

FILE



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, October 22, 2007, at 7:00 p.m.

AGENDA

1. Pledge of Allegiance
2. Approve Agenda
3. Approve Minutes
 - a. September 24, 2007
4. Public Hearings:
 - a. VARIANCE: Review of an application for a 20 foot variance to a lakeshore setback for a septic system at 8186 Hill Trail North – R-1 zoning.
 - b. CONDITIONAL USE PERMIT: Review of an application from Common Ground Church to allow the use of horses on site.
 - c. INTERIM USE ORDINANCE: Review of a draft interim use ordinance.
 - d. IMPERVIOUS SURFACE ORDINANCE: Review of a draft ordinance to alter the existing impervious surface coverage permitted in an Open Space Preservation development.
 - e. CITY CODE RENUMBERING ORDINANCE: Review ordinance revising numbering system for city code book.
5. Business Items:
 - a. None.
6. Informational Items:
 - a. City Council Updates
 - i. October 16 – Whistling Valley III – Final Plat approval
 - ii. October 16 – I-94 to 30th Street Infrastructure Project Presentation
 - b. October 18 – I-94 to 30th Street Infrastructure Project Presentation at OakLand Junior High School
7. Adjourn

**City of Lake Elmo
Planning Commission Meeting
Minutes of September 24, 2007**

Chairman Ptacek called to order the meeting of the Lake Elmo Planning Commission at 7:00 p.m. COMMISSIONERS PRESENT: Ptacek, Roth, Schneider, Deziel, Van Zandt, Armstrong, McGinnis, and Fliflet. STAFF PRESENT: Senior Planner Gozola and Planner Matzek.

Agenda

M/S/P, Armstrong/Van Zandt, to approve the agenda as presented. Vote: 9:0.

Minutes

August 13, 2007

M/S/P, Roth/McGinnis, to approve the minutes as presented. Vote: 9:0.

Public Hearings:

Conditional Use Permit (CUP) - HAIRitage 'Hous

Planner Matzek provided an overview of the request for a conditional use permit to authorize therapeutic massage at 9242 Hudson Blvd. The business originally opened up at the site in 2006 and included two treatment rooms as a component of the salon. Upon being notified that a CUP was necessary, the applicants discontinued the use and submitted a formal application. Staff is recommending approval of the request.

THE CHAIRMAN OPENED THE PUBLIC HEARING AT 7:07 P.M.

No one spoke.

THE CHAIRMAN CLOSED THE PUBLIC HEARING AT 7:07 P.M.

Commissioner Fliflet asked if proof of insurance and certifications were provided.

Planner Matzek stated that it is required in the definition section of city code.

M/S/P, Deziel/Fliflet, move to recommend approval subject to staff's findings and conditions. Vote: 9:0.

Master Plan Amendment – Carmelite Monastery

Planner Matzek provided an overview of the request showing the commission the location of the proposed garage structure in relation to the rest of the monastery property. She stated staff found the request reasonable and meets other requirements for site plan approval.

THE CHAIRMAN OPENED THE PUBLIC HEARING AT 7:11 P.M.

Father Pat McCorkell, Jesuit Retreat

Father McCorkell provided a history of the neighboring monastery dating back to the 40s. He had a concern of the noise the trucks and equipment would make as well as from the future garage. He also expressed concern about the impact those vehicles would have on the shared driveway. He would like access for the Carmelite Monastery to be examined now or at some point in the future.

Father John Burns, Carmelite Monastery

Father Burns said the woman's community been there since the 50's and the men's monastery was approved in the early 1990's. He said the proposed garage is smaller than the existing garage and would be made using brick and masonry. He does not believe the shared road would be damaged. Father Burns said that no heavy equipment would be brought through the site on the days of silence. He said the building would be used for storage of equipment, a small bathroom for two employees on the site, and a workroom area to package artistic reproductions of art produced on the site. The online sale of the artwork has been occurring since the monastery opened. Father Burns said the road is a legally shared private roadway.

THE CHAIRMAN CLOSED THE PUBLIC HEARING AT 7:26 P.M.

Commissioner Armstrong said he would not like to force the property owner to combine the properties in order to meet the setback requirements.

Chairman Ptacek asked if access was an issue with this proposal.

Planner Matzek confirmed that the monastery received a variance for the road access and is independent of this application.

M/S/P, Armstrong/Van Zandt, to recommend approval subject to staff's findings and conditions. Vote: 9:0.

Common Ground Church

Senior Planner Gozola recommending tabling the item as the applicant had provided additional history to staff that may alter a staff recommendation. He asked that the public hearing be tabled to the October 22nd Planning Commission meeting.

THE CHAIRMAN OPENED THE PUBLIC HEARING AT 7:32 P.M.

M/S/P, Fliflet/Helwig, motion to table the public hearing to October 22nd. Vote: 9:0.

Conditional Use Permit Amendment and Variances – E&E Properties LLC

Senior Planner Gozola said the existing use is permitted by conditional use permit at 11530 Hudson Boulevard North. The applicant is requesting additional parking space to allow the additional buses currently parked in Afton to be parked at this site. He stated that because there is not a definition for identifying the site area, he would recommend it include all the areas such as landscaping, berming, and stormwater ponding as those would not be necessary without the use. He said that although the 2002 approval of the original CUP did not include the gravel parking lot as hardcover, he would suggest including that in the calculation now given that there is not a definition for impervious

surface. Senior Planner Gozola stated that three variances would be needed with approval of the CUP amendment: the site area would exceed the size limit, the hardcover would exceed the limit, and the traffic generated by additional buses would exceed that allowed. He suggested one way in which to handle this transitional parcel would be to look at an interim use ordinance. Staff is recommending denial of the application.

Terry Emerson, applicant

Mr. Emerson stated that the parking lot was not originally calculated in the impervious surface calculation, but the pond was sized correctly to account for the parking lot. Laidlaw requested he apply for this application so the company can plug all the buses in during the winter. The increase in buses would not impact anyone else.

THE CHAIRMAN OPENED THE PUBLIC HEARING AT 7:56 P.M.

No one spoke.

THE CHAIRMAN CLOSED THE PUBLIC HEARING AT 7:56 P.M.

Commissioner Armstrong said there are three existing businesses that use this same ordinance in the city. He said all the applications were handled in the same way. The four percent restriction was only to apply to the use such as parking and buildings and not the other items such as berms and ponds.

Commissioner Deziel said the city should look at an interim use ordinance.

Senior Planner Gozola an interim use ordinance would need to be added to the city code. He said a conditional use permit runs with the property whereas an interim use ordinance identifies a sunset time or date for a use.

M/S/P, Deziel/Van Zandt, to recommend denial of the requested conditional use permit amendment and variances and to immediately schedule work on an interim use ordinance. Vote: 7:2.

City Council

Senior Planner Gozola said the pool barrier ordinance was discussed at the September 18th Council meeting. The City Council voted 4:1 to keep the existing ordinance in place. He said the new city website is functioning, but will continue to be enhanced.

Adjourned at 8:27 p.m.

Respectfully submitted,

Kelli Matzek
Planner

ITEM: Hold a public hearing to consider an application from Frederick L. Paul for a lakeshore setback variance to permit the construction of a new on-site septic system at 8186 Hill Trail North – R1 zoning – PID 09-029-21-23-0003.

SUBMITTED BY: Kelli Matzek, City Planner

REVIEWED BY: Susan Hoyt, City Administrator
Ben Gozola, Senior Planner

SUMMARY AND ACTION REQUESTED: Staff is requesting that the planning commission hold a public hearing to consider a request from Frederick L. Paul for a lakeshore setback variance to permit the construction of a new on-site septic system at 8186 Hill Trail North. Specifically, the replacement septic system will require a 20-foot variance from the required 75-foot sewage treatment system setback from the Ordinary High Water mark (OHW). Recently, this applicant received variances for minor additions to this home which was destroyed by a fire in January of 2007. At that time, it was understood that the septic upgrade could be accommodated in a conforming location on the property. However, upon seeking approval for the new installation, it was discovered that the location of the northern property line along with topographical difficulties prevented the desired site from being utilized.

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 of the code would cause undue hardship on a property owner. "Hardship" is broken down into the following three components:

- a. *The proposed use of the property and associated structures in question cannot be established under the conditions allowed by the city's zoning regulations and no other reasonable alternative use exists;*
- b. *The plight of the landowner is due to the physical conditions unique to the land, structure, or building involved and are not applicable to other lands, structures, or buildings in the same zoning district; and*
- c. *The unique conditions of the site were not caused or accepted by the landowner after the effective date of the city's zoning regulations.*

In reviewing the request against the three criteria listed above, staff determined all criteria were met as a septic system would be necessary to utilize the home on the site and the current property owner did not create the nonconformities. The request was also deemed to be reasonable as the addition of the septic system would have no impact on adjacent properties.

At this time, the planning commission is asked to conduct a public hearing for the variance request to allow construction of a septic system. Upon conclusion of the hearing, the commission is asked to make a recommendation to the City Council on this request.

ADDITIONAL INFORMATION:

- Neither the DNR nor the Valley Branch Watershed District had any concerns with the application.

RECOMMENDATION:

Recommend that Council approve the proposed lakeshore variance for Frederick L. Paul at 8186 Hill Trail North with conditions outlined in the attached staff report.

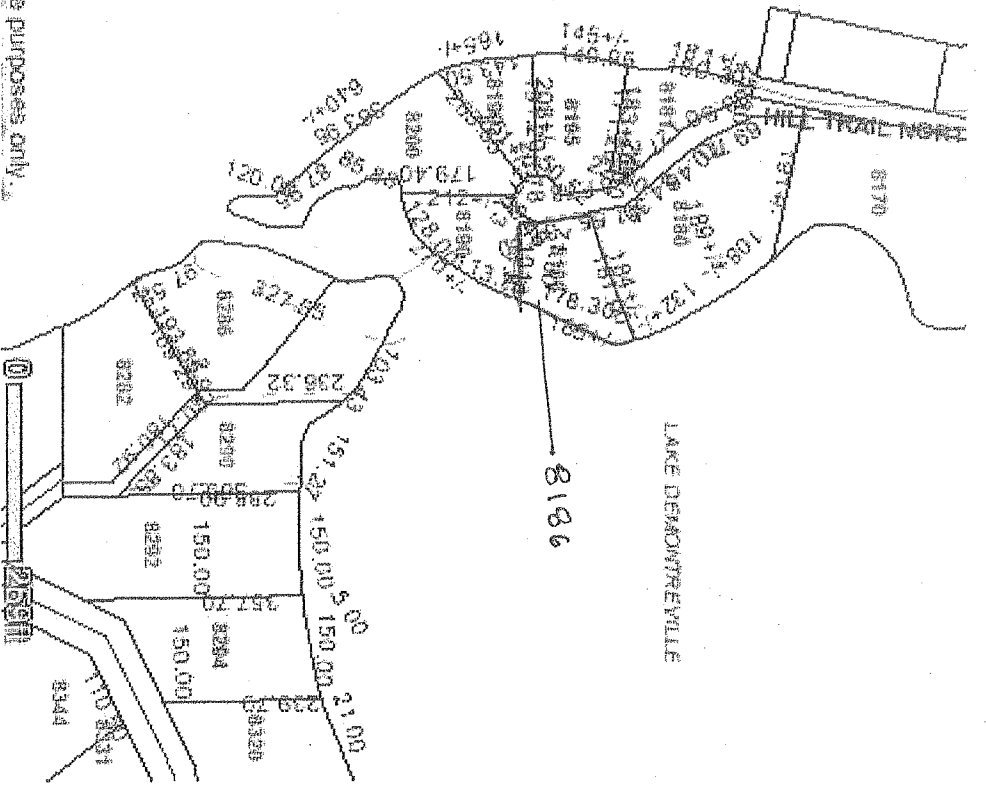
ORDER OF BUSINESS:

- 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 (5):

1. Area Map identifying the location of the property
2. Detailed staff report analyzing the request
3. Applicant's Narrative
4. Letter from Septic Installer
5. Survey of 8186 Hill Trail North identifying the location of the proposed septic system

This site is for reference purposes only.



- 8180 - STEPHEN BUTLER TRS
- 8170 - PATRICIA COLE TRS
- 8170 - J NICHOLAS &
- 8170 - LIND T LINSMAYER
- 8181 - WILLIAM MARK
- 8181 - KAREN L WELTER
- 8195 - CHRISTINE M THORN BURY
- 8199 - GREGORY L &
- 8200 - KATHLEEN LOHMER
- 8200 - DEAN ALLEN
- 8190 - KAREN JOHNSTON
- 8190 - JAMES P &
- 8286 - ROBIN A DILLON
- 8286 - WILLIAM N &
- 8286 - NANCY S ROWE
- BETWEEN 8286-8290
- DEAN A &
- AUDREY L HEDBERG

City of Lake Elmo Planning Department
Variance Review

To: Planning Commission

From: Kelli Matzek, City Planner

Meeting Date: 10-22-07

Applicant: Frederick L. Paul

Location: 8186 Hill Trail North

Current Zoning: R1 – One Family Residential

Introductory Information

Request: The applicant is seeking approval of a variance to allow the placement of a new septic site in a nonconforming location for the home at 8186 Hill Trail North. Specifically, the replacement septic system will require a 20-foot variance from the 75-foot sewage treatment system setback from the Ordinary High Water mark (OHW).

