City of Lake Elmo
3800 Laverne Avenue North

Monday, December 1, 2008

7:00 p.m.

A. CALL TO ORDER

B. PLEDGE OF ALLEGIANCE:

C. ATTENDANCE:____Johnston____DeLapp_____Johnson_____Park_____Smith

D. APPROVAL OF AGENDA: (The approved agenda is the order in which the City Council will do its business.)

E. ORDER OF BUSINESS: (This is the way that the City Council runs its meetings so everyone attending the meeting or watching the meeting understands how the City Council does its public business.)

F. GROUND RULES: (These are the rules of behavior that the City Council adopted for doing its public business.)

G. APPROVE MINUTES:
   1. November 18, 2008 (postponed to December 9th)

H. PUBLIC COMMENTS/INQUIRIES: In order to be sure that anyone wishing to speak to the City Council is treated the same way, meeting attendees wishing to address the City Council on any items NOT on the regular agenda may speak for up to three minutes.

I. CONSENT AGENDA: (Items are placed on the consent agenda by city staff and the Mayor because they are not anticipated to generate discussion. Items may be removed at City Council's request.)

   2. Approve payment of disbursements and payroll
   3. Approve Workers' compensation for elected officials; Resolution 2008-054
   4. Approve 2009 Liquor Licenses
   5. Approve letter of agreement with KDV for financial support services in 2009
   6. Approve one-day off-site charitable gambling license for Maplewood/Oakdale Lions Club; Resolution no 2008-058

J. Truth in Taxation PUBLIC HEARING:

   7. Hold a Truth in Taxation Public Hearing on the proposed 2009 budget

K. REGULAR AGENDA:

8. Consider a wireless telecommunication tower permit and lease agreement to allow AT&T to attach an antenna array to the city water tower and to construct an accessory equipment shelter at 3303 Langly Court North; Resolution no. 2008-055

9. a. Consider zoning text amendments to allow a bus/truck terminal as a non-agricultural low impact use in the HD-A-BP zoning district, Ordinance no. 08-010, Resolution no. 2008-056

   b. Consider an interim use permit for a truck terminal within a HD-A-BP zone at 11530 Hudson Blvd., Resolution no. 2008-057

L. REPORTS AND ANNOUNCEMENTS:
Mayor and Council members
Administrator

M. Adjourn

City Council
Date: 12/01/2008
CONSENT
Item: 2

ITEM: Approve disbursements in the amount of $167,779.26

SUBMITTED BY: Tom Bouthilet, Finance Director

Claim #	Amount	Description
ACH	$ 8,881.93	Payroll Taxes to IRS
ACH	$ 1,301.18	Payroll Taxes to Mn Dept. of Revenue
DD1911-DD1939	$ 22,558.98	Payroll Dated 11/20/2008 (Direct Deposit)
33448-33508	$ 15,914.74	Payroll Dated 11/20/2008 (Payroll & Benefits)
33509-33549	$119,122.43	Accounts Payable Dated 12/01/2008

Total: $ 167,779.26

SUMMARY AND ACTION REQUESTED: The City Council is being asked to approve disbursements in the amount of $ 167,779.26

Accounts Payable
Checks for Approval

User: julie
Printed: 11/26/2008 - 11:43 AM

Check Number	Check Date	Fund Name	Account Name	Vendor Name	Amount
33547	12/02/2008	Water	Engineering Services	TKDA	3,589.12
33547	12/02/2008	Water	Engineering Services	TKDA	1,465.95
33547	12/02/2008	Infrastructure Reserve	Engineering Services	TKDA	3,101.48
33547	12/02/2008	Development Fund	Engineering Services	TKDA	3,502.92
33547	12/02/2008	Development Fund	Engineering Services	TKDA	79.52
33547	12/02/2008	Development Fund	Engineering Services	TKDA	2,613.65
33547	12/02/2008	Development Fund	Engineering Services	TKDA	1,548.75
33547	12/02/2008	Development Fund	Engineering Services	TKDA	855.20
33547	12/02/2008	Development Fund	Engineering Services	TKDA	2,799.10
33547	12/02/2008	Development Fund	Engineering Services	TKDA	3,156.43
33547	12/02/2008	Village	Engineering Services	TKDA	102.94
33547	12/02/2008	General Fund	Engineering Services	TKDA	7,003.02
33547	12/02/2008	General Fund	Engineering Services	TKDA	1,106.71
33547	12/02/2008	Infrastructure Reserve	Engineering Services	TKDA	3,325.32
33547	12/02/2008	Park Dedication	Engineering Services	TKDA	92.57
33547	12/02/2008	Surface Water Utility	Engineering Services	TKDA	5,443.58
33547	12/02/2008	Water	Engineering Services	TKDA	4,173.31
33547	12/02/2008	Sewer	Engineering Services	TKDA	749.78
33547	12/02/2008	Water	Engineering Services	TKDA	74.10
33520	12/02/2008	General Fund	Miscellaneous	City of Roseville	1,685.00
33514	12/02/2008	General Fund	Software Support	Banyon Data Systems, Inc.	977.55
33542	12/02/2008	General Fund	Office Supplies	S&T Office Products, Inc.	244.95
33518	12/02/2008	General Fund	Equipment Parts	Cateo	329.76
33519	12/02/2008	Water	Water Utility	City of Oakdale	6,098.04
33510	12/02/2008	General Fund	Building Repair Supplies	Airgas North Central	24.60
33537	12/02/2008	General Fund	Repairs/Maint Contractual Bldg	Quality Air	118.00
33543	12/02/2008	General Fund	Miscellaneous	Sam's Club	66.36
33543	12/02/2008	General Fund	Miscellaneous	Sam's Club	18.12
33543	12/02/2008	General Fund	Miscellaneous	Sam's Club	36.27
33509	12/02/2008	General Fund	Dues & Subscriptions	10000 Lakes Chapter	50.00
33539	12/02/2008	General Fund	Postage	Pitney Bowes Reserve Account	500.00
33548	12/02/2008	General Fund	Newsletter/Website	United States Postal Service	500.00
33534	12/02/2008	General Fund	Conferences & Training	Doug Pepin	70.00

