



City of Lake Elmo

3800 Laverne Avenue North
Lake Elmo, Minnesota 55042

(651) 777-5510 Fax: (651) 777-9615
www.lakeelmo.org

NOTICE OF MEETING

The City of Lake Elmo
Planning Commission will conduct a meeting on
Monday, August 8, 2011, at 7:00 p.m.

AGENDA

1. Pledge of Allegiance
2. Approve Agenda
3. Approve Minutes – None.
4. Public Hearings
 - a) VARIANCE: Consideration of a variance at 2860 Lake Elmo Avenue North to allow septic holding tanks to be installed within the 10 foot setback to a property line and within the 75 foot setback of the Ordinary High Waterline for Lake Elmo.
 - b) VARIANCE: Consideration of an application to allow the construction of a garage and home addition that would connect an existing detached garage to the existing home at 2976 Lake Elmo Avenue. The variance is to allow the new construction to be located within the 100 foot setback to the Ordinary High Waterline for Lake Elmo and within the 30 foot setback for a bluff line.
 - c) INTERIM USE PERMIT: Consideration of an application to allow the sale of agricultural produce and Christmas trees at 11211 North 60th Street that were produced off site. Country Sun Farm and Greenhouses Inc is requesting the use for ten years from the adoption date of the permit or upon sale of the property to an outside party.
 - d) CONDITIONAL USE PERMIT AMENDMENT: Consideration of an application to amend a Conditional Use Permit for Hidden Meadows (Rockpoint Church) to allow an additional parking lot consisting of 84 parking stalls at 5825 Kelvin Avenue North.
5. Business Items (None)
6. Updates
 - a. City Council Updates
 - i. Ziertman Variance – Approved
 - ii. Lovett Variance – Approved
 - iii. Appeal of Fence Code - Approved
 - b. Staff Updates
 - c. Commission Concerns
7. Adjourn

Planning Commission
Date: 8/8/11
Public Hearing
Item: 4a

ITEM: Hold a public hearing to consider an application for a variance to allow holding tanks to be installed for waste management purposes for more than 12 months at 2860 Lake Elmo Avenue North within the 10 foot setback to a property line and within the 75 foot setback of the Ordinary High Waterline (OHW) for Lake Elmo – R-1 zoning; Shoreland District – PID 24-029-21-22-0015.

SUBMITTED BY: Kelli Matzek, City Planner

REVIEWED BY: Kyle Klatt, Planning Director

SUMMARY AND ACTION REQUESTED: Staff is requesting the Planning Commission hold a public hearing and consider a request for a variance to allow holding tanks to be installed up to 45 feet from the OHW for Lake Elmo and up to 2 feet from the front property line at 2860 Lake Elmo Avenue North for more than 12 months. The applicant is trying to sell his home and is therefore required to bring his septic system into compliance as the dry well currently on-site is not allowed. A septic designer has stated that there is no room on-site to provide a septic system and is therefore recommending holding tanks. Washington County (the City's septic permitting agency) has stated that ordinances require holding tanks be a temporary measure – no longer than 12 months. This property has no other feasible alternatives for waste management.

While the City has generally granted septic variance requests, it should be considered by the City whether this property, at just 5,908 square foot lot should continue to be used for year-round residential purposes.

For variance applications, the burden is on the applicant to demonstrate why this situation is unique and necessitates flexibility to code requirements. To make this case, a variance can only be granted by the city when strict enforcement would cause practical difficulties because of circumstances unique to the individual property under consideration and then only when it is demonstrated that such actions will be in keeping with the spirit and intent of this chapter. The criteria that are included in the City Code for making such a decision include the following:

Practical Difficulties. A variance to the provision of this chapter may be granted by the Board of Adjustment upon the application by the owner of the affected property where the strict enforcement of this chapter would cause practical difficulties because of circumstances unique to the individual property under consideration and then only when it is demonstrated that such actions will be in keeping with the spirit and intent of this chapter.

- (1) Definition of practical difficulties. "Practical difficulties," as used in connection with the granting of a variance, means that the property owner proposes to use the property in a reasonable manner not permitted by an official control.

Unique Circumstances. The plight of the landowner is due to circumstances unique to the property not created by the landowner

Character of locality. The proposed variance will not alter the essential character of the locality in which the property in question is located.

Adjacent properties and traffic. The proposed variance will not impair an adequate supply of light and air to property adjacent to the property in question or substantially increase the congestion of the public streets or substantially diminish or impair property values within the neighborhood.

In reviewing the request against the four criteria listed above, staff determined that all of these criteria were met by the applicant and is recommending approval of the request based on the suggested findings included in the attached Staff report **should** the City determine that this small lakeshore lot should continue to be used for residential purposes.

At this time, the Planning Commission is asked to conduct a public hearing for the variance request to allow construction of two 1,500 gallon holding tanks up to 45 feet from the OHW for Lake Elmo and up to 2 feet from the front property line. Upon conclusion of the hearing, the commission is asked to make a recommendation to the City Council on this request.

ADDITIONAL INFORMATION:

- As of October 1, 2010, Washington County took over the septic permitting and inspections of septic systems for the City of Lake Elmo. Although the County now permits septic systems, the City of Lake Elmo continues to be the authority on granting or denying variances.
- Washington County's Department of Public Health and Environment (the septic permitting agency) has recommended against the variance as they state holding tanks are not a long term solution and future owners, should the home be used year-round to it's full capacity, **may** be pumping every two weeks.
- The Valley Branch Watershed District recommended that the elevation of the bottom of the new sewage tanks be no lower than 893 (2 feet above the 100-year flood level). The septic designer has stated that the bottom elevation is planned for approximately 888 – 5 feet lower then recommended by VBWD.
- A representative from Washington County's Public Health Department will be attending the meeting to answer any questions the Planning Commission may have regarding the technical aspect of the permit or his professional opinion.

OPTIONS:

1. APPROVAL – Recommend approval of the variances requested to allow two holding tanks to be constructed, but to require a document be recorded against the property stating that holding tanks is the method of waste management on the property and that the homeowner may need to pump those tanks frequently.

Motion – Move to recommend the City Council approve the proposed variances for the construction of two holding tanks at 2860 Lake Elmo Avenue with conditions outlined in the attached staff report.

2. APPROVAL – Recommend approval of the variances requested to allow two holding tanks to be constructed, but to require that the home be used seasonally.

Motion – Move to recommend the City Council approve the proposed variances for the construction of two holding tanks at 2860 Lake Elmo Avenue with conditions outlined in the staff report and to add the condition that the home be used for residential purposes for no more than _____ months a year and with conditions listed in the attached staff report.

3. DENIAL – Recommend denial of the variances requested to allow two holding tanks to be constructed thus removing the ability to use the home for residential purposes unless an alternate waste management system is found.

Motion – Move to recommend the City Council deny the proposed variances for the construction of two holding tanks at 2860 Lake Elmo Avenue.

ORDER OF BUSINESS:

- Introduction Kelli Matzek, City Planner
- Report by staff Kelli Matzek, City Planner
- Questions from the Commission Chair & Commission Members
- Applicant Comments Chair facilitates
- Questions of the Applicant Chair & Commission Members
- Open the Public Hearing Chair
- Close the Public Hearing Chair
- Call for a motion Chair Facilitates
- Discussion of Commission on the motion Chair Facilitates
- Action by the Planning Commission Chair & Commission Members

ATTACHMENTS (6):

1. Detailed staff report analyzing the request
2. Area Map identifying the location of the property
3. Proposed Holding Tank Site Plan
4. Ltr. - Valley Branch Watershed District
5. Ltr. - Washington County Department of Public Health and Environment
6. Ltr. – Washington County Public Works Department

City of Lake Elmo Planning Department
Variance Request

To: **Planning Commission**

From: Kelli Matzek, City Planner

Meeting Date: **8/8/11**

Applicant: **Clyde Durand**

Owner: Same

Location: **2860 Lake Elmo Ave N**

Zoning: R-1; Shoreland District

Introductory Information

Application Summary: The City of Lake Elmo has received a request from Clyde Durand to construct a septic system consisting of holding tanks located up to 8 feet within the 10 foot property line setback and up to 30 feet within the 75 foot setback to Lake Elmo's Ordinary High Waterline (OHW).

Property Information: This small, lakeshore property is just 5,908 square feet in size, approximately 600 square feet of which is paved and utilized for County Road 17 (Lake Elmo Avenue). The old address file does not contain a building permit for the home, but does have a permit from April of 1968 to install and connect a water line from the main to the private dwelling.

There is currently a two bedroom home on-site that is served by a non compliant cesspool or tank/drywell.

The current property owner is interested in selling the property and is now required to bring the septic system into compliance.

Applicable Codes: **Section 150.253 Administration.**
(B 2) Variance. Identifies procedures.

Section 150.254 Shoreland Classification.
(B 2) Recreational Development Lakes. Identifies Lake Elmo's OHW at 885.6 and the 100-Year Elevation at 889.

Section 150.255 Shoreland Standards.
(D 1 a). Identifies the sewage treatment system setback for recreational

development lakes to be 75 feet.

Section 150.253 Administration (Shoreland)

(B 2 b) Variance.

For existing developments, the application for variance must clearly demonstrate whether a conforming sewage treatment system is present for the intended use of the property. The variance, if issued, must require reconstruction of a non-conforming sewage treatment system.

Staff has interpreted this section as “conforming” to mean functioning as necessary to serve the home.

Section 150.255 Shoreland Standards. (D). Placement, Design and Height of Structures

States that on-site sewage systems must be setback a minimum of 75 feet from the OHW of Recreational Development classified lakes.

Findings & General Site Overview

Site Data: Lot Size: 0.14 acres (including area below OHW and property used for Co Rd 17)
Existing Use: Residential
Existing Zoning: R-1 (One Family Residential); Shoreland District
Property Identification Number (PID): 24-029-21-22-0015

Application Review:

Applicable Definitions:

DWELLING, SINGLE-FAMILY. A residential structure designed for or used exclusively as 1 dwelling unit of permanent occupancy.

INDIVIDUAL SEWAGE DISPOSAL SYSTEM. A septic tank, seepage tile sewage disposal system, or other sewage treatment device.

INDIVIDUAL SEWAGE TREATMENT SYSTEM. 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.

LOT, RIPARIAN. A separate parcel of land within a designated shoreland area having frontage along a lake or tributary stream.

MOUND SYSTEM. An alternative sewage treatment system designed with the soil treatment area built above existing grade to overcome the limitations of water table, bedrock, or soil permeability.

NON-CONFORMITY – NON-CONFORMING USE. Any legal use, structure or

parcel of land already in existence, recorded, or authorized before the adoption of zoning regulations or amendments to the zoning regulations that would not have been permitted to become established under the terms of the zoning regulations as now written, if the zoning regulations had been in effect prior to the date it was established, recorded, or authorized.

ORDINARY HIGH WATER MARK OR ELEVATION (O.H.W.). The boundary of public waters and wetlands, and shall be an elevation delineating the highest water level which has been maintained for a sufficient period of time to leave evidence upon the landscape, commonly that point where the natural vegetation changes from predominantly aquatic to predominantly terrestrial. For water courses, the ordinary high water level is the elevation of the top of the bank of the channel. For reservoirs and flowages, the ordinary high water level is the operating elevation of the normal summer pool.

PRACTICAL DIFFICULTIES. "Practical difficulties," as used in connection with the granting of a variance, means that the property owner proposed to use the property in a reasonable manner not permitted by an official control.

SEPTIC TANK. A sound, durable, watertight sewage tank designed and constructed to receive the discharge of sewage from a building sewer, separate solids from liquids, digest organic matter, and store liquids through a period of detention.

SHORE IMPACT ZONE. Land located between the ordinary high water level of a public water and a line parallel to it at a setback of 50% of the structure setback.

SHORELAND. Land located within the following distances from public waters: 1,000 feet from the ordinary high water level of a lake, pond, or foliage; and 300 feet from a river or stream, or the landward extend of a flood plain designated by ordinance on a river or stream; whichever is greater. The limits of shorelands may be reduced whenever the waters involved are bounded by topographic divides which extend landward from the waters for lesser distances and when approved by the Commissioner.

STANDARD SYSTEM. An individual sewage treatment system employing a building sewer, sewage tank, and the soil treatment system commonly known as a dram field or leach field.

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

**Planning
Department
Review
Summary:**

Mr. Durand, the property owner, is attempting to sell his property at 2860 Lake Elmo Avenue North which requires him to bring the waste management for the home into compliance with regulations. The 2-bedroom lakeshore property is currently served by a dry well/cesspool which is not allowed. According to a certified septic system designer and inspector as well as the Washington County Department of Public Health and Environment, the existing septic treatment system is considered a threat to the ground water. However, finding a suitable replacement, though required, has been a challenge.

The septic designer has stated in a letter that he does not believe there is enough area to install a subsurface sewage treatment system and that holding tanks seem to be the only option.

In a letter received by Washington County, who is the septic permitting authority, it was identified that the septic ordinance states holding tanks are intended for temporary purposes and should not be used for more than 12 months. The city is able to grant a variance from this provision. However, the County stated they would not be in favor of holding tanks as a permanent measure and was concerned about the frequency with which they would need to be pumped for a future buyer – potentially every two weeks all year round.

Exploring Options for Waste Management at 2860 Lake Elmo Avenue N:

1. 201 System - The City owns and operates a few 201 Systems which function as a community septic system that is located off-site for private residential homes. There is no current 201 system availability for Mr. Durand to connect to at this time.
2. City Sewer – The City’s Comprehensive Plan does not designate Mr. Durand’s property to be within an area guided for city sewer by 2030. The property is located **between** the Village area and the south of 10th street area – both of which are guided for future sewer service.
3. Locating Off Site – A **different** small lakeshore lot on Lake Elmo was permitted to pipe their sewage under a city road to a neighboring property where a septic system was constructed. A one acre septic easement was supplied on a 9+ acre property directly across the road by the person who owned both properties at the time.

The option to acquire an easement or land to create a septic system off-site was discussed with Mr. Durand who stated that he did not believe it was an option in his case.

4. Holding Tanks – This is the option being proposed by the septic designer and property owner, but as mentioned above, is not a preferred long-term solution. If holding tanks are utilized, the City should also discuss if additional conditions should be considered.
 - a. If it is desirable to the City to allow this home to continue to be used for year-round residential purposes, it may be considered whether or not a document should be recorded against the property identifying

future perspective buyers of the potential for the holding tanks to be pumped every two weeks (or less).

- b. Should the city be interested in reducing the use of the property and therefore the use of the holding tanks (a “temporary” solution), it should be discussed whether the City should require the use of the home be reduced from year-round to a seasonal use and limited to a certain number of months each year. The restriction of a property to seasonal (such as three months a year) use would reduce the amount of times the holding tanks would be pumped. This solution would be more acceptable by Washington County and would be considered a temporary use.

**Variance
Criteria:**

An applicant must establish and demonstrate compliance with the variance criteria set forth in Lake Elmo City Code Section 154.017 before an exception or modification to city code requirements can be granted. Because the City has recently amended the variance provisions of the ordinance, some of these required findings will be relatively new to both staff and Planning Commissioners. These criteria are listed below, along with comments from Staff regarding applicability of these criteria to the applicants’ request.

1. **Practical Difficulties.** *A variance to the provision of this chapter may be granted by the Board of Adjustment upon the application by the owner of the affected property where the strict enforcement of this chapter would cause practical difficulties because of circumstances unique to the individual property under consideration and then only when it is demonstrated that such actions will be in keeping with the spirit and intent of this chapter. Definition of practical difficulties - “Practical difficulties” as used in connection with the granting of a variance, means that the property owner proposes to use the property in a reasonable manner not permitted by an official control.*

The language concerning “practical difficulties” represents the bulk of the new provisions that were amended in the City Code. Under this standard, the City would need to find that the installation of the proposed holding tanks at 2860 Lake Elmo Avenue is a reasonable use of the property not otherwise permitted under the zoning ordinance. The appropriate findings for this standard would therefore need to note the waste management system is a reasonable improvement for a lot in one of the City’s single family districts. Using this standard as a basis, Staff is suggesting that the Planning Commission consider the following:

FINDINGS: That the proposed use is reasonable because the applicants have demonstrated that the existing home would no longer be inhabitable without a waste management system. A certified septic designer has stated that holding tanks are the only form of on-site waste management possible. The inability to use the home for residential purposes would drastically reduce, but would not eliminate, the usability of the property. The ability to continue to use an existing

residential dwelling for residential purposes in a residential zoning district would be a reasonable use of the property.

2. **Unique Circumstances.** *The plight of the landowner is due to circumstances unique to the property not created by the landowner.*

In order to demonstrate compliance with this standard, the Planning Commission would need to note those aspects of the applicant's property that would not pertain to other properties within the same zoning classification. In this case, the size of the lot (just under 6,000 square feet), that a portion of the land is utilized for County Road 17, and its proximity to Lake Elmo are unique, especially considering that there is no garage taking up additional space on the property. A septic system of any type would likely require a variance of some kind at any point on this property.

The city run 201 systems do not have capacity for the applicant's property to join. This property is not in an area designated by the 2030 Lake Elmo Comprehensive Plan to be served with city sewer. The applicant's property is located between two larger planning areas guided for future sewer (the Village Area and south of 10th Street).

Prior to 1968, it was determined this lot could be utilized for residential purposes and a building permit was issued for a new home. The property is just over a tenth of an acre in size where a 1.5 acre minimum lot size is required and is located on a lake which, in combination with the house location and driveway, create a difficult situation in which to find a conforming location for a replacement septic system.

Again, Staff is suggesting some findings that could be considered by the Planning Commission as follows:

FINDINGS: That the applicant's property is unique due to its location within a shoreland district and the small size of the property. This property is unable to connect to an existing 201 system and is not guided for a future sewer connection.

3. **Character of locality.** *The proposed variance will not alter the essential character of the locality in which the property in question is located.*

Because the holding tanks would be located underground, they would not be visible and would have no visual impact on the neighborhood. The holding tanks would allow the residential dwelling to continue to be used for residential purposes as it has for the last few decades. This property is zoned R-1 residential and is located in a residential neighborhood.

A more formal set of findings related to this standard is suggested as follows:

FINDINGS: The applicant's house is located in a residential area of the city and is guided to continue on in that manner. The proposed holding tanks would allow

that use to continue on at that site.

4. **Adjacent properties and traffic.** *The proposed variance will not impair an adequate supply of light and air to property adjacent to the property in question or substantially increase the congestion of the public streets or substantially diminish or impair property values within the neighborhood.*

Staff has found that the proposed holding tanks, given that they would be located below ground would have no impact on the supply of light and air to properties adjacent to the property in question and would not impact the congestion of the public streets or impact property values within the neighborhood.

Considering the potential findings of fact as suggested in the preceding section, Staff is recommending approval of the variance request based on the findings noted in items 1-4 above. In order to address some potential issues, Staff would further suggest conditions of approval that would require the applicant to survey the front property line prior to construction to ensure it is outside the right-of-way for County Road 17 (Lake Elmo Avenue North) and provide property erosion control measures during and after construction to prevent sediment from leaving the site.

**Variance
Conclusions:**

Based on the analysis of the review criteria in City Code, City Staff would state that there is merit to grant an **approval of the variances requested** for 2860 Lake Elmo Avenue North.

**Resident
Concerns:**

No response has been received.

**Additional
Information:**

In speaking with a representative of Washington County's Public Health and Environment Department, the information was conveyed to City Staff that additional properties near Mr. Durand's home will be coming forward soon with this same problem. He suggested the City reconsider providing sewer service to this area for a long-term solution.

