH-REC Total:		8.57								
WASHACC Washington County										
66108	04/20/2010	1,027.00	0.00	04/06/2010	Special Assessment Billing		-	No		0000
101-410-1520-44300	Miscellaneous									
66108 Total:		1,027.00								
WASHACC Total:		1,027.00								
WASHCONS Washington Conservation Dist.										
1828	03/31/2010	500.00	0.00	04/06/2010	1st Qtr - Shared Educator Program		-	No		0000
603-496-9500-44370	Conferences & Training									
1828 Total:		500.00								
WASHCONS Total:		500.00								
YOCUM Yocum Oil Company, Inc.										
187010	04/22/2010	160.69	0.00	04/06/2010	Bulk Oil Tanks		-	No		0000
101-430-3100-44010	Repairs/Maint Bldg									
187010 Total:		160.69								
YOCUM Total:		160.69								
ZACK Zack's, Inc.										
25795	04/23/2010	93.98	0.00	04/06/2010	Flat Towels (City Hall)		-	No		0000
101-410-1940-42110	Cleaning Supplies									
25795	04/23/2010	80.16	0.00	04/06/2010	Blue Marking Paint		-	No		0000
601-494-9400-42270	Utility System Maintenance									
25795	04/23/2010	94.95	0.00	04/06/2010	Asphalt Remover		-	No		0000
101-430-3120-42240	Street Maintenance Materials									
25795	04/23/2010	89.83	0.00	04/06/2010	Shop Towels		-	No		0000
101-430-3100-42150	Shop Materials									
25795 Total:		358.92								
ZACK Total:		358.92								
Report Total:		128,369.11								



MAYOR & COUNCIL COMMUNICATION

DATE: 5/04/2010
CONSENT
ITEM #: 3
MOTION *as part of Consent Agenda*

AGENDA ITEM: CSAH 13 (Ideal Avenue/Olson Lake Trail) from TH 5 to 50th Street – Resolution No. 2010-018, Supporting an Engineering and Traffic Investigation to Determine the Reasonable and Safe Speed Limit

SUBMITTED BY: Ryan Stempski, Assistant City Engineer

THROUGH: Bruce A. Messelt, City Administrator *BAW*

REVIEWED BY: Jack Griffin, City Engineer

SUMMARY AND ACTION REQUESTED: At the April 20th, 2010, City Council Meeting, Washington County presented the results of their Driver Feedback Sign and Roadway Study for CSAH 13 (Ideal Avenue/Olson Lake Trail). This Study is now posted on the City's Website.

As a follow-up to the County presentation, the City Council directed that a speed study be requested for this road segment. No specific motion is needed, as this is recommended to be part of the overall approval of the *Consent Agenda*.

BACKGROUND INFORMATION: - County State Aid Highway (CSAH) 13 (Ideal Avenue/Olson Lake Trail) within this proposed study area is a two-lane north-south County highway with a posted speed ranging from 40 to 50 miles per hour (mph). CSAH 13 currently carries approximately 2,500 to 3,500 vehicles per day (vpd) in the study area and has narrow, 0' to 4' paved shoulders. The current roadway was constructed in 1945 south of Hidden Bay Trail, and in 1960 north of Hidden Bay Trail. Both sections of roadway were last repaved in 1986.

On April 20th, The City Council received an update from Washington County on an ongoing Driver Feedback Sign and Roadway Study. At that time, it was directed that the City request Washington County seek a formal MNDOT Speed Study. As this roadway serves as the Oakdale – Lake Elmo municipal boundary, the City of Oakdale has been contacted and will affirmatively consider the same resolution at its May 11th, 2010 meeting.

STAFF REPORT: An Engineering and Traffic Investigation to Determine the Reasonable and Safe Speed Limit at CSAH 13 was recommend by Washington County on April 20th. The Lake Elmo City Council expressed support of this recommendation. Per MN Statute 169.14, the

authority to determine the safe and reasonable speed on a County Highway resides with the Commissioner of the Minnesota Department of Transportation. For Washington County to proceed with this request, a resolution of support must be provided by the City of Lake Elmo and by the City of Oakdale. The City of Oakdale will discuss their resolution of support at their May 11, 2010, City Council Meeting.

The proposed resolution of support for Lake Elmo will include the condition that the investigation occur after the I-494 and I-694 projects are completed and traffic volumes return to normal along CSAH 13. It should also be noted that the conclusions of the investigation performed by Mn/DOT must be supported by the City of Lake Elmo for the investigation to be conducted.

RECOMMENDATION: Based upon the above background information and staff report, it is recommended that the City Council approve as part of the Consent Agenda the following motion:

“Move to Approve Resolution No. 2010-018 seeking Washington County action to Support the Authorization of the Commissioner of Transportation to Perform an Engineering and Traffic Investigation to Determine the Reasonable and Safe Speed Limit at CSAH 13 (Ideal Avenue/Olson Lake Trail) Between Trunk Highway 5 and CSAH 35 (50th Street N).”

Alternatively, the City Council does have the authority to remove this item from the Consent Agenda and further discuss and deliberate this recommendation prior to taking action. The Council may table this item at its discretion, take no action (in essence denying the recommendation), or amend the recommended action. If the latter is done so, the appropriate action of the Council following such discussion would be:

“Move to Approve Resolution No. 2010-018, as amended at tonight’s meeting.”

ATTACHMENTS:

1. Proposed Resolution 2010-018
2. Driver Feedback Sign and Roadway Study (previously distributed and on-line)

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

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

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

RESOLUTION NO. 2010-018

**RESOLUTION TO WASHINGTON COUNTY IN SUPPORT OF THE
AUTHORIZATION OF THE COMMISSIONER OF TRANSPORTATION TO
PERFORM AN ENGINEERING AND TRAFFIC INVESTIGATION TO DETERMINE
THE REASONABLE AND SAFE SPEED LIMIT AT THE FOLLOWING LOCATION:**

CITY OF LAKE ELMO

County State Aid Highway (CSAH) 13 (Ideal Ave) between Trunk Highway 5 and CSAH 35 (50th Street North) including the boundary between the City of Lake Elmo and the City of Oakdale.

WHEREAS, per MN Statute 169.14; the authority to determine the safe and reasonable speed on a County Highway resides with the Commissioner of the Minnesota Department of Transportation, and;

WHEREAS, it is in the best interest of all parties to have reasonable and safe speeds posted on County Highways and City Streets, and;

WHEREAS, the accepted method to determine the reasonable and safe speed limit(s) is through an engineering and traffic investigation, as required by statute;

NOW, THEREFORE, BE IT RESOLVED,

1. *That the City of Lake Elmo hereby approves this resolution to Washington County in support of the authorization of the Commissioner of the Minnesota Department of Transportation to perform an engineering and traffic investigation to determine the reasonable and safe speed limit(s) at the above referenced location.*
2. *That the City of Lake Elmo agrees to support the conclusions of the engineering and traffic investigation, and the implementation of such conclusions.*
3. *That the Investigation be conducted after the I-494 and I-694 Construction Project has been completed, and when it is determined that traffic volumes have returned to normal, non-construction related conditions.*

Date: _____, 2010

CITY OF LAKE ELMO

By: _____

Dean A. Johnston

Mayor

ATTEST:

Bruce A. Messelt
City Administrator



MAYOR & COUNCIL COMMUNICATION

DATE: 5/04/2010
CONSENT
ITEM #: 4
MOTION *as part of Consent Agenda*

AGENDA ITEM: Authorize City Administrator Professional Development

SUBMITTED BY: Tom Bouthilet, Finance Director

THROUGH: Bruce Messelt, City Administrator *BAM*

REVIEWED BY: - NA -

SUMMARY AND ACTION REQUESTED: As part of its Consent Agenda, the City Council is asked to authorize the City Administrator's participation in the Minnesota City Management Association's annual conference, to be held May 5th-7th. No specific motion is needed, as this is recommended to be part of the overall approval of the *Consent Agenda*.

BACKGROUND INFORMATION: The City of Lake Elmo provides for Professional Development opportunities for elected and appointed officials and City staff, as is both financially feasible and appropriate. In the City Administrator's Contract, the following applies:

11. **PROFESSIONAL DEVELOPMENT.** Subject to the City's adopted budget, Employer shall pay the travel and subsistence expenses of Employee for professional and official travel, meetings and occasions adequate to continue the professional development of Employee ... Professional development includes but is not limited to the International City/County Management Association annual conference, the Minnesota City Management Association annual conference, and the League of Minnesota Cities annual conference.

STAFF REPORT: The City's adopted 2010 budget provides for sufficient funds for Administrator participation in the upcoming MCMA annual conference and the LMNC annual conference in June in St. Cloud. However, due to ongoing budgetary constraints, the City Administrator is recommending at this time NOT attending the annual conference of the International City/County Management Association, to be held in October in San Jose, California.

Attendance is estimated to cost approximately \$663.10 USD (\$199 for Conference and \$464.10 for lodging and meals), plus mileage reimbursement for approximately 300 miles round-trip, if carpooling is not available.

RECOMMENDATION: It is recommended that the City Council authorize the City Administrator's participation in the Minnesota City Management Association's annual conference, to be held May 5th-7th. No specific motion is needed, as this is recommended to be part of the overall approval of the *Consent Agenda*.

Alternatively, the City Council does have the authority to remove this item from the Consent Agenda and further discuss and deliberate prior to taking action. The City Council may deny such recommendation by simply not taking any action on this item. It may also amend this recommendation, as appropriate. If the latter is done so, the appropriate action of the Council following such discussion would be:

“Move to authorize the City Administrator’s participation in the 2010 MCMA annual conference, as recommended [*and amended*] at tonight’s meeting.”

ATTACHMENTS: None

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

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



MAYOR & COUNCIL COMMUNICATION

DATE: 5/04/2010
CONSENT
ITEM #: 5
MOTION *as part of Consent Agenda*

AGENDA ITEM: Appointments to the Park Commission

SUBMITTED BY: Sharon Lumby, City Clerk

THROUGH: Bruce A. Messelt, City Administrator *BAW*

REVIEWED BY: - NA -

SUMMARY AND ACTION REQUESTED: There currently exist two vacancies on the Park Commission. The City Council is asked to appoint Judith Blackford for a second term on the Parks Commission and move David Steele from Alternate to Full Voting Member. No specific motion is needed, as this is recommended to be part of the overall approval of the *Consent Agenda*.

BACKGROUND INFORMATION: There are currently two vacancies on the Park Commission. The Park Commission consists of the following members:

<u>Park Commission</u> <u>Member</u>	<u>Term</u>	<u>Expires</u>
John Ames	2	12/31/2010
Judith Blackford	1	11/08/2009
John Booher	1	12/31/2010
Todd Bruchu	2	12/31/2011
Marty Dobbs	1	12/31/2012
Susan Dunn	1	12/31/2011
Rolf Larson	2	12/31/2011
David Steele	First Alternate	08/05/2009
Mike Zeno	1	12/31/2011

STAFF REPORT: The City has advertised these vacancies pursuant to City policy. There are no applications on file and no new applications have been received. Ms. Blackford has indicated an interest in serving as a Full Voting Member for a 3-year term on the Park Commission.

Mr. Steele was appointed to the Park Commission as an Alternate on August 5, 2009. Past practice has been, when there is an opening, the First Alternate should be moved to a Full Voting Member for a 3-year term. As such, staff is recommending the re-appointment of Ms. Blackford and moving of Mr. Steele from Alternate to Full Voting Member.

RECOMMENDATION: Based upon the above background information and staff report, it is recommended that the City Council Appoint Ms. Blackford and Mr. Steele to the Park Commission. No specific motion is needed, as this is recommended to be part of the overall approval of the *Consent Agenda*.

Alternatively, the City Council does have the authority to remove this item from the Consent Agenda and further discuss and deliberate prior to taking action. The City Council may table this decision until another time or may deny such recommendation by simply not taking any action on this item. It may also amend this recommendation, as appropriate. If the latter is done so, the appropriate action of the Council following such discussion would be:

*“Move to appoint _____ [and _____] as Member[s]
for a 3-year term on the Park Commission, as agreed to at tonight’s meeting.”*

ATTACHMENTS: None

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

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



MAYOR & COUNCIL COMMUNICATION

DATE: 5/04/2010
CONSENT
ITEM #: 6
MOTION *as part of Consent Agenda*

AGENDA ITEM: Authorize Temporary On-Call Building Inspection Services for May-June 2010

SUBMITTED BY: Kyle Klatt, Planning Director

THROUGH: Bruce Messelt, City Administrator *BAM*

REVIEWED BY: Tom Bouthilet, Finance Director

SUMMARY AND ACTION REQUESTED: As part of its Consent Agenda, the City Council is asked to authorize the Mayor and City Administrator to enter into a temporary services contract with a neighboring community for on-call Building Inspection Services for Fridays during May and June 2010. No specific motion is needed, as this is recommended to be part of the overall approval of the *Consent Agenda*.

BACKGROUND INFORMATION: The City of Lake Elmo desires to provide a full complement of municipal services, especially during the busy spring and early construction season. However, with limited City staff and current City policies regarding use or loss of accrued Paid-Time-Off (PTO), accommodations are recommended to be made for the Acting Building Official to take Fridays off during May and June 2010.

The City has approached both Woodbury and Bayport for potential interim on-call services for time-sensitive building inspections and construction services for Fridays during May and June 2010. Both organizations are amenable to this suggested arrangement.

STAFF REPORT: The City's current Human Resource policies and both state and federal regulations presume reasonable accommodation of requests for leave can and should be made. The City's current Acting Building Official has accrued significant PTO that must be utilized by June 30th or would be "lost," according to City policies.

The Planning Director and City Administrator have worked to minimize potential customer service reductions by directing the all sanitary sewer inspections and non-building related inspection and enforcement efforts are undertaken on Monday – Thursday during the May-June timeframe. Moreover, only time sensitive inspections that cannot be accommodated Monday – Thursday will be scheduled for Fridays.

On Fridays, the contracted Building Department will make an inspector available on an hourly basis to cover such time-sensitive inspections and related requests for information. All official activities and record-keeping will remain the responsibility of the Lake Elmo Acting Building Official.

Attached for Council information is a Letter of Interest from Bayport and a sample Agreement provided by the City of Woodbury. The City of Woodbury has indicated by telephone an interest in support Lake Elmo's request.

As these costs will be incurred on a per-inspection basis, no significant budgetary impact is anticipated. However, it should be noted that the City is equally obligated to provide budgetary capacity to cover accrued benefits. As such, utilization of such benefits would effectively result in a reduction in the City's future financial obligations, thereby offsetting the additional contract costs.

RECOMMENDATION: It is recommended that the City Council authorize the Mayor and City Administrator to enter into a temporary On-Call Building Inspection Services agreement for May – June 2010. The specific provider will be selected based upon best capacity and fit for the City's overall inspection needs. No specific motion is needed, as this is recommended to be part of the overall approval of the *Consent Agenda*.

Alternatively, the City Council does have the authority to remove this item from the Consent Agenda and further discuss and deliberate prior to taking action. The City Council may deny such recommendation by simply not taking any action on this item. It may also amend this recommendation, as appropriate. If the latter is done so, the appropriate action of the Council following such discussion would be:

“Move to authorize the Mayor and Administrator to proceed, as recommended [*and amended*] at tonight's meeting.”

ATTACHMENTS:

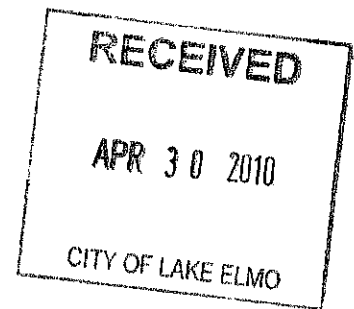
1. Letter of Interest from Bayport
2. Sample Agreement

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

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



CITY OF BAYPORT
294 NORTH THIRD STREET
BAYPORT, MINNESOTA 55003
PHONE 651-275-4404 FAX 651-275-4411



April 28, 2010

Bruce Messelt
City of Lake Elmo
3800 Laverne Avenue
Lake Elmo, MN 55042

Dear Mr. Messelt,

Thank you for meeting with both I and John on the opportunity to provide contracted building inspections services to the City of Lake Elmo.

Based on our conversation and subject to Lake Elmo City Council approval, the City of Bayport understands the City of Lake Elmo is requesting inspection services on the Fridays the Lake Elmo Building Official is out of the office.

The City of Bayport also understands the City of Lake Elmo will only need the services of the City of Bayport through the end of June, with the possibility of a few more Friday's in July.

The City of Bayport will bill the City of Lake Elmo an hourly rate of \$50.00 for the services of the building official.

The City of Lake Elmo also agrees to reimburse for mileage based on the current IRS reimbursement rate.

Please let me know how this is received by your City Council. Should you have any questions, please call me at 651-275-4414.

Sincerely,


Mitchell Berg
City of Bayport

DRAFT BUILDING INSPECTION SERVICES AGREEMENT

This Agreement is made this ___ day of March, 2010, by and between the City of Newport hereinafter referred to as "Newport") and the City of Cottage Grove (hereinafter referred to as "Cottage Grove").

WHEREAS, Newport is authorized and empowered to provide for various types of building inspections and code enforcement to ensure the public health, welfare and safety; and

WHEREAS, it is the desire of the parties and the purpose of this Agreement that certain of such services be performed by Cottage Grove on behalf of Newport;

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth below, the above parties hereto agree as follows:

1. The term of this agreement shall be from May 1, 2010 through May 1, 2011, and shall automatically renew for an additional one year term on May 1, 2011 and on May 1, 2012, unless either party to the Agreement provides notice to the other party that they shall terminate the contract at the end of the current term, and further subject to termination as provided in paragraph 9.

2. For the term of this Agreement, Cottage Grove shall provide Newport with the following services, in and on behalf of Newport and at the direction of Newport's City Administrator:

- a. Building inspections and code enforcement, as necessary.
- b. Property inspections for structural integrity for purposes of exercising eminent domain powers or protection of life.
- c. Planning and zoning reviews required for building permits.
- d. Issuing building permits (plumbing & mechanical included).
- e. Preparation of all reporting required by the State of Minnesota or any state agency.
- f. Preparation of an annual written report of work completed for the City Council of Newport.
- g. Provide copies of all permits issued and inspections made on a monthly basis.

The services Cottage Grove will provide under this Agreement do not include property maintenance inspections and do not include planning or zoning review unless such review is specifically related to a building permit request for a structure permitted under the Newport Code.

3. Cottage Grove shall consult with and abide by the manner in which the inspections, plan review and activities are conducted and over the determination of what enforcement action is appropriate and consistent with Newport City Code Chapter 18, Article II (Building Code) and

Article III (Housing Code) and Article IV (Swimming Pools) and other policies as established by Newport. Cottage Grove shall confer with Newport staff regarding interpretation of the Code. Newport shall have a duty to inform Cottage Grove of any and all updates or changes to the Newport Code.

4. Cottage Grove is not required to maintain office hours at Newport's City Hall. However, if Cottage Grove finds it necessary to meet with citizens at Newport's City Hall, Newport will arrange for a work area for such meetings. Cottage Grove's main contact at Newport shall be Newport's City Administrator and Cottage Grove shall take direction from Newport's City Administrator for all work performed under this Agreement.

5. Cottage Grove shall assume the expense of performing the inspections and code enforcement.

6. Newport will pay Cottage Grove 25% of the total permit and plan review fee. Such permit and plan review fees shall be separate from, and in addition to, the payment provided for by Paragraph 8 of this agreement. All other provisions of this agreement shall remain applicable with respect to the plan review and inspection services being provided.

7. In addition to the above fees Newport will pay Cottage Grove for services performed by Cottage Grove outside those contemplated by this agreement but only as specifically requested by Newport. These additional fees will be billed to Newport on a time and material basis. Services performed by the Cottage Grove Chief Building Official will be at the rate of \$60/hour plus expenses. Services performed by Cottage Grove Building Inspector(s) will be at the rate of \$45 plus expenses.

8. This agreement shall terminate as follows:

- a. Upon the expiration of 90 days after service of written notice upon the other party; or
- b. At any time, upon agreement of the parties; or
- c. In any event on May 1, 2012.

9. Cottage Grove agrees to defend, indemnify and hold harmless Newport, and its officials, agents and employees from and against all claims, actions, damages, losses and expenses arising out of or resulting from Cottage Grove's performance of the duties required under this Agreement, provided that any such claim, action, damage, loss or expense is attributable to bodily injury, sickness, disease, or death or to the injury to or destruction of property including the loss of use resulting therefrom and is caused in whole or in part by any negligent act or omission or willful misconduct of Cottage Grove. This provision shall not be construed as a waiver by either party of any defenses, immunities or limitators on liability with respect to claims made by third parties.

10. Newport agrees to defend, indemnify and hold harmless Cottage Grove, and its officials, agents and employees from and against all claims, actions, damages, losses and expenses arising out of or resulting from Newport's performance of the duties required under this Agreement,

provided that any such claim, action, damage, loss or expense is attributable to bodily injury, sickness, disease, or death or to the injury to or destruction of property including the loss of use resulting therefrom and is caused in whole or in part by any negligent act or omission or willful misconduct of Newport. This provision shall not be construed as a waiver by either party of any defenses, immunities or limitators on liability with respect to claims made by third parties.

11. Cottage Grove shall carry liability insurance in the amount of at least \$1,000,000 per occurrence and \$2,000,000 in the aggregate for both Bodily Injury and Property Damage. Newport shall be named as an additional insured, and a certificate of said insurance shall be provided to Newport. Cottage Grove shall carry Worker's Compensation Insurance as required by Minnesota Statutes, Section 176.181, Subd. 2 and further agrees to provide a certificate of said insurance to the Newport.

12. Any employee assigned by Cottage Grove to perform its obligations hereunder shall remain the exclusive employee of Cottage Grove for all purposes including, but not limited to, wages, salary and employee benefits.

13. In addition to the services listed in Paragraph 2 above, Cottage Grove shall, upon request, also provide for and on behalf of Newport:

- a. Collecting fees for issuing building permits and inspections.
- b. Inspection of all rental property once every two years.
 - Newport will provide Cottage Grove with a current list of rental property owners
 - Cottage Grove shall notify Newport rental property owners of upcoming rental inspections via letter and application and collect an inspection fee of \$40.00 per unit. Fees must be paid before inspections can be performed. Cottage Grove shall receive \$25.00 for each unit inspected and Newport shall receive \$15.00
 - Newport rental property owners shall apply for Certificate of Occupancy renewal no later than 60 days prior to the April 1 expiration date of the previously issued certificate.
 - Cottage Grove shall collect \$40.00 per unit for reinspections. Cottage Grove shall receive \$25.00 for each reinspection and Newport shall receive \$15.00
 - Cottage Grove shall provide copies of inspections as well as Certificate of Occupancy for each building
- c. Clerical and other office duties related to building inspections and review of building permits.