History: This property at 8186 Hill Trail North was platted as part of the J.L Cohn Subdivision. A building permit was issued for a structure (presumably the home) in 1970. Up until 2006, the property at 8186 Hill Trail North had a home and septic system located on the property. In January of 2007, a house fire destroyed the original home, and a replacement home was authorized and built shortly thereafter. Later that year, the property owner applied for and received variances on June 19, 2007 to allow three minor expansions of the home as it was being rebuilt. At the time the three variances were applied for, it was understood that the septic system would ultimately be upgraded in a location not requiring a variance. After further study, it was determined the septic system would need to be placed in a different location due to topographical challenges and the location of the northern property line as identified by an updated survey.

Applicable Codes: Section 325 Shoreland District. Subd 4. 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: *Existing Zoning* – R-1 (One Family Residential)
Land Use Guidance – NC (Neighborhood Conservation District)
Parcel size – 0.42 acres

Property Identification Number (PID): 09-029-21-23-0003

Application Review:

**Applicable
Code
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 UNIT. A residential accommodation including complete kitchen and bathroom facilities, permanently installed, which is arranged, designed, used, or intended for use exclusively as living quarters for one (1) family.

HARDSHIP. The proposed use of the property and associated structures in question cannot be established under the conditions allowed by the city's zoning regulations and no other reasonable alternative use exists; that the plight of the landowner is due to the physical conditions unique to the land, structure, or building involved and are not applicable to other lands, structures, or buildings in the same zoning district; and that these unique conditions of the site were not caused or accepted by the landowner after the effective date of the city's zoning regulations.

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.

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.

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.

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

(cont.) 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]

Variance
Criteria:

By code, a variance can only be granted where the city finds the request can successfully address the three criteria as outlined below for the septic system. To review, the specific request is for a 20-foot variance from the 75-foot sewage treatment system setback from the Ordinary High Water mark (OHW).

1. *The proposed use of the property and associated structures in question cannot be established under the conditions allowed by the city's zoning regulations and no other reasonable alternative use exists;*

The design and location of the septic system were established by a professional septic system design company. Their review identified the proposed location as the only viable location for the septic tanks and mound system on this site due to the slopes and shape of the lot. The City's building inspector, who is a certified septic inspector, has reviewed the lot and concurs with this finding. As such, staff finds the request is reasonable given that wastewater management must be provided for the home. **This criteria is met.**

2. *The plight of the landowner is due to the physical conditions unique to the land, structure, or building involved and are not applicable to other lands, structures, or buildings in the same zoning district;*

The slopes and shape of the property as well as the location of the home and well are all restrictions that limit the potential location sites at which the septic tanks and mound system could be built. **This criteria is met.**

3. *The unique conditions of the site were not caused or accepted by the landowner after the effective date of the city's zoning regulations.*

The physical layout of the platted lot and the topography on the lot were not created by the landowner. **Staff finds this criteria is also satisfied.**

**Variance
Conclusions:**

Based on our analysis of the review criteria in City Code, staff would recommend **approval of the septic variance request** for 8186 Hill Trail North.

**Resident
Concerns:**

The property owner to the north has expressed concern that the proposed system may have a negative impact on his septic system to the north. The city building inspector, who is a licensed septic inspector, visited both properties and has determined these

**Additional
Information:**

concerns are unfounded and that the proposed system will not have any negative impact on abutting property.

- Neither the DNR nor the Valley Branch Watershed District had any concerns with the application.
- In addition to the required lakeshore setback, code also requires that septic components meet certain setbacks from structures and property lines. However, unlike the lakeshore setback, code also allows for administrative approval of lesser setbacks from structures and property lines if the building inspector deems that such lesser setbacks will not hamper access to the proposed facilities. In this case, the inspector finds that the proposed location in relation to the existing home and the side yard will not create any access problems, so no variances from either setback were required.

Conclusion

The applicant is seeking approval of a 20-foot variance from the 75-foot setback from the OHW of Lake DeMontreville to allow the placement of a septic system in a nonconforming location.

**Commission
Options:**

The Planning Commission must examine the proposed variance to determine whether it meets all conditions of approval outlined by city code. The Planning Commission has the following options:

- A) Recommend Council approve the requested variance based on the applicant's submission and findings of fact.
- B) Recommend Council deny the requested variance based on the applicant's submission and findings of fact.
- C) Table the request and ask for additional information.

The deadline for a Council decision on this item is November 26, which can be extended an additional 60-day if needed.

**Recommended
Action:**

Staff recommends option A: Approval of the requested variance with the following conditions:

1. All necessary permits shall be provided to the City.
2. The applicant shall comply with any additional requirements established by the City Engineer and City Attorney.

**Denial Motion
Template:** To deny the requested variances, you may use the following motion as a guide:

Move to recommend denial of the variance application for 8186 Hill Trail North based on the following findings: (cite your own findings)

**Approval
Motion
Template (as
recommended
by staff):** To approve the requested variances as recommended by staff, you may use the following motion as a guide:

Move to recommend approval of the lakeshore variance for the septic system as outlined in the staff report for 8186 Hill Trail North based on the findings listed in the staff report and as articulated tonight, subject to the conditions recommended by staff. (use staff's findings provided above or cite your own)

Conditions:

1. All necessary permits shall be provided to the City.
2. The applicant shall comply with any additional requirements established by the City Engineer and City Attorney.

cc: Frederick L. Paul, *Applicant*
Bill Rust, *Rust Architecture*
Ben Gozola, Senior Planner

RECEIVED
2021/07

NARRATIVE

Attachment to Variance Request for 8186 Hill Trail North, Lake Elmo, MN

We request a variance from the Lake Elmo setback from Ordinary High water of 75' for septic system rock bed. We propose to set the rock bed 55 feet minimum from OHW (a 20 foot variance).

This would still be within the Minnesota Pollution Control Agency requirements since the existing grade is 11 feet minimum above the OHW at the toe of the sand bed and 14 feet above the OHW at the rock bed.

Rebuilding the house after a major fire triggered the requirement to bring the septic system up to current standards. The rebuilt house has the same number of bedrooms and only slightly more square footage than before. The owner is not adding any more load to the septic system, only bringing it to current requirements.

Due to the shape of the lot, the drainfield cannot be placed outside the 75' OHW setback without violating setbacks from the house and property line.

Discussions between Brian Kline, installer, Dale Eklin, waste water designer, and Karl Horning, Lake Elmo building inspector determined that the drainfield cannot be built where it was shown on the previous plans. Due to the higher elevation at the west side of the lot and lack of space at the narrow end of the pie shaped lot, the mound would be too high and the slope too steep to work therefore a permit could not be issued for the previous septic plan. Moving the drainfield toward the lake allows 20 feet of absorption area at most of the south/downslope side of the rock bed. Elevation is lower here allowing better shallower slope of the absorption bed and proper separation from the house foundation. It was determined that this is the best and only place for the drainfield. See also note from Brian Kline to Karl Horning attached as part of this application.

The well for this house is south of the house- the opposite side from the proposed septic-see site plan. The adjacent house to the north has its septic system on its south side adjacent to this property. Its well is on the north side of the house.

RECEIVED

September 18th, 2007


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

**Re: Septic replacement design
8186 Hill Trail N
Lake Elmo, Mn 55042**

Dear Karl,

After closer examination of the property, there is not as much room for a septic system then there appears to be on the site plan. The original site plan showed 20 more feet of drainfield area than there really was. We met with Dale Eklin and he agrees that the survey stakes show we are short on the required downslope absorption area sloping towards the neighboring property. At the front NW corner of the house, we have 27 feet to the property line. If the mound is 20 feet from the house and 10 feet from the property line, we have no room. Because the property is pie shaped, we have more room as we get closer to the lake. The west end of the earlier drainfield area slopes towards the property line but as it gets closer to the back of the house, the slope changes towards the south east allowing for 20 feet of absorption area, which it should really have. This better drainfield area would put the rock bed about 55 feet from the lake, which may sound close but this area is over 10 feet higher in elevation than the lakes high water line. This proposed drainfield area is allowed by the MPCA because of the elevation difference between the lake and the drainfield area. A mound closer to the lake should not be a problem, as it treats effluent better than in ground drainfields. We have included a site plan that is more accurate of the property line. We ask that you consider this proposal because it appears to be the best long term solution and there is no other area on the property for a drainfield.

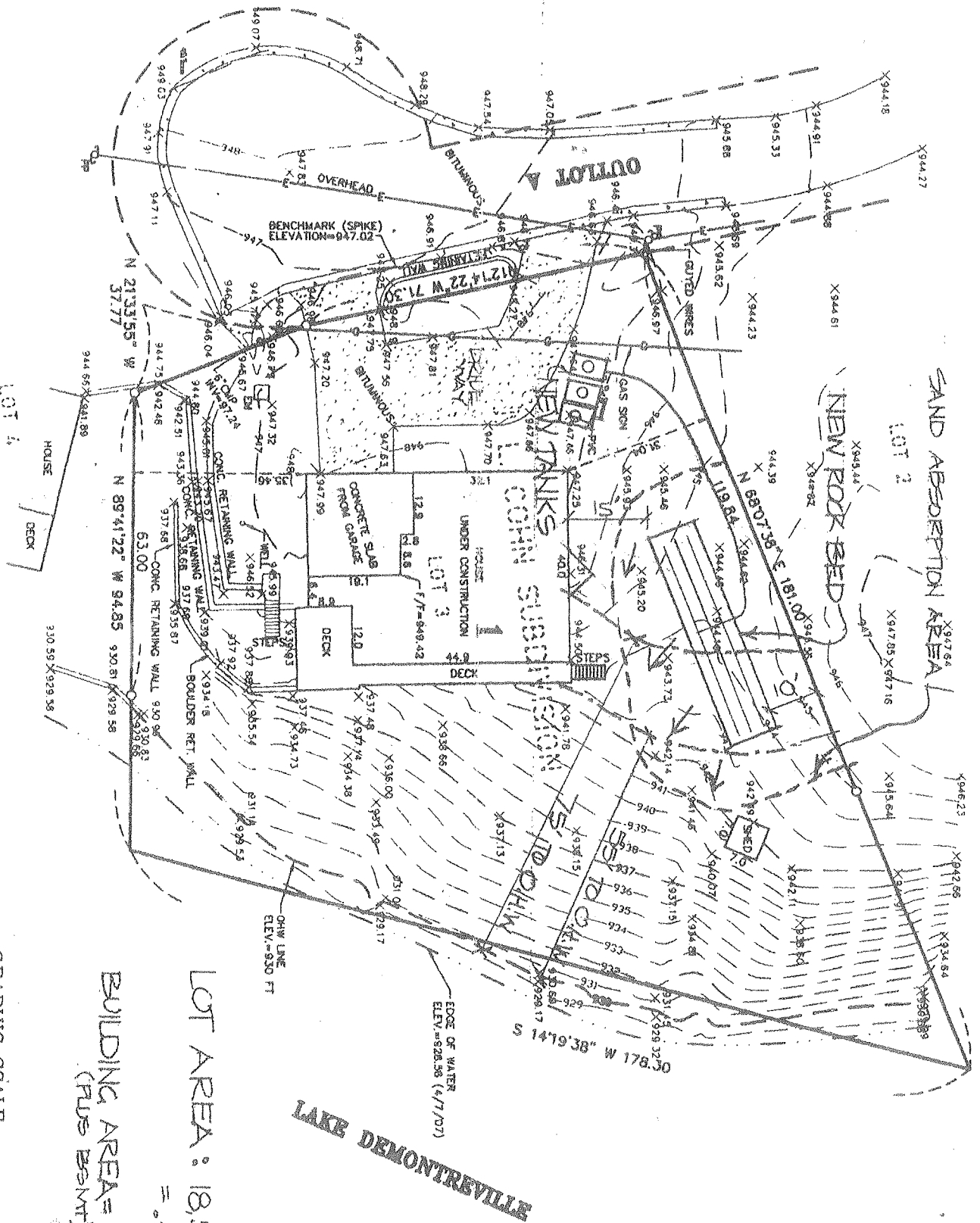
Sincerely,



Brian Kline

TOPOGRAPHIC SURVEY FOR: LARRY PAUL

LEGAL DESCRIPTION:
LOT 3, BLOCK 1, J.L. COHN SUBDIVISION, WASHINGTON COUNTY, MINNESOTA.



BENCHMARK:
SPIKE IN CLUMP WEST OF HOUSE
ELEVATION=947.02

FOR THE PURPOSES OF THIS SURVEY
THE BEARINGS ARE ASSUMED.

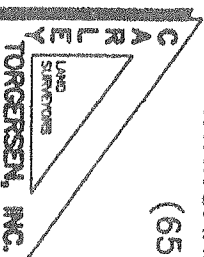
REVISIONS	DESCRIPTION	DATE

LOCATION OF UTILITIES SHOWN ARE
THE ONLY OTHER UTILITIES MAY
BE HAD HAVE NOT BEEN SHOWN.
OPERATOR STATE ONE CALL AT
1-800-222-3877 FOR EXACT LOCATIONS
DURING CONSTRUCTION.