In speaking with the septic designer, Mr. Eklin, he stated that another property in Lake Elmo will be coming in shortly seeking a septic variance as well. He identified a business located in the Village Area that does not have room to replace the septic system and holding tanks will be necessary as well.

The Valley Branch Watershed District stated that a VBWD permit would not be required, but recommended the elevation of the bottom of the new sewage tank be no lower than elevation 893 (two feet above the VBWD-established 100-year flood level of Lake Elmo).

Conclusion:

The applicants are seeking approval of a variance to allow holding tanks to be constructed within 55 feet of Lake Elmo's OHW and within 2 feet of a property line at 2860 Lake Elmo Avenue North.

**Commission
Options:**

The Planning Commission has the following options:

- A) Recommend approval of the variance request;
- B) Recommend denial of the variance request;
- C) Table the request and direct staff or the applicant to provide additional information concerning this application.

The deadline for a Council decision on this item is September 18, 2011, which can be extended an additional 60-days if needed.

Rec:

Staff is recommending approval of the variance to allow holding tanks to be constructed within 45 feet of Lake Elmo's OHW and within 2 feet of a property line at 2860 Lake Elmo Avenue North for longer than 12 months based on reasons stated above with the following conditions:

1. No adverse impacts are allowed to the adjacent lots. Existing drainage patterns must be maintained.
2. The right-of-way line of CSAH 17 shall be identified and staked by a licensed surveyor in order to determine the exact location of the property line.
3. Any work in the CSAH 17 right-of-way shall require a right-of-way permit. Any disturbance of the CSAH 17 roadway and shoulder shall be restored according to county standards.
4. The County retains all rights to work within the county right-of-way and within any drainage/utility easement. Adverse effects on the septic system resulting from such work within the right-of-way by the County or any other permittee will be without compensation to the property owner.
5. Temporary erosion control measures shall be installed prior to any earthwork. Disturbed areas shall be vegetated as soon as possible after disturbance and no later than 14 days after final grading.
6. A document shall be recorded against the property owner identifying that holding tanks are the method of waste management for the site which may require pumping every two weeks (or less depending on usage).

Denial Motion | To deny the request, you may use the following motion as a guide:

Template: | **I move to recommend denial of the request for the construction of two holding tanks 55 feet from Lake Elmo's OHW and 2 feet from a property line at 2860 Lake Elmo Avenue North for the following reasons: ...***(please site reasons for the recommendation)*

1. The property is insufficient in size to continue to accommodate a residential dwelling that requires an on-site waste management system.
2. The lot size for the R-1 district is 1.5 acres which was deemed necessary due to the lack of city services, such as sewer.
3. Other waste management options such as a 201 system, off-site system, or City sewer are not available to this site.
4. City ordinances identify that holding tanks are not a suitable long-term solution for providing waste management service.
6. It is not in the City's or future residents' best interest to grant a variance to allow a holding tank to be the long-term solution for waste management to a residential home.

Approval Motion | To approve the request, you may use the following motion as a guide:

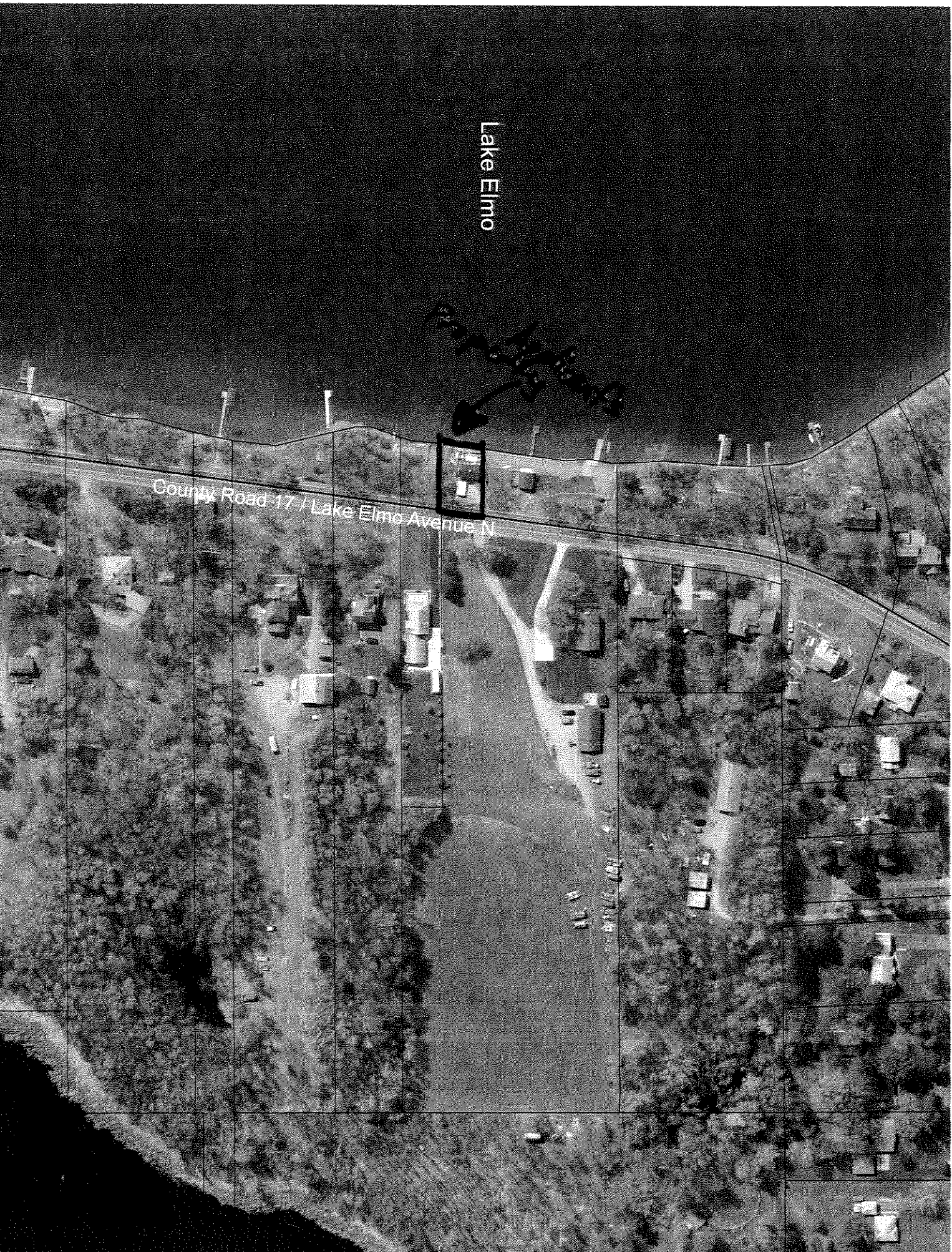
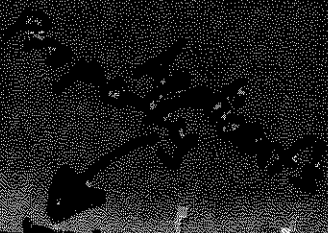
Template: | **I move to recommend approval of the request for the construction of two holding tanks 45 feet from Lake Elmo's OHW and 2 feet from a property line at 2860 Lake Elmo Avenue North for longer than 12 months based on the findings provided in the staff report...***(or cite your own)*

...with the conditions outlined in the staff report.

cc: Clyde Durand, applicant

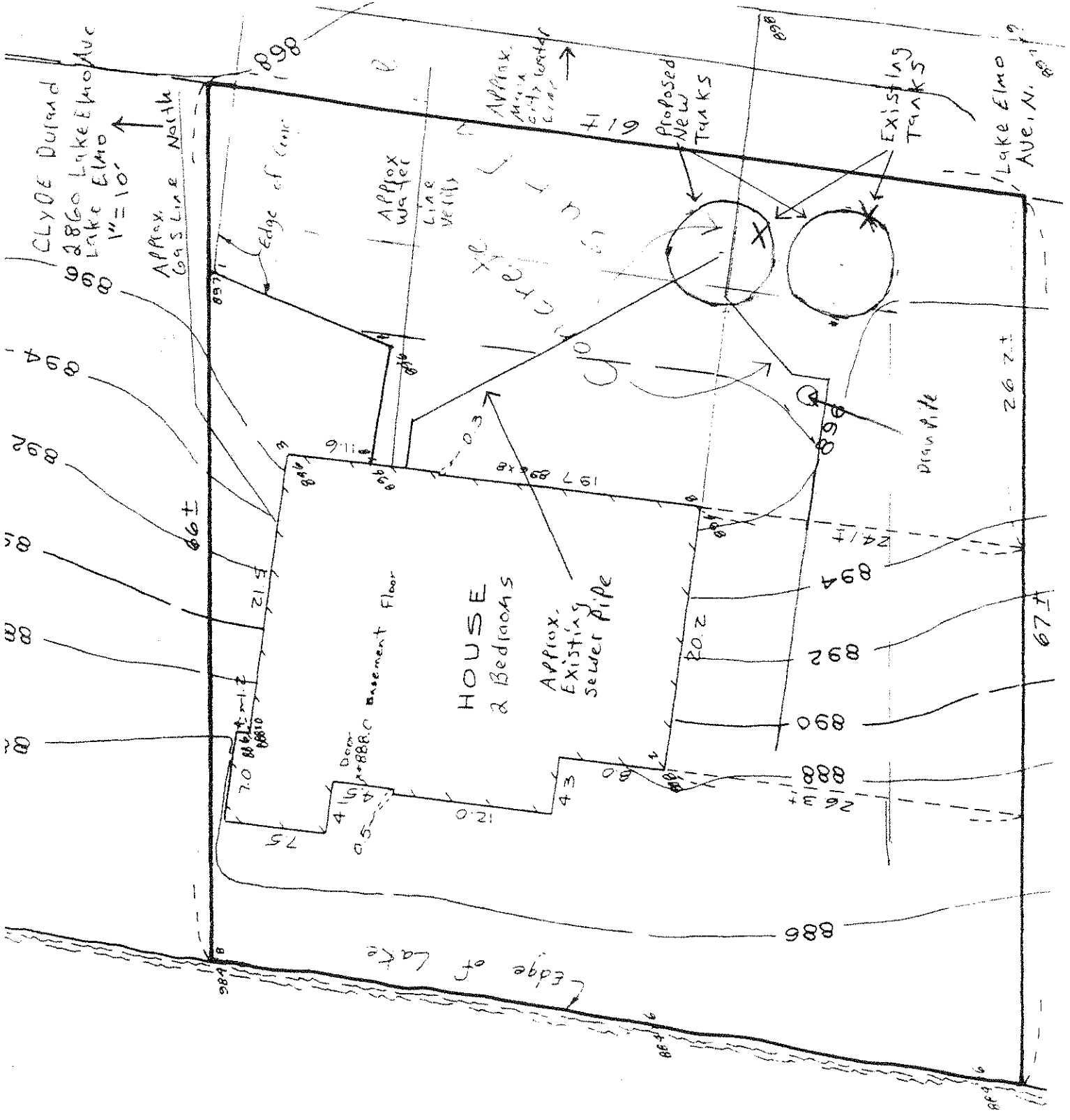
Lake Elmo

County Road 17 / Lake Elmo Avenue N

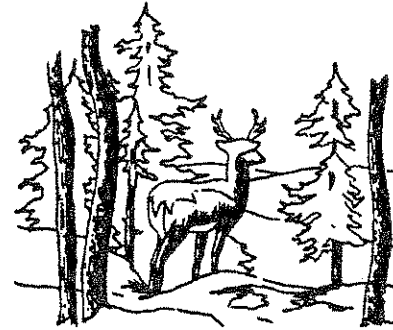


ELMO

LAKE



July 27, 2011



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

Re: 2860 Lake Elmo Avenue North – Variance Request

Dear Kyle:

Thank you for submitting information regarding the proposed septic system replacement at 2860 Lake Elmo Avenue North. On behalf of the Valley Branch Watershed District (VBWD), I have reviewed the information and this letter provides my comments.

The proposed project involves replacing an existing system that may include a dry well. A new system should be installed to protect Lake Elmo from contamination. The proposed project, which includes installing two 1,500-gallon holding tanks that will be pumped as necessary, does not require a VBWD permit.

Based on the grading plan submitted, the home's basement floor is at Elevation 888.0, which is below the VBWD-established 100-year flood level of Lake Elmo (El. 891.0). The proposed elevation of the bottoms of the new sewage tanks is unclear. I recommend that they be no lower than Elevation 893.0 (i.e., two feet above the VBWD-established 100-year flood level of Lake Elmo).

Temporary erosion control measures should be installed prior to any earthwork. The erosion control measures should be inspected during construction and maintained as needed. Disturbed areas should be vegetated as soon as possible after disturbance, and no later than 14 days after final grading.

If you have any questions, please contact me at 952-832-2622.

Sincerely,

A handwritten signature in black ink that reads "John P. Hanson". The signature is fluid and cursive, with a long horizontal stroke at the end.

John P. Hanson, P.E.
BARR ENGINEERING COMPANY
Engineers for the District



DAVID BUCHECK • LINCOLN FETECHER • DALE BORASH • JILL LUCAS • EDWARD MARCHAN

VALLEY BRANCH WATERSHED DISTRICT • P.O. BOX 838 • LAKE ELMO, MINNESOTA 55042-0538

www.vbwd.org



Department of Public Health and Environment

Lowell Johnson
Director

Sue Hediund
Deputy Director

8/3/2011

GEO: 24-029-21-22-0015

Kyle Klatt
Planning Director
City of Lake Elmo
3800 Laverne Ave N
Lake Elmo, MN 55042

RE: 2860 Lake Elmo Avenue (Clyde Durand Residence) Holding Tank Variances.

The dwelling is currently served by a non compliant cesspool or tank/drywell. Holding tanks are not a reasonable long term sewage disposal solution for a residence. Section 18.5(1) of the Washington County SSTS Regulations only allows holding tanks for residences on a temporary basis (up to 12 months) until such time that municipal sewer service can be provided.

It is my understanding that this dwelling fronts the route of a planned sewer extension within Lake Elmo. A variance to section 18.5(1) of the Washington County SSTS Regulations will be required if connection to city sewer service is delayed by more than 12 months.

The requested variances to the OHW of Lake Elmo and front lot line setbacks to the holding tanks are necessary considering the severe lot constraints and there appears no option for an on-site solution for sewage treatment and disposal.

If you have any questions, call me at (651)430-6676.

Sincerely,

Pete Ganzel
Senior Environmental Specialist



Public Works Department

Donald J. Theisen, P.E.
Director/County Engineer

Wayne H. Sandberg, P.E.
Deputy Director/Assistant County Engineer

August 3, 2011

Kyle Klatt
Planning Director
City of Lake Elmo
3800 Laverne Avenue North
Lake Elmo, MN 55082

RE: Variance Application for the placement of two septic tanks, 2860 Lake Elmo Avenue in the City of Lake Elmo, Clyde Durand, applicant

Dear Mr. Klatt


Washington County Public Works has been notified of a variance application for the placement of septic tanks within a few feet from the CSAH 17 right-of-way in the City of Lake Elmo. The property is located at 2860 Lake Elmo Avenue and is an existing residential property on Lake Elmo. The applicant has indicated that septic tanks are the only option for sewage storage at this time and it appears that the new septic tanks will be located under the exiting concrete driveway within a few feet of the CSAH 17 right-of-way.

There are concerns regarding the right-of-way line of CSAH 17 in relation to the proposed septic tanks since the application does not include a certificate of survey. Also, due limited space between the house and the CSAH 17 right-of-way, there may be a need to work in the right-of-way and disturb the existing roadway as part of the project to install the septic tanks.

Based on the application provided to the county, the following are recommended conditions of approval:

1. The right-of-way line of CSAH 17 shall be identified and staked by a licensed surveyor in order to determine the exact location property line.
2. Any work in the CSAH 17 right-of-way shall require a right-of-way permit. Any disturbance of the CSAH 17 roadway and shoulder shall be restored according to county standards.
3. The County retains all rights to work within the county right-of-way and within any drainage/utility easement. Adverse effects on the septic system resulting from such work within the right-of-way by the County or any other permittee will be without compensation to the property owner.

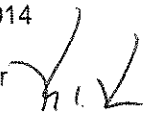
Thank you for the opportunity to comment on this variance application. Please call me at 651-430-4362 or e-mail me at Ann.pung-terwedo@co.washington.mn.us if you have questions or comments.

Sincerely,

Ann Pung-Terwedo
Senior Planner

c: Joe Gustafson, Traffic Engineer
Carol Hanson, Office/Right-of-Way Specialist
Pete Ganzel, Senior Environmental Specialist, Public Health and Environment

Planning Commission
Date: 8/8/11
Public Hearing
Item: 4b

ITEM: Hold a public hearing to consider an application for a variance to permit the construction of an addition at 2976 Lake Elmo Avenue that does not meet the required setback from the Ordinance High Water Level of Lake Elmo – R1 zoning; 24.029.21.22.0014

SUBMITTED BY: Kyle Klatt, Planning Director 

REVIEWED BY: Kelli Matzek, City Planner

SUMMARY AND ACTION REQUESTED

Staff is respectfully requesting the Planning Commission consider a variance application from Peter Vujovich, representing John and Bonnie Butenhof, to allow the construction of an addition to their home at 2976 Lake Elmo Avenue that is set back 48 feet from the Ordinance High Water Elevation (OHW) of Lake Elmo. A variance has been requested because the required structure setback from the OHW of Lake Elmo is 100 feet in accordance with the City's Shoreland Management Overlay Zoning.

For variance applications, the burden is on the applicant to demonstrate why this situation is unique and necessitates flexibility to code requirements. To make this case, a variance can only be granted by the city when strict enforcement would cause practical difficulties because of circumstances unique to the individual property under consideration and then only when it is demonstrated that such actions will be in keeping with the spirit and intent of this chapter. The criteria that are included in the City Code for making such a decision include the following:

Practical Difficulties. A variance to the provision of this chapter may be granted by the Board of Adjustment upon the application by the owner of the affected property where the strict enforcement of this chapter would cause practical difficulties because of circumstances unique to the individual property under consideration and then only when it is demonstrated that such actions will be in keeping with the spirit and intent of this chapter.

- (1) Definition of practical difficulties. "Practical difficulties," as used in connection with the granting of a variance, means that the property owner proposes to use the property in a reasonable manner not permitted by an official control.

Unique Circumstances. The plight of the landowner is due to circumstances unique to the property not created by the landowner

Character of locality. The proposed variance will not alter the essential character of the locality in which the property in question is located.

Adjacent properties and traffic. The proposed variance will not impair an adequate supply of light and air to property adjacent to the property in question or substantially increase the congestion of the public streets or substantially diminish or impair property values within the neighborhood.

In reviewing the request against the four criteria listed above, staff determined that all of these criteria were met by the applicant and is recommending approval of the request based on the suggested findings included in the attached Staff report.

At this time, the Planning Commission is asked to conduct a public hearing for the variance request to allow the construction of an addition on the applicant's property that does not meet the required setback from the OHW of Lake Elmo. Upon conclusion of the hearing, the commission is asked to make a recommendation to the City Council on this request.

ADDITIONAL INFORMATION:

- Valley Branch Watershed District provided comments regarding the application in the attached letter dated July 27, 2011.