14. It is agreed that nothing herein contained is intended or should be construed in any manner as creating or establishing the relationship of co-partners between the parties hereto or as constituting the persons employed by Cottage Grove as the agent, representative or employee of Newport for any purpose or in any manner whatsoever. Cottage Grove is to be and shall remain an independent contractor with respect to all services performed under this contract. Cottage Grove represents that it has, or will secure at its own expense, all personnel and equipment required in performing services under this contract. Any and all personnel of Cottage Grove or other persons,

while engaged in the performance of any work or services required by Cottage Grove under this contract, and shall not be considered employees of Newport and any and all claims that may or might arise under the Workers' Compensation Act of the State of Minnesota on behalf of said personnel or other persons while so engaged, and any and all claims whatsoever on behalf of any such person or personnel arising out of employment or alleged employment including, without limitation, claims of discrimination against Cottage Grove, its officers, agents contracts or employees shall in no way be the responsibility of Newport; and Cottage Grove shall defend, indemnify and hold Newport, its officers, agents and employees harmless from any and all such claims regardless of any determination of any pertinent tribunal, agency, board, commission or court. Such personnel or other persons shall not require nor be entitled to any compensation, rights or benefits of any kind whatsoever from Newport, including, without limitation, tenure rights, medical and hospital care, sick and vacation leave, Workers' Compensations, Unemployment Compensation, disability, severance pay and PERA.

15. The books, records, documents, and accounting procedures of Cottage Grove relevant to this Agreement, are subject to examination by Newport and either the legislative or state auditor as appropriate, pursuant to Minnesota Statutes, Section 16C.05, Subd. 5.

16. This Agreement represents the entire Agreement between Cottage Grove and Newport and supersedes and cancels any and all prior agreements or proposals, written or oral, between the parties relating to the subject matter hereof, any amendments, addenda, alterations, or modifications to the terms and conditions of this Agreement shall be in writing and signed by both parties.

17. Cottage Grove and Newport agree to comply with the Americans With Disabilities Act and not to discriminate on the basis of disability in the admission or access to, or treatment of employment in its services, programs, or activities. Upon request, accommodation will be provided to allow individuals with disabilities to participate in all services, programs, and activities. Cottage Grove has designated coordinators to facilitate compliance with the Americans With Disabilities Act of 1990 (ADA), as required by Section 35.107 of the U.S. Department of Justice regulations, and to coordinate compliance with Section 504 of the Rehabilitation Act of 1973, as mandated by Section 8.53 of the U.S. Department of Housing and Urban Development regulations. For information contact the City Administrator, City of Cottage Grove, 7516 80th Street South, Cottage Grove, Minnesota 55016; telephone: 651-458-2800; TDD: 641-458-2880. Newport agrees to hold harmless and indemnify Cottage Grove from costs, including but not limited to damages, attorney's fees and staff time, in any action or proceeding brought alleging a violation of ADA by Newport. Cottage Grove agrees to hold harmless and indemnify Newport from costs, including but not limited to damages, attorney's fees and staff time, in any action or proceeding brought alleging a violation of ADA by Cottage Grove.

18. Both parties agree to comply with all applicable state, federal and local laws, rules and regulations.

IN WITNESS WHEREOF, the parties have set forth their hands on the day and year first written above.

CITY OF COTTAGE GROVE

By: _____
Its Mayor

Date

By: _____
Its City Administrator

Date

CITY OF NEWPORT

By: _____
Its Mayor

Date

By: _____
Its City Administrator

Date



MAYOR & COUNCIL COMMUNICATION

DATE: 5/04/2010
CONSENT
ITEM #: 7
MOTION *as part of Consent Agenda*

AGENDA ITEM: 2010 Seal Coat Project – Accepting Bids, Awarding Contract, and Approval of Change Order No. 1

SUBMITTED BY: Ryan Stempski, Assistant City Engineer

THROUGH: Bruce Messelt, City Administrator *BAUM*

REVIEWED BY: Jack Griffin, City Engineer
Mike Bouthilet, Public Works Superintendent
Tom Bouthilet, Finance Director

SUMMARY AND ACTION REQUESTED: The City Council is asked to accept bids, award a contract, and approve Change Order No. 1 for the 2010 Seal Coat Project. Bids were received, publicly opened, and read aloud on April 28th, 2010. TKDA has prepared and attached the Bid Tabulation worksheet and a Letter of Recommendation for the Award of the Contract. No specific motion is needed, as this is recommended to be part of the overall approval of the *Consent Agenda*.

BACKGROUND INFORMATION: On February 3rd, 2010, the City Council ordered the preparation of plans and specifications. On March 23rd, 2010, the City Council approved the plans and specifications for the 2010 Seal Coat Project, and ordered advertisement for bids.

STAFF REPORT: The proposed streets to be seal coated are a combination of the 2009 and 2010 Street Capital Improvement Plan, with the exception of 2 road segments. Jamaca Avenue and 42nd Street will not be included in this proposed project. (Refer to the attached location map.) The crack seal and seal coat maintenance for Jamaca Avenue has been deferred until the year following the completion of the MPCA Landfill Project. 42nd Street (Jamaca Avenue to Irish Court) was included in the project as bid. However recent investigations have identified additional pavement distresses experienced over the winter months.

As such, it has been determined that a seal coat is no longer the recommended improvement for this street segment. Due to the increased amount of road surface peeling up, the recommended improvements for this segment has now changed from a seal coat to a mill and overlay. (Refer to the attached example photo of 42nd Street.) Therefore, it is recommended that 42nd Street be

removed from this contract by approval of Change Order No. 1. The lowest responsible bidder, Pearson Brothers, Inc., has provided a bid in the amount of \$177,614.65, which is \$21,579.35 *below* the Engineer’s Estimate of \$199,194.00. With the approval of Change Order No. 1, the proposed contract amount will be \$168,365.57.

The biannual budget for these improvements was \$250,000 (\$125,000 per year) with \$28,214.00 being expended in 2009 for the crack seal preparation work. Staff will evaluate whether to perform the mill and overlay of 42nd Street or perform additional seal coating with the savings of \$53,420.43 of the minor maintenance budget.

RECOMMENDATION: Based upon the above background information and staff report, it is recommended that the City Council accept the lowest responsible bid and approve Change Order #1, as part of the overall approval of the *Consent Agenda*.

Alternatively, the City Council does have the authority to remove this item from the Consent Agenda and further discuss and deliberate prior to taking action. The City Council may deny such recommendation outright by simply not taking any action on this item or rejecting the bids. It may also amend this recommendation, as appropriate. If the latter is done, the appropriate action of the Council following such discussion would be:

“Move to Approve Resolution No. 2010-020 Accepting the Bids, Awarding a Contract, and Approval of Change Order No. 1 for the 2010 Seal Coat Project per the Engineer’s Letter of Recommendation for the Award of Contract [as amended at tonight’s meeting].”

ATTACHMENTS:

1. Resolution 2010-020
2. Project Schedule
3. Engineers Letter of Recommendation for Award of Contract
4. Change Order No. 1
5. Updated 2010 Seal Coat Project Location Map (Removal of 42nd Street)
6. Example Photo of 42nd Street

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

- Questions from Council to Staff Mayor Facilitates
- Call for Motion Mayor & City Council
- Discussion Mayor & City Council
- Public Input, if Appropriate Mayor Facilitates
- Action on Motion Mayor Facilitates

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

RESOLUTION NO. 2010-020

**A RESOLUTION ACCEPTING BIDS AND AWARDING A CONTRACT
FOR THE 2010 SEAL COAT PROJECT AND
APPROVING CHANGE ORDER NO. 1**

WHEREAS, pursuant to an advertisement for bids for the 2010 Seal Coat Project, bids were received, opened and tabulated according to law, and bids were received complying with the advertisement;

WHEREAS, bids were tabulated, checked and summarized to verify that all requirements of the submittals were met;

WHEREAS, the City Engineer reviewed the bids and has provided a letter recommending the award of the contract to the lowest responsible bidder;

WHEREAS, the City Engineer and Public Works staff have identified that the proposed sealcoat is no longer the recommended improvement for that part of the work that includes 42nd Street, due to the identification of additional pavement stresses experienced over the winter;

AND WHEREAS, the City Engineer is further recommending the approval of Change Order No. 1, removing 42nd Street from the Project;

NOW, THEREFORE, BE IT RESOLVED,

- 1. That the Mayor and City Clerk are hereby authorized and directed to enter into a Contract in the accordance with the above ordered Project, in the amount of the Contractor's lowest responsible bid, and according to the plans and specifications thereof approved by the City Council.*
- 2. That Change Order No. 1 is approved, thereby removing 42nd Street from the project and decreasing the contract amount by \$9,249.08 to a total contract amount of \$168,365.57.*
- 3. The City Clerk is hereby authorized and directed to return forthwith to all bidders the deposits made with their bids, except that the deposits of the successful bidder and the next two lowest bidders shall be retained until a contract has been signed.*

Date: _____, 2010 CITY OF LAKE ELMO

By: _____
Dean A. Johnston
Mayor

ATTEST:

Bruce A. Messelt
City Administrator

**CITY OF LAKE ELMO
2010 SEAL COAT PROJECT**

PROPOSED PROJECT SCHEDULE

February 3, 2010	Council orders TKDA to prepare Plans and Specs
March 16, 2010	Presentation of Plans and Specs to the City Council. Council approves Plans and Specifications and orders advertisement for Bids
March 26, 2010	Placement of Advertisement for Bids - Construction Bulletin. Publication date of March 31 and April 7
March 30, 2010	Placement of Advertisement for Bids – Oakdale-Lake Elmo Review. Publication date of April 5 and April 12
April 28, 2010	Receive and review Contractor bids
May 4, 2010	City Council accepts bids and awards contract
May 7, 2010	Process and send out Contract Documents.
May 21, 2010	Receipt of Contractor's Bonds / Legal Review & Issue Notice to Proceed.
June 8, 2010	Conduct Pre-construction Meeting
July 30, 2010	Substantial Completion
August 18, 2010	Final Completion (Includes sweeping and clean up)

TKDA

ENGINEERING • ARCHITECTURE • PLANNING

The right time. The right people. The right company.

444 Cedar Street, Suite 1500
Saint Paul, MN 55101-2140

(651) 292-4400
(651) 292-0083 Fax
www.tkda.com

April 29, 2010

Honorable Mayor and City Council
City of Lake Elmo, Minnesota

Re: 2010 Seal Coat Project
City of Lake Elmo, Minnesota
TKDA Project No. 14575.005

Dear Mayor and City Council:

Bids for the referenced project were received on April 28, 2010, at 2:00 pm with the following results. A complete Tabulation of Bids is enclosed for your information.

Contractor	Base Bid
Pearson Bros Inc.	\$177,614.65
Allied Blacktop Inc.	\$182,594.50
ASTECH Corp.	\$190,894.25
Fahrner Asphalt Sealers	\$213,801.56
Engineer's Estimate	\$199,194.00

Recommendation

We recommend that you award the Contract to the lowest bidder, Pearson Bros Inc., for their base bid of \$177,614.65, and execute Change Order No. 1, which removes 42nd Street from the project for a reduced total Contract amount of \$168,365.57.

Please do not hesitate to call me with any questions or comments you may have.

Sincerely,

Ryan W. Stempski, P.E.
Project Manager

DMK:lbb
Enclosure

TABULATION OF BIDS

2010 SEAL COAT PROJECT
 CITY OF LAKE ELMO, MINNESOTA
 TKDA PROJECT NO. 14575-005

BIDS OPENED: APRIL 28, 2010, AT 2:00 PM



ENGINEERING • ARCHITECTURE • PLANNING
 Through Time Through People Through Change

*DENOTES ERROR IN BIDDERS CALCULATION

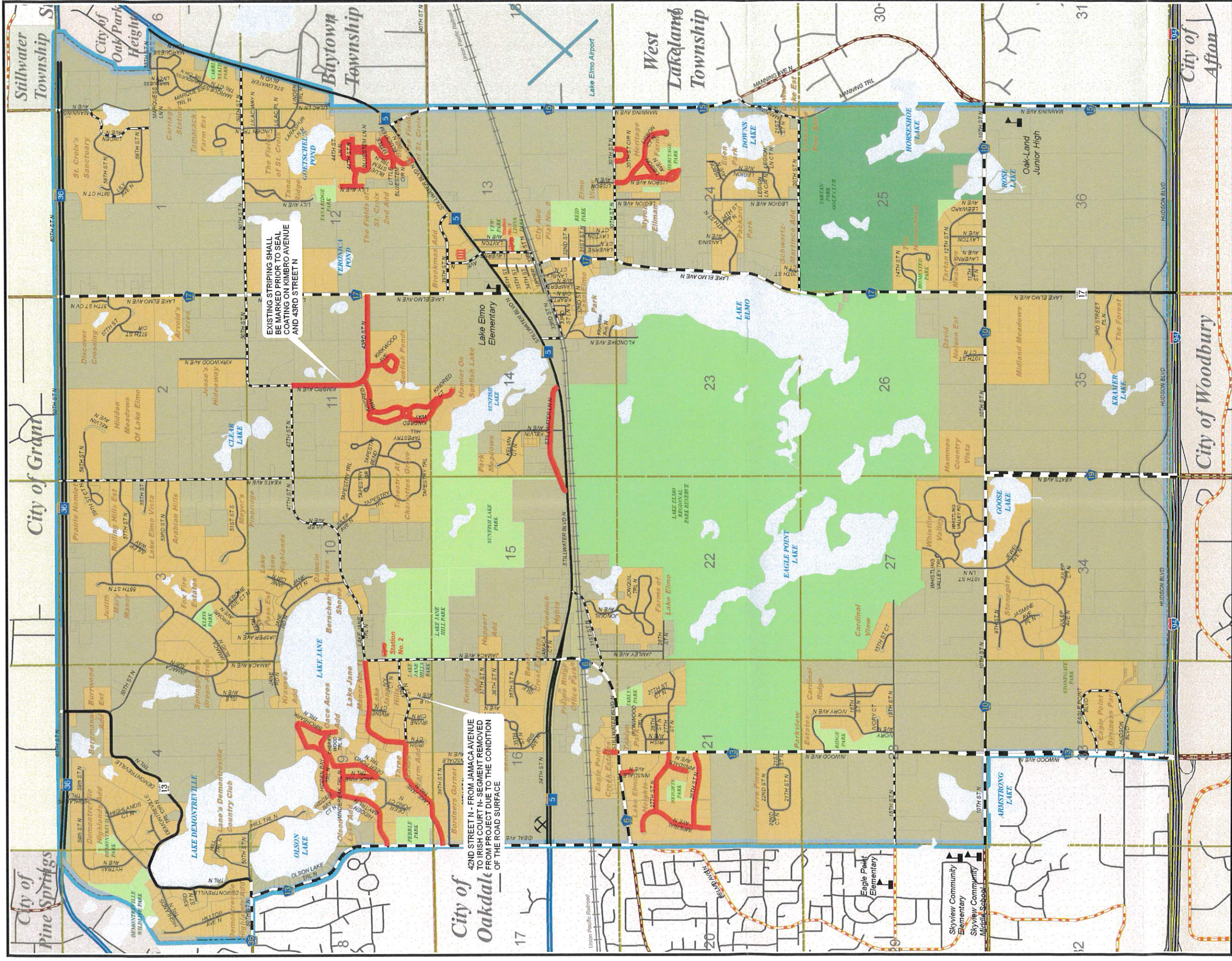
ITEM NO.	DESCRIPTION	QUANTITY	UNIT	ENGINEER'S ESTIMATE		PEARSON BROS INC.		ALLIED BLACKTOP CO.	
				UNIT PRICE	TOTAL AMOUNT	UNIT PRICE	TOTAL AMOUNT	UNIT PRICE	TOTAL AMOUNT
1	BITUMINUS SEALCOAT WITH 1/8" DRESSER TRAP ROCK	185,995	SY	\$ 1.20	\$ 199,194.00	\$ 1.07	\$ 177,614.65	\$ 1.10	\$ 182,594.50
2									
3									
4									
5									
6									
7									
8									
9									
10									
	TOTAL				\$ 199,194.00		\$ 177,614.65		\$ 182,594.50

CHANGE ORDER NO. 1

PERIOD ENDING: April 29, 2010

2010 SEAL COAT PROJECT
 CITY OF LAKE ELMO, MINNESOTA
 TKDA PROJECT NO. 14575.005

ITEM NO.	ITEM	UNIT	QUANTITY	QUANTITY TO DATE	+/- DIFFERENCE	UNIT PRICE	AMOUNT TO DATE	NET CHANGE	CONTRACT AMOUNT
1	REMOVE QUANTITY FOR BITUMINOUS SEALCOAT WITH 1/8" DRESSER TRAP ROCK DUE TO REMOVAL OF 42ND STREET (JAMACA TO IRISH CT) FROM PROJECT SCOPE	SY	(8,644)		-	\$ 1.07	\$ -	\$ -	\$ (9,249.08)
TOTAL CHANGE ORDER NO. 1							\$ -	\$ -	\$ (9,249.08)

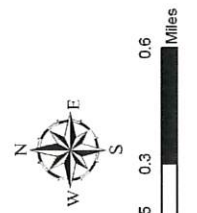


2010 SEAL COAT PROJECT LOCATION MAP



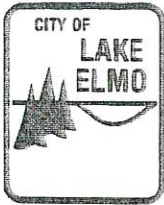
Legend

- 2010 Seal Coat Project
- City Hall
3000 Lavigne Avenue N
651/777-5510
www.lakeelmo.org
- Public Works Building
3445 Ideal Ave N
651/233-5414
- Fire Stations
Station No. 1
3510 Lavigne Ave N
651/778-5005
Station No. 2
4259 Jamaca Ave N
651/778-5852
- Schools
- Parcels
- Subdivisions
- City Parks
- Golf Course
- Lake Elmo Regional Park Reserve
- Park Office
651/430-3588
- Lakes



Map Date: March 2010
 Created By
TKDA
 ENGINEERS - ARCHITECTS - PLANNERS





MAYOR & COUNCIL COMMUNICATION

DATE: 5/04/2010

REGULAR

ITEM #: 84 3

MOTION

AGENDA ITEM: Keats Avenue Street and Watermain Improvements – Authorization for Geotechnical Services

SUBMITTED BY: Ryan Stempki, Assistant City Engineer

THROUGH: Bruce A. Messelt, City Administrator *BOM*

REVIEWED BY: Jack Griffin, City Engineer
Tom Bouthilet, Finance Director

SUMMARY AND ACTION REQUESTED: Keats Avenue is scheduled to be improved in the 2011 construction season, as per the Street Capital Improvement Program. Additionally, the installation of a trunk watermain along Keats Avenue is seen as a critical loop connection in the water system, to be considered in conjunction with the planned street improvements.

To provide an engineering recommendation of street and watermain improvements, and whether these improvements will be better completed together or separately, a geotechnical evaluation (soil borings) should be obtained so as to determine the subsurface condition of the roadway. City staff will briefly review this proposal during tonight's meeting. The recommended motion to act on this is as follows:

“Move to Authorize American Engineering Testing, Inc. to Perform Geotechnical Services for the Keats Avenue Street and Watermain Improvements in the Amount of \$7,700.00.”

BACKGROUND INFORMATION: Keats Avenue is a road segment on Lake Elmo's Municipal State Aid System that is scheduled for improvements in the 2011 construction season. Additionally, Lake Elmo has received state grant money in the amount of \$1 million to be used towards general water system improvements. The construction of Well No. 4 and the trunk watermain connection along Keats Avenue have both been identified as immediate high-priority needs to improve the current water supply system.

STAFF REPORT: Geotechnical services are necessary at this time to obtain the existing *in place* subsurface conditions along the Keats Avenue corridor, so that a preliminary project scoping study can be completed. The scoping study is necessary to evaluate how these two

projects will best be completed. If the existing *in place* subsurface soils and pavement condition allows for a lower cost reclaim-type street improvement for Keats Avenue, then the trunk watermain improvements may best be completed separately, one year prior to the street improvements, and using directional type drilling. If, however, a complete reconstruction-type street improvement is necessary, then the trunk watermain improvements may best be completed concurrently, using an open trench installation method.

To obtain the necessary subsurface investigation, 17 standard penetration test borings to a depth of 11 feet will be needed. The scope of services is further detailed in the attached Proposal provided by AET, Inc. in an amount not to exceed \$7,700. The geotechnical services will be funded out of the Infrastructure Reserve Fund.

RECOMMENDATION: Based upon the above background information and staff report, it is recommended that the City Council move to approve the motion by undertaking the following action:

“Move to Authorize American Engineering Testing, Inc. to Perform Geotechnical Services for the Keats Avenue Street and Watermain Improvements in the Amount of \$7,700.00.”

ATTACHMENTS: American Engineering Testing, Inc. Proposal for Geotechnical Services

SUGGESTED ORDER OF BUSINESS:

- Introduction of Item City Administrator
- Report/Presentation..... City Engineer
- Questions from Council to Staff..... Mayor Facilitates
- Public Input, if Appropriate..... Mayor Facilitates
- Call for Motion Mayor & City Council
- Discussion..... Mayor & City Council
- Action on Motion..... Mayor Facilitates



CONSULTANTS
• ENVIRONMENTAL
• GEOTECHNICAL
• MATERIALS
• FORENSICS

April 23, 2009

City of Lake Elmo
c/o TKDA
444 Cedar Street, Suite 1500
St. Paul, MN 55101-2140

Attn: Ryan W. Stempksi, PE

RE: Proposal for Geotechnical Services
Keats Avenue Street Improvements, Lake Elmo, Minnesota

Dear Mr. Stempksi:

Per your April 22 request and our follow-up discussion, we are submitting this proposal to conduct the following scope:

Scope:

Fieldwork

- Drill 17 standard penetration test borings to depths of 11 feet along Keats Avenue. Most borings will be on the paved surface, with the remainder being on the east shoulder or ditch.
- Clear underground public utilities through the Gopher State One Call system.
- Measure in-place bituminous and apparent aggregate base thicknesses.
- Measure and document the boring locations. No measuring of the surface elevations is planned.

