



3800 Laverne Avenue North  
Lake Elmo, MN 55042

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[www.lakeelmo.org](http://www.lakeelmo.org)

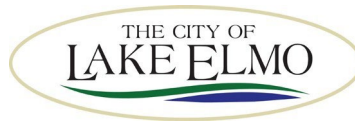
## **NOTICE OF MEETING**

The City of Lake Elmo  
Planning Commission will conduct a meeting on  
**Monday December 12, 2022**  
**at 7:00 p.m.**

## **AGENDA**

1. Pledge of Allegiance
2. Approve Agenda
3. Approve Minutes of November 28, 2022
4. Public Hearing – N/A
5. New/Unfinished Business
  - a) 2023 Planning Department Work Plan
  - b) Impervious Surface Text Amendments
6. Communications/Updates –
  - a) City Council Updates
    - i. 8265 Hidden Bay Trail – Variance for Septic Setback from Wetland – Approved
    - ii. 8243 Demontreville Trail – Jesuit Retreat House CUP – Approved
    - iii. Inwood 7th Addition - Replat Outlot, Preliminary Plat Extension – Approved
    - iv. PUD Amenity Categories – Tabled for discussion at 12/13 work session
  - b) Upcoming PC Meetings
    - i. December 28, 2022 - Cancelled
    - ii. January 9, 2023
7. Adjourn

\*\*\*Note: Every effort will be made to accommodate person or persons that need special considerations to attend this meeting due to a health condition or disability. Please contact the Lake Elmo City Clerk if you are in need of special accommodations.



**City of Lake Elmo Planning Commission  
Meeting  
City Council Chambers – 3800 Laverne  
Avenue North  
Minutes of Regular Meeting of  
November 28, 2022**

**CALL TO ORDER:** Commission Chair Steil called to order the meeting of the Lake Elmo Planning Commission at 7:00 p.m.

**COMMISSIONERS PRESENT:** Mueller, Steil, Rehkamp, Vrieze

**COMMISSIONERS ABSENT:** Risner

**STAFF PRESENT:** Planning Director Molly Just, City Planner Ben Hetzel

**Pledge of Allegiance** at 7:00 PM

**Approve Agenda:**

M/S/P: Vrieze / Mueller: made a motion to approve the agenda. **Vote: 4-0, motion carried unanimously.** (Risner absent)

**Approve Minutes:**

M/S/P: Rehkamp / Vrieze made a motion to approve the 11-14-22 meeting minutes. **Vote: 4-0, motion carried unanimously.** (Risner absent)

**Public Hearing:**

**a) Upper 33<sup>rd</sup> Street N Conditional Use Permit Request.** A conditional use permit request to construct a four unit townhome building on PIDs 13.029.21.32.0052 and 13.029.21.32.0051.

City Planner Hetzel gave presentation and answered questions.

**RECOMMENDED CONDITIONAL USE FINDINGS**

Conditional use means a land use or development as defined by ordinance that would not be appropriate generally but may be allowed with appropriate restrictions as provided by official controls only upon a finding that all of the following provisions are met. Staff recommends the following findings:

1. The proposed use will not be detrimental to or endanger the public health, safety, comfort, convenience or general welfare of the neighborhood or the city. ***The proposed use will not endanger the public health, safety, comfort, convenience or general welfare of the neighborhood or the City.***
2. The use or development conforms to the City of Lake Elmo Comprehensive Plan. ***The site is already zoned in conformance with the intent of the Old Village District of the Village Planning Area and the Village Mixed Use zoning district.***
3. The use or development is compatible with the existing neighborhood. ***The proposed use is compatible with the existing single family residential in the neighborhood. The design of the proposed structure is consistent with the surrounding area in terms of building height, building materials, colors, and variations of pitched roofs.***

4. The proposed use meets all specific development standards for such use listed in the Zoning Code. ***The use meets all the specific development standards for single family attached dwellings set forth in LEC 05.12.820(a)(3).***
5. If the proposed use is in a flood plain management or shoreland area, the proposed use meets all the specific standards for such use listed in Article XIX (Shoreland Management) and Title 100 (Flood Plain Management). ***The proposed use is not within a Shoreland Management District or a Floodplain Management zone.***
6. The proposed use will be designed, constructed, operated, and maintained so as to be compatible in appearance with the existing or intended character of the general vicinity and will not change the essential character of that area. ***The design of the proposed structure is designed to be compatible with the height, colors, and building materials of the surrounding area.***
7. The proposed use will not be hazardous or create a nuisance as defined under this Chapter to existing or future neighboring structures. ***The use is not hazardous and will not create a nuisance.***
8. The proposed use will be served adequately by essential public facilities and services, including streets, police and fire protection, drainage structures, refuse disposal, water and sewer systems and schools or will be served adequately by such facilities and services provided by the persons or agencies responsible for the establishment of the proposed use. ***The proposed use will be served adequately by essential public facilities and services.***
9. The proposed use will not create excessive additional requirements at public cost for public facilities and services and will not be detrimental to the economic welfare of the community. ***The proposed use will not create excessive additional requirements at a public cost.***
10. The proposed use will not involve uses, activities, processes, materials, equipment, and conditions of operation that will be detrimental to any persons, property, or the general welfare because of excessive production of traffic, noise, smoke, fumes, glare, or odors. ***The proposed residential use will not produce excessive noise, fumes, glare, or odors. The addition of four dwelling units should not create excessive traffic along 33<sup>rd</sup> Street N especially with the restriction of on street parking. Any future expansion of 33<sup>rd</sup> Street N to the west will further improve traffic circulation.***
11. Vehicular approaches to the property, where present, will not create traffic congestion or interfere with traffic on surrounding public thoroughfares. ***The proposed structure will not create traffic congestion or interfere with traffic on surrounding public thoroughfares. Four additional residential units should not create congestion. The rear facing garages and singular access creates for a safer vehicle access onto Upper 33<sup>rd</sup> Street N by eliminating the need to back out into a public street.***
12. The proposed use will not result in the destruction, loss, or damage of a natural or scenic feature of major importance. ***The use will not result in the destruction, loss, or damage of a natural or scenic feature of major importance.***

**RECOMMENDED CONDITIONS OF APPROVAL:**

1. The applicant must obtain all other necessary City, State, and other governing body permits and approvals prior to the commencement of any construction activity onsite.
2. All recommendations in the City Engineer's memorandum dated 11/15/22 shall be met prior to any construction activity.
3. All recommendations provided by the City's Landscape Architect shall be met prior to any construction activity.
4. All conditions in the Fire Chief's memorandum dated 11/8/22 must be met prior to any construction activity.
5. The applicant shall provide the City with recorded documents from Washington County which effectuate the required lot consolidation prior to any construction activity.
6. The applicant must receive an approved address from Washington County prior to any construction activity.