RECOMMENDATION:

Staff is recommending that the Planning Commission recommend approval of the proposed variance to allow the applicant to construct an addition to the home at 2976 Lake Elmo Avenue that is set back 48 feet from the Ordinance High Water Elevation (OHW) of Lake Elmo, provided the following conditions are met:

- 1) The applicant shall submit a tree protection and replacement plan that identifies all trees to be removed from the site prior to construction and that specifies which trees are to remain on the property. Grading, or other construction activity, should not come within the branch spread of any tree to be retained. Tree protection fencing should be erected on the construction side of any trees which are less than 15 ft. from construction activity, and placed as far out from the branch spread of the tree as possible.
- 2) A revised landscape plan shall be submitted that provides for the replacement of any trees removed during construction.
- 3) Temporary erosion control measures that comply with the Lake Elmo Storm Water and Erosion and Sediment Control Ordinance shall be established prior to the start of any earthwork and shall be maintained throughout the duration of construction activity on the site.

ORDER OF BUSINESS:

- Introduction.....Planning Director
- Report by staff.....Planning Director
- Questions from the Commission Chair & Commission Members
- Applicant CommentsChair facilitates
- Questions of the Applicant Chair & Commission Members
- Open the Public HearingChair
- Close the Public Hearing.....Chair
- Call for a motion Chair Facilitates
- Discussion of Commission on the motion Chair Facilitates
- Action by the Planning Commission..... Chair & Commission Members

ATTACHMENTS:

1. Detailed staff report analyzing the request
2. Application form
3. Review comments from Valley Branch Watershed District
4. Site photographs – existing conditions

5. Architectural drawings:
 - o Site and landscape plan with east building elevation
 - o Interior layout
 - o Upper level plan with west building elevation
6. Existing site plan
7. Aerial image of site
8. Current septic system plan (201 system)

City of Lake Elmo Planning Department
Variance Request

To: **Planning Commission**

From: **Kyle Klatt, Planning Director**

Meeting Date: **8/8/11**

Applicant: **Peter Vujovich**

Location: **2976 Lake Elmo Avenue**

Zoning: **R1 – Single Family Residential**

Introductory Information

Application Summary: The City of Lake Elmo has received an application for a variance from Peter Vujovich representing John and Bonnie Butenhof to allow the construction of an addition to their home at 2976 Lake Elmo Avenue. A variance has been requested because the proposed addition would be located 48 feet at its closest point to the Ordinance High Water Elevation (OHW) of Lake Elmo, and the City's Shoreland Ordinance requires a minimum structure setback of 100 feet from the OHW. The proposed addition would extend between an existing detached garage and the principal residential structure on the property and would include garage space for two additional parking stalls on the site.

Property Information: The applicants' property is located on the western side of Lake Elmo Avenue near the intersection of 30th Street. It is the second to last house on the lake side of the road as one moves south from the center of the Old Village, and is bordered by another residential lot to the north, and an open lot to the south with some minor accessory buildings on it. There is a modest elevation change from the water level of the lake up to the elevation at which the house has been built, and there is a steep hillside separating the house from the lake. Access to Lake Elmo has been provided through a series of stairs leading down to a sandy beach area.

The size of the applicant's lot is typical for the Village area, at approximately 26,563 square feet (0.61 acres) excluding the road right-of-way for Lake Elmo Avenue. The house, at present, does not have an attached garage, and the detached garage on the premises is located approximately 35 feet from the main structure. There are several larger, mature trees around the house and between the house and the lake on the hillside leading to the shoreline.

County property records indicate that the house (not garage) was built in 1941. City records show that in 1987, the City approved a variance to allow an addition to be built on to the house that extended to within 65 feet of the OHW. The setback prior to

approval of the variance was 75 feet from the OHW. There is very little additional information in the address file for this property other than a diagram and report noting that this site was included as one of the City "201" projects. The 201 projects involved the use of federal funding to fix failing septic systems through the community. The location of the septic system for the house is identified on these plans, and the system would not be impacted by the proposed construction project.

**Applicable
Codes:**

Section 150.017 Variances.

(A-I) Variances. Identifies procedures and requirements for the processing and review of a variance application. Please note that this section was recently updated by the City to comply with revisions to Minnesota State Statutes.

Section 154.041 (C) R-1 Minimum District Requirements

Maximum impervious surface coverage of 25%.

Section 150.255 (D) Shoreland Standards. Subd. 1 Placement, design, and height of structures.

(1) Placement. When more than 1 setback applies to a site, structures and facilities must be located to meet all setbacks. Where structures exist on the adjoining lots on both sides of a proposed building site, structure setbacks may be altered without a variance to conform to the adjoining setbacks from the ordinary high water level, provided the proposed building site is not located in a shore impact zone or in a bluff impact zone. Structures shall be located as follows.

(a) Structure and on-site sewage system setbacks. Structure and on-site sewage system setbacks (in feet) from ordinary high water level. (100 feet from a recreational development lake.)

Section 150.255 (G) Shoreland Standards. Subd. 2 (a) Storm Water Management – Specific Standards.

Impervious surface coverage of lots must not exceed 6,000 S.F. or 15% of the lot area, whichever is larger.

Section 150.256 (B) Subd. 2 (b) Additions/expansions to nonconforming structures.

(a) Additions/expansions. All additions or expansions to the outside dimensions of an existing nonconforming structure must meet the setback, height, and other requirements of § 150.255. Any deviation from these requirements must be authorized by a variance pursuant to § 150.253(B)(2).

Findings & General Site Overview

Site Data: Lot Size: 26,563 square feet (0.61 acres)

Existing Use: Residential
Existing Zoning: R1 – Single Family Residential;
Property Identification Number (PID): 24.029.21.22.0014

Application Review:

Applicable Definitions:

BUILDING. Any structure either temporary or permanent, having a roof and used or built for the shelter or enclosure of any person, animal, or movable property of any kind. When any portion of a building is completely separate from every other part of a building by area separation, each portion of the building shall be deemed as a separate building.

DWELLING, SINGLE-FAMILY. A residential structure designed for or used exclusively as 1 dwelling unit of permanent occupancy.

PRACTICAL DIFFICULTIES “Practical difficulties,” as used in connection with the granting of a variance, means that the property owner proposes to use the property in a reasonable manner not permitted by an official control.

UNIQUE CIRCUMSTANCES. The plight of the landowner is due to circumstances unique to the property not created by the landowner

ORDINARY HIGH WATER MARK OR ELEVATION (O.H.W.). The boundary of public waters and wetlands, and shall be an elevation delineating the highest water level which has been maintained for a sufficient period of time to leave evidence upon the landscape, commonly that point where the natural vegetation changes from predominantly aquatic to predominantly terrestrial. For water courses, the ordinary high water level is the elevation of the top of the bank of the channel. For reservoirs and flowages, the ordinary high water level is the operating elevation of the normal summer pool.

Variance Review:

The applicant is proposing to construct an addition to the existing house at 2976 Lake Elmo Avenue that would add two garage stalls, guest bath (as an option), mudroom, and foyer, and that would provide room for an entry terrace as well. This new addition would be connected to the house via a small extension to the southern edge of the house and a narrow connection to the proposed foyer. One unique aspect of the proposed plans is that this narrow connection between the existing and proposed structure would act as a bridge over a proposed rain garden. This storm water feature is has been proposed by the applicant to manage an existing runoff that flows through the property and into Lake Elmo.

The current driveway will still be used to provide access to the new garage and also remain in its present location in front of the existing garage. There are some larger trees on the site that will need to be removed in order to make room for the addition,

and Staff has requested that these trees be delineated on the site plan. Because this property is located within a shoreland district, Staff is recommended that a tree replacement plan also be provided to off-set the loss of existing vegetation on the property.

The proposed plans note some additional changes to the current site, including the removal of a small tool shed located between the lake and the detached garage, the removal of a portion of the existing deck, the construction of a new deck to the north of the 1987 addition, and the moving of a hot tub to the newly constructed deck. As noted on the site plans, the applicant is planning to make use of pervious stepping stones to supplement other planned landscape improvements.

In reviewing the applicable codes that must be met by the applicant, Staff would like the Planning Commission to consider the following as it reviews this request:

- **R-1 District Setbacks.** The proposed addition will comply with all setbacks required under the R-1 District regulations. In particular, the building will be set back just beyond the required 30 foot front yard setback, and will be situated 23 feet from the side yard (10 feet is the required setback). The existing detached garage is 14 feet from the side property line.
- **Impervious Coverage.** The R-1 District specifies a maximum impervious coverage of 25%. The proposed site plan documents a total lot coverage of 4,666 square feet, which represents an impervious surface calculation of 17.6%, well under the maximum allowed. The Shoreland Ordinance contains separate impervious coverage requirements, which for the applicant's lot would be a maximum of 6,000 square feet.
- **Accessory Building Size.** The Zoning Ordinance allows a maximum combined space of 1,200 square feet for both detached and attached garages in an R-1 District. The total garage space proposed with the addition is 868 square feet and in compliance with this provision.
- **Shoreland Setbacks.** Lake Elmo is classified as a "recreational development" lake, and structures within 1,000 feet of the lake are subject to a 100 foot setback. The proposed building would be setback 48 feet at its closest point to the OHW elevation of Lake Elmo, hence a setback variance to allow the construction of the addition 52 feet closer to the OHW line has been requested by the applicant.
- **Bluff Setbacks.** The steep slope on the applicant's property between the lake and the house does not meet the definition of a shoreland bluff and therefore no special setback from a bluff line is required for this lot.
- **Maximum Building Height.** The proposed addition will not exceed one story in height, and falls well under the maximum allowed building height of 35 feet

for the R-1 District.

- **Flood Ordinance.** The home's existing basement has been built above the Regulatory Flood Protection Elevation for Lake Elmo, and since the addition would not have a basement, it will comply with the City's Flood Ordinance.

The applicant has provided some of the rationale for the request in the attached submission materials, and based on this information, is intending to: 1) improve the access to the front entrance of the home, 2) address storm water issues that have been problematic in the past, and 3) create a safe and dry entry into the garage with a new attached structure and an addition that bridges over a storm water feature. Staff would also like to point out that there are no other locations on the lot for an addition that would not encroach further into a front yard, OHW, side yard, or other setback. Additionally, the septic system occupies nearly all of the front yard of the house, leaving only a very small portion of the rear yard that could be used for an addition (but not without a variance from the OHW setback as well). The proposed addition appears to be located in the most logical location on the lot should the Planning Commission find that a variance is warranted in this instance.

**Variance
Criteria:**

An applicant must establish and demonstrate compliance with the variance criteria set forth in Lake Elmo City Code Section 154.017 before an exception or modification to city code requirements can be granted. Because the City has recently amended the variance provisions of the ordinance, some of these required findings will be relatively new to both staff and Planning Commissioners. These criteria are listed below, along with comments from Staff regarding applicability of these criteria to the applicants' request.

1. **Practical Difficulties.** *A variance to the provision of this chapter may be granted by the Board of Adjustment upon the application by the owner of the affected property where the strict enforcement of this chapter would cause practical difficulties because of circumstances unique to the individual property under consideration and then only when it is demonstrated that such actions will be in keeping with the spirit and intent of this chapter. Definition of practical difficulties - "Practical difficulties" as used in connection with the granting of a variance, means that the property owner proposes to use the property in a reasonable manner not permitted by an official control.*

The language concerning "practical difficulties" represents the bulk of the new provisions that were amended in the City Code. Under this standard, the City would need to find that the construction of the proposed addition at 2976 Lake Elmo Avenue is a reasonable use of the property not otherwise permitted under the zoning ordinance. The appropriate findings for this standard would therefore need to note the addition proposed is a reasonable improvement for a lot in one of the City's single family districts. Using this standard as a basis, Staff is suggesting that the Planning Commission consider the following:

FINDINGS: That the proposed use is reasonable because the applicants have demonstrated that it is not possible to construct an addition of any size to their house without encroaching on a property line or Ordinance High Water (OHW) Elevation setback. The addition will allow the construction of an attached garage with safe access while addressing current drainage problems that exist between the principal structure and existing detached garage. The proposed addition will comply with all other applicable code requirements except for the OHW setback. The addition will not be located any closer to Lake Elmo than the current structures on the property, and will allow the removal of an existing shed that is less than 30 feet from the OHW.

2. ***Unique Circumstances.*** *The plight of the landowner is due to circumstances unique to the property not created by the landowner.*

In order to demonstrate compliance with this standard, the Planning Commission would need to note those aspects of the applicant's property that would not pertain to other properties within the same zoning classification. In this case, configuration of the lot and its proximity to Lake Elmo are unique, especially considering that the house and detached garage are already located within the required OHW setback. Both structures were built prior to the adoption of the City's shoreland ordinance, and the lot was platted well before the City regulated shoreland areas separate from other aspects of the City Code. Again, Staff is suggesting some findings that could be considered by the Planning Commission as follows:

FINDINGS: That the applicant's property is unique due to its location within a shoreland district and due to the curvature of Lake Elmo Avenue along the front of the property. The narrowness of the lot and location of the septic system prohibits the construction of an addition anywhere else on the property that would comply with the required setbacks for the property. The existing house and detached garage are already located within the OHW seatback, and were constructed prior to adoption of the City's Shoreland Overlay Ordinance.

3. ***Character of locality.*** *The proposed variance will not alter the essential character of the locality in which the property in question is located.*

Because the only setback variance that has been requested is from the OWH elevation, the proposed addition will comply with all other applicable zoning requirements for an R1 – Single Family District and shoreland parcel. The applicant's house, as currently situated on the site, is generally smaller than other homes in the immediate vicinity along Lake Elmo, and the proposed addition would be built in such a manner as to minimize the impact of the garage by making it a side-loading garage. A more formal set of findings related to this standard is suggested as follows:

FINDINGS: The applicant's house, as currently situated on the site, is generally smaller than other homes in the immediate vicinity along Lake Elmo, and the

proposed addition would be built in such a manner as to minimize the impact of the garage by making it a side-loading garage. The location of the addition would take advantage of existing screening between the house and Lake Elmo, and would be located in a central portion of the site away from neighboring properties. The one story addition would not exceed the height of any other structures in the vicinity of the applicant's property.

4. **Adjacent properties and traffic.** *The proposed variance will not impair an adequate supply of light and air to property adjacent to the property in question or substantially increase the congestion of the public streets or substantially diminish or impair property values within the neighborhood.*

Staff has found that the proposed building addition will comply with this provision since it is located in a manner that will minimize direct impacts to adjacent properties and will not create any additional traffic on the streets surrounding the applicants' property. No change to the current driveway is proposed or would be needed to support the new garage.

Considering the potential findings of fact as suggested in the preceding section, Staff is recommending approval of the variance request based on the findings noted in items 1-4 above. In order to address some potential issues during construction, Staff would further suggest conditions of approval that would require the applicant to document any trees to be lost due to construction, submit a replacement plan for the trees to be removed, and provide property erosion control measures during and after construction to prevent sediment from leaving the site.

Variance Conclusions: Based on the analysis of the review criteria in City Code and referenced in the preceding section, Staff is recommending **approval** of the applicant's request to construct an addition to the existing principal structure that is set back 48 feet at its closest point to the Ordinary High Water Elevation of Lake Elmo.

Resident Concerns: Staff has not received any correspondence or had any other communication with neighbors in advance of the public hearing.

Additional Information: The City Engineer has reviewed the proposed location of the addition and has not expressed any concerns regarding the proposed construction site. Valley Branch Watershed District has submitted review comments in the attached letter, and specifically noted that a Watershed District permit would not be required for the project. The variance request was forwarded to the Minnesota Department of Natural Resources for comment, but not response has been received in advance of the Planning Commission meeting.

Conclusion:

The applicants are seeking approval of a variance to allow the construction of an addition to their home at 2976 Lake Elmo Avenue that is set back 48 feet from the Ordinance High Water Elevation of Lake Elmo.

Commission Options:

The Planning Commission has the following options:

- A) Recommend approval of the variance request;
- B) Recommend denial of the variance request;
- C) Table the request and direct staff or the applicant to provide additional information concerning this application.

The deadline for a Council decision on this item is September 21, 2011, which can be extended an additional 60-days if needed.

Rec:

Staff is recommending approval of a variance to allow the construction of an addition to the house at 2976 Lake Elmo Avenue that is set back 48 feet from the Ordinance High Water Elevation of Lake Elmo based on the findings documented in the above Staff report and provided the following condition are met:

- 1) The applicant shall submit a tree protection and replacement plan that identifies all trees to be removed from the site prior to construction and that specifies which trees are to remain on the property. Grading, or other construction activity, should not come within the branch spread of any tree to be retained. Tree protection fencing should be erected on the construction side of any trees which are less than 15 ft. from construction activity, and placed as far out from the branch spread of the tree as possible.
- 2) A revised landscape plan shall be submitted that provides for the replacement of any trees removed during construction.
- 3) Temporary erosion control measures that comply with the Lake Elmo Storm Water and Erosion and Sediment Control Ordinance shall be established prior to the start of any earthwork and shall be maintained throughout the duration of construction activity on the site.

Denial Motion

To deny the request, you may use the following motion as a guide:

Template:

I move to recommend denial of the request for a variance to allow the construction of an addition the house at 2976 Lake Elmo Avenue that is set back 48 feet from the Ordinance High Water Elevation of Lake Elmo ...*(please site reasons for the recommendation)*

Approval | To approve the request, you may use the following motion as a guide:

Motion

Template:

I move to recommend approval of the request for a variance to allow the construction of an addition the house at 2976 Lake Elmo Avenue that is set back 48 feet from the Ordinance High Water Elevation of Lake Elmo ...*(or cite your own)*
...with the conditions outlined in the staff report.

cc: Peter Vujovich, Vujovich Design Build
John and Bonnie Butenhof, 2976 Lake Elmo Avenue

**City of Lake Elmo
DEVELOPMENT APPLICATION FORM**

Fee \$ _____

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

APPLICANT: Peter Vujovich 14888 50th St. So ARDEN MN 55001
(Name) (Mailing Address) (Zip)

TELEPHONES: 651-998-0533 612-889-5031 612-338-2323
(Home) (Work) (Mobile) (Fax)

FEE OWNER: John + Bonnie Butenhof (see below)
(Name) (Mailing Address) (Zip)

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

PROPERTY LOCATION (Address and Complete (Long) Legal Description):
2976 Lake Elmo Ave N.

DETAILED REASON FOR REQUEST: Proposed Garage addition would be closer then the 100' setback

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

The existing front entrance causes guests to park on busy-dangerous Lake Elmo Ave. Present path from home to detached garage has caused injury due to water and ice draining across the only entrance to the home. The Butenhofs are at an age where this will get worse.

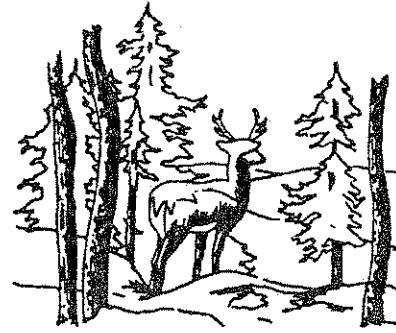
In signing this application, I hereby acknowledge that I have read and fully understand the applicable provisions of the Zoning and Subdivision Ordinances and current administrative procedures. I further acknowledge the fee explanation as outlined in the application procedures and hereby agree to pay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

Peter Vujovich
 Signature of Applicant _____ Date _____

Bonnie J. Butenhof 7/18/11
 Signature of Applicant _____ Date _____

peter.vujovich

July 27, 2011



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

Re: 2976 Lake Elmo Avenue North – Variance Request

Dear Kyle:

Thank you for submitting information regarding the garage addition at 2976 Lake Elmo Avenue North. On behalf of the Valley Branch Watershed District (VBWD), I have reviewed the information and this letter provides my comments.

The proposed project involves constructing a new garage and connecting it to an existing garage and house. The project will create less than 6,000 square feet and does not involve grading of at least one acre of land or working below the VBWD-established 100-year flood level of Lake Elmo. Therefore, the project does not require a VBWD permit.