Laboratory

- Classify the soils per the Unified Soil Classification System (USCS).
- Conduct water content tests on cohesive samples retrieved.
- Conduct unit price soil index testing (\$350 unit price budget, allowing for 4 sieve analysis tests).

Report

- Logs of the test borings, including pavement thicknesses and lab test results.
- Descriptions of the drilling, sampling, test, and classification methods.
- Review of soil and groundwater conditions encountered.
- Geotechnical opinions/recommendations pertaining to the planned street improvements (rehabilitation or reconstruction), including estimate of subgrade R-value; and watermain support, bedding, and backfilling.

The scope of work defined in this proposal is intended for geotechnical purposes only, and not to explore for the presence or extent of environmental contamination at the site. However, we will note obvious contamination encountered.



City of Lake Elmo

April 23, 2010

Page 2 of 2

Fee:

Our services will be performed on a time-and-materials basis per the attached fee schedule. For the scope described, we will establish \$7700 as a not-to-exceed fee. In the event the scope of our work needs to be revised, we will review such scope adjustments and the associated fees with you, and receive your approval before proceeding.

Schedule:

Based on our current backlog, we anticipate drilling can be performed within about 1 to 1½ weeks after receiving authorization to proceed. The borings should take two days to complete in the field. Verbal results can be provided shortly after drilling. The report should follow the fieldwork by about two weeks.

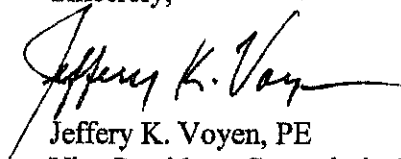
Terms/Conditions:

Our services will be performed per the attached two-page *Service Agreement* and the one-page *Subsurface Boring Supplement*.

Acceptance:

Please indicate your acceptance of this proposal by endorsing the enclosed copy and returning it to us. The original proposal is intended for your records.

Sincerely,



Jeffery K. Voyer, PE
Vice President, Geotechnical Division
Phone #651-659-1305
Cell #612-961-9186
jvoyen@amengtest.com

PROPOSAL ACCEPTANCE BY:

Signature: _____

Printed Name: _____

Date: _____

Attachments:

2009 Geotechnical Fee Schedule
Service Agreement (2 pages), Subsurface Boring Supplement

2009 GEOTECHNICAL FEE SCHEDULE

I. Personnel Hourly Rates		7. Stabilized Earth Slopes & Walls	15.00/hr
A.	Word Processing Specialist	56.00/hr	
B.	Drill Technician/Lab Technician	82.00/hr	
C.	Senior Engineering Technician	87.00/hr	
D.	Engineering Assistant	98.00/hr	
E.	Engineer I/Geologist I	105.00/hr	
F.	Engineer II/Geologist II/Sr. Engr. Assistant	120.00/hr	
G.	Senior Engineer/Geologist	133.00/hr	
H.	Principal Engineer/Geologist	160.00/hr	
II. Vehicle Mileage		8. Settlement (FoSSA)	15.00/hr
A.	Personal Automobile/Truck	0.70/mile	
B.	Auxiliary Truck Vehicle	0.90/mile	
C.	Truck with Coring Equipment	1.00/mile	
D.	Truck with Warning Sign/Crash Trailer	1.10/mile	
E.	1-ton Truck with Drill Rig	1.10/mile	
F.	1-1/2 to 2-1/2-ton Truck with Drill Rig	1.25/mile	
G.	CPT Truck Rig (20-ton push capacity)	1.50/mile	
H.	Tractor/Lowboy Trailer	1.70/mile	
III. Equipment Rental		9. SHAFT	15.00/hr
A.	Drill Rig Rental		
1.	Rotary Drill on 1-ton Truck	62.00/hr	
2.	Rotary Drill on 1½ to 2½-ton Truck	72.00/hr	
3.	Rotary Drill on All-Terrain Vehicle	102.00/hr	
4.	Portable, Non-rotary Rig	72.00/hr	
B.	Auxiliary/Specialty Vehicle Rental		
1.	Auxiliary Truck Vehicle	15.50/hr	
2.	Truck with Warning Sign/Crash Trailer	25.00/hr	
3.	Truck with Coring Equipment	40.00/hr	
C.	Cone (CPT) Rig/Equipment Rental		
1.	CPT Rig (Truck or ATV)	128.00/hr	
2.	Electronic Cone w/Computer	37.00/hr	
3.	Soil Sampler	3.00/hr	
4.	Water Sampler	20.00/hr	
D.	Miscellaneous Equipment Rental		
1.	Field Vane Shear	300.00/day	
2.	Field Electrical Resistivity	210.00/day	
3.	Field Seismic Refraction (ReMi)	370.00/day	
4.	Inclinometer Reading Equipment	300.00/day	
5.	Pneumatic Transducer Reading	150.00/day	
6.	Bore Hole Permeability		
a.	Open End Casing Method	120.00/day	
b.	HQ Wireline Packer	300.00/day	
7.	Borehole Pressuremeter	55.00/hr	
8.	Iowa Borehole Shear Tester	310.00/day	
9.	Double Ring Infiltrometer	235.00/day	
10.	Photoionization Detector (PID)	110.00/day	
11.	GPS Mapping System	13.00/hr	
12.	Pile Driving Analyzer (PDA)	680.00/day	
13.	Calibrated SPT Rod	175.00/day	
14.	Portable Concrete Coring Equipment	35.00/hr	
15.	Pavement Testing (FWD includes Truck)		
a.	Falling Weight Deflectometer	150.00/hr	
b.	Light Weight Deflectometer	50.00/hr	
E.	Geotechnical Software Rental		
1.	Geo Studio Finite Element	55.00/hr	
2.	CAPWAP	30.00/hr	
3.	AutoCAD	25.00/hr	
4.	Wave Equation (WEAP)	15.00/hr	
5.	LPILE or GROUP	15.00/hr	
6.	Slope Stability (ReSSA)	15.00/hr	
		F. Bit Wear- Rock Coring	
		1. Diamond Bit - Sedimentary Rock	
		a) B, NQ	10.00/foot
		b) HQ	12.00/foot
		2. Diamond Bit - Metamorphic & Igneous	
		a) B, NQ	17.00/foot
		b) HQ	20.00/foot
		IV. Laboratory Tests of Soil	
		A. Water Content	hourly
		B. Dry Density (includes water content)	50.00/test
		C. Atterberg Limits (ASTM:D4318)	
		1. Plasticity Index	100.00/test
		2. Liquid Limit or Plastic Limit Separately	75.00/test
		D. Shrinkage Limit (ASTM:D427)	95.00/test
		E. Sieve Analysis (includes #200)	88.00/test
		F. Hydrometer Analysis (sieve included)	235.00/test
		G. Thermal Resistivity w/Proctor (ASTM:D5334)	
		1. As Received and Oven Dried (2 pts)	910.00/test
		2. Dry Out Curve (4 pts)	1130.00/test
		H. Electrical Resistivity (ASTM:G57-Soil Box)	85.00/test
		I. Unconfined Compression (ASTM:D2166)	76.00/test
		J. Hand Penetrometer	10.00/test
		K. Organic Content of Soil	55.00/test
		L. Topsoil Borrow Test (Mn/DOT 3877)	340.00/test
		M. R-value (Hveem Stabilometer)	360.00/test
		N. California Bearing Ratio	
		1. Granular	560.00/test
		2. Cohesive	630.00/test
		O. Proctor Tests (Methods A or B)	
		1. Standard	115.00/test
		2. Modified	130.00/test
		V. Expenses	
		A. Direct Project Expenses: includes out-of-town per diem; plowing & towing; special materials & supplies; special travel, transportation & freight; subcontracted services, and miscellaneous costs	Cost + 15%
		B. Equipment Replacement (when abandonment is more feasible than recovery)	Cost
		C. Equipment Recovery (when required by regulatory agencies or project specifications)	Cost + 15%
		VI. Expert Witness Service Rates	
		A. Litigation Preparation	210.00/hr
		B. Deposition or Court Time (4-hour minimum)	265.00/hr

The rates presented are portal-to-portal with vehicle mileage, expenses and equipment rentals being additional.

Overtime for personnel charged at above cost plus 25% for over 8 hours per day or Saturday; and at above cost plus 50% for Sundays or Holidays. Hazardous work charged at an additional 25%. Night time shift work will include a premium charge of \$30.00 per person per shift.

SECTION 1 - RESPONSIBILITIES

1.1 - The party to whom the proposal/contract is addressed is considered the Client of American Engineering Testing, Inc. (AET). The terms and conditions stated are binding, upon acceptance, on the Client, its successors, assignees, joint ventures and third-party beneficiaries. **Oral proposal acceptance or authorizing purchase orders from the Client are considered formal acceptance of AET's terms and conditions.**

1.2 - Prior to AET performing work, Client will provide AET with all information that may affect the cost, progress, safety and performance of the work. This includes, but is not limited to, information on proposed and existing construction, all pertinent sections of contracts between Client and property owner, site safety plans or other documents which may control or affect AET's work. If new information becomes available during AET's work, Client will provide such information to AET in a timely manner. Failure of client to timely notify AET of changes to the project including, but not limited to, location, elevation, loading, or configuration of the structure or improvement will constitute a release of any liability of AET. Client will provide a representative for timely answers to project-related questions by AET.

1.3 - Work by AET will not relieve other persons of their responsibility to perform work according to the contract documents or specifications, and AET will not be held responsible for work or omissions by Client and other persons. AET does not perform construction management, general contracting or surveying services and our presence on site does not constitute any assumption of those responsibilities. AET will not be responsible for directing or supervising the work of others, unless specifically authorized and agreed to in writing.

1.4 - Work by AET often includes sampling at specific locations. Inherent with such sampling is variation of conditions between sampling locations. Client recognizes this uncertainty and the associated risk, and acknowledges that opinions developed by AET, based on the samples, are qualified to that extent.

1.5 - AET is not responsible for interpretations or modifications of AET's recommendations by other persons.

1.6 - Should changed conditions be alleged, Client agrees to notify AET before evidence of alleged change is no longer accessible for evaluation.

SECTION 2 - SITE ACCESS AND RESTORATION

2.1 - Client will furnish AET safe and legal site access.

2.2 - It is understood by Client that in the normal course of the work, some damage to the site or materials may occur. AET will take reasonable precautions to minimize such damage. Restoration of the site is the responsibility of the Client.

SECTION 3 - SAFETY

3.1 - Client shall inform AET of any known or suspected hazardous materials or unsafe conditions at the work site. If, during the course of AET's work, such materials or conditions are discovered, AET reserves the right to take measures to protect AET personnel and equipment or to immediately terminate services. Client shall be responsible for payment of such additional protection costs.

3.2 - AET shall only be responsible for safety of AET employees at the work site. The Client or other persons shall be responsible for the safety of all other persons at the site.

SECTION 4 - SAMPLES

4.1 - Client is responsible for informing AET of any known or suspected hazardous materials prior to submittal to AET. All samples obtained by, or submitted to, AET remain the property of the Client during and after the work. Any known or suspected hazardous material samples will be returned to the Client at AET's discretion.

4.2 - Non-hazardous samples will be held for 30 days and then discarded unless, within 30 days' of the report date, the Client provides a written request that AET store or ship the samples, at the Client's expense.

SECTION 5 - PROJECT RECORDS

The original project records prepared by AET will remain the property of AET. AET shall retain these original records for a period of three years following submission of the report, during which period the project records can be made available to Client at AET's office at reasonable times.

SECTION 6 - STANDARD OF CARE

AET will perform services consistent with the level of care and skill normally performed by other firms in the profession at the time of this service and in this geographic area, under similar budgetary constraints. No other warranty is implied or intended.

SECTION 7 - INSURANCE

AET carries Worker's Compensation, Comprehensive General Liability, Automobile Liability and Professional Liability insurance. AET will furnish certificates of insurance to Client upon request.

SECTION 8 - DELAYS

If AET work delays are caused by Client, work of others, strikes, natural causes, weather, or other items beyond AET's control, a reasonable time extension for performance of work shall be granted, and AET shall receive an equitable fee adjustment.

SECTION 9 - PAYMENT, INTEREST AND BREACH

9.1 - Invoices are due on receipt. Client will inform AET of invoice questions or disagreements within 15 days of invoice date; unless so informed, invoices are deemed correct.

9.2 - Client agrees to pay interest on unpaid invoice balances at a rate of 1.5% per month, or the maximum allowed by law, whichever is less, beginning 30 days after invoice date.

9.3 - If any invoice remains unpaid for 60 days, such non-payment shall be a material breach of this agreement. As a result of such material breach, AET may, at its sole option, terminate all duties to the Client or other persons, without liability.

9.4 - Client will pay all AET collection expenses and attorney fees relating to past due fees which the Client owes under this agreement.

SECTION 10 - MEDIATION

10.1 - Client and AET agree that any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to arbitration or the institution of legal or equitable proceedings by either party.

10.2 - Unless Client and AET mutually agree otherwise, mediation shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association. Request for mediation shall be in writing and the parties shall share the mediator's fee and any filing fees equitably. The mediator shall be acceptable to both parties and shall have experience in commercial construction matters.

SECTION 11 - LITIGATION REIMBURSEMENT

Payment of AET costs for Client lawsuits against AET which are dismissed or are judged substantially in AET's favor will be the Client's responsibility. Applicable costs include, but are not limited to, attorney and expert witness fees, court costs, and AET costs.

SECTION 12 - MUTUAL INDEMNIFICATION

12.1 - AET agrees to hold harmless and indemnify Client from and against liability arising out of AET's negligent performance of the work, subject to Section 13 and any other limitations, other indemnifications or other provisions Client and AET have agreed to in writing.

12.2 - Client agrees to hold harmless and indemnify AET from and against liability arising out of Client's negligent conduct, subject to any limitations, other indemnifications or other provisions Client and AET have agreed to in writing.

12.3 - If Client has indemnity agreement with other persons, the Client shall include AET as a beneficiary.

SECTION 13 - LIMITATION OF LIABILITY

Client agrees to limit AET's liability to Client arising from negligent acts, errors or omissions, such that the total liability of AET shall not exceed \$1,000,000.

SECTION 14 - TERMINATION

After 7 days written notice, either party may elect to terminate work for justifiable reasons. In this event, the Client shall pay for all work performed, including demobilization and reporting costs to complete the file.

SECTION 15 - SEVERABILITY

Any provisions of this agreement later held to violate a law or regulation shall be deemed void, and all remaining provisions shall continue in force. However, Client and AET will in good faith attempt to replace an invalid or unenforceable provision with one that is valid and enforceable, and which comes as close as possible to expressing the intent of the original provision.

SECTION 16 - GOVERNING LAW

This Agreement shall be construed, and the rights of the parties shall be determined, in accordance with the Laws of the State of Minnesota.

SECTION 17 - ENTIRE AGREEMENT

This agreement, including attached appendices, is the entire agreement between AET and Client. This agreement nullifies any previous written or oral agreements, including purchase/work orders. Any modifications to this agreement must be in writing.

**SUBSURFACE BORING SUPPLEMENT
TO TERMS AND CONDITIONS**

Page 1 of 1

SECTION 1 - UNDERGROUND UTILITY AND STRUCTURE CLEARANCE

1.1 - It is necessary that borings, excavations and other penetrations be located such that they maintain a minimum safe distance from underground utilities or other man-made objects. Client shall advise AET of all utilities that service or are located on the site, as well as any underground improvements located on the site. AET will contact state notification centers, where available, or individual utility owners where a state notification center is not available prior to drilling.

1.2 - Public utility owners may not provide the locating service on private property. In such situations, the Client is responsible for location of such utilities prior to drilling.

1.3 - The property owner may have private underground improvements which cannot be cleared through the state notification center or public utility owners. The Client is responsible for location of these improvements.

1.4 - AET will not be responsible for any damages to "non-located" or incorrectly located underground utilities or other man-made improvements.

SECTION 2 - SITE RESTORATION

2.1 - Client accepts that in the normal course of field exploration work, certain types of damage to the site may occur which are inherent with this type of work, such as tire indentations to lawns and landscape areas. It is the responsibility of AET to take reasonable precautions to minimize such damage. It is also AET's responsibility to patch boreholes placed through pavement or slab areas after performance of borings. Otherwise, restoration of the site is the responsibility of the client.

SECTION 3 - CONTAMINATION

3.1 - Client acknowledges and accepts that unavoidable contamination risks may be associated with AET's subsurface drilling, sampling and installation of monitoring devices. Risks include, but are not limited to, cross contamination created by linking contaminated zones to uncontaminated zones during the drilling process; containment and proper disposal of known or suspected hazardous materials, drill cuttings and drill fluids; and decontamination of equipment and disposal and replacement of contaminated consumables. Client and AET agree that the discovery of unanticipated actual or suspected hazardous materials may make it necessary for AET to take immediate measures, including regulatory notification, to protect human health and safety, and/or the environment. Client and AET also agree that the discovery of such materials constitutes a changed condition which may result in added costs to the Client, and may require a renegotiation of work scope or termination of services.

3.2 - Pursuant to risks set forth in Section 3.1, which are inherent with AET's work performed on the Client's behalf, Client agrees to hold harmless and indemnify AET from and against liability associated with contamination resulting therefrom.

SECTION 4 - LOST EQUIPMENT

Equipment lost in bore holes may be required to be retrieved or properly abandoned by government agencies. Client agrees to pay AET all costs related to retrieving and/or abandoning such equipment at AET fee schedule rates, unless agreed otherwise.

SECTION 5 - LIMITATIONS OF SUBSURFACE EXPLORATION

Client recognizes that unavoidable risks occur whenever engineering or related disciplines are applied to identify subsurface conditions. Variations in soil conditions usually occur between and beyond sampled/tested locations. Even a comprehensive sampling and testing program performed in accordance with a professional standard of care may fail to detect certain conditions, because the variability of conditions cannot be seen. For similar reasons, actual environmental, geologic and geotechnical conditions that AET characterizes to exist between sampling points may differ significantly from those that actually exist. The passage of time also must be considered, and Client recognizes that, due to natural occurrences or direct or indirect human activities at the site or distant from it, actual conditions discovered may change. Client recognizes that nothing can be done to eliminate the risks associated with these limitations.



MAYOR & COUNCIL COMMUNICATION

DATE: 5/04/2010

REGULAR

ITEM #: 9

MOTION

AGENDA ITEM: Street Capital Improvement Program – Authorization to Conduct the Annual Pavement Management Street Rating Services

SUBMITTED BY: Ryan Stempksi, Assistant City Engineer

THROUGH: Bruce A. Messelt, City Administrator *BAM*

REVIEWED BY: Jack Griffin, City Engineer
Tom Bouthilet, Finance Director

SUMMARY AND ACTION REQUESTED: As part of the City's Street Capital Improvement Program, the street inventory and condition assessment data needs to be updated and maintained. This data is important in that it is one of the underlying factors supporting the recommendations of the annual street maintenance and reconstruction program. To maintain the street rating data, the best practice is to re-rate 25% of the street and roadway network each year so that the street condition assessment for any given street is completed every 4 years. The street segments are chosen consistent with the streets most likely to require maintenance or improvements in the next few years. The recommended motion to act on this is as follows:

SUGGESTED: *“Move to Authorize TKDA to Complete an Update of Street Ratings for 25% of the Street Network in the Amount of \$5,700.00.”*
MOTION

BACKGROUND INFORMATION: In 2007, a Pavement Management Program was completed for the City of Lake Elmo street network. Street condition assessments were completed for the entire street network and this data was stored in a software program called CarteGraph, which is maintained by TKDA. Engineering and Public Works utilized this relative comparison data to prepare the street Capital Improvement Program. No updates have been completed to the street rating data since this 2007 Pavement Management Report.

STAFF REPORT: TKDA will identify and measure distresses in the exposed street surface of 25% of the street network, focusing first on the streets programmed for maintenance and improvements in 2011 and 2012. The updated data will be entered into the CarteGraph database and the condition assessments will be used to confirm the Street Capital Improvement Program, or to support amendments as necessary.

A review of the proposed 2011 Street Improvements will need to be completed and confirmed within the next two months in order to initiate the 2011 Street Improvements Feasibility Study on schedule (Feasibility Study's need to be initiated during the summer of the year prior to construction to ensure that the resident meetings, survey work and investigations can be completed prior to snowfall). This practice will result in the most effective use of the City's street maintenance and improvement expenditures.

RECOMMENDATION: Based upon the above background information and staff report, it is recommended that the City Council move to approve the motion by undertaking the following action:

“Move to Authorize TKDA to Complete an Update of Street Ratings for 25% of the Street Network in the Amount of \$5,700.00.”

Alternatively, the City Council may deny such recommendation by simply not taking any action on this item or tabling this item for future consideration. It may also amend this recommendation, as appropriate. If the latter is done so, the appropriate action of the Council following such discussion would be:

“Move to Authorize TKDA to Complete an Update of Street Ratings, as amended and approved at tonight's meeting.”

ATTACHMENTS: None

SUGGESTED ORDER OF BUSINESS:

- Introduction of Item City Administrator
- Report/Presentation..... City Engineer
- Questions from Council to Staff..... Mayor Facilitates
- Public Input, if Appropriate Mayor Facilitates
- Call for Motion Mayor & City Council
- Discussion Mayor & City Council
- Action on Motion..... Mayor Facilitates



MAYOR & COUNCIL COMMUNICATION

DATE: 5/04/2010

REGULAR

ITEM #: 10

MOTION

AGENDA ITEM: Resolution of Concurrence with South Washington Watershed District
Petition for a Boundary Change

SUBMITTED BY: Matt Moore, SWWD Administrator

THROUGH: Bruce A. Messelt, City Administrator *BAM*

REVIEWED BY: - NA -

SUMMARY AND ACTION REQUESTED: Attached is a draft Resolution of Concurrence and related petition for a boundary change requested by the South Washington Watershed District. (SWWD) The proposed boundary change follows several weeks of mediation among Washington County and interested parties and represents the consensus opinion and recommendation of the parties involved. The SWWD requests affirmative consideration of the Resolution of Concurrence from all of its member municipalities. A motion to act upon this is as follows:

SUGGESTED: *“Move to Approve Resolution 2010-021 providing Concurrence by the
MOTION City of Lake Elmo with the proposed Boundary Chances to the South
Washington Watershed District.”*

BACKGROUND INFORMATION: The SWWD boundary change petition is requesting transfer of territory from the Valley Branch Watershed District, which was formerly governed by the Lower St. Croix WMO. Upon dissolution of the Lower St. Croix WMO, a dispute ensued over which entity or entities should govern its territory.