WWW.CARLEY-TORGERSEN.COM

(651) 484-3301

70 W COUNTY ROAD "C" SUITE 703
LITTLE CANADA, MN, 55117
FAX: (651) 765-9729

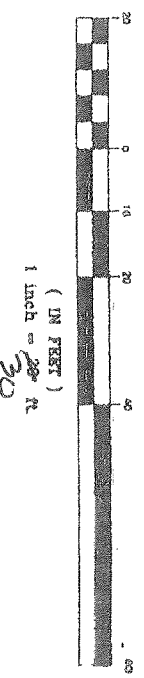


QUALITY SERVICE SINCE 1948

- DENOTES IRON MONUMENT FOUND
- DENOTES IRON MONUMENT SET
- ⊙ DENOTES MANHOLE
- ⊞ DENOTES ELECTRIC METER
- ⊞ DENOTES HYDRANT
- ⊞ DENOTES WATERVALVE
- ⊞ DENOTES ELECTRIC HAND HOLE

- ⊞ DENOTES POWER POLE
- ⊞ DENOTES LIGHT POLE
- ⊞ DENOTES TELEPHONE BOX
- ⊞ DENOTES NAIL SET
- ⊞ DENOTES CATCH BASIN
- ⊞ DENOTES GAS METER
- ⊞ DENOTES WATER BOX
- ⊞ DENOTES CONCRETE
- ⊞ DENOTES SANITARY SEWER
- ⊞ DENOTES STORM SEWER
- ⊞ DENOTES WATER MAIN
- ⊞ DENOTES ELECTRICITY
- ⊞ DENOTES GAS
- ⊞ DENOTES SPOT ELEVATION

LEGEND



GRAPHIC SCALE

LOT AREA : 18,540 SQ FT
= 0.42 ACRE
BUILDING AREA = 2408 SQ FT
(PLUS BASEMENT)

I hereby certify that this survey, plan or report was prepared by me or under my direct supervision and that I am a duly Registered Land Surveyor under the laws of the State of Minnesota.

David E. Torgersen, P.L.S.
Minn. Reg. No. 17551 Date 4/17/07

Job No. 07-009 File No. 10.090

PLS007 0853\07-009.dwg 07-09.dwg 4/19/2007 3:28:12 PM CDT

ITEM: Hold a public hearing to consider an application from Common Grounds Church to permit the keeping of horses as a component of an existing special use permit for a "place of worship."

REQUESTED BY: Common Grounds Church, Applicant

SUBMITTED BY: Ben Gozola, Senior Planner

REVIEWED BY: Susan Hoyt, City Administrator
Kelli Matzek, Assistant City Planner
Jerry Filla, City Attorney
Ryan Stempiski, City Engineer

SUMMARY AND ACTION REQUESTED:

Staff is requesting that the planning commission hold a public hearing to consider a request from Common Grounds Church (10240 Stillwater Blvd N) to allow the keeping of horses as a component of the exiting special use permit¹ (SUP) which authorizes a church on this property. Horses would be kept on the property throughout the year as part of the "Hoof Prints" organization which is a non-profit, faith-based, volunteer run group. The purpose of the organization is to benefit people who may be dealing with abuse, sickness or other troubles through work with horses. Guests and volunteers care for the horses by exercising, grooming and feeding them; which in turn is meant to provide a sense of accomplishment and improved self-confidence. The proposed hours of operation would be primarily "after school" and weekends by appointment.

The zoning of the subject property is Public Facilities (PF) which allows churches as a conditionally permitted use. The existing SUP fulfills this need. Stables or horses, however, are not listed as either permitted or conditionally permitted; and therefore staff is recommending denial of the proposed SUP amendment. If the planning commission or council were interested in allowing the proposed use, we would instead recommend that code be amended to make stables a conditionally permitted or interim use in the Public Facilities zoning district. Such action would allow the city to define the specific criteria that must be met to allow such a use.

In the interim and as a viable alternative, staff would recommend the church continue its partnership with adjacent landowners to "lease" its pasture land to the neighboring property owners. The leasing of pasture land to property for which the keeping of horses is an allowed use provides an avenue for horses to be present on the land and requires no amendment to the existing SUP. This was deemed appropriate as the intent of the PF zoning district is "to allow uses and structures that are incidental and subordinate to the overall land uses permitted in the City," and the property is guided for agricultural use in the comprehensive plan (not public facilities).

¹ A special use permit is an outdated permit type which is analogous to a conditional use permit (CUP) in the current city code.

ADDITIONAL INFORMATION:

- The applicants have allegedly expressed to the City intent to board horses adjacent to the church over the past two years. When the matter was brought up to current staff, we directed them to apply for the CUP amendment to allow us to review the matter and all associated codes. This in turn provided us an avenue to make a recommendation on the best way to proceed, and to allow the planning commission and Council to make a final decision. While we are not recommending approval of the amendment as requested, we believe we have offered up viable alternatives if the City is interested in seeing this concept to fruition.
- If the commission or council wishes to direct staff to amend city code to allow horses in the PF zoning district, staff must receive direction on whether to make such a conditionally permitted use or an interim permitted use. We anticipate the interim use ordinance being considered by the City will be approved in the coming weeks. Staff would also like direction on what criteria should be met prior to considering horses within the PF zoning district.

OPTIONS

Of the two options listed below, staff is recommending option 1.

1. Recommend the City Council deny the requested CUP amendment based on the following:
 - a) Horses/Stables are not listed as a conditionally permitted use in the PF zoning district.
2. Recommend approval of the CUP amendment request based on findings of fact (please cite) with conditions (please cite).

STAFF RECOMMENDATION:

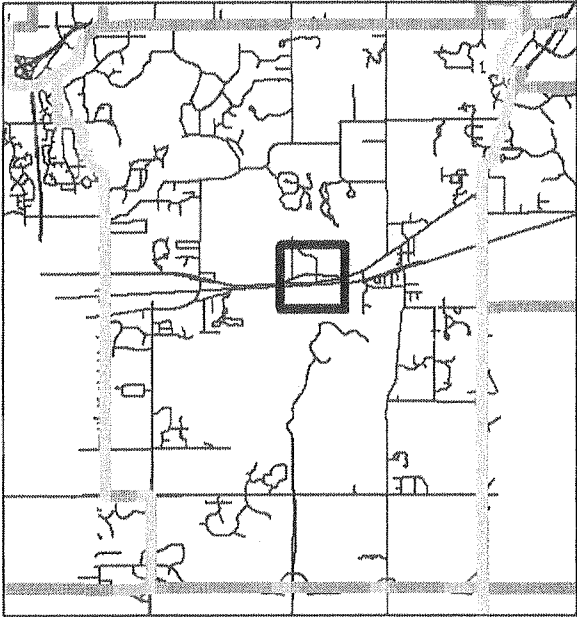
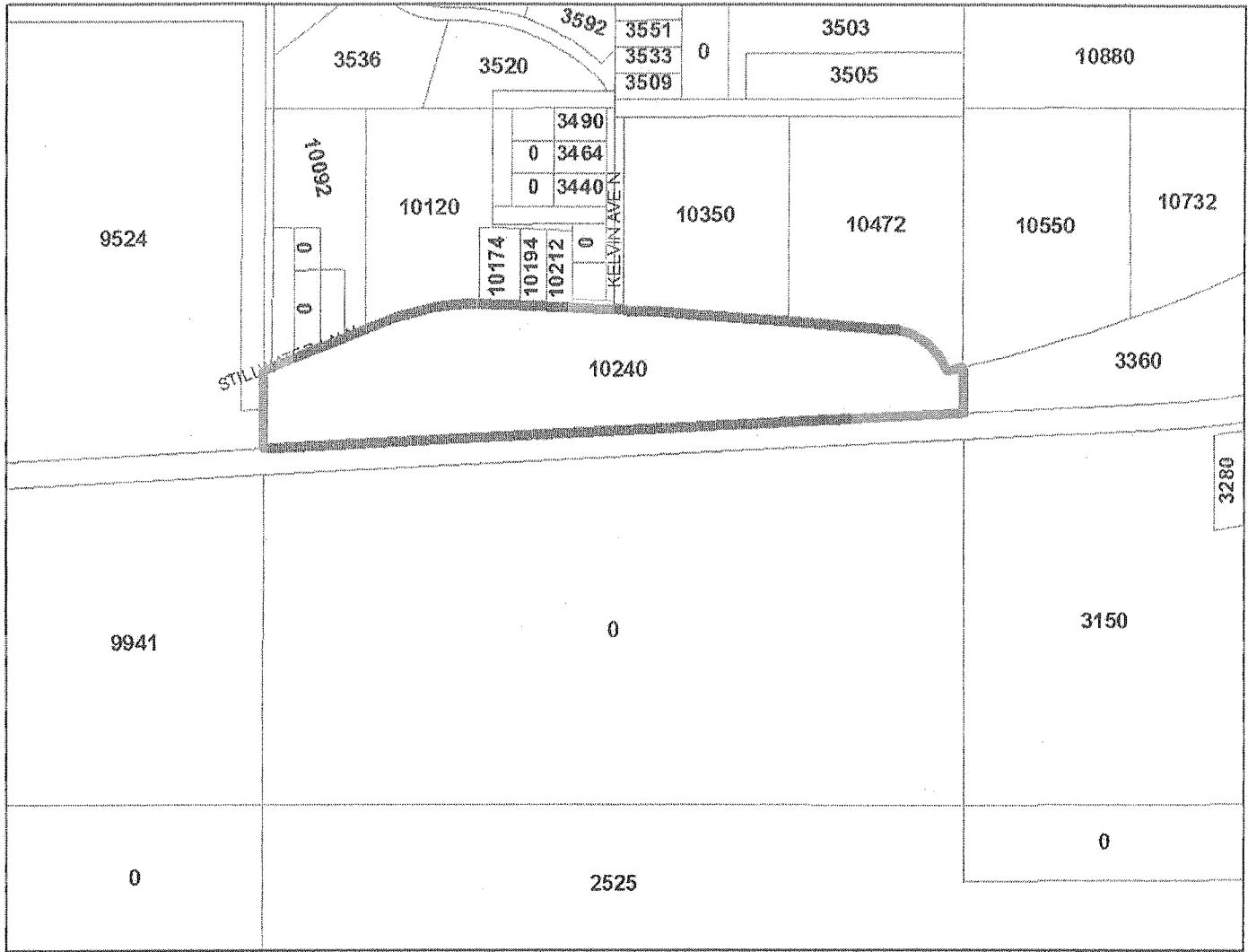
Recommend that the City Council deny the requested CUP amendment as the keeping of horses is not a conditionally permitted use in the PF zoning district. If the commission is interested in allowing this concept under certain circumstances, we would also recommend that staff be directed to add horses/stables as a conditionally or interim permitted use in the PF zoning district. Direction on criteria for horses in this zoning district should also be provided.

ORDER OF BUSINESS:

- Introduction Ben Gozola, Senior Planner
- Report by staff Ben Gozola, Senior 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

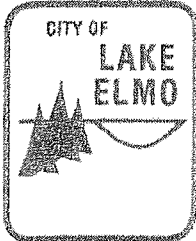
ATTACHMENTS (2):

1. Area map showing the location of the subject property;
2. Detailed staff report on the request.
3. Applicant's Written Narrative.
4. Applicant's Site Plan of proposed pasture area.
5. Written Comments from Travis Germundson (DNR).
6. Existing 1978 SUP authorizing a church at 10240 Stillwater Blvd N.



Location within the City of Lake Elmo

Common Grounds Church
10240 Stillwater Blvd N.
(PID 14-029-21-32-0024)



City of Lake Elmo Planning Department
Special Use Permit¹ Amendment Request

To: Planning Commission

From: Ben Gozola, City Planner

Meeting Date: 10-22-07

Applicant: Common Grounds Church

Representatives: Pastor Mark Anderson and Dawn Oswald

Location: 10240 Stillwater Boulevard North (Hwy 5)

Zoning: Public Facilities (PF)

Introductory Information

***Requested
Amendment:***

The applicant is seeking to amend the existing special use permit¹ authorizing a church at 10240 Stillwater Boulevard North to allow the stabling of horses in conjunction with a ministry being run at the church. Horses would be kept on the property throughout the year as part of the "Hoof Prints" organization which is a non-profit, faith-based, volunteer run group. The purpose of the organization is to benefit people who may be dealing with abuse, sickness or other troubles through work with horses. Guests and volunteers care for the horses by exercising, grooming and feeding them; which in turn is meant to provide a sense of accomplishment and improved self-confidence. The proposed hours of operation would be primarily "after school" and weekends by appointment.

Note that special use permits are no longer a valid permitting procedure in the current City Code. However, in looking at the original approval, it appears that the special use permit process was akin to the current conditional use permit process. As such, we are administering this amendment utilizing the process for a CUP amendment.

***Applicable
Codes:***

Section 300.06 Administration.

Subd 4. Conditional User Permits. Outlines the general requirements for all conditionally permitted uses in Lake Elmo.

Section 300.07 Zoning Districts.

Subd. 4(M). Public Facilities, Quasi-Public Facilities. Subd 2. Uses Allowed by Conditional use Permit. Allows cemeteries, places of worship, government facilities, libraries, museums, schools, and historic sites/centers as conditionally permitted uses in the PF zoning district.

¹ A special use permit is an outdated permit type which is analogous to a conditional use permit (CUP) in the current city code.