Based on one of the plan sheets submitted, the existing home's basement floor is at Elevation 896.5, which is higher than minimum floor elevation required by the VBWD. The new addition's minimum floor elevation should be no lower than Elevation 893.0.

Temporary erosion control measures should be installed prior to any earthwork. The erosion control measures should be inspected during construction and maintained as needed. Disturbed areas should be vegetated as soon as possible after disturbance, and no later than 14 days after final grading.

I am pleased to see that the project includes a rain garden. The property owners may wish to contact Rusty Schmidt, the Cost-Share Program Coordinator for the VBWD, at 651-275-1136, extension 36. He could help the property owners design an unmowed vegetative buffer adjacent to the lake. For new projects, VBWD requires a minimum 35-foot wide buffer strip measured perpendicular to the OHW (Ordinary High Water level, Elevation 885.6 at Lake Elmo) extending 35 feet inland. A mowed access and shoreline is allowed, but must not exceed 30% of the landowner's shoreline width or 30 feet, whichever is less. Access paths shall not be located where concentrated runoff will flow to the lake. For existing developed sites, the vegetative buffer is strongly encouraged, but not required.

If you have any questions, please contact me at 952-832-2622.

Sincerely,

A handwritten signature in black ink, appearing to read "John P. Hanson". The signature is fluid and cursive.

John P. Hanson, P.E.
BARR ENGINEERING COMPANY
Engineers for the District

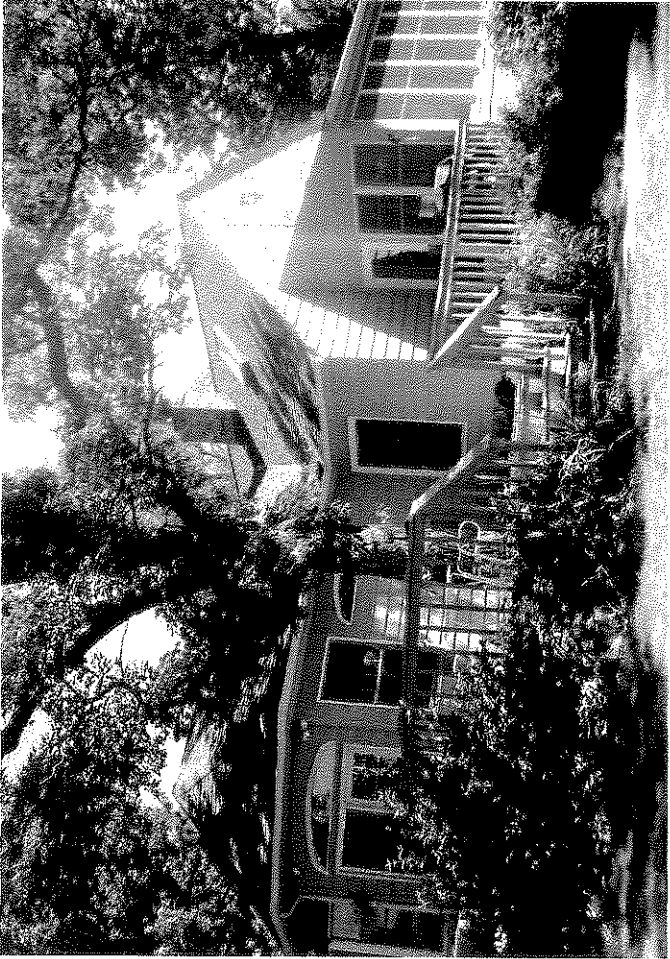
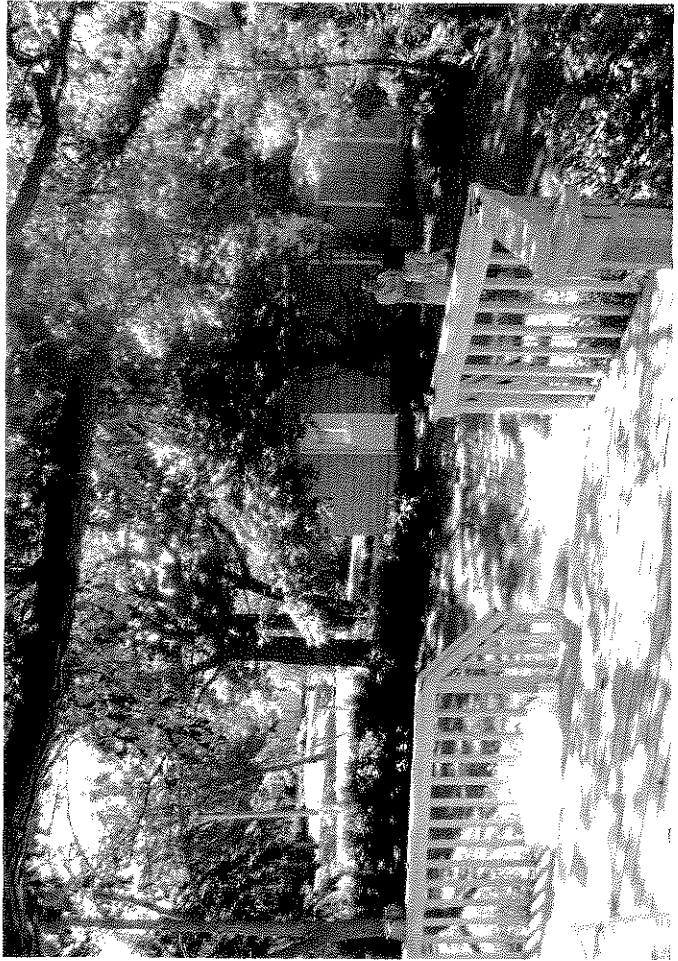


DAVID BUCHECK • LINCOLN FETECHEER • DALE BORASH • JILL LUCAS • EDWARD MARCHAN

VALLEY BRANCH WATERSHED DISTRICT • P.O. BOX 838 • LAKE ELMO, MINNESOTA 55042-0538

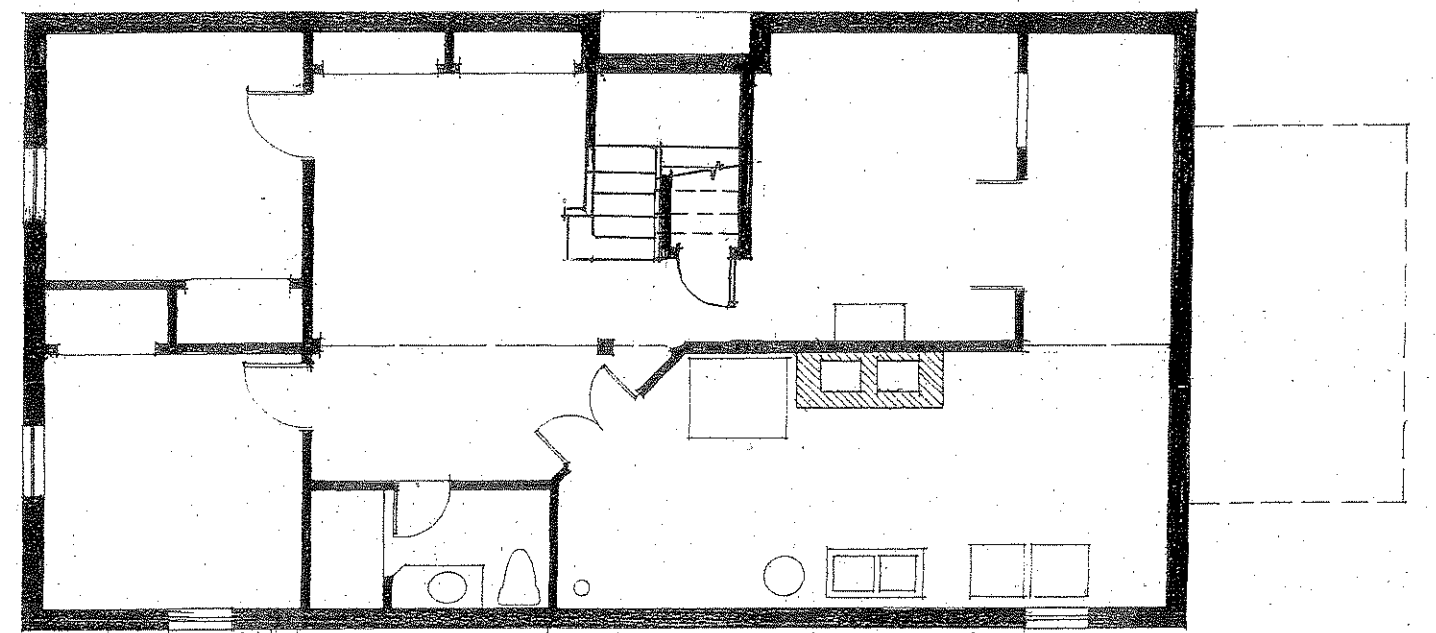
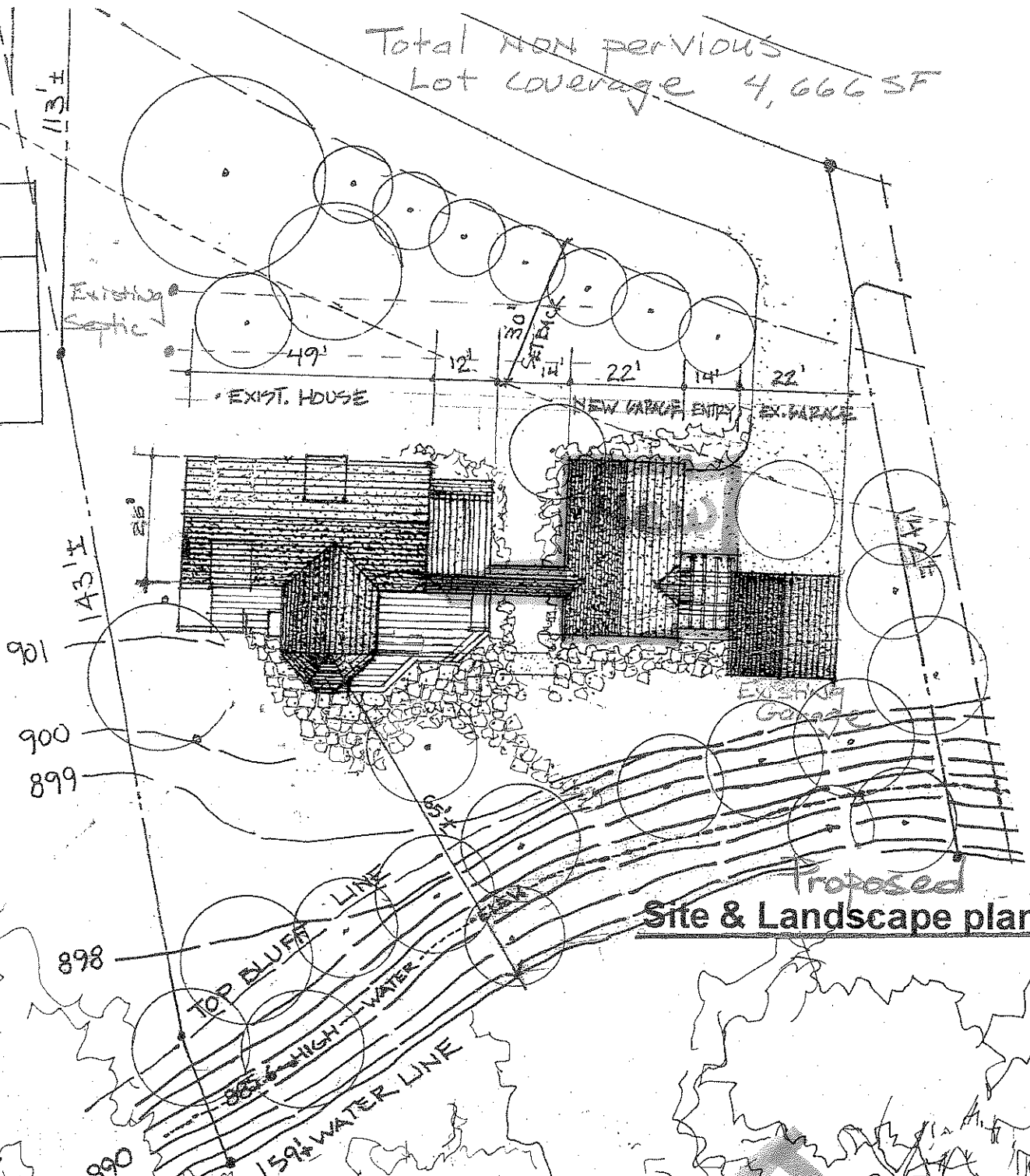
www.vbwd.org





Total NON pervious
Lot coverage 4,666 SF

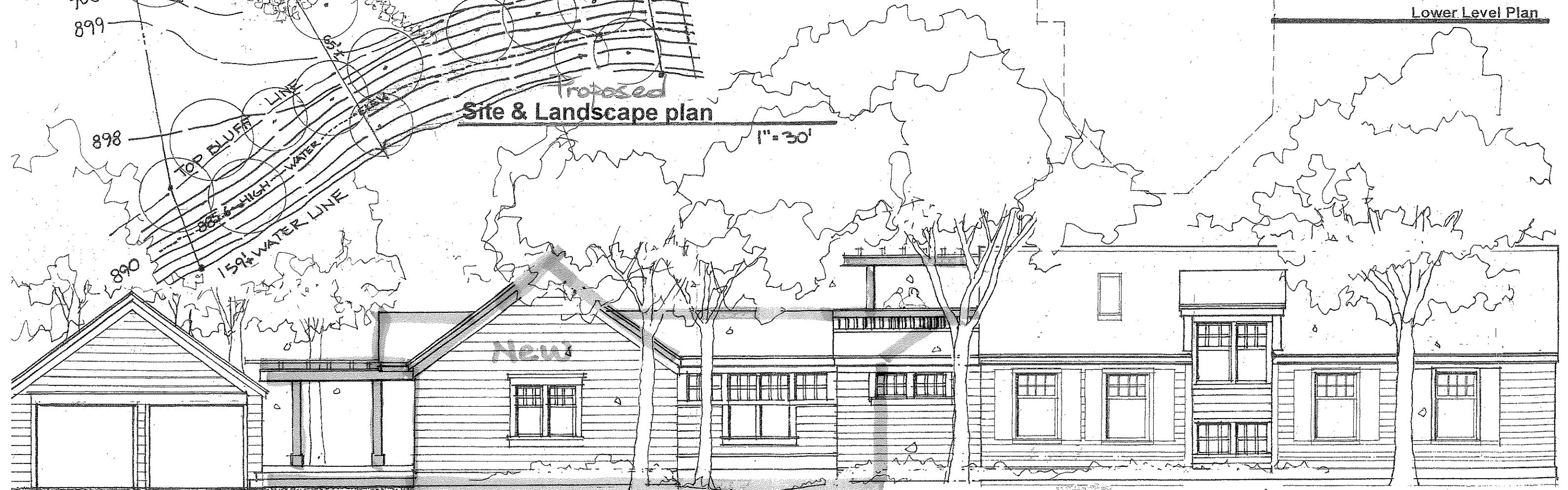
Existing
~~New~~



Lower Level Plan

Site & Landscape plan

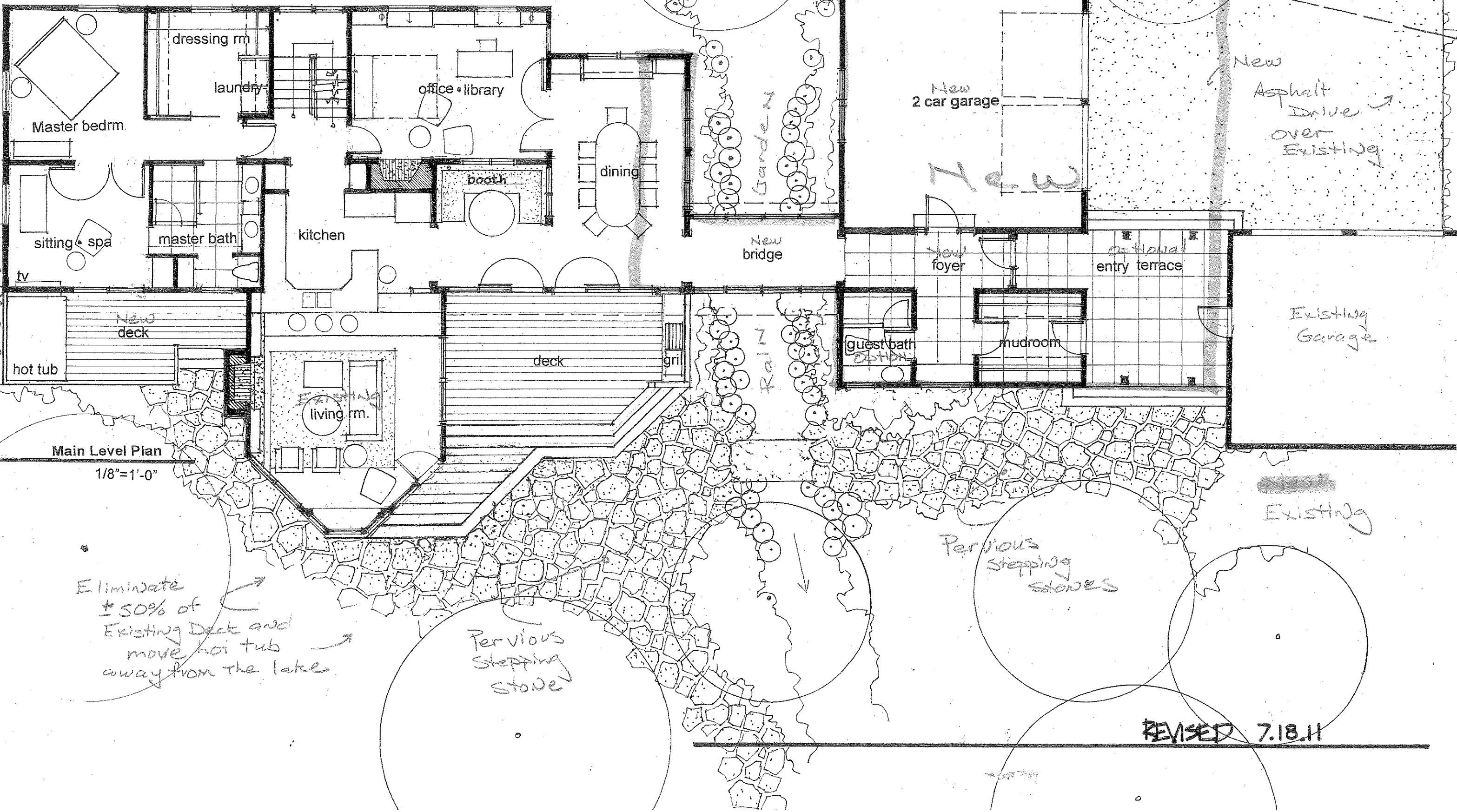
1" = 30'



1/2" = 1'-0"

East Elev. - Road Side

Option : MASTER BEDR.