Check Number	Check Date	Fund Name	Account Name	Vendor Name	Amount
33541	12/02/2008	General Fund	Repairs/Maint Contractual Bldg	Diane Rud	340.00
33541	12/02/2008	General Fund	Repairs/Maint Contractual Bldg	Diane Rud	256.40
33541	12/02/2008	General Fund	Cleaning Supplies	Diane Rud	19.15
33541	12/02/2008	General Fund	Use Tax Payable	Diane Rud	-36.40
33526	12/02/2008	General Fund	Dues & Subscriptions	Lake Elmo Rotary Club	125.00
33535	12/02/2008	General Fund	Legal Services	Peterson Fram & Bergman	1,337.83
33535	12/02/2008	Water	Miscellaneous	Peterson Fram & Bergman	363.00
33535	12/02/2008	General Fund	Civil Attorney Criminal	Peterson Fram & Bergman	5,315.75
33535	12/02/2008	General Fund	Legal Services	Peterson Fram & Bergman	397.65
33535	12/02/2008	General Fund	Legal Services	Peterson Fram & Bergman	187.00
33521	12/02/2008	General Fund	Equipment Parts	Farm Plan	180.16
33521	12/02/2008	General Fund	Use Tax Payable	Farm Plan	-11.00
33509	12/02/2008	General Fund	Conferences & Training	10000 Lakes Chapter	175.00
33528	12/02/2008	General Fund	Repairs/Maint Contractual Eqpt	LOFFLER	59.51
33528	12/02/2008	General Fund	Use Tax Payable	LOFFLER	-3.63
33544	12/02/2008	General Fund	Miscellaneous	St Paul Stamp Works, Inc.	87.53
33540	12/02/2008	General Fund	Newsletter/Website	Rogers Printing Services	2,185.38
33517	12/02/2008	General Fund	Equipment Parts	Car Quest Auto Parts	13.24
33517	12/02/2008	General Fund	Equipment Parts	Car Quest Auto Parts	205.00
33517	12/02/2008	General Fund	Shop Materials	Car Quest Auto Parts	35.70
33517	12/02/2008	General Fund	Equipment Parts	Car Quest Auto Parts	43.52
33517	12/02/2008	General Fund	Equipment Parts	Car Quest Auto Parts	31.45
33517	12/02/2008	General Fund	Sign Repair Materials	Car Quest Auto Parts	29.30
33517	12/02/2008	General Fund	Repairs/Maint Contractual Bldg	Car Quest Auto Parts	8.68
33545	12/02/2008	General Fund	Repairs/Maint Contractual Bldg	Sun Ray Plumbing & Heating	754.73
33545	12/02/2008	General Fund	Use Tax Payable	Sun Ray Plumbing & Heating	-27.35
33525	12/02/2008	General Fund	Equipment	Knox Company	211.94
33525	12/02/2008	General Fund	Use Tax Payable	Knox Company	-12.94
33529	12/02/2008	General Fund	Conferences & Training	LOWER ST CROIX VALLEY FIRE	166.99
33530	12/02/2008	General Fund	Conferences & Training	Greg Malmquist	1,367.40
33516	12/02/2008	General Fund	Legal Services	Campbell Knutson P.A.	369.97
33512	12/02/2008	General Fund	Contract Services	Animal Control Services	502.56
33549	12/02/2008	2002 GO Improvement Bond	Bond Principal	US Bank Trust N.A.	35,000.00
33549	12/02/2008	2002 GO Improvement Bond	Bond Interest	US Bank Trust N.A.	3,316.25
33524	12/02/2008	General Fund	Dues & Subscriptions	Greater Stillwater Chamber	675.00
33527	12/02/2008	General Fund	Repairs/Maint Contractual Eqpt	Little Falls Machine, Inc	427.29
33538	12/02/2008	General Fund	Conferences & Training	Fire Instruction & Rescue Education Inc	540.00
33513	12/02/2008	General Fund	Repairs/Maint Contractual Bldg	Aramark	33.37
33513	12/02/2008	General Fund	Uniforms	Aramark	28.91
33513	12/02/2008	General Fund	Repairs/Maint Contractual Bldg	Aramark	33.37
33513	12/02/2008	General Fund	Repairs/Maint Contractual Bldg	Aramark	34.75
33513	12/02/2008	General Fund	Uniforms	Aramark	34.47
33533	12/02/2008	General Fund	Contract Services	MFRA	1,417.50
33533	12/02/2008	General Fund	Engineer Serv Utility Permits	MFRA	2,182.50
33511	12/02/2008	General Fund	Repairs/Maint Contractual Bldg	Allied Electrical Contractors	798.75

Check Number	Check Date	Fund Name	Account Name	Vendor Name	Amount
33511	12/02/2008	General Fund	Use Tax Payable	Allied Electrical Contractors	-48.75
33546	12/02/2008	General Fund	Telephone	TDS METROCOM - MN	155.81
33546	12/02/2008	General Fund	Telephone	TDS METROCOM - MN	69.98
33546	12/02/2008	Sewer	Telephone	TDS METROCOM - MN	103.29
33546	12/02/2008	Water	Telephone	TDS METROCOM - MN	41.73
33532	12/02/2008	General Fund	Landscaping Materials	Menards - Stillwater	22.60
33532	12/02/2008	General Fund	Repairs/Maint Contractual Bldg	Menards - Stillwater	19.96
33523	12/02/2008	General Fund	Chemicals	Gametime	168.65
33523	12/02/2008	General Fund	Use Tax Payable	Gametime	-9.80
33531	12/02/2008	General Fund	Repairs/Maint Contractual Bldg	Menards - Oakdale	60.88
33536	12/02/2008	General Fund	Contract Services	PLANT HEALTH ASSOCIATES, INC	987.00
33536	12/02/2008	Development Fund	Contract Services	PLANT HEALTH ASSOCIATES, INC	258.50
33536	12/02/2008	General Fund	Printed Forms	PLANT HEALTH ASSOCIATES, INC	250.00
33531	12/02/2008	General Fund	Building Repair Supplies	Menards - Oakdale	23.83
33531	12/02/2008	General Fund	Building Repair Supplies	Menards - Oakdale	5.77
33531	12/02/2008	General Fund	Miscellaneous	Menards - Oakdale	37.95
33531	12/02/2008	General Fund	Repairs/Maint Contractual Bldg	Menards - Oakdale	-18.05
33531	12/02/2008	General Fund	Repairs/Maint Contractual Bldg	Menards - Oakdale	17.90
33531	12/02/2008	General Fund	Miscellaneous	Menards - Oakdale	38.26
33531	12/02/2008	General Fund	Repairs/Maint Contractual Bldg	Menards - Oakdale	91.16
33531	12/02/2008	General Fund	Repairs/Maint Contractual Bldg	Menards - Oakdale	81.71
33522	12/02/2008	General Fund	Assessing Services	FXL, Inc.	2,000.00
33515	12/02/2008	General Fund	Rentals - Buildings	Biff's Inc.	61.27
				Total for this Date:	119,122.43
				Report Total:	119,122.43

City Council
Date: 12/01/08
CONSENT
Item: 3

ITEM: Workers' Compensation for Elected Officials

SUBMITTED BY: Tom Bouthilet, Finance Director

SUMMARY AND ACTION REQUESTED: The City Council is being asked to consider approving Workers' Compensation coverage for elected officials. Minnesota Statue 176.001 subd.9 (6) that "municipal officers elected or appointed for a regular term of office" are considered to be "employees" for workers' compensation purposes only if the city has passed an ordinance or resolution to that affect. This would provide coverage for elected officials injured while performing his or her duties.

RECOMMENDATION: Declare the City Council as employees of the City for workers' compensation purposes only and provide the appropriate coverage.

SUGGESTED MOTION FOR CONSIDERATION:
Move to approve Resolution 2008-054 to provide workers' compensation coverage of elected officials.

ATTACHMENT: Resolution 2008-054 Workers' Compensation coverage for elected officials.

CITY OF LAKE ELMO
WASHINGTON COUNTY, MINNESOTA

RESOLUTION NO. 2008-054
RESOLUTION REGARDING WORKERS' COMPENSATION
COVERAGE FOR ELECTED OFFICIALS

WHEREAS, the City of Lake Elmo obtains its Worker's Compensation coverage from the League of Minnesota Cities;

WHEREAS, M.S. 176.011, subd. 9, (6) provides "that municipals officers elected or appointed for a regular term of office" are considered to be "employees" for workers compensation purposes only if the city has passed an ordinance or resolution to that effect;

WHEREAS, as part of the renewal process, the City must decide whether or not the Mayor & Council intent is that they will be included as employees for workers compensation purposes only;

NOW, THEREFORE BE IT RESOLVED , The Mayor and Council Members of the CITY OF LAKE ELMO be covered by the Minnesota Workers' Compensation.

ADOPTED, by the Lake Elmo City Council on December 01, 2008.

_____
Dean Johnston, Mayor

ATTEST:

_____
Sharon Lumby, City Clerk

City Council
Date: 12/1/08
CONSENT
Item: 4

ITEM: Consider approval of Liquor License Renewals for 2009

SUBMITTED BY: Sharon Lumby, City Clerk

SUMMARY AND ACTION REQUESTED:

The City has received renewal liquor applications for 2009, required fees, and insurance certificates. The City Council is being asked to grant:

2009 On-Sale intoxicating liquor and On-Sale Sunday intoxicating license to 3M Club of St. Paul (Operators of Tartan Park) and to the Machine Shed Restaurant by Heart of America Restaurants; conditioned on approval by the Washington County Sheriff's Dept.

and

2009 On-Sale intoxicating liquor, Off-Sale intoxicating liquor and On-Sale Sunday intoxicating liquor license to the Twin Point Tavern and Lake Elmo Inn; conditioned on approval by the Washington County Sheriff's Dept. ***The Lake Elmo Inn location has been extended to: 3342 Lake Elmo Avenue and the outdoor patio located at the northeast corner. Lake Elmo Inn Event Center and outdoor patio on the southside of the property.***

RECOMMENDATION:

Staff recommends approval of the 2009 liquor license renewals

SUGGESTED MOTION FOR CONSIDERATION:

Move to approve the 2009 Liquor License Renewals as presented

City Council
Date: 12.01.08
CONSENT 5.
Motion

ITEM:	Approve letter of agreement with KDV for financial support services in 2009
SUBMITTED BY:	Tom Bouthilet, Finance Director
REVIEWED BY:	Susan Hoyt, City Administrator Steve MacDonald, Auditor, Abdo, Eick and Meyer

SUMMARY AND ACTION REQUESTED: The city council is being asked to authorize the a letter of agreement for continuing financial advising on budget, accounts and records with KDV for 2009. The 2009 budget includes funds for these services. Steve MacDonald, the auditor, recommends this service continue to maintain the fiscal quality required. The city utilized Joe Rigdon of KDV, on the recommendation of the city auditor, to reconcile the city's records to be consistent with best practices for government accounting. Due to substantial experience in government finance accounting including being a finance director, Joe is very efficient with his time. In addition, Joe has prepared monthly revenue and expenditure reports for the city council and the city staff since he has been hired. He also prepared documents for the budget process and documents for 2009. With the city's accounts reconciled and the budget document format in place, the hours of work required by KDV will be substantially less in 2009 than in 2008. The work in 2009 should include a utility rate study of the three utilities: water, wastewater and surface water to assure the city council and taxpayers that the costs of these utilities are being born by users. A detailed study is in order based upon recommendations of the city engineer and the finance experts. Joe Rigdon's financial expertise complements and supports the day to day work of Tom Bouthilet, the city's finance director. The hourly rate for Joe Rigdon is $135 per hour. There is no obligation for a minimum fee for this service.

MOTION

Approve the letter of agreement with KDV for financial support services in 2009

KDV

November 19, 2008

Mayor and City Council
City of Lake Elmo
3800 Laverne Avenue North
Lake Elmo, MN 55042

The City of Lake Elmo has previously contracted for various hours of accounting, finance, and consulting services with KDV. The purpose of this letter is to revise the engagement to confirm our understanding of the services we are to provide to the City of Lake Elmo, Minnesota through December 31, 2009.

We are proposing one or more of (but not limited to) the following consulting services:

- Assistance with oversight of the accounting and finances of the City to comply with government standards and generally accepted accounting principles
- Preparation of 2008 audit working papers for the independent auditors
- Utility rate study
- Preparation of a comprehensive 2010 budget document and five-year capital improvement plan
- Attendance and presentations at City Council meetings, as requested
- Other services, as requested

If for any reason we are unable to complete these services, we will discuss such reasons with you. You agree to indemnify and hold harmless Kern, DeWenter, Viere, Ltd., its successors and affiliates, from any losses, claims, damages or liabilities relating to Kern, DeWenter, Viere, Ltd's services under this agreement attributable to false or incomplete representations made by you, except to the extent such losses, claims, damages or liabilities are determined to have resulted from the intentional or deliberate misconduct of Kern, DeWenter, Viere, Ltd. personnel.

The City of Lake Elmo agrees to perform the following functions in connection with this engagement:

- Make all management decisions and perform all management functions
- Designate a competent individual to oversee the services
- Evaluate the adequacy and results of the services performed
- Accept responsibility for the results of the services
- Establish and maintain internal controls, including monitoring ongoing activities

Our charges for services, including travel and out-of-pocket expenses, will be billed as the work progresses on a monthly basis. Payments for our services are due upon receipt of our billing. These services will be billed at the rate of $135 per hour for services performed through December 31, 2009. When, and if, our hours or billings approach the estimated amounts, we will discuss the progress of the above consulting services with you. We will also provide the City with progress reports on objectives accomplished on an "as requested" basis.

Should our relationship terminate before our engagement is completed, you will be billed for services to the date of termination. All bills are payable upon receipt. A service charge of 1% per month, which is an annual rate of 12%, will be added to all accounts unpaid 30 days after billing date. If collection action is necessary, expenses and reasonable attorney's fees will be added to the amount due.

Any disputes between us that arise under this agreement, or for a breach of this agreement, or that arise out of any other services performed by us for you, must be submitted to non-binding mediation before either of us can start a lawsuit against the other. To conduct mediation, each of us shall designate a representative with authority to fully resolve any and all disputes, and those representatives shall meet and attempt to negotiate a resolution of the dispute. If that effort fails, then a competent and impartial third party acceptable to each side shall be appointed to hold and conduct a non-binding mediation proceeding. You and we will equally share in the expenses of the mediator and each of us will pay for our own attorneys' fees, if any. No lawsuit or legal process shall be commenced until at least sixty (60) days after the mediator's first meeting with the parties.

The nature of our engagement makes it inherently difficult, with the passage of time, to present evidence in a lawsuit that fully and fairly establishes the facts underlying any dispute that may arise between us. We both agree that notwithstanding any statute of limitation that might otherwise apply to a claim or dispute, including one arising out of this agreement or the services performed under this agreement, or for breach of contract, fraud or misrepresentation, a lawsuit must be commenced within twenty-four (24) months after the date of our report. This twenty-four (24) month period applies and starts to run on the date of each report, even if we continue to perform services in later periods and even if you or we have not become aware of the existence of a claim or the basis for a possible claim. In the event that a claim or dispute is not asserted at least sixty (60) days before the expiration of this twenty-four (24) month period, then the period of limitation shall be extended by sixty (60) days, to allow the parties to conduct non-binding mediation.

We appreciate the opportunity to be of service to the City of Lake Elmo, Minnesota and believe this letter accurately summarizes the significant terms of our engagement. If you have any questions, please let us know. If you agree with the terms of our engagement as described in this letter, please sign the enclosed copy and return it to us. At any time, please feel free to contact Matthew Mayer at 763-537-3011 or Joe Rigdon at 763-569-5774.

Sincerely,

Matthew Mayer, CPA

Joe Rigdon, CPA

RESPONSE:

This letter correctly sets forth the understanding of the City of Lake Elmo, Minnesota.

By: _____

Title: _____

Date: _____

RESPONSE:

This letter correctly sets forth the understanding of the City of Lake Elmo, Minnesota.

By: _____

Title: _____

Date: _____

City Council
Date: 12/1/08
CONSENT
Item: 6

ITEM: Consider approval of one-day off-site charitable gambling license for Maplewood/Oakdale Lions Club

SUBMITTED BY: Sharon Lumby, City Clerk

SUMMARY AND ACTION REQUESTED:

The City Council is being asked to approve a request from the Maplewood/Oakdale Lions Club for a one-day (February 9, 2009) off-site gambling license to sell raffles and hold bingo at the Lake Elmo Inn Event Center located at 3712 Layton Avenue N.

RECOMMENDATION:

Staff recommends approval of issuing the charitable gambling license.

SUGGESTED MOTION FOR CONSIDERATION:

Move to approve Resolution no. 2008-057, A Resolution approving the issuance of a charitable gambling license by the State of Minnesota to the Maplewood/Oakdale Lions.

ATTACHMENTS:

1. Letter requesting an annual off-site gambling license
2. Resolution no. 2008-057

Maplewood / Oakdale Lions Club
P.O. Box 28366
Oakdale, MN 55128

We Serve

November 3, 2008

City of Lake Elmo
City Council
3800 Laverne Ave N.
Lake Elmo MN 55042

Lake Elmo City Council:

Resolution requested from the City of Lake Elmo for a one-day off-site charitable gambling activity, to be conducted at the Lake Elmo Inn Event Center (3712 Layton Ave N) by the Maplewood Oakdale Lions Club. Gambling activity conducted will consist of a raffle and bingo on the evening of February 9, 2009. The Maplewood Oakdale Lions gambling license number is 02-118, current license will expire November 30, 2009.

Your action on behalf of our request is appreciated.

Sincerely,

Rose Johnson

Lion Rose Johnson
Gambling Manager
7913 24th Street N.
Oakdale MN 55128-5129

RESOLUTION NO. 2008-057

CITY OF LAKE ELMO
WASHINGTON COUNTY, MINNESOTA

A RESOLUTION APPROVING THE ISSUANCE OF A CHARITABLE GAMBLING LICENSE BY THE STATE OF MINNESOTA TO THE MAPLEWOOD/OAKDALE LIONS

WHEREAS, the Maplewood/Oakdale Lions has requested that the State of Minnesota issue a One-Day (February 9, 2009) Off-Site Gambling License; and

WHEREAS, the Maplewood/Oakdale Lions has requested to sell raffles and hold bingo at a location within an establishment known as the Lake Elmo Inn Event Center, located at 3712 Lake Elmo Avenue N., Lake Elmo, Minnesota; and

WHEREAS, the Maplewood/Oakdale Lions comply with the Charitable Gambling rules and regulations as set forth in Section 1110.04 of the Lake Elmo Municipal Code;

NOW, THEREFORE, BE IT RESOLVED, that the City Council of Lake Elmo hereby approves the issuance of a charitable gambling application requested by the Maplewood/Oakdale Lions.

