



STAFF REPORT

DATE: 11/16/2021

REGULAR

TO: Mayor and City Council

FROM: Jane Kansier, AICP, Planning Consultant

AGENDA ITEM: **Krueger Tree Farm – Amendment to Interim Use Permit**

REVIEWED BY: Molly Just, Planning Director

INTRODUCTION:

The Krueger Christmas Tree Farm has requested an amendment to its Interim Use Permit (IUP). The current IUP allows the sale of Christmas trees that are grown off-site on the property in order to supplement the sale of trees that are grown on the property. The proposed amendment to the IUP would allow the following additional items:

1. Construction of an approximately 1,250 square foot barn to be used for Christmas tree sales;
2. Allow a professional photography business to operate on the property from July through December of each year (this will need to be covered under a separate IUP); and
3. Extension of the term of the existing IUP from January 1, 2042 by five years to January 1, 2047.

(Please see the applicants' letter and attached plans for more information about this request.)

BACKGROUND:

On November 15, 2011, the City Council approved an IUP to allow the sales of Christmas trees grown off-site to supplement the sale of trees grown on-site. The approved IUP limited the use to the existing buildings on the site, and is subject to 13 conditions.

On October 25, 2021, the Planning Commission held a public hearing to consider the request for an amendment to the existing IUP, and a separate IUP to allow a professional photography business as an Agricultural Entertainment Business use. There were eight emailed comments read into the record (see attached). Three residents provided public testimony at the hearing:

- Adam Slinger, 9849 59th St. Ct. N, spoke in support of the Krueger Tree Farm.
- Steve Pott, 4212 Lake Elmo Ave. N, stated that he feels that this business has grown too large for the existing location and does not want the IUP expansion. He also spoke regarding parking and traffic issues.
- Doug Williams, 4596 Lake Elmo Ave. N, spoke in favor of the new building.

Following the public hearing, Mr. Potts also submitted a letter to the Council outlining his concerns. The letter is attached to this report.

The Planning Commission recommended approval of the amendment to the existing IUP subject to 10 conditions. The Planning Commission also recommended approval of the IUP for a photography business as an Agricultural Entertainment Business subject to 10 conditions.

ISSUE BEFORE THE CITY COUNCIL:

The City Council is being asked to review, consider and make a determination about the amendments to the existing IUP and to the Agricultural Entertainment Business IUP as described above.

PROPOSAL DETAILS/ANALYSIS:

<i>Applicant:</i>	John, Neil and Deb Krueger; 4452 Lake Elmo Avenue N
<i>Property Owners:</i>	Neil and Deb Krueger; 4452 Lake Elmo Avenue N
<i>Location:</i>	4452 Lake Elmo Avenue N
<i>Request:</i>	Application for various amendments to the existing IUP.
<i>Site Area:</i>	46 acres
<i>Existing Land Use:</i>	Christmas tree farm and associated buildings/MDR/PUD.
<i>Existing Zoning:</i>	Agricultural
<i>Surrounding:</i>	North – single family homes zoned RR West – single family homes zoned A South – 43 rd Street N and single family homes zoned RR East – Lake Elmo Avenue, Wildflower outlot and single family homes zoned RR and PUD
<i>Comprehensive Plan:</i>	Rural Area Development (RAD)
<i>History:</i>	The owner/applicant established a tree farm with tree sales on the property in the 1980s. In 2011, the City Council approved an IUP to allow the sale of Christmas trees on the property that are grown off-site. The IUP has several conditions.
<i>Deadline for Action:</i>	Application Complete – 9/20/2021 60 Day Deadline – 11/19/2021 Extension Letter Mailed – No 120 Day Deadline – NA
<i>Regulations:</i>	Chapter 154.012 – Zoning Use Types and Classifications Article XI – Rural Districts Chapter 154.404 – Site Design and Development Standards Chapter 154.913 – Agricultural Sales Business Regulations Chapter 154.914 – Agricultural Entertainment Business Regulations

PROJECT ANALYSIS

John, Neil, and Deb Krueger are requesting approval of amendments to the IUP. Their proposal includes the following specific changes to the existing IUP (and an additional separate IUP for the professional photography use).

1. Construction of a new sales barn. The proposed new sales barn will be two stories, with 1,288 square feet per story. The new facility will not include any restroom facilities. This building will replace the existing sales building on the site, which will be used for staff and storage. The current IUP is limited to the use of the existing buildings on the site. The applicants are requesting this language in the IUP to be changed as follows:

*“That the proposed Interim Use will make use of the ~~existing~~ facilities that are used to support the Christmas tree farm, including **but not limited to** a sales building, warming house, and off-street parking area, and that the terms and conditions associated with the interim use will not apply to any portion of the site that is already used for permitted activities, including the current tree farm.”*

Analysis: The site currently includes a single-family home, a machine shed, a sales barn, a warming house, and parking facilities, in addition to the tree farm and natural areas. Currently, the only buildings used for the tree sales are the existing sales barn and warming house, as well as the parking lot. The amended language that is being proposed by the Kruegers is fairly open-ended and could ultimately be interpreted to allow conversion of the other buildings for the sales use or the construction of additional buildings on the property.

The issue is not necessarily the construction of a new sales barn, which meets all of the required setbacks. The applicant has indicated this new building will replace the current sales barn, which will then be used primarily for storage. Rather, the question is how many buildings on the site should be used for the sales. City staff would recommend, as a condition of approval, that public access for the sales use be limited to the sales barn and the warming house. The existing sales barn may be used for storage purposes in conjunction with the sales use. No other buildings on the site may be constructed and no existing buildings may be converted or used as part of the sales operation.

2. Allow professional photography on the site. The applicants would like to expand the IUP to allow photographers to use the site as a location for family photos from July to December of each year. The applicants plan to utilize an online reservation system that will allow them to control the number of people on the site at any given time. The photo shoots would be approximately 30 minutes in length and would not involve the use of any buildings on the site. No more than 5 photographers would be allowed on site at any one time. Condition #9 of the current IUP limits the use of the property to sales of agricultural products grown off-site, specifically Christmas trees. The applicants are requesting this language be changed as follows:

*The Interim Use Permit is to allow the sale of agricultural products that are grown off site, and specifically Christmas trees, **as well as professional photography during the months of July-December.** Any other items sold that are not otherwise grown on site or considered an ancillary item shall require an amendment to the Interim Use Permit.*

Analysis: Section 154.913 of the City Code states, “Activities shall be limited to those listed within the definition for Agricultural Sales Business.” Agricultural sales, as defined in Section 154.012, generally include the retail sale of agricultural, floricultural, or horticultural products, and may involve the ancillary sale of items considered accessory to the products being sold. No activities other than the sale of goods as outlined above shall be allowed as part of the agricultural sales business. Therefore, a professional photography use would not fall within the definition of an Agricultural Sales Business.

The City Code does allow Agricultural Entertainment Business uses which are defined as an “agricultural sales business that combines the elements and characteristics of agriculture and tourism, which is not necessarily located in an existing building. Examples of agricultural entertainment include: corn mazes, hayrides, sleigh rides, petting farms, on-farm tours, agricultural related museums, demonstrations of farming practices, techniques and methods, fee-based fishing and hunting, horseback riding, nature trails, haunted barns and similar activities which are related to agriculture.” While not specifically included in this list, the professional photography element, as proposed, could be interpreted to meet this definition, since the intent is to allow outdoor photos. If the Planning Commission and Council agree that this type of use can be characterized as an Agricultural Entertainment Business use, the use can be limited by specific conditions. The Code also requires that a separate IUP be issued by the City for Agricultural Entertainment Business uses. Therefore, Staff would recommend that a separate IUP relating to the professional photography use be issued that includes the following conditions:

- Hours of operation – the current proposal suggests 8:00 AM to sunset. City staff would recommend this window be narrowed to 9:00 AM to 8:00 PM, or sunset, whichever is sooner.
 - Months – the current application states July – December. Staff agrees these months are reasonable.
 - Number of photographers on site – the current application states they would limit the number to 5 on site at any given time. Staff would suggest this number be reduced to no more than 3. In addition, the time frame for each session should be maximized at 1 hour, and the number of individuals in a party should be limited to 15.
 - The photography sessions must not utilize the interior of the sales building, or any other building on the site for the photography use. This includes set up, changing rooms, or review of photos.
 - Parking for this use must be accommodated within the existing parking lot.
3. Expand the term of the IUP. The current IUP was granted for a term of 30 years, and expires on January 1, 2042. The applicants are requesting extension of this date for an additional five years to January 1, 2047. This change is shown below:

The Interim Use Permit shall expire on January 1, ~~2042~~ 2047; upon the sale of the property or a transfer of the business ownership to an outside party (non-family member); or at such time that the total property utilized for the Krueger Christmas tree farm is less than 40 acres; whichever occurs first. At such time as this IUP expires, an applicant may request an extension.

Analysis: City staff has no objections to this request. The City's IUP ordinance still allows the City to review the IUP and to take enforcement action as needed.

IUP CRITERIA/FINDINGS

Interim uses must be reviewed under both the general criteria for such as well as the specific criteria outlined for the requested use.

General Criteria:

1. The use is allowed as an interim use in the respective zoning district and conforms to standard zoning regulations.

The Agricultural zoning district was amended in 2010 to include Agricultural Sales Business as an interim use. Agricultural Entertainment Business is also an interim use in this district.

2. The use will not adversely impact nearby properties through nuisance, noise, traffic, dust, or unsightliness and will not otherwise adversely impact the health, safety, and welfare of the community.

The Krueger's Christmas Tree Farm has been in operation for nearly 40 years. Staff is not aware of any issues or nuisance conditions that have been identified in this period of time, and the proposed amendments to the Interim Use Permit will not alter the current operations in any significant manner.

3. The use will not adversely impact implementation of the comprehensive plan.

The Applicants are asking to sell agricultural products from their site. The purpose of an IUP is specifically to allow a use for a limited period of time that reasonably utilizes the property, but as a result of anticipated development or redevelopment or other significant change, will not be acceptable in the future or will be replaced by a permitted or conditional use allowed within the respective district. This site is designated for Rural Area Development in the 2040 Comprehensive Plan, which includes working farms and agricultural uses. The Agricultural Sales Business would not adversely impact implementation of the Comprehensive Plan when regulated through an Interim Use Permit.

4. The user agrees to all conditions that the City Council deems appropriate for permission of the use. This may include the requirement of appropriate financial surety such as a letter of credit or other security acceptable to the City to cover the cost of removing the interim use and any interim structures not currently existing on the site, upon the expiration of the interim use permit.

Staff is not recommending any financial surety be requested. City staff is recommending conditions.

5. There are no delinquent property taxes, special assessments, interest, or city utility fees due upon the subject parcel.

City staff is not aware of any delinquent taxes, special assessments, or fees due with respect to the property.

6. The date or event that will terminate the use is identified with certainty.

The existing IUP expires on January 1, 2042. Staff is suggesting this be extended to January 1, 2047, or if the property is sold to an outside party, whichever is greater, or at such time that the total property utilized for the Krueger Christmas tree farm is less than 40 acres; whichever occurs first.

Specific Criteria – Agricultural Sales (Christmas Tree Sales)

1. Activities shall be limited to those listed within the definition for Agricultural Sales Business.

The proposed use is consistent with the definition of Agricultural Sales Business.

2. The agricultural sales business shall be located on land owned or leased by the producer or the operator of the business and not within or on any public right-of-way or easements.

The operator of the business is the landowner and the operator/landowner maintain that the business is not being operated in any public right-of-way or easements.

3. The operator must be able to demonstrate at all times to the City that there is sufficient access, parking, and maneuvering space, that the location and adequacy of approaches are sufficient, that there is suitable and safe access for pedestrians, and that customer parking is away from the travel way and in close proximity to the agricultural sales business.

The operator/owner maintains that the existing parking lot is adequate to accommodate the existing sales building, and the space available for sales would not be impacted by the proposed supplemental sales.

4. All waste materials shall be enclosed in containers provided on the site, and shall not generate any nuisance impacts on adjacent properties.

A condition of approval requires enclosed trash containers.

5. All sidewalks, roadways, and parking areas shall be treated as necessary to eliminate dust nuisance impacts on adjacent properties.

This is a condition of the existing 2011 IUP. Staff recommends maintaining this condition.

6. Per code section 154.913 The maximum gross floor area that can be devoted to sales activities is limited to 20,000 square feet.

The current activities are housed in two buildings totaling approximately 1,800 square feet. The new sales building is a total of 2,576 square feet, for a total building area of 4,376 square feet. The Applicants will fall well below the maximum allowed building size for the Christmas tree sales activity. A condition of the IUP will also limit the Christmas tree sales activity to these buildings.

7. Parking shall be provided in accordance with the parking requirements for other commercial uses, as per City Code 154.051 (C). All parking must occur on-site, be on a primary surface such as class five gravel or pavement; and must be set back at least 30 feet from all property lines.

The operator/owner maintains that the existing parking lot has been sized to accommodate the needs of the existing sales business and that the proposed interim use permit will not significantly alter the need for parking that already exists on the site.

8. The minimum lot size shall be 40 acres for any agricultural sales business.

The existing parcel is 46 acres in size.

9. On-site wastewater handling system shall be planned and designed by a licensed professional and approved by the City or its designated responsible authority. Usable primary and alternate well and septic sites sized for the maximum anticipated usage of the property shall be identified on the property. Alternate site shall be protected in the site plan design, and will only need to be used upon failure of a primary site.

The Christmas tree sales business will use the water and septic system for the farmstead. The interim use will not likely require the expansion of the septic system on the property. A condition of approval notes the Applicants must certify that the existing system is sized adequately to meet all needs.

10. Any structures constructed for the agricultural sales business shall be consistent in design and appearance with other agricultural buildings in the area.

The proposed building is consistent with the design of other agricultural buildings.

11. Per code section 154.913 trip generation shall be limited to the yearly average daily trips calculated for the underlying zoning, with no daily trip generation to exceed twice the daily calculation rate for the underlying zoning. The base daily trip generation is established at 180 vehicle trips per day for every 40 acres.

The operator/owner maintains that the tree farm will fall well under the maximum trip generation required under the code.