New Direction of Rain off

New Asphalt Drive over Existing

New 2 car garage

New

New bridge

New foyer

Optional entry terrace

Existing Garage

guest bath optional

mudroom

Existing

Previous Stepping Stones

Previous Stepping Stones

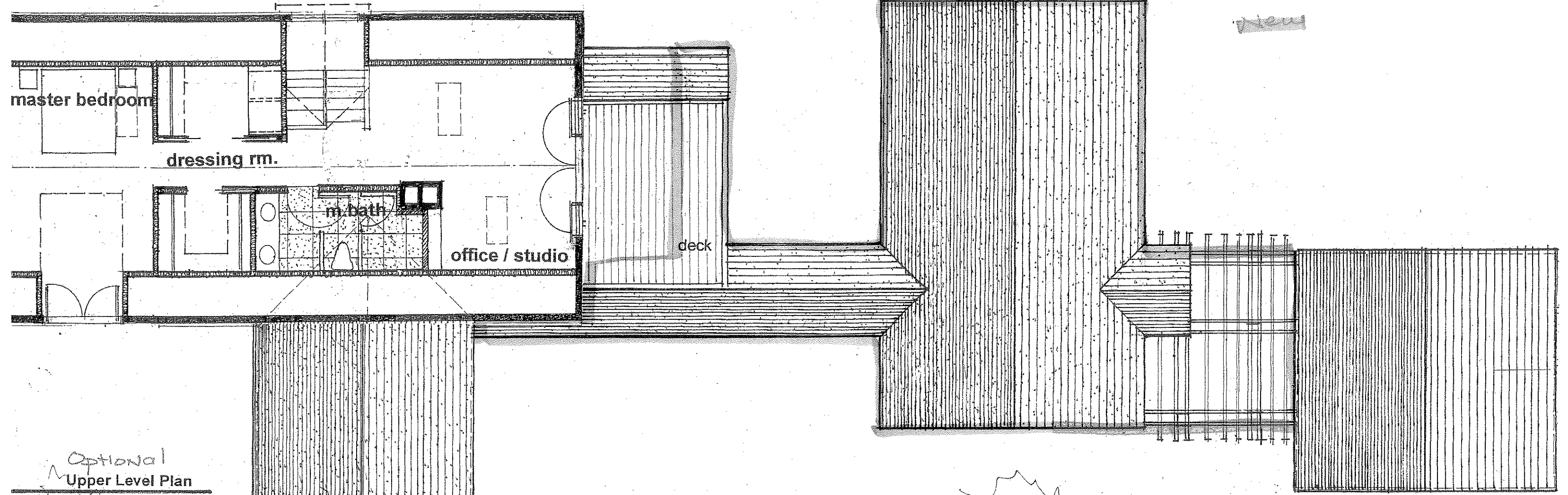
Eliminate ±50% of Existing Deck and move hot tub away from the lake

REVISED 7.18.11

Main Level Plan
1/8"=1'-0"

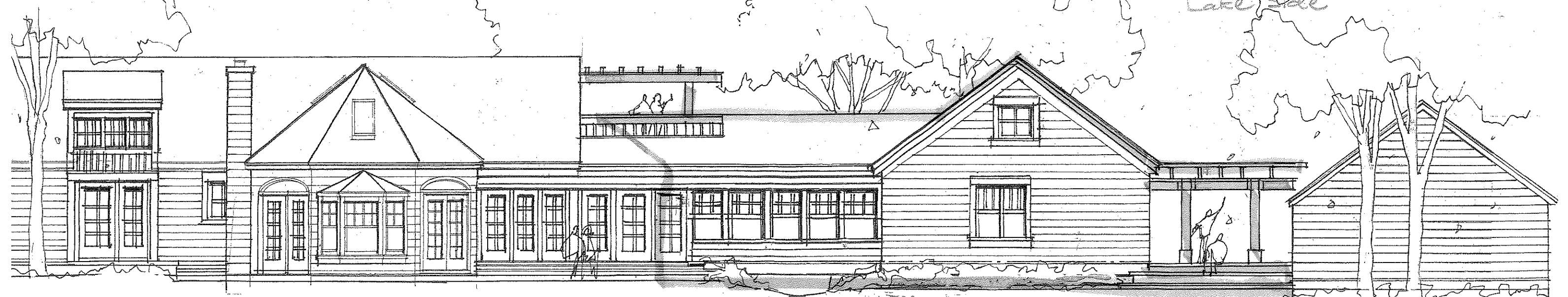
Option

Existing



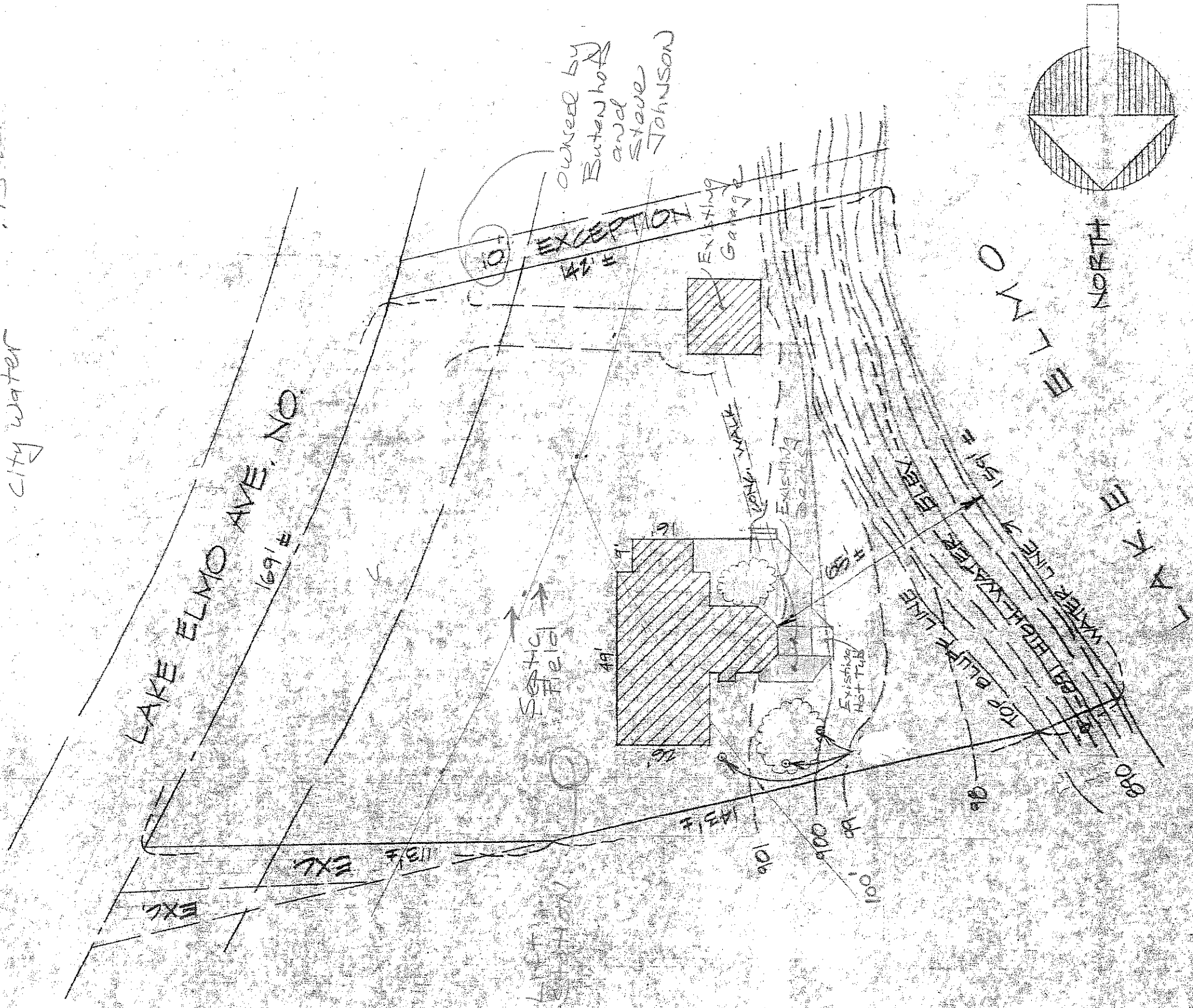
Optional
Upper Level Plan

Eliminate
Existing
Shed on
Lake Side



West Elevation - Lake Side

Existing Lot Size - 33,521 SF
City Water .75 acres



Existing

SITE PLAN

1" = 30'

.75 Acres 32,521 SF

Marion
Gunderson
Julie
Barn
Neighbor



Washington County
PUBLIC WORKS DEPARTMENT
SURVEY AND LAND MANAGEMENT DIVISION
14949 82nd Street North, P.O. Box 6
Stillwater, Minnesota 55082-0006
(651) 430-6876
surveyor@co.washington.mn.us
www.co.washington.mn.us

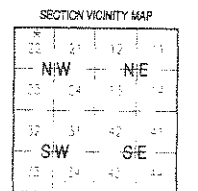
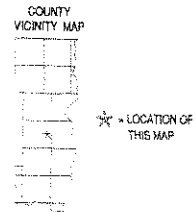
LEGEND
--- DNR PROTECTED WATERS
--- DNR PROTECTED WETLAND
--- DNR PROTECTED WATERCOURSE
--- MUNICIPAL BOUNDARY
--- PARK BOUNDARY

CONTOUR LEGEND
--- 10 FOOT INTERVAL CONTOUR
--- 2 FOOT INTERVAL CONTOUR
○ DEPRESSION
--- DASHED CONTOURS INDICATE QUESTIONABLE ACCURACY DUE TO GROUND VEGETATION
● SPOT ELEVATION

↑ CORNER
↑ STONE
↑ STATION
↑ NORTH
SCALE: 1 inch = 30 feet

SECTION-TOWNSHIP-RANGE INDEX

1402921	1302921	1802920
2302921	2402921	1902920
2602921	2502921	3002920



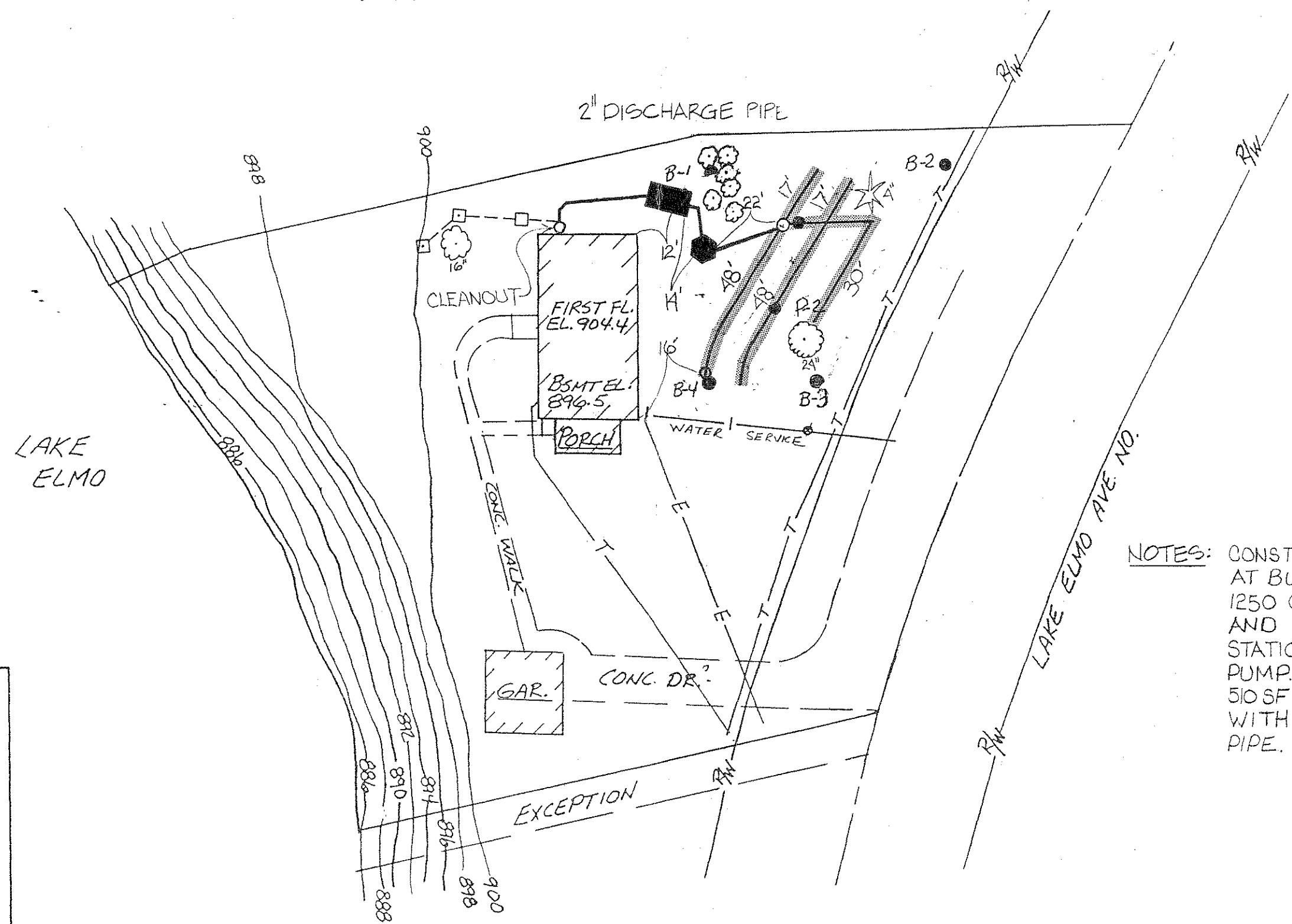
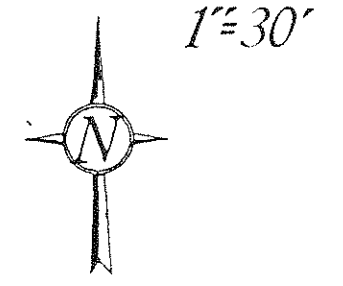
PROPERTY IDENTIFICATION NUMBER FORMAT (GEOCODE)

SECTION NUMBER	TOWNSHIP NUMBER	RANGE NUMBER	QUARTER	SUBDIVISION
00	00	00	00	0000

LAST FOUR DIGITS OF PROPERTY IDENTIFICATION NUMBER

THIS DRAWING IS THE RESULT OF A COMPILATION AND REPRODUCTION OF LAND RECORDS AS THEY APPEAR IN VARIOUS WASHINGTON COUNTY OFFICES. WASHINGTON COUNTY IS NOT RESPONSIBLE FOR ANY INACCURACIES. PROPERTY LINES AS SHOWN ARE FOR REFERENCE PURPOSES AND MAY NOT REPRESENT ACTUAL LOCATIONS.
MAP LAST UPDATED: January 26, 2011
NO ADDITIONAL CHANGES HAVE BEEN REPORTED TO DATE
DATE OF CONTOURS: April, 2009 DATE OF PHOTOGRAPHY: April, 2009

7340
2976 LAKE ELMO AVE.



NOTES: CONSTRUCTED CLEANOUT AT BUILDING. INSTALLED 1250 GAL. SEPTIC TANK AND A 500 GAL. PUMP STATION WITH A 1/3 HP PUMP. CONSTRUCTED 510 SF OF 3' WIDE TRENCHES WITH 2' OF ROCK UNDER PIPE.

LEGEND	
	- EX. SEPTIC TANK
	- EX. DRYWELL
	- EX. WELL
	- EX. DRAINFIELD
	- PROP. SEPTIC TANK
	- PROP. PUMP STATION
	- PROP. DRAINFIELD
	- PROP. DISTRIB./DROP BOX
	- PROP. 2" DISCHARGE PIPE
	- PERCOLATION TEST OR SOIL BORING LOCATION
	- PROP. MOUND SYSTEM

Planning Commission
Date: 8/8/11
Public Hearing
Item: 4c

ITEM: Hold a public hearing to consider an Interim Use Permit (IUP) application from Country Sun Farm and Greenhouses Inc to allow the sale of agricultural produce and Christmas trees at 11211 North 60th Street that were produced off site.

REQUESTED BY: Keith Bergmann on behalf of Country Sun Farm and Greenhouses Inc, Applicant

SUBMITTED BY: Kelli Matzek, Planner

SUMMARY AND ACTION REQUESTED:

The Planning Commission is asked to hold a public hearing to consider a request from Country Sun Farm and Greenhouses Inc. to allow the sale of agricultural produce and Christmas trees that were grown off site. The applicant is requesting the Interim Use Permit (IUP) have an ending date of 10 years from the date of adoption or upon sale of the property to an outside party.

ADDITIONAL INFORMATION:

- The Minnesota Department of Transportation has requested the applicants obtain a drainage permit from work done back in 2009 on the site.

OPTIONS

1. Recommend the City Council approve the requested IUP with Findings and Conditions outlined in the full staff report.
2. Recommend denial of the requested IUP request based on findings of fact (please cite).

STAFF RECOMMENDATION:

Recommend that the City Council approve the requested IUP for an Agricultural Sales Business with conditions outlined in the staff report.

ORDER OF BUSINESS:

- Introduction..... Kelli Matzek, Planner
- Report by staff Kelli Matzek, Planner
- Questions from the Commission Chair & Commission Members
- Applicant CommentsChair facilitates
- Questions of the Applicant Chair & Commission Members
- Open the Public HearingChair
- Close the Public Hearing.....Chair
- Call for a motion Chair Facilitates

- Discussion of Commission on the motion Chair Facilitates
- Action by the Planning Commission..... Chair & Commission Members

ATTACHMENTS (3):

1. Detailed staff report on the request.
2. Email and Letter from MnDOT
3. Applicant's submittals.

City of Lake Elmo Planning Department
Interim Use Permit Request

To: Planning Commission

From: Kelli Matzek, Planner

Meeting Date: 8-8-11

Applicant: Country Sun Farm and Greenhouses, Inc.

Representatives: Keith Bergmann

Location: 11211 Stillwater Boulevard North (Hwy 5)

Zoning: Agricultural (A)

Introductory Information

Application Summary: The applicant is seeking an interim use permit (IUP) to allow the sale of agricultural produce and Christmas trees that were produced off site.

Applicable Codes: **Section 154.019 Interim Use Permits.**
Outlines the general requirements for all interim permitted uses in Lake Elmo.
Section 154.033 Agricultural Zoning District.
(C) 1. Uses permitted by Interim Use Permit. *Agricultural Sales Businesses subject to performance standards outlined in Section 154.110.*

Findings & General Site Overview

Site Data: *Lot Size:* Approximately 21.5 acres (including road right-of-way for Highway 36)
Existing Use: Country Sun Farm and Greenhouses Operations
Existing Zoning: Agricultural (A)
Property Identification Number (PID): 01-029-21-22-0002

Application Review:

History: Prior to 2008, Lake Elmo regulations allowed agricultural uses such as greenhouses and the sale of produce grown on site.
In 2008, the City added Agricultural Sales Business (ASB) and Agricultural Entertainment Business (AEB) as conditional uses in certain zoning districts. The definitions for ASB and AEB stated the use was restricted to allow the sale of

produce produced on the premises. When the City was first setting the performance standards in 2008 when those categories of conditional uses were created, such language served to limit the scale of commercial activity.

In 2010, the City then amended codes to allow the sale of produce grown off site in Agricultural, Rural Residential and OP Zoning Districts. In addition, changes were made to required an interim use permit subject to performance standards instead of allowing the use outright.

**IUP Review
Criteria:**

Interim uses must be reviewed under both the general criteria for such as well as the specific criteria outlined for the requested use. Keep in mind that for these types of applications, the burden is on the City to show why the use should or should not be permitted. For the sale of produce grown off site, the following performance standards apply:

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

- Staff finds that this criteria is met.

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.*

- Staff finds that this criteria is met.

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.*

- Added as a condition of approval.

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

- Added as a condition of approval.

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

- Added as a condition of approval.