Litigation involving several government entities and private citizens ensued and Washington County sought, through mediation, to resolve this dispute. Tonight's requested action represents the consensus resolution of this issue and is purportedly supported by all involved parties.

As part of its formal petition, the SWWD is requesting a statement of concurrence from all Cities and Townships in the watershed district. Attached is a draft resolution for consideration by the City Council of the City of Lake Elmo.

STAFF REPORT: In discussion with the SWWD, Valley Branch Watershed District and Washington County, it was reported that this action represents the consensus settlement of the mediation process. As such, it is recommended by these bodies that the City of Lake Elmo offer its support.

Of note, part of the settlement affords the City of Woodbury two of five seats on the SWWD Board of Managers. This is a change from current practice but, according to Washington County, is not without legal justification and some modicum of de facto, if not de jure, precedent. With the now-expanded sub-management districts and the little amount of Lake Elmo territory located within the SWWD, appointment by the County of the remaining three Managers will be an important task, given the automatic appointment of two Managers from the City of Woodbury.

RECOMMENDATION: Based upon the above background information and staff report, it is recommended that the City Council approve the motion by undertaking the following action:

“Move to Approve Resolution 2010-021 providing Concurrence by the City of Lake Elmo with the proposed Boundary Chances to the South Washington Watershed District.”

Alternatively, the City Council may deny such recommendation by simply not taking any action on this item or tabling this item for future consideration. It may also amend this recommendation, as appropriate. If the latter is done so, the appropriate action of the Council following such discussion would be:

“Move to Approve Resolution 2010-021, as amended at tonight’s meeting.”

ATTACHMENTS:

1. Proposed Resolution of Concurrence
2. SWWD Petition for Boundary Change

SUGGESTED ORDER OF BUSINESS:

- Introduction of Item City Administrator
- Report/Presentation..... City Administrator
- Questions from Council to Staff..... Mayor Facilitates
- Public Input, if Appropriate Mayor Facilitates
- Call for Motion Mayor & City Council
- Discussion..... Mayor & City Council
- Action on Motion..... Mayor Facilitates

CITY OF LAKE ELMO

SOUTH WASHINGTON WATERSHED DISTRICT PETITION
FOR BOUNDARY CHANGE

RESOLUTION NO. 2010-021

A Resolution by the City of Lake Elmo concurring with the petition to add or transfer territory to the South Washington Watershed District.

RECITALS:

1. The City of Lake Elmo is a statutory or home rule charter city with jurisdiction over area wholly or partially within the South Washington Watershed District.
2. That the Boundary Change Petition prepared by the South Washington Watershed District has been reviewed by the City Council of the City of Lake Elmo, and subject to the terms and conditions of paragraph 4 (a-i) of said Petition, the City of Lake Elmo concurs with said Petition.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Lake Elmo is in concurrence with the Boundary Change Petition of the South Washington Watershed District to be submitted to the Board of Water and Soil Resources.

ADOPTED this 4th day of May, 2010.

Dean A. Johnston, Mayor

Attest:

Bruce A. Messelt, City Administrator

JACK W. CLINTON, P.A.
ATTORNEY AT LAW

JACK W. CLINTON*
MARY K. KUEHLWEIN
PAKOU L. YANG
-LEGAL ASSISTANTS

539 BIBLENBERG DRIVE
SUITE 200
WOODBURY, MINNESOTA 55125 **JWCLINTON@USINTERNET.COM**

TELEPHONE: 651-389-9923
FAX: 651-389-9924

April 26, 2010

Matt Moore, Administrator
South Washington Watershed District
2302 Tower Drive
Woodbury, MN 55125

VIA E-MAIL

Re: Mediation Agreement and Boundary Change Petition

Dear Matt:

I am enclosing new versions of the Petition for the Minnesota Board of Water and Soil Resources, and the agreement between the various municipalities and watershed districts. Based on the most recent events and discussions from the week of April 19th, the revisions can be summarized as follows:

Petition

The Watershed District is now the petitioner, substituting for Washington County.

The operative terms of the Petition remain the same, and there is no change to the substantive agreements that were reached through the mediation process.

Agreement

The operative terms of the Agreement remain those that were agreed upon in mediation, with the following two exceptions:

1. The South Washington Watershed District, rather than the County, is the petitioner.
2. The County and South Washington will seek letters of concurrence from any municipality or township that is required to concur in the submission of the Petition.

The revisions are not being submitted in redline since the earlier versions had so many redlines that it became very difficult to read, and the document would not allow removal of all of the redlining.

For purposes of references for the attorneys who will be reviewing this, the Petition would be an amendment under 103B.215, subd. 2, adding new territory to a district or by transferring territory that is within the jurisdiction of another watershed district.

Re: Mediation Agreement and Boundary Change Petition
April 26, 2010
Page Two

Under Minn. Stat. 103B.225, there is authority granted to BWSR to place conditions upon a transfer of territory under 103B.215. We believe that the conditions can be added based on the work done to date by South Washington, including land acquisitions for the Central Draw Project. The obligations/responsibility for financing can be incorporated in the Petition and adopted by reference in the BWSR order. This is consistent with and follows the same process when the East Mississippi WMO was added to South Washington.

The Petition in the East Mississippi proceeding was conditioned upon: (1) the East Mississippi territory being treated as a subwatershed taxing district; (2) that the East Mississippi territory would pay 100% of the costs of any projects within the territory of East Mississippi; and (3) costs of projects that were outside of the territory of East Mississippi (and within the then existing watershed district) were to be paid for by the territory within the existing district, and none of those costs would be charged to the East Mississippi territory. The Order approved by BWSR in 2003 stated in its conclusions that the boundary change "should be approved per the Petition." If they are consistent, the BWSR board should approve this petition.

My letter, the two attachments and the resolutions of support that you prepared should be forwarded to the county for distribution.

Please call me if you have any questions.

Very truly yours,

JACK W. CLINTON, P.A.



Jack W. Clinton

JWC:mkk
Attachments

**STATE OF MINNESOTA
BOARD OF WATER AND SOIL RESOURCES
520 Lafayette Road North
St. Paul, MN 55155**

In the Matter of the Petition of
the South Washington Watershed District
for Boundary Change

BOUNDARY CHANGE PETITION

TO: Minnesota Board of Water and Soil Resources, 520 Lafayette Road North, St. Paul, MN 55155

Petitioner, South Washington Watershed District, a body politic and corporate, pursuant to South Washington Watershed District Board Resolution No. 2010-____ does hereby petition the Minnesota Board of Water and Soil Resources (BWSR) to change the boundaries of the South Washington Watershed District (SWWD) and the Valley Branch Watershed District (VBWD) pursuant to Minnesota Statute 103B.215 for the following reasons:

1. Both the SWWD and VBWD are existing watershed districts located entirely within the metropolitan area, and Minnesota Statute 103B.215, subd. 1 allows the boundaries of a watershed district wholly within the metropolitan area to be changed. The SWWD is requesting the transfer of territory currently within the jurisdiction of the VBWD to the SWWD. The areas being transferred are contiguous to the existing SWWD.
2. The boundary change proposed and the areas to be transferred are described on the map attached hereto as Exhibit A.

The proposed SWWD consists of a total of 110.38 square miles, of which

4.82 square miles are located within the City of Afton
36.56 square miles are located within the City of Cottage Grove
30.14 square miles are located within Denmark Township
2.71 square miles are located within Grey Cloud Island Township
0.40 square miles are located within the City of Hastings
0.98 square miles are located within the City of Lake Elmo
3.89 square miles are located within the City of Newport
1.02 square miles are located within the City of Oakdale
3.61 square miles are located within the City of St. Paul Park
26.25 square miles are located within the City of Woodbury

The proposed VBWD consists of a total of 71.33 square miles, of which

21.01 square miles are located within the City of Afton
4.44 square miles are located within Baytown Township
4.33 square miles are located within the City of Grant
22.93 square miles are located within the City of Lake Elmo
0.87 square miles are located within the City of Mahtomedi
5.55 square miles are located within the City of Oakdale
0.30 square miles are located within the City of Oak Park Heights
0.90 square miles are located within the City of Pine Springs
0.08 square miles are located within the City of St. Mary's Point
7.47 square miles are located within West Lakeland Township
2.75 square miles are located within the City of Woodbury
0.10 square miles are located within the City of Maplewood
0.30 square miles are located within the City of North St. Paul
0.30 square miles are located within the City of White Bear Lake

3. The following are supporting reasons for the boundary change between the SWWD and the VBWD described in Exhibit A.
 - a. The boundary change will be conducive to the public health and public welfare and for the purposes of Minnesota Statutes Chapters 103.
 - b. The boundary change will provide long term protection for surface and groundwater resources.

- c. The boundary change will ensure efficiency and effectiveness of water resource management in this area.
 - d. The boundary change is consistent with the purposes and requirements of Minnesota Statute 103B.205 to 103B.255.
 - e. Certain properties under the jurisdiction of the SWWD are subject to protection under Minnesota Statute 103B.225. The boundary change, subject to conditions in the petition, is compliant with Minnesota Statute 103B.225.
 - f. The petitioner has received a written statement of concurrence in the petition from the governing body of each statutory or home rule charter city and town and each watershed management organization having jurisdiction over the territory proposed to be added or transferred.
 - g. The boundary change will accomplish the objectives that were agreed upon through the watershed boundary mediation process which involved BWSR, Washington County, SWWD, VBWD, City of Cottage Grove, Denmark Township, and City of Woodbury in accordance with the Agreement (Exhibit B) adopted by Washington County, SWWD, VBWD, City of Cottage Grove, Denmark Township, and City of Woodbury.
4. Representatives of the City of Cottage Grove, Denmark Township, City of Woodbury, SWWD, VBWD and Washington County have developed recommendations for key issues related to the proposed boundary change between

the SWWD and the VBWD; such as financing policies, implementation of water management plans, and board representation. The local governments have approved an Agreement (Exhibit B) to specifically address these key issues to be in full force upon approval of this petition. The following are the conditions for changing the boundaries of the SWWD to be compliant with Minnesota Statute 103B.225:

- a. The SWWD will amend its watershed management plan pursuant to Minnesota Statute 103B.205-103B.255 to include the Lower St. Croix subwatershed area within one year. The SWWD will initially adopt the Lower St. Croix Water Management Organization (LSCWMO) 2009 Water Management Plan as the plan for this subwatershed pursuant to Minnesota Statute 103B.205-103B.255.
- b. The SWWD will apply resource based water quality standards defined by the St. Croix River and the Mississippi River and based on discrete geographical locations defined by hydrologic boundaries.
- c. The SWWD will implement the Central Draw Overflow Project as follows:
 - The SWWD will complete acquisition of lands necessary to control the outlet for the Central Draw Overflow Project to the Mississippi River by June 30, 2014.
 - As part of the Central Draw Overflow Project, the SWWD will

construct improvements to the Cottage Grove Central Ravine by December 31, 2014 to accommodate interim watershed overflows.

- The SWWD will complete construction of the Central Draw Overflow Project by January 1, 2020 unless otherwise agreed to by the City of Cottage Grove, City of Woodbury and SWWD.

- d. For the purpose of collecting revenues and paying the costs of projects in the former LSCWMO territory, the SWWD will establish a water management district pursuant to Minnesota Statute 103D.729. The former LSCWMO territory will pay 100 percent of the costs of any projects that are needed within the former LSCWMO territory and none of the costs will be charged to any of the territory SWWD as it existed prior to the May 27, 2009 BWSR Order.
- e. The cost of projects for the territory within the existing SWWD will be paid for by the territory within the existing SWWD and none of the costs will be charged to the former LSCWMO territory being added to the SWWD.
- f. Funding should be determined on a project-by-project basis, based on project benefits, costs (including administrative costs of the financing options), and equity. The SWWD will finance projects on a subwatershed basis through revenue collected using a stormwater utility fee according to Minnesota Rules Chapter 444.
- g. Administrative services and related general services that are provided

throughout the new areas of the watershed districts will be funded using a district wide ad valorem tax, collected by Washington County as a part of property tax collection. For the SWWD, the former LSCWMO territory will pay its costs of the annual administrative budget and proportional costs of annual SWWD operational programs based on the ad valorem tax rate.

- h. Currently the SWWD consists of five managers. The SWWD is requesting the SWWD board of managers remain at five.
- i. The appointment of managers in the SWWD will be consistent with Minnesota Statute 103D.311, subd. 3(c) which states that managers must be appointed to fairly represent the various hydrologic areas within the watershed district. The county will ensure that two managers on the SWWD board live in the City of Woodbury. The remaining three managers will be appointed to fairly represent the remaining hydrological areas within the SWWD. In accordance with Minnesota Statute 103D.311, subd. 3(a) the county will appoint managers from a list of persons nominated by the townships and municipalities located within the watershed district. The list must contain at least three nominees for each managers position to be filled. The list must be submitted to the county at least 60 days before the managers term of office expires. If a list of

nominees is not received 60 days prior to the managers term of office
expiring or if a city or town fails to submit a list of nominees, the county
may appoint any managers that they so choose.

THEREFORE, the SWWD requests that the Minnesota Board of Water and Soil Resources,
after giving notice as required by law, and for the public welfare and public interest and to
further Minnesota Statute 103, the SWWD requests that the Minnesota Board of Water and Soil
Resources issue its order granting the following relief:

1. That the boundaries of the SWWD be changed as set forth on the map attached
hereto as Exhibit A pursuant to Minnesota Statute 103B.215.
2. That the area in each watershed district will be guided and managed consistent
with the current management plan of the watershed management organizations in
accordance with Minnesota Statute 103.
3. That the conditions stated in item 4 (a. – i.) of this petition be incorporated in the
Board's order.

Dated the _____ day of _____ 2010.

By: _____

Jack Lavold, SWWD President

By: _____

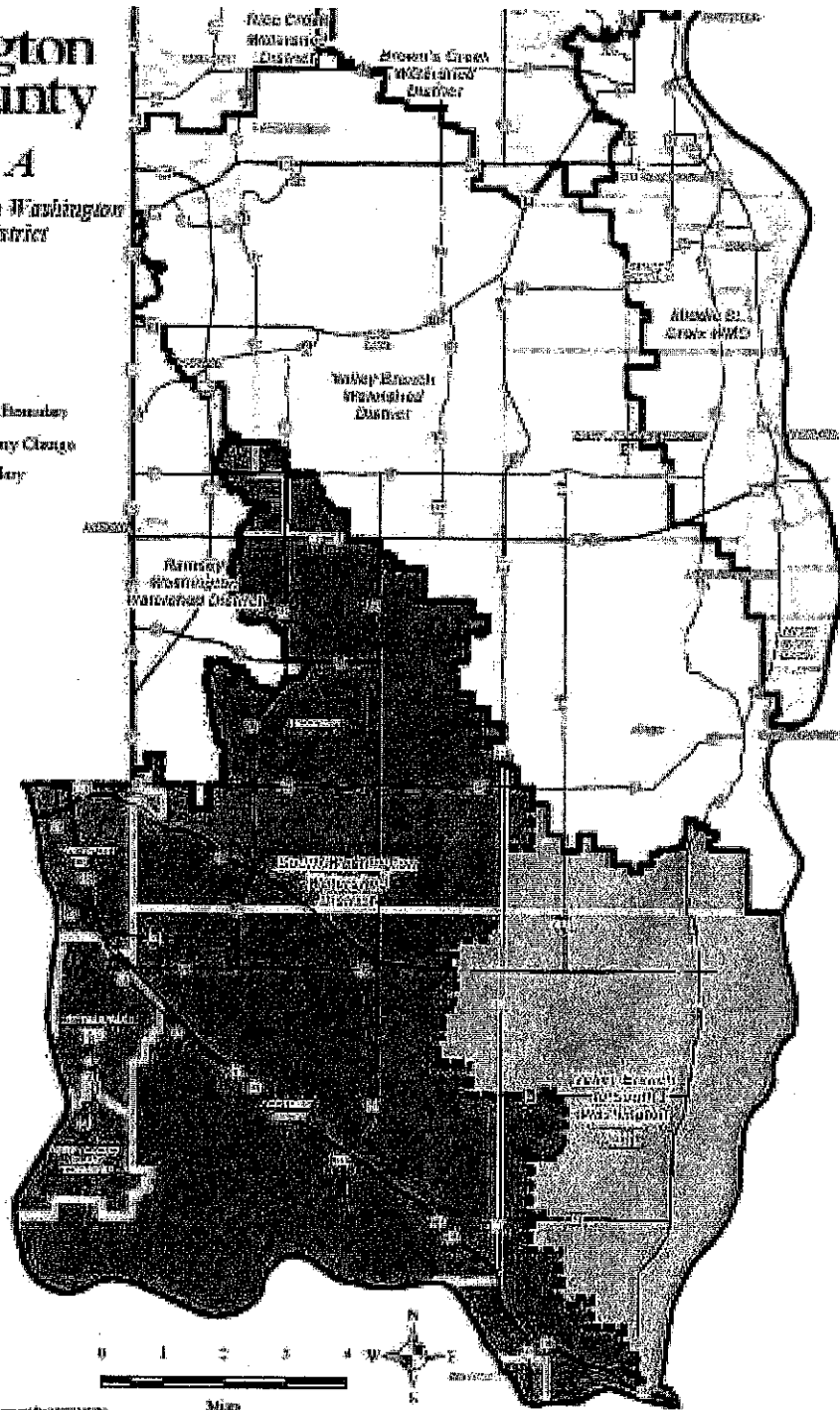
Don Pereira, SWWD Secretary

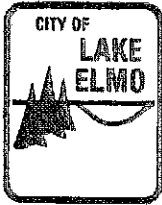
Washington County

Exhibit A

Enlargement of South Washington Watershed District

- Waterbed Legal Boundary
- Proposed Boundary Change
- Municipal Boundary





MAYOR & COUNCIL COMMUNICATION

DATE: 5/04/2010
REGULAR
ITEM #: 11
MOTION Resolution 2010-017

AGENDA ITEM: Comprehensive Plan Amendment for Senior Living and Farm School
Project at 9434 Stillwater Boulevard North – PID's: 15-029-21-31-0001
and 15-029-21-31-0003

SUBMITTED BY: Tammy Malmquist, Applicant
Lake Elmo Planning Commission
Kyle Klatt, Planning Director

THROUGH: Bruce A. Messelt, City Administrator

REVIEWED BY: Dave Snyder, City Attorney

SUMMARY AND ACTION REQUESTED: The City Council is asked to review a act upon a proposed Comprehensive Plan Amendment, requested from Mrs. Tammy Malmquist, 8549 Ironwood Trail North. Assuming affirmative action by the City Council, forthcoming will be separate requests for Zoning Text or Map Amendments, an OP Open Space Preservation Concept Plan, and a Planned Unit Development concept plan.

In their totality, these actions will allow the establishment of a 40-unit senior living multi-family building, 10 townhouse units, and a farm-themed preschool on a 30.9 acre parcel at 9434 Stillwater Boulevard North. The unanimous recommendation of the Planning Commission to approve the proposed Comprehensive Plan Amendment is reflected in the following motion:

SUGGESTED MOTION: *“Move to Approve Resolution 2010-017 Amending the City of Lake Elmo Comprehensive Plan to change future land use designation for the identified parcel from RAD to RAD2, as reflected in the specific findings and recommendations of the Planning Commission.”*

BACKGROUND INFORMATION: Given the complex nature of this application, Staff has recommending that the Planning Commission and City Council review focus first on the Comprehensive Plan and Zoning amendments before proceeding with a discussion of the OP Development and PUD Concept Plans. The primary reason for the staged review was to take the bigger picture items first, and then advance with the detailed plan reviews, if warranted.

This process was designed to save time, resources and effort, should support not exist within the Planning Commission and City Council to move forward with the Comprehensive Plan and Rezoning. However, the Planning Commission elected to only consider and forward at this time for Council consideration the recommended Comprehensive Plan Amendment. A summary of this item follows:

COMPREHENSIVE PLAN AMENDMENT: A request to amend the Lake Elmo Comprehensive Plan, and specifically the Future Land Use Map, to change the future use of the applicant's 30.9 acre parcel from RAD Rural Agriculture Density (.45 dwelling units per acre) to RAD2 Rural Agricultural Density/2 (2 dwelling units per acre). The applicant has requested a transfer of some density from an existing RAD2 area located west of the applicant's site along Stillwater Boulevard to the project site.

STAFF REPORT: The attached Staff report from the Planning Department includes detailed information concerning the application and the review and recommendation concerning the first two portions of the request: the Comprehensive Plan and Zoning Text Amendments. As the Planning Commission did not act upon the requested Zoning Text Amendments, these will be scheduled for Planning Commission review and consideration on May 10th, assuming affirmative Council action tonight on the proposed Comprehensive Plan Amendment.

The staff report also includes a brief summarization of the initial issues that have been identified concerning the specific concept plans, which are to be presented in greater detail to the Planning Commission on May 10th. Please note, however, that the City Council **is not being asked to review the concept plans at this time, and should focus its attention on the positive or negative aspects of the Comprehensive Plan Amendment** being requested.

Should the City Council decide to not move forward with the requested revisions to the Comprehensive Plan, the latter decisions will not require a significant amount of additional discussion and review, since the concept plans and Zoning changes would not be consistent with the Comprehensive Plan (and therefore could not be approved).

Planning Staff recommended denial of the proposed Comprehensive Plan amendment, as requested by the applicant. Findings of fact for denial were included in Planning Commission Report and are available tonight, if requested.

PLANNING COMMISSION RECOMMENDATION: The Planning Commission unanimously supported the applicant's requested Comprehensive Plan Amendment and developed a revised list of findings, included in the Planning Commission report. The findings have been incorporated by the Planning Director and City Attorney into the attached draft Resolution for Council Consideration.

Of note, the Planning Commission chose to table taking action on the Zoning Amendment, and requested that Staff prepare an alternate to the applicant's proposal that would create an overlay zoning district instead of amending the existing OP Ordinance. The Commission requested that the same standards proposed by the applicant be used to draft overlay regulations.

RECOMMENDATION: Based upon the above background information, staff report and recommendation of the Planning Commission, it is recommended that the City Council discuss and consider the proposed Comprehensive Plan Amendment, as delineated in the attached draft Resolution. Affirmative action can be undertaken by the following motion:

“Move to Approve Resolution 2010-017 Amending the City of Lake Elmo Comprehensive Plan to change future land use designation for the identified parcel from RAD to RAD2, as reflected in the specific findings and recommendations of the Planning Commission.”