7. The applicant shall provide one additional off-street parking space for visitor parking as per Lake Elmo City Code.
8. An encroachment agreement is required for fencing located in the required drainage and utility easements prior to any construction activity. A fence permit is also required regardless of the location of the fencing.
9. If the applicant has not taken action toward starting the townhouse structure or if substantial construction has not taken place within 12 months of the City's approval of the conditional use permit, the CUP approval shall become void. The applicant may request City Council approval of a time extension to start or implement the conditional use permit.

**PUBLIC COMMENT:**

A public hearing notice was sent to surrounding property owners on November 16, 2022 and published in the Stillwater Gazette on November 18, 2022. Staff has received three public comments, City Planner Hetzel read responses from:

Urban Coffee – 349 Lake Elmo Ave N – emailed their full support of this CUP.

Jill Martin – 11002 Upper 33<sup>rd</sup> St N – provided comment to staff in opposition of the CUP.

Response from Susan Dunn - 11018 Upper 33<sup>rd</sup> Street N – was not read aloud, as she was in the audience

Applicant Henry Elgersma, with Upper 33<sup>rd</sup> LLC, spoke in regards to this project and answered questions.

Public hearing opened at 7:20 PM.

JoAnne Lawen – 11051 34<sup>th</sup> St N – is in opposition of the CUP due to community design and the existing density of the community.

Elizabeth Everson – 11075 34<sup>th</sup> St N – posed the question regarding why the garages were in the back and who was going to be managing the property, is there a maximum capacity per unit and would pets be allowed

Ann Bucheck – 2301 Legion Ave N – is in opposition of the CUP due to this building not conforming to the Comprehensive Plan in many aspects.

Susan Dunn – 11018 Upper 33<sup>rd</sup> St N – is in opposition of the CUP due to parking, safety, water, impervious surface area, snow removal, building size

Public hearing closed at 7:33 PM

M/S/P: Vrieze / Mueller moved to recommend approval of a conditional use permit to allow the construction of a four unit townhome building at the properties described as Lots 10 and 11, Block 2, Subdivision of Lake Elmo Park  
**Vote: 4-0, motion carried unanimously.** Vrieze stated that he is in support of this project as long as the applicant abides by the conditions of approval provided by city staff, but does state that the parking spaces do need to be addressed before final approval has been given. Mueller does have concerns regarding the parking and driveway location but does think this is an appropriate building for this location and is in support of this project. Rehkamp is concerned that this property will be sold to someone that will not manage and maintain it properly, the applicant did a nice job of presenting a good plan that will help screen neighbors from the railroad noise. Steil is also in favor of this project, as it does meet the city code, and the parking is in the back.

**Public Hearing:**

**b) Final PUD Plan and Final Plat – Royal Golf Club at Lake Elmo 5<sup>th</sup> Addition.** U.S. Home, LLC (Lennar) for approval of a Final PUD Plan and Final Plat for 43 lots for single-family homes. There would be 46 lots remaining to be final platted.

Director Just gave presentation and answered questions.

**RECOMMENDED FINDINGS:**

1. That all the requirements of City Code Sections 153.07 and 154.759 related to Final Plat and Final PUD Plans have been met by the Applicant.
2. That the Royal Golf Club at Lake Elmo 3<sup>rd</sup> Addition Final Plat and PUD Plans are generally consistent with Preliminary Plat and PUD Plans approved by the City of Lake Elmo on June 6, 2017.
3. That the Royal Golf Club at Lake Elmo 3<sup>rd</sup> Addition Final Plat and PUD Plans are consistent with the Lake Elmo Comprehensive Plan and the Future Land Use Map for this area.
4. That the Royal Golf Club at Lake Elmo 3<sup>rd</sup> Addition Final Plat and PUD Plans generally comply with the City’s GCC - Golf Course Community zoning districts as modified by the PUD regulations.
5. That the Royal Golf Club at Lake Elmo 3<sup>rd</sup> Addition Final Plat PUD Plans comply with the City’s subdivision ordinance.
6. That the Royal Golf Club at Lake Elmo 3<sup>rd</sup> Addition Final Plat and PUD Plans comply with the City’s Planned Unit Development Regulations.
7. That the Royal Golf Club at Lake Elmo 3<sup>rd</sup> Addition Final Plat and PUD Plans comply with the City’s Engineering Standards, except where noted in the review memorandum from the City Engineer dated November 19, 2018 and modified by PUD regulations.
8. That the Royal Golf Club at Lake Elmo 3<sup>rd</sup> Addition Final Plat and PUD Plans generally comply with other City zoning ordinances, shoreland, and erosion and sediment control, except as noted in this staff report and review memorandum from the City Engineer dated November 19, 2018.
9. That the Royal Golf Club at Lake Elmo 3<sup>rd</sup> Addition Final Plat and PUD Plans generally comply with the City’s landscaping and tree preservation ordinances, providing some flexibility to the Applicant to allow for woodland management and pollinator friendly native seeding in lieu of some required tree replacement in order to avoid possible detriment caused by over planting.
10. That the Royal Golf Club at Lake Elmo 3<sup>rd</sup> Addition Final Plat and PUD Plans achieve multiple identified objectives for planned developments within Lake Elmo.
11. That the proposed Final Plat and PUD Plans are for the 3<sup>rd</sup> Addition of 67 single family residential units of a 291-unit total residential golf course community Planned Unit Development on 103.7 acres of land (of 231 acres total) located on the former 3M Tartan Park properties.
12. That the Final Plat and PUD Plans will be located on property legally described on the attached Exhibit “A”.
13. That there has been significant public testimony that 20th Street is already dangerous without the additional traffic and that the City and developer need to explore ways to make the road safer.
14. That the proposed PUD will allow a more flexible, creative, and efficient approach to the use of the land, and will specifically relate to existing zoning district standards in the following manner (with exceptions as noted):

a. Setbacks:

**i. Royal Golf Club at Lake Elmo Setbacks**

15.	16. 100 Ft. Wide Lots	17. 80-90 Ft. Wide Lots	18. 55-65 Ft. Wide Lots
19. Front	20. 30 ft.	21. 30 ft.	22. 20 ft. for side loaded garages, or 25’

23. Side	24. 10 ft.	25. 10 ft.	26. 10ft. house/5ft. garage or 7.5 ft./7.5 ft.
27. Corner Side	28. 15 ft.	29. 15 ft.	30. 15 ft.
31. Rear	32. 30 ft.	33. 30 ft.	34. 20 ft.

- a. Maximum Impervious Coverage: The maximum impervious coverage for 55-65' wide lots shall be 50%. All other lots shall have a maximum impervious coverage of 40%.
- b. Lot Sizes: The minimum lot size for Villa lots (55-65' wide) in the development shall be 6,600 sq. ft.
- c. Attached Garages: That attached garages shall not exceed 1,300 sq. ft. in area at the ground floor level except by conditional use permit. The width of the visible garage door area when closed shall not exceed 60% of the principal building façade (including garage) fronting on the primary street.
- d. Subdivision Identification Signs: The Royal Golf Club at Lake Elmo residential subdivision shall be allowed up to a maximum of 4 subdivision identification signs, including the identification sign for the golf course entrance, not to exceed 24 sq. feet in sign area each, located no closer than 10 feet to any public right-of-way. In addition, neighborhood identification markers (pillars) shall be permitted to be no larger than 2 ft. x 2 ft. to identify the development logo and the name of the neighborhood. Additional subdivision signs should be considered for a subdivision of this size.
  - i. *Staff Note:* If the developer requests a change to this, a variance should be requested.
- e. All other requirements for the City's GCC – Golf Course Community zoning district will apply, including the allowed uses and other site and development standards.
- f. That the proposed street names within the development are generally consistent with the City's Street Naming Policy as amended April 17, 2018.
- g. The developer has not yet constructed an HOA-owned and maintained play structure as required by the original condition of approval of the 2<sup>nd</sup> Addition Final Plat.

**Recommended Conditions of Approval.** Staff recommends the following conditions of approval:

1. That there shall be no encroachments to drainage and utility easements on residential lots other than those reviewed and approved by the City Engineer and upon execution of an easement encroachment agreement.
2. Prior to the execution of Final Plat, the Developer shall enter into a Developer's Agreement acceptable to the City Attorney and approved by the City Council that delineates who is responsible for the design, construction, and payment of the required improvements with financial guarantees therefore.
3. The Royal Golf Club at Lake Elmo 3<sup>rd</sup> Addition shall be incorporated into the Common Interest Agreement concerning management of the common areas and establish a homeowner's association (HOA) which shall be submitted in final form to the Planning Director before any building permit may be issued for any structure in any phase of the development. Said agreement shall comply with Minnesota Statutes 515B-103 and specifically the provisions concerning the transfer of control to the future property owners. The HOA documents shall include required maintenance of wetland buffers.
4. That the HOA documents include architectural requirements that require four-sided architecture and garages facing the public rights-of-way to have windows and/or other architectural features.
5. The applicant shall enter into a landscape license and maintenance agreement with the City that clarifies the individuals or entities responsible for landscaping.

6. The developer shall provide evidence of an HOA owned and maintained children's play structure or other similar improvement has been constructed within Outlot D of the 2<sup>nd</sup> Addition before the release of building permits for the 3<sup>rd</sup> Addition.
7. That a fee in lieu of park land dedication be paid to the City based upon an appraisal by an appraiser to be chosen by the City and paid for by the developer.
8. That the developer pay a parkland dedication fee equal to \$500 per 2.5 caliper inch required in lieu of some required tree preservation replacement tree requirements, totaling **\$111,552.00** in lieu of planting the required number of trees required. This fee was calculated as follows: \$500.00 multiplied by 969 2.5-caliper inch tree not planted within the entire subdivision, divided by 291 single family lots within the entire subdivision, multiplied by 67 single family lots within the 3<sup>rd</sup> Addition.
9. All changes and modifications to the plans requested by the City Engineer in the Engineer's review memo dated November 19, 2018 shall be incorporated into the Final Plat and PUD Plans. The Applicant should note the requirements for VBWD permits for temporary storm water management.
10. The Final Plat and PUD Plans approval is conditioned upon the applicant meeting all City standards and design requirements unless specifically addressed otherwise in this resolution.
11. Prior to the City issuing building permits, all wetland buffers shall be delineated and identified via staking or signage that is acceptable to the City.
12. Prior to the construction of any subdivision identification signs or neighborhood markers within the development, the developer shall submit sign plans for review and obtain a sign permit from the Planning Department. Any amendments to the finding regarding signs indicated in this Resolution shall be subject to a PUD amendment or variance.
13. That the Final Plat include street names as approved by Council.
14. The developer shall follow all of the rules and regulations spelled out in the Wetland Conservation Act and shall acquire the needed permits from the appropriate watershed districts prior to the commencement of any grading or development activity on the site.
15. That the Royal Golf Club development will not have street lights except at street intersections and cul-de-sacs.
16. That the developer make a \$1,000,000 donation to the City Parks fund when construction of the 3<sup>rd</sup> Addition prohibits use of the former Tartan Park ballfields, including construction materials storage and before the city releases the 3<sup>rd</sup> Addition final plat for recording.
17. The location and spacing of the trees that overlap the buildings and on edge of driveway when shown at mature diameter is adjusted and resubmitted on a revised landscape plan, per the Landscape Review memo, dated November 8, 2018.
18. The developer shall pave the unfinished trail in the 2<sup>nd</sup> Addition as soon as favorable conditions are available in the spring of 2019. The City may choose to not release building permits for the 3<sup>rd</sup> Addition in the spring of 2019 if the developer has not completed the required trail paving in a timely manner.