ADOPTED, by the Lake Elmo City Council this 1st day of December, 2008.

_____
Dean Johnston, Mayor

ATTEST:

_____
Sharon Lumby, City Clerk

City Council
Date: 12.1.08
T-N-T HEARING 7.
No Action

ITEM: Hold a Truth in Taxation Public Hearing on the proposed 2009 Budget

SUBMITTED BY: Joe Rigdon, KDV, finance support consultant

REVIEWED BY: Susan Hoyt, City Administrator
Tom Bouthilet, Finance Director

SUMMARY AND ACTION REQUESTED: The city council is being asked to hold a Truth-In-Taxation Public Hearing on the proposed 2009 Budget. The city council discussed the draft budget in three workshops and adopted the proposed general fund budget and the city's overall preliminary property tax levy on September 2, 2008. The proposed overall city 2009 budget includes the general fund, special revenue funds, debt service funds, capital projects funds, enterprise funds, and a draft five-year capital improvement plan (CIP). The CIP, including capital projects and enterprise fund impacts, will be reviewed by the planning commission and scheduled for city council review, discussion, and final adoption in 2009.

On September 2, 2008, the City of Lake Elmo adopted the proposed 2009 general fund budget of $2,892,060 revenues and $2,892,060 expenditures. In addition, the city adopted the "2009 Proposed Levy Certification" for submission to the Washington County Auditor, as follows:

General Fund Levy	$2,332,130
2004 G.O. Capital Improvement Plan Bonds	319,885
2006 G.O. Equipment Certificates of Indebtedness	56,188
Total	$2,708,203

Overall 2009 general fund expenditures are budgeted at $2,892,060, or a 1.4% decrease from the amended 2008 general fund budget. The 2009 general fund budget is considered "balanced", with overall general fund budgeted revenues also at $2,892,060, or a 1.4% decrease.

As part of the general fund revenues budget, the general property tax levy is proposed at the state-determined levy limit amount of $2,332,130. This amounts to a 5.0% increase over the 2008 general fund levy amount of $2,221,486. The increase in total general fund tax levy dollars is attributed to an overall city preliminary market value increase of 5.6% from $1,146,659,500 in payable 2008 to $1,210,377,300 in payable 2009. The market value increase correlates to a 7.6% increase in the city's preliminary adjusted net tax capacity from $12,681,137 in payable 2008 to $13,639,580 in payable 2009.

By both utilizing the adjusted net tax capacity increase to fund expected declines in permit and fee revenues while maintaining levels of government services, the City is proposing to decrease the payable 2008 city tax rate by 3.6% from 20.553% in 2008 to 19.810% in 2009. In other words, property owners with no change in market values from payable 2008 to payable 2009 should experience a 3.6% decrease in the city portion of their overall property tax bill. In the event of a market value decrease or increase from payable 2008 to payable 2009, city property taxes would change proportionately.

The 2009 budget includes a 3% increase to all pay grades on the city's salary chart and a 12% increase to health insurance coverage.

The city is proposing to enact certain special levies for payable 2009 of $376,073. This includes $319,885 and $56,188, respectively, for the pre-existing special levies for the 2004 G.O. Capital Improvement Plan Bonds (city facilities), and the 2006 G.O. Equipment Certificates of Indebtedness (fire truck).

ORDER OF BUSINESS

Presentation	Joe Rigdon, KDV
Questions to presenter	Mayor and Councilmembers
OPEN TRUTH IN TAXATION HEARING	City Council
Questions/comments from the public	Mayor facilitates
CLOSE TRUTH I N TAXATION HEARING	City Council
ADOPTION OF BUDGET/LEVY	December 9, 2008 city council meeting

ATTACHMENT:

1 Proposed 2009 budget

City Council
Date: 12/01/08
REGULAR
Item: 8
Resolution 2008 – 055

ITEM: Consider a Wireless Telecommunication Tower Permit and lease agreement to allow AT&T to attach an antenna array to the city water tower and to construct an accessory equipment shelter at 3303 Langly Court North.

REQUESTED BY: Ken Nielsen, Agent for AT&T Mobility - Applicant

SUBMITTED BY: Kelli Matzek, City Planner
Kyle Klatt, Planning Director

REVIEWED BY: Susan Hoyt, City Administrator
Lake Elmo Planning Commission

SUMMARY AND ACTION REQUESTED:

The City Council is being asked to consider a request from AT&T to attach a wireless communications antenna array to the existing city water tower and to construct an accessory equipment shelter at 3303 Langly Court. The council is also being asked to approve a lease agreement allowing AT&T to attach the antenna to the water tower. This is a permitted use, but requires a Wireless Telecommunications Tower permit.

The water tower currently has two existing wireless communication antennas mounted to the site. The co-location of the antennas reduces the impact to the adjacent neighborhood and is required when an existing structure exceeds 75 feet in height and is located within ¼ mile of an area being considered by an applicant. The proposed antenna array will not project higher than the existing water tower.

The proposed accessory building to house the ground equipment will be screened on the north and west side by the planting of 10 trees by the applicant. The proposed landscaping plan was reviewed by the City Forester who found that the proposed landscaping looked adequate for screening and would provide that function at maturity.

ADDITIONAL INFORMATION:

- The planning commission reviewed the application and held a public hearing. An adjacent neighbor spoke in support of the application. The commission recommended approval of the application.
- No additional lighting is proposed by the applicant.
- Because the applicant is proposing to add the antenna array to the existing water tower, some of the review criteria outlined for the Wireless Telecommunications Tower permit is not applicable. The review requirements for a new tower are more stringent than that of locating (or in this case co-locating) antennas on an existing structure.
- The applicant will perform an interference study to ensure the proposed frequency will not cause interference with public safety telecommunications.
- The city attorney and the applicant negotiated and agreed upon a lease agreement, which is included in this packet.

STAFF RECOMMENDATION:

The planning commission and staff recommend the city council approve the applicant's request for a Wireless Telecommunication Tower Permit to allow AT&T to attach a wireless communications antenna array to the existing city water tower and to construct an accessory equipment shelter at 3303 Langly Court North. Staff is also recommending approval of the lease agreement.

MOTION FOR CONSIDERATION:

I move we approve the requested Wireless Telecommunications Tower Permit and lease agreement to allow AT&T to attach a wireless communications antenna array to the existing city water tower and to construct an accessory equipment shelter at 3303 Langly Court North with the two conditions outlined in the staff report.

ORDER OF BUSINESS:

- Introduction ..... Kyle Klatt, Planning Director
- Report by staff ..... Kyle Klatt, Planning Director
- Questions from the Council ..... Mayor & Council Members
- Questions/Comments from the applicant ..... Mayor facilitates
- Questions/Comments from the public ..... Mayor facilitates
- Call for a Motion

  (required for further discussion; does not imply approval of the motion ..... Mayor facilitates
- Discussion ..... Mayor facilitates
- Action on motion ..... Council

ATTACHMENTS:

1. Detailed staff report on the request
2. Resolution 2008 - 055
3. Area map showing the location of the subject property
4. Aerial image of site
5. Landscape Plan
6. Site Plan
7. Elevation Map
8. Lease Agreement

City of Lake Elmo Planning Department

Wireless Telecommunication Tower Permit Request

To: **City Council**

From: Kelli Matzek, City Planner
Kyle Klatt, Planning Director

Meeting Date: **11-01-08**

Applicant: **Ken Nielsen, Agent for AT&T Mobility**

Owner: City of Lake Elmo

Location: **3303 Langly Ct N**

Zoning: Public and Quasi-Public Open Space (PF)

Introductory Information

Requested WTT Permit: The applicant is requesting to attach a wireless communications antenna array to the existing city water tower and to construct an accessory equipment shelter at 3303 Langly Court.