Of note: The City Council will not be able to formally adopt the Comprehensive Plan Amendment until after Met Council review is complete. It appears that this amendment would be classified as a "minor plan amendment" by the Met Council and, therefore, not subject to adjacent review. However, staff is still researching this requirement (noted in the Resolution).

It should also be noted that final approval of the Comprehensive Plan Amendment is contingent upon approval by the City Council of the other aspects of this project. This contingency obviates the necessity or taking action to reverse tonight's decision, should the proposed development not move forward. Language to this effect has been crafted by the City Attorney and is also included in the draft Resolution.

Alternatively, the City Council does have the authority to deny the recommendation of the Planning Commission at tonight's meeting. However, tabling action tonight would likely require the concurrence of the applicant, given state statutes governing timely responses to land use applications. The City Council may also elect to amend this recommendation, as appropriate. If the latter is done, the appropriate action of the Council following such discussion would be:

“Move to Approve Resolution No. 2010-017 [as amended at tonight's meeting].”

Future Considerations: Should this initial step in this development proposal be affirmed at tonight's meeting, the following "future considerations" specific to this proposal are noted for Council information:

- The feasibility of the site and proposed development to comply with all aspects of the City Code remains to be determined. Of critical importance will be compliance with the City's new storm water regulations, and the resulting impact to site.
- The City and applicant will need to take into consideration potential future local, collector and arterial transportation improvements, above those already noted, directly or

indirectly resulting from the development, as well as anticipated financial participation of the applicant in such future improvements.

- The City and the applicant will need to take into consideration current and potential future provision of municipal utility services, including water and wastewater, as these services are improved and/or become available, consistent with state law and the best long-term interests of the City and development.
- The City and applicant may need to decide if the housing on the site should be age restricted and/or develop language that restricts future uses to those proposed by the applicant may prove problematic.
- Finally, the City and applicant will need to evaluate current and future park and recreation issues relating to the site, including such issues as trails and trail access, private and public access and amenities, and the like.

With respect to more general “future considerations;” the City Council may wish to consider future review of the Comprehensive Plan, which is currently devoid of any language addressing senior housing outside of the Village or multi-family buildings in rural development areas.

ATTACHMENTS:

1. Resolution 2010-017
2. Planning Staff Report
3. Copies of Written Correspondence
4. Concept Plan Narrative & Zoning Text Amendment (*previously provided*)
5. Farm School and Senior Living Concept Plans (*previously provided*)
6. Development Application Form (*previously provided*)
7. Response to Incompletion Letter (*previously provided*)
8. Review Comments: (*previously provided*)
 - Minnesota Department of Transportation
 - Valley Branch Watershed District
 - Oakdale Fire Department (Public Safety)
 - City Engineer
9. Future Land Use Map (Applicant’s Site and RAD2 Areas) (*previously provided*)
10. Aerial Image of Site (*previously provided*)

SUGGESTED ORDER OF BUSINESS:

- Introduction..... City Administrator
- Report by City Staff/Planning Commission Planning Director
- Questions from the City Council Mayor & City Council
- Presentation of Applicant..... Mayor Facilitates
- Questions from the City Council Mayor & City Council
- Public Comments 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. 2010-017

*RESOLUTION APPROVING AN AMENDMENT TO THE CITY OF LAKE ELMO
COMPREHENSIVE PLAN*

WHEREAS, the City of Lake Elmo has established a Comprehensive Plan that provides a compilation of background data, policy statements, standards, and maps, which help to guide the future physical, social, and economic development of the City; and

WHEREAS, Tammy Malmquist, 8549 Ironwood Trail North, ("Applicant") has submitted an application to the City of Lake Elmo ("City") to amend the Lake Elmo Comprehensive Plan, a copy of which is on file in the City Planning Department; and

WHEREAS, the request to amend the Comprehensive Plan was submitted along with multiple zoning requests necessary for the Applicant to move forward with a proposed multi-family senior living facility and farm-based preschool project; and

WHEREAS, the Lake Elmo Planning Commission held a public hearing on April 26, 2010 to consider the request to amend the Comprehensive Plan; and

WHEREAS, on April 26, 2010 the Lake Elmo Planning Commission adopted a motion to recommend that the City Council approve the request to amend the Comprehensive Plan; and

WHEREAS, the City Council reviewed the recommendation of the Planning Commission and the proposed amendment to the Comprehensive Plan at a meeting held on May 4, 2010.

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

FINDINGS

- 1) That the Applicant has submitted a request to amend the Comprehensive Plan in accordance with the procedures as established by the Lake Elmo Planning Department and Lake Elmo Planning Commission.
- 2) That the request to is to amend the Future Land Use Map (Map 1 in Chapter III – Land Use Plan) in the Lake Elmo Comprehensive Plan, and to specifically change the future land use designation of the parcel located at 9434 Stillwater Boulevard North from RAD (Rural Agricultural Density – 0.45 dwelling units per acre) to RAD2 (Rural Agricultural Density – 2 dwelling units per acre).
- 3) That the Comprehensive Plan Amendment will apply to property legally described in the attached Exhibit "A".

- 4) That the current use of the site as a working farm is unique compared to other properties designated for RAD development in the Comprehensive Plan.
- 5) That the proposed project associated with the Comprehensive Plan Amendment will help fulfill a need for senior housing within the community.
- 6) That recent subdivisions in areas guided for RAD development have been approved at a density below the unit levels anticipated in the Comprehensive Plan. The proposed density increase will be offset by reductions that have previously been approved or acknowledged by the City.
- 7) That the site is located in close proximity to public transportation along State Highway 5, and specifically, a bus route that could provide alternate transportation options for seniors.
- 8) That the site is located immediately adjacent to existing R-1 Single Family Residential zoning districts along its southern, eastern, and western boundaries. Other areas guided for RAD development are primarily surrounded by rural residential, agricultural, or public open space uses.

NOW, THEREFORE, BE IT RESOLVED, that based on the foregoing, the Lake Elmo City Council hereby approves the Applicant's request to amend the Lake Elmo Comprehensive Plan, subject to and contingent upon the following:

- 1) Submission of the Comprehensive Plan Amendment to the Metropolitan Council and the receipt of formal notification from the Metropolitan Council that its review has been completed and approved. Acknowledgement of these comments and final adoption of the Comprehensive Plan Amendment will require formal action by the City Council.
- 2) City Council approval of Zoning Ordinance Text or Map Amendments necessary for the Applicant's project to be satisfactorily considered by the City.
- 3) City Council approval of a satisfactory Final Open Space Preservation (OP) Development Plan associated with the Applicant's request to amend the Comprehensive Plan.
- 4) City Council approval of a satisfactory Planned Unit Development (PUD) Final Plan and associated documentation associated with the Applicant's request to amend the Comprehensive Plan and execution of same by the Applicant.
- 5) City Council approval of site development and details.

Passed and duly adopted this 4th day of May 2010 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
Comprehensive Plan and Zoning Text Amendment

To: **City Council**

From: Kyle Klatt, Planning Director

Meeting Date: **5/04/2010**

Applicant: **Tammy Malmquist**

Owner: Tammy Malmquist; Marlene Friedrich

Location: **9434 Stillwater Blvd N**

Zoning: RR – Rural Residential

Introductory Information

***Application
Summary:***

The City of Lake Elmo has received an application from Tammy Malmquist, 8549 Ironwood Trail North, for a Comprehensive Plan Amendment, Zoning Text Amendment, Open Space Preservation (OP) Development Concept Plan, and Planned Unit Development (PUD) Concept Plan. The individual elements of this request have been made to allow the establishment of a 40-unit senior living multi-family building, 10 townhouse units, and a farm-themed preschool on a 30.9 acres parcel at 9434 Stillwater Boulevard North. The request would incorporate the existing family care facility that is located adjacent to this property at 9442 Stillwater Boulevard North. As the current owner of the 30.9-acre parcel, Marlene Friedrich has signed as a co-applicant to this request.

Given the complex nature of this application, Staff has recommended that the City review focus first on the Comprehensive Plan and Zoning amendments before proceeding with a discussion of the OP Development and PUD Concept Plans. To facilitate this two-tiered review, separate public hearings and agenda items have been scheduled at different times with the Planning Commission as follows:

- April 26: Comprehensive Plan and Zoning Text Amendments
- May 10: OP Development and PUD Concept Plans

The primary reason for the staged review is to take the bigger picture items first, and then advance with the detailed plan reviews if warranted. This process will save time and effort if there is no support by the City Council to move forward with the Comprehensive Plan and Rezoning. If these elements of the application are approved, it would allow the required Met Council review to proceed while the City is considering the development Concept Plans.

The Planning Commission reviewed and conducted a public hearing on both the Comprehensive Plan and Zoning Text Amendments, and made a recommendation to the City Council on the first issue at its meeting on April 26th. The Commission tabled its discussion on the latter issue and directed staff to prepare an alternate ordinance to consider in addition to the amendments requested by the applicant. The ordinance will be brought back before the Planning Commission at its next meeting, prior to discussion on the OP Development and PUD Concept Plans.

**Application
Details:**

As noted above, there are four distinct components of the applicants request, which include the following:

Comprehensive Plan Amendment. The proposed amendment would change the future land use designation of the parcel located at 9434 Stillwater Boulevard North from RAD (Rural Agricultural Density – 0.45 dwelling units per acre) to RAD2 (Rural Agricultural Density – 2 dwelling units per acre). This change is necessary to move forward with the proposed development because the current designation as RAD would limit the overall number of units on the site to 14 units and the project that has been requested is for 51 units (1.7 units per acre), in addition to the existing single family residential site and proposed farm school. The applicant has proposed shifting density from an area guided for RAD2 west of the applicant’s property to this site in order to avoid any impacts to the overall population projections in the Comprehensive Plan.

Zoning Text Amendments. The applicant has requested an amendment to the OP Open Space Preservation Ordinance to add requirements for development in areas that are guided RAD2, and more specifically, to amend the OP District to allow for the proposed multi-family senior living facility and farm-based preschool. The current OP Ordinance does not contain any provisions that would allow residential development to exceed a density of 0.45 units per acre (or 18 units per 40 acres), and although one section ties the maximum allowed density to the Comprehensive Plan, another section very specifically limits densities in OP developments to 18 units per 40 gross acres of buildable land. The other proposed amendments to this section include the following:

- Adding Multi-Family Senior Housing buildings (only in areas guided for RAD2) and Farm Schools for preschool and school-aged children to the list of allowable uses in an OP development.
- Reducing the minimum land area for an OP development from 40 to 20 acres in areas guided RAD2.
- Reducing the amount of contiguous land required in open areas from 10 to 5 acres for land guided RAD2.
- Reducing the required buffer setback in areas guided RAD2 to 50 feet from 200 feet.
- Adding standards for Senior Housing Buildings in the OP minimum district

requirements table.

OP – Open Space Preservation (OP) Development Concept Plan. The ultimate objective of the Comprehensive Plan and Zoning Text Amendments described above is to allow the development of a 40-unit senior housing building, 10-unit townhouse development, and farm-based preschool on a 30.9-acre property located at 9434 Stillwater Boulevard North. Should the City adopt the requested OP District changes, the applicant would be able to submit a request for the proposed development in accordance with the requirements for new OP Open Space Preservation projects. The first step in this process is the submission of a concept plan for review, and all plans and information required as part of this submission have been included as part of the overall application. A few of the details of this proposal include the following:

- The Wunder Years day care would remain in its current location, and would be updated along with the existing house at 9434 Stillwater Boulevard North to match the proposed townhouses.
- A community septic system is planned to serve the development.
- One access is planned off Stillwater Boulevard to serve the project area in the general location now used for access to the existing home and daycare.
- 50% of the project site area would be set aside as permanent open space in accordance with the OP district requirements.
- An open green area is planned within the center of the development area and a common architectural theme is planned throughout the development area consistent with the past agricultural use of the property.

A more detailed description and complete staff review of the proposed OP Development Concept Plan will be provided at the next Planning Commission meeting when this aspect of the request is considered. This request may only proceed if the Comprehensive Plan and Zoning amendments are approved by the City Council.

Planned Unit Development (PUD) – Concept Plan. In addition to the OP Development concept plan submission, the application also includes a request for a Planned Unit Development concept plan. A PUD is necessary to move forward with the applicant's request since the project includes a mix of uses and activities that would otherwise not be possible under current zoning regulations. The PUD portion of the request will be considered by the City in conjunction with the review schedule for the OP Development concept plan. The pending staff review will group the concept plans together for the purpose of providing an analysis of the request in a future report.

Property Information:

The applicant's property is located near the intersection of Jamaca Avenue North and Stillwater Boulevard North (Highway 5). The current uses consist of the original Friederich family farmstead and related outbuildings and the Wunder Years day care

facility. Other than the agricultural fields, each of these uses would be considered a permitted residential and/or agricultural use of the property. The 30.9 acre farmstead is zoned RR – Rural Residential while the day care site is zoned R-1 Single Family Residential and is 29,670 square feet (0.68 acres) in size. Each property currently has its own access to Stillwater Boulevard via two driveways that are approximately 25 feet apart.

Other notable features of the farm property include a larger wooded area in the northeast portion of the site (referred to as the “Oak Savanna” on the concept plans) and gently rolling topography throughout the proposed project area. The 30.9-acre parcel extends westward to Jamaca Court North, and connects to this street via a narrow connection point between two existing homes. The surrounding property uses include single family homes zoned R-1 to the south and east along Stillwater Boulevard, and agricultural uses located to the north and east that are zoned A – Agriculture and RR – Rural Residential. The Washington County Landfill and Sunfish Lake Park is located further to the north and northwest for the latter.

**Applicable
Codes:**

Section 150.175 through 150.189 OP Open Space Preservation

Describes the process and requirements associated with an OP Open Space Preservation development. The applicant has requested an amendment to this section of the City Code in order to allow a multi-family senior living building and farm-based preschool as part of an OP development.

Section 154.020 Amendments

Outlines the process and requirements for requesting an amendment to the Zoning Ordinance. Of particular interest, please note Subsection (J) which reads: “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.”

Section 154.036 RR – Rural Residential

Outlines the general requirements for the RR Rural Residential Zoning District in Lake Elmo.

Section 154.070 through 154.075. Planned Unit Development

Describes the process and requirements for submitting an application for a Planned Unit Development.

Findings & General Site Overview

Site Data: Lot Sizes: 30.9 acres and 0.68 acres

Existing Uses: Single Family Residences/Agricultural/Agricultural Outbuildings

Existing Zoning: RR – Rural Residential and R-1 Single Family Residential
Future Land Use: RAD – Rural Agricultural Density and Neighborhood Conservation
Property Identification Numbers (PID): 15-029-21-31-0001 and 15-029-21-31-0003

Comprehensive Plan and Zoning Text Amendment Review:

**Comp Plan
 Analysis
 Staff
 Comments:**

Of all the land use requests that are considered by a Planning Commission, a City has the most discretion to approve or deny proposals to amend the Comprehensive Plan. For communities within the Twin Cities metropolitan area, this discretion is limited somewhat by the Metropolitan Council, which requires cities to update their plans every ten years and has the authority to review all requests to amend an approved Comprehensive Plan. In this case, if the City decides to move forward with the proposed amendment, the proposed change will need to be reviewed by the Metropolitan Council before it can be officially adopted by the City. The update must also be submitted to adjacent communities for review and comment before the Met Council will take action on the proposal, and once accepted, there is a 60 day review period that can be extended an additional 60 days if needed.

In general, Cities may consider an amendment to a Comprehensive Plan for several reasons. Below are some specific examples as listed in the Met Council’s Local Planning Handbook:

- Changes resulting from interim planning activities such as master plans, redevelopment plans or annexation
- A need to change a land use designation to allow a proposed development.
- Routine update of a public facilities element, such as a parks plan
- A text amendment to revise a land use category, policy or other description
- A routine update to incorporate new information such as census figures

The applicant’s request clearly falls under the category of a land use designation change to allow a proposed development; however, there is much more to the Comprehensive Plan than just the simple designation of future land uses on a map. In Lake Elmo’s situation, the City’s Comprehensive Plan includes many other sections devoted to housing, provision of water service, transportation, and other elements that form a unified set of goals and objectives for the City. Any proposed land use changes should remain consistent with the other policies within the Comprehensive Plan or may otherwise need to be considered in the context of a larger update to the plan.

In order to support an amendment to a Comprehensive Plan, planners will typically try to identify circumstances that may have changed since the plan was last updated to support a change in the future land use designation or other components of a plan. For instance, market conditions may have led to assumptions concerning the rate of growth that are incorrect or a transportation improvement may have opened up new areas for development that were otherwise inaccessible. In Lake Elmo’s case, certain sections of the plan will be updated this year, while the land use section was last

updated in 2006. It is staff's opinion that, if anything, conditions have changed during this period of time in a manner that is not conducive to the request being considered by the Planning Commission. Specifically:

- The economic downturn has led to a very slow rate of build out in the more recent OP developments. It is in the best interest of the City and each affected neighborhood to encourage new building to take place on lots that are currently vacant and served with water, roads, sewer, and other services and not in new areas with no or limited existing services.
- The City is lagging well behind the development phasing planned for urban service areas (with no growth in these areas to date) while OP development have only in the past few years begun experiencing the severe downturn in building activity. A multi-family project is more typical of the type of development planned for the urban service areas.
- The City's Comprehensive Plan and the Memorandum of Understanding between Lake Elmo and the Met Council includes provisions that will allow the Council to assess penalties against the City for failure to reach target population figures in sewerred residential areas. Given the potential for penalties associated with a slow rate of build-out, larger projects should be directed to the urban service areas where they would help meet the development milestones in the Plan.
- Although it appears that the overall pattern of development in areas guided for RAD density in the Comprehensive Plan will result in a lower overall population living in these areas than previously estimated, the overall impacts to the City's infrastructure and planning policies will be much lower if the current trend is followed than by increasing the allowed densities by over four times the amounts projected in some of these areas. On the applicant's site, the current zoning would permit a density of three dwelling units (or up to 14 units if combined with adjacent parcels) verses the 51 units that have been requested.
- The re-allocation of densities throughout areas guided for RAD and RAD2 should be considered within the larger context of where these densities may best be integrated with surrounding land uses and where they can best be provided with public services (even if these services are somewhat limited in OP developments). There has been no substantial change since the land use plan was updated to indicate why the applicant's site would be better-suited for additional density verses the areas currently guided RAD2.

Other general comments from Staff:

- The applicant has proposed to re-allocate densities from an existing RAD2 property in order to permit the proposed 50-unit project without increasing the overall population projections for the City. In order to keep the overall population projections level for the City, this would reduce the density of an existing RAD2 areas to accommodate this change. There are currently around

140 total acres guided RAD2 which could theoretically accommodate up to 280 new housing units. If the proposed Comprehensive Plan amendment is approved, a net transfer of 37 units in excess of the current OP standards would be required (14 allow at .45 units per acre compared to 51 requested units). This transfer would reduce the overall density on the 140 acre sites to approximately 1.75 units per acre (or less if borrowed from just one property).

- There have been no discussions with the current property owner of the 103 acre parcels that are guided RAD2 to the west of the applicant's site that the overall density on this site may change (or any of the RAD2 guided property owners).
- Although the land use description for RAD2 notes that "limited life cycle housing" would be appropriate in these areas, there are no other references to such housing in RAD or RAD2 guided land. In fact, the housing section of the current plan states very specifically that "Any future senior-specific housing in Lake Elmo will be best accommodated within the Old Village Area due to proximity to goods, services, and public facilities. The combination of senior housing needs and village scale housing density may result in attached housing of some description".
- The Comprehensive Plan calls for the City to make some fairly substantial investments in public sanitary sewer services, and Staff recommends that any developments that exceed the base densities allowed in rural areas be directed to the urban service areas where such developments can help support the provision of these services.
- The applicant's plan would place additional traffic directly on to Stillwater Boulevard at a new intersection that is not consistent with the recently-prepared Transportation Plan. The Plan specifically encourages the use of collector streets and limiting access to major roads. The proposed project also does not comply with MnDOT's or the City's access spacing guidelines.

Based on the reasons provided above, Staff recommended that the Planning Commission recommend denial of the request to amend the Comprehensive Plan to change the future land use designation of the applicant's site from RAD to RAD2. Draft findings were also presented to the Planning Commission consistent with the review comments noted above. The Planning Commission did not support the recommendations of Staff and, rather, developed a revised list of findings supporting the Comprehensive Plan Amendment that are included in the Planning Commission report that follows.

**Zoning
Amendment
Staff
Analysis:**

The second part of the request that was considered by the Planning Commission concerns the proposed amendments to the OP Open Space Preservation District as detailed in the applicant's submission materials and summarized by Staff in this report. Many of the changes proposed would apply on to areas designated as RAD2, and in particular, senior-living dwellings would not be permitted outside of land so designated. If approved, the proposed changes would apply to all portions of the City guided for RAD2 development, which includes 103 acres at the western edge of the

City along Stillwater Boulevard and a smaller 36-acre area immediately north of 10th Street at its intersection with Manning Avenue. This would open up these parcels for a similar senior-living or school project.

Looking at the proposed zoning amendments in a general sense, Staff offered the following comments for consideration by the Planning Commission:

- The current OP Ordinance does not contain provisions that would allow densities to exceed the 0.45 units per acre maximum in the code even in areas guided RAD2. At some point, this discrepancy should be addressed so that the densities allowed in the Zoning Ordinance are consistent with the Comprehensive Plan.
- If approved, the proposed amendments would not alter the maximum permitted density in areas guided RAD2, and would primarily amend the types of uses that would be permitted in such areas.
- Rather than amending the current OP Ordinance provisions, Staff would recommend that an overlay zoning district be created for RAD2 that would require compliance with all OP development standards with specific exceptions that would allow higher densities in RAD areas. This approach would leave the current OP Ordinance as-is while focusing a new overlay district only in specific areas to accommodate higher densities.
- The proposed language in 150.180 (B, 2, g) should read “per gross acres of *buildable* land” to be consistent with the current OP requirements.
- Given the allowance for larger buildings up to three stories in height, Staff recommends that the buffer setbacks (Section 150.180 B, 2, d) be left as currently written since a larger buffer should be provided in cases where there is greater potential for dissimilar uses to be located next to each other.
- The Planning Commission may want to consider whether or not Farm Schools should be permitted in all OP developments as the proposed draft would allow.
- The Zoning Ordinance only permits buildings over 35 feet in the BP Business Park and PF Public Facility zoning districts. The maximum height for Senior Housing Buildings as proposed would be 48 feet.
- The OP district standards table should include setbacks from side and rear property lines for Senior Housing Buildings.

