



STAFF REPORT

DATE: 3/6/2024

MOTION

TO: City Council
FROM: Sophia Jensen, City Planner
AGENDA ITEM: Conditional Use Permit Extension Request – CEF Solar Farm

BACKGROUND:

The City Council adopted Resolution 2023-021 approving the solar farm located at 10755 50th Street North on April 4th, 2023. The ordinance requires substantial construction within 12 months of the date on which the conditional use permit was granted. Otherwise, the council, after receiving recommendation from the planning commission, may extend the permit for such additional period, as it deems appropriate. The current conditional use permit deadline is April 4th, 2024.

The developer submitted a 3 month extension request to the City on February 8th 2024. As outlined in the extension request letter, the applicant had delays with closing on the project which caused them to get a late start on the required conditional use permit conditions. They are making progress on the conditions but will require additional time to achieve the substantial construction requirement.

ISSUE BEFORE THE CITY COUNCIL

The City Council is being asked to make a determination on the extension for the conditional use permit deadline to July 4th 2024?

PLANNING COMMISSION

The Planning Commission reviewed this request at their February 26th 2024 meeting. The Commission voted to recommend approval of the extension (Vote 5-0).

FISCAL IMPACT

None.

OPTIONS

- 1) Approve the conditional use permit extension deadline to July 4th 2024
- 2) Deny the extension request.

RECOMMENDATION:

As part of the consent agenda Staff is recommending the City Council approve the request to extend the Conditional Use Permit Deadline. If removed from the consent agenda Staff recommends the following motion:

“Move to approve Resolution 2024-026 approving an extension of the conditional use permit deadline for the CEF Solar Farm project to July 4th 2024.”

ATTACHMENTS:

1. Draft Resolution 2024-026
2. Original Approval Resolution 2023-021
3. CEF Solar Extension Letter Request

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

RESOLUTION NO. 2024-026

*A RESOLUTION APPROVING AN EXTENSION OF THE CONDITIONAL USE PERMIT FOR
A SOLAR FARM AT 10755 50TH STREET NORTH*

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

WHEREAS, CEF Lake Elmo Community Solar, LLC (the “Applicant”), submitted an application to the City of Lake Elmo (the “City”) for a solar farm located at 10755 50th Street North, a copy of which is on file in the City of Lake Elmo Community Development Department; and

WHEREAS, on April 4th 2023, the Lake Elmo City Council adopted Resolution 2023-021 approving the conditional use permit; and

WHEREAS, City Code also requires substantial completion of the project within twelve months of approval to remain valid; and

WHEREAS, the Applicant has submitted a request for an extension to the conditional use permit deadline to allow for additional time to address remaining conditions of the conditional use permit;

NOW, THEREFORE, BE IT RESOLVED THAT the City Council does hereby approve an extension to the deadline for recording the conditional use permit deadline to July 4th 2024

Passed and duly adopted this 6th day of March 2024, by the City Council of the City of Lake Elmo, Minnesota.

Charles Cadenhead, Mayor

ATTEST:

Julie Johnson, City Clerk

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

RESOLUTION 2023-021

**A RESOLUTION APPROVING A CONDITIONAL USE PERMIT FOR THE
CONSTRUCTION AND OPERATION OF A SOLAR FARM ON THE PROPERTY
LOCATED AT 10755 50TH STREET NORTH**

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

WHEREAS, CEF Lake Elmo Community Solar, LLC (the “Applicant”) has submitted an application to the City of Lake Elmo (the “City”) for a Conditional Use Permit for the construction and operation of a solar farm on the property located at 10755 50th Street North (PID# 11.029.21.11.0003) (the “Property”); and

WHEREAS, the Lake Elmo Planning Commission held a public hearing on said matter on November 22, 2021; and

WHEREAS, the Lake Elmo Planning Commission has submitted its report and recommendation to the City Council as part of a Staff Memorandum dated March 15, 2022; and

WHEREAS, the City Council considered said matter at its April 5th, 2022 meeting and voted to deny the conditional use permit request; and

WHEREAS, the Applicant has since revised its landscaping plans to address screening concerns that were the basis for the City Council’s denial of the conditional use permit; and

WHEREAS, pursuant to Minnesota Statutes Sections 462.3595, subdivision 2 and 462.357, subdivision 3, the City Council held a public hearing on March 21, 2023, to consider the proposed conditional use permit with revised plans; and

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

FINDINGS

- 1) That the procedures for obtaining said Conditional Use Permit are found in the Lake Elmo Zoning Ordinance, Section 105.12.290.
- 2) That all the submission requirements of said Section 105.12.290 have been met by the Applicant.