Property Information: The property at 3303 Langly Court is currently owned by the city of Lake Elmo and is the location of city water tower #1. The property is zoned PF which allows facilities for local government, such as water towers by conditional use permit. The water tower currently houses antenna arrays for two other wireless providers on the 1.1 acre site.

Applicable Codes:

Section 150.110 – 150.126 Wireless Telecommunication Tower Permit

Contains the standards and requirements for the Wireless Telecommunication Tower Permit.

Section 11.02 Definitions

WIRELESS TELECOMMUNICATION FACILITY. The combination of a wireless telecommunication tower, antennae, and tower accessory equipment.

WIRELESS TELECOMMUNICATION TOWER. Any pole, spire, structure, or combination thereof, including supporting lines, cables, wires, braces, and masts, intended primarily for the purpose of mounting an antenna or to serve as an antenna.

Section 154.063 PF – Public and Quasi-Public Open Space

Contains the standards and uses permitted in the PF District.

Findings & General Site Overview

Site Data:	*Size of 3303 Langly Court North:* 51,809 square feet *Buildings:* two existing buildings which house ground equipment for existing antenna *Existing Use:* City Water Tower #1/Wireless Telecommunications Antenna arrays and associated equipment *Existing Zoning:* PF – Public and Quasi-Public Open Space *Property Identification Number (PID):* 13-029-21-32-0069

Application Review:

Existing Conditions:	The 1.1 acre city owned site is currently used for the location of water tower #1 which was built in 1960. The PF zoned property is surrounded on all sides by residentially zoned property. The water tower currently houses two cellular antenna arrays from other cellular providers.
WTT Permit Review:	The applicant is seeking to place a wireless communications antenna array on the existing city water tower. While the Wireless Telecommunication Tower Permit is largely aimed at the construction of new towers, this application is being reviewed as such as the associated wireless communication antennas would be regulated under this section of code. The proposed antenna array and associated equipment building is viewed as a permitted use on the property, but will require a Wireless Telecommunications Tower permit and building permit. Because the applicant is proposing to add the antenna array to the existing water tower, some of the review criteria outlined for the Wireless Telecommunications Tower permit is not applicable. The review requirements for a new tower are more stringent than that of locating (or in this case co-locating) antennas on an existing structure. *Height* The applicant is proposing to add two antenna arrays to water tower #1. The antennas will be located on the catwalk of the tower. Therefore, the antennas will not exceed the height of the peak of the water tower and will be located lower on the structure than other existing wireless communication antennas. *Co-location* The code specifically requires co-location of antenna when possible. The applicant is proposing to maximize the use of the existing and approved tower for the location of the new wireless telecommunication antennas. This minimizes adverse visual effects of the antenna and accompanying accessory equipment. The site is intended for the co-location of multiple wireless communication facilities –

both on the tower and on the ground.

Lighting

The applicant is not proposing any additional lighting to the site.

Equipment Building

The applicant is proposing an 11 ½' by 20' equipment building at the base of the tower. The flat roofed building is proposed to be ten feet in height.

Landscaping

The proposed equipment building at the base of the water tower will be screened on the north and west side of the building by approximately 10 trees to be added by the applicant. The tower will be to the south and the access to the building will be on the east side. This screening will minimize visual disturbances to four residential properties adjacent to the property. Two of the four have side yards adjacent to the property, while the remaining properties back up to the property.

The proposed landscaping plan was reviewed by the City Forester who found that the proposed landscaping looked adequate for screening and would provide that function at maturity.

Planning Commission Review: The planning commission reviewed the application, held a public hearing, and recommended approval at their November 10th meeting. At the public hearing, one person spoke in favor of the application.

Resident Concerns: Staff is not aware of any concerns surrounding the requested Wireless Telecommunication Tower Permit. Property owners within 1000 feet of the property were notified of the application as required by city code.

Additional Information: The watershed district had no comment in opposition to the proposed Wireless Telecommunication Tower Permit.

WTT Permit Conclusions: Based on the above analysis, staff is recommending approval of the Wireless Telecommunication Tower permit request to allow a wireless communications antenna array to the existing city water tower and to construct an accessory equipment shelter at 3303 Langly Court North for the following reasons:

1) The applicant is minimizing adverse visual effects of the antenna and accessory equipment by proposing to make use of the city water tower which is already being utilized for such uses.

2) The proposal complies with the city regulations and development standards.
3) The proposal does not constitute a nuisance.
4) A lease agreement has successfully been negotiated between the city and the applicant.

Conditions:

1) That the applicant signs the approved lease agreement with the City in accordance with Section 150.114 of the City Code.
2) An interference study must be conducted to ensure the proposed frequency will not cause interference with public safety telecommunications.

Conclusion:

The applicant is seeking approval of a Wireless Telecommunications Tower permit and lease agreement to add a wireless communications antenna array to the existing city water tower and to construct an accessory equipment shelter at 3303 Langly Court North.

Council Options: The City Council has the following options:

A) Approve the Wireless Telecommunications Tower Permit request based on the findings identified on page three and four of the staff report;
B) Deny the Wireless Telecommunications Tower Permit request based on reasons provided by the council.

The 60-day review period for this application expires on 12-21-08, but can be extended an additional 60 days if more time is needed.

Staff Rec: **Staff is recommending approval** of the Wireless Telecommunications Tower Permit and lease agreement to add a wireless communications antenna array to the existing city water tower and to construct an accessory equipment shelter at 3303 Langly Court North for the following reasons:

1) The applicant is minimizing adverse visual effects of the antenna and accessory equipment by proposing to make use of the city water tower which is already being utilized for such uses.
2) The proposal complies with the city regulations and development standards.
3) The proposal does not constitute a nuisance.
4) A lease agreement has successfully been negotiated between the city and the applicant.

Conditions:

1) That the applicant signs the approved lease agreement with the City in accordance with Section 150.114 of the City Code.
2) An interference study must be conducted to ensure the proposed frequency will not cause interference with public safety telecommunications.

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

Move to deny the requested Wireless Telecommunications Tower Permit and lease agreement for addition of a wireless communications antenna array and construction of an accessory equipment shelter at 3303 Langly Court North based on the following reasons…*(please site reasons for the recommendation)*

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

Move to approve the requested Wireless Telecommunications Tower Permit and lease agreement for addition of a wireless communications antenna array and construction of an accessory equipment shelter at 3303 Langly Court North based on the reasons and with the conditions outlined in the staff report.

cc: Ken Nielsen, AT&T Mobility

CITY OF LAKE ELMO
WASHINGTON COUNTY, MINNESOTA

RESOLUTION NO. 2008-055

A RESOLUTION GRANTING A WIRELESS TELECOMMUNICATION TOWER PERMIT AND APPROVING A LEASE AGREEMENT ALLOWING AT&T TO ATTACH A WIRELESS COMMUNICATIONS ANTENNA ARRAY TO THE EXISTING WATER TOWER AND TO CONSTRUCT AN ACCESSORY EQUIPMENT SHELTER AT 3303 LANGLY COURT NORTH

WHEREAS, Ken Nielson, Agent for AT&T Mobility, has requested approval of a Wireless Telecommunication Tower Permit to attach a wireless communications antenna array to the existing water tower and to construct an accessory equipment shelter at 3303 Langly Court North in a PF zoning district.

WHEREAS, the Lake Elmo Planning Commission held a Public Hearing on November 10, 2008, and reviewed and recommended approval of the Wireless Telecommunications Tower Permit based on the following findings:

1) The applicant is minimizing adverse visual effects of the antenna and accessory equipment by proposing to make use of the city water tower which is already being utilized for such uses.
2) The proposal complies with the city regulations and development standards.
3) The proposal does not constitute a nuisance.
4) A lease agreement has successfully been negotiated between the city and the applicant.

WHEREAS, Section 150.114 of the City Code requires the applicant to enter into a lease agreement with the City; and

WHEREAS, the Lake Elmo City Council reviewed the Wireless Telecommunications Tower Permit and lease agreement at its December 1, 2008 meeting.