Applicant Paul Tabone spoke regarding this project and was available for questions.

Public hearing opened at 7:50 PM.

No public comments

Public hearing closed at 7:51 PM

M/S/P: Mueller / Rehkamp moved to recommend approval of the Royal Golf Club at Lake Elmo 5<sup>th</sup> Addition Final Plat and PUD Plans based on the findings off act and conditions outlined in the Staff Report. **Vote: 4-0, motion carried unanimously.** Mueller had no comments, Rehkamp had concerns about the loss of tree coverage but believes the staff have addressed that issue, Vrieze agrees, Steil concurs with all previous comments

### **Regular Business**

None

### **Communications/Updates - City Council Updates**

None

### **Upcoming Meetings**

- a. December 12<sup>th</sup>, 2022
- b. December 28<sup>th</sup>, 2022

Meeting adjourned at 7:55 PM.

Respectfully submitted,

Diane Wendt  
Permit Technician





PLANNING COMMISSION  
DATE: 12/12/2022

ITEM: **2023 Planning Department Work Plan**  
SUBMITTED BY: Molly Just, Planning Director

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**SUMMARY AND ACTION REQUESTED:**

Staff is respectfully requesting that the Planning Commission review the proposed Planning Department Work Plan for 2023.

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**REQUEST DETAILS:**

Planning Department Staff has updated the 2022 Planning Work Plan for 2023. Listed below are the activities that have been completed from the 2022 Work Plan:

- Amend the Medium Density Residential District (MDR) to match the comp plan density and adjust the lot sizes to enable the range allowed in the comp plan
- Refine and continue to process the package of “clean up” code amendments from 2021
- Planning Commission review of City Capital Improvement Plan for consistency with Comprehensive Plan
- Update Permits and Land Use Applications to be more concise, include a checklist, and be electronic (fillable)
- Rebuild the Planning Department in light of departures. Allocate work according to strengths, expectations, and interests. Hire a Code Enforcement Officer.

Some projects are currently in progress or ongoing:

With the addition of a new position, Code Enforcement Official, and hiring a new City Planner we benefit from fresh perspectives and differing and complimentary skill sets which we are utilizing to streamline and improve our processes. This is an ongoing process intended to benefit our customers.

It is the intent of staff to address the work plan projects in the order that they have been ranked. However, some projects, although ranked lower in terms of priority take less time to accomplish. Because of this, other projects with a lower priority will be given attention before or in tandem with others of a higher rank.

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**REQUESTED ACTION:**

Staff is respectfully requesting that the Planning Commission review the proposed Planning Department Work Plan for 2023.

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**ATTACHMENT:**

- 2023 Planning Department Work Plan

## 2023 Planning Commission Work Plan

Prepared by the Lake Elmo Planning Commission: 12/12/22

Accepted by the City Council: \_\_\_\_\_



### Key

<b>Status</b>	C – Complete (delete once accepted by City Council) IP – In Progress
<b>PL</b>	Priority Level (1-5 with 1 being the highest priority. Level 4 or 5 may be an indicator of lack of personnel/time)

Project and Description	PL	Status
<b>Zoning Map Amendments</b>		
<b>Code Amendments</b>		
<ul style="list-style-type: none"> <li>Update PUD ordinance to better match City’s current objectives in granting a PUD.</li> </ul>	1	IP
<ul style="list-style-type: none"> <li>Amend the Medium Density Residential District (MDR) to match the comp plan density and adjust the lot sizes to enable the range allowed in the comp plan</li> </ul>	1	C
<ul style="list-style-type: none"> <li>Refine and continue to process the package of “clean up” code amendments from 2021</li> </ul>	2	C
<ul style="list-style-type: none"> <li>Update the landscape ordinance to provide clarity for developers as to expectations and long-term responsibility.</li> </ul>	2	IP
<b>Comprehensive Planning</b>		
<ul style="list-style-type: none"> <li>Planning Commission review of City Capital Improvement Plan for consistency with Comprehensive Plan. <u>Annual</u> requirement.</li> </ul>	3	C
<b>Other Planning Initiatives</b>		
<ul style="list-style-type: none"> <li>Provide training to Planning Commission</li> </ul>	2	
<ul style="list-style-type: none"> <li>Hold a joint Planning Commission City Council work session</li> </ul>	2	
<ul style="list-style-type: none"> <li>Streamline &amp; Improve Policies/Procedures for the handling of routine land matters including but not limited to variances, site plan review, setbacks et al;</li> </ul>	1	Ongoing
<ul style="list-style-type: none"> <li>Update Permits and Land Use Applications to be more concise, include a checklist, and be electronic (fillable)</li> </ul>	2	C
<ul style="list-style-type: none"> <li>Rebuild the Planning Department in light of departures. Allocate work according to strengths, expectations, and interests. Hire a Code Enforcement Officer (22/23)</li> </ul>	1	C
<ul style="list-style-type: none"> <li>When possible, add Planning Module from Permit Works (or equivalent) to track planning and zoning applications.</li> </ul>	4	

<ul style="list-style-type: none"> <li>• Create educational materials that may include a brochure, website, or other publication to communicate the intended and planned development patterns in the urbanizing area</li> </ul>	5	
<b>Ongoing</b>		
<ul style="list-style-type: none"> <li>• Zoning Map Amendments - as amendments are requested</li> </ul>	1	
<ul style="list-style-type: none"> <li>• Zoning Code Amendments – as amendments are requested</li> </ul>	1	
<ul style="list-style-type: none"> <li>• Comprehensive Plan Amendments – as amendments are requested</li> </ul>	1	



## STAFF REPORT

DATE: 12/12/2022

**TO:** Planning Commission  
**FROM:** Molly Just, Planning Director  
**AGENDA ITEM:** Impervious Surface Text Amendments

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### **BACKGROUND:**

At their July 12, 2022 workshop, the City Council discussed the City's definition of impervious surface. In preparation for the workshop, staff researched and compared the City's definition of impervious surface and impervious surface allocations with other communities. The findings of the research prompted the City Council to direct staff to draft the proposed amendment to the City's definition for impervious surface and increase the maximum allowed impervious surface in unsewered shoreland areas.