12. Per code section 154.913 the maximum impervious coverage for the buildings, parking areas and other uses devoted to the agricultural sales business shall not exceed 40,000 square feet and the remainder shall be suitably landscaped.

The maximum area devoted to Christmas tree sales is under 20,000 square feet and will therefore comply with this provision.

13. Any activities that are defined as an Agricultural Entertainment Business shall require a separate interim use permit.

The proposed professional photography use will be covered under a separate IUP.

14. Any exterior storage of equipment and materials other than the display of products being sold or agricultural equipment currently in use on the property shall be prohibited, unless otherwise exempted in accordance with Section 150.001 through 150.003 of the City Code.

A condition of approval prohibits exterior storage, other than display of products.

15. There shall be a minimum buffer of 100 feet between any sales areas or sales buildings and any adjacent residential property lines.

The application depicts the sales buildings located at least 250 feet from the nearest residential property line.

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

This is a condition of approval of the existing IUP.

17. Trash containers must be located inside or screened in an acceptable manner.

This is a condition of approval of the existing IUP.

18. The operator shall adhere to the general review criteria applicable to all interim use permit applications.

This is identified in the review criteria above.

19. No activities or structures beyond those specified in the interim use permit shall be added before review by the City to determine compliance with this ordinance.

Any changes to the approved IUP will require review and approval by the City.

Specific Criteria – Agricultural Entertainment

1. An agricultural entertainment business shall adhere to all performance standards as outlined in § 154.913 for an agricultural sales business;

The proposed photography use is consistent with these performance standards. Additional conditions pertaining to hours and months of operation, number of customers, and use of buildings will be applied to ensure the use is consistent.

2. The property proposed to be used for agricultural entertainment must be located with direct access to a collector or arterial street as identified in the Comprehensive Plan;

The site has access to Lake Elmo Avenue, which is a minor collector, and to 43rd Street, which is a planned minor collector.

3. Discharge of firearms, including blanks, shall not be allowed on the property;

The discharge of firearms is not proposed with this use.

4. The property owner must take reasonable steps to prevent trespassing on adjacent properties by employees, contractors or patrons.

A condition of approval requiring users of the photography services will require the applicant provide specific direction about the allowed locations for photo sessions.

CITY ENGINEER REVIEW:

The City Engineer has reviewed this request, and has prepared a review memorandum for the Commission and City Council's review, dated September 24, 2021. Some key issues outlined in the review include:

- The Krueger Tree Farm currently has an access and egress to 43rd Street North, located only 100 feet west and 160 feet west respectively, from the Lake Elmo Avenue intersection. As traffic volumes grow along 43rd Street North, the City will eventually need to improve this intersection with dedicated turn lanes. This will require removal or relocation of the existing driveways. Consideration should be made with the placement of the sales barn and internal traffic circulation for the relocation of the access at least 400 feet to the west.

- As a commercial operation, consideration should be given to the provision of on-site sewage treatment capabilities and site along with safe drinking water provisions. The existing home on the site is currently connected to City water. An expanded use may require infrastructure upgrades, additional fees and meter provisions.

FIRE DEPARTMENT REVIEW:

The Fire Department has reviewed this request and has provided the attached comments. Some key issues outlined in the review include:

- Install emergency egress illumination in the means of egress including exit discharge compliant with 2020 MSFC.
- Install compliant exit signage as required by the 2020 MSFC.
- Provide and install dry chemical fire extinguishers certified for service and tagged as required. Service classification rating shall be a minimum 2A classification rating and maximum travel distance of 75 feet to extinguishers. The minimum classification rating may be upgraded for special or extra hazard areas within the occupancy.

CITY ATTORNEY REVIEW:

The City Attorney has reviewed this request and has provided the attached comments. Some key issues outlined in the review include:

- The proposed language by the Applicants for the IUP amendment would remove the limitation on the number of buildings that may be on the property (right now it is limited to only existing buildings). The City may want to consider placing some type of limitation on it.

FISCAL IMPACT:

Staff has not found that the proposed IUPs will have any impact to the City.

PLANNING COMMISSION RECOMMENDATION:

The Planning Commission recommended the City Council approve the request for an amendment to the IUP and for the Agricultural Entertainment Business IUP for the Krueger Tree Farm on the property located at 4452 Lake Elmo Avenue N, subject to the following conditions:

Agricultural Sales IUP (Christmas Tree Sales):

- 1) That the Applicants sign the approved consent agreement with the City in accordance with Section 154.019, Subd. (B, 5) of the City Code.
- 2) The operator must be able to demonstrate at all times to the City that there is sufficient access, parking, and maneuvering space, that the location and adequacy of approaches are sufficient, that there is suitable and safe access for pedestrians, and that customer parking is away from the travel way and in close proximity to the agricultural sales business.
- 3) All waste materials shall be enclosed in containers provided on the site, and shall not generate any nuisance impacts on adjacent properties.
- 4) All sidewalks, roadways, and parking areas shall be treated as necessary to eliminate dust nuisance impacts on adjacent properties.

- 5) Trip generation shall be limited to the yearly average daily trips calculated for the underlying zoning, with no daily trip generation to exceed twice the daily calculation rate for the underlying zoning. The base daily trip generation is established at 180 vehicle trips per day for every 40 acres.
- 6) Any exterior storage of equipment and materials other than the display of products being sold or agricultural equipment currently in use on the property shall be prohibited, unless otherwise exempted in accordance with Section 150.001 through 150.003 of the City Code.
- 7) Roof top or outside building mechanical equipment must be screened from view from adjacent properties and rights-of-way with an opaque material architecturally compatible with the building(s).
- 8) Trash containers must be located inside or screened in an acceptable manner.
- 9) This interim use permit is to allow the sale of agricultural products that are grown off site, and specifically Christmas trees. Any other items sold that are not otherwise grown on site or considered an ancillary item shall require an amendment to the interim use permit.
- 10) The interim use permit shall expire on January 1, 2047; upon the sale of the property or a transfer of the business ownership to an outside party (non-family member); or at such time that the total property utilized for the Krueger Christmas Tree Farm is less than 40 acres; whichever occurs first. At such time as this interim use permit expires, an extension may be requested.

Agricultural Entertainment Business IUP (Professional Photography):

- 1) That the Applicants sign the approved consent agreement with the City in accordance with Section 154.019, Subd. (B,5) of the City Code.
- 2) This interim use permit only allows the use of the site as a setting for family and individual photographs by a professional photographer.
- 3) Parking for this use must be accommodated within the existing parking lot.
- 4) The operator must be able to demonstrate at all times to the city that there is sufficient access, parking, and maneuvering space, that the location and adequacy of approaches are sufficient, that there is suitable and safe access for pedestrians, and that customer parking is away from the travel way and in close proximity to the agricultural sales business.
- 5) All waste materials shall be enclosed in containers provided on the site, and shall not generate any nuisance impacts on adjacent properties.
- 6) All sidewalks, roadways, and parking areas shall be treated as necessary to eliminate dust nuisance impacts on adjacent properties.
- 7) Trip generation shall be limited to the yearly average daily trips calculated for the underlying zoning, with no daily trip generation to exceed twice the daily calculation rate for the underlying zoning. The base daily trip generation is established at 180 vehicle trips per day for every 40 acres.
- 8) There shall be no exterior storage of equipment and materials associated with the agricultural entertainment use.
- 9) Trash containers must be located inside or screened in an acceptable manner.

- 10) The interim use permit shall expire on January 1, 2047; upon the sale of the property or a transfer of the business ownership to an outside party (non-family member); or at such time that the total property utilized for the Krueger Christmas tree farm is less than 40 acres; whichever occurs first. At such time as this IUP expires, an applicant may request an extension.

STAFF RECOMMENDATION:

The staff recommended the following conditions be attached to the approval of the IUP:

Agricultural Sales IUP (Christmas Tree Sales):

- 1) That the Applicants sign the approved consent agreement with the City in accordance with Section 154.019, Subd. (B, 5) of the City Code.
- 2) The operator must be able to demonstrate at all times to the City that there is sufficient access, parking, and maneuvering space, that the location and adequacy of approaches are sufficient, that there is suitable and safe access for pedestrians, and that customer parking is away from the travel way and in close proximity to the agricultural sales business.
- 3) All waste materials shall be enclosed in containers provided on the site, and shall not generate any nuisance impacts on adjacent properties.
- 4) All sidewalks, roadways, and parking areas shall be treated as necessary to eliminate dust nuisance impacts on adjacent properties.
- 5) Trip generation shall be limited to the yearly average daily trips calculated for the underlying zoning, with no daily trip generation to exceed twice the daily calculation rate for the underlying zoning. The base daily trip generation is established at 180 vehicle trips per day for every 40 acres.
- 6) Any exterior storage of equipment and materials other than the display of products being sold or agricultural equipment currently in use on the property shall be prohibited, unless otherwise exempted in accordance with Section 150.001 through 150.003 of the City Code.
- 7) Roof top or outside building mechanical equipment must be screened from view from adjacent properties and rights-of-way with an opaque material architecturally compatible with the building(s).
- 8) Trash containers must be located inside or screened in an acceptable manner.
- 9) This interim use permit is to allow the sale of agricultural products that are grown off site, and specifically Christmas trees. Any other items sold that are not otherwise grown on site or considered an ancillary item shall require an amendment to the interim use permit.
- 10) The agricultural sales use shall be limited to the existing 600 square foot warming housing, the existing 1,200 square foot sales building, and the new 2,576-foot sales building. Public access for the sales use be limited to the sales barn and the warming house. The existing sales barn may be used for storage purposes in conjunction with the sales use. No other buildings on the site may be constructed and no existing buildings may be converted or used as part of the sales operation.
- 11) The interim use permit shall expire on January 1, 2047; upon the sale of the property or a transfer of the business ownership to an outside party (non-family member); or at such time

that the total property utilized for the Krueger Christmas Tree Farm is less than 40 acres; whichever occurs first. At such time as this interim use permit expires, an extension may be requested.

Agricultural Entertainment Business IUP (Professional Photography):

- 1) That the Applicants sign the approved consent agreement with the City in accordance with Section 154.019, Subd. (B,5) of the City Code.
- 2) This interim use permit only allows the use of the site as a setting for family and individual photographs by a professional photographer.
- 3) Hours of operation for the photography use are limited to 9:00 AM to 8:00 PM, or sunset, whichever is sooner, from July through December.
- 4) The number of photography sessions on site is limited to no more than three at any given time. The time frame for each session is a maximum of 1 hour, and the number of individuals in a group is limited to 15.
- 5) The photography sessions must not utilize the interior of the sales building, or any other building on the site for this purpose. This includes set up, changing rooms, or review of photos.
- 6) The applicant shall provide specific direction to photographers about the allowable locations for photo sessions.
- 7) Parking for this use must be accommodated within the existing parking lot.
- 8) The operator must be able to demonstrate at all times to the city that there is sufficient access, parking, and maneuvering space, that the location and adequacy of approaches are sufficient, that there is suitable and safe access for pedestrians, and that customer parking is away from the travel way and in close proximity to the agricultural sales business.
- 9) All waste materials shall be enclosed in containers provided on the site, and shall not generate any nuisance impacts on adjacent properties.
- 10) All sidewalks, roadways, and parking areas shall be treated as necessary to eliminate dust nuisance impacts on adjacent properties.
- 11) Trip generation shall be limited to the yearly average daily trips calculated for the underlying zoning, with no daily trip generation to exceed twice the daily calculation rate for the underlying zoning. The base daily trip generation is established at 180 vehicle trips per day for every 40 acres.
- 12) There shall be no exterior storage of equipment and materials associated with the agricultural entertainment use.
- 13) Trash containers must be located inside or screened in an acceptable manner.
- 14) The interim use permit shall expire on January 1, 2047; upon the sale of the property or a transfer of the business ownership to an outside party (non-family member); or at such time that the total property utilized for the Krueger Christmas tree farm is less than 40 acres; whichever occurs first. At such time as this IUP expires, an applicant may request an extension.

POSSIBLE CONDITIONS TO ADDRESS NUISANCE IMPACTS:

1) Parking and Traffic

- Require the applicant complete a traffic study during the peak operation of the tree sales. This can provide documentation on whether the trips exceed the maximum allowed by the ordinance.
- Require the applicant to submit a specific parking lot plan clearly identifying the location and number of parking spaces intended to serve the sales operation.
- Require the applicant submit a reservation only system for Christmas Tree sales. This may help to limit the number of customers on the site at any given time, but may be somewhat difficult to enforce.
- The City Council may designate 43rd Street for “No Parking” during a specific time frame associated with the tree sales. This would allow the City to install signs and to enforce no parking at this location.

2) Impervious Surface

- Require the applicant submit a survey identifying all impervious surface on the site, and what surfaces are associated with the Christmas Tree sales. This will help determine if the impervious surface complies with the ordinance requirements.

3) Tree Sales

- Limit the number or percentage of trees grown off-site. This would require some sort of reporting system to ensure compliance. This could be difficult to track.

4) Photography

- Limit the timeframe for photos on the site so that tree sales and photography do not occur at the same time. For example from January 1st to November 1st.

5) Review of IUP Uses

- While the code allows for review and revocation of an IUP for non-compliance it may be appropriate to formalize a recurring review period. This could put the applicant and the neighborhood on notice as to a specific review period. For example, a condition of approval could be added that requires City Council review of these IUPs every 3 years, with August 2022 being the first review.

OPTIONS/SUGGESTED MOTIONS

The City Council has three options:

1. Approval

Approve amendments to the IUP for Agricultural Sales (Christmas Trees) and the new IUP for the Agricultural Entertainment Business (professional photography) with the listed conditions, or other conditions as determined by the Council. The suggested motions are:

“Move to approve Resolution 2021-128 approving the amendment to the IUP for agricultural sales with eleven conditions based on the findings listed in the staff report.”

“Move to approve Resolution 2021-129 approving the IUP for the agricultural entertainment business to allow professional photography sessions on the site with thirteen conditions based on the findings listed in the staff report.”

2. Denial

Deny the requested amendments to the IUP for Agricultural Sales (Christmas Trees) and the new IUP for the Agricultural Entertainment Business (professional photograph) based on specific findings of fact supporting denial of this request. The suggested motions are:

“Move to approve Resolution 2021-128 denying the amendment to the IUP for agricultural sales based on specific findings stated by the City Council.”