- 3) That the proposed Conditional Use Permit is for the construction and operation of a solar farm on the property located at 10755 50th Street North.
- 4) 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 be detrimental or in any way endanger the public health, safety, comfort. Conditions intended to mitigate any potential impact have been included in the CUP, and include items such as screening, setbacks, and stormwater management.***
- 5) The use or development conforms to the City of Lake Elmo Comprehensive Plan. ***Chapter 3 of the Comprehensive Plan notes the City has incorporated standards into its zoning ordinances regarding siting of structures and buildings to support access to solar resources. Given the City's dominant residential landscape pattern, options for private property owners including individual homeowners and homeowners' associations to capitalize on solar energy are supported by the City's adopted ordinances and official controls.***
- 6) The use or development is compatible with the existing neighborhood. ***The proposed use is permitted in the Rural Residential District subject to a CUP. With conditions, the use is compatible with the existing neighborhood.***
- 7) The proposed use meets all specific development standards for such use listed in Article 7 of this Chapter. ***The proposed use will meet the specific development standards for a solar facility with specific conditions.***
- 8) 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 Chapter 150, §150.250 through 150.257 (Shoreland Regulations) and Chapter 152 (Flood Plain Management). ***The property is located outside the 0.2% annual chance floodplain and shoreland area.***
- 9) 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 proposed use will be compatible in appearance with the existing and intended character of the general vicinity and will not change the essential character of the area.***
- 10) The proposed use will not be hazardous or create a nuisance as defined under this Chapter to existing or future neighboring structures. ***The proposed use will not be hazardous or create a nuisance. To help ensure this, City staff is recommending conditions for screening and decommissioning.***
- 11) 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.

No wastewater or City water facilities are needed to serve this site. The site is otherwise adequately served by existing City services.

- 12) 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 public cost.*
- 13) 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 use will generate 1-3 trips per year on the site.*
- 14) Vehicular approaches to the property, where present, will not create traffic congestion or interfere with traffic on surrounding public thoroughfares. *The proposed use will not create traffic congestion or interfere with traffic on surrounding public streets.*
- 15) The proposed use will not result in the destruction, loss or damage of a natural or scenic feature of major importance. *The proposed use will not impact a natural or scenic feature.*
- 16) That, in accordance with City Code Section 105.12.290, the Applicant's proposed use of the Property as a solar farm shall be permissible under the Conditions 1-9 as provided in the decision below, and incorporated herein:

DECISION

NOW, THEREFORE, BE IT FURTHER RESOLVED, and based upon the information received and the above Findings, that the City Council of the City of Lake Elmo hereby approves the request by CEF Lake Elmo Community Solar, LLC for a Conditional Use Permit for the construction and operation of a solar farm on the property located at 10755 50th Street North, and grants the same, subject to the following conditions of approval:

Prior to issuance of City permits for the project:

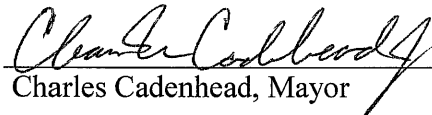
- 1) Stormwater Management: A stormwater management plan meeting all State, Watershed District and City rules is required and a permit must be obtained from the Valley Branch Watershed District. These required details must be included:
 - a. Soil borings will be required for infiltration basins;
 - b. If adjacent properties are impacted by stormwater discharge, written permission from those property owners is required;
 - c. The storm water facilities must remain privately owned and maintained; and
 - d. A Stormwater Maintenance and Easement Agreement in the City's standard form is required.

- 2) The Applicant must provide to the City Engineer a statement from a qualified engineer certifying the foundation and design of the solar panels, racking and support is within accepted professional standards, given local soil and climate conditions.
- 3) A revised landscape plan should be submitted to address the Landscape Architects memo dated March 13th 2023 and address reduced tree spacing.
- 4) Tree plantings must be 9ft. at the time of planting.
- 5) The Applicant must provide an approved interconnection agreement with Xcel.
- 6) The Applicant must provide to the Fire Department details about the proposed gate to ensure it is in compliance with the Fire Code.
- 7) The Applicant must provide a letter of credit in the amount of \$120,652 for decommissioning the site. The letter of credit must be in good standing at all times and issued by a bank determined by the City to be solvent and creditworthy. The letter of credit shall be in a form approved by the City. In the event the letter of credit is not renewed or is cancelled, the City may revoke the conditional use permit.
- 8) The Applicant must obtain all other necessary City, State, and other governing body permits prior to the commencement of any construction activity on the parcel including but not limited to an approved stormwater management plan, utility plans, grading plan, and building permits.

General:

- 8) The Applicant must install a Fire Department lock box for emergency access to the site at an approved location and provide keys for emergency access into the property and any controls necessary for emergency use or shut down.
- 9) The modules and equipment on the site must be removed within 90 days after the site is no longer operational or has not operated continuously for 12 months. In the event that it is not removed by that time, the City has permission to enter the property to remove the modules and equipment and recover its costs from the letter of credit. In the event that the letter of credit is insufficient to cover the City's costs, the City shall certify the costs against the property and collect the costs with the property taxes.

Passed and duly adopted this 4th day of April 2023 by the City Council of the City of Lake Elmo, Minnesota.