NOW, THERFORE, BE IT RESOLVED that the Lake Elmo City Council hereby approves a Wireless Telecommunication Tower Permit to attach a wireless communication array to the existing water tower and to construct an accessory equipment shelter at 3303 Langly Court North and authorizes the execution of the lease agreement for this permit subject to the following conditions:

1) That the applicant signs the approved lease agreement with the City in accordance with Section 150.114 of the City Code.
2) An interference study must be conducted to ensure the proposed frequency will not cause interference with public safety telecommunications.

This resolution was adopted by the City Council of the City of Lake Elmo on the 1st day of December 2008, by a vote of ___ Ayes and ___ Nays.

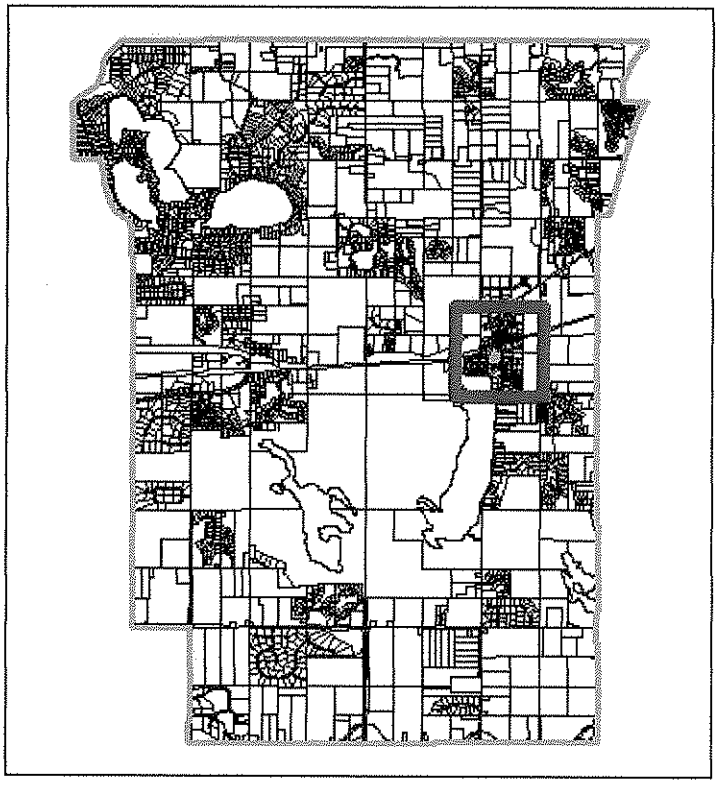
_____
Dean A. Johnston, Mayor

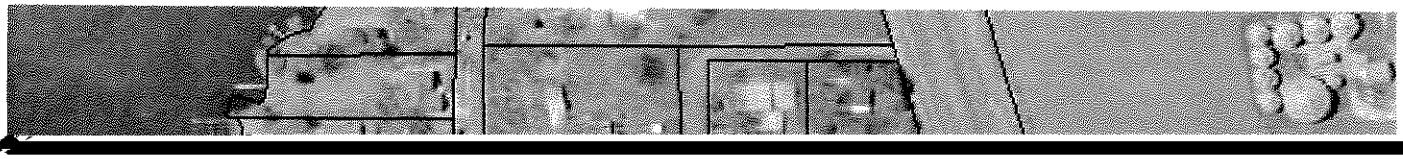
ATTEST:

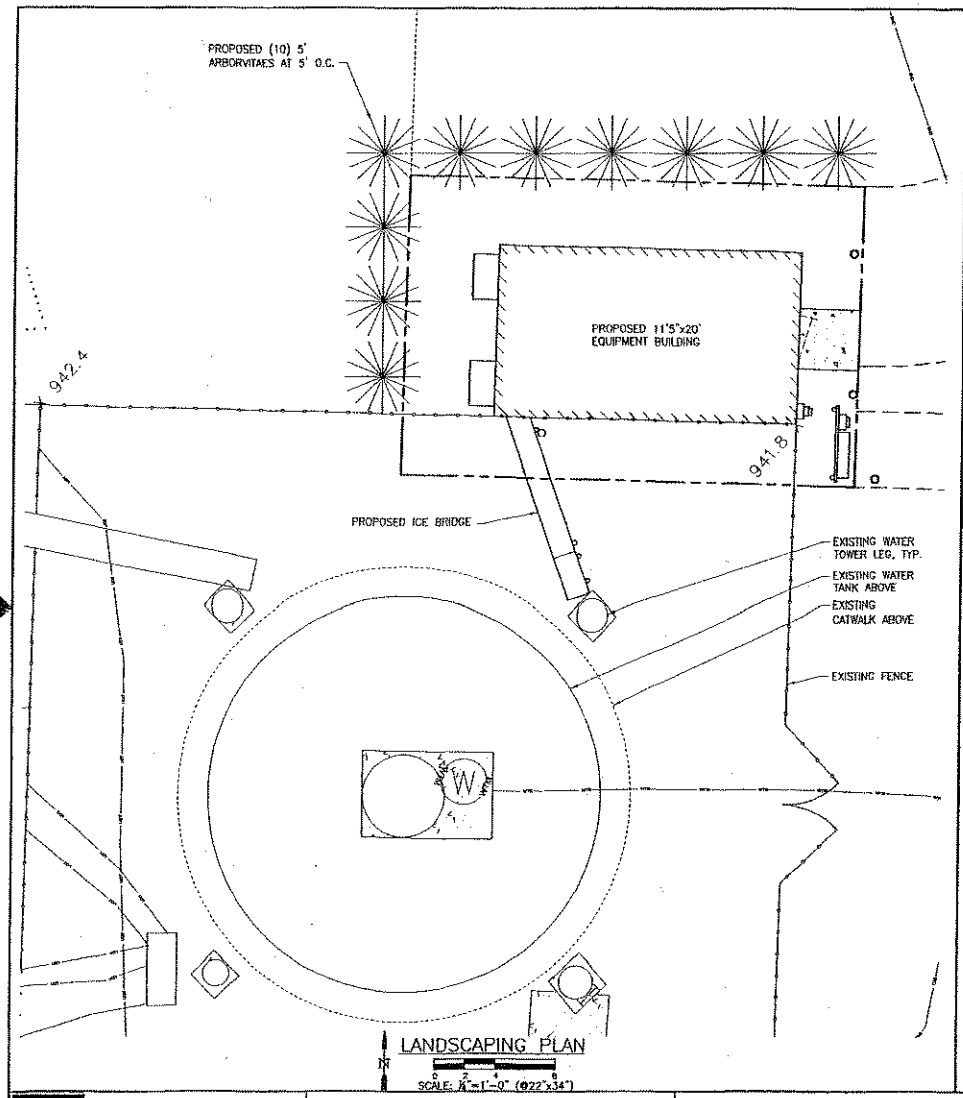
_____
Susan Hoyt, City Administrator

(SEAL)

3303 Langly Court North

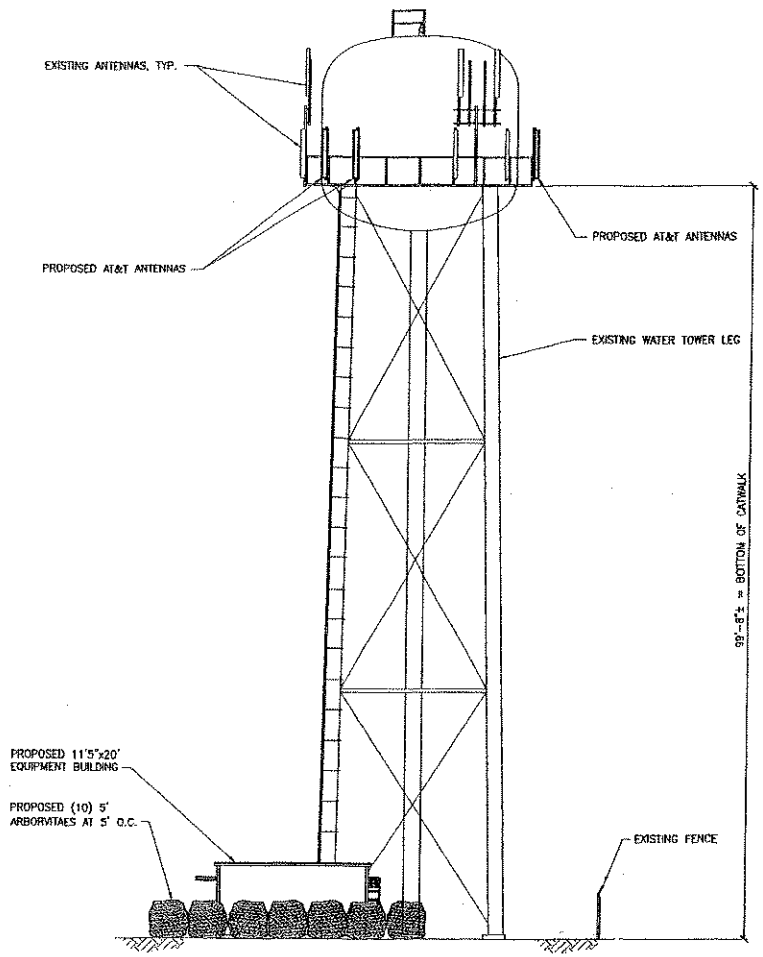






LANDSCAPING PLAN

SCALE: 1/8" = 1'-0" (@22"x34")