“Move to approve Resolution 2021-129 denying the IUP for the agricultural entertainment business to allow professional photography sessions on the site based on specific findings stated by the City Council.”

It should be noted this action does not revoke the existing IUP. Revocation of the existing permit requires a public hearing by the City Council.

3. Table to a date specific

The City Council may table action on this request to a date specific, and request specific information. The current 60-day period ends on November 19, 2021, but the City has the option to extend this deadline for an additional 60 days, or until January 19, 2022. This requires the Council take action on this at their January 5, 2022 meeting. The suggested motions are:

“Move to table the request for an amendment to the IUP for agricultural sales to a date specific and specifying additional information to be provided.”

“Move to table the request for an IUP for the agricultural entertainment business to allow professional photography sessions on the site to a date specific and specifying additional

ATTACHMENTS:

- 1) Application and narrative
- 2) Location Map
- 3) City Engineer review comments
- 4) Fire Department review comments
- 5) City Attorney review comments
- 6) Email comments
- 7) Potter comments
- 8) Resolution 2021 - 128 approving the IUP amendments
- 9) Resolution 2021- 129 approving the IUP for Agricultural Entertainment Business (professional photography).

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

RESOLUTION NO. 2021-128

*A RESOLUTION GRANTING AN AMENDMENT TO THE INTERIM USE PERMIT FOR
AN AGRICULTURAL SALES BUSINESS AT 4452 LAKE ELMO AVENUE NORTH TO
ALLOW THE SUPPLEMENTAL SALES OF CHRISTMAS TREES GROWN OFF-SITE*

WHEREAS, Krueger's Christmas Tree Farm, 4452 Lake Elmo Avenue North (Applicant), has submitted an application to the City of Lake Elmo (City) for an amendment to the existing Interim Use Permit to allow the sale of Christmas trees that are grown off-site to supplement the sale of trees that are grown on the Applicant's farm that would allow the construction of a 1,288 square foot building for use as a sales barn and would extend the term of the existing IUP five years to January 1, 2047; and

WHEREAS, notice has been published, mailed and posted pursuant to the Lake Elmo Zoning Ordinance, Section 154.019; and

WHEREAS, the Lake Elmo Planning Commission held a Public Hearing on October 25, 2021 and reviewed and recommended approval of the amendment to the Interim Use Permit to allow the construction of a 1,288 square foot building for use as a sales barn and would extend the term of the existing IUP five years to January 1,; and

WHEREAS, the Lake Elmo Planning Commission has submitted its report and recommendation to the City Council as part of a Staff Memorandum dated November 16, 2021; and

WHEREAS, Section 154.019, Subd. (B, 5) of the City Code requires the applicant to enter into a consent agreement with the City that specifies the terms and conditions of the interim use; and

WHEREAS, the Lake Elmo City Council reviewed the interim use permit request and consent agreement at its November 16, 2021 meeting.

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

- 1) That the procedures for obtaining said Interim Use Permit are found in the Lake Elmo Zoning Ordinance, Section 154.019.
- 2) That all the submission requirements of said Section 154.019 have been met by the Applicant.

- 3) That the proposed amendment Interim Use Permit is to allow the construction of a 1,288 square foot building for use as a sales barn and to extend the term of the existing IUP five years to January 1, 2047 for the sale of Christmas trees that are grown off-site to supplement the sale of trees that are grown on the applicant's farm in an A – Agriculture Zoning District.
- 4) That the Christmas tree sales occur during the month of November and through December 31st of each year.
- 5) That the proposed Interim Use will make use of the existing facilities that are used to support the Christmas tree farm, including the existing 600 square foot warming housing, the existing 1,200 square foot sales building, and the new 2,576-foot sales building and off-street parking area, and that the terms and conditions associated with the interim use will not apply to any portion of the site that is already used for permitted activities, including the current tree farm.
- 6) That the applicant will be allowed to supplement the sale of Christmas trees grown on-site with trees grown off-site throughout the duration of the interim use permit, regardless of whether or not applicant sells produce grown off-site in any given year.
- 7) That the proposed use will be located on property legally described as: Part of the east half (1/2) of the southeast quarter (1/4) lying northerly of the current existing east-west right-of-way known as 43rd Street North, in Section 11, Township 029 West, Range 21 North in Washington County and State of Minnesota. Commonly known as 4452 Lake Elmo Avenue North.
- 8) That the use is allowed as an interim use in the respective zoning district and conforms to standard zoning regulations.
- 9) That the use will not adversely impact nearby properties through nuisance, noise, traffic, dust, or unsightliness and will not otherwise adversely impact the health, safety, and welfare of the community. The Krueger's Christmas Tree Farm has been in operation for nearly 40 years. Staff is not aware of any issues or nuisance conditions that have been identified in this period of time, and the proposed amendments to the Interim Use Permit will not alter the current operations in any significant manner.
- 10) That the use will not adversely impact implementation of the Comprehensive Plan. The Applicants are asking to sell agricultural products from their site. The purpose of an IUP is specifically to allow a use for a limited period of time that reasonably utilizes the property, but as a result of anticipated development or redevelopment or other significant change, will not be acceptable in the future or will be replaced by a permitted or conditional use allowed within the respective district. This site is designated for Rural Area Development in the 2040 Comprehensive Plan, which includes working farms and agricultural uses. The Agricultural Sales Business would

not adversely impact implementation of the Comprehensive Plan when regulated through an Interim Use Permit.

- 11) The user agrees to all conditions that the City Council deems appropriate for permission of the use. This may include the requirement of appropriate financial surety such as a letter of credit or other security acceptable to the City to cover the cost of removing the interim use and any interim structures not currently existing on the site, upon the expiration of the interim use permit.
- 12) There are no delinquent property taxes, special assessments, interest, or city utility fees due upon the subject parcel.
- 13) That the date or event that will terminate the use is identified with certainty. The interim use agreement establishes a termination date for the permit that is set at January 1, 2047, or if the property is sold to an outside party, whichever is greater, or at such time that the total property utilized for the Krueger Christmas tree farm is less than 40 acres; whichever occurs first.
- 14) Activities shall be limited to those listed within the definition for Agricultural Sales Business. The proposed use is consistent with the definition of Agricultural Sales Business.
- 15) The agricultural sales business shall be located on land owned or leased by the producer or the operator of the business and not within or on any public right-of-way or easements. The operator of the business is the landowner and it is not being operated in any public right-of-way or easements.
- 16) The operator must be able to demonstrate at all times to the City that there is sufficient access, parking, and maneuvering space, that the location and adequacy of approaches are sufficient, that there is suitable and safe access for pedestrians, and that customer parking is away from the travel way and in close proximity to the agricultural sales business. The existing parking lot is adequate to accommodate the existing sales building, and the space available for sales would not be impacted by the proposed supplemental sales.
- 17) All waste materials shall be enclosed in containers provided on the site, and shall not generate any nuisance impacts on adjacent properties. A condition of approval will require enclosed trash containers.
- 18) All sidewalks, roadways, and parking areas shall be treated as necessary to eliminate dust nuisance impacts on adjacent properties. This has been addressed as a condition of the IUP.
- 19) The maximum gross floor area that can be devoted to sales activities is limited to 20,000 square feet. The current activities are housed in two buildings totaling approximately 1,800 square feet. The new sales building is a total of 2,576 square

feet, for a total building area of 4,376 square feet. The Applicants will fall well below the maximum allowed building size for the Christmas tree sales activity. A condition of the IUP will also limit the Christmas tree sales activity to these buildings.

- 20) Parking shall be provided in accordance with the parking requirements for other commercial uses, as per City Code 154.051 (C). All parking must occur on-site, be on a primary surface such as class five gravel or pavement; and must be set back at least 30 feet from all property lines. The existing parking lot has been sized to accommodate the needs of the existing sales business; the proposed interim use permit will not significantly alter the need for parking that already exists on the site.
- 21) The minimum lot size shall be 40 acres for any agricultural sales business. The existing parcel is 46 acres in size.
- 22) On-site wastewater handling system shall be planned and designed by a licensed professional and approved by the City or its designated responsible authority. Usable primary and alternate well and septic sites sized for the maximum anticipated usage of the property shall be identified on the property. Alternate site shall be protected in the site plan design, and will only need to be used upon failure of a primary site. The Christmas tree sales business will use the water and septic system for the farmstead. The interim use will not likely require the expansion of the septic system on the property. A condition of approval notes the Applicants must certify that the existing system is sized adequately to meet all needs.
- 23) Any structures constructed for the agricultural sales business shall be consistent on design and appearance with other agricultural buildings in the area. The proposed building is consistent with the design of other agricultural buildings.
- 24) Trip generation shall be limited to the yearly average daily trips calculated for the underlying zoning, with no daily trip generation to exceed twice the daily calculation rate for the underlying zoning. The base daily trip generation is established at 180 vehicle trips per day for every 40 acres. The tree farm will fall well under the maximum trip generation required under the code.
- 25) The maximum impervious coverage for the buildings, parking areas and other uses devoted to the agricultural sales business shall not exceed 40,000 square feet and the remainder shall be suitably landscaped. The maximum area devoted to Christmas tree sales is under 20,000 square feet and will therefore comply with this provision.
- 26) Any activities that are defined as an Agricultural Entertainment Business shall require a separate interim use permit. The proposed professional photography use will be covered under a separate IUP.
- 27) Any exterior storage of equipment and materials other than the display of products being sold or agricultural equipment currently in use on the property shall be prohibited, unless otherwise exempted in accordance with Section 150.001 through

150.003 of the City Code. A condition of approval prohibits exterior storage, other than display of products.

- 28) There shall be a minimum buffer of 100 feet between any sales areas or sales buildings and any adjacent residential property lines. The sales buildings are located at least 250 feet from the nearest residential property line.
- 29) Roof top or outside building mechanical equipment must be screened from view from adjacent properties and rights-of-way with an opaque material architecturally compatible with the building(s). This is a condition of approval of the existing IUP.
- 30) Trash containers must be located inside or screened in an acceptable manner. This is a condition of approval of the existing IUP.
- 31) The operator shall adhere to the general review criteria applicable to all interim use permit applications. This is identified in the review criteria above.
- 32) No activities or structures beyond those specified in the interim use permit shall be added before review by the City to determine compliance with this ordinance. Any changes to the approved IUP will require review and approval by the City.

NOW, THEREFORE, BE IT RESOLVED that the Lake Elmo City Council hereby approves the Interim Use Permit at 4452 Lake Elmo Avenue North for an Agricultural Sales Business to allow the sale of Christmas trees that are grown off-site to supplement the sale of trees that are grown on the Applicant's farm and authorizes the execution of the consent agreement for this interim use subject to the following conditions:

- 1) That the Applicants sign the approved consent agreement with the City in accordance with Section 154.019, Subd. (B, 5) of the City Code.
- 2) The operator must be able to demonstrate at all times to the City that there is sufficient access, parking, and maneuvering space, that the location and adequacy of approaches are sufficient, that there is suitable and safe access for pedestrians, and that customer parking is away from the travel way and in close proximity to the agricultural sales business.
- 3) All waste materials shall be enclosed in containers provided on the site, and shall not generate any nuisance impacts on adjacent properties.
- 4) All sidewalks, roadways, and parking areas shall be treated as necessary to eliminate dust nuisance impacts on adjacent properties.
- 5) Trip generation shall be limited to the yearly average daily trips calculated for the underlying zoning, with no daily trip generation to exceed twice the daily calculation rate for the underlying zoning. The base daily trip generation is established at 180 vehicle trips per day for every 40 acres.

- 6) Any exterior storage of equipment and materials other than the display of products being sold or agricultural equipment currently in use on the property shall be prohibited, unless otherwise exempted in accordance with Section 150.001 through 150.003 of the City Code.
- 7) Roof top or outside building mechanical equipment must be screened from view from adjacent properties and rights-of-way with an opaque material architecturally compatible with the building(s).
- 8) Trash containers must be located inside or screened in an acceptable manner.
- 9) This interim use permit is to allow the sale of agricultural products that are grown off site, and specifically Christmas trees. Any other items sold that are not otherwise grown on site or considered an ancillary item shall require an amendment to the interim use permit.
- 10) The agricultural sales use shall be limited to the existing 600 square foot warming housing, the existing 1,200 square foot sales building, and the new 2,576-foot sales building. Public access for the sales use be limited to the sales barn and the warming house. The existing sales barn may be used for storage purposes in conjunction with the sales use. No other buildings on the site may be constructed and no existing buildings may be converted or used as part of the sales operation.
- 11) The interim use permit shall expire on January 1, 2047; upon the sale of the property or a transfer of the business ownership to an outside party (non-family member); or at such time that the total property utilized for the Krueger Christmas Tree Farm is less than 40 acres; whichever occurs first. At such time as this interim use permit expires, an extension may be requested.

This resolution was adopted by the City Council of the City of Lake Elmo on the 16th day of November 2021, by a vote of ____ Ayes and ____ Nays.

Mayor Charles Cadenhead

ATTEST:

Julie Johnson, City Clerk
(SEAL)

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

RESOLUTION NO. 2021-129

*A RESOLUTION APPROVING AN INTERIM USE PERMIT FOR AN AGRICULTURAL
ENTERTAINMENT BUSINESS AT 4452 LAKE ELMO AVENUE NORTH TO ALLOW
PROFESSIONAL PHOTOGRAPHY SESSIONS*

WHEREAS, Krueger's Christmas Tree Farm, 4452 Lake Elmo Avenue North (Applicant), has submitted an application to the City of Lake Elmo (City) for Interim Use Permit to allow professional photography sessions as an Agricultural Entertainment Business; and

WHEREAS, notice has been published, mailed and posted pursuant to the Lake Elmo Zoning Ordinance, Section 154.019; and

WHEREAS, the Lake Elmo Planning Commission held a Public Hearing on October 25, 2021 and reviewed and recommended approval of the IUP to allow an agricultural entertainment business consisting of professional photography sessions on the site; and

WHEREAS, the Lake Elmo Planning Commission has submitted its report and recommendation to the City Council as part of a Staff Memorandum dated November 16, 2021; and

WHEREAS, Section 154.019, Subd. (B, 5) of the City Code requires the applicant to enter into a consent agreement with the City that specifies the terms and conditions of the interim use; and

WHEREAS, the Lake Elmo City Council reviewed the interim use permit request and consent agreement at its November 16, 2021 meeting.