Charles Cadenhead, Mayor

ATTEST:



Julie Johnson, City Clerk



COOPERATIVE ENERGY FUTURES

COMMUNITY POWERED ENERGY

City of Lake Elmo
3880 Laverne Avenue North
Lake Elmo, Minnesota 55042

February 8, 2024

CEF Lake Elmo Community Solar, LLC
310 East 38th Street Suite 109
Minneapolis, Minnesota 55409

Extension Request for Conditional Use Permit 2023-021

Project Address: 10957 50th Street North, Lake Elmo
Project Description: Community Solar Garden

Planning Commission and City Council:

CEF Lake Elmo Community Solar, LLC (CEF Lake Elmo) is owned by Cooperative Energy Futures. Cooperative Energy Futures is a member-owned community solar cooperative that develops community solar projects to bring energy bill savings and wealth-building opportunities to local energy consumers in the community.

We are requesting a 3-month extension to our Conditional Use Permit 2023-021. Below is an explanation of the chronology of events that has led us to submit this extension request. Please also be aware that we are working as hard as we can to still meet the April 4th deadline for substantial construction on this project.

Background Information:

In 2021, Cooperative Energy Futures engaged One Energy Renewables through a Membership Interest Purchase Agreement (MIPA) to develop the CEF Lake Elmo Community Solar Garden prior to construction. Cooperative Energy Futures would then purchase the project, build the project, and own it for the life of the project for the benefit of our member-owners.

When One Energy Renewables was unable to get an approved Conditional Use Permit with the City of Lake Elmo for CEF Lake Elmo Community Solar, LLC after several iterations, Cooperative Energy Futures decided to take over the efforts to address City Council concerns through collaboration rather than pursue a legal path for resolution.

Cooperative Energy Futures went to great lengths to understand the concerns of the council and incorporated significant changes to the landscaping plan to satisfy their concerns regarding the garden's impact on the local area. CEF Lake Elmo Community Solar was approved for a Conditional Use Permit per Resolution 2023-021 on April 4th, 2023.

Though CEF took on this work to secure CUP approval, One Energy still owned the project. Legal and administrative work for One Energy to fulfill all their other obligations and responsibilities per the MIPA took many months to complete. We were not able to close on the



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purchase of the project, transferring ownership of CEF Lake Elmo Community Solar, LLC to Cooperative Energy Futures, until November 15, 2023.

This extended delay for us to assume ownership impeded our ability to mobilize towards construction. However, since November 15th, we have made substantial construction.

On November 20, 2023 we engaged Braun Intertec to begin work on the Stormwater Management Plan and Valley Branch Water District permit. They have been able to get all the field work done and draft a SWPPP that they are now finalizing. They are on the verge of submitting for the VBWD permit.

November 21, 2023 we issued a Request for Proposal to 10 interested General Contractors. Responses were due December 22, 2023. After thoroughly vetting the candidates, on January 23rd, we awarded the project to Apadana Solar and are currently in contract negotiations. Apadana Solar has built several of our operating solar gardens, is currently building one on the Community Center in Eden Prairie and will be building a large parking ramp canopy solar installation at Allina Health in Minneapolis this year. Cooperative Energy Futures and Apadana have a proven track record of building successful community solar gardens.

Current Progress:

We have satisfied the following elements of the Conditional Use Permit conditions:

- Revised landscape plan which shows that tree plantings will be 9 feet at the time of planting
- Approved Interconnection Agreement with Xcel
- Confirmed collaboration with the Fire Department on gate design and key lockbox
- All other necessary permits will be in place prior to applying for building permit.
- A Letter of Credit for decommissioning will be provided prior to applying for building permit

We are actively working on the following elements of the Conditional Use Permit Conditions and Building Permit Requirements:

- Stormwater Management:
 - Braun Intertec, as mentioned, is in the final stages of the SWPPP and VBWD application
 - WSE Massey surveyors are working on legal descriptions for the Stormwater Maintenance and Easement Agreement with City of Lake Elmo
- Braun Intertec will soon be performing the required Geotech studies needed by RP Construction Services to produce the technical foundation plans for the racking
 - These plans will be required for both the building permit and to satisfy the CUP condition for a statement from a qualified engineer regarding the design of the racking and support

However, current timelines on some of these outstanding steps make an April 4th substantial construction deadline challenging, including:

- That all Geotech analyses must be completed before RP Construction services can complete a technical foundation plan



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- That the technical foundation plan must be completed before we can submit a building permit
- That the City Attorney will need time to draft the Stormwater Maintenance and Easement Agreement.
- That building permit review, which may take three or more weeks, must be completed and a permit issued before we are allowed to begin work on site.

Conclusion:

We are making good progress on all the conditions and building permit requirements, but we were hindered by getting a late start that was not in our control.

Had legal and administrative functions not taken 7 months for us to close on this project with One Energy, we would have easily met our April 4th deadline and would likely be well underway with construction by now. We are very excited to get this project underway and completed so we can provide residents of Lake Elmo with clean, affordable energy and membership in the cooperative.

Please consider our request for a 3-month extension on our Conditional Use Permit.

Sincerely,

Dan Grantier
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Cooperative Energy Futures
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