Findings & General Site Overview

Site Data:	Lot Size (available for horses): Approximately 4 acres Existing Use: Common Ground Church Facility / farming Existing Zoning: Public Facility (PF) Property Identification Number (PID): 14-029-21-32-0024
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Application Review:

History: Over the past two years, the applicants have allegedly expressed to past City staff their intent to board horses and have sought direction on what approvals (if any) were necessary. It is our understanding that the Church was directed to combine their properties (which was completed), but that no further direction was given on subsequent steps. Upon meeting with the applicants earlier this year, current staff informed the applicants that keeping of horses was clearly not permitted by code and that it was a stretch to consider horses as conditionally permitted given the uses spelled out in the PF zoning district. At that time, the applicants were instructed to do two things:

- 1) Because the intent of the PF zoning district is “to allow uses and structures that are incidental and subordinate to the overall land uses permitted in the City;” and because the property is guided for agricultural use in the comprehensive plan (not public facilities); staff instructed the applicants to see if they could lease their pasture land to an adjacent rural residential property on which horses were a permitted use. This would be very similar to the church’s current practice of leasing a portion of the property for farming purposes (i.e. farming is not permitted or conditionally permitted in the PF district, but is ostensibly accepted because of the agricultural guidance for the property). If they could set up such an arrangement through which the neighboring property would graze horses on the church property, then horses could be present but housed on a neighboring property until such time as the City could review a formal request to amend the SUP or change code.
- 2) We instructed the applicants to apply for a CUP amendment to allow staff an opportunity to review code requirements and past approvals to determine if the existing SUP could be amended given current code language. If so, staff would analyze the request to determine if all code requirements were satisfied. If not, staff was to outline what would need to occur before the Church could possibly receive authorization for the proposal.

Recommendation: After reviewing the application, city code, and the history of this property; staff is recommending the City deny the request to amend the existing special use permit to allow the keeping of horses. The reason for this recommendation is simply due to the fact that “horses” or “stables” are not listed as an allowed or conditionally permitted use in the PF zoning district. Furthermore, we find it is not in the City’s

(cont.) best interest to read the current conditional uses in an overly broad manner so as to open the door for other secondary uses (also undefined) to seek approval in conjunction with existing PF facilities.

Instead, if the City were interested in allowing this type of activity on PF properties, we would recommend that code be amended to list "horses" or "stables" as a conditionally or interim permitted use. Taking this course of action would allow the city to define the specific criteria that must be met to allow horses in the PF district, thereby insuring that future requests would likely be acceptable.

CUP Review Criteria: If the planning commission disagrees with staff's interpretation of code and it is felt that an amendment is permissible given current city code language, then the following criteria must be reviewed with regards to the request. Keep in mind that 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.

Impacts the City must review are as follows:

1. *Effects on the health, safety, morals, convenience, or general welfare of surrounding lands.*
2. *Traffic & Parking conditions.*
3. *Effects on utility and school capacities.*
4. *Effect on property values of surrounding lands.*
5. *Effect of the proposed use on the Comprehensive Plan.*

Of the five criteria above, staff believes the request could likely comply with all except for possibly criteria #1 as it relates to the proposed number of horses on the site and the manure generated by the animals. Please see staff's notes on our discussions with the Minnesota Pollution Control Agency outlined below in the "other agency reviews" section of the report.

Resident Concerns: Staff is not aware of any resident concerns surrounding the requested variances.

Other Agency Reviews:

- The DNR did not provide comment for or against the application.
- Staff contacted Don Hauge at the Minnesota Pollution Control Agency to see how the PCA would view this operation, and he indicated that small operations fall into a grey area. He cautions communities to be careful when assessing such proposals to distinguish between what constitutes a "feedlot" and what can qualify as "pasture." A two horse facility may be a feedlot if the available pastureland does not provide sufficient food for the horses on the site.

(cont.)

By Minnesota rules, the definitions of "Animal feedlot" and "pasture" are as follows:

MN Rule 7020.033 Subp. 3. Animal feedlot. "Animal feedlot" means a lot or building or combination of lots and buildings intended for the confined feeding, breeding, raising, or holding of animals and specifically designed as a confinement area in which manure may accumulate, or where the concentration of animals is such that a vegetative cover cannot be maintained within the enclosure. For purposes of these parts, open lots used for the feeding and rearing of poultry (poultry ranges) shall be considered to be animal feedlots. Pastures shall not be considered animal feedlots under these parts.

MN Rule 7020.033 Subp. 18. Pastures. "Pastures" means areas where grass or other growing plants are used for grazing and where the concentration of animals is such that a vegetation cover is maintained during the growing season except in the immediate vicinity of temporary supplemental feeding or watering devices.

According to Mr. Hauge, a rough gauge is two acres per horse when setting aside pasture land to meet the MPCA definition. Based on this rough gauge, the Church would be limited to two horses based on the four acres of available pasturable land identified on their site plan. Additional horses on the site may constitute a feedlot which requires adherence to a stricter set of MPCA requirements. This is an important point as Lake Elmo code recognizes the MPCA regulations as "the minimum safeguard necessary to prevent pollution..."

By Lake Elmo City Code,

...no manure or livestock waste shall be deposited, stored, kept or allowed to remain upon any site without reasonable safeguards adequate to prevent the escape or movement of the manure or wastes or a solution of the manure or wastes from the site which may result in pollution of any public waters or any health hazard."

To ensure this requirement is met, code continues to state that:

"all regulations imposed by the Minnesota Pollution Control Agency relating to keeping of livestock shall be adhered to and the regulations shall be considered the minimum safeguard necessary to prevent pollution of public water or creation of a health hazard."

As such, even if horses are ultimately classified as a conditional use in the PF district, that does not guarantee horses would work on this site (or horses may need to be limited to less than the ten that are proposed). Staff would recommend the applicant work closely with the MPCA when putting together any future application.

Interim Use Option: The city is currently working on a code amendment to allow the granting of interim use permits for specifically defined uses in different areas of the City. If the commission does not feel comfortable with classifying "horses" or "stables" as a conditionally permitted use in the PF district, another option would be to classify "pasture land" as an interim use provided certain conditions are met.

Conclusion:

The applicant is seeking approval of an SUP amendment to allow the stabling of horses in conjunction with a ministry being run at the church. Horses would be kept on the property throughout the year as part of the "Hoof Prints" organization which is a non-profit, faith-based, volunteer run group.

Commission Options:

The Planning Commission has the following options:

- A) Recommend approval of the CUP & variance requests (with findings of fact);
- B) Recommend denial of the CUP & variance requests (with findings of fact);
- C) Table the item and request additional information.

The 60-day review period for this application was already extended an additional 60 days making 12-22-07 the final deadline for a decision on this application.

Staff Rec:

Staff is recommending denial of the SUP amendment to allow the stabling of horses at 10240 Stillwater Boulevard North based on the following:

- The requested use is not specifically listed as a conditionally permitted use in the PF zoning district.

If the planning commission or council were interested in allowing this use in the PF zoning district, staff would suggest that code be amended to classify "horses," "stables," or "pasture land" as a conditionally permitted or interim permitted use in the PF zoning district.

Approval Motion Template:

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

Move to recommend that Council approve the requested SUP amendment based on the following findings of fact...(please site reasons for the recommendation)

Denial Motion Template:

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

Move to recommend that Council deny the requested SUP amendment based on the findings of fact cited by staff in the report (and others as you deem appropriate).

cc: Pastor Mark Anderson, Applicant

Hoof Print's Response to Ben Gonzola's letter to Pastor Mark Anderson of Common Ground Church

Following is the answers to the CUP application request.

1. Yes, our property is entirely zoned Public Facilities as of 10/25, 200~~6~~ (Both sides of Kelvin Ave.)
2. Common Ground Church located at 10210 Stillwater Blvd. N. has never applied for a CUP.
3. Common Ground owns a total of 24.68 acres. 11.2 of these acres are on the East Side of Kelvin. It was zoned agriculture. Mayor Johnson spoke to Chuck Dillarud about this property. Chuck thought it would be better if it was zoned Public Facilities so we could utilize all the acreage. The property is now zoned Public Facilities.
NOTE: There was a mistake made in the interpretation of the original map. We thought we had access to only 4.54 acres, when in fact, we have 11.2 acres included in this parcel.
4. We will use the site plan you are requesting us to use.

We will address the main areas of code that supposedly come into play when we submit an application:

300.06 Administration.

(Please see attached document for our response to this point)

300.07 Zoning Districts

This ministry is a pathway to reach out to those in need. We agree with your interpretation "place of worship." The horses are an important resource that will help us reach out to those who struggle with depression, abuse, or teenagers who are in trouble. We are not rehabilitating horses.

300.13 Restrictions on nuisance and hazardous activities.

Subdivision 15. Livestock.

A. Prohibition of manure deposition without safeguards.

Fill was taken from Parcel 3 and moved to Parcel 2 when the church building was first constructed in 1979, in order for the building to stand on higher ground. Though the site plan states "retention pond", it has never functioned as one, because the two culverts were never installed which would have allowed water to escape this area. In fact, a dike was built at the east end of the parcel that is about 4 to 6 feet high. This is the area closest to Sunfish Lake. Occasionally there is a small amount of water that pools resulting from the spring thaw but this does not amount to more than a few inches each year, and is located more along Highway 5. It is usually absorbed by the end of spring. (There are no cattails or other pond plants where the water pools.)

B. Pollution Control Agency Standard Minimum Requirements. After speaking with Doug Hougie of the MnPCA on the minimum requirements, he indicated that there should not be any concern because animals are grazing, they consider what we are doing to be a pasture operation. Since horse manure is considered fertilizer he said it can be broken apart, raked into the ground, or simply left alone. The only way this would be a concern is if we had 50 horses or more, then the manure needs to be hauled away to another site. The maximum number of horses we will have will never come close to that number.

C. Inadequate Safeguards.

Though we do not anticipate any problems we will cooperate with the city if safety becomes an issue.

D. Hazards and Nuisances.

We are in compliance with this regulation. (See map)

Grazable Acres

Our plan includes dividing the land in order to control grazing.

1315.02 Riding

Since our property is directly adjacent to the neighboring property that will temporarily house our horses, we will only need to cross Stillwater Lane. However, we do have the ability to trailer our horses.

4. CUP Proposal

This ministry will fit nicely into the rural setting of Lake Elmo and within the community's values. Our neighbors to the north both have farms and horses of their own. The neighbors are willing to partner with us in the care of our horses. Our purpose is to help the community by reaching out to those who are hurting. The affect on school and utility capacities will be minimal or non-existent. Our church parking lot is adequate to accommodate the needs of our volunteers and guests. We do not expect any significant traffic congestion as our ministry will be to small groups of people. We do not foresee any concern over health hazards.

4a) About the Ministry:

Our vision for this ministry is to help people through direct contact with rehabilitated horses.

Our purpose is to benefit people who may be dealing with abuse, sickness or other troubles. This will happen as our guests, in conjunction with our volunteers, care for the horses by exercising, grooming, and feeding them. Horses have a calming effect on people and the interaction will provide individuals with a sense of accomplishment while improving their self confidence.

Hoof Prints is a non-profit, faith-based, volunteer run organization.

Proposed hours:

As we begin this ministry in the fall we anticipate that our hours will be mainly "after school" and weekends by appointment only. As the ministry grows, and during the summer we may expand our hours.

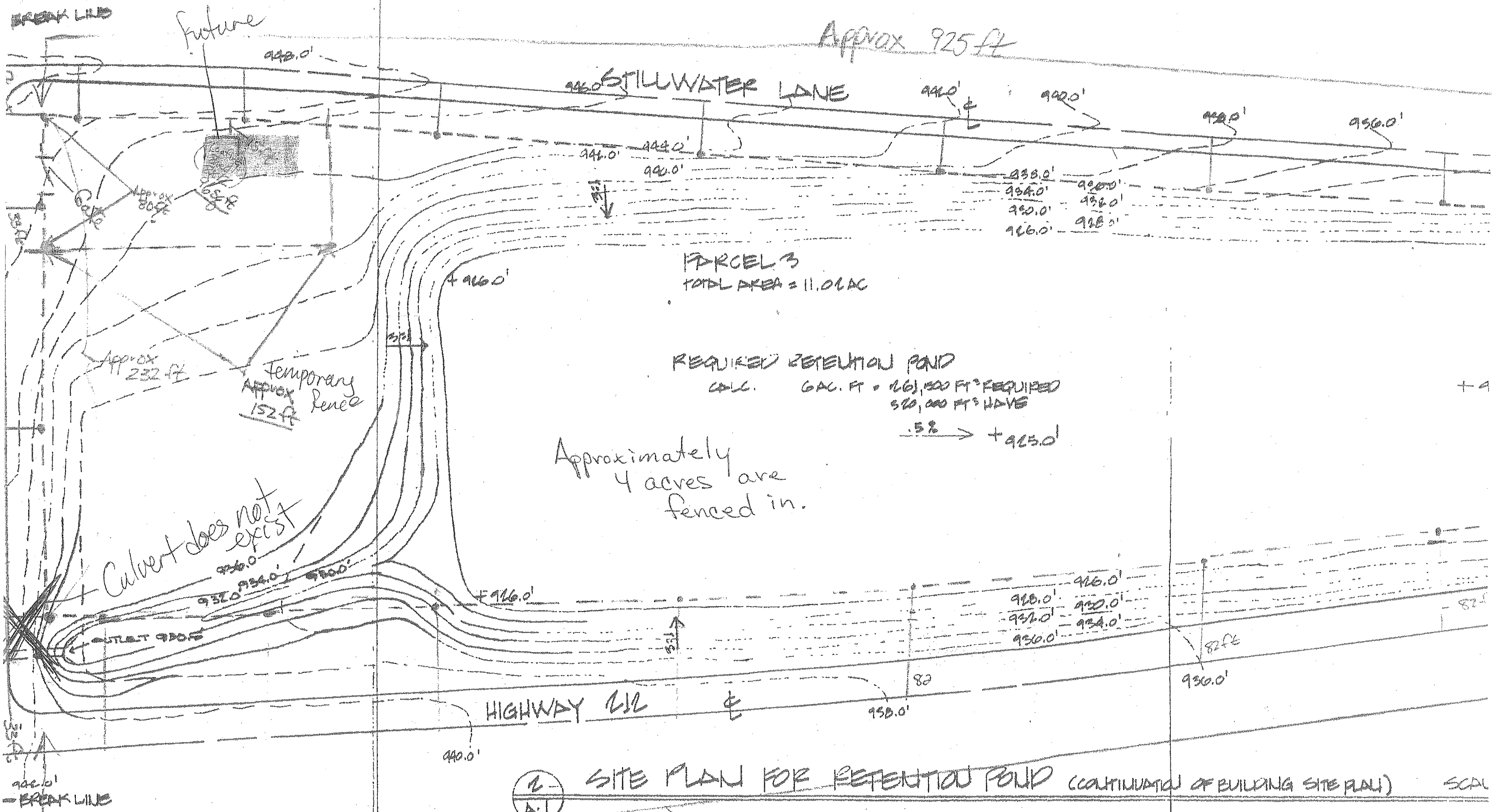
Maximum number of horses:

Given the total property acreage of just over 24 acres the maximum numbers of horses allowed would be 10.