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

- 1) That the procedures for obtaining said Interim Use Permit are found in the Lake Elmo Zoning Ordinance, Section 154.019.
- 2) That all the submission requirements of said Section 154.019 have been met by the Applicant.

- 3) That the proposed amendment Interim Use Permit is to allow an agricultural entertainment business consisting of professional photography sessions on the site in an A – Agriculture Zoning District.
- 4) That the photography session occur July 1st and through December 31st of each year.
- 5) That the proposed use will be located on property legally described as: Part of the east half (1/2) of the southeast quarter (1/4) lying northerly of the current existing east-west right-of-way known as 43rd Street North, in Section 11, Township 029 West, Range 21 North in Washington County and State of Minnesota. Commonly known as 4452 Lake Elmo Avenue North.
- 6) That the use is allowed as an interim use in the respective zoning district and conforms to standard zoning regulations.
- 7) That the use will not adversely impact nearby properties through nuisance, noise, traffic, dust, or unsightliness and will not otherwise adversely impact the health, safety, and welfare of the community. The Krueger's Christmas Tree Farm has been in operation for nearly 40 years.
- 8) That the use will not adversely impact implementation of the Comprehensive Plan. The Applicants are asking to allow professional photography sessions on their existing tree farm. The purpose of an IUP is specifically to allow a use for a limited period of time that reasonably utilizes the property, but as a result of anticipated development or redevelopment or other significant change, will not be acceptable in the future or will be replaced by a permitted or conditional use allowed within the respective district. This site is designated for Rural Area Development in the 2040 Comprehensive Plan, which includes working farms and agricultural uses. The Agricultural Entertainment Business would not adversely impact implementation of the Comprehensive Plan when regulated through an Interim Use Permit.
- 9) The user agrees to all conditions that the City Council deems appropriate for permission of the use. This may include the requirement of appropriate financial surety such as a letter of credit or other security acceptable to the City to cover the cost of removing the interim use and any interim structures not currently existing on the site, upon the expiration of the interim use permit.
- 10) There are no delinquent property taxes, special assessments, interest, or city utility fees due upon the subject parcel.
- 11) That the date or event that will terminate the use is identified with certainty. The interim use agreement establishes a termination date for the permit that is set at January 1, 2047, or if the property is sold to an outside party, whichever is

greater, or at such time that the total property utilized for the Krueger Christmas tree farm is less than 40 acres; whichever occurs first.

- 12) An agricultural entertainment business shall adhere to all performance standards as outlined in § 154.913 for an agricultural sales business; The proposed photography use is consistent with these performance standards. Additional conditions pertaining to hours and months of operation, number of customers, and use of buildings will be applied to ensure the use is consistent.
- 13) The property proposed to be used for agricultural entertainment must be located with direct access to a collector or arterial street as identified in the Comprehensive Plan; The site has access to Lake Elmo Avenue, which is a minor collector, and to 43rd Street, which is a planned minor collector.
- 14) Discharge of firearms, including blanks, shall not be allowed on the property; No firearms are proposed for this use.
- 15) The property owner must take reasonable steps to prevent trespassing on adjacent properties by employees, contractors or patrons. A condition of approval requiring users of the photography services will require the applicant provide specific direction about the allowed locations.

NOW, THEREFORE, BE IT RESOLVED that the Lake Elmo City Council hereby approves the Interim Use Permit at 4452 Lake Elmo Avenue North for an Agricultural Entertainment Business to allow professional photography sessions on the Applicant's farm and authorizes the execution of the consent agreement for this interim use subject to the following conditions:

- 1) That the Applicants sign the approved consent agreement with the City in accordance with Section 154.019, Subd. (B,5) of the City Code.
- 2) This interim use permit only allows the use of the site as a setting for family and individual photographs by a professional photographer.
- 3) Hours of operation for the photography use are limited to 9:00 AM to 8:00 PM, or sunset, whichever is sooner, from July through December.
- 4) The number of photography sessions on site is limited to no more than three at any given time. The time frame for each session is a maximum of 1 hour, and the number of individuals in a group is limited to 15.
- 5) The photography sessions must not utilize the interior of the sales building, or any other building on the site for this purpose. This includes set up, changing rooms, or review of photos.
- 6) The applicant shall provide specific direction to photographers about the allowable locations for photo sessions.
- 7) Parking for this use must be accommodated within the existing parking lot.
- 8) The operator must be able to demonstrate at all times to the city that there is sufficient access, parking, and maneuvering space, that the location and adequacy of approaches are

sufficient, that there is suitable and safe access for pedestrians, and that customer parking is away from the travel way and in close proximity to the agricultural sales business.

- 9) All waste materials shall be enclosed in containers provided on the site, and shall not generate any nuisance impacts on adjacent properties.
- 10) All sidewalks, roadways, and parking areas shall be treated as necessary to eliminate dust nuisance impacts on adjacent properties.
- 11) Trip generation shall be limited to the yearly average daily trips calculated for the underlying zoning, with no daily trip generation to exceed twice the daily calculation rate for the underlying zoning. The base daily trip generation is established at 180 vehicle trips per day for every 40 acres.
- 12) There shall be no exterior storage of equipment and materials associated with the agricultural entertainment use.
- 13) Trash containers must be located inside or screened in an acceptable manner.
- 14) The interim use permit shall expire on January 1, 2047; upon the sale of the property or a transfer of the business ownership to an outside party (non-family member); or at such time that the total property utilized for the Krueger Christmas tree farm is less than 40 acres; whichever occurs first. At such time as this IUP expires, an applicant may request an extension.

This resolution was adopted by the City Council of the City of Lake Elmo on the 16th day of November 2021, by a vote of ____ Ayes and ____ Nays.

Mayor Charles Cadenhead

ATTEST:

Julie Johnson, City Clerk
(SEAL)

RECEIVED
Date Received: SEP 10 2021
Received By: _____
Permit #: _____
BY: RM



651-747-3900
3800 Laverne Avenue North
Lake Elmo, MN 55042

LAND USE APPLICATION

- ☐ Comprehensive Plan ☐ Zoning District Amend ☐ Zoning Text Amend ☐ Variance*(see below) ☐ Zoning Appeal
- ☐ Conditional Use Permit (C.U.P.) ☐ Flood Plain C.U.P. ☒ Interim Use Permit (I.U.P.) ☐ Excavating/Grading
(amendment)
- ☐ Lot Line Adjustment ☐ Minor Subdivision ☐ Residential Subdivision Sketch/Concept Plan
- ☐ PUD Concept Plan ☐ PUD Preliminary Plan ☐ PUD Final Plan

Applicant: John, Neil, and Deb Krueger
Address: 4452 Lake Elmo Ave. N.
Phone #: 612-214-8136
Email Address: johnbkrueger@hotmail.com

Fee Owner: Neil and Deb Krueger
Address: (same as above)
Phone #: _____
Email Address: _____

Property Location (Address and Complete (long) Legal Description):
(see printed application for details)

Detailed Reason for Request:
(see printed application for details)

*Variance Requests: As outlined in Section 301.060 C. of the Lake Elmo Municipal Code, the applicant must demonstrate practical difficulties before a variance can be granted. The practical difficulties related to this application are as follows:

(N/A)

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

Signature of applicant: John Krueger Date: 9/10/21

Signature of fee owner: Neil Krueger Date: 9-10-21
Deb Krueger

Interim Use Permit amendment application

Krueger's Christmas Tree Farm

Neil, Deb, and John Krueger

September 9, 2021

Item 2

(A) **Property owners and owners of the associated LLC:** The property at 4452 Lake Elmo Avenue North is owned by Neil and Deb Krueger. There is also a business associated with the property, Krueger's Christmas Tree Farm, LLC. The LLC is owned by Neil and Deb along with their son, John Krueger. Neil Krueger's phone number is 651-331-8563. John Krueger's phone number is 612-214-8136.

(B) **Parcel identification number:** 11.029.21.41.0005 (NOTE: prior to 4/22/2021 the property was in three separate PIN's – 11.029.21.41.0002, 11.029.21.14.0003, 11.029.21.42.0004)

Parcel size: 46.21 acres (2,012,907 square feet)

Existing use of land: approximately 50% of acreage used as Christmas tree farming, 25% homestead and tree selling operations, and 25% woods/wetlands/buffer areas

Current zoning: A – Agricultural

Legal description of property: SECTION 11 TOWNSHIP 029 RANGE 021 THAT PART OF THE EAST HALF OF THE SOUTHEAST QUARTER LYING NORTHERLY OF THE CENTERLINE OF THE CURRENT EXISTING EAST/WEST RIGHT OF WAY KNOWN AS 43RD STREET NORTH; AND THAT PART OF THE SOUTH 445.5 FEET (AS MEASURED ALONG THE EAST LINE) OF THE EAST HALF OF THE NORTHEAST QUARTER, SECTION ELEVEN, IN TOWNSHIP TWENTY-NINE (29) NORTH, OF RANGE TWENTY- ONE (21) WEST, WASHINGTON COUNTY, MINNESOTA, LYING WEST OF THE EAST 396 FEET (AS MEASURED ALONG THE SOUTH LINE) THEREOF; SUBJECT TO AND TOGETHER WITH ANY VALID EASEMENTS, RESTRICTIONS AND RESERVATIONS, ACCORDING TO THE UNITED STATES GOVERNMENT SURVEY THEREOF AND ALL THAT PART OF THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 11, TOWNSHIP 29 NORTH, RANGE 21 WEST, WASHINGTON COUNTY, MINNESOTA, DESCRIBED AS FOLLOWS, TO WIT: BEGINNING AT THE NORTHEASTERLY CORNER OF SAID NORTHWEST QUARTER OF THE SOUTHEAST QUARTER; THENCE WESTERLY ALONG THE NORTHERLY LINE THEREOF 583.56 FEET, MORE OR LESS, TO THE EASTERLY LINE OF THE WEST 726.00 FEET OF SAID NORTHWEST QUARTER OF THE SOUTHEAST QUARTER; THENCE SOUTHERLY ALONG SAID EASTERLY LINE 481.00 FEET, MORE OR LESS, TO THE SOUTHERLY LINE OF THE NORTH 481.00 FEET OF SAID NORTHWEST QUARTER OF THE SOUTHEAST QUARTER; THENCE WESTERLY ALONG SAID SOUTHERLY LINE 114.00 FEET, MORE OR LESS, TO THE EASTERLY LINE OF THE WEST 612.00 FEET OF SAID NORTHWEST QUARTER OF THE SOUTHEAST QUARTER; THENCE SOUTHERLY ALONG SAID EASTERLY LINE 355.23 FEET, MORE OR LESS, TO THE CENTERLINE OF 43RD STREET NORTH; THENCE EASTERLY ALONG SAID CENTERLINE 696.03 FEET, MORE OR LESS, TO THE EASTERLY LINE OF SAID NORTHWEST QUARTER OF THE SOUTHEAST QUARTER; THENCE NORTHERLY ALONG SAID EASTERLY LINE 830.70 FEET, MORE OR LESS, TO THE POINT OF BEGINNING. SUBJECT TO THE RIGHT OF WAY OF SAID 43RD STREET

NORTH ALONG THE SOUTHERLY LINE THEREOF. SUBJECT TO AND TOGETHER WITH ANY OTHER VALID EASEMENTS, RESERVATIONS OR RESTRICTIONS

- (C) **Narrative regarding the history of the property (current and past uses) and any pre-application discussions with staff:** Our family's history to the farm starts in approximately 1916. Over the next 100+ years over 4 generations of Kruegers have farmed and lived on the land. We became a Century Farm in 2016. We purchased the farm from Krueger relatives in 1982 and started raising Christmas trees. In the early 1990's, as the original tree farm in Stillwater was closing after 40 years in business, we started selling our first trees. Over the last 30 years we have steadily built a thriving, successful, 3rd generation family business. We have solid succession plans in place as the 3rd generation takes ownership into the future. Many of our customers are from Lake Elmo but others come from all over the Twin Cities for a few weeks a year for quality trees and an authentic farm experience. For many of our customers, when they think of Lake Elmo, they think of Krueger's Christmas Tree Farm.

To support our business operations we started the planning process for a new tree barn approximately one year ago. While the barn will be used year-round for general farm operations it will also greatly improve our Christmas tree business in terms of operations flow, safety, customer accessibility, and additional shelter for customers in inclement weather during the tree selling season. Based on our zoning and number of existing buildings City staff informed us that we would first need to combine all three of our property parcels into one to get into the 40+ acre classification. This step was completed in April 2021. Then during the building permit process we were told by City staff that a new building would not be supported by our existing IUP (included in this packet). Section 5 of the IUP references the use of "existing buildings, including a sales building, warming house, and off-street parking area". Although the new tree barn is essentially a replacement of the current sales building (current building won't be used for sales going forward so it will be net-neutral in terms of number of buildings used under the IUP) we were instructed that an amendment to the IUP would be needed before the new barn could be used for our business.

(D) **Specific written description of the proposed uses:**

- i. Due to the reasons stated above in (C), we are respectfully requesting the following amendments to our current IUP to help our business be successful and sustainable into the future. All other existing IUP conditions are to remain unchanged.

*Section 5: That the proposed Interim Use will make use of the **existing** facilities that are used to support the Christmas tree farm, including **but not limited to** a sales building, warming house, and off-street parking area, and that the terms and conditions associated with the interim use will not apply to any portion of the site that is already used for permitted activities, including the current tree farm.*

(We would be willing to review any future building requests with the City for reasonability and to maintain a reasonable scope and scale of our business).

*Section 9: The Interim Use Permit is to allow the sale of agricultural products that are grown off site, and specifically Christmas trees, **as well as professional photography during the months of July-December**. Any other items sold that are not otherwise grown*

on site or considered an ancillary item shall require an amendment to the Interim Use Permit.