At the August 22, 2022 Planning Commission meeting a public hearing was held on the updates. Since that time, staff worked with the Minnesota Department of Natural Resources (MN DNR) to come up with an acceptable compromise for allowing increased impervious surface in unsewered shoreland areas. Staff and the MN DNR could not reach a solution that would be reasonable for the City to implement. Therefore, staff is only recommending approval of the proposed amendment to the definition of impervious surface.

### **ISSUE BEFORE THE PLANNING COMMISSION:**

The Planning Commission is asked to make a recommendation to the City Council on the proposed text amendment to the definition of impervious surface.

### **PROPOSAL DETAILS/ANALYSIS: IMPERVIOUS DEFINITION**

Section 1.08.010 defines impervious surface as any structure or surface which interferes to any degree with the direct absorption of water into the ground, including, but not limited to, building footprints, sidewalks, paved or gravel driveways and parking areas, patios, sports courts, or any other similar surface. Decks, pervious landscape fabric, and retaining walls shall not be included as impervious surface.

The current definition aligns with the MN DNR shoreland model ordinance definition and a majority of other local governments.

Staff found that many other communities do not list specific examples of impervious surfaces. The City Council feels examples in the current definition are unnecessary and may be confusing.

### **PROPOSED DEFINITION CHANGES:**

*Impervious surface* means any structure or surface which interferes to any degree with the direct absorption of water into the ground, ~~including, but not limited to, building footprints, sidewalks, paved or gravel driveways and parking areas, patios, sport courts, or any other similar surface.~~ Decks, pervious landscaping fabric, the surface water of pools and retaining walls shall not be included as impervious surface.

### **AGENCY REVIEW**

Staff distributed the proposed comments for agency review and received comments from the following:

- City Engineer (email provided in packet).
- Browns Creek Watershed District (email provided in packet).
- Valley Branch Watershed District (email provided in packet).
- Minnesota Department of Natural Resources (email provided in packet)

### **PUBLIC COMMENT**

A hearing notice was published in the Stillwater Gazette on August 12, 2022. Staff received the following public input on the text amendments which at the time included an increase to allowed impervious surface in unsewered shoreland areas:

- There was one email in opposition to this change from resident Ann Bucheck. Her reasoning was that this may have a negative impact on the environment.
- During the public hearing Susan Dunn (11018 Upper 33<sup>rd</sup> St N Lake Elmo) thanked the Commissioners for their service to the community, and reiterated that the Planning Commission's job is the health, safety and welfare of the residents in the community.

### **FISCAL IMPACT**

None

### **OPTIONS**

- Recommend approval of the proposed amendments.
- Recommend changes to the proposed amendments.
- Recommend denial of the proposed amendments.

### **RECCOMENDATION**

Staff recommends that the Planning Commission recommend approval of the proposed text amendments as presented.

***“Motion to recommend adoption of the proposed text amendment, amending the impervious surface definition in Section 1.08.010 Definitions as presented.”***

### **ATTACHMENTS**

1. Minutes from August 22, 2022 meeting
2. Section 1.08.010 Definitions (Draft)
3. City Engineer comments
4. Browns Creek Watershed District comments
5. Valley Branch Watershed District comments
6. MN DNR Initial Comments



**City of Lake Elmo Planning Commission  
Meeting  
City Council Chambers – 3800 Laverne  
Avenue North  
Minutes of Regular Meeting of August  
22, 2022**

**CALL TO ORDER:** Commission Chair Steil called to order the meeting of the Lake Elmo Planning Commission at 7:00 p.m.

**COMMISSIONERS PRESENT:** Steil, Mueller, Vrieze

**COMMISSIONERS ABSENT:** Risner, Rehkamp

**STAFF PRESENT:** Planning Director Just, City Planner Hetzel

**Pledge of Allegiance** at 7:00 PM

**Approve Agenda:**

M/S/P: Mueller / Vrieze made a motion to approve the agenda. **Vote: 3-0, motion carried unanimously.** (Risner, Rehkamp absent)

**Approve Minutes:**

M/S/P: Steil / Mueller made a motion to approve the 7-25-22 and 8-8-22 meeting minutes. **Vote: 3-0, motion carried unanimously.** (Risner, Rehkamp absent)

**Public Hearings:**

- a) **Impervious Surface Text Amendments.** A City initiated text amendment to change the impervious surfaces definition and increase the maximum impervious lot coverage in the Shoreland Management Overlay Districts.

City Planner Hetzel gave presentation and answered questions:

**PROPOSAL DETAILS/ANALYSIS: IMPERVIOUS DEFINITION**

Section 1.08.010 defines impervious surface as any structure or surface which interferes to any degree with the direct absorption of water into the ground, including, but not limited to, building footprints, sidewalks, paved or gravel driveways and parking areas, patios, sports courts, or any other similar surface. Decks, pervious landscape fabric, and retaining walls shall not be included as impervious surface.

The current definition aligns with the MN DNR shoreland model ordinance definition and a majority of other local governments.

Staff found that many other communities do not list specific examples of impervious surfaces. The City Council feels examples in the current definition are not necessary and may be confusing.

PROPOSED DEFINITION CHANGES:

*Impervious surface* means any structure or surface which interferes to any degree with the direct absorption of water into the ground, ~~including, but not limited to, building footprints, sidewalks, paved or gravel driveways and parking areas, patios, sport courts, or any other similar surface.~~ Decks, pervious landscaping fabric, the surface water of pools and retaining walls shall not be included as impervious surface.

PROPOSAL DETAILS/ANALYSIS: MAXIMUM IMPERVIOUS LOT COVERAGE

Section 105.12.1260(c)(3) Table 17-3: Shoreland Standards currently restricts unsewered lots to a maximum of 15 percent, while sewerred lots are allowed a maximum of 30 percent. This results in a high number of variance requests being submitted to exceed to the maximum 15 percent. The intent of this amendment is to reduce the number of variance requests, while not exceeding the maximum 25 percent allowable per MN Statute 6120.3300 and the DNR Model Ordinance. It is appropriate when a community receives many variance requests from the same standard for that community to review whether the standard should be changed.