4b) The requirements of 300.13 Subdivision 15 (C)

We will adhere to the requirements by breaking apart manure so it will be used as fertilizer in the pasture or we can move it to the west side of the church and spread it in the field area west of the church parking lot. Because of the layout of the land we do not see any reason to be concerned about manure runoff. (See map)

8/24/07



Approx 925 ft

STILLWATER LANE

PARCEL 3
TOTAL AREA = 11.01 AC

REQUIRED RETENTION POND
 COLL. GAC. FT = 161,500 FT³ REQUIRED
 520,000 FT³ HAVE
 .5% → + 925.0'

Approximately
4 acres are
fenced in.

Culvert does not
exist

Temporary
fence
Approx
152 ft

Approx
232 ft

future

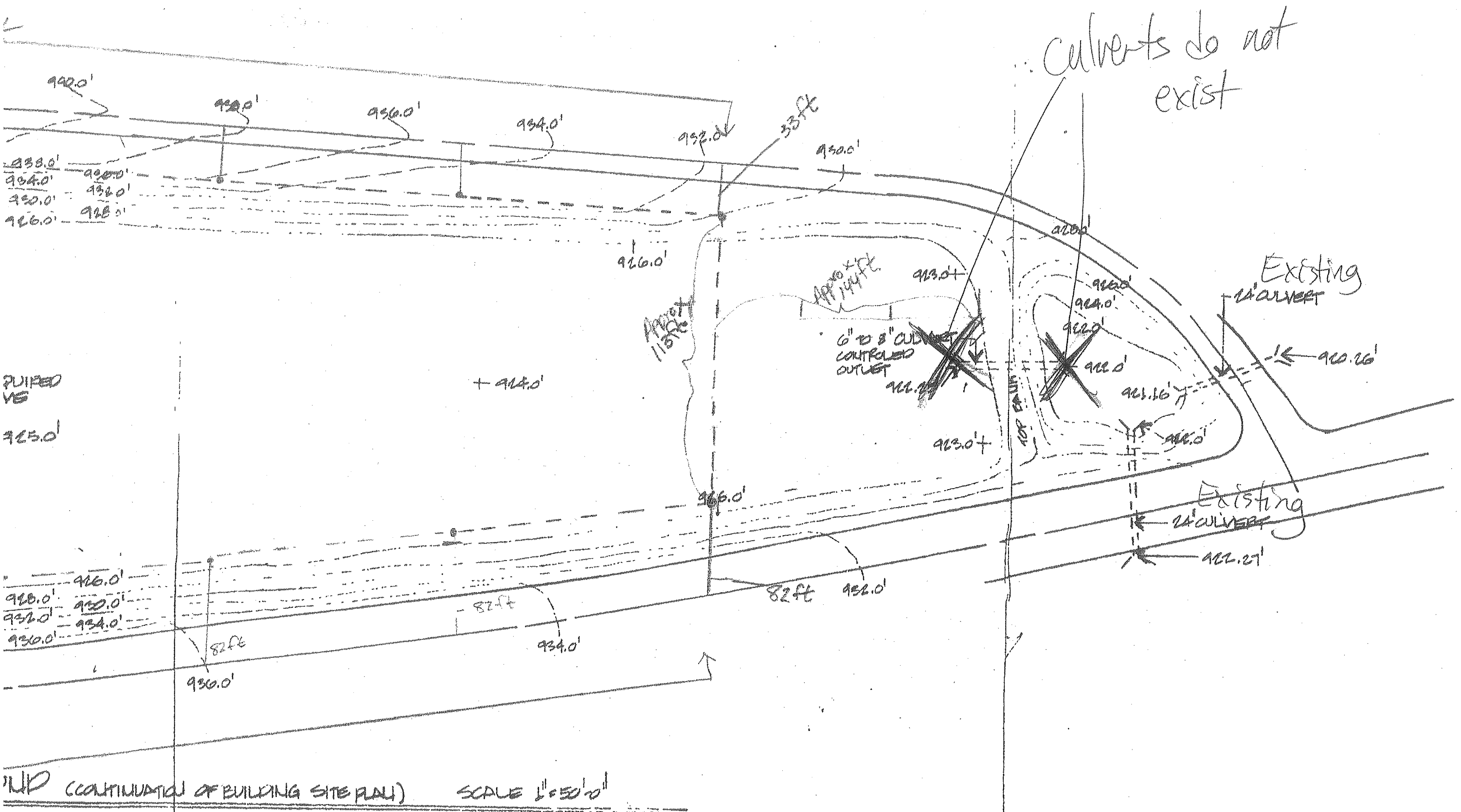
HIGHWAY 212

2. SITE PLAN FOR RETENTION POND (CONTINUATION OF BUILDING SITE PLAN)
A.J.

SCAL

Approx 1000 ft

= Culvert does
not exist.



Culverts do not exist

Existing 14' CULVERT

Existing 24' CULVERT

6" to 8" CULVERT CONTROLLED OUTLET

QUIPED VS 925.0'

946.0'
940.0'
936.0'
930.0'

IND (CONTINUATION OF BUILDING SITE PLAN) SCALE 1" = 50'-0"

Kelli Matzek

From: Travis Germundson [Travis.Germundson@dnr.state.mn.us]
Sent: Thursday, September 13, 2007 3:46 PM
To: Kelli Matzek
Subject: RE: September Land Use Reviews

Church CUP

Sorry for the confusion,
I do not have comments.....

Travis,

>>> "Kelli Matzek" <Kelli.Matzek@lakeelmo.org> 9/13/2007 3:36 PM >>>
You do have comments or you don't have comments?

-Kelli

-----Original Message-----

From: Travis Germundson [mailto:Travis.Germundson@dnr.state.mn.us]
Sent: Thursday, September 13, 2007 2:02 PM
To: Kelli Matzek
Subject: September Land Use Reviews

I have comments or concerns to pass along.

Thanks,

Travis

RESOLUTION

CITY OF LAKE ELMO
WASHINGTON COUNTY, MINNESOTA

A RESOLUTION GRANTING A SPECIAL USE PERMIT TO THE LAKE
ELMO BAPTIST CHURCH

WHEREAS, the Planning Commission, holding a public hearing as required by law on November 27, 1978; recommended that a Special Use Permit be granted December 21, 1979, subject to the following conditions: 1) Review of drainage and on-site sewer concerns by City Engineer; 2) Landscape plan approval prior to construction; 3) Engineer's opinion concerning entrance and exits; and 4) Review of exterior lighting for parking lot and building, and;

WHEREAS, the applicant appeared before the City Council December 19, 1978, at which time the City Council considered the application and the recommendation of the Planning Commission, and;

WHEREAS, the City Council has determined that the use proposed by the applicant will not be detrimental to the health, safety, morals or general welfare of the community, nor will it cause serious traffic congestion or hazards, nor will it seriously depreciate the surrounding property values, provided such use is limited and restricted as hereinafter set forth.

That said use, if limited and restricted as hereinafter set forth, is in harmony with the general purposes and intent of the City Zoning Ordinance and the Comprehensive Plan.

NOW, THEREFORE, BE IT RESOLVED, that the applicant, Lake Elmo Baptist Church, is hereby granted a Special Use Permit for a church building at Kelvin Avenue and Trunk Highway 212 on property described as follows:

All that part of the N $\frac{1}{2}$ of the SW $\frac{1}{4}$ of Section 14, Township 29, Range 21, lying west of Kelvin Avenue North and between the north right-of-way line of State Highway 212 and the south right-of-way line of Stillwater Lane. (County Property No. 36-37014-2800)

All that part of the N $\frac{1}{2}$ of the SW $\frac{1}{4}$ of Section 14, Township 29, Range 21, lying east of Kelvin Avenue North and between the north right-of-way

Line of State Highway 212 and the south right-of way line of Stillwater Lane.

subject to the following conditions, limitations, and restrictions:

1. Final plans for surface water drainage improvements shall be approved by the City Engineer; said drainage improvements shall not change the drainage of any of the surrounding areas outside the church property.
2. The final landscaping plan shall be approved by the City Council as to its adequacy to protect surrounding property values.
3. Adequate parking shall be provided for all vehicles on-site; no on-street parking will be permitted.
4. The City Engineer shall approve the final plan for exits and entrances; and he shall require that driveway access be located away from accesses of homes in the immediate area to avoid a traffic inconvenience.
5. All construction traffic be directed to Kelvin Avenue.
6. The final plan for exterior lighting of parking and building area shall be approved by the City Council so as to avoid potential nuisance or inconvenience to other property owners.
7. Said permit shall not be effective until the same has been endorsed by the applicant and approved by the City Attorney and the original thereof filed with the City Administrator.
8. Any additions to the buildings or facilities herein approved be treated as an amendment to this Special Use Permit.
9. The City Engineer shall certify that there are at least two (2) adequate sites for construction of an on-site sewage disposal system and drainage field on the applicant's property so that an alternate system may be constructed if the first should fail.
10. A copy of this Resolution, bearing the consent of the applicants, and certified by the City Administrator to be a true and correct copy, shall be recorded with the Washington County Recorder and/or Registrar of Titles so as to make a public record of the conditions under which a Special Use Permit is issued.

Adopted by the City Council this 19th day of December, 1978.

Thomas G. Armstrong
Thomas G. Armstrong, Mayor

Attest:

Laurence E. Whittaker
Laurence E. Whittaker, Administrator

ACCEPTANCE OF APPLICANT

The undersigned applicant, hereby accepts the conditions, limitations and restrictions set forth in the foregoing Resolution as conditions, limitations and restrictions to be included in any Special Use Permit or related Building Permit issued pursuant to the approval of the said Special Use Permit as set forth in the foregoing Resolution.

LAKE ELMO BAPTIST CHURCH

Dated: 2-14-79

BY Richard L. Webb
Richard L. Webb, Pastor

Dated: 2-14-79

BY William J. Hargis
William J. Hargis,
Building Committee Chairman

ITEM: Hold a public hearing to consider an ordinance to adopt regulations to govern the issuance of interim use permits and to establish allowable interim uses in the HD-A-BP zoning district.

REQUESTED BY: City Council & Planning Commission

SUBMITTED BY: Ben Gozola, Senior Planner

REVIEWED BY: Susan Hoyt, City Administrator
Kelli Matzek, Assistant City Planner

SUMMARY AND ACTION REQUESTED: The planning commission is asked to hold a public hearing to discuss adoption of an ordinance to establish regulations governing the issuance of interim use permits and the establishment of allowable interim uses in the HD-A-BP zoning district. An IUP is an important zoning tool because, unlike conditional use permits (CUPs), an IUP can be eliminated once a specific trigger occurs. Typically IUP's will terminate on a specific date, at the occurrence of a specific event, or until zoning regulations would no longer permit such a use. In contrast, a CUP cannot be terminated provided the conditions of approval continue to be met.

At the October 10th meeting, the Planning Commission directed staff to draft an interim use ordinance for consideration. The following guidance was provided for staff to utilize when crafting the ordinance:

1. Include purpose and intent language.

Staff has included purpose and intent language into the draft ordinance for your consideration.

2. Cap all interim uses at a maximum of two years or less.

The proposed ordinance mandates that all interim uses must terminate upon the date stated in the permit, upon violation of approval conditions, upon a change in zoning, upon redevelopment, or after two years (whichever occurs first).

3. Renewals should be allowed via a less intensive process.

Staff is proposing an administrative renewal system that includes notice to surrounding properties and approval by the City Council. If concerns are raised, the review process for a new application would occur.

4. The review process for IUPs should be similar to the process established for CUPs.

The proposed process closely follows the language governing CUP reviews except for the elimination of timelines that exceed the standards of current MN state statute 15.99. Staff would recommend making similar changes to the CUP review language in the near future.