NORTH ELEVATION (LOOKING SOUTH)

SCALE: 1/8" = 1'-0" (@22"x34")

Ulteig engineers
5201 East River Road Suite 308
Minneapolis, Minnesota 55421
Phone: 763.571.2500 Fax: 763.571.1199
Minneapolis · Rimrock · Devil's Lake · Fargo · Bismarck
Web: www.ulteig.com
Ulteig Job No. 3061.0833

SITE No. MPLSMN3500
LAKE ELMO

at&t
4300 MARKET POINTE DRIVE, SUITE 350
BLOOMINGTON, MINNESOTA 55435

No.	DATE	REVISIONS	BY	CHK	APP'D
C	10/23/08	ADDED LANDSCAPING SHT PER CITY	KBA	KBA	RAE
B	08/26/08	REVISED PER TKDA COMMENTS	KBA	KBA	RAE
A	06/27/08	ISSUED FOR REVIEW AND COMMENT	KBA	KBA	RAE

SCALE: AS NOTED | DESIGNED: RAE | DRAWN: KBA

THE SIGNED DRAWING IS THE CORRECT RECORD DOCUMENT, NOT THE AutoCAD DISKETTE.

I HEREBY CERTIFY THAT THIS PLAN, SPECIFICATION OR REPORT WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND THAT I AM A DULY LICENSED PROFESSIONAL ENGINEER UNDER THE LAWS OF THE STATE OF MINNESOTA

DATE 10/23/08 REG. No. 43119

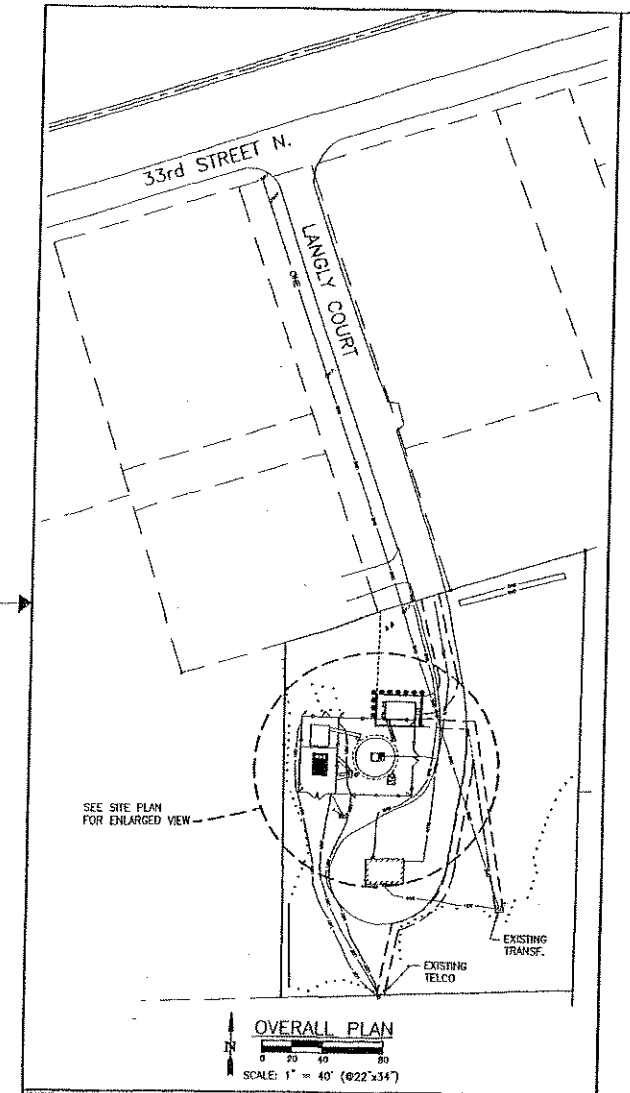
ROBLEY A. EVANS

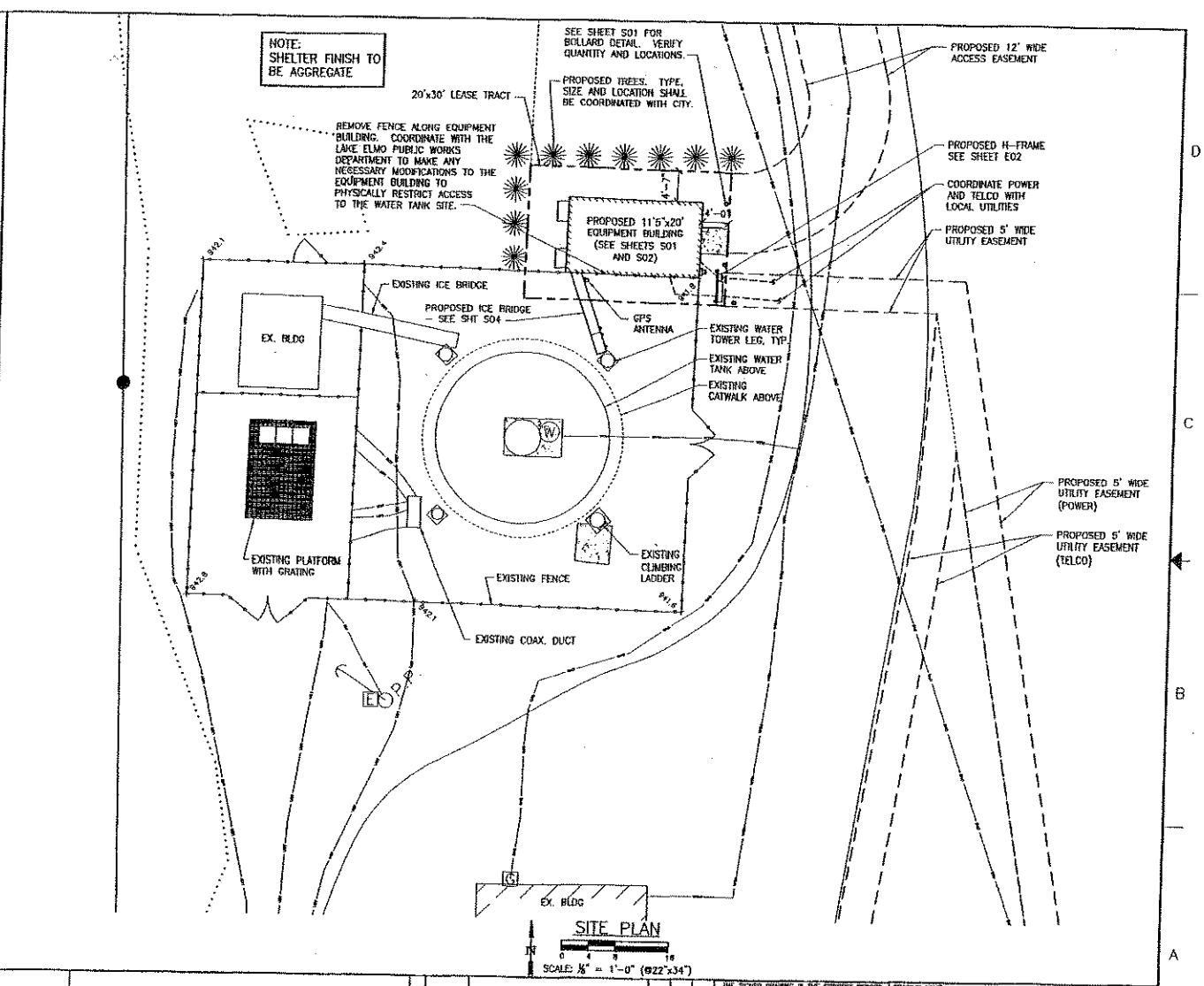
DRAWING NAME: **LANSCAPING PLAN & ELEVATION**