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

- The applicant has identified that the gross floor area of the existing greenhouse and sales building, where agricultural sales takes place, is 26,976 square feet in size. The sales area is where the agricultural products are also stored. Because this structure and the sale of agricultural produce existed prior to this ordinance, staff finds this criteria is met.

(cont.)

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.

- Staff finds this criteria is met.

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

- Although the property on which the sales building is located is on approximately 21 acres, the Country Sun Farm operations take place on over 40 acres. Staff is suggesting as a condition of approval, that the applicant maintain at least 40 acres for the agricultural sales business.

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.

- Country Sun Farm and Greenhouses has been in operation for many years and has an established wastewater handling system and well in place. Staff finds this criteria is met.

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

- The applicants are not proposing any additional buildings at this time. Staff finds this criteria is met.

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.

- Added as a condition of approval.

12. 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.

- Though the applicant may be over this allotment currently, they have also been in operation in this manner for a number of years. The applicants are not proposing any additional buildings, parking areas or other uses at this time.

13. Any activities that are defined as an Agricultural Entertainment Business shall require a separate Interim Use Permit.

- The applicants have received a Conditional Use Permit for an Agricultural Entertainment Business on this site.

14. Any exterior storage of equipment and materials other than the display of

(cont.)

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.

- Added as a condition of approval.

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

- Added as a condition of approval.

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).

- Added as a condition of approval.

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

- Added as a condition of approval.

18. The operator shall adhere to the general review criteria applicable to all Interim Use Permit applications.

- This is identified in the review criteria below.

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.

- The applicant is not requesting any additional structures at this time. The applicant is requesting an interim use permit to sell agricultural products grown off site such as flower and vegetable plants, pumpkins, squash, corn, vegetables and Christmas trees.

As mentioned, there are additional general review criteria required for all interim use permits.

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.

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 property is located along a major roadway – State Highway 36 which, in part, minimizes the impact due to the ability to minimize or in some cases eliminate traffic through residential areas. The applicants own 149 acres of which

(cont.) a portion of this is utilized for an approved Agricultural Entertainment Business. The applicants own land which is held in a conservation easement as a wide buffer to the nearest established neighborhood – St. Croix’s Sanctuary.

3. 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 its rural character, 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.

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

- The applicant has requested the Interim Use Permit terminate 10 years from the date on which the permit is granted or if the property is sold to an outside party, whichever is greater.

5. 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.

- Because the applicant is not requesting to add any additional structures at this time, staff is not recommending any financial surety be requested.

6. 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 fees due.

Resident Concerns: Staff is not aware of any resident concerns surrounding the requested interim use permit.

Other Agency Reviews:

- The VBWD and the DNR did not have any comment for or against the application.
- The Minnesota Department of Transportation provided a letter stating a drainage permit from MnDOT was never received. The letter is attached to this packet and a condition of approval is suggested.

Conclusion:

The applicant is seeking approval of an IUP for an Agricultural Sales Business to allow the sale of produce brought in from off site.

**Commission
Options:**

The Planning Commission has the following options:

- A) Recommend approval of the Interim Use Permit request;
- B) Recommend denial of the Interim Use Permit request;

The 60-day review period for this application expires on 8-27-11, but can be extended an additional 60 days if more time is needed.

Staff Rec:

Staff is recommending approval of an Interim Use Permit to allow an Agricultural Sales Business which would allow bringing in produce as identified by the applicant for sale at 11211 60th Street North, based on the following:

1. The applicants meet the required standards set forth for both interim uses and Agricultural Sales Businesses with the exception of existing structures which were permitted or have existing for a number of years.

With the following conditions:

- 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.
- All waste materials shall be enclosed in containers provided on the site, and shall not generate any nuisance impacts on adjacent properties.
- All sidewalks, roadways, and parking areas shall be treated as necessary to eliminate dust nuisance impacts on adjacent properties.
- 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.
- 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.
- There shall be a minimum buffer of 100 feet between any sales areas or sales buildings and any adjacent residential property lines.
- 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).

- Trash containers must be located inside or screened in an acceptable manner.
- The Interim Use Permit is to allow the sale of agricultural products that were grown off site, which would include flower and vegetable plants, pumpkins, squash, corn, vegetables, and Christmas trees. Any other items wishing to be sold that are not otherwise grown on site or considered an ancillary item shall require an amendment to the Interim Use Permit.
- The Interim Use Permit shall expire on August 23, 2021 or at such time as the property on which this Interim Use Permit applies (PID: 01-029-21-22-0002) is sold to an outside party or at such time as the total property utilized for the Country Sun Farm and Greenhouse company is less than 40 acres. At such time as this IUP expires, an applicant may request an extension.

***Approval Motion
Template:***

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

I move to recommend approval of the requested IUP based on the findings cited by staff in the report with conditions (and others as you deem appropriate).

***Denial Motion
Template:***

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

Move to recommend denial of the requested IUP based on the findings of fact...(please site reasons for the recommendation)

cc: Keith Bergmann, Applicant

Kyle Klatt

From: Goff, William (DOT) [william.goff@state.mn.us]
Sent: Wednesday, July 27, 2011 12:42 PM
To: Kyle Klatt
Cc: Craig, E.Buck (DOT); Fossand, Bryce (DOT); Sherman, Tod (DOT); Briese, Marc (DOT)
Subject: Country Sun Farm and Garden Center - Interim Use Permit
Attachments: 20110727124135669.pdf

Dear Kyle,

As a follow up to the Interim Use Permit application from Country Sun Farm and Garden Center, please be advised that our comments from their conditional use permit back in 2009 are still applicable (see attached). It is important to highlight that according to our records, the property owners never obtained a drainage permit from Mn/DOT for the improvements back in 2009. Therefore, your assistance in insuring that the petitioner gets any and all necessary permits would be very much appreciated.

If you have any questions, please do not hesitate to contact me at (651) 234-7797.

Sincerely,

William Goff
Mn/DOT Senior Planner



Minnesota Department of Transportation

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

September 15, 2009

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

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

Dear Mr. Klatt:

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

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

Water Resources:

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

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

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

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

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

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

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

Permits:

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

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

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

Mn/DOT document submittal guidelines require either:

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

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

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

Sincerely,

Jon P. Solberg
Senior Planner



Copy via Groupwise to:

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

COUNTRY SUN FARM & GREENHOUSES INC.

5500 Lake Elmo Avenue North
Lake Elmo, Minnesota, 55042
Phone (651) 351-5139
Cell (651) 399-7423
Keithbergmann@msn.com

June 29, 2011

City of Lake Elmo
3800 Laverne Ave. N.
Lake Elmo, Mn. 55042

RECEIVED

JUN 29 2011

Dear Ms. Matzek,

In response to your letter March 15, 2011 I submit the following information:

The proposed event and time frame that will terminate the Interim Use Permit, and require a new permit application, would be upon sale of the property to an outside party, or ten years from the adoption date of the permit.

The peak traffic count for the site shall not exceed 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. With the base daily trip generation established at 180 vehicle trips per day for every 40 acres. The property at this site is 149 acres.

Also enclosed are 3 maps of the site:

On Map #1, the area highlighted in blue represents the current greenhouse and sales building where agricultural sales take place. This sales area is also where agricultural products brought in from off site will be stored and sold from. This sales area is 26,976 sq. ft. and was previously constructed and approved. It also includes a greenhouse of 1,440 sq. ft. used solely for growing and holding product, with no sales activity. The area highlighted in red represents the 149 acres of property at this site.

On Map #2, the area highlighted in orange depicts the driveway access from Lake Elmo Avenue to the West, and Highway 36 to the North, where agricultural products will be brought in from off-site. It also depicts the parking areas for customers. This highlighted area is 131,820 sq. ft. and holds 244 parking spaces, and was previously constructed and approved. This is also the parking area previously established for the Ag. Entertainment Business.

On Map #3, the relative square footages, and uses of buildings on the site are given.

No landscaping to this site is being proposed.

Also included with this letter is a list of property owners within 350 feet of the subject property.

Finally, copies of deeds for the property are included.

Thank you for your consideration in this matter, and please let me know if you need any more information to go forward with this Interim Use Permit application.

Sincerely,

A handwritten signature in cursive script that reads "Keith Bergmann". The signature is written in black ink and has a long, sweeping horizontal line extending to the right.

Keith Bergmann
Country Sun Farm & Greenhouses Inc.

RECEIVED

MAR -4 2011

Fee \$ 250.00

City of Lake Elmo
DEVELOPMENT APPLICATION FORM

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

IUP - Ag Sales & Entertainment

APPLICANT: Keith Bergmann 5833 Lake Elmo Ave. N. 55042
(Name) (Mailing Address) (Zip)

TELEPHONES: 651-357-5139 651-439-4156 651-399-7423 651-351-3172
(Home) (Work) (Mobile) (Fax)

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

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

PROPERTY LOCATION (Address and Complete (Long) Legal Description): Country Sun Farm and Greenhouses Inc. 11211 N. 60th street, Lake Elmo, MN. 55042

DETAILED REASON FOR REQUEST: SEE ATTACHED

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

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

Keith Bergmann 3/4/11
Signature of Applicant Date

Signature of Applicant Date

Country Sun Farm and Greenhouses Inc. has operated within the City of Lake Elmo in one form or another since 1978, and since 1986 at its current greenhouse and sales area along the south side of highway 36 near Lake Elmo avenue. Since its inception it has operated under various special use and conditional use permits issued by the City of Lake Elmo. Its most current Conditional Use Permit is for an Agricultural Entertainment Business. At the time this current CUP was granted, the definition of Agricultural Sales Businesses, a division of an Agricultural Entertainment Business, only allowed for products to be sold which were grown on the premises, and did not allow an Agricultural Sales Business to sell products produced off site. Under the new definition of an Agricultural Sales Business with an Interim Use Permit, sales of products produced off the premises is allowed.

Country Sun Farm and Greenhouses Inc. has always sold agricultural products which include flowering and vegetable plants, pumpkins, squash, corn and other vegetables, and Christmas trees. In keeping with the new definitions of an Agricultural Sales Business, Country Sun Farm and Greenhouses Inc. is seeking an Interim Use Permit which would allow for agricultural products which would include; flower and vegetable plants, pumpkins, squash, corn, vegetables, and Christmas tress produced off the premises to be allowed to be sold at its current facility.

RECEIVED

MAR -4 2011

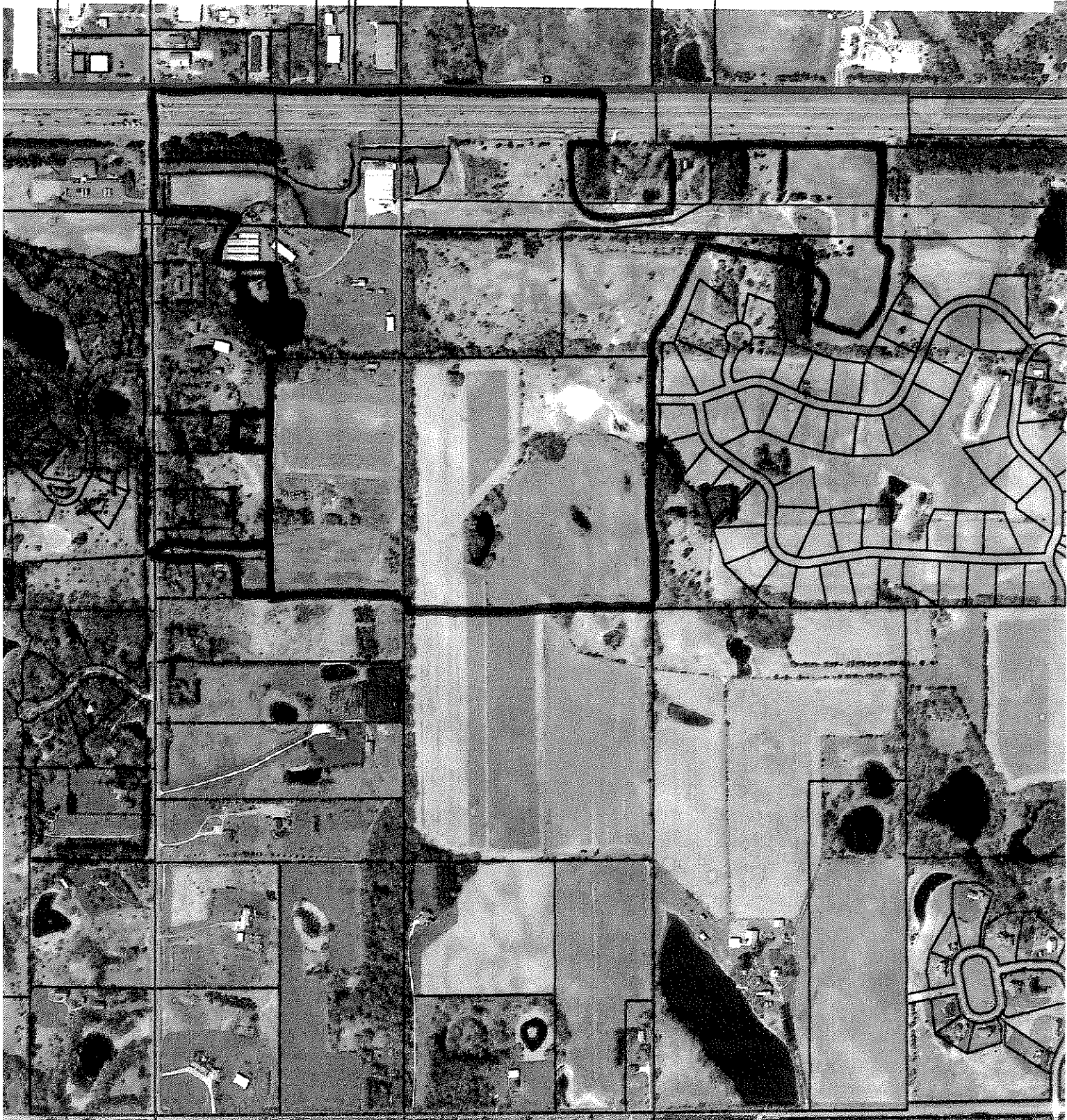


Map 1



Map #2

N
↑



Map #3



Poly-Zu shelters 358 sq. Ft.

Hay Barn 240 ft

Manure House 374 sq. Ft.

100 sq. Ft.

432 sq. Ft.

Tractor Booths

450 sq. Ft.

260 sq. Ft.

384 sq. Ft.

168 sq. Ft.

2304 sq. Ft.

Animal/Farm Buildings

1440 sq. Ft.

Greenhouse
Growing range
17,400 sq. Ft.

Pile Barn/Shop
5600 sq. Ft.

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

ORDINANCE NO. 08-031-A

**AN ORDINANCE TO AMEND AGRICULTURAL BUSINESS DEFINITIONS
AND REGULATIONS**

FINDINGS:

1. Under the Municipal Planning Act and the Metropolitan Land Use Planning Act, a central and required purpose of a zoning ordinance is to give effect to a city's comprehensive plan.
2. According to the City's Comprehensive Plan, the RAD land use designation "represents low density semi-rural residential development. Working farms, Alternative Ag uses, single family detached residences, and limited life cycle housing." Most of the City's outer areas are guided in this fashion. This includes areas that are zoned Agriculture, Rural Residential, and Open Space.
3. By contrast, around the City's "village center" is an area with a "Commercial" land use designation.
4. Commercially-zoned areas within the City include areas that are zoned General Business, General Business Park Holding, General Business Commercial Holding, General Business Sewered Residential Holding, Village Residential General Business Holding, Convenience Business, and Limited Business.
5. The Land Use Plan chapter of the City's Comprehensive Plan places special emphasis on three precepts, among them "the City's desire to preserve its rural character, open space, and green corridors," and "the City's desire to retain its identity and sense of community by preserving the historic village center." It further states that the Plan "supports a community focused from its village core out, rather than a lock step continuation of urbanization from the community borders."
6. These aspects of the City's Comprehensive Plan are more likely to be achieved if the zoning ordinance regulates commercially-related land uses in Agriculture, Rural Residential, and Open Space districts so as to further the following objectives:
 - a. controlling or mitigating the impact on other properties or the environment,

- b. ensuring that the scale of the business does not exceed what is compatible with a rural or semi-rural setting,
 - c. ensuring that adequate space is available, on site, for such operations,
 - d. ensuring that customers attracted to such business, including their children, are not unreasonably subjected to risks;
 - e. ensuring that such uses do not present an added risk of disease;
 - f. insuring that the acreage of the site is sufficiently large for a traditional agricultural use; and
 - g. otherwise preserving the rural character of Agriculture, Rural Residential, and Open Space districts.
7. The current definitions of Agricultural Sales Business (“ASB”) (and, indirectly, of Agricultural Entertainment Business) (“AEB”) restrict produce sales by those who hold conditional use permits for such uses to sales of produce that is produced on the premises. When the City was first setting the performance standards in 2008 when those categories of conditional uses were created, such language served to limit the scale of commercial activity by those property owners who complied with that limitation. If the City removes that limitation, but leaves the remaining performance standards unchanged, the City’s ability to achieve the objectives described above will be threatened.
8. If land with a rural zoning designation cannot be used in an economically-beneficial fashion, that will increase the likelihood that the property owner will press the City to rezone the property for rezoning to a non-rural designation. For this reason, the City finds that the goal of preserving the rural character of areas guided and zoned for rural uses is best accomplished if the City’s regulation of commercially-related land uses in Agriculture, Rural Residential, and Open Space districts is not overly restrictive.
9. The City is changing, and will continue to change, as expected and unexpected opportunities and challenges emerge. In particular, the City expects that certain areas with rural zoning designations, or areas adjacent to them, will eventually be converted to more intensive uses. Because of those changes, restrictions on commercially-related land uses in a rural residential that are appropriate today may be less reasonable in the future. The authority provided by the Minnesota Legislature for cities to issue interim use permits (IUPs) is a sound planning tool to address this dynamic, and is generally more effective than classification of such uses as permitted or conditional uses.

10. The objective of controlling or mitigating the impact on other properties or the environment is served by requiring performance standards that limit the floor area that can be devoted to sales activities, require compliance with the City Code's parking requirements for retail sales activities, require planned and designed on-site wastewater handling systems that are approved by the City or its designated responsible authority, limit trip generation related to the underlying zoning (both on an average basis and as a reasonable multiple of that figure for peak periods), set a maximum impervious coverage limit that keeps such land uses from unreasonably adding to the runoff appropriate for rural areas and rural stormwater systems, and require a buffer area beside any adjacent residential property lines.
11. The objective of ensuring that the scale of the business does not exceed what is compatible with a rural or semi-rural setting is served through such floor area requirements, trip generation limitations, and limitations on impervious coverage.
12. The objective of ensuring that adequate space is available, on site, for such operations, is served by requiring a minimum lot size for any agricultural sales business.
13. The objective of ensuring that customers attracted to such business, including their children, are not unreasonably subjected to risks is served by requiring compliance with parking requirements for retail sales activities, requiring planned and designed on-site wastewater handling systems that are approved by the City or its designated responsible authority, and limiting unscreened or inadequately screened exterior storage of equipment and materials.
14. The objective of insuring that the acreage of the site is sufficiently large for a traditional agricultural use is served through a minimum lot size for any agricultural sales business.
15. The objective of otherwise preserving the rural character of Agriculture, Rural Residential, and Open Space districts is served by the same restrictions, and by requiring that structures constructed for the agricultural sales business be consistent on design and appearance with other agricultural buildings in the area, and requiring screening mechanical equipment in certain settings.
16. As the text of the City's zoning ordinance has been revised over time, certain definitions have become obsolete or unnecessary, yet remain. Removing such definitions reduces the likelihood of confusion or misunderstanding.
17. Because a business that is not an ASB cannot satisfy the definition of an AEB, it is important that the ordinance clarify that an AEB must satisfy performance standards applicable to ASBs and AEBs. For the same reason, it is important that

the performance standards for ASBs and AEBs complement each other, and not contradict each other.