5. Add definitions to city code as needed.

Staff has proposed definitions for the terms "impervious surface" and "building footprint." Both terms are currently undefined, but are used consistently throughout the existing code. The proposed definition for "impervious surface" was written to be all-inclusive, so discussion should be had on whether any exceptions should be made (i.e. pavers approved by engineering, decks with ¼ spacing or greater, etc.). Staff did not add a definition for "non-agricultural low impact use site area," instead choosing to define the term in the framework of the code requirement.

6. Create a template "consent agreement" for IUP applications.

Staff utilized the City of Bloomington consent agreement as a template, and drafted a similar form for the City of Lake Elmo. The consent agreement required all IUP applicants to acknowledge up front that the use is temporary, they have no rights to future reapproval, costs to acquire the property will not increase for public agencies as a result, all conditions must be adhered to, and that the agreement runs with the land. Having all applicants sign such a form up front addresses many of the concerns the City would normally have when issuing IUP permits.

7. Add Non-Agricultural Low Impact Uses as an interim use permit in the HD-A-BP zoning district.

Staff has proposed new language to govern non-agricultural low impact interim uses in the HD-A-BP zoning district. The language closely follows the requirements already established for non-agricultural low impact use CUPs in the Agricultural zoning district, but provides somewhat more flexibility in terms of size and hardcover requirements. This is the only interim use that staff proposes to create at this time.

8. Research what other communities classify as interim permitted uses for future consideration.

9. Examine the City's existing allowable CUPs and identify if any are more appropriately allowed as IUPs.

Due to time constraints, staff was unable to research the final two questions prior to the publication deadline of the October 22nd packet. Staff can certainly return in the future with a separate ordinance to address further IUPs in other zoning districts.

RECOMMENDATION:

The planning commission is asked to hold a public hearing and consider an ordinance to establish regulations governing the issuance of interim use permits and the establishment of allowable interim uses in the HD-A-BP zoning district.

- If the language is acceptable to the commission, the commission should recommend approval of the language (with any necessary edits) and forward such to City Council for consideration.
- If the commission is uncomfortable with the ordinance or would like other aspects examined, the item should be tabled and direction given to staff on what to address.

ORDER OF BUSINESS:

- Introduction..... Ben Gozola, Senior Planner
- Report by staff Ben Gozola, Senior Planner
- Questions from the Commission 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. Proposed Ordinance to adopt regulations governing the issuance of interim use permits and establishing allowable interim uses in the HD-A-BP zoning district.
2. Proposed Consent Agreement for IUP applicants.
3. MN Statute 462.3597 which authorizes interim uses.

CITY OF LAKE ELMO
COUNTY OF WASHINGTON
STATE OF MINNESOTA

ORDINANCE NO. _____

AN ORDINANCE ADOPTING REGULATIONS TO GOVERN THE ISSUANCE
OF INTERIM USE PERMITS IN THE CITY OF LAKE ELMO, AND
ESTABLISHING ALLOWABLE INTERIM USES IN THE HD-A-BP ZONING
DISTRICT

Section 1. The City Council of the City of Lake Elmo hereby ordains that Sections 154.019 and 154.020 and all associated subdivisions are hereby amended to read as follows:

Current Section 154.020 and its subdivisions are restated and incorporated herein as Section 154.021.

Current Section 154.019 and its subdivisions are restated and incorporated herein as Section 154.020.

154.019 INTERIM USE PERMITS.

- (A) *Purpose and Intent*. The purpose and intent of allowing interim uses is:
- (1) To allow a use for a brief period of time until a permanent location is obtained or while the permanent location is under construction.
 - (2) To allow a use that is presently acceptable, but that with anticipated development or redevelopment, will not be acceptable in the future or will be replaced by a permitted or conditional use allowed within the respective district.
 - (3) To allow a use which is reflective of anticipated long range change to an area and which is in compliance with the Comprehensive Municipal Plan provided that said use maintains harmony and compatibility with surrounding uses and is in keeping with the architectural character and design standards of existing uses and development.
- (B) *General Standards*. An interim use permit may be granted only if the City Council finds as follows:
- (1) The use is allowed as an interim use in the respective zoning district and conforms to standard zoning regulations.
 - (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.

- (3) The use will not adversely impact implementation of the comprehensive plan.
 - (4) The date or event that will terminate the use is identified with certainty.
 - (5) The applicant has signed a consent agreement agreeing that the applicant, owner, operator, tenant and/or user has no entitlement to future reapproval of the Interim Use Permit as well as agreeing that the interim use will not impose additional costs on the public if it is necessary for the public to fully or partially take the property in the future.
 - (6) The user agrees to all conditions that the City Council deems appropriate for permission of the use including the requirement of appropriate financial surety to cover the cost of removing the interim use and any interim structures upon the expiration of the interim use permit.
 - (7) There are no delinquent property taxes, special assessments, interest, or City utility fees due upon the subject parcel.
 - (8) The term of the interim use does not exceed two (2) years.
- (C) Recordkeeping. The Zoning Administrator shall maintain a record of all applications and all interim use permits issued, including information on the use, location, conditions imposed by the community, time limits, review dates, and such other information as may be appropriate.
- (D) Application. Applications for an interim use permit shall be made by the fee owner or authorized representative of the fee owner of the property upon which the interim use is proposed. All applications shall include the following:
- (1) A completed application form signed by the fee owner of the property or by the fee owner's authorized representative;
 - (2) Application fee;
 - (3) Proof of ownership or authorized representation for the property on which the interim use is requested;
 - (4) Development plans for the proposed use showing all information deemed necessary by the Administrator to ensure the community can determine whether the proposed development will meet all applicable development standards. Such information may include but shall not be limited to the following:
 - a) Site plan drawn to scale showing parcel and existing topography;
 - b) Location of all buildings and their size, including square footage;
 - c) Curb cuts, driveways, access roads, parking spaces, off-street loading areas, and sidewalks;

- d) Landscaping and screening plans, including species and size of trees and shrubs proposed;
 - e) Finished grading and drainage plan sufficient to drain and dispose of all surface water accumulated;
 - f) Type of business or activity and proposed number of employees;
 - g) Proposed floor plan and elevations of any building with use indicated;
 - h) Sanitary sewer and water plan with estimated flow rates;
 - i) Soil type and soil limitations for the intended use. If severe soil limitations for the intended use are noted, a plan or statement indicating the soil conservation practice or practices to be used to overcome the limitation shall be made part of the application;
 - j) A location map showing the general location of the proposed use within the community;
 - k) A map showing all principal land use within 500 feet of the parcel for which the application is being made;
 - l) The applicant shall supply proof of ownership of the property for which the conditional use permit is requested, consisting of an abstract of title or registered property certificate, certified by a licensed abstractor, together with any unrecorded documents whereby the petitioners acquired legal or equitable ownership; and
 - m) The application form shall be accompanied by an accurate list showing the names and the mailing address of the record owners of all property within a minimum of 350 feet of the property for which the conditional use permit is sought; verified as to accuracy by the applicant.
- (5) A letter from the applicant explaining the proposal and stating the date or event that will terminate the use;
- (6) A signed consent agreement, provided by the City of Lake Elmo, agreeing:
- a) that the applicant, owner, operator, tenant and/or user has no entitlement to future reapproval of the Interim Use Permit;
 - b) that the interim use will not impose additional costs on the public if it is necessary for the public to fully or partially take the property in the future; and
 - c) that the applicant, owner, operator, tenant and/or user will abide by conditions of approval that the City Council attaches to the Interim Use Permit.
- (7) A location map showing the general location of the proposed use within the community;

- (8) A map showing all principal land uses within five hundred (500) feet of the parcel on which the interim use is proposed;
- (9) A certified list of property owners located within three hundred fifty (350') feet of the subject property obtained from and certified by a licensed abstractor.
- (10) Any other information that may be reasonably required by the City to evaluate the application.

(E) *Planning Commission Review and Public Hearing.* The Zoning Administrator shall refer complete applications to the Planning Commission for consideration and a public hearing at the next available regular meeting as determined by staff. Prior to the meeting, the Zoning Administrator shall complete the following:

- (1) Distribute the application to appropriate city departments and commenting agencies to receive feedback;
- (2) Publish notice of the purpose, time and place of the public hearing in the official newspaper of the community, and mail notices to all property owners located within a minimum of 350 feet of the property described in the application, at least 10 days prior to the date of the hearing. A copy of the notice and a list of the owners and addresses to which the notice was sent shall be attested to by the responsible person and shall be made a part of the records of the proceedings. Failure to give mailed notice to individual property owners or defects in the notice shall not invalidate the proceedings, provided a bone fide attempt to comply with the provisions of this section has been made.
- (3) Prepare a staff report analyzing the request under city code requirements for consideration by the Planning Commission.

After considering the application, the staff report, testimony from the applicant and the public and any other relevant information; the Planning Commission shall recommend approval, approval with conditions, or denial. The recommendation of the Planning Commission shall be forwarded to the City Council as soon as practical, and in a manner which allows the City Council time to make a final determination on the request within the state mandated timelines for reviewing land use applications.

(F) *City Council Action.* After considering the application, recommendation of the Planning Commission, any staff reports, testimony from the public hearing and any other relevant information; the City Council shall take action on the application through approval, approval with conditions, or denial. Should the City Council approve the application, the City Council shall specify the term of

the Interim Use Permit, the event(s), circumstances or conditions that shall cause termination, and any conditions of approval.

- (G) *Termination.* An interim use shall terminate on the happening of any of the following events, whichever occurs first:
- (1) The date stated in the permit.
 - (2) Upon violation of conditions under which the permit was issued.
 - (3) Upon change in the City's zoning regulations which renders the use nonconforming.
 - (4) The redevelopment of the use and property upon which it is located to a permitted or conditional use as allowed within the respective zoning district.
- (H) *Suspension and Revocation.* The City Council may suspend or revoke an Interim Use Permit upon finding that the activities allowed under the permit adversely affect the public health, safety, or welfare in ways not anticipated during approval of the permit. A suspension or revocation of an Interim Use Permit shall be preceded by written notice to the permittee and a hearing. The notice shall provide at least ten (10) days notice of the time and place of the hearing and shall state the nature of the violations. The notice shall be mailed to the permittee at the most recent address listed on the application. The hearing of a contested case may be before the City Council or in accordance with Minnesota Statutes, Section 14.57 to 14.60, but informal disposition of a contested case by stipulation, pursuant to Minnesota Statutes, Section 14.59, may provide an adequate basis for imposition of sanctions.
- (I) *Amendments.* All requested amendments to an existing interim use permit shall be processed in the same manner as a new application.
- (J) *Renewal.* The following process may be used to renew an active interim use permit that is set to expire. Terminated or suspended interim use permits cannot be renewed.
- (1) *Application.* Application requirements for renewal of an existing interim use permit be the same as for a new application.
 - (2) *Review.* Upon receiving a complete application for an interim use permit renewal, the Zoning Administrator shall send notice of the requested renewal to all property owners within three hundred fifty (350) feet of the parcel(s) containing the interim use. If any objections are raised within ten (10) days of the mailed notice, the application shall be processed in the manner of a new application. If no objections are raised, the Zoning Administrator shall prepare a resolution of approval outlining the conditions and stipulations of the renewal for consideration by the City

Council. Council—at its discretion—may approve or deny the request with findings. Denial of a renewal request does not constitute termination of the existing interim use permit.

Section 2. The City Council of the City of Lake Elmo hereby ordains that Section 154.034 is hereby amended to read as follows:

§ 154.034 HD-A-BP - AGRICULTURAL BUSINESS PARK HOLDING DISTRICT.

- (A) *Purpose.* The Agricultural Business Park Holding District (HD-A-BP) is intended to regulate land use within agricultural areas planned and staged for business park development with access to regional sewer service. Areas zoned HD-A-BP will be rezoned upon the availability of sewer service and when consistent with the "Development Staging Plan" contained in the Lake Elmo Comprehensive Plan. The future zoning district regulations will be consistent with the comprehensive plan guidance of the property for Business Park use.
- (B) *General regulation.* All regulations governing the Agricultural (A) zoning district shall also apply to properties zoned Agricultural Business Park Holding District (HD-A-BP) except as outlined in this section.
- (C) *Permitted uses.* The permitted uses in the HD-A-BP zoning district shall be the same as in the Agricultural (A) zoning district except that non-farm dwellings shall be prohibited.
- (D) *Uses permitted by conditional use permit.* The uses permitted by conditional use permit in the HD-A-BP zoning district shall be the same as in the Agricultural (A) zoning district except that Open Space Development Projects shall be prohibited.
- (E) *Uses permitted by interim use permit.* The following uses may apply for an interim use permit in the HD-A-BP zoning district:
 - (1) *Non-agricultural low impact uses.* The city desires to maintain and preserve open space and agricultural land within the city. The city recognizes the monetary regards that may be enjoyed by a farmer or larger property owner who sells his or her land for development. The city further recognizes that allowing non- agricultural low impact uses, strictly controlled and regulated by an interim use permit, might allow a farmer or large property owner an economical use of his or her property prior to redevelopment as guided in the comprehensive plan. In addition to the general IUP standards, the following standards shall also apply to these types of uses.