The Planning Commission chose to table taking action on the Zoning Amendment, and requested that Staff prepare an alternate to the applicant’s proposal that would create an overlay zoning district instead of amending the existing OP Ordinance. The Commission requested that the same standards proposed by the applicant be used to draft overlay regulations.

With the separation of the concept plan review from the Comprehensive Plan and Zoning Amendments, Staff will not be providing a detailed analysis of the submitted concept plans at this time. These plans were been provided, however, as part of the

**Concept Plan
Issues:**

Commission's review materials since the application was submitted at one time. The project narratives and required submissions are also intertwined and are being presented in one package of information rather than splitting up certain pieces of information between the two scheduled meeting and hearing dates. Also, the Planning Department has asked for all comments from other agencies and internal staff on the entire application, and all comments that have been submitted to date are included as part of the Council meeting material.

In order to give the City Council, and the applicant, a quick overview of the major issues associated with the concept plans that have been identified to date, please consider the following:

- The Minnesota Department of Transportation has indicated that it will require certain improvements to Highway 5 if access is provided as shown on the concept plan. Specifically, a right turn lane and escape lane for eastbound traffic will be required at the new entrance road.
- The City Engineer has recommended that the concept plan be revised to provide road connectivity to the east and north with the development proposal.
- The water plan does not appear to meet fire flow requirements for the proposed improvements since the new eight-inch pipe as shown on the utility plan connects to an existing four-inch water pipe at the edges of the development.
- The storm water management and drainage and erosion control plan will need to address the City's recently adopted storm water quantity and quality standards.
- A small portion of the site is located within a shoreland district and will need to comply with any applicable shoreland ordinance requirements.
- The City of Oakdale's Fire Chief has been asked to review the plans from a public safety perspective since the applicant is married to Lake Elmo's Fire Chief.
- The proposed landscape plan does not accommodate the minimum number of trees required under the OP Ordinance.
- The community septic system and a portion of the trail system are shown within and power line easement. The City should receive an acknowledgement and consent from the easement holder in order to permit these encroachments.
- Staff would suggest a greater amount of spacing between the proposed tree preservation area and the buildings and roads on the site. The City should evaluate whether or not it is appropriate to use the required open space areas for storm water retention ponds.

A more thorough review and analysis of the proposed concept plans will be forthcoming from Staff should the Comprehensive Plan and Zoning Amendments be approved by the City Council. Should approvals be granted, the City will need to discuss the review schedule with the applicant since no action may be finalized with

regards to the Comprehensive Plan until the Met Council has completed its review.

**Staff
Recommendation:**

Based on the report and analysis provided above, Staff recommended that the Planning Commission recommend **denial** of the request to amend the Comprehensive Plan to change the future land use designation of 9434 Stillwater Boulevard North from RAD to RAD2. Consistent with this recommendation, Staff further recommended that the Planning Commission recommend **denial** of the proposed text amendments to the OP Open Space Preservation Ordinance.

Pending Council action on these items, a separate recommendation from Staff concerning the OP Development and PUD concept plans will be presented at the next Planning Commission meeting.

**Additional
Information:**

Comments have been received for all four aspects of the applicant's request from MnDOT, Valley Branch Watershed District, the City of Oakdale Fire Department, and the City Engineer is attached for consideration by the City Council.

In addition to the applicant's submission materials, staff has also attached an aerial image of the site and Future Land Use Map from the Comprehensive Plan identifying the applicant's site and the two areas currently zoned as RAD2.

Planning Commission Report:

**Planning
Commission
Review and
Public
Hearing:**

The Planning Commission reviewed the request for a Comprehensive Plan Amendment and Zoning Text Amendment and conducted a public hearing on each of these items at its April 26, 2010 meeting. At the meeting, the following feedback was provided to the Commission:

- Tammy Malmquist explained her overall goals and objectives behind the proposed senior living and farm school project. She also introduced Jan Friedrich, who talked about her father's discussions with Mrs. Malmquist concerning the future of this property.
- Tim Freeman with Folz, Freeman, Erickson, Inc. suggested alternative findings in support of the proposed Comprehensive Plan Amendment.
- Seven people spoke in favor of the amendments needed to support the project.
- Councilmember Ann Smith addressed the Commission and reviewed some of the history behind the preparation of the Comprehensive Plan, and in particular, the creation of a separate RAD2 land use designation.
- Eight letters of support were submitted and distributed at the meeting. These letters are included as part of the Council agenda packet.
- One additional letter of support was submitted by a resident who also spoke during the public hearing.

- Staff noted that Ed Nielsen, 9498 Stillwater Boulevard North, had contacted the City via telephone earlier in the week to express his support for the project.
- The project consultant submitted a list of neighbors that had attended a March 31, 2010 meeting conducted by the applicant to discuss the project (seven neighbors were in attendance of this meeting).

The Commission reviewed the Staff recommendation and considered the comments submitted in writing and verbally at the meeting. The Planning Commission developed findings of fact to support the proposed Comprehensive Plan Amendment, and by a unanimous vote of 9-0, recommended that the City Council approve the request to change the future land use designation of the applicant's property from RAD to RAD2. The Planning Commission tabled taking any action regarding the proposed amendments to the OP Open Space Preservation Ordinance; however, and instead directed Staff to prepare an alternate to the applicant's request that would create a separate overlay district with the same standards.

The overlay district to be considered by the Planning Commission would include the following as specific exceptions to the existing OP Ordinance:

- Allowing a density of 2 units per acre.
- Adding Multi-Family Senior Housing buildings and Farm Schools for preschool and school-aged children as allowable uses.
- Reducing the minimum land area required from 40 to 20 acres.
- Reducing the amount of contiguous land required in open areas from 10 to 5 acres.
- Reducing the required buffer setback to 50 feet.
- Adding standards for Senior Housing Buildings.

In developing its findings of fact, the Planning Commission was concerned about setting precedent with the approval of the Comprehensive Plan amendment. The Commission's findings describe some aspects of this site that the Commission has indicated set it apart from other properties that are guided for RAD development.

A complete record of the Planning Commission's findings is listed as part of the formal recommendation below.

**Planning
Commission
Recommendation:**

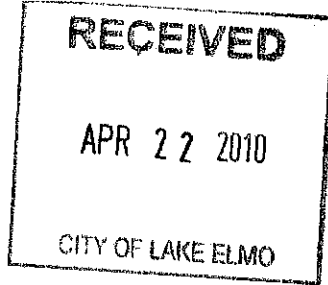
The Planning Commission Recommends that the City Council approve the Comprehensive Plan Amendment to change the future land use designation of the parcel located at 9434 Stillwater Boulevard North from RAD (Rural Agricultural Density – 0.45 dwelling units per acre) to RAD2 (Rural Agricultural Density – 2 dwelling units per acre). The Planning Commission further offers the following findings to support this recommendation:

- 1) The current use of this site as a working farm is unique compared to other

properties designated for RAD development in the Comprehensive Plan.

- 2) The proposed request will help fulfill a need for senior housing within the community.
- 3) Recent subdivisions in areas guided for RAD development have been approved at a density below the unit levels anticipated in the Comprehensive Plan. The proposed density increase will be offset by reductions that have previously been approved or acknowledged by the City.
- 4) The applicant's site is located in close proximity to public transportation along State Highway 5, and specifically, a bus route that could provide alternate transportation options for seniors.
- 5) The applicant's site is located immediately adjacent to existing R-1 Single Family Residential zoning districts along its southern, eastern, and western boundaries. Other areas guided for RAD development are primarily surrounded by rural residential, agricultural, or public open space uses.
- 6) There has been broad public support for the proposed project and no objections from neighboring property owners have been filed with the City.

cc: Tammy Malmquist, 8549 Ironwood Trail
Folz, Freeman, Erickson, Inc.; 12445 55th Street N



cc: council
planning comm
4-22-10

9402 Stillwater Blvd
Lake Elmo, MN 55042

Lake Elmo Planning Commission
Lake Elmo City Council
3800 Laverne Avenue
Lake Elmo, MN 55042

April 20, 2010

Dear Lake Elmo City Leaders,

We are writing to you in support of the Farm School and Senior Living Proposal that is currently being reviewed. Our property is adjacent on the south and west of the proposed development. We have met with Tammy on several occasions, she is and has been very interested, concerned and has addressed all concerns that we have had regarding the project.

We feel this project is beneficial to the community by meeting the housing needs of seniors living in Lake Elmo, and offering the children an opportunity to work with the seniors in a positive rewarding and learning environment.

Please contact us with any questions or concerns you may have @651-592-8566.

Sincerely,

Roger and Vicki Linnell

Two handwritten signatures in cursive. The top signature is for Roger Linnell and the bottom signature is for Vicki Linnell.

April 26, 2010

Dear Planning Commission,

My name is Sharon Bernardy I live at 8352 27th St N. I have lived in Lake Elmo since 1988. I would prefer to not publicly speak so I am writing to you with my support and desire for the senior housing and farm preschool. I will be selling my house in the next 2 years and would love to know that I could still stay in Lake Elmo. I feel that this will be an affordable option for me. I love the location which is not far from where I live now. I'm 52 and like the concept of living in a neighborhood situation with a farm preschool as opposed to a "Senior Complex". I know that Lake Elmo has talked about a complex for years and that it would be downtown. Nothing has come forward with this idea and more over I would prefer to stay out of downtown. I realize that this may be preferred for some, but not me! I hope that the planning commission will take into consideration the different viewpoints of it's current residents. I realize that there are other places in the town for possible senior housing. I would like my voice to be counted as a very positive vote for the senior housing and farm preschool proposal.

*Respectively,
Sharon Bernardy
8352 27th St N
Lake Elmo*

April 26, 2010

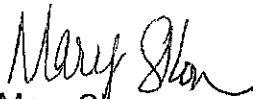
Dear Chairman and Planning Commission Members:

My name is Mary Skon and I have been a resident of Lake Elmo for 8 years. I recently heard about the Senior Housing and Farm Preschool project that you will be voting on. I am uncomfortable standing up to speak at the public hearing but I want you to know that as a resident I am in full support of this concept and the location being proposed.

As a mother, I believe the farm preschool would be a wonderful experience for children. We moved to Lake Elmo because of the community and "farm atmosphere" ...having horses, cows and fields planted/harvested. I also know the success this project would reap having an 84 year father in a nursery home. The entire home adores the sight of my 5 year old daughter and her Grandpa playing games together. My words cannot express the feeling I get when I see this setting of elderly and young children coming together.

I would like to say I feel our community would benefit and become a very 'prestigious' spot on the map if you would support the Farm School and Senior Housing proposal.

Sincerely,



Mary Skon
2965 Innsdale Avenue North
Lake Elmo, MN 55042
(651) 779-6363

January 26, 2010

Mr. Robert Van Zandt
Planning Commission Chair
Lake Elmo, MN 55042

Dear Mr. Van Zandt:

It was with great interest and excitement that we listened to an Adult Forum presentation at our church a few weeks ago. At the request of several Christ Lutheran members, Tammy Malmquist explained her vision for the "Main Street" development she proposes to create on her property just off Highway 5.

Having entered the retirement years some time ago, we have begun to deal with the unwelcome, but very real, future when we can no longer maintain the home and acreage we have enjoyed for nearly 40 years. In the past several years, we have explored many of the options becoming available in the St. Croix Valley, but we did not uncover anything the really "spoke" to us. What we heard from Ms Malmquist DID!

Although our current residence is in West Lakeland Township, our community connections (through the bank, church, grocery store, hair salon, library, etc. etc.) have been in lovely Lake Elmo. Having the opportunity to maintain that connection, live alongside neighbors who are already our friends and acquaintances, AND live in an area that offered the rural feel that has been our lifelong preference would be a perfect solution for us. In addition, we were good friends with the Friedrich family who owned part of this property and residing in a complex that honored their memory would be a wonderful "PLUS!"

We encourage you to look with great favor on this proposed development and give it the guidance that would bring it to early fruition in our wonderful community.

Sincerely,



Cleone Pritchard
13851 23rd Street North
Stillwater, MN 55082

April 25, 2010

Mr. Chairman and members of the Planning Commission:

I have been a resident of Lake Elmo for 24 years. The idea of remaining in Lake Elmo during my retirement years is very appealing to me. The proposed farm school and senior housing is very desirable and would greatly enhance our community. I feel the proposed location off Highway 5 is better suited for me than in the village or along I-94.

I urge the Planning Commission to approve the current proposal to insure our citizens will have this wonderful senior housing option.

Sincerely,

A handwritten signature in cursive script that reads "Pat Weyandt". The signature is written in black ink and is positioned above the typed name and address.

Pat Weyandt
8772 Ironwood Trail N.
Lake Elmo, MN 55042

13851 23rd St N.
Stillwater, Minnesota 55082
January 26, 2010

Dear Mr. Van Zandt,

We have lived at this address for over 35 years, but now are realizing that we need to move to a retirement home that means less work and upkeep. We know that this will not be easy for us.

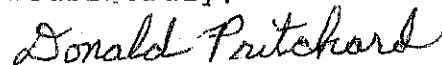
We feel very connected with the Lake Elmo community. Our banking is done at the Lake Elmo Bank. I get my hair cut at the Lake Elmo Barber Shop. Our church that we attend is Christ Lutheran Church in Lake Elmo.

We have looked at several locations in the Stillwater area, but none seemed quite right. We didn't want to move out of the Lake Elmo community.

We are very interested in the development of the "Main Street" community and would like to see it developed into our retirement home.

Please help make this possible.

Yours truly,



Donald Pritchard

April 26, 2010

Proposed Senior Housing/Farm Preschool

Dear Chairman and members of the Planning Commission,

Our names are Paul and Jill Mitchell and we have lived in Lake Elmo for 19 years. We have seen the plans for the proposed senior housing / farm preschool that you will be voting on in the near future. We feel this is a well thought out plan and would fit the rural look of the Lake Elmo community.

As a couple who will be approaching retirement age in the next several years this would be the type of setting we would enjoy living in. The concept of children and seniors interacting together is very appealing to us. We like this plan because it offers the opportunity to still enjoy outdoor activities such as gardening, recreation areas to spent time with family and friends and walking paths.

We know there has been talk of senior living being developed in the Old Village or along the I94 corridor but have not seen plans moving either project forward. Given a choice of location to live, we would choose the proposed senior housing and farm preschool over those other locations.

Sincerely,

Paul & Jill Mitchell

Paul + Jill Mitchell
2811 Irish Ave N

Lake Elmo

651-779-9671

February 1, 2010

TO: Mr. Bob Vanzandt
FROM: Joan Beutel


Dear Mr Vanzandt

I think we shared a table together when Tammy had a meeting at the Lake Elmo Bank about Main Street.

I am very excited about Main Street development. I am one of the people who had to leave Lake Elmo area because of lack of housing for the seniors. I was so sorry about that and wished someone had put together a plan for a development for seniors.

Tammy Malmquist has done just that. The "Main Street" development is in an area that is a bit in the country and not too far from shopping. I think it is a very unique and favorable area for this development. I now live in Stillwater in the hub bub of lots of noise and business's. I am looking forward to the peace and a quiet gentle community with trees instead of buses and lots of traffic.

I sincerely hope that her ideas of this development called "Main Street" is met with a favorable attitude from all the council members. Please vote for me. Thank you


Joan Beutel
6351 St Croix Trail
Stillwater, Minnesota 55082

Revised 4/26/10

CC

April 26, 2010

Lake Elmo Planning Commission
City Hall
3800 Laverne Avenue
Lake Elmo, Minnesota 55042

Re: Comprehensive Plan Amendment for a Farm School and Senior Living Project at 9434 Stillwater Boulevard North

Members of the Planning Commission:

Please accept the following letter IN SUPPORT of the proposed Comprehensive Plan Amendment for a Farm School and Senior Living Project at 9434 Stillwater Boulevard North.

While I have included detailed comments on the proposed Findings, below, in summary, my view is that the project is:

- (1) needed;
- (2) completely consistent with the City's Comprehensive Plan; and,
- (3) in the best, long-term interest of the City of Lake Elmo.

Please revise the Planning Director's proposed Findings and approve the requested Amendments.

I. For More Than a Decade City Officials Have Proclaimed Their Commitment to the Development Life-Cycle Housing

As the members of this Commission know, it has long been the hope of City officials to establish a wide-range of housing options within Lake Elmo.

In fact, City policy and City officials have both been quite explicit on this point. We have said that we want Lake Elmo residents to have a genuine opportunity to live, work, raise families and reside here throughout their lives.¹

This project represents a needed, and overdue, step toward fulfilling this promise by developing housing stock for Lake Elmo's senior citizens.

¹ See, Lake Elmo Comprehensive Plan, Housing Element – Chapter IV at IV-5, IV-6 (January 31, 2006).

If the requested Amendments are not approved, the Planning Commission should detail for taxpayers (and the Metropolitan Council) how, where and when these types of units will be developed.

The Comprehensive Plan Amendments are needed and should be approved.

II. The Proposed Findings in the Commission's Memorandum Misstate the Underlying Record and Will Lead the City into Error

I strongly disagree with the Planning Director's proposed Findings.

For the reasons outlined below, they misstate the submissions on this project and undermine the City's commitments on orderly development. The proposed Findings are wrong and they put the City at risk.

- (1) Draft Finding Number 1 asserts that there has been no "change in circumstances" since 2006.

This is plainly not true. Since the latest version of the Comprehensive Plan was adopted, the real estate market locally, and across the nation, has collapsed. In fact, as detailed in a January article in the *Saint Paul Pioneer Press*, the downturn in the housing and real estate development markets has adversely impacted Lake Elmo's ability to meet the housing numbers it agreed to (with the Metropolitan Council) in 2005. While Lake Elmo was accustomed to adding approximately 100 homes each year, it added just 18 homes in 2009. Further, as City Manager Bruce Messelt explained to the *Pioneer Press* "And we were pleased to have those [18]...."²

If, in 2010, City Officials are "pleased" to have less than 20 percent of the development rates that we had in 2006, it is clear that there has been a significant "change in circumstances."

The Amendments are needed and should be approved.

- (2) Draft Finding Number 2 implies that only sewer-connected homes – Residential Equivalent Connections (or RECs) – make progress toward the City of Lake Elmo's housing goals.

This is likewise untrue. The City of Lake Elmo pledged to the Metropolitan Council in 2005 that it would move toward a local population of 24,000 – independent of its commitment to add more sewer-connected units. Moreover, the Metropolitan

² See, Attachment 1 to this letter, "Lake Elmo's controversial growth still on hold," *St. Paul Pioneer Press*, 1A (January 11, 2010).

Council understands our pledge as being broader than simply an agreement on sewers. As the Chairman of the Metropolitan Council, Peter Bell, explained after the accord with the City was reached: "State and regional taxpayers have made significant investments to keep pace with growth in Lake Elmo and the surrounding area — including three major highways [and] a 2,200-acre regional park The compromise plan will ensure that these investments are used in a cost-effective manner."³ For the Metropolitan Council, moving toward more efficient use of the parks and transportation system are likewise part of our 2005 bargain.

The proposed project moves us toward greater population numbers and a more efficient use of one of the three major highways referenced by Chairman Bell (Highway 5). Likewise, to the extent that regional sewer systems will one-day travel down Highway 5, this development will be within easy reach of those systems.

This development is needed to show our good faith to the Metropolitan Council.

- (3) Draft Findings 3, 5 and 7 imply that senior housing is only appropriate in either the Old Village or along the I-94 Corridor.

This is not true. As detailed above, rejecting the kind of development plans that will help us to meet our commitments to the Metropolitan Council, simply because the units are not in the Old Village or along the I-94 corridor, is foolish.

Moreover, such a stance is at odds with the commitments that the City has made in its Comprehensive Plan. Not only does the City's Comprehensive Plan urge a move to more "older age groupings" in its housing stock, it argues that our lack of progress in developing these opportunities so far has followed from "forces of the market place."⁴

In this case, a private developer is willing to address some of our needs for life-cycle housing. A long-time resident of this community is willing to develop the kind of housing that is sought by our residents and our Comprehensive Plan. At long last, we have both a willing developer and interested buyers.

Moreover, this project does not interfere with any wished-for development in the Old Village or the I-94 Corridor. If there is a developer interested in creating senior housing inside of the Old Village that should be approved as well.

In fact, the Metropolitan Council would rightly regard any "de facto" rule strictly limiting senior housing to the Old Village and the I-94 Corridor as an attempt to break the 2005 agreement on total housing numbers. Such a view puts the City, and taxpayers, at risk for future penalties.

³ See, "Met Council approves Lake Elmo comp plan, Action ends protracted dispute over growth issues" (<http://www.metrocouncil.org/directions/planning/planning2006/LakeElmoApr06.htm>).

⁴ See, Lake Elmo Comprehensive Plan, Housing Element – Chapter IV at IV-5, IV-6 (January 31, 2006).

The Amendments are needed and should be approved.

- (4) Draft Finding Number 4 implies that the characteristics of the Stillwater Boulevard site are indistinguishable from any of the other parcels that are guided Rural Agricultural Density – or RAD.

The Finding is wrong. The project site is adjacent to Highway 5 and one of three bus routes serving Lake Elmo – Bus Route 294.⁵ For a senior housing development, easy access to this important transportation route is a critical feature and a major benefit of this plan. Particularly if the City is genuinely interested in “encouraging and advocating” “transit alternatives to automobile travel,”⁶ the project site is simply not interchangeable with the more than 7,000 other acres of RAD-guided land in the City of Lake Elmo.⁷ This site is distinct and especially well-suited for both the proposed use and the other goals of the Comprehensive Plan.

The Amendments are needed and should be approved.

- (5) Draft Finding Number 6 asserts that the proposed project is inconsistent with maintaining Lake Elmo’s rural character and a Rural Agricultural Density guiding.

The draft Finding is both silly and wrong. It is important to emphasize that the 50 percent of the proposed project site would be set aside as permanent open space, it would include an open green area at its center and include a working Farm School.

Plainly, if such large tracts of open, green space and a “Farm School” do not constitute development of a “rural character,” these words of the Comprehensive Plan have no meaning whatsoever. They will have been reduced to gibberish.

Worse still, if the terms “Rural Character” do not mean projects like this one, not only will they cheat the City of Lake Elmo out of needed property tax base, but sooner or later they will be recognized by the Metropolitan Council as a stalling tactic.