(We have worked hard over the last 40 years to cultivate and maintain our beautiful property. We have over 46 acres of rolling hills, 7 wetlands, and 2 oak savannahs. Our tree customers experience the property as they search for and cut down their tree. More and more often we are asked if they can come back to the farm with a photographer and take family photos, most often for family Christmas cards. We would like to formally add this item to our IUP amendment. Our vision is to offer this from July through December to best coincide with the late summer/fall and tree season. We would use an online reservation system to limit and control the volume of people on the farm at any time. The hours would be from 8am to sunset as the low-light evenings are the most optimal for photos. Sunset changes quickly in the fall, from 7:45pm in September to 4:30 in December; we would follow that shortening cycle. We would also limit the volume to no more than 5 photographers at any time. Photographers would park in our off-street parking lot at approximately 250' from 43rd Street and 200' from Lake Elmo Avenue. As such the visual impact to the neighborhood would be minimal and no additional City services or public works or utilities would be needed.)

***Section 10:** The Interim Use Permit shall expire on January 1, ~~2042~~ 2047; upon the sale of the property or a transfer of the business ownership to an outside party (non-family member); or at such time that the total property utilized for the Krueger Christmas tree farm is less than 40 acres; whichever occurs first. At such time as this IUP expires, an applicant may request an extension.*

(The current IUP was created at the end of 2011 with a 30-year timeline. While this may seem like a lot of time for an interim permit, it takes approximately 10 years to grow a harvestable Christmas tree. Without a longer term IUP such as this it is very difficult to invest in and plan for the business. We are now 10 years into the current IUP and are requesting an extension of 5 years to 2047 for the aforementioned reasons. While this is beneficial for our business planning, it is also in line with the 2040 Comp Plan (recently completed in 2019). The Future Land Use map (Map 3-3, page 57) in the 2040 plan indicates RAD use for our property. Part of the RAD definition includes "single-family detached homes, working farms and agricultural uses where land is undeveloped, cultivated in crops, or used for livestock." An extension to 2047 would meet this future land use forecast but still provide flexibility if changes were made in the 2050 Comp Plan later this decade.)

ii. **Signed consent agreement**

We, the applicant, agree to all three conditions identified in Section 2.ii of the interim use permit application.

(E) **Provide justification that the proposed use meets the following findings:**

- i. The proposed use (Ag Sales) is allowed as an interim use in our zoning district (Ag) per City Code section 154.401.
- ii. The use will not adversely impact nearby properties. We have operated our business at this location since approximately 1991. In the last 30 years the City has not received a formal complaint about our business. During this time the City has also not had to incur

any additional costs related to our business for fire, medical, police, emergency, public works, or other City service. In terms of unsightliness, we believe the proposed barn style will further improve the rural character of the property as a complementary building to the existing set of farm buildings and pre-1900 farmhouse. We have carefully and purposefully designed the barn to emulate the style of a traditional two-story "bank" barn. Additionally, we have chosen to use higher-quality "stick-built" construction methods to match the existing character and style of the other buildings as opposed to a lower-quality and less visually appealing pole-style shed with metal siding. Additionally, our current traffic flow has been reviewed by Washington County traffic engineering and their conclusion is our current entrance and exit is the most optimal flow (see appendix for more detail.)

- iii. The use will not adversely impact implementation of the 2040 Comprehensive Plan. In fact, the farm and business meets or exceeds several positive and targeted aspects of the Comp Plan for our geographic location and Lake Elmo in general.
- iv. We agree to review and discuss any conditions that the City Council deem appropriate to establish interim use.
- v. There are not delinquent property taxes or other fees due.
- vi. We agree the date terminating the interim use shall be set by the City Council at the time of approval.

Additional Supporting Information Included:

- Current Interim Use Permit
 - New Barn Design Schematic and Elevations
 - Full property site plan (46.2 acres)
 - Detailed site plans (2) (farmstead area)
 - Traffic flow analysis by Washington County Traffic Engineer
-

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

RESOLUTION NO. 2011-054

**A RESOLUTION GRANTING AN INTERIM USE PERMIT FOR AN AGRICULTURAL
SALES BUSINESS AT 4452 LAKE ELMO AVENUE NORTH TO ALLOW THE
SUPPLEMENTAL SALES OF CHRISTMAS TREES GROWN OFF-SITE**

WHEREAS, Krueger's Christmas Tree Farm, 4452 Lake Elmo Avenue North (Applicant), has submitted an application to the City of Lake Elmo (City) for an Interim Use Permit to allow the sale of Christmas trees that are grown off-site to supplement the sale of trees that are grown on the Applicant's farm; and

WHEREAS, notice has been published, mailed and posted pursuant to the Lake Elmo Zoning Ordinance, Section 154.019; and

WHEREAS, the Lake Elmo Planning Commission held a Public Hearing on November 7, 2011 and reviewed and recommended approval of the Interim Use Permit for the sale of Christmas trees that are grown off-site; and

WHEREAS, the Lake Elmo Planning Commission has submitted its report and recommendation to the City Council as part of a Staff Memorandum dated November 15, 2011; and

WHEREAS, Section 154.019, Subd. (B, 5) of the City Code requires the applicant to enter into a consent agreement with the City that specifies the terms and conditions of the Interim use; and

WHEREAS, the Lake Elmo City Council reviewed the interim use permit request and consent agreement at its November 15, 2011 meeting.

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


- 1) That the procedures for obtaining said Interim Use Permit are found in the Lake Elmo Zoning Ordinance, Section 154.019.
- 2) That all the submission requirements of said Section 154.019 have been met by the Applicant.
- 3) That the proposed Interim Use Permit is to allow the sale of Christmas Trees that are grown off-site to supplement the sale of trees that are grown on the applicant's farm in an A – Agriculture and RR – Rural Residential Zoning District.
- 4) That the Christmas tree sales occur during the month of November and through December 31st of each year.

- 5) That the proposed Interim Use will make use of the existing facilities that are used to support the Christmas tree farm, including a sales building, warming house, and off-street parking area, and that the terms and conditions associated with the Interim use will not apply to any portion of the site that is already used for permitted activities, including the current tree farm.
- 6) That the applicant will be allowed to supplement the sale of Christmas trees grown on-site with trees grown off-site throughout the duration of the interim use permit, regardless of whether or not applicant sells produce grown off-site in any given year.
- 7) That the proposed use will be located on property legally described as: Part of the east half (1/2) of the southeast quarter (1/4) lying northerly of the current existing east-west right-of-way known as 43rd Street North, in Section 11, Township 029 West, Range 21 North in Washington County and State of Minnesota. Commonly known as 4452 Lake Elmo Avenue North.
- 8) That the use is allowed as an Interim use in the respective zoning district and conforms to standard zoning regulations. *The Agricultural and Rural Residential zoning districts were amended in 2010 to include Agricultural Sales Business as an Interim Use in each district.*
- 9) That the use will not adversely impact nearby properties through nuisance, noise, traffic, dust, or unsightliness and will not otherwise adversely impact the health, safety, and welfare of the community. *The Krueger's Christmas Tree Farm has been in operation for approximately 30 years. Staff is not aware of any issues or nuisance conditions that have been identified in this period of time, and the proposed Interim Use Permit will not alter the current operations in any significant manner.*
- 10) That the use will not adversely impact implementation of the Comprehensive Plan. *The applicants are asking to sell agricultural product from their site. As identified in the Findings of Ordinance 08-031A, the Comprehensive Plan expresses a desire to preserve the rural character of Lake Elmo and open space and green corridors while regulating commercial uses of an agricultural nature. The Findings provided in Ordinance 08-031A identified that an Agricultural Sales Business would not adversely impact implementation of the Comprehensive Plan when regulated through an Interim Use Permit.*
- 11) That the date or event that will terminate the use is identified with certainty. *The Interim use agreement establishes a termination date for the permit that is set at January 1, 2032 or upon the sale or transfer of ownership in the property, whichever occurs first.*
- 12) That the Interim use will not impose additional costs on the public if it is necessary for the public to fully or partially take the property in the future. *The applicant is not requesting to add any additional structures at this time*
- 13) That there are no delinquent property taxes, special assessments, interest, or city utility fees due upon the subject parcel.

NOW, THEREFORE, BE IT RESOLVED that the Lake Elmo City Council hereby approves the Interim Use Permit at 4452 Lake Elmo Avenue North for an Agricultural Sales Business to allow the sale of Christmas trees that are grown off-site to supplement the sale of trees that are grown on the Applicant's farm and authorizes the execution of the consent agreement for this interim use subject to the following conditions:

- 1) That the applicant signs the approved consent agreement with the City in accordance with Section 154.019, Subd. (B, 5) of the City Code.
- 2) The operator must be able to demonstrate at all times to the city that there is sufficient access, parking, and maneuvering space, that the location and adequacy of approaches are sufficient, that there is suitable and safe access for pedestrians, and that customer parking is away from the travel way and in close proximity to the agricultural sales business.
- 3) All waste materials shall be enclosed in containers provided on the site, and shall not generate any nuisance impacts on adjacent properties.
- 4) All sidewalks, roadways, and parking areas shall be treated as necessary to eliminate dust nuisance impacts on adjacent properties.
- 5) Trip generation shall be limited to the yearly average daily trips calculated for the underlying zoning, with no daily trip generation to exceed twice the daily calculation rate for the underlying zoning. The base daily trip generation is established at 180 vehicle trips per day for every 40 acres.
- 6) Any exterior storage of equipment and materials other than the display of products being sold or agricultural equipment currently in use on the property shall be prohibited, unless otherwise exempted in accordance with Section 150.001 through 150.003 of the City Code.
- 7) Roof top or outside building mechanical equipment must be screened from view from adjacent properties and rights-of-way with an opaque material architecturally compatible with the building(s).
- 8) Trash containers must be located inside or screened in an acceptable manner.
- 9) The Interim Use Permit is to allow the sale of agricultural products that are grown off site, and specifically Christmas trees. Any other items sold that are not otherwise grown on site or considered an ancillary item shall require an amendment to the Interim Use Permit.
- 10) The Interim Use Permit shall expire on January 1, 2042; upon the sale of the property or a transfer of the business ownership to an outside party (non-family member); or at such time that the total property utilized for the Krueger Christmas tree farm is less than 40 acres; whichever occurs first. At such time as this IUP expires, an applicant may request an extension.

This resolution was adopted by the City Council of the City of Lake Elmo on the 15th day of November 2011, by a vote of ____ Ayes and ____ Nays.


Dean A. Johnston, Mayor

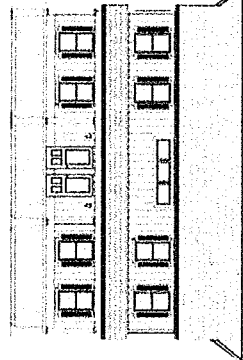
ATTEST:


Craig Dawson, Interim City Administrator

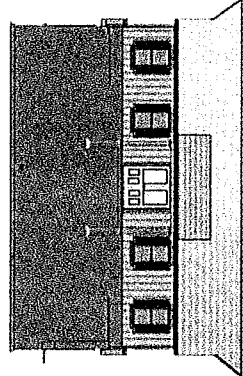
(SEAL)

ALL TRADES SHALL MAINTAIN A CLEAN WORK SITE.

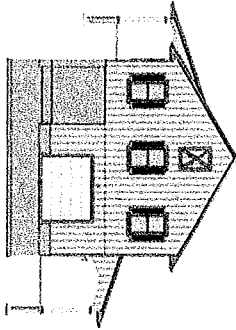
CALL 311 PRIOR TO DIGGING.



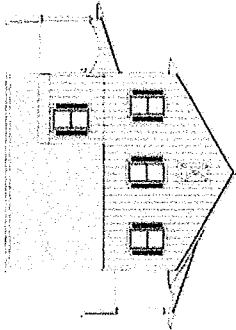
EAST ELEVATION
SCALE 1/8" = 1'



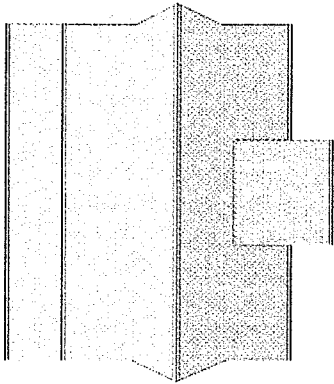
WEST ELEVATION
SCALE 1/8" = 1'



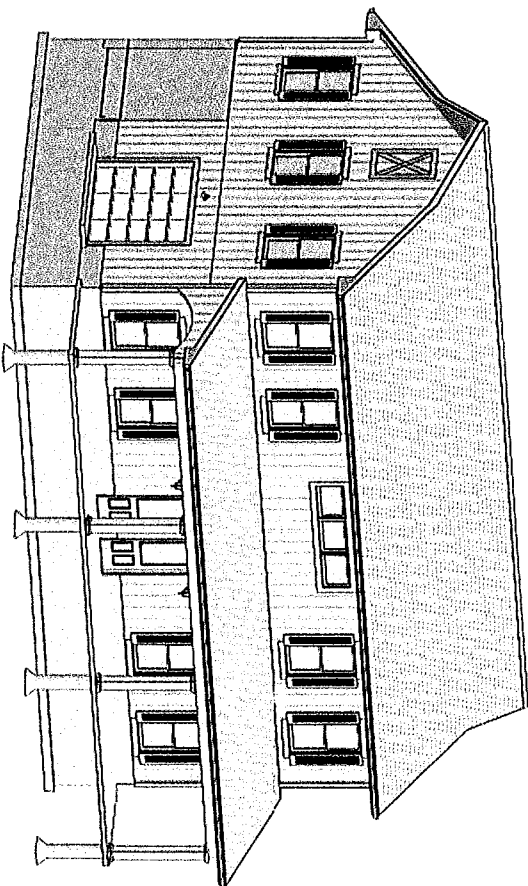
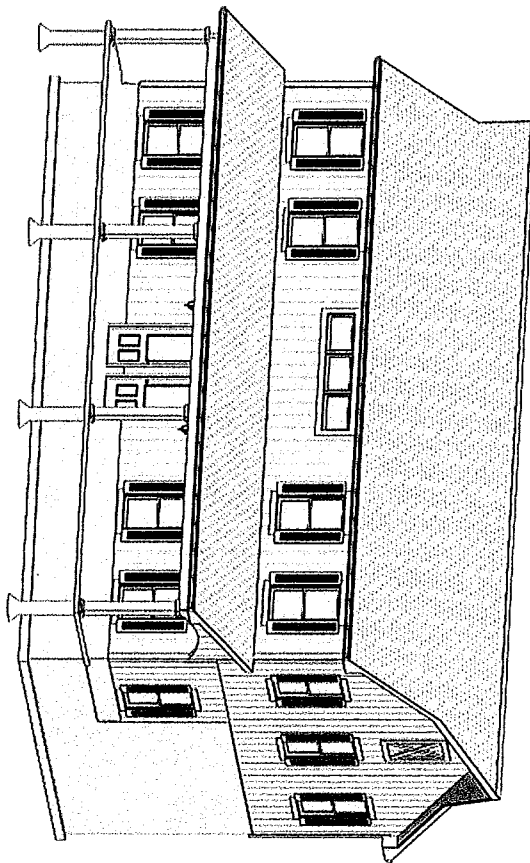
SOUTH ELEVATION
SCALE 1/8" = 1'