- a. All of the property owner's real estate that is contiguous to the non-agricultural low impact use must be zoned HD-A-BP and remain so zoned while the interim use permit is in effect.
- b. The property shall be a minimum of a nominal 40 acres in size.
- c. The maximum size for the non-agricultural low impact use—inclusive of all improvements—shall be 10% of the property owner's contiguous HD-A-BP zoned area.
- d. Impervious surface coverage of the non-agricultural low impact use shall not exceed 5% of the property owner's contiguous HD-A-BP zoned area.
- e. The use shall not generate more than 3 trips per day per acre of contiguous agriculturally zoned area, with the exception of land with sole access to Hudson Boulevard that shall not generate more than 6 trips per day per acre.
- f. Uses involving the outside storage of vehicles, equipment, or goods shall be located a minimum of 200 feet from any public roadway or adjacent landowner's boundary, except that the setback from the I-94 frontage road shall be not less than 50 feet. In addition, any such outside storage shall be screened from view from adjacent property and the public roadway by berms and landscaping. A plan for such screening shall be submitted with the application for the interim use permit which shall clearly demonstrate by view cross-sections that said screening will be effective immediately and in all seasons. Loss of landscaping materials or outdoor storage of items in a manner not screened from adjacent properties shall be grounds to terminate the IUP.
- g. Non-agricultural low impact uses may not generate more than 3.0 SAC units per 3.5 acres or 235 gallons per day per net acre of land based upon design capacity of facilities, whichever is more restrictive.
- h. The property owner shall maintain the remaining land or farm outside of the IUP Area in accordance with the permitted uses of the HD-A-BP zoning district and the required practices of the Soil and Water Conservation District.
- i. All lighting shall comply with the city's regulations.
- j. All signs shall comply with the city's regulations.
- k. Rate and volume of runoff from the CUP shall not exceed the 1% rule and shall be verified by the City Engineer.
- l. The use shall terminate upon the rezoning of the property, further development of the property, violation of the IUP, or after a two year period; whichever occurs first.

- | ~~(E)~~(F) Accessory uses and structures. Regulations governing accessory uses and structures in the HD- A-BP zoning district shall be the same as in the Agricultural (A) zoning district.
- | ~~(F)~~(G) Minimum district requirements. The minimum district requirements in the Agricultural Business Park Holding District (HD-A-BP) shall be the same as in the Agricultural (A) zoning district.
- | ~~(G)~~(H) Cluster development. Cluster development in the HD-A-BP zoning district is prohibited.
- | ~~(H)~~(I) Non-agricultural low impact use standards. Regulations governing non-agricultural low impact use standards in the HD-A-BP zoning district shall be the same as the Agricultural (A) zoning district.

Section 3. The City Council of the City of Lake Elmo hereby ordains that Section 11.01 is hereby amended to add the following definitions:

Building Footprint. The outline of the total area covered by a building's perimeter at the ground level.

Impervious Surface. Any structure or surface which interferes to any degree with the direct absorption of water into the ground, including but not limited to building footprints, sidewalks, paved or gravel driveways and parking areas, patios, sport courts, swimming pools, decks, pavers, or any other similar surface.

Section 4. 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. ____ was adopted on this ____ day of _____, 20____, by a vote of __ Ayes and __ Nays.

Mayor Dean Johnston

ATTEST:

Susan Hoyt
Administrator

This Ordinance No. _____ was published on the ____ day of _____, 2007.



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462.3597, Minnesota Statutes 2006

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462.3597 INTERIM USES.

Subdivision 1. **Definition.** An "interim use" is a temporary use of property until a particular date, until the occurrence of a particular event, or until zoning regulations no longer permit it.

Subd. 2. **Authority.** Zoning regulations may permit the governing body to allow interim uses. The regulations may set conditions on interim uses. The governing body may grant permission for an interim use of property if:

- (1) the use conforms to the zoning regulations;
- (2) the date or event that will terminate the use can be identified with certainty;
- (3) permission of the use will not impose additional costs on the public if it is necessary for the public to take the property in the future; and
- (4) the user agrees to any conditions that the governing body deems appropriate for permission of the use.

Any interim use may be terminated by a change in zoning regulations.

Subd. 3. **Public hearings.** Public hearings on the granting of interim use permits shall be held in the manner provided in section [462.357, subdivision 3](#).

History: 1989 c 200 s 2

Please direct all comments concerning issues or legislation
to your [House Member](#) or [State Senator](#).

For Legislative Staff or for directions to the Capitol, visit the [Contact Us](#) page.

[General questions or comments.](#)

ITEM: Hold a public hearing to consider an ordinance to amend the allowable impervious surface coverage in all OP developments.

REQUESTED BY: Ben Gozola, Senior Planner

SUBMITTED BY: Ben Gozola, Senior Planner

REVIEWED BY: Susan Hoyt, City Administrator
 Kelli Matzek, Assistant City Planner

SUMMARY AND ACTION REQUESTED: The planning commission is asked to hold a public hearing to consider an ordinance to amend the allowable impervious surface coverage in all OP developments. Staff is requesting this change as it has recently come to our attention that nearly all lots in this zoning district are nonconforming (or are unbuildable) due to the current 10% impervious surface requirement. This issue was discovered as a result of an internal process change which now requires all building permits to be reviewed by the planning department for zoning conformance (a step that was heretofore missing).

To establish an idea as to the depth of this problem, staff randomly selected two parcels within each of six existing OP developments to see where impervious surface measurements were generally falling given past building activities. The following are our findings:

<i>Development Name</i>	<i>Year Built</i>	<i>Approx Impervious Surface (sq ft.)</i>	<i>Lot Size</i>	<i>% Imp.</i>
Discover Crossing (site 1)	2006	5,566	36,709	15.2%
Discover Crossing (site 2)	2007	4,011	32,797	12.2%
Farms of Lake Elmo (site 1)	2007	5,609	38,528	14.6%
Farms of Lake Elmo (site 2)	2006	4,339	37,672	11.5%
Whistling Valley 2 nd (site 1)	2005	10,143	57,151	17.8%
Whistling Valley 2 nd (site 2)	2005	5,755	38,752	14.9%
Hamlet on Sunfish Lk (site 1)	1999	4,331	31,221	13.9%
Hamlet on Sunfish Lk (site 2)	1999	3,494	28,348	12.3%
Tana Ridge (site 1)	2000	4,346	33,105	13.1%
Tana Ridge (site 2)	1998	3,753	32,670	11.5%
Parkview Estates (site 1)	1998	5,331	43,560	12.2%
Parkview Estates (site 2)	1999	6,240	43,558	14.3%

A more in-depth review of the build out in St. Croix Sanctuary showed that 11 of 12 existing home sites examined are non-conforming to the 10% hardcover requirement having totals consistent with the figures shown above. The one conforming parcel in St. Croix Sanctuary contained a smaller than average home for the development that was set closely to the road (and the resulting hardcover was just under the 10% maximum).

Please keep in mind that most of the figures portrayed in our research are estimates as the City historically did not require impervious surface calculations on surveys. Staff has done our best to be conservative on our calculations to ensure we are not overstating existing nonconformities; if anything, the calculations provided are low. Furthermore, most of the lots examined currently do not contain accessory structures such as sheds, detached garages, pools, etc. These types of amenities will likely be sought by many OP homes, but such permits will have to be denied unless the allowable hardcover percentage is changed. Currently two such homeowners have been denied permits due to existing nonconformities.

Staff is requesting the planning commission consider a proposed ordinance to change the allowable impervious surface from 10% to a higher figure to eliminate the existing nonconformities while providing opportunity to reasonably construct accessory structures within these developments. Not taking action—either now or in the future—will result in variance requests for nearly all construction within OP developments.

ADDITIONAL INFORMATION: For all OP developments in Lake Elmo, city code requires that “Maximum Lot Coverage: Buildable Land Area” not exceed 10% (pg 301-5; section 301.06 subd 2I). We can reasonably read this requirement to be specific to individual lots for two reasons:

1. This same section defines other lot specific zoning provisions such as setbacks, maximum building height, septic area requirements, etc.
2. If the 10% requirement was over the entirety of the development acreage, parcels developed last may not be buildable without variances if those developed first contained large amounts of hardcover.

Lake Elmo currently has in excess of twenty developments that were authorized using open space preservation techniques; all of which include a maximum impervious surface coverage of 10% per lot. Given the findings of our random assessment, we anticipate that more than 90% of the OP lots in Lake Elmo are currently non-conforming to the impervious surface requirement. Furthermore, some private covenants (such as in St. Croix Sanctuary) require the homes and improvements to achieve a certain price point. So while the City would issue a permit that conforms to the 10% requirement, it's likely that some property owners would be denied the right to build by their HOA due to their own private restrictions.

Consideration should also be given to the fact that code allows for 1200+ square feet of accessory buildings depending upon the size of the OP lot. Examined lots that were on the high end of the impervious surface scale (between 15% and 17%) typically included an accessory structure such as a pool to get to that figure. Those lots estimated to be between 11% and 15% generally did not have accessory structures.

RECOMMENDED OPTIONS FOR CONSIDERATION: Establishing an after-the-fact fix that is fair to all property owners is always a difficult task given the variety of lots and land use expectations that exist based on allowed development to date. That said, staff believes the following options would be the most fair to all parties:

➤ **Option 1: Adjust the allowable impervious surface to 20%.**

It is not uncommon for half acre plus lots (20,000+) to have allowable hardcover percentages from 20% to 25% depending on the jurisdiction. MN Rule 6120 which outlines shoreland management guidelines uses 25% per lot as a suggested maximum. Utilizing this option would likely address all existing nonconformities in OP developments, and would likely allow all property owners to add desired accessory structures.

➤ **Option 2: Adjust the allowable impervious surfaces for primary structures and driveways to 15%, and allow up to 17% when factoring in additional impervious surfaces created by accessory uses (i.e. pools, detached sheds & garages, walkways, etc.).**

This option is a mid-way option that will likely address most of the nonconformities in OP developments while still allowing some flexibility for accessory uses. Overall hardcover is limited to less than 20%, and 15% seems reasonable for the main improvements based on our general analysis of existing developments.

➤ **Option 3: Adjust the allowable impervious surface to 15%, and permit an additional 5% of coverage using pervious pavers or other engineered surfaces approved by the City Engineer.**

This option may be more complex than is desirable as situations will arise in which existing impervious surfaces would need to be replaced using approved materials. Logistically this can create problems as the City must acquire securities to ensure the hardcover is removed as proposed. Costs are incurred tracking these securities and inspecting the property to ensure the completion of the work. On a positive side, this option does provide a lower overall impervious surface cap while giving additional breathing room for accessory uses.

Regardless of which option is selected (if any), it is critical that the City also define the term “impervious surfaces.” Staff is recommending the following definition be considered:

Impervious Surface. Any structure or surface which interferes to any degree with the direct absorption of water into the ground, including but not limited to building footprints, sidewalks, paved or gravel driveways and parking areas, patios, sport courts, swimming pools, decks, pavers, or any other similar surface.

Finally, staff is also recommending that code be amended as necessary to clarify that impervious surfaces are calculated based on the gross size of the lot (typical); not on the “buildable land area” (i.e. area within setbacks upon which structures can be located). Currently code uses the term “buildable land area” which would be very uncommon and would result in the above problems becoming substantially worse. The proposed clarification to “gross lot size” will work in conjunction with whatever solution is ultimately selected.

ORDER OF BUSINESS:

- Introduction Ben Gozola, Senior Planner
- Report by staff Ben Gozola, Senior Planner
- Questions from the Commission Chair & Commission Members

- Open the Public HearingChair
- Close the Public HearingChair
- 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. Ordinance Option #1 (impervious raised to 20%).
2. Ordinance Option #2 (impervious for the primary structure and driveway limited to 15%, but up to 17% total when factoring in other accessory structures).
3. Ordinance Option #3 (impervious raised to 15%, but up to 20% coverage allowed provided all surfaces above 15% consist of pervious pavers or other materials approved by the City Engineer).

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

ORDINANCE NO. _____

AN ORDINANCE TO DEFINE IMPERVIOUS SURFACES AND BUILDING FOOTPRINT, AND TO AMEND THE ALLOWABLE IMPERVIOUS SURFACE COVERAGE FOR LOTS IN OPEN SPACE PRESERVATION DEVELOPMENTS

Section 1. The City Council of the City of Lake Elmo hereby ordains that Section 150.180 (B)(2)(h) is hereby amended to read as follows:

(h) Minimum district requirements.

<i>Open Space Preservation District (OP)</i>		
	<i>Single-Family</i>	Townhouse
Maximum Building Height:		
Primary Structure	2 and 1/2 stories or 35 feet	2 and 1/2 stories or 35 feet
Accessory Structure	25 feet	1 story or 20 feet, whichever is less
Minimum Lot Width:	NA	NA
1/2 acre lot; 1 acre lot		
Maximum Impervious Surface Lot Coverage:	40%20%	NA
Buildable LandGross Lot Area		
Minimum Setback Requirements:		
Front Yard	30 feet	20 feet
Side Yard	15 feet or 10% of lot width, whichever is greater	15 feet or 10% of lot width, whichever is greater
Corner Lot Front	30 feet	30 feet
Corner Lot Side Yard	30 feet	30 feet
Well From Septic Tank	50 feet	50 feet
Minimum Lot Size:		
Individual Well and Septic System	1 acre	NA
Individual Well and Communal Drainfield	1/2 acre	8,000 square feet per unit

Section 2. The City Council of the City of Lake Elmo hereby ordains that Section 11.01 is hereby amended to add the following definitions:

Building Footprint. The outline of the total area covered by a building's perimeter at the ground level.

Impervious Surface. Any structure or surface which interferes to any degree with the direct absorption of water into the ground, including but not limited to building footprints, sidewalks, paved or gravel driveways and parking areas, patios, sport courts, swimming pools, decks, pavers, or any other similar surface.