The Amendments are needed and should be approved.

⁵ See, Route 294 (<http://www.metrotransit.org/Schedules/WebSchedules.aspx?route=294>); Lake Elmo Comprehensive Plan, Transportation Plan – Chapter VIII, at VIII-26 (January 31, 2006)

⁶ See, Lake Elmo Comprehensive Plan, Transportation Plan – Chapter VIII, at VIII-26 (January 31, 2006).

⁷ See, Lake Elmo Comprehensive Plan, Land Use Plan – Chapter III, at III-7 (January 31, 2006).

III. Conclusion

For these reasons, please revise the Planning Director's proposed Findings and approve the requested Amendments.

The Farm School and Senior Living Project at 9434 Stillwater Boulevard North is very much needed, consistent with the City's Comprehensive Plan, and in the best, long-term interest of the City of Lake Elmo.

Sincerely,

A handwritten signature in black ink, appearing to read "Kim Lipman", with a long horizontal flourish extending to the right.

Kimberly A. Lipman

By Bob Shaw
bshaw@pioneerpress.com

Lake Elmo doesn't have to grow after all — at least, not yet.

The city and the Metropolitan Council have tentatively agreed that Lake Elmo's deadlines for growth will be delayed by at least one year.

That means the city will avoid paying a \$1.5 million penalty for not adding customers to the Met Council's sewer system.

The agreement is the latest twist in the state's most celebrated anti-growth case. The eight-year dispute between the city and the Met Council climaxed in 2004 with a Supreme Court decision — supporting the council's right to force Lake Elmo to grow.

Bruce Messelt is relieved by the delay. As city manager, he is hoping to ask for an even longer extension. "We would like to slide everything by three years. If we can demonstrate that we are trying," he said.

The delay has been tentatively worked out by officials on both sides, who predicted that it would be

formally approved later.

Growth has been a shout-in-your-face issue in Lake Elmo for a long time.

In the Supreme Court case, city officials fought against growth, saying that it would destroy the small-town charm of Lake Elmo.

Met Council officials argued that the real issue was fairness.

All other metro cities were absorbing their share of the area's new residents. They were adding sewer connections to help pay for the multi-billion-dollar metro-wide sewer system — so why shouldn't Lake Elmo?

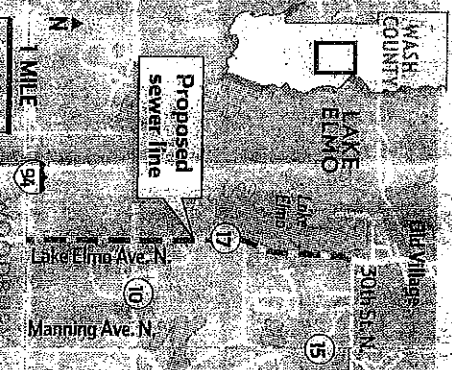
After the Supreme Court decision, the emboldened Met Council set growth targets for Lake Elmo. In 2006, the city agreed to add 515 sewer connections by 2010; 1,980 more by 2015; and so forth. The effect will be to add 17,000 residents by 2030 — tripling the size of the city.

The progress after five years? Not one new connection.

That's because, Messelt said, the city hasn't completed the pipe connecting to the Met Council sewers. It's not for lack of trying, he said.

Lake Elmo's big dig

A \$6 million sewer project, which the city of Lake Elmo has yet to begin, is at the heart of the city delay in meeting Met Council growth targets.



Source: Lake Elmo officials. PIONEER PRESS

The council took a step toward building the sewer line in 2007 when it approved the Old Village plan to expand the city's historic downtown.

That plan called for a three-mile, \$6 million link to an existing sewer line near Interstate 94.

Then the housing slowdown hit. Then financing for public projects dried up.

Lake Elmo, accustomed to adding about 100 new homes per year, added only 18 in 2009. "And we were pleased to have those," Messelt said.

The city has spent almost \$1 million in planning costs for the sewer connection. But with few new houses being built and financing efforts paralyzed, the sewer project has stalled.

Officials won't predict when the work will start. "Some financing is in place for water and sewer, and some is not," Messelt said.

Like Lake Elmo, other cities are having trouble growing on schedule. But the deferment will only apply to Lake Elmo, said Bill Moore, the Met Council's manager of environmental services.

"Lake Elmo is unique. This situation developed out of a Supreme Court case," he said.

LAKE ELMO GROWTH 4A

CONTINUED FROM 1A > Lake Elmo growth

Other suburbs, Moore said, already have the needed sewer pipes to add connections. And they have been adding population and housing steadily for years.

Our growth curve never got started, Messelt said.

Officials on both sides say the 2005 agreement marked a shift away from the combative tone of the past.

Messelt said the city has accepted the need to grow — although it doesn't always

agree about how much. "We have demonstrated five years of good faith," he said. "The Met Council has been good to work with."

But so far, good faith hasn't resulted in growth. And that could ultimately mean a financial disaster for the city.

In the 2005 agreement, the Met Council said it would impose a "wastewater treatment fee" if the city didn't add sewer connections. This year that fee was scheduled to be \$1.5 million — before the deferment was announced.

If no new connections are added by 2015, the scheduled penalty would be \$10 million.

Lake Elmo officials might welcome the delay, but they might only be postponing the inevitable.

The 2030 target of adding 17,000 new people remains unchanged. The delay means that Lake Elmo will have fewer years to hit that target — so it will have to add extra houses later.

For example, if the Met Council granted a three-year delay until 2013, and the city failed to add more houses before then, the city would have to add 1,000 new sewer connections every year until 2030 — an unprecedented explosion of growth.

But that too might be negotiable, Messelt said. "We may have to look at that 2030 target and see if that has to be changed as well," he said.

Bob Shaw can be reached at 651-228-5433.

Lake Elmo's controversial growth still on hold,"
St. Paul Pioneer Press,
1A and 4A (January 11, 2010)

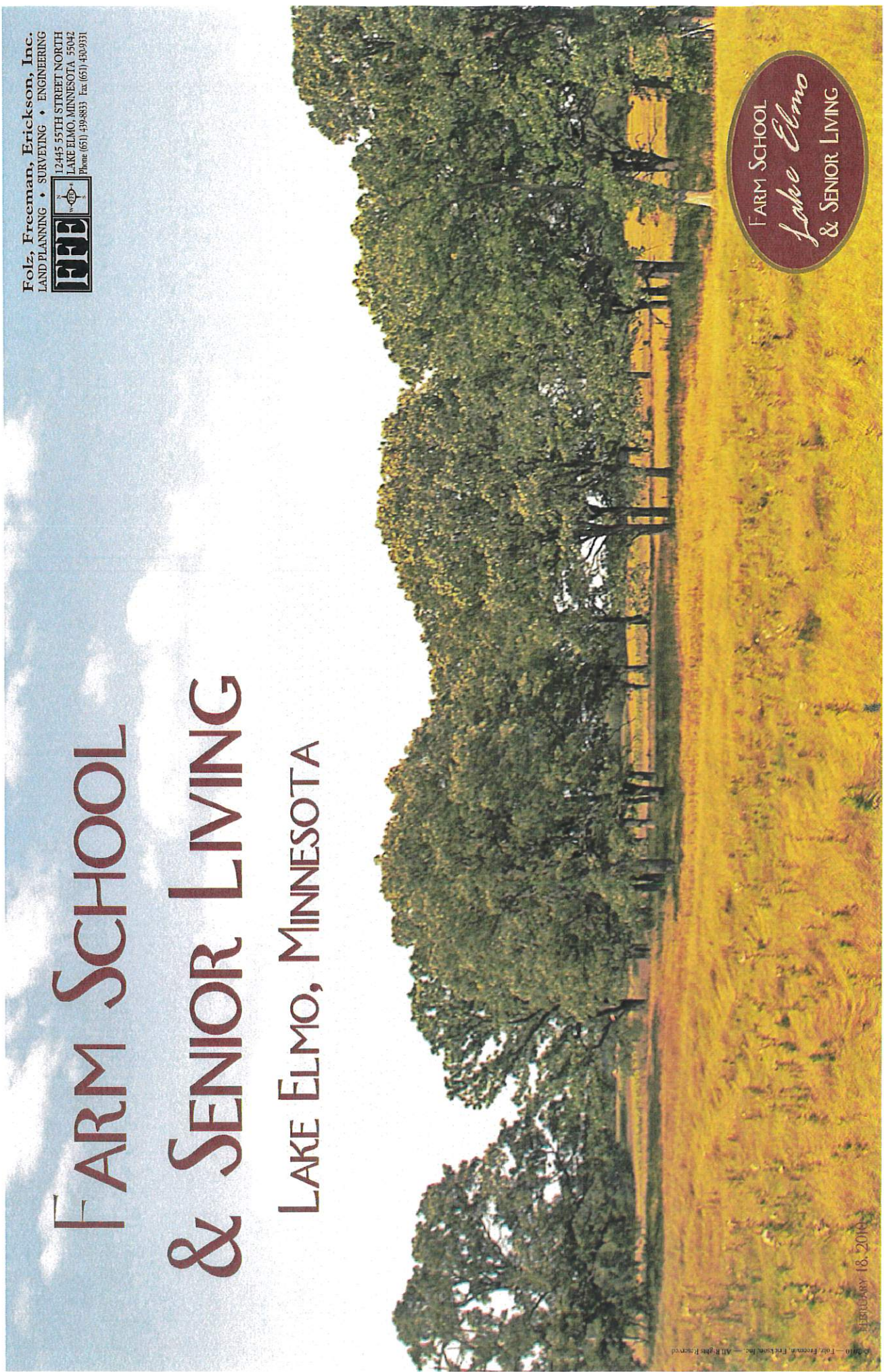
NEIGHBORHOOD MEETING
MARCH 31, 2010

NAME	ADDRESS
Julie Buntel	3415 Jamaica Ave N
Richard MANAHAN	9348 STILLWATER BLVD N.
Tony Morrison	3467 Jamaica Ave No
Mae Nippelt	3501 Jamaica Ave N.
Deeki Gunnell	P.O. Box 35, 9402 Stillwater Blvd
Roger Gunnell	" " " " " "
Sandra Groth / Quang Phung	9150 Jamaica Ct N.

FARM SCHOOL & SENIOR LIVING

LAKE ELMO, MINNESOTA

Folz, Freeman, Erickson, Inc.
LAND PLANNING • SURVEYING • ENGINEERING
12445 55TH STREET NORTH
LAKE ELMO, MINNESOTA 55042
Phone (651) 438-8833 Fax (651) 438-9331



Folz, Freeman, Erickson, Inc.
LAND PLANNING • SURVEYING • ENGINEERING



12445 55TH STREET NORTH
LAKE ELMO, MINNESOTA 55042
Phone: (651) 439-8833 Fax: (651) 430-9331

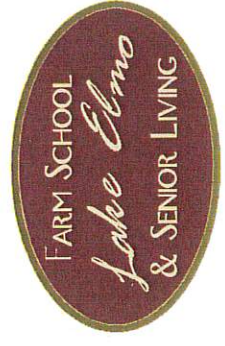
FARM SCHOOL & SENIOR LIVING

LAKE ELMO, MINNESOTA

CONCEPT SUBMITTAL

FEBRUARY 18, 2010

DEVELOPER: TAMMY MALMQJIST





Project Narrative

February 18, 2010

The project as proposed, is a mixed use development featuring a farm based pre-school integrated with a residential community for people age 55 and better. This concept is unique not only to the Lake Elmo community but also to the Midwest. Lake Elmo has been a leader in innovative ways to preserve its rural heritage by being the champion of open space developments. This project is a new variation of an open space development by bringing in the unique concept of focusing on seniors working side by side with pre-school children. The "farm school" experience is not unique to the area, however the idea of children working with seniors in this environment, is a very unique and exciting concept.

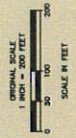
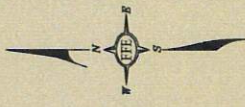
The property is located in the heart of Lake Elmo's farm country on the north side of Minnesota Highway 5 just east of Jamaca Avenue North. The 30.9 acre parcel is owned by the Friedrich family and has been part of the family farm heritage of Lake Elmo for well over 100 years. This unique development teams long time resident Tammy Malmquist with one of Lake Elmo's longest standing farm families. Tammy has distinguished herself as a successful owner/operator of the child care business "Wonder Years" which is now and will continue to be located at the entrance to this project.

This project presents several challenges in the municipal approval process as present day ordinances do not recognize this type of unique undertaking. This application encompasses three requests to provide a means for approval:

- First is a Comprehensive Plan amendment that focuses on shifting some of the designations from the Future Land Use Map. We propose to switch the existing Future Land Use of Rural Residential for the property with RAD 2 from the property just to the west along Highway 5. There is no increase in density for the City, only a shift of where it is located.
- Second is a Zoning Ordinance Text Amendment. We propose to amend the existing OP Development ordinance to allow the density and unit types for areas within the RAD 2 guided areas to allow the Senior Housing component of this project. This will require the project to still conform to the basic premise of OP by providing 50 percent open space, village greens, trails, etc., along with the other features that go with the rural feel that Lake Elmo has strived for in these developments. This type of amendment to the existing ordinance will insure that future projects cannot "piggy back" on to these development densities and thereby creating some kind of "precedent" that is unintended.
- Third is a Concept Plan review for the OP Development and a multi-use PUD. The concept plan is the framework of the OP Development. The Planned Unit Development (PUD) is required to process the project as a multi-use project. This process isn't intended to relax or negotiate any of the development standards but to allow for multiple uses within the same project.



Concept Layout



PROPOSED OPEN SPACE PLANNED UNIT DEVELOPMENT

MAIN ELEMENTS:

- 1) FARM SCHOOL
- 2) 40 UNIT SENIOR HOUSING
- 3) FIVE TWIN TOWNHOMES
- 4) EXISTING DAYCARE "WILDER YEARS" AND EXISTING HOME AT ENTRANCE TO BE UPDATED TO MATCH NEW TOWNHOMES.
- 5) WILDER YEARS TO REMAIN IN OPERATION.
- 6) COMMUNITY SEPTIC.

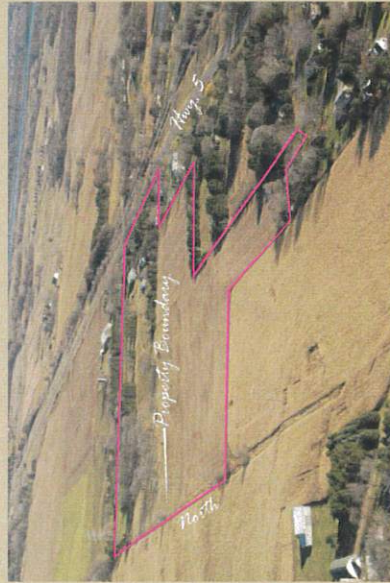
CITY PLANNING AND COUNCIL ACTION:

- A) COMP PLAN AMENDMENT/MIXED USE PLD.
- B) ZONING TEXT AMENDMENT OF O.P.
- C) TRANSFER OF RAD 2 DENSITY.



Open Space Planned Unit Development

Existing Site Features



2009 Aerial Photo - Looking Southeast



Oak Savannah - View from the Southwest
(Area to be Preserved)



Lone Oaks - View from the South
(Trees to be Preserved)



Entrance Oaks - View from South
(Trees to be Preserved)

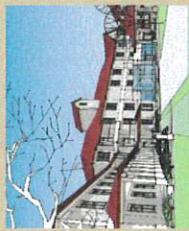
Concept Layout



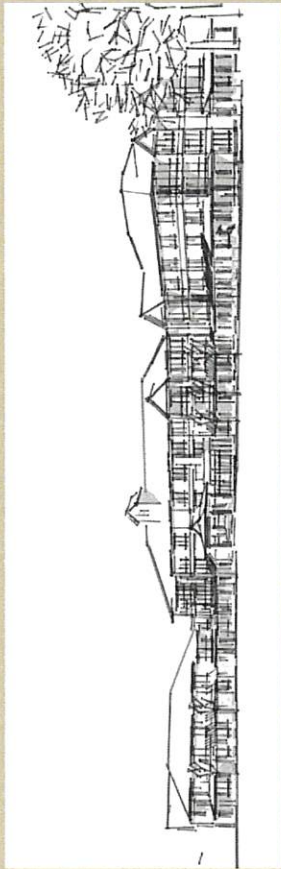
Fields - View to the Northwest



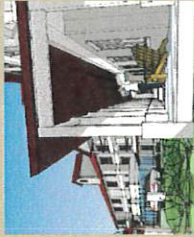
Proposed Elements



Southwest Corner of Building



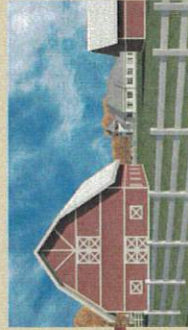
40 Unit Senior Living Complex - View from Southeast



Northeast Corner of Building



Farm School - View from Southwest



Farm School Out Buildings - View from South



Both Structures to be Remodeled

Single Family Home (Part of Community)

Existing Daycare "Under Years" (to Remain)



View of Townhomes - from Northeast



Proposed Farm School



Farm School

*DESCRIPTION OF SCHOOL:
INTEGRATION OF GENERATIONS IS THE MAIN FOCUS OF THIS PROPOSED ONE-ROOM SCHOOL HOUSE.
PROVIDING PRE-SCHOOL AGED CHILDREN THE OPPORTUNITY TO LEARN FROM THE SENIORS OF THIS
COMMUNITY IS THE REAL DRIVING FORCE OF THIS DEVELOPMENT.*

*CLASSES WILL INCORPORATE THE ACTIVITIES OF FARM LIFE WITH LEARNING LESSONS OF LIFE AS SHARED
BY THE SENIORS. GARDENING, COLLECTING EGGS AND FEEDING THE GOATS AND SHEEP WILL ALL BE A
PART OF THE EXPERIENCE AT THE SCHOOL.*

*CLASSES WILL BE OFFERED TO PRE-SCHOOL AGED CHILDREN
DURING THE SCHOOL YEAR AND TO ALL SCHOOL AGED CHILDREN
FOR THE SUMMER MONTHS.*

*THE SCHOOL HOUSE WILL ALSO SERVE A SECOND
PURPOSE: A COMMUNITY CENTER FOR THE SENIORS.
THE BUILDINGS WILL BE OPEN FOR THE USE AFTER
SCHOOL HOURS FOR FUNCTIONS AND CLASSES
FOR THE COMMUNITY.*

Greenhouse & Shop



*Existing Historic
Structures to
be Rebuilt*

New Barn Structure

*FARM SCHOOL BUILDINGS:
FULLY FUNCTIONAL OUT BUILDINGS FOR A TYPICAL
FARMING OPERATION; HOUSING EQUIPMENT, ANIMALS
AND FEED FOR DAY TO DAY OPERATION OF FARM
SCHOOL.*



Proposed Townhomes



View of Townhomes - from Northeast



TOWNHOME DESCRIPTION:
THE TEN TOTAL UNITS ARE PROPOSED TO BE CONSTRUCTED AS EITHER TWIN OR SINGLE TOWNHOMES.

THIS ELEMENT OF THE DEVELOPMENT WILL HELP TO DEFINE THE VILLAGE GREEN AND PROVIDE SENIORS WITH AN ALTERNATIVE FOR LIVING IN THE COMMUNITY.

EACH STRUCTURE WILL BE PLANNED AND CONSTRUCTED FOR SENIORS WHO WANT TO AGE AT HOME, WITH WIDER HALLWAYS, DOORWAYS AND ACCESSIBLE BATHROOMS.



Village Green



Village Green

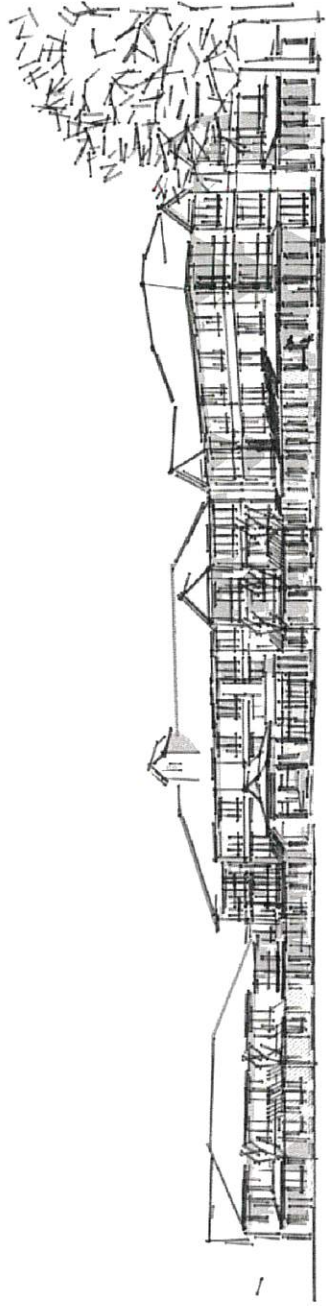
FARM SCHOOL
Lake Elmo
& SENIOR LIVING



Fole, Freeman, Erickson, Inc.



Senior Living Homestead



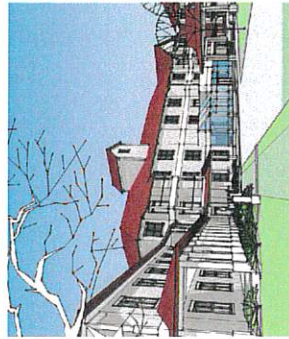
40 Unit Senior Living Homestead - View from Southeast

SENIOR LIVING HOMESTEAD: PLANNED AS AN INTEGRAL PART OF THE PROJECT, THIS SENIOR HOUSING COMPONENT WILL BE SITUATED OVERLOOKING THE VILLAGE GREEN, OAK SAVANNAH AND FARM FIELDS TO THE NORTHWEST.

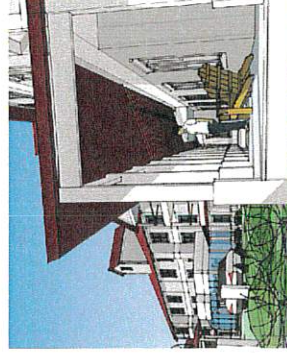
THE UNITS ARE PLANNED TO PROVIDE RESIDENTS THE OPPORTUNITY TO AGE AT HOME, WITH WIDE HALLWAYS AND DOORS, ACCESSIBLE APPLIANCES AND BATHROOMS.