18. The added kinds of activities allowed for ASBs that are also AEBs pose additional challenges because of the size and the nature of the crowds that could be attracted to AEBs. Those challenges are best addressed by imposing additional requirements on AEBs related to direct access to a collector or arterial street, prohibition of the discharge of firearms, and requiring reasonable steps to prevent trespassing on adjacent properties.

Based upon the above Findings of Fact, which the City Council of the City of Lake Elmo hereby adopt, The City Council of the City of Lake Elmo does ordain:

Section 1. The City Council of the City of Lake Elmo hereby ordains that Section 11.01 (Definitions) is hereby amended to *add* the following definition:

GREENHOUSES. A building used for the growing of plants, all or part of which are sold at retail or wholesale.

Section 2. The City Council of the City of Lake Elmo hereby ordains that Section 11.01 (Definitions) is hereby changed to *amend or eliminate* the following definitions as shown:

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

~~COMMERCIAL FOOD PRODUCING FARM OPERATIONS. See FARM/RURAL.~~

FARMER. Person permanently residing on a tract of land of not less than ~~75~~ 10 acres in the city and who farms the land for a livelihood.

~~NATURE FARMS. The keeping of animals and/or the growing and keeping of agricultural products for the purpose of display to the public, not including the breeding and keeping of animals for boarding or sale. Examples of this use would include "petting~~

~~farms," or the display of unique horticulture. Retail or wholesale sales of any product are specifically excluded.~~

~~NURSERY, LANDSCAPE. A business growing and selling trees, flowering and decorative plants, and shrubs and which may be conducted within a building or without.~~

~~ROADSIDE SALES STAND. A structure used only for the display and sale of products, with no space for customers within the structure, on a seasonal basis.~~

WAYSIDE STAND. A temporary structure or vehicle used for the seasonal retail sale of agricultural goods, floriculture, and horticulture produced by the operator of the WAYSIDE STAND on site, which is clearly a secondary use of the premises and does not change the character thereof.

Section 3. The City Council of the City of Lake Elmo hereby ordains that Section 154.033 (Agricultural Use Regulations) subsections (A) and (B) are hereby amended as follows:

(A) Permitted uses and structures.

(1) Agriculture

(2) Farm, suburban or rural;

(32) Poultry facilities meeting state and federal regulations;

(43) Farm buildings;

(54) Farm drainage and irrigation systems;

(65) Forestry meeting state and federal regulations;

(76) One farm dwelling per farm (also see §§ 154.091 and 154.105);

(87) One non-farm dwelling per each 40 acres, or part of a dwelling on a prorated basis, not already containing a farm or non-farm dwelling, provided:

(a) The dwelling unit is located on a separate parcel of record in the office of the County Recorder and/or County Auditor, which shall be at least 1-1/2 acres in size;

(b) The parcel on which the dwelling unit is located must have at least 125 feet of frontage along a public street, be rectangular in shape and no dimension to be greater than 3 times the other; and

(c) The dwelling is separated by at least 300 feet from the nearest farm building.

~~(98)~~ Wayside stands;

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

(10) Joint ownership of property or ownership by association or rental for the purpose of providing private gardens, ~~or~~ forest plots, or subplots to its members or lessees.

(B) Uses permitted by conditional use permit.

(1) Greenhouses;

(2) Kennels;

(3) Stables;

(4) Commercial recreation of a rural nature, including outdoor target ranges;

(5) Agricultural service establishments primarily engaged in performing agricultural animal husbandry or horticultural services on a fee or contract basis, including sorting, grading, and packing fruits and vegetables for the owner, lessee, or sublessee; agricultural produce milling and processing for the owner, lessee, or sublessee; horticultural services; fruit picking; grain cleaning; veterinary services; boarding and training of horses;

(6) Open space development projects, as regulated by §§ 150.175 et seq.;

(7) Non-agricultural low impact uses pursuant to the standards described in division (F) of this section; and

~~(8)~~ Agricultural entertainment businesses subject to the following performance standards:

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

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

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

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

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

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

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

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

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

~~(j) Adherence to the general review criteria applicable to all CUP applications.~~

(Am. Ord. 97-57, passed 7-18-2000; Am. Ord. 97-191, passed 4-3-2007)

(C) Uses permitted by Interim Use Permit:

(1) Agricultural Sales Businesses subject to performance standards outlined in § 154.110; and

(2) Agricultural Entertainment Businesses subject to the performance standards outlined in § 154.111

(DE) Accessory uses and structures (see §§ 154.092 and 154.093).

(1) Uses and structures which are customarily accessory and clearly incidental and subordinate to permitted uses and structures as defined in § 11.01;

(2) Private garages, carports, screen houses, conservatories, playhouses, swimming pools and storage buildings, as defined in § 11.01, for use by occupants of the principal structures; and

(Am. Ord. 97-38, passed 11-17-1998)

- (3) Home occupations.

Section 4. The City Council of the City of Lake Elmo hereby ordains that Section 154.036 (Rural Residential Use Regulations) subsections (A), (B), (C), and (D) are hereby amended as follows:

- (A) Permitted uses and structures.

- (1) Agriculture

~~(2) One-family residential dwellings (also see §§ 154.091 and 154.105);~~

~~(3) Farm, suburban or rural within the limits defined in the performance standards for livestock;~~

- ~~(4) Wayside stands; and~~

~~(5) Agricultural sales businesses subject to performance standards outlined in § 154.110.~~

(B) Accessory uses and structures (also see §§ 154.092 and 154.093). Uses and structures which are customarily accessory and clearly incidental and subordinate to allowed uses and structures; accessory structures cannot exceed the size of the principal building.

- (C) Conditionally permitted uses.

- (1) Kennels;

- (2) Open space development as regulated by §§ 150.175 et seq.;

- (3) Home occupations; and

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

- (D) Uses permitted by Interim Use Permit:

~~(1) Agricultural Sales businesses subject to performance standards outlined in § 154.110; and~~

~~(2) Agricultural Entertainment Businesses subject to the performance standards outlined in § 154.111~~

Section 5. The City Council of the City of Lake Elmo hereby ordains that Section 150.178 (OP Use Regulations) subsections (A), (B) and (C) are hereby amended as follows:

(A) Permitted uses.

- (1) Single-family, detached;
- (2) Preserved open space;
- (3) Conservation easements;
- (4) Agriculture;
- (5) Suburban farms;
- (6) Private stables;
- (7) Single-family, attached;
- (8) Townhouses (no more than 25% in any development); and
- (9) Wayside stand.

(B) Accessory uses. Uses that are typically found accessory to a permitted use.

(C) Prohibited uses. All other uses are hereby prohibited.

Section 6. The City Council of the City of Lake Elmo hereby ordains that the City's Design and Performance Standards are hereby amended to incorporate the following additions and changes:

Current Sections 154.090 through 154.109 and their subdivisions are restated and incorporated herein without change.

Current Section 154.111 and its subdivisions are restated and incorporated herein as section 154.112

154.110 Agricultural Sales Businesses

Agricultural Sales Businesses shall be permitted as allowed upon the issuance of an interim use permit in agricultural and rural areas that are guided for Rural Agricultural

Density or future sewered development in accordance with the Comprehensive Plan. Agricultural Sales Businesses shall be subject to the following performance standards:

(A) Activities shall be limited to those listed within the definition for Agricultural Sales Business.

(B) 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-ways or easements.

(C) 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.

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

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

(F) The maximum gross floor area that can be devoted to sales activities is limited to 20,000 square feet.

(G) 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.

(H) The minimum lot size shall be 40 acres for any agricultural sales business.

(I) 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 sites shall be protected in the site plan design, and will only need to be used upon failure of a primary site.

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

(K) 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.

(L) 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.

(M) Any activities that are defined as an Agricultural Entertainment Business shall require a separate Interim Use Permit.

(N) 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 §150.001 through §150.003 of the City Code.

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

(P) 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).

(O) Trash containers must be located inside or screened in an acceptable manner.

(R) The operator shall adhere to the general review criteria applicable to all Interim Use Permit applications.

(S) 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.

154.111 Agricultural Entertainment Businesses

Agricultural Entertainment Businesses shall be allowed upon the issuance of an interim use permit in agricultural and rural areas that are guided for Rural Agricultural Density or future sewer development in accordance with the Comprehensive Plan. Agricultural Entertainment Businesses shall be subject to the following performance standards:

(A) An Agricultural Entertainment Business shall adhere to all performance standards as outlined in Section 154.110 for an Agricultural Sales Business

(B) 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;

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

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

Section 7. Adoption Date

This ordinance shall become effective immediately upon adoption and publication in the official newspaper of the City of Lake Elmo.

This Ordinance No. 08-031 was adopted on this 5th day of October 2010, by a vote of ___ Ayes and ___ Nays.

Mayor Dean Johnston

ATTEST:

Bruce Messelt
City Administrator

This Ordinance No. 08-031 was published on the ___ day of ____, 2010.

Planning Commission
Date: 8/8/11
PUBLIC HEARING
Item: 4d

ITEM: Conditional Use Permit Amendment: Rockpoint Church overflow parking lot expansion: PID Number 02-029-21-21-0003

SUBMITTED BY: Nick Johnson, Planning Intern

REVIEWED BY: Kyle Klatt, Planning Director

SUMMARY AND ACTION REQUESTED

The Planning Commission is being asked to consider a request from the Rockpoint Church, 5825 Kelvin Avenue North, for a Conditional Use Permit amendment to allow the expansion of an overflow parking lot on the eastern portion of their property in Lake Elmo. The proposed parking lot would provide 84 parking spots, and would primarily be used to accommodate additional parking needs during special events and holidays.

ADDITIONAL INFORMATION:

The attached Staff report includes a detailed review of the application along with a Staff recommendation.

RECOMMENDATION:

Staff is recommending that the Planning Commission recommend approval of the request from the Rockpoint Church to construct an overflow parking lot at 5826 Kelvin Avenue North, provided the following conditions are met:

1. The applicant must obtain a permit from the Valley Branch Watershed District prior to construction.
2. The applicant shall negotiate for an easement across the northern portion of Outlot A in the location of the proposed 16" Watermain.
3. The applicant shall provide a letter of credit in the amount of 125% of the cost of paving and landscaping to complete the overflow parking lot.
4. The applicant shall provide additional year-round screening with evergreen trees to shield the future residential development to the South of the overflow parking lot.
5. The applicant shall provide an erosion control plan, a landscaping plan, as well as specify the proposed material for the parking lot, per the City Engineer's request.

ORDER OF BUSINESS:

- Introduction..... Planning Intern
- Report by staff Planning Intern
- Questions from the Commission Chair & Commission Members

- Applicant CommentsChair facilitates
- Questions of the Applicant Chair & Commission Members
- Open the Public HearingChair
- Close the Public Hearing.....Chair
- Call for a motion Chair Facilitates
- Discussion of Commission on the motion Chair Facilitates
- Action by the Planning Commission..... Chair & Commission Members

ATTACHMENTS:

1. Staff Report
2. Application Form
3. Site Plans
4. Final Plat of Hidden Meadows 1st Addition
5. Review Letter from Focus Engineering, Inc.
6. Review Letter from Valley Branch Watershed District
7. Site Photographs
8. Aerial Image of Site
9. Letter from the Applicant detailing the need for additional parking space

City of Lake Elmo Planning Department
Conditional Use Permit Amendment Request

To: **Planning Commission**

From: Nick Johnson, Planning Intern

Meeting Date: **8/8/2011**

Applicant: **Rockpoint Church**

Owner: Rockpoint Church

Location: **5825 Kelvin Ave. N.**

Zoning: PF – Public and Quasi-Public Open Space/Public Facilities

Introductory Information

Application Summary:

The City of Lake Elmo has received a request from the Rockpoint Church, 5825 Kelvin Avenue North, for a Conditional Use Permit amendment to allow the expansion of the parking lot on the eastern portion of their property in Lake Elmo. The proposed overflow parking lot would create additional parking on the eastern end of the property, and would be used to serve overflow parking needs for holidays, special events, and other times when the church is at or near capacity.

Property Information:

Rockpoint Church is located to the East of the intersection of Keats Avenue North and 59th Street North in the Northern area of Lake Elmo. It was established within what was formerly known as the Deer Glen subdivision, and currently platted as Hidden Meadows of Lake Elmo. The site is zoned PF- Public and Quasi-Public Open Space, and is 20 acres in size. Under the PF designation, Rockpoint Church would be classified as a “place of worship” in accordance with the general City Code. In the PF zoning district, this use is permitted as a Conditional Use.

The applicant has provided a site building plan showing the proposed overflow parking lot, creating an additional 84 parking spots. According to the site plan, the proposed parking lot is 90’ from the 150’ buffer width setback for impervious surface, as required of sites between 10 and 20 acres within the PF Zoning District. In addition, construction of the additional parking lot will not increase the amount of allowable impervious surface over the 35% threshold for sites ranging from 10-20 acres in size.

Rockpoint Church was proposed as part of a larger residential subdivision. The preliminary plat was approved in 2006 for the subdivision. The Church planned to submit a final plat for residential area sometime after construction of the Church. Following construction of the Church, the City has since granted the applicant two extensions for submitting the final plat of the residential area, first in 2007, and second

in 2008. The applicant now has until January, 2013 to submit a final plat of the residential area.

Applicable Codes:

Section 154.063 PF – Public and Quasi-Public Open Space

(B) *Uses allowed by conditional use permit*

(2) Places of Worship

(E) *Minimum District Requirements*

(2) Maximum lot area, buffer width and impervious coverage shall be in compliance with the following table:

Section 154.018 Conditional Use Permits.

(A) Granting/Denial. Outlines the general requirements for all conditionally permitted uses in Lake Elmo.

(K) Amendment. In accordance with Section 154.018 K of the Zoning Ordinance, an amended conditional use may be administered in a manner similar to that required for a new permit.

Section 154.095 Off-Street Parking

(A) *General Provisions*

7. *Use of parking area.* Required off-street parking space in any district shall not be utilized for open storage of goods or for the storage of vehicles which are inoperable, for sale, or for rent.

9. *Surfacing and drainage.*

(B) *Design and maintenance of off-street parking area.*

6. *Planting requirements with parking and vehicular use areas.*

Section 150.020 Screening

(B) *Business, industrial screening.* Where any business or industrial use (structure, parking, or storage) is adjacent to property zoned or developed for residential use, that business or industry shall be screened along the boundary of the residential property. Screening shall also be provided where a business, parking lot, or industry is across the street from a residential zone, but not on the side of a business or industry considered to be the front.

Findings & General Site Overview

Site Data:	Lot Size: 20 acres
	Existing Use: Place of Worship
	Existing Zoning: PF – Public and Quasi-Public Facilities
	Property Identification Number (PID): 02-029-21-21-0003

Application Review:

Review Requirements	With this application, staff will be reviewing the proposed amendments to the site as a conditional use permit amendment and use the applicable criteria in the review.
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CUP Review:	<p>The two sections of code that contain requirements for this project include the PF District regulations and Conditional Use Permit section.</p> <p>First, the PF District requirements contain specific criterion for “Places of Worship”. These requirements, with Staff comments, are as follows:</p> <ul style="list-style-type: none"> • Direct access is provided to a public street classified by the Comprehensive Plan as major collector or arterial. <i>Kelvin Avenue North is classified as a local/municipal street, which connects to Keats Avenue North, which is classified as a major collector.</i> • No use may exceed 235 gallons wastewater generation per day per net acre of land. <i>The proposed building will not create any additional generation of wastewater from the site.</i> • No on-site sewer system shall be designed to handle more than 5,000 gallons per day. <i>The proposed parking lot will not require the expansion or alteration of any existing septic systems.</i> • Exterior athletic fields shall not include spectator seating, public address facilities or lighting. <i>There are no athletic fields on this site.</i> • No freestanding broadcast or telecast antennas are permitted. No broadcast dish or antenna shall extend more than 6 feet above or beyond the principal structure. <i>There are no broadcast antennas on the site.</i> <p>In addition to this information, it should be noted that an extension has been granted for the final plat of the 2nd addition of Hidden Meadows that allows Rockpoint Church to delay submitting a final plat for the residential portion of the subdivision until January, 2013, in accordance to Resolution 2007-097. Despite the fact that Hidden Meadows 2nd addition has not yet been platted, Staff feels that this issue is unrelated to the expansion of the parking lot on the eastern portion of the property. However, in order to allow the connection of the 16” Trunk Watermain necessary to loop the water system per the City’s 2030 Comprehensive Water System Plan in this area, Staff is suggesting that the applicants consent to grant an easement to the City over the northern section of Outlot A. With the completion of this condition, the Planning Commission and City Council would be able to move forward with this Conditional Use Permit amendment while securing the ability to build the Watermain should construction of the residential area be delayed.</p>
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It is also important to note that Rockpoint Church is requesting a 5 year window to leave the parking lot unpaved. This grace period would include waiting the same amount of time to install the necessary landscape islands required by City Code. Staff feels that this be an acceptable request given the condition that the applicant provides a letter of credit to the City in the amount of 125% of the paving and landscaping costs until all proposed work on the parking lot is complete.

Additionally, the City Engineer has outlined the same previous concerns in his report. In addition to the previously discussed conditions, the City Engineer also would like the applicant to submit an erosion control plan, a landscaping plan, as well as specify the proposed material for the parking lot. Finally, the City Engineer reiterated that the applicants would have to obtain a permit from the Valley Branch Watershed District.

**Conditional
Use Permit
Criteria:**

The City is required to make findings specific to the Conditional Use Permit. For these types of applications, the burden is on the City to show why the use should not be permitted due to impacts that cannot be controlled by reasonable conditions. These findings include the following:

1. Effects on the health, safety, morals, convenience, or general welfare of surrounding lands
2. Existing and anticipated traffic conditions including parking facilities on adjacent streets and land
3. The effect on utility and school capacities
4. The effect on property values of property in the surrounding area
5. The effect of the proposed use on the Comprehensive Plan

Given that congestion has previously occurred due to a lack of sufficient parking spaces, construction of the overflow lot should alleviate this ongoing problem that has previously occurred during larger events. In addition, the expansion of the overflow parking lot should not affect utility capacity or property values in the surrounding area. Finally, the proposed parking lot should have no affect on the Comprehensive Plan being that the property was rezoned PF according to Resolution 2005-27.

**Conditional
Use Permit:
Conclusions:**

Based on the above analysis of the review criteria in City Code, Staff recommends approval of the request by the Rockpoint Church, 5825 Kelvin Avenue North, for a Conditional Use Permit amendment to allow the construction of an overflow parking

lot on the eastern portion of their property based on the following:

- The proposed parking lot would have no impact on the Health, Safety, Morals, Convenience, General Welfare of Surrounding Lands.
- The proposed parking lot would alleviate ongoing incidents of congestion on nearby streets during special events and holidays.
- The use would have no effect on utility capacities.
- The proposed amendment would have no effect on property values of surrounding lands.
- The use would be consistent considering that the Rockpoint Church property has been rezoned Public/Semi-Public Facilities according to Resolution 2005-027, amending the Comprehensive Plan.

Resident Concerns: Staff has not received any feedback from neighboring property owners regarding the proposed Conditional Use Permit amendment. This action requires a public hearing to be conducted by the Planning Commission at which time members of the public may address the Commission regarding this application.