There was one email in opposition to this change from resident Ann Bucheck. Her reasoning was that this may have a negative impact on the environment

Public hearing opened at 7:15 PM.

Susan Dunn (11018 Upper 33<sup>rd</sup> St N Lake Elmo) thanked the Commissioners for their service to the community, and reiterated that the Planning Commission's job is the health, safety and welfare of the residents in the community.

Public hearing closed at 7:16 PM

M/S/P: Vrieze /Mueller moved to recommend to table the adoption of the proposed text amendment while staff works with the Minnesota DNR to review the proposed changes. **Vote: 3-0, motion carried unanimously.** (Risner, Rehkamp absent) Vrieze and Mueller both stated that this text amendment needed more work and appreciate that the city staff will be working with the Minnesota DNR.

**b) 40-Foot Residential Setback from a Public Street Text Amendment.** A City initiated text amendment to incorporate a 40-foot setback for any new residential development abutting a public street in the area south of 10th Street.

Director Just gave presentation and answered questions:

Public hearing opened at 7:25 PM.

No public comments.

Public hearing closed at 7:25 PM.

M/S/P: Mueller / Steil moved to recommend adoption of the proposed amendment as presented, amending Section 105.12.930 Commercial Lot Dimensions and Building Bulk Requirements to incorporate a 40-foot setback for all new residential development abutting a public street. **Vote: 2-1, (Steil , Mueller: Aye, Vrieze: Nay) motion carried.** (Risner, Rehkamp absent) Mueller stated that the 40 foot setback is reasonable for safety reasons. Steil is also in agreement. Vrieze does not agree with this and believes a homeowner shouldn't be limited in what they can do with their property.

M/S/P: Mueller /Steil moved to recommend adoption of the proposed amendment as presented, amending Section 105.12.720 Lot Dimensions and Building Bulk Requirements to incorporate a 40-foot setback for all new residential development abutting a public street. **Vote: 2-1, (Steil , Mueller: Aye, Vrieze: Nay) motion carried.** (Risner, Rehkamp absent) Mueller stated that the 40 foot setback is reasonable for safety reasons. Steil is also in agreement. Vrieze does not agree with this and believes a homeowner shouldn't be limited in what they can do with their property.

M/S/P: Steil /Mueller moved to recommend adoption of the proposed amendment as presented, amending Section 105.12.880 Mixed-Use Commercial and Mixed-Use Business Park Districts Lot Dimensions and Building Bulk Requirements to incorporate a 40-foot setback for all new residential development abutting a public street. **Vote: 2-1, (Steil , Mueller: Aye, Vrieze: Nay) motion carried.** (Risner, Rehkamp absent) Mueller stated that the 40 foot setback is reasonable for safety reasons. Steil is also in agreement. Vrieze does not agree with this and believes a homeowner shouldn't be limited in what they can do with their property.

## **Communications/Updates - City Council Updates**

### **Upcoming Meetings**

- a. September 12<sup>th</sup>, 2022
- b. September 26<sup>th</sup>, 2022

Meeting adjourned at 7:30 PM.

Respectfully submitted,

Diane Wendt  
Permit Technician



*Illuminance* means the level of light measured at a surface.

*Impervious surface* means any structure or surface which interferes to any degree with the direct absorption of water into the ground, ~~including, but not limited to, building footprints, sidewalks, paved or gravel driveways and parking areas, patios, sport courts, or any other similar surface.~~ Decks, pervious landscaping fabric, the surface water of pools and retaining walls shall not be included as impervious surface.

*Individual sewage disposal system* means a septic tank, seepage tile sewage disposal system, or other sewage treatment device. This definition shall not apply to LEC 5.08.010 through LEC 5.08.050.

*Individual sewage treatment system* means an on-site sewage treatment system connecting to a single dwelling or other establishment, consisting of soil treatment unit, septic tank, and any associated pumping and piping systems. This definition shall not apply to LEC 5.08.010 through LEC 5.08.050.

*Industrial use* means the use of land or buildings for the production, manufacture, warehousing, storage, or transfer of goods, products, commodities, or other wholesale items.

*Industrial users or industries (sewer systems)* means:

(a) Entities that discharge into a publicly-owned wastewater treatment works, liquid waste resulting from the process employed in industrial or manufacturing processes, or from the development of any natural resources; these are identified in the Standard Industrial Classification Manual, 1972, Office of Management and Budget, as amended and supplemented under one of the following divisions:

- (1) Division A. Agriculture, Forestry, and Fishing;
- (2) Division B. Mining;
- (3) Division D. Manufacturing;
- (4) Division E. Transportation, Communications, Electric, Gas, and Sanitary Sewers; or
- (5) Division I. Services.

(b) Any non-governmental user of a publicly-owned treatment works which discharges wastewater to the treatment works which contains toxic pollutants or poisonous solids, liquids, or gases in sufficient quantity, either singly or by interaction with other wastes, to contaminate the sludge of any municipal systems, or to injure or to interfere with any sewage treatment process, or which constitutes a hazard to humans or animals, creates a public nuisance, or creates any hazard in or has an adverse effect on the waters receiving any discharge from the treatment works.

*Industrial waste* means the solid, liquid, or gaseous waste resulting from industrial or manufacturing processes, trade, or business, or from the development, recovery, or processing of natural resources.

*Industrial wastewater (sewer systems)* means the liquid, solid, or gaseous processing wastes from an industrial manufacturing process, trade, or business, including, but not limited to, all Standard Industrial Classification Manual divisions A, B, D, E, or I, as distinct from domestic wastewater.

*Industry, municipal sewer system*, means any non-governmental or nonresidential user of a publicly-owned treatment works which is identified in the Standard Industrial Classification Manual, latest edition, categorized in divisions A, B, D, E, and I.

*Institutional housing* means housing for students, mentally ill, infirm, elderly, nurses, physically retarded, and similar housing of a specialized nature.