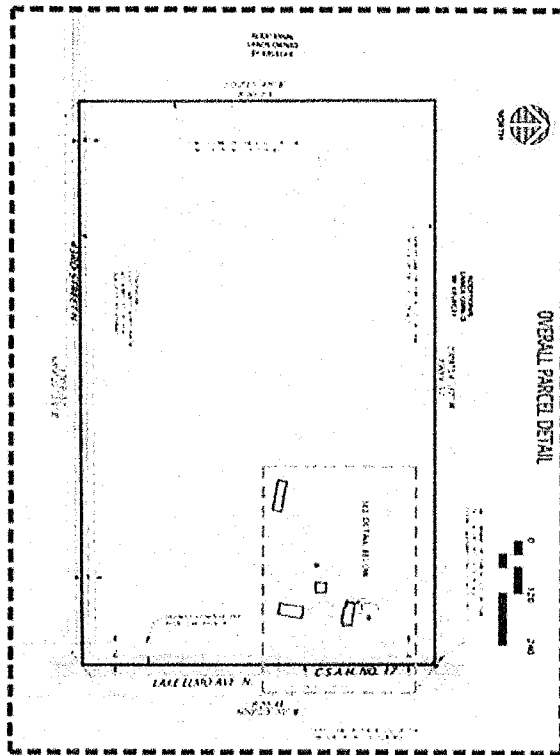
NORTH ELEVATION
SCALE 1/8" = 1'



BIRD'S EYE VIEW
SCALE 1/8" = 1'



OVERALL PARCEL DETAIL



LOCAL DESCRIPTION

The parcel is located on the north side of Lake Haven, just north of the intersection of Lake Haven and CSA# 17. The parcel is currently zoned R-1 (Residential Single-Family) and is surrounded by other residential parcels.

LOCAL TITLE NOTES

There are no recorded easements or other interests affecting this parcel. The parcel is currently owned by the City of Lake Haven and is being offered for sale by public auction.

PLANT NOTES

1. The parcel is currently planted with a variety of trees and shrubs, including mature oaks, maples, and birches. The trees are generally well-maintained and provide a good level of shade for the property.

FLOOD INFORMATION

The parcel is located in a flood-prone area, as indicated by the FEMA Flood Insurance Rate Map (FIRM). The parcel is currently in a Special Flood Hazard Area (SFHA) and is subject to flooding during heavy rain events.

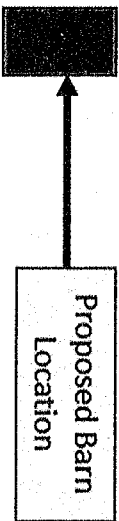
AREA

The parcel is located in the City of Lake Haven, which is a city in the state of Florida. The city is known for its beautiful beaches and scenic views of the Gulf of Mexico.



LEGEND

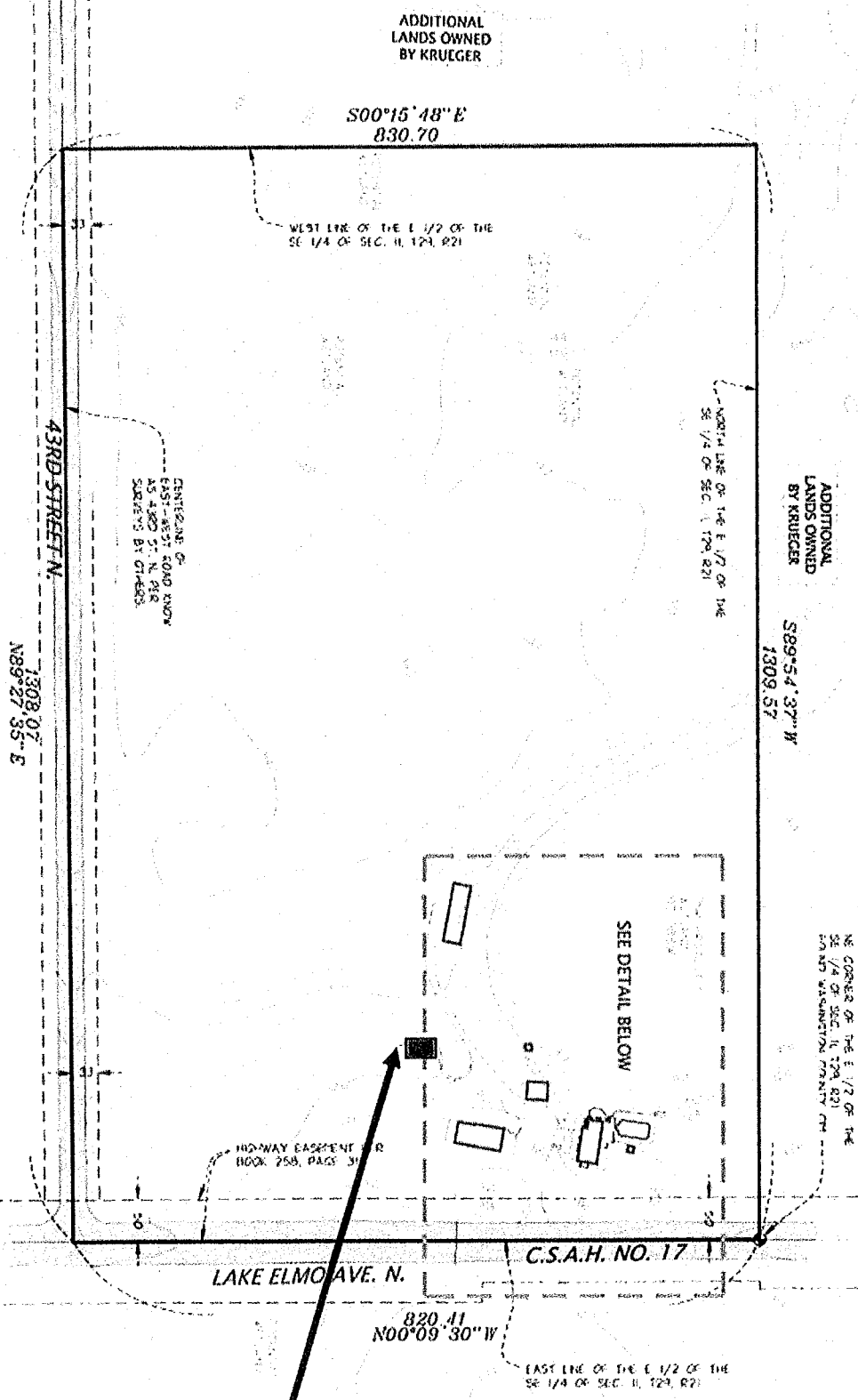
PROPOSED BARN	EXISTING BARN
LAKE HAVEN AV. N	CSA# 17
200,000 SQ. FT. (4.5 AC.)	10,000 SQ. FT. (0.23 AC.)



CSA# 17



OVERALL PARCEL DETAIL



Planned new
barn location

SEE DETAIL BELOW

Planned New Barn
~350' from ROW

HIGHWAY EASEMENT PER
BOOK 258, PAGE 31

LAKE ELMO AVE. N.

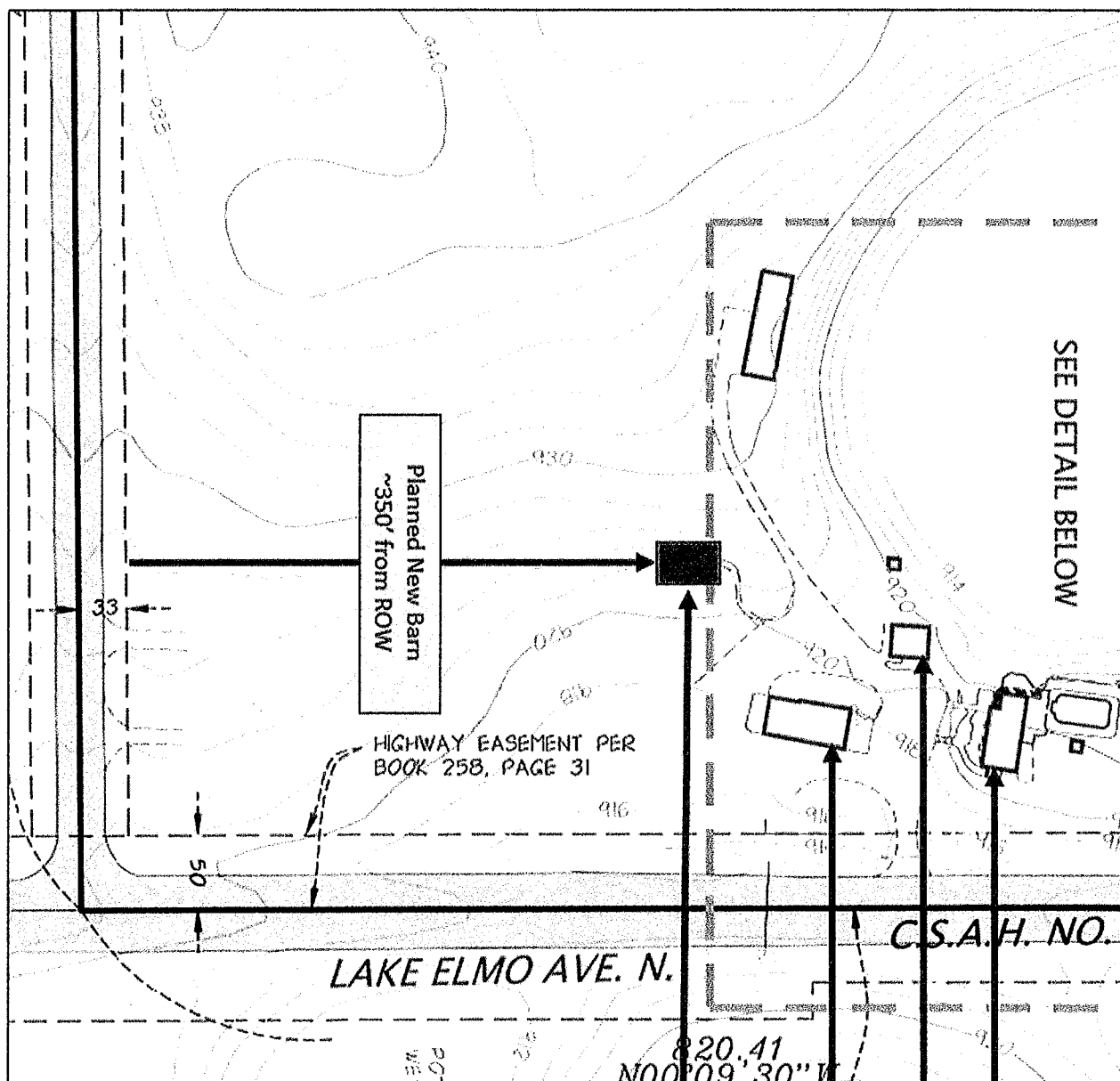
C.S.A.H. NO.

Planned New Barn
~1250 sq ft
200' from ROW

Existing Building
~1500 sq ft
~50' from ROW

Existing Home
~1100 sq ft
45' from ROW

Existing Building
~600 sq ft
~116' from ROW



From: [Joe Gustafson](#)

Sent: Friday, July 30, 2021 12:05 PM

To: 'ndkrueger@msn.com'

Cc: [Frank Ticknor](#); [Jack Griffin \(Jack.Griffin@focusengineeringinc.com\)](#); 'kroberts@lakelmo.org'

Subject: Lake Elmo Avenue Access

Hello Mr. Krueger,

Thanks for reaching out regarding traffic patterns and flows for your business at the intersection of County State Aid Highway 17 (Lake Elmo Avenue) and 43rd Street North in the City of Lake Elmo, as it relates to renewal of your Interim Use Permit with the city. Per your request, the following is a summary of our department's recommendations for customer traffic in this area in the short and long term.

At present, your site has two driveway access points onto 43rd Street in addition to two field accesses, and one driveway access onto County 17 located approximately 550 feet north of 43rd Street. Under the current roadway configuration, it is optimal to have all customer traffic enter your site from the south on 43rd Street, where the turn lane and bypass lane allow for these turns to be made from County 17 with the least disruption to through traffic and the least risk of rear-end crashes or illegal passing.

For exiting traffic, it is currently optimal to have traffic depart your site via the north driveway. This minimizes interference with inbound traffic and also offers the best available sight lines for drivers looking for a gap in which to turn.

Washington County currently does not have any roadway improvements planned for this section of County 17, but as traffic continues to grow it is possible that a center left turn lane or controlled intersection could be installed at 43rd Street, and for sight lines to be improved south of 43rd Street. Therefore, it may be optimal for traffic to exit at 43rd Street under such future conditions.

Thank you for the opportunity to provide recommendations to maximize traffic safety in this area. Please feel free to contact our office with any questions.

Joe Gustafson, PE, PTOE | Traffic Engineer

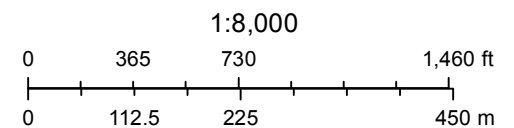
Washington County Public Works – Traffic Operations
11660 Myeron Road North, Stillwater, MN 55082
Main: 651-430-4300 | Direct: 651-430-4351

A great place to live, work and play...today and tomorrow

Location Map - Krueger Tree Farm



October 7, 2021



MEMORANDUM

FOCUS ENGINEERING, inc.