Section 3. 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. ____ was adopted on this ____ day of _____, 20____, by a vote of __ Ayes and __ Nays.

Mayor Dean Johnston

ATTEST:

Susan Hoyt
Administrator

This Ordinance No. _____ was published on the ____ day of _____, 2007.

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Accessory Structure	25 feet	1 story or 20 feet, whichever is less
Minimum Lot Width:	NA	NA
1/2 acre lot; 1 acre lot		
Maximum Lot Impervious Surface Coverage:	40% No more than 15% for the primary structures and driveway; but up to 17% total when including all other impervious surfaces	NA
Buildable Land Gross Lot Area		
Minimum Setback Requirements:		
Front Yard	30 feet	20 feet
Side Yard	15 feet or 10% of lot width, whichever is greater	15 feet or 10% of lot width, whichever is greater
Corner Lot Front	30 feet	30 feet
Corner Lot Side Yard	30 feet	30 feet
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Mayor Dean Johnston

ATTEST:

Susan Hoyt
Administrator

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**CITY OF LAKE ELMO
COUNTY OF WASHINGTON
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Accessory Structure	25 feet	1 story or 20 feet, whichever is less
Minimum Lot Width:	NA	NA
1/2 acre lot; 1 acre lot		
Maximum Impervious Surface Lot Coverage:	10% 15% (except that additional coverage up to 20% may be allowed for pervious pavers or other engineered surfaces approved by the City Engineer).	NA
Buildable Land Gross Lot Area		
Minimum Setback Requirements:		
Front Yard	30 feet	20 feet
Side Yard	15 feet or 10% of lot width, whichever is greater	15 feet or 10% of lot width, whichever is greater
Corner Lot Front	30 feet	30 feet
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This ordinance shall become effective immediately upon adoption and publication in the official newspaper of the City of Lake Elmo.

This Ordinance No. ____ was adopted on this ____ day of _____, 20____, by a vote of __ Ayes and __ Nays.

Mayor Dean Johnston

ATTEST:

Susan Hoyt
Administrator

This Ordinance No. _____ was published on the ____ day of _____, 2007.

ITEM: Hold a public hearing to consider an ordinance to repeal the existing city code and replace it with a fully recodified city code incorporating all ordinances approved since the last update.

REQUESTED BY: Ben Gozola, Senior Planner

SUBMITTED BY: Ben Gozola, Senior Planner

REVIEWED BY: Susan Hoyt, City Administrator
Kelli Matzek, Assistant City Planner

SUMMARY AND ACTION REQUESTED: The planning commission is asked to hold a public hearing to discuss the repeal of the existing city code in favor of a newly recodified code that incorporates all ordinances approved since the last update. A complete repeal of the existing ordinance is needed as the new codification utilizes a completely new numbering system that was recommended by American Legal (the company hired by the City to complete the recodification). The new codification addresses the following problems with the existing city code:

1. All approved ordinances are now reflected making the new code an up-to-date document;
2. Out-of-date references to state statutes have been removed or updated to reflect current state law;
3. Grammatical edits have been incorporated to make the document more user-friendly and easier to understand;
4. Duplicate language (rare) was removed.

NONE OF THE EDITS PROPOSED IN THE RECODIFIED ORDINANCE CHANGE THE INTENT OR REQUIREMENTS OF THE EXISTING CITY CODE.

Adoption of a recodified ordinance is long overdue as the current code is difficult for both staff and residents to use and navigate. Additionally, the new code is already set up for web access once the recodification is approved. Staff is recommending approval of this change.

ADDITIONAL INFORMATION

- Ideally the city code should be updated after every change to the ordinance is approved. While that will be the City's practice with this newly codified ordinance, it has not been the practice with the current city code. Multiple years worth of ordinances will now be reflected in the City's code book.

OPTIONS

Of the two options listed below, staff is recommending option 1.

1. Recommend approval of the new ordinance codification;
2. Table the item and request additional clarification on the proposed recodification as deemed necessary.

STAFF RECOMMENDATION:

- Recommend that Council approve the recodified ordinance.

SUGGESTED MOTION FOR CONSIDERATION:

- *Move to recommend the City Council approve the proposed ordinance to recodify and reorganize the entire city code as prepared by American Legal publishing services.*

ORDER OF BUSINESS:

- Introduction Ben Gozola, Senior Planner
- Report by staff Ben Gozola, Senior Planner
- Questions from the Commission 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 (1):

1. Proposed Ordinance to adopt the recodification and reorganization of city code.

CITY OF LAKE ELMO
COUNTY OF WASHINGTON
STATE OF MINNESOTA

ORDINANCE NO. 97-___

AN ORDINANCE ENACTING A CODE OF ORDINANCE FOR THE CITY OF LAKE ELMO, MINNESOTA, AMENDING, RESTATING, REVISING, UPDATING, CODIFYING AND COMPILING CERTAIN ORDINANCES OF THE CITY DEALING WITH THE SUBJECTS EMBRACED IN THE CODE OF ORDINANCES, AND PROVIDING PENALTIES FOR THE VIOLATION OF THE CODE OF ORDINANCES.

WHEREAS, Minnesota Statutes Sections 415.02 and 415.03 authorize the city to cause its ordinances to be codified and printed in a book,

NOW THEREFORE the City Council of the City of Lake Elmo, Minnesota, ordains:

Section 1. The general ordinances of the City as amended, restated, revised, updated, codified and compiled in book form, including penalties for the violations of various provisions thereof, are hereby adopted and shall constitute the "Code of Ordinances of the City of Lake Elmo. This Code of Ordinances also adopts by reference certain statutes and administrative rules of the State of Minnesota as named in the Code of Ordinances.

Section 2. The Code of Ordinances as adopted in Section 1 shall consist of the following titles:

Title I: General Provisions

Title III: Administration

Title V: Public Works

Title VII: Traffic Code

Title IX: General Regulations

Title XI: Business Regulations

Title XIII: General Offenses

Title XV: Land Usage

Table of Special Ordinances

Parallel References

Section 3. All prior ordinances, pertaining to the subjects treated in the Code of Ordinances, shall be deemed repealed from and after the effective date of this ordinance, except as they are included and re-ordained in whole or in part in

the Code of Ordinances; provided, this repeal shall not affect any offense committed or penalty incurred or any right established prior to the effective (late of this ordinance, nor shall this repeal affect the provisions of ordinances levying taxes, appropriating money, annexing or detaching territory, establishing franchises, or granting special rights to certain persons, authorizing public improvements, authorizing the issuance of bonds or borrowing of money, authorizing the purchase or sale of real or personal property, granting or accepting easements, plat or dedication of land to public use, vacating or setting the boundaries of streets or other public places; nor shall this repeal affect any other ordinance of a temporary or special nature or pertaining to subjects not contained in or covered by the Code of Ordinances.

Section 4. This ordinance adopting the Code of Ordinances shall be a sufficient publication of any ordinance included in it and not previously published in the City's official newspaper. The Clerk of the City shall cause a substantial quantity of the Code of Ordinances to be printed for general distribution to the public at actual cost and shall furnish a copy of the Code of Ordinances to the County Law Library or its designated depository. The official copy of this Code of Ordinances shall marked and be kept in the office of the City Clerk.

Section 5. The Code of Ordinances is declared to be prima facie evidence of the law of the City and shall be received in evidence as provided by Minnesota Statutes by the Courts of the State of Minnesota.

Section 6. This ordinance adopting the Code of Ordinances, and the Code of Ordinances itself, shall take effect upon publication of this ordinance in the City's official newspaper.

Adoption Date

This Ordinance No. 97-___ was adopted on this ___ day of _____, 20___, by a vote of ___ Ayes and ___ Nays.

Mayor Dean Johnston

ATTEST:

Susan Hoyt
Administrator

This Ordinance No. 97-___ was published on the ___ day of _____, 2007.

Handed out at 10-22-07
PZ mtg

Proposed amendment to Non-Agricultural Low Impact Use Standards 300.07 Subd. 4A6b.

- b. The area where the non-agricultural low impact use is located shall be legally defined and is hereafter known as the "CUP Area" "Non-Ag Area". The "CUP Area" "Non-Ag Area" shall not exceed 4% of the property owner's contiguous agricultural zone gross lot area. The CUP Area impervious surface coverage building footprints and asphalt and concrete surfaces within the Non-Ag Area shall not exceed 1.5% of the property owner's contiguous agricultural zone gross lot area. Landscaping, berms, ponds, gravel driveways, and other improvements that would otherwise be permitted in the Agricultural zone may be located outside of the Non-Ag Area.

Proposed amendment to HD-A-BP zoning district § 154.034 paragraph E

(E) Uses permitted by interim use permit. The following uses may apply for an interim use permit in the HD-A-BP zoning district:

- (1) Non-agricultural low impact uses under the same regulations as in the Agricultural (A) district with the exception that the Non-Ag area shall not exceed 5% of the property owner's contiguous agricultural zone gross lot area.

- i. Each dwelling unit shall be located on a separate parcel of record in the office of the county recorder and/or County Auditor; the separate parcel shall be at least one and one-half (1 1/2) and not more than two (2) acres in size, except the remaining large lot.
 - d. Any land which is to be set aside as an out lot shall be clearly identified as such on the plat, and shall be dedicated as permanent open space in a manner approved by the City Attorney and City Council.
6. **Non-Agricultural Low Impact Use Standards.**¹ The City desires to maintain and preserve open space and agricultural land within the City. The City recognizes the monetary regards that may be enjoyed by a farmer or larger property owner who sells their land for development. The City further recognizes that allowing non-agricultural low impact uses, strictly controlled and regulated by conditional use permit, might allow a farmer or large property owner an economical use of their property that is zoned for agriculture. The following standards shall apply to these types of uses.

²It is also the intent of the City to preserve the appearance of rural character within the community by establishing standards for the setback and screening from adjacent property and public roadways by natural features of any open storage as may be associated with the Non-Agricultural Use.

- a. All of the property owner's real estate that is contiguous to the non-agricultural low impact use must be zoned Agricultural and remain so zoned while the Conditional Use Permit is in effect.
- b. The area where the non-agricultural low impact use is located shall be legally defined and is hereafter known as the "CUP Area. The CUP Area shall not exceed 4% of the property owner's contiguous agricultural zone area. The CUP Area impervious surface coverage shall not exceed 1.5% of the property owner's contiguous agricultural zoned area.
- c. Non agricultural low impact uses shall only be allowed on a parcel of a nominal 40 acres or larger.
- d. Non-agricultural low impact uses shall not generate, on the average, more than three vehicle trips per day per acre of contiguous agriculturally zoned area.
- e. Any uses under this section involving the outside storage of vehicles, equipment, or goods shall be located a minimum of 200 feet from any public roadway or adjacent landowner's boundary,³ except that the setback from the I-94 frontage road shall be not less than 50 feet. The use shall be landscaped, bermed and/or screened from view by a landscape plan approved by the City Council. In addition, any such outside storage shall be screened from view from adjacent property and the public roadway by berms and landscaping. A plan for such screening shall be submitted with the application for the Conditional Use Permit, which shall clearly demonstrate by view cross sections, that said screening will be effective immediately, and in all seasons. Degradation of such screening by loss of landscape materials, outdoor storage of items that exceed the screened height or for any other reason shall be grounds for rescinding the outdoor storage portion of the Conditional Use Permit.
- f. Non-agricultural low impact uses may not generate more than 3.0 SAC units per 3.5 acres or 235 gallons per day per net acre of land based upon design capacity of facilities, whichever is more restrictive.

¹ Adopted Ordinance 97-57 on 07-18-00

² Amended Ordinance 97-76 on 3-06-01

³ Amended Ordinance 97-71 on 3-06-01

- g. The property owner shall maintain the remaining land or farm outside of the CUP Area in accordance with the permitted uses of the Agricultural zoning district and the required practices of the Soil and Water Conservation District.
- h. All lighting shall comply with the City's Regulations.
- i. All signs shall comply with the City's Regulations.
- j. Rate and volume of runoff from the CUP shall not exceed the once percent rule and shall be verified by the City Engineer.
- k. In the event that the property owner, or future property owner, initiates a Comprehensive Plan Amendment and Rezoning of any or all of the contiguous real estate from Agriculture to a more intensive use, the Conditional Use Permit shall terminate and all non-conforming structures shall be removed from the site within one year from the date of the City Council's adoption of the Comprehensive Plan Amendment and rezoning, unless the City agrees otherwise. This section shall not apply if the City initiates rezoning or if property owner is forced to transfer title to any part of the contiguous real estate due to Eminent Domain.
- 1. All Conditional Use Permits granted to a non-agricultural low impact use shall be reviewed on an annual basis, and may be rescinded, after a two week notice and a public hearing, if the Council finds that the public health, safety, or welfare is jeopardized.
- m. The standards for buildings or structures, as listed in the minimum District Requirements of the Agricultural Zone, shall not apply to structures built prior to the effective date of this ordinance.

(300.07 Subd.4.)

B. - Rural Residential

1. Permitted Uses and Structures

- a. One family residential dwellings; (Also see Section 300. 13, Subd. 2. and Subd. 16)
- b. Farm, suburban or rural within the limits defined in the performance standards for livestock;
- c. ~~Kennels permitted by a conditional use permit.²~~

300-21A

² Repealed by Ordinance 97-40 on 12-1-98