Additional Information: The Valley Branch Watershed District has reviewed the proposed site plans and found that the parking lot expansion will require a VBWD permit due to the fact that the project involves the construction of 36,500 square feet of additional impervious surface. Therefore, from the perspective of the Staff, obtaining this permit should be included as a condition of approval.

The Lake Elmo Fire Chief had no concerns or comment regarding this proposal.

Conclusion:

The Rockpoint Church, 5825 Kelvin Avenue North, has applied for a Conditional Use Permit amendment to allow the construction of a new overflow parking lot on the eastern portion of their property in Lake Elmo. The proposed parking lot would be used during special or larger events when additional parking beyond the primary parking lot is needed.

Commission Options: The Planning Commission has the following options:
A) Recommend approval of the conditional use permit amendment request;
B) Recommend denial of the conditional use permit amendment request.

The 60-day review period for this application expires on September 27, 2011, but can be extended an additional 60 days if more time is needed.

Staff Rec: Staff is recommending approval of the request to amend a conditional use permit for

the Rockpoint Church at 5825 Kelvin Avenue North based on the reasons stated above with the following conditions:

1. The applicant must obtain a permit from the Valley Branch Watershed District prior to construction.
2. The applicant shall agree to grant an easement to the City of Lake Elmo across the northern portion on Outlot A in the location of the proposed 16" Watermain.
3. The applicant shall provide a letter of credit in the amount of 125% of the cost of paving and landscaping to complete the overflow parking lot. This letter of credit shall be returned to the Church upon completion of the improvements.
4. The applicant shall provide additional year-round screening with evergreen trees to shield the future residential development to the South of the overflow parking lot.
5. The applicant shall provide an erosion control plan, a landscaping plan, as well as specify the proposed material for the parking lot, per the City Engineer's request.

***Denial
Motion***

To deny the request, you may use the following motion as a guide:

Template:

I move to recommend denial of the request by the Rockpoint Church to amend a conditional use permit...(please site reasons for the recommendation)

***Approval
Motion***

To approve the request, you may use the following motion as a guide:

Template:

**I move to recommend approval of the request by the Rockpoint Church to amend a conditional use permit based on the findings provided in the staff report...(or cite your own)
...with the conditions outlined in the staff report.**

cc: Gary Van Beek, Rockpoint Church

RECEIVED

MAY 17 2011

Fee \$ 1000.00

City of Lake Elmo
DEVELOPMENT APPLICATION FORM

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

APPLICANT: Rockpoint Church 5825 Kelvin Ave. N. Lake Elmo, Mn. 55042
(Name) (Mailing Address) (Zip)

TELEPHONES: 651-770-3172 651-770-3476
(Home) (Work) (Mobile) (Fax)

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

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

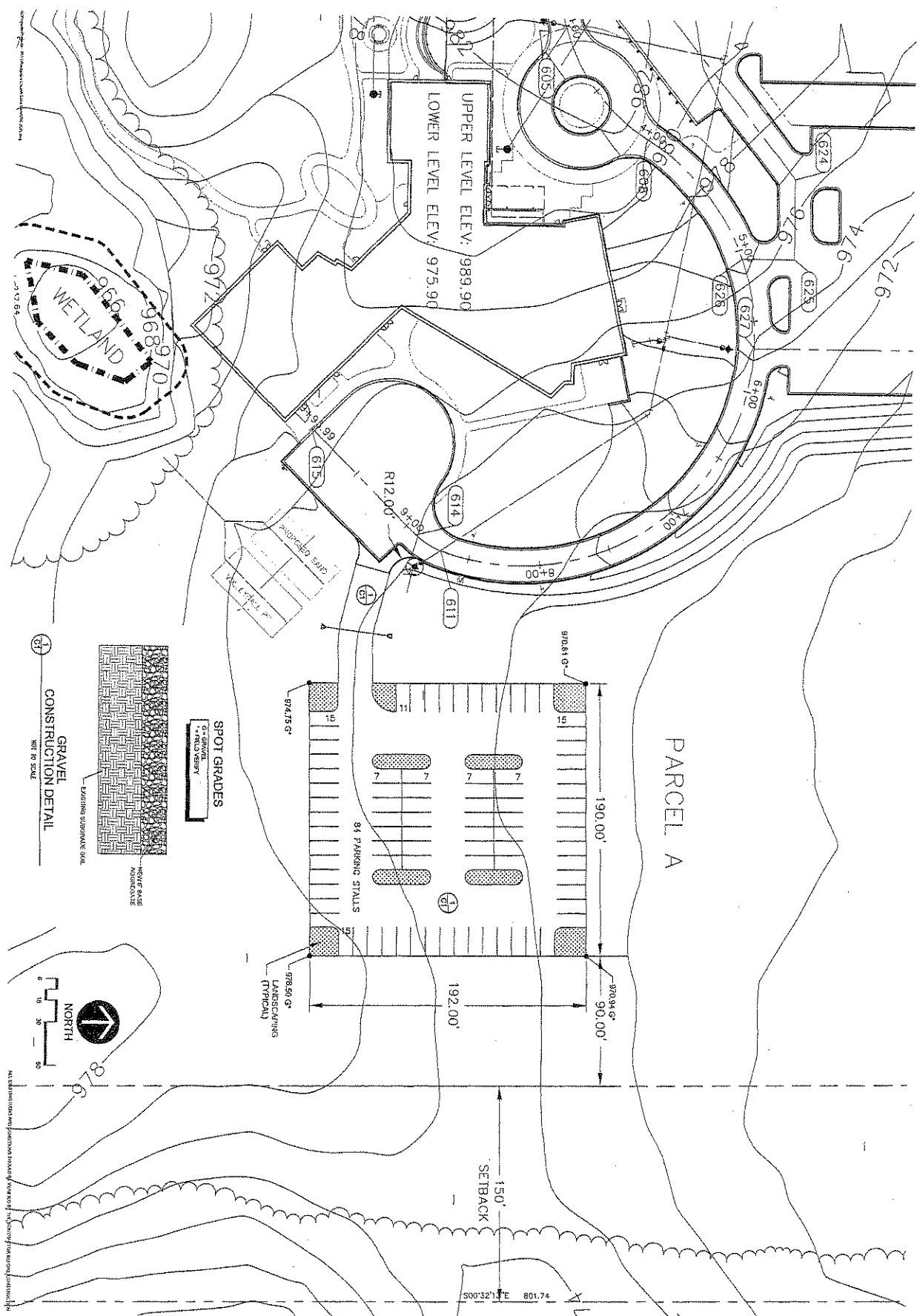
PROPERTY LOCATION (Address and Complete (Long) Legal Description):
outlot A, Hidden Meadows of Lake Elmo
outlot B, " " "
lot 1 Block 1, " " "

DETAILED REASON FOR REQUEST:
need for overflow parking space

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

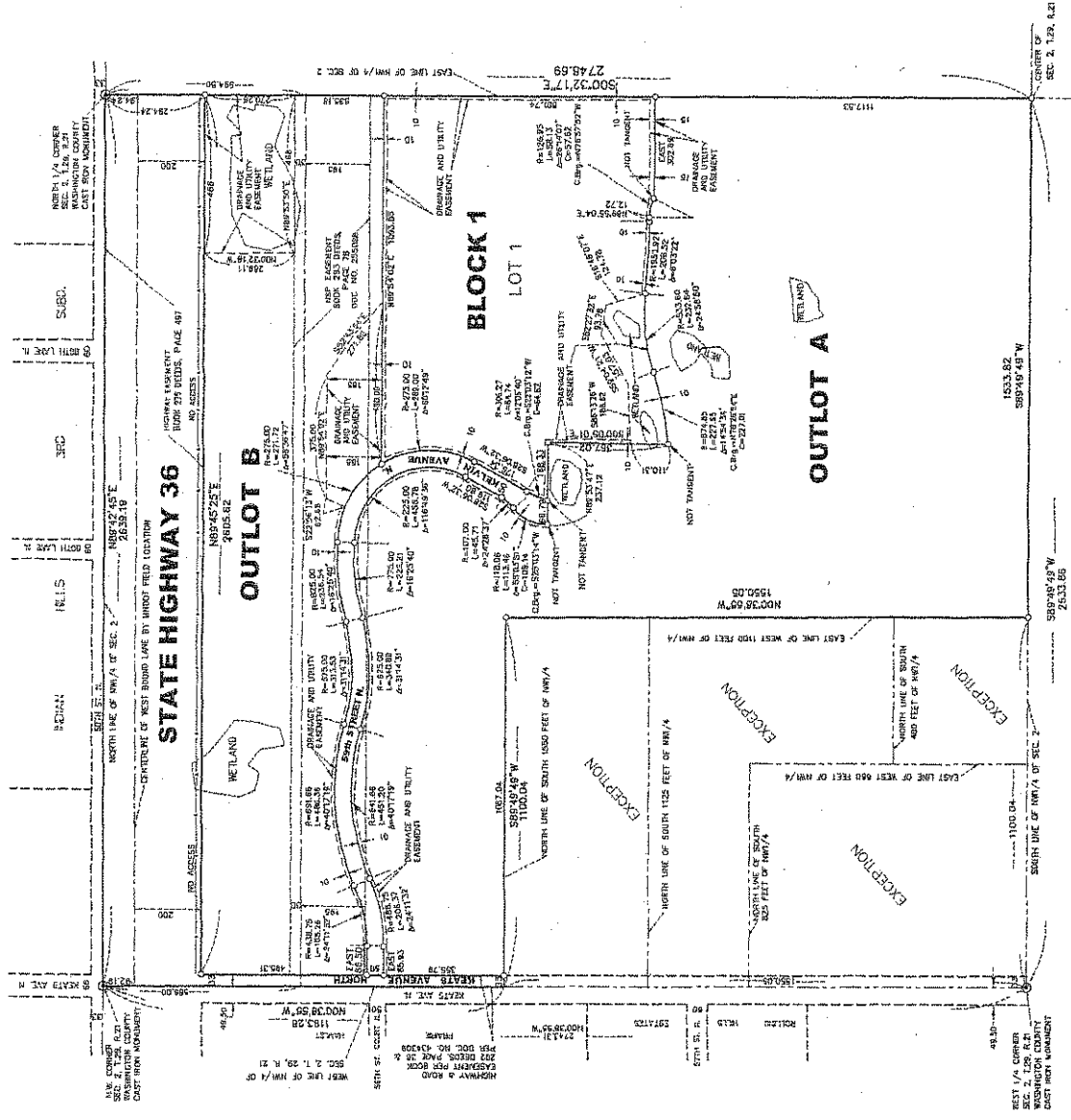
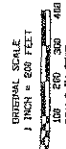
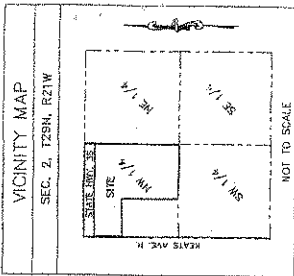
In signing this application, I hereby acknowledge that I have read and fully understand the applicable provisions of the Zoning and Subdivision Ordinances and current administrative procedures. I further acknowledge the fee explanation as outlined in the application procedures and hereby agree to pay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

[Signature] _____ Date _____
Signature of Applicant Date



Sheet C1 1 of 1	LAYOUT	Project: 2011 PARKING LOT EXPANSION Client: ROCKPOINT CHURCH Date: 07/21/11	Drawn: [Blank] Checked: [Blank] Date: [Blank]	Project: 2011 PARKING LOT EXPANSION Client: ROCKPOINT CHURCH Date: 07/21/11	Project: 2011 PARKING LOT EXPANSION Client: ROCKPOINT CHURCH Date: 07/21/11	Larson Engineering, Inc. 3524 Labore Road White Bear Lake, MN 55110 651.481.9120 (F) 651.481.9201 www.larsoneng.com
		2011 PARKING LOT EXPANSION ROCKPOINT CHURCH			ROCKPOINT CHURCH 5825 KELVIN AVENUE NORTH LAKE ELMO, MN 55042	

HIDDEN MEADOWS OF LAKE ELMO



LEGEND

- BENTLEY A SET 1 INCH X 1/4 HIGH IRON PIPE MONUMENT MARKED WITH A PLASTIC CAP INScribed "RLS 10832C" UNLESS SHOWN OTHERWISE
- DENOTES NO ACCESS

NOTES

- 1) ORIENTATION OF THIS SECTION CENTERED AS SHOWN ON THE NORTH LINE OF THE NORTHEAST QUARTER OF SEC. 2, T29N, R21W, WHICH BEARS NORTH 88 DEGREES 42 MINUTES 45 SECONDS EAST.



FOCUS ENGINEERING, inc.

MEMORANDUM

August 4, 2011

Cara Geheren, P.E. 651.300.4261

Jack Griffin, P.E. 651.300.4264

Ryan Stempski, P.E. 651.300.4267

To: Nick Johnson, Planning Intern

RE: Rock Point Church

CC: Kyle Klatt, Planning Director

Parking Lot Expansion

From: Ryan Stempski, P.E.

Lake Elmo, MN

We have reviewed the C.U.P. application for the parking lot expansion at Rock Point Church received from the Kyle Klatt on July 26, 2011. The C.U.P. application included an aerial drawing showing the location of the proposed overflow parking lot and an 11X17 site plan of the proposed parking lot.

The following comments must be addressed prior to engineering approval of this application:

- 1) The proposed material to construct the parking lot should be specified on the plan.
- 2) A typical section of the parking lot must be provided on the plan.
- 3) A landscaping plan must be provided to show the type and location of proposed trees, plants, and vegetative cover.
- 4) An erosion control plan must be provided.
- 5) It is our understanding that the applicant is proposing to leave the parking lot gravel for a specified time prior to paving and installing the landscape islands. It is our recommendation that the applicant provide a letter of credit in an amount sufficient to cover 125% of the paving and landscaping costs until all proposed work is complete.
- 6) A permit from the VBWD is required.
- 7) An easement must be negotiated with the property owner(s) of Rock Point Church to allow the connection of the 16" Trunk Watermain necessary to loop the water system per the City's 2030 Comprehensive Water System Plan.

Should you have any questions please contact me at (651) 300-4267.

Sincerely,

Ryan W. Stempski, P.E.
Principal / Municipal Engineer

Cc: Jack Griffin, P.E., City Engineer

July 27, 2011



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

Re: 5825 Kelvin Avenue North, Rockpoint Church Overflow Parking Lot, Conditional Use Permit

Dear Kyle:

Thank you for submitting information regarding the proposed overflow parking lot at Rockpoint Church. On behalf of the Valley Branch Watershed District (VBWD), I have reviewed the information and this letter provides my comments.

The proposed project involves constructing approximately 36,500 square feet of new impervious surface. Therefore, the project requires a VBWD permit. Please instruct the owner to apply for a VBWD permit. Permit submittal materials are posted on the VBWD's website at <http://www.vbwd.org/permitting.htm>. Once a VBWD permit application is submitted, I will review the project for conformance to the VBWD Rules and Regulations.

If you have any questions, please contact me at 952-832-2622.

Sincerely,

A handwritten signature in black ink that reads "John P. Hanson". The signature is written in a cursive style.

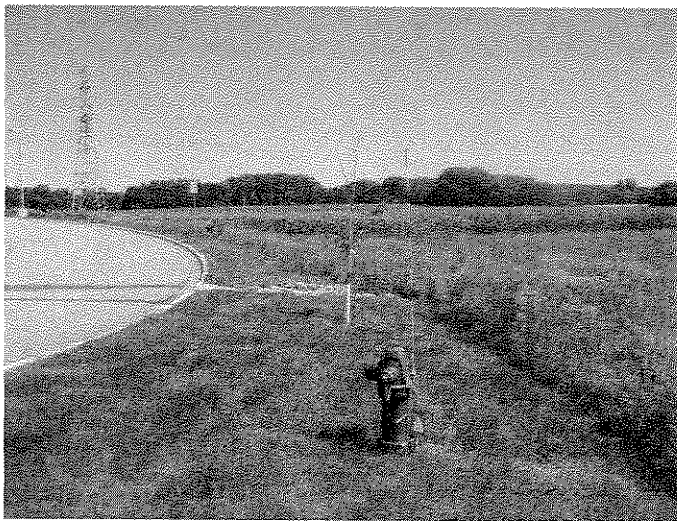
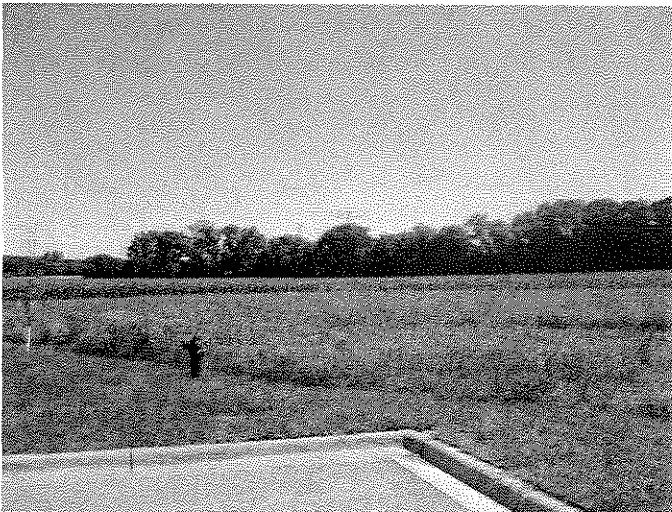
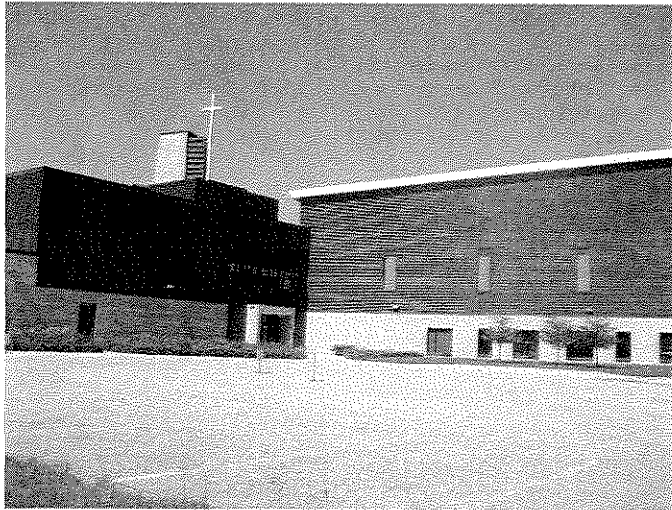
John P. Hanson, P.E.
BARR ENGINEERING COMPANY
Engineers for the District



DAVID BUCHECK • LINCOLN FETECHER • DALE BORASH • JILL LUCAS • EDWARD MARCHAN

VALLEY BRANCH WATERSHED DISTRICT • P.O. BOX 838 • LAKE ELMO, MINNESOTA 55042-0538

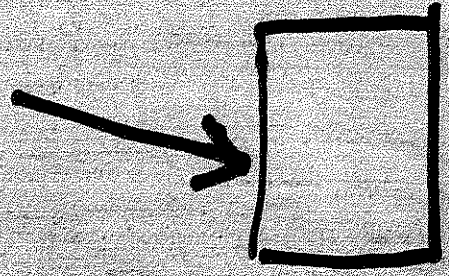
www.vbwd.org



Kelvin Ave.

KEVIN AVE

PROPOSED OVERFLOW PARKING LOT



Reason for needed overflow parking

Due to the tremendous growth we have experienced in the past 4 years, our parking has reached its maximum and beyond. With holidays such as Christmas, Easter,, during other special events including concerts, conventions, guest speakers, special services, etc., we have maximized our parking on numerous occasions.

Gary Van Beek

Facility Manager

Rockpoint Church