**From:** [Jack Griffin](#)  
**To:** [Ben Hetzel](#)  
**Cc:** [Molly Just](#); [Marty Powers](#)  
**Subject:** Re: Impervious Surface Zoning Text Amendments  
**Date:** Wednesday, August 3, 2022 11:37:24 AM  
**Attachments:** [image001.png](#)  
[image002.png](#)

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

Ben,

The only comment I have is on the definition change. The issue of gravel surfaces is often debated as being impervious or not pervious. Your definition revisions remove this clarification and is likely an issue that will continue to come up over time.

Thanks ~Jack

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

**FOCUS** ENGINEERING, INC.  
651.300.4264  
[jack.griffin@focusengineeringinc.com](mailto:jack.griffin@focusengineeringinc.com)

On Mon, Jul 18, 2022 at 3:49 PM Ben Hetzel <[BHetzel@lakeelmo.org](mailto:BHetzel@lakeelmo.org)> wrote:

All,

The City of Lake Elmo has self-initiated zoning text amendments in regards to impervious surfaces. I have attached copies of the code to be amended with a brief description of each below:

1. Amend Section 1.08 Definitions to change Impervious Surface definition as shown below:

*Impervious surface* means any structure or surface which interferes to any degree with the direct absorption of water into the ground, ~~including, but not limited to, building footprints, sidewalks, paved or gravel driveways and parking areas, patios, sport courts, or any other similar surface.~~ Decks, pervious landscaping fabric, the water surface of pools, and retaining walls shall not be included as impervious surface.

2. Amend Section 105.12.1260 Shoreland Management Overlay District Table 17-3 to change maximum impervious surface lot coverage from 15% to 25% for unsewered lots classified as Recreational Development Shoreland :

**From:** [Karen Kill](#)  
**To:** [John P. Hanson](#); [Ben Hetzel](#); [Marty Powers](#); [Jack Griffin](#); "[Scollan, Daniel \(DNR\)](#)"; [mmoore@ciwoodbury.mn.us](mailto:mmoore@ciwoodbury.mn.us)  
**Cc:** [Molly Just](#); [Gary Bruns](#)  
**Subject:** RE: Impervious Surface Zoning Text Amendments  
**Date:** Tuesday, July 19, 2022 11:12:08 AM  
**Attachments:** [image001.png](#)  
[image002.png](#)  
[image003.png](#)

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

Ben,

As with VBWD, Brown's Creek Watershed District considers the water surface of a pool as an impervious surface. Our stormwater management rules would apply to a land disturbing activity where there is >10,000 square feet of impervious net. A pool would be included in this total. I frequently have people misunderstand that gravel driveways are impervious. Is there a reason why you are taking this out or do you define it elsewhere?

BCWD has recently been discussing decks. Currently we include them in the impervious total because they are generally not built to allow water to flow through them, they are concentrating the flow, often the soil below is compacted, and we are generally not notified when a resident adds a patio below a second story deck or adds a screen porch. Nearby city of Stillwater includes decks in the impervious surface total.

As John also inquired, I would be interested to understand why an increase to 25% impervious is being proposed. I am not clear on whether the Sanctuary development is considered sewered or unsewered since there is a community sewage for the development. Could you clarify? This small portion of Lake Elmo is the only portion in BCWD.

Best Regards,  
Karen

Karen Kill, Administrator  
Brown's Creek Watershed District  
455 Hayward Ave N  
Oakdale, MN 55128  
651-331-8316 (cell)

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**From:** John P. Hanson [mailto:JHanson@barr.com]  
**Sent:** Monday, July 18, 2022 4:48 PM  
**To:** 'Ben Hetzel' <BHetzel@lakeelmo.org>; Marty Powers <MPowers@lakeelmo.org>; Jack Griffin <Jack.Griffin@focusengineeringinc.com>; 'Scollan, Daniel (DNR)' <daniel.scollan@state.mn.us>; Karen Kill <KKill@mnwcd.org>; mmoore@ciwoodbury.mn.us  
**Cc:** Molly Just <MJust@lakeelmo.org>; Gary Bruns <Gary.Bruns@co.washington.mn.us>  
**Subject:** RE: Impervious Surface Zoning Text Amendments

Hi Ben,

Thanks for providing the opportunity to comment on these proposed changes.

The Valley Branch Watershed District considers the water surface of a pool an impervious surface, but VBWD doesn't consider a pool a structure. These VBWD definitions require stormwater management and vegetative buffers be considered with pools but minimum elevations are not considered.

While unclear, it appears Lake Elmo considers a swimming pool a structure. (City definition of structure is anything constructed or erected on the ground or attached to the ground or on-site utilities, including, but not limited to, buildings, factories, sheds, detached garages, cabins, manufactured homes, signs, recreation vehicles not meeting the exemption criteria specified in LEC 100.00.090(c)(1), and other similar items.) If a swimming pool is considered a structure by the City, it appears the City would require the lowest elevation of pool to be at least 2 feet higher than the adjacent public water's 100-year flood level based on Table 17-3 of the City's Shoreline Management Overlay District code. Is this the City's intent? If not, the City might want to specifically exempt swimming pools from the minimum floor elevation requirement.

Has the City evaluated the implications to water resources with the proposed change in maximum amount of impervious surface coverage? Why is 25% being proposed? The proposal would allow more impervious surfaces to unsewered areas around Lakes DeMontreville, Olson, Jane, and Elmo. These lakes are the jewels of the many lakes and ponds in the City. Increases in impervious surfaces without thoughtful mitigation could negatively affect these lakes.

As the City reviews its requirements, I suggest that the City consider requiring the bottoms of septic tanks, drain fields, etc. be at least 2 feet higher than the adjacent water's 100-year flood level. Perhaps City code already requires this based on the City's definition of structure.