Cara Geheren, P.E. 651.300.4261
Jack Griffin, P.E. 651.300.4264
Ryan Stempski, P.E. 651.300.4267
Chad Isakson, P.E. 651.300.4285

Date: September 24, 2021

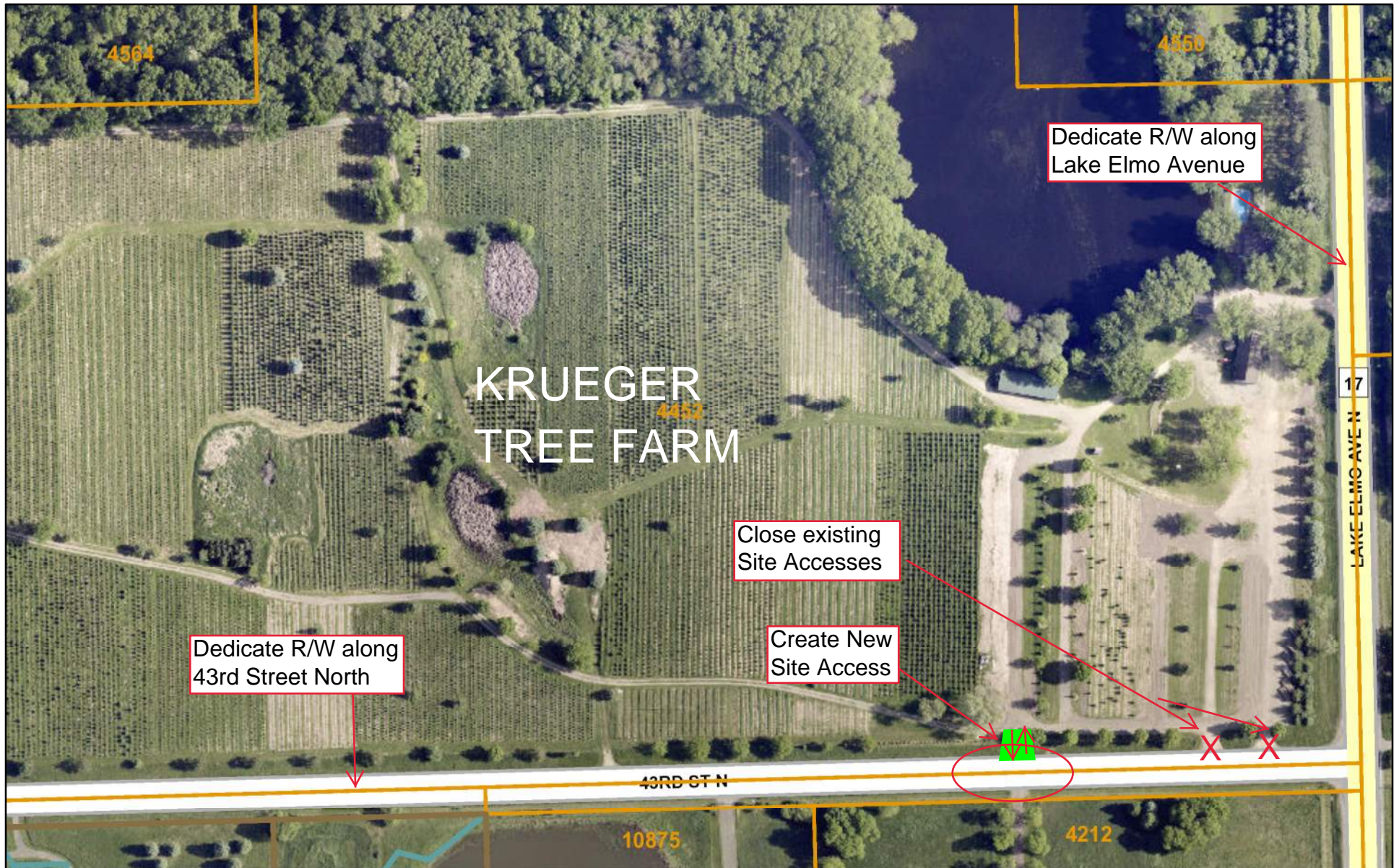
To: Jane Kansier, Planning Consultant
Cc: Molly Just, Planning Director
Chad Isakson, PE, Assistant City Engineer
From: Jack Griffin, PE, City Engineer
Re: Krueger Tree Farm Amended IUP
4452 Lake Elmo Avenue North

An engineering review has been completed for the Krueger Tree Farm Amended IUP located at 4452 Lake Elmo Avenue North. The application was received by engineering on September 20, 2021 consisting of the following documentation:

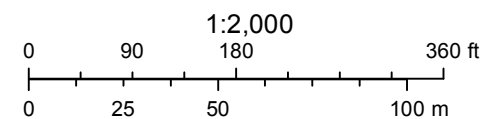
- Land Use Application for Amended IUP dated September 10, 2021.

1. **SITE ACCESS:** The Krueger Tree Farm currently has an access and egress to 43rd Street North, located only 100 feet west and 160 feet west respectively, from the Lake Elmo Avenue intersection. As traffic volumes grow along 43rd Street North, the city will eventually need to improve this intersection with the construction of dedicated turn lanes. The turn lane improvements will require the removal or relocation of the Krueger Tree Farm access and egress.
 - Consideration should be made with the placement of the sales barn and internal site traffic circulation/parking for the relocation of site access to be further west of Lake Elmo Avenue, a distance of at least 400 feet and aligning with the existing driveway to the south (see attached exhibit).
2. **RIGHT-OF-WAY DEDICATION:** As part of any land use approvals, the City should consider requesting right-of-way dedication along both Lake Elmo Avenue and 43rd Street North. Currently the Krueger Tree Farm parcel extends to the existing centerline of each of these existing roadways.
3. **WATER AND SANITARY SEWER:** The application is silent in regards to the sales barn operation and use. As a commercial operation, consideration should be given to the provision of on-site sewage treatment capabilities and siting, along with safe drinking water provisions. The residential home on the property is currently connected to city water. An expanded use may require infrastructure upgrades, additional fees and meter provisions to address any expanded use.

Washington County, MN



September 24, 2021



Jane Kansier

From: Dustin Kalis <DKalis@lakeelmo.org>
Sent: Thursday, September 30, 2021 11:21 AM
To: Jane Kansier
Subject: RE: Land Use Review Request - Krueger Tree Farm IUP Amendment

Below are the Fire Department comments based on the information provided in the Interim Use Permit packet dated 9/20/21:

Total building sq. ft. must be provided.

MN State Fire Code Considerations:

- 2020 MN State Fire Code Definition: Mercantile Group M. Mercantile Group M occupancy includes, among others, the use of a building or structure or a portion thereof, for the display and sale of merchandise, and involves stocks of goods, wares or merchandise incidental to such purposes and accessible to the public. Mercantile occupancies shall include, but not be limited to, the following: Department stores, Drug stores, Greenhouses with public access that maintain plants for, display and, sale, Markets, Motor fuel-dispensing facilities, Retail or wholesale stores, Sales rooms.

- MAXIMUM FLOOR AREA ALLOWANCES PER OCCUPANT

Mercantile	60 gross
Storage, stock, shipping areas	300 gross

- Emergency egress illumination in the means of egress including exit discharge compliant with 2020 MSFC.

- Install compliant exit signage as required by the 2020 MSFC.

- Provide and install dry chemical fire extinguishers certified for service and tagged as required. Service classification rating shall be a minimum 2A classification rating and maximum travel distance of 75 feet to extinguishers. The minimum classification rating may be upgraded for special or extra hazard areas within the occupancy.

Other operating considerations:

Photography

How is the building going to be used for photographers: public access to interior of the building?

Storage

What is the plan for in-season and off season storage of equipment, combustible materials and liquids and other hazardous materials?

Dustin Kalis | Fire Chief

Lake Elmo Fire Department

Fire Station #1 - 3510 Laverne Ave. N. | Lake Elmo, MN | 55042
651-747-3933 office | www.lakeelmo.org

From: Jane Kansier [mailto:Jane.Kansier@bolton-menk.com]
Sent: Monday, September 20, 2021 4:59 PM
To: Jack Griffin <Jack.Griffin@focusengineeringinc.com>; Sonsalla, Sarah J. <SSonsalla@kennedy-graven.com>; transportation@co.washington.mn.us; Marty Powers <MPowers@lakeelmo.org>; Dustin Kalis <DKalis@lakeelmo.org>

Cc: Molly Just <MJust@lakeelmo.org>; Corrin Bemis <Corrin.Bemis@bolton-menk.com>

Subject: Land Use Review Request - Krueger Tree Farm IUP Amendment

Caution: This email originated outside our organization; please use caution.

Please see the attached request for review of the application for an amendment to the Krueger Tree Farm IUP. I would appreciate receiving your comments no later than October 4, 2021.

Thank you.

Jane Kansier, AICP

Senior Planner

Bolton & Menk, Inc.

12224 Nicollet Avenue

Burnsville, MN 55337-1649

Phone: 952-890-0509 x3294

Mobile: 952-358-0604

Fax: 952-890-8065

Bolton-Menk.com



Jane Kansier

From: Sonsalla, Sarah J. <SSonsalla@Kennedy-Graven.com>
Sent: Monday, October 4, 2021 3:13 PM
To: Jack Griffin; Jane Kansier
Cc: Marty Powers; dkalis@lakeelmo.org; Molly Just; Corrin Bemis; Sonsalla, Sarah J.
Subject: RE: Land Use Review Request - Krueger Tree Farm IUP Amendment

Hi Jane,

I reviewed the application. My comments are as follows:

1. The proposed language by the Applicant for the IUP amendment would remove the limitation on the number of buildings that may be on the property (right now it is limited to only existing buildings). The City may want to consider placing some type of limitation on it.
2. Jack has noted that the City may want to require some type of right-of-way dedication. Because the property is not being platted, the City does not have any authority to require any dedication of right-of-way in this circumstance.

Let me know if you have any questions.

Thanks!

Sarah

Sarah J. Sonsalla | Attorney | Kennedy & Graven, Chartered | 150 South Fifth Street, Suite 700 | Minneapolis, MN 55402 | direct: 612.337.9284 | fax: 612.337.9310 | e-mail: ssonsalla@kennedy-graven.com

From: Jack Griffin <Jack.Griffin@focusengineeringinc.com>
Sent: Friday, September 24, 2021 9:34 AM
To: Jane Kansier <Jane.Kansier@bolton-menk.com>
Cc: Sonsalla, Sarah J. <SSonsalla@Kennedy-Graven.com>; Marty Powers <MPowers@lakeelmo.org>; dkalis@lakeelmo.org; Molly Just <MJust@lakeelmo.org>; Corrin Bemis <Corrin.Bemis@bolton-menk.com>
Subject: Re: Land Use Review Request - Krueger Tree Farm IUP Amendment

Jane,
Please see my review comments for consideration. I am not sure what can be requested from the applicant for an IUP application so I simply identified issues regarding this parcel that could be considered. Let me know if you need further review or additional details regarding my comments.

Thanks ~Jack

John (Jack) W. Griffin, P.E.
Principal / Sr. Municipal Engineer

FOCUS ENGINEERING, INC.
651.300.4264
jack.griffin@focusengineeringinc.com

On Mon, Sep 20, 2021 at 4:59 PM Jane Kansier <Jane.Kansier@bolton-menk.com> wrote:

Please see the attached request for review of the application for an amendment to the Krueger Tree Farm IUP. I would appreciate receiving your comments no later than October 4, 2021.

Thank you.

Jane Kansier, AICP

Senior Planner

Bolton & Menk, Inc.

12224 Nicollet Avenue

Burnsville, MN 55337-1649

Phone: 952-890-0509 x3294

Mobile: 952-358-0604

Fax: 952-890-8065

Bolton-Menk.com



Comments based on page numbering and sections found in the Planning Commission packet:

Page 5 – General criteria

#2 – The use will not adversely impact nearby properties through nuisance, noise, traffic, dust, or unsightliness and will not otherwise adversely impact the health, safety, and welfare of the community.

The Krueger's Christmas Tree Farm has been in operation for nearly 40 years. Staff is not aware of any issues or nuisance conditions that have been identified in this period of time, and the proposed amendments to the Interim Use Permit will not alter the current operations in any significant manner.

Comment: A previous member of the City Council was contacted on at least two occasions about the disruption caused by the Tree Farm, both times when 43rd Street was nearly impassible due to cars parked on both sides – See pictures.

#6 – What is the basis for extending the IUP? It already runs for another 20 years. The City should wait to extend it for at least 10 years to see if the commercial operation is a compatible use. Krueger's application says that it takes 10 years to grow a tree to harvest, so there doesn't seem to be any urgency.

Page 6 - Specific Criteria

#2 - The agricultural sales business shall be located on land owned or leased by the producer or the operator of the business and not within or on any public right-of-way or easements.

Parking is frequently in right of way of 43rd Street.

#3 – “The operator must be able to demonstrate at all times to the City that there is sufficient access, parking, and maneuvering space, that the location and adequacy of approaches are sufficient, that there is suitable and safe access for pedestrians, and that customer parking is away from the travel way and in close proximity to the agricultural sales business.”

The staff comments state – *“The existing parking lot is adequate to accommodate the existing sales building, and the space available for sales would not be impacted by the proposed supplemental sales.”*

Again, based on what? The parking has been inadequate for years. As the business continues to grow, traffic frequently backs up on Cty 17, because the cars can't get into the parking area fast enough. On weekends, particularly the weekend after Thanksgiving, 43rd Street has cars parked on both sides. A couple of years ago, Krueger's put small, homemade signs on both sides of 43rd prohibiting parking, but

people parked between them anyway. Our driveway is frequently used for turning around and/or blocked from getting out with a trailer.

#7 – “Parking shall be provided in accordance with the parking requirements for other commercial uses, as per City Code 154.051 (C). All parking must occur on-site, be on a primary surface such as class five gravel or pavement; and must be set back at least 30 feet from all property lines.”