LARGE WINDOWS, PORCHES AND THE LAYOUT OF EACH OF THE UNITS WILL ALLOW EACH OWNER TO HAVE VIEWS AND THE FEELING OF THE OUTDOORS. EXPERIENCING THE OPEN SPACES OF THIS DEVELOPMENT, WITHOUT HAVING TO VENTURE OUTSIDE WAS A MAJOR DRIVING FORCE IN THE DESIGN AND PLACEMENT OF THE BUILDING.

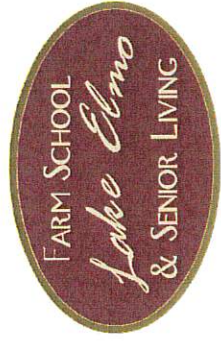
TO ALSO PROVIDE GREATER ACCESSIBILITY DURING WINTER MONTHS, THE BUILDING IS PLANNED WITH AN UNDERGROUND PARKING FACILITY ACCESSED BY AN ELEVATOR TO ALL FLOORS. PLACING THE PARKING UNDERGROUND WILL ALSO DECREASE THE OVERALL HARD SURFACE, HELPING TO PRESERVE A GREATER AMOUNT OF NATURAL AREAS.



Southwest Corner of Building

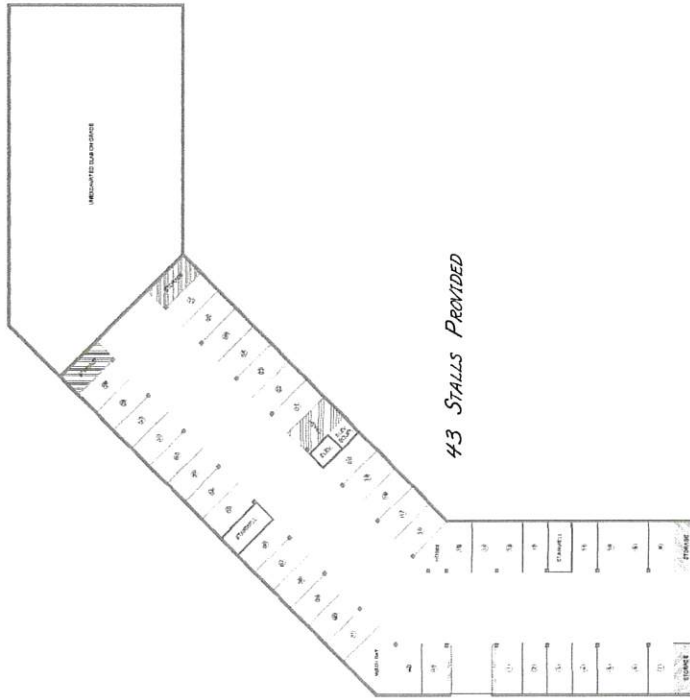


Southeast Corner of Building

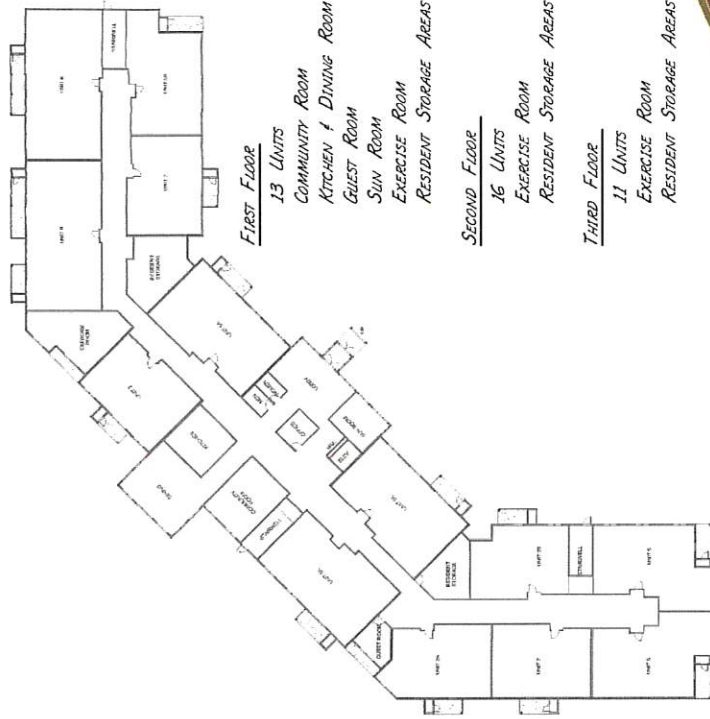


Senior Living Homestead

Floor Layouts



Concept Underground Parking Layout



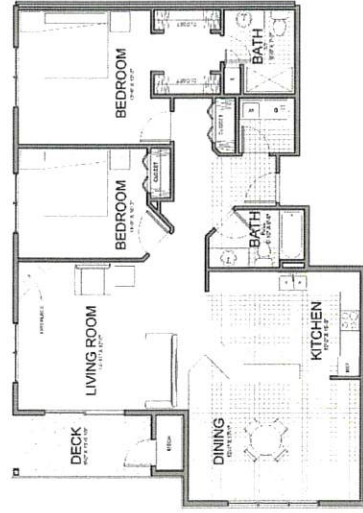
Concept Unit Layout



Senior Living Homestead Unit Plans



1



2

Typical Unit Floor Plans

UNIT SIZES RANGING FROM 1,000 S.F. TO 1,800 S.F.



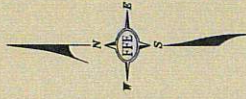
Open Space Concept Plat

Folz, Freeman, Erickson, Inc.
 LAND PLANNING • SURVEYING • ENGINEERING
 12445 55TH STREET NORTH
 LAKE ELMO, MINNESOTA 55042
 Phone: (651) 494-8833 Fax: (651) 494-9331

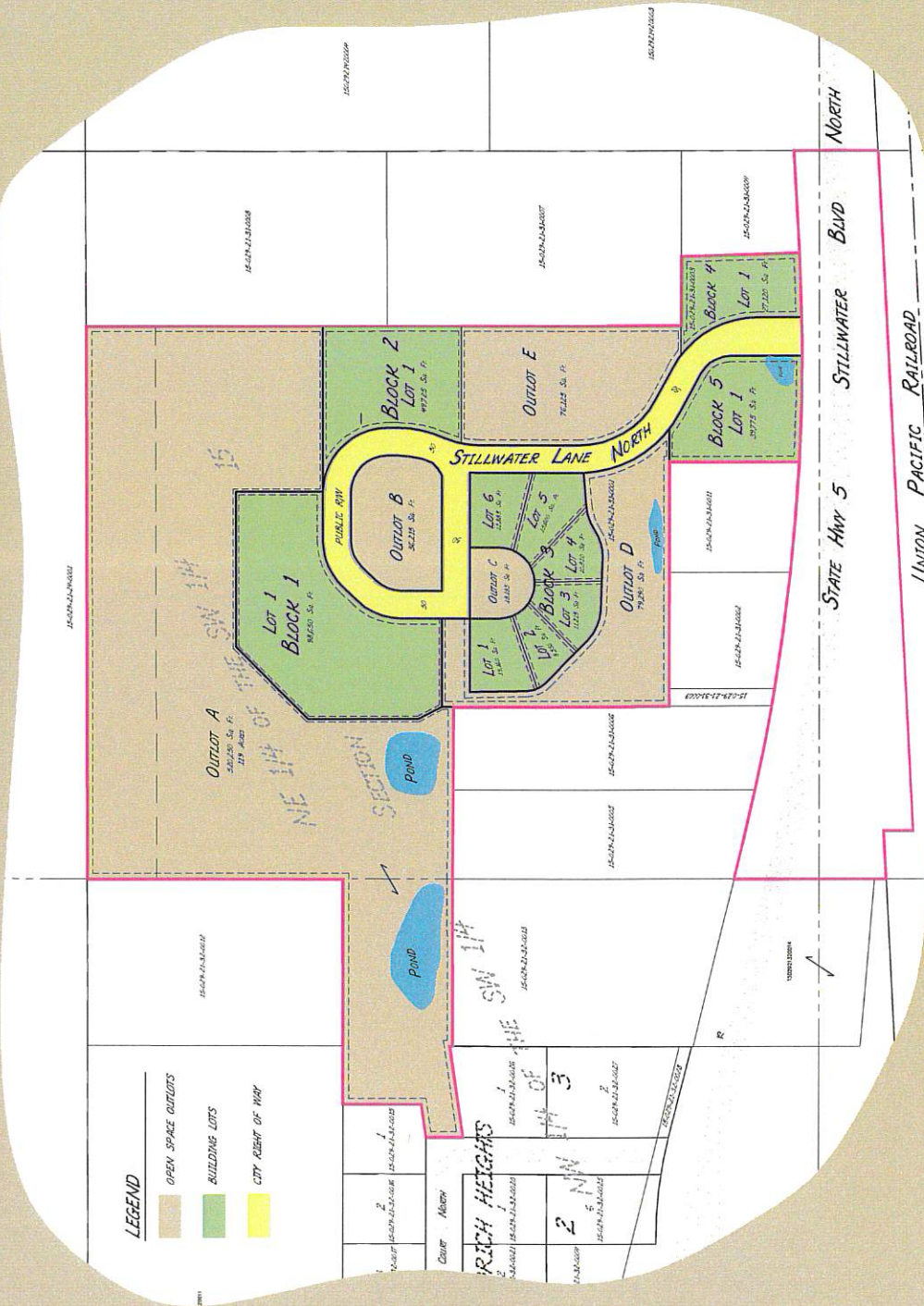


OWNERS:
 Estate of Arvo Feurich/
 Ole Janice Gruen
 65 Mezzine Estancia
 949 Stillwater Blvd. N.
 Lake Elmo, MN 55042

DEVELOPER:
 TAMM MALMQUIST
 8599 BOWWOOD TRAIL
 LAKE ELMO, MN 55042



ORIGINAL SCALE
 1 INCH = 100 FEET
 SCALE IN FEET
 0 50 100 150 200 250 300



Open Space Area Calculations

Folz, Freeman, Erickson, Inc.
 LAND PLANNING • SURVEYING • ENGINEERING
 12445 55TH STREET NORTH
 LAKE ELMO, MINNESOTA 55042
 Phone (651) 494-8813 Fax (651) 443-9331



LEGEND
 DENOTES EXISTING STRUCTURE
 DENOTES PROPOSED STRUCTURE

ENVIRONMENTAL RESOURCES

TOTAL SIZE	30.9 Acres
PROTECTED WETLANDS	None
25% + 25% SLOPED AREAS	None
25% + SLOPED AREAS	None
WOODLANDS	3.1 Acres

CONSERVATION AREAS

OUTLOT	AREA
A	11.99 Acres
B	0.83 Acres
C	0.30 Acres
D	18.1 Acres
E	17.9 Acres
Total	30.9 Acres

UNIT CALCULATION

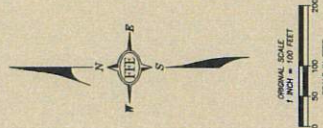
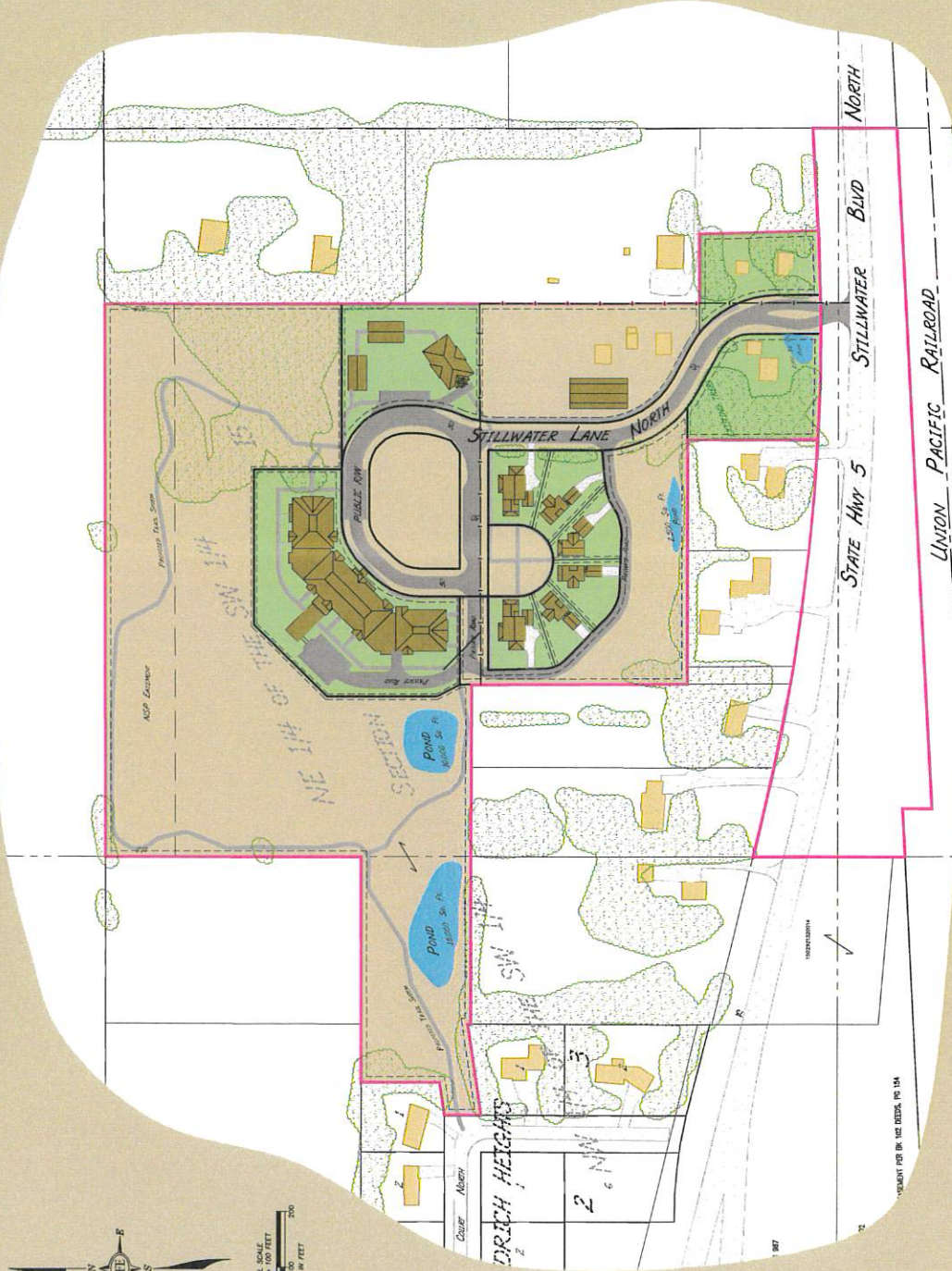
GRASS AREA	30.9 Acres
UNBUILDABLE AREA	0.0 Acres
TOTAL BUILDABLE AREA	30.9 Acres
UNIT CALCULATION (2 UNITS / 1 ACRE)	61.8 Units
NEW UNITS	50 Units
EXISTING UNITS	2 Units
TOTAL REQUESTED UNITS	52 Units

OPEN SPACE CALCULATION

TOTAL BUILDABLE AREA	30.9 Acres
OPEN SPACE REQUIRED (20% Provision)	15.4 Acres
OPEN SPACE PROVIDED (Other Areas)	16.6 Acres

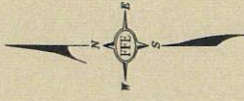
STREET & TRAIL

TOTAL STREET LENGTH	1,676 Feet
TOTAL STREET AREA	189 Acres
TOTAL TRAIL PROPOSED	5,000 Feet



Site Contours & Drainage Patterns

Folz, Freeman, Erickson, Inc.
 LAND PLANNING • SURVEYING • ENGINEERING
 12445 55TH STREET NORTH
 LAKE ELMO, MINNESOTA 55042
 Phone: (651) 494-8833 Fax: (651) 494-9331



ORIGINAL SCALE
 1" = 100 FEET
 SCALE IN FEET
 0 50 100 200

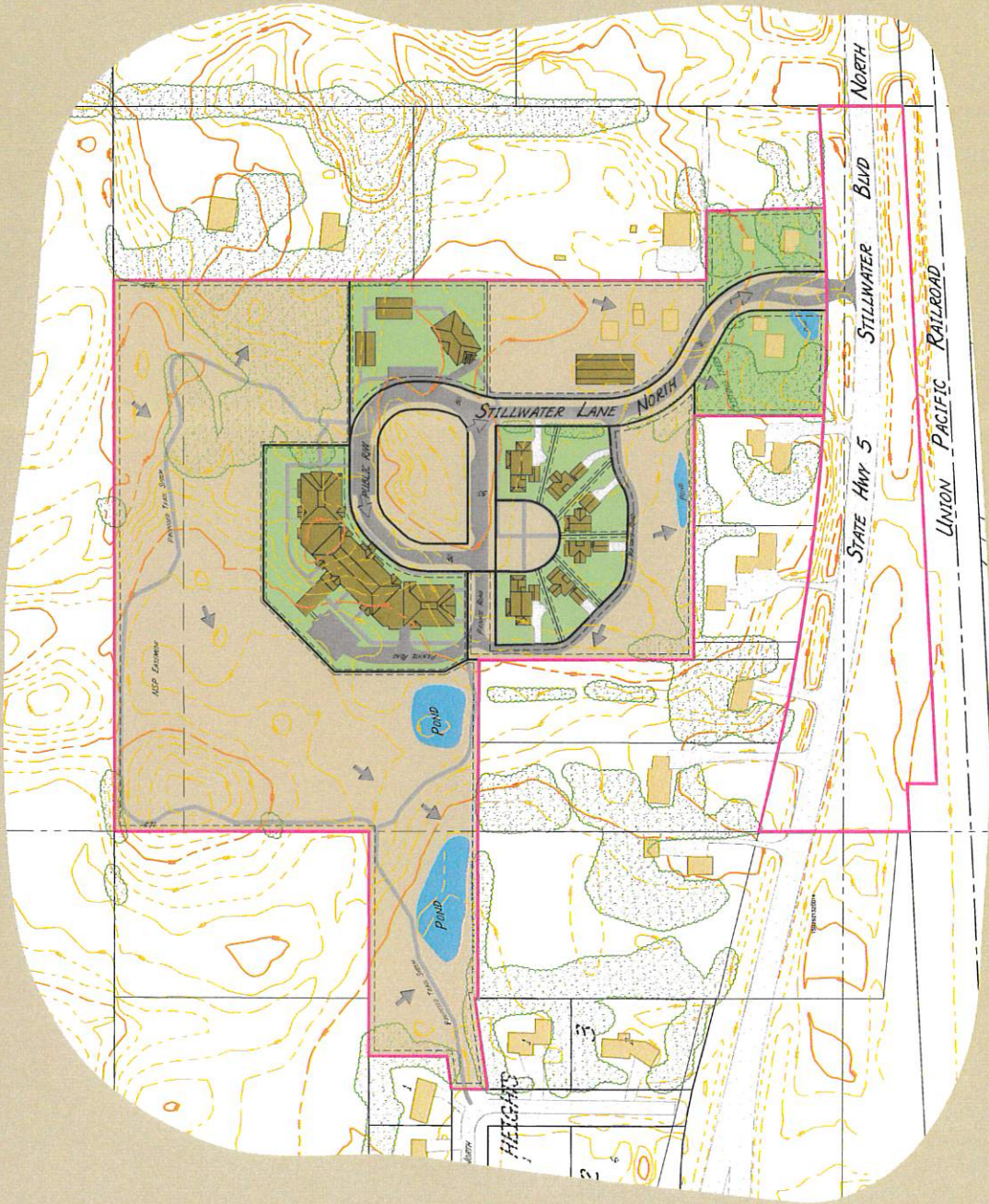
LEGEND

- EXISTING CONTOUR
- PROPOSED PONDING/INFILTRATION AREAS
- PROPOSED DRAINAGE PATH

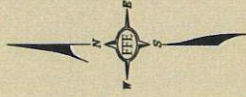
PROPOSED GRADING & DRAINAGE.
 THE PROPOSED GRADING PLAN WILL FOLLOW THE CONTOURS OF
 THE LAND, DISTURBING AS LITTLE AREA AS POSSIBLE. THE
 INTENT IS FOR THE PROPOSED PONDING AREAS AS SHOWN TO
 BE DESIGNED AS INFILTRATION BASINS AND STORAGE PONDS,
 HELPING TO CLEAN AND REDUCE RUNOFF FROM THE SITE.

EXISTING SOILS:

SOIL NAME	SOIL TYPE
ANTWERP	STEF LOAM
CUYLER	SANDY LOAM
ROSRUELL	SANDY LOAM
POSKOH	STEF LOAM
BARRONETT	STEF LOAM



Concept Layout - Landscape



LEGEND

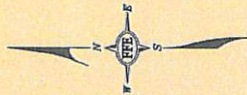
- Proposed Private Split - See Decision Text
- Existing Development or Existing Trees



Open Space Planned Unit Development

Existing and Proposed Utilities

Folz, Freeman, Erickson, Inc.
 LAND PLANNING • SURVEYING • ENGINEERING
 12445 55TH STREET NORTH
 LAKE ELMO, MINNESOTA 55442
 Phone (651) 499-8833 Fax (651) 499-9331



- LEGEND**
- DENOTES EXISTING STRUCTURE
 - DENOTES PROPOSED STRUCTURE
 - DENOTES PROPOSED WATER LINES

ORDINANCE COMPLIANCE

THE PROPOSED PROJECT WILL ACCOMMODATE THE REQUIRED BMP'S TO ADDRESS STREAM WATER QUALITY AND QUANTITY. THE NECESSARY ACCOMMODATIONS WILL BE MADE TO THE PROPOSED PROJECT AND THE REQUIREMENTS OF THE LOCAL BRANCH INTERPRETED STRICTLY.

SEPTIC SYSTEM

THE PROPOSED AREA AVAILABLE FOR THE SEPTIC DRAIN FIELD IS OVER 8000 SQ. FT. WHICH IS MORE AS LARGE AS THE AREA WHERE THIS WILL BE LOCATED. THE PROPOSED PROJECT WILL BE DESIGNED TO MEET ALL PROPOSED USES. THE ANTICIPATED FLOWS WILL REQUIRE A 4" AND 8" SEPTIC AREA WILL BE UTILIZED TO DELIVER THE SERVICE TO THE PROPOSED SEPTIC AREA FOR ALL OF THE PROPOSED UNITS.