Thanks,  
John

John P. Hanson, PE  
Valley Branch Watershed District Engineer  
Barr Engineering Co. | 4300 MarketPointe Drive | Bloomington, MN 55435  
office: 952.832.2622 | cell: 612.590.1785  
[JHanson@barr.com](mailto:JHanson@barr.com) | [www.barr.com](http://www.barr.com) | [www.vbwd.org](http://www.vbwd.org)



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**From:** Ben Hetzel <[BHetzel@lakeelmo.org](mailto:BHetzel@lakeelmo.org)>  
**Sent:** Monday, July 18, 2022 3:49 PM  
**To:** Marty Powers <[MPowers@lakeelmo.org](mailto:MPowers@lakeelmo.org)>; Jack Griffin <[Jack.Griffin@focusengineeringinc.com](mailto:Jack.Griffin@focusengineeringinc.com)>; 'Scollan, Daniel (DNR)' <[daniel.scollan@state.mn.us](mailto:daniel.scollan@state.mn.us)>; John P. Hanson <[JHanson@barr.com](mailto:JHanson@barr.com)>; [karen.kill@mnwcd.org](mailto:karen.kill@mnwcd.org);  
[mmoore@ciwoodbury.mn.us](mailto:mmoore@ciwoodbury.mn.us)  
**Cc:** Molly Just <[MJust@lakeelmo.org](mailto:MJust@lakeelmo.org)>  
**Subject:** Impervious Surface Zoning Text Amendments

**CAUTION: This email originated from outside of your organization.**

All,

The City of Lake Elmo has self-initiated zoning text amendments in regards to impervious surfaces. I have

**From:** Scollan, Daniel (DNR)  
**To:** Ben Hetzel  
**Cc:** MN Ordinance Review (DNR); Petrik, Daniel (DNR)  
**Subject:** RE: Zoning Text Amendments to Shoreland Code  
**Date:** Tuesday, July 19, 2022 3:22:11 PM  
**Attachments:** jmaoe002.ono  
jmaoe008.ono  
jmaoe009.ono  
jmaoe012.ono  
jmaoe013.ono  
jmaoe004.wmz  
jmaoe003.ono  
jmaoe005.ono  
2017\_06-09.LakeElmoSI\_OrdFinalApproval.pdf

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

Hello Ben,

I'll will prepare a formal preliminary comment letter in response to the proposed amendments to the City's shoreland code. More information on the process is available at DNR's [Adopting and Amending Shoreland Ordinances](#) webpage.

I will need more time to complete this review. In the meantime, I'd like to bring your attention to a few items:

- Please see the attached June 9, 2017 letter from DNR to the City of Lake Elmo approving the city's shoreland ordinance with an [implementation flexibility](#) agreement. As noted in the letter, DNR and the City of Lake Elmo agreed to allow a 35-foot maximum building height (state standard = 25 feet) and 30% maximum impervious surface coverage of lots in sewered areas (state standard = 25%), in return for higher standards including 15% impervious surface coverage on unsewered lots (standard = 25%) and a 20% bonus density increase for PUDs (standard = 200%).
- Note that the impervious surface limits approved by DNR (see the approved ordinance in the attached PDF) applied to all shoreland areas, not just the shoreland areas of recreational development lakes.
- DNR's recommended impervious surface definition is available in our [model ordinance](#).

Best Regards,

**Dan Scollan**

East Metro Area Hydrologist – Ramsey and Washington Counties  
Division of Ecological and Water Resources

**Minnesota Department of Natural Resources**

1200 Warner Road  
St. Paul, MN 55106  
Phone: 651-259-5732  
Fax: 651-772-7977

Email: [daniel.scollan@state.mn.us](mailto:daniel.scollan@state.mn.us)  
[mndnr.gov](http://mndnr.gov)



**From:** Ben Hetzel <BHetzel@lakeelmo.org>  
**Sent:** Friday, July 15, 2022 2:18 PM  
**To:** Scollan, Daniel (DNR) <daniel.scollan@state.mn.us>  
**Subject:** Zoning Text Amendments to Shoreland Code

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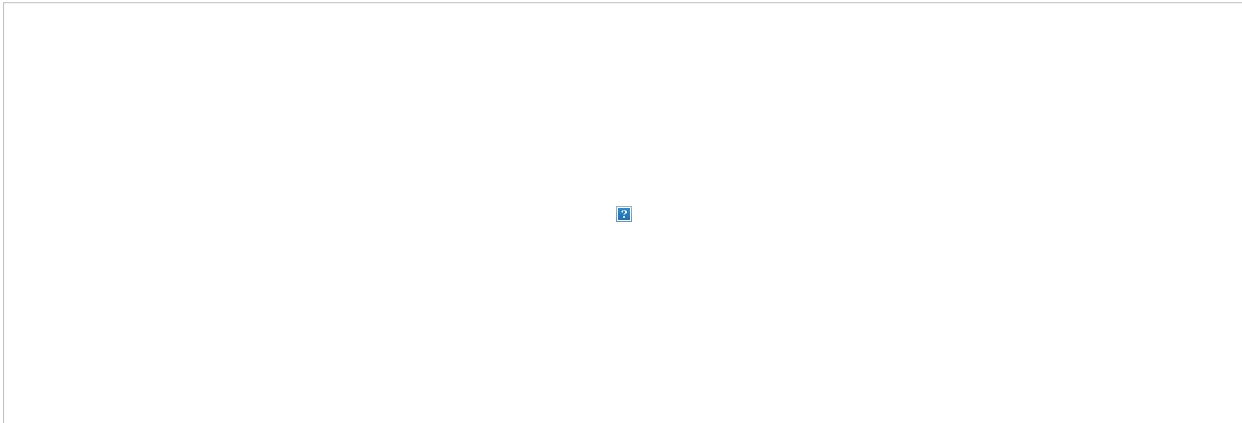
Hello Dan,

A few weeks ago I spoke to you about possible changes to our Impervious Surface Definition and Impervious Surface percentage maximums. After meeting with City Council at our most recent workshop, Council wishes to pursue the following changes:

**Change Impervious Surface Definition (Chapter 1.08 Definitions)**

*Impervious surface* means any structure or surface which interferes to any degree with the direct absorption of water into the ground, including, but not limited to, building footprints, sidewalks, paved or gravel driveways and parking areas, patios, sport courts, or any other similar surface. Decks, pervious landscaping fabric, the water surface of pools, and retaining walls shall not be included as impervious surface.

**Increase Maximum Impervious lot coverage for lots in Shoreland classified as Recreational Development from 15% to 25% for unsewered lots (Section 105.12.1260(c)(3) Table 17-3**



The change will impact unsewered lots in the areas of Lakes Elmo, Jane, Olson, and DeMontreville.