The staff comments are: *“The existing parking lot has been sized to accommodate the needs of the existing sales business; the proposed interim use permit will not significantly alter the need for parking that already exists on the site.”*

There is no basis for that staff response. The attached Google Earth image shows that there is a gravel parking area adjacent to Cty 17, but the other gravel areas are driving lanes only. Most of the cars park on grass. When we have experienced warm weather or rain in late November, the place is a mess. Cars stuck and spinning tires in the grass. One year there was an exceptional amount of mud tracked on to Cty 17 to the point I believe a sweeper was needed to clean up the road.

Paragraph #12 says in part “The maximum impervious coverage for the buildings, parking areas and other uses devoted to the agricultural sales business shall not exceed 40,000 square feet...”

City 154.210 Table 5-1 shows the size for a parking space is required to be 9' X 18'. It also requires a driving lane of 20' for one way traffic or 22' for two way traffic. Each parking space is 162 sq ft, and using a 20' one way driving lane to benefit the applicant, the most parking spaces allowed to meet this impervious surface limit would be between 79 and 80. That calculation does not include any of the buildings on the property or any access roads.

Picture 2 shows a sketch overlayed on the Google Earth image that represents what I have seen for parking over the years. I packed as many spaces in as possible to advantage the applicant for the off street parking requirement, but it really disadvantages them for the impervious surface limitation.

Less than a year ago, Mr Krueger stood in front of this committee and/or the City Council and expressed his concerns about the water runoff problem caused by all of the housing developments that are being built. This committee correctly pointed out that the developments are required to manage their runoff. Is there any mitigation for the runoff if the impervious surface allowed or expanded?

#11 – “Trip generation shall be limited to the yearly average daily trips calculated for the underlying zoning, with no daily trip generation to exceed twice the daily calculation rate for the underlying zoning. The base daily trip generation is established at 180 vehicle trips per day for every 40 acres.”

The staff comments are: *"The tree farm will fall well under the maximum trip generation required under the code."*

How is the trip generation calculated? Is a car arriving and then leaving 30 or 60 minutes later considered one or two trips? Assuming a logical basis for the number, double that number is 360 trips. What happens with the 361st trip? How does the City track this? Assuming they have just over 200 parking spots, if the parking lot only turns over once in a day, that would be more than 400 vehicles entering and exiting.

Summary:

It may not sound like I am happy their business is thriving, but I actually am. It's difficult to have a small family business survive in this environment. Like many other successful businesses, I believe they have outgrown their current facilities. We've lived next to the tree farm for as long as it has existed. There really wasn't an issue until the commercial sales of pre-cut trees started about 10 years ago. The existing IUP says in part *"That the applicant will be allowed to supplement the sale of Christmas trees grown on-site with trees grown off-site throughout the duration of the interim use permit, regardless of whether or not applicant sells produce grown off-site in any given year."* The wording in the part of that section is curious and might lead one to think that the applicant didn't know if they would sell trees grown off-site every year, but wanted it as an option. Pre-cut trees are now hauled in by the truckload, and appear to be a major part of their business. The website shows a long list of media stories about it being a great tree cutting experience. If they want to keep the "experience" alive, they may need to separate the commercial ventures from the farming.

I don't see a way that the current IUP conditions can be met, given the volume of business they are doing, and I think it would be not be prudent to expand their commercial operation at this site.

If City and County staff only observe the operation during regular City/County business hours, things probably do look fairly calm. I am guessing if the County Engineer saw that the left turning traffic off of Cty 17 backs up because the cars can't get into the lot fast enough, they may have a different opinion about the current traffic flow.

Request:

Look at their website to see what services they are advertising. It looks to me like they are making it into a destination/attraction, which adds to the parking and traffic problem. I always assumed the hayrides, for example, were part of their permitted use, but the application for the photography business seems to indicate that the hayrides are an additional use. It's not uncommon for them to have two tractors pulling wagons on the weekends.

Delay approval of the IUP amendment and the new IUP for at least 60 days to allow Planning Commission members, Council members and/or staff visit the site on a nice

weekend when they are selling trees. Is this really the right location for this large of a business? Is this the “low impact” (description used at Planning Commission meeting) use that the City contemplated when they approved the original IUP? The existing IUP says in part “*That the use will not adversely impact nearby properties through nuisance, noise, traffic,*”

Consider limiting the number of trees hauled in for sale – maybe require 75% or more of the trees sold to be grown on the property? Trees are hauled in with large trucks/semis. Suggest an off-site location for their commercial tree sales.

Look closely at the available parking, impervious area and traffic flow on the property. It doesn’t currently meet their needs. In my opinion, their current operation doesn’t meet the existing IUP in several areas.

Consider denying the request to build another building. I assume the existing buildings met their needs in 2011, and maybe the focus should be to return the activity level at the site to more like it was in 2011, rather than making it worse. Nearly all properties in Lake Elmo have restrictions on the number of buildings allowed. I think the rules related to the number of buildings are different for areas zoned agricultural, but I think Krueger’s gave up the opportunity for more buildings upon acceptance of the IUP – it seems they want the best of both options.

New IUP

Consider allowing the new photography concession only from January 1 through the weekend before Thanksgiving. During their presentation at the Planning Commission meeting, they said their intent was to not have the professional photographers on site during the tree sales season.

Don’t allow the “daily trip generation” to be cumulative – 720 per day

The letters of support from the neighbors are all from the hill on the far west end of the property and I’m sure they do enjoy looking out at the view of a tree farm rather than a bunch of houses. They are removed from the chaos during the selling season and can leave the neighborhood the other direction.

I think the City should police these special permits, rather than putting neighbors in the uncomfortable situation of having to live with them.



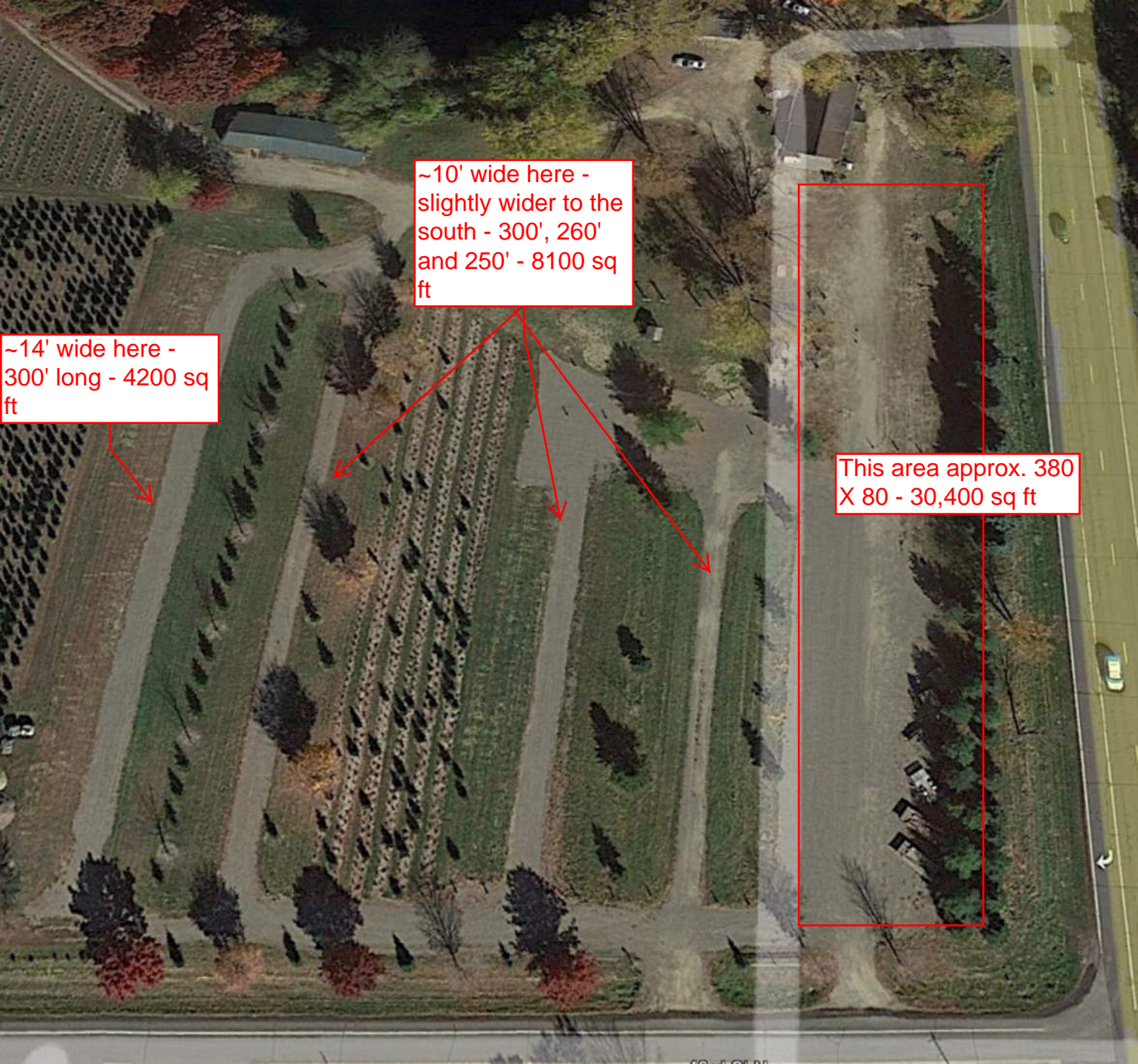




~14' wide here -
300' long - 4200 sq
ft

~10' wide here -
slightly wider to the
south - 300', 260'
and 250' - 8100 sq
ft

This area approx. 380
X 80 - 30,400 sq ft



The Google Earth image above shows the parking area. There is one larger gravel area on the east side, which in recent years has not been used for parking, but rather for the exit lanes, loading, securing the trees, etc. It also shows 4 driving lanes with two small parking area near the middle. Cars typically park off the side of the gravel driving lanes as shown in the image below.

Total existing impervious area (gravel) excluding the driving lane to the south, the buildings, and the other gravel areas not included in the north/south driving lanes is about 42,700 sq ft. This already exceeds the allowed 40,000 sq ft – the existing sale building was described as 1800 sq ft, the warming house at 800 sq ft, and the machine shed was mentioned but not the size, and the new building is expected to be 1250 sq ft. I choose not to guess at the remaining impervious surfaces, but the City likely has more sophisticated tools to determine it.

City Code 154.210 Table 5-1 shows the size for a parking space is required to be 9' X 18'. It also requires a driving lane of 20' for one way traffic or 22' for two way traffic. Each parking space is 162 sq ft, and using a 20' one way driving lane to benefit the applicant, the most parking spaces allowed to meet the impervious surface limit of 40,000 sq ft would be between 79 and 80. That calculation does not include any of the buildings on the property or any access roads. If the areas used for parking over the past several years were covered with gravel as required by the IUP, It would result in over 87,000 sq ft of impervious surface – again not including the buildings and other impervious surfaces on the property.

The image below shows the approximate available parking spaces based on the City Code, and Google Earth imagery. Again, the City likely has access to more sophisticated tools and can verify actual dimensions.

On the topic of vehicle trips per day, if a vehicle arriving and leaving after they conduct their business is considered two trips, I think the parking lot could be filled once each day, and that limit would likely be exceeded. If it is considered one trip, the parking lot could turn over less than one complete time and the limit would be exceeded. Cars are leaving and arriving most of the daylight hours on the first two or three weekends after Thanksgiving each year, so I think the number is much higher.

Ruler

LinePathPolygonCircle3D path3D polygon

Measure the distance or area of a geometric shape on the ground

#4

Perimeter:1,601.12Feet

Area:159,804.57Square Feet

☒ Mouse Navigation

SaveClear



#5

215 Parking Spots (282)
87,160 gravel area

67 Spaces - 9' wide 34 spaces - 9' wide

58 spaces - 9' wide

56 spaces - 9' wide

16,800 sq ft

11,400 sq ft

14,560 sq ft

14,000 sq ft

30,400 sq ft

Gravel area -
Appears to not be
used for parking
during busy times,
but used for exit
lanes, tree loading/
wrapping, etc.

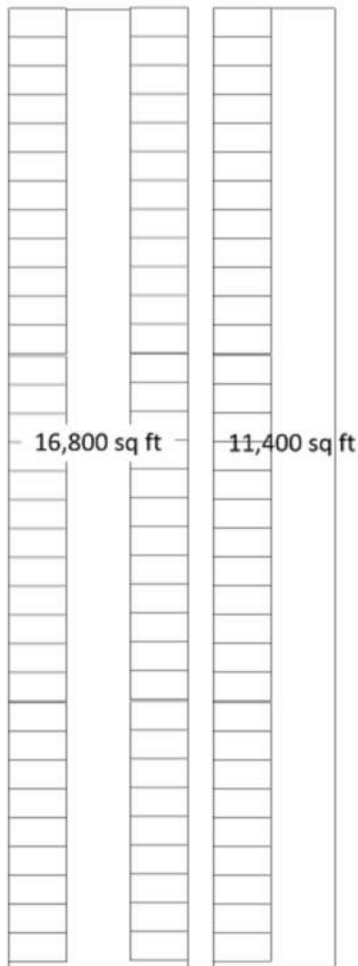
43rd St N

#6

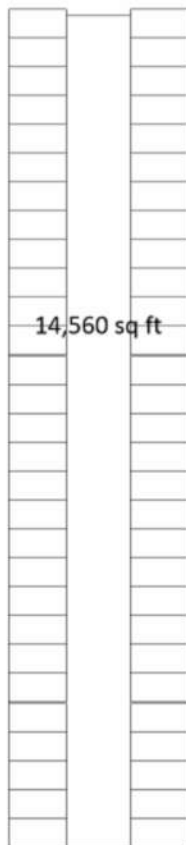
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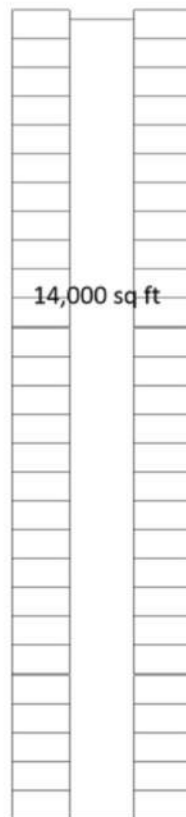
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58 spaces - 9' wide



56 spaces - 9' wide



30,400 sq ft