DRAWING No.: **MPLSMN3500-L01** REV: C

6 5 4 3 2 1

D C B A





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Ultelg Job No. 208.0823

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LAKE ELMO

at&t
4300 MARKET POINTE DRIVE, SUITE 200
BLOOMINGTON, MINNESOTA 55435

No.	DATE	REVISIONS	BY	CHK	APP'D
B	08/28/08	REVISED PER TKDA COMMENTS	KBA	KBA	RAE
A	06/27/08	ISSUED FOR REVIEW AND COMMENT	KBA	KBA	RAE

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DATE 08/26/08 REG. No. 43119

ROBLEY A. EVANS

DRAWING NAME: **SITE PLAN**

DRAWING No.: **MPLSMN3500-C01** REV: B

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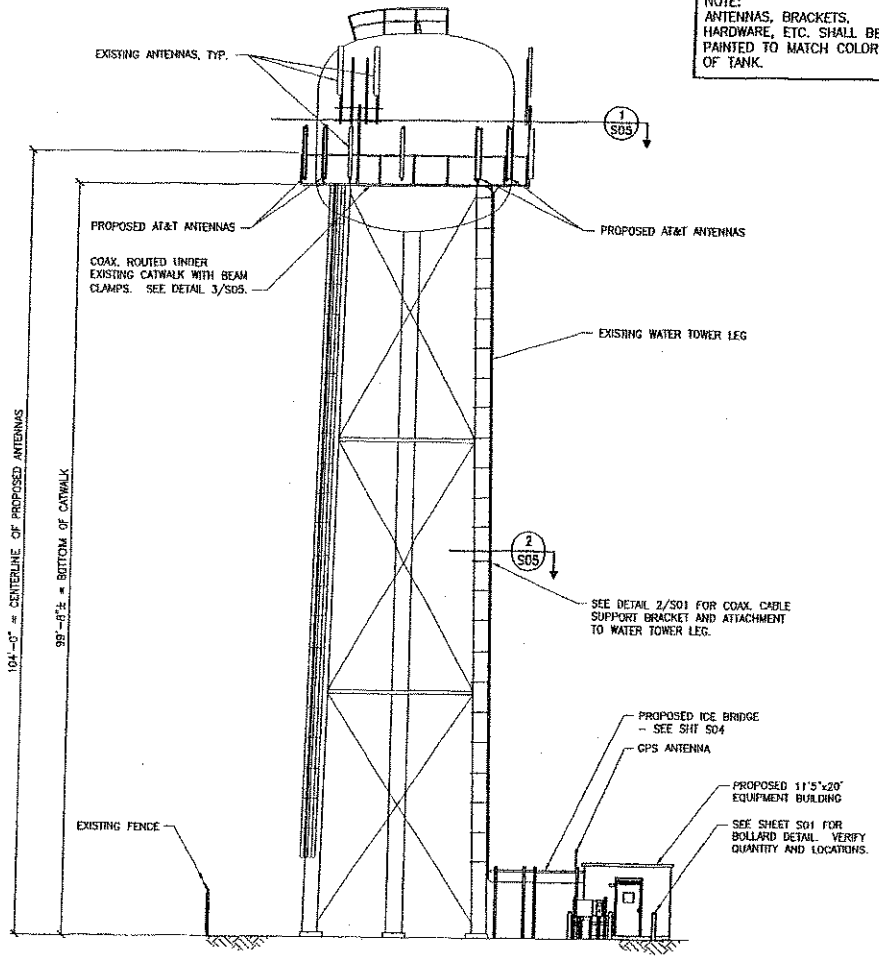
D C B A

NOTE:
ANTENNAS, BRACKETS, HARDWARE, ETC. SHALL BE PAINTED TO MATCH COLOR OF TANK.



EAST ELEVATION

SCALE: 1/8" = 1'-0" (@22"x34")

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8201 East River Road Suite 208
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Minneapolis - Rochester - Detroit Lakes - Fargo - Sioux Falls
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Ulteig Job No. 208.0023

SITE No. MPLSMN3500
LAKE ELMO

at&t
4300 MARKET POINTE DRIVE, SUITE 300
BLOOMINGTON, MINNESOTA 55435

No.	DATE	REVISIONS	BY	CHK	APP'D
B	08/26/08	REVISED PER TKDA COMMENTS	KBA	KBA	RAE
A	08/27/08	ISSUED FOR REVIEW AND COMMENT	KBA	KBA	RAE

SCALE: AS NOTED | DESIGNED: RAE | DRAWN: KBA

THIS SIGNED DRAWING IS THE CORRECT RECORD DOCUMENT, NOT THE AutoCAD DISKETTE.

I HEREBY CERTIFY THAT THIS PLAN, SPECIFICATION OR REPORT WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND THAT I AM A DULY LICENSED PROFESSIONAL ENGINEER UNDER THE LAWS OF THE STATE OF MINNESOTA

DATE 08/26/08 REG. No. 43119

ROBLEY A. EVANS

DRAWING NAME: **ELEVATION**

DRAWING No.: **MPLSMN3500-C02** REV: B

6 5 4 3 2 1

D C B A

DRAFT

SITE LEASE AGREEMENT

THIS SITE LEASE AGREEMENT ("Lease"), is dated the _____ day of _____, 2008 (the "Effective Date"), and is entered into by and between the City of Lake Elmo, a Minnesota statutory city ("Landlord") and New Cingular Wireless PCS, LLC, a Delaware limited liability company ("Tenant").

For good and valuable consideration, the parties agree as follows:

1. Leased Premises. Subject to the terms and conditions of this Lease, Landlord hereby leases to Tenant and Tenant leases from Landlord the following:

   A. A portion of Landlord's real property legally described on that certain survey prepared by Ulteig Engineering and dated 6/26/2008, attached hereto as Exhibit A, subject to any and all existing easements, liens or encumbrances ("Property");

   B. A portion of the water tower ("Water Tower") located on the Property described and illustrated on those certain construction drawings prepared by Ulteig Engineers, dated _____tbd_____and consisting of __tbd__ pages, attached hereto as Exhibit B ; and

   C. A non-exclusive access and utility easement ("Access Easement") legally described on Exhibit A, for reasonable access to the Property and the Water Tower.

   The Property, Water Tower and Access Easement shall be collectively referred to herein as the "Leased Premises".

2. Rent.

   A. Amount, Adjustments. As consideration for this Lease, Tenant shall pay Landlord an annual rent in the amount Fourteen Thousand Dollars ($14,000.00) prorated for the initial partial year, which shall be increased January 1, 2010 and each January 1 thereafter, Three percent (3%) of the previous year's annualized rental.

   B. Time of Payment, Taxes. Landlord shall communicate all rental increases to the Tenant in writing by the preceding December 1. The annual rental shall be paid in equal monthly installments, in advance, on the first day of each month, commencing on the date specified in Paragraph 3 below. If the Tenant does not meet the requirements referenced in

Subparagraph 5A below by March 1, 2009, Landlord shall refund the Tenant rental payment made at the time of Lease execution and this Lease shall terminate. In addition to the annual rental, Tenant agrees to timely pay its pro rata share of any taxes or payment in lieu of taxes required as a result of this Lease.

3. Term and Renewals. The "Initial Term" of this Lease shall commence on the date that Tenant assumes occupancy of the Leased Premises for the purposes of installing its equipment or the date ninety (90) days after the Effective Date hereof, whichever is earlier and shall terminate on December 31 of the fifth full calendar year of this Lease, unless sooner terminated as provided herein. Subject to the terms and conditions of this Lease, Tenant shall have the right to extend this Lease for four (4) additional five (5)-year renewal periods ("Renewal Term") commencing on the day following the expiration date of the Initial Term or of any subsequent Renewal Term. Use of the word "Term" shall be deemed to include the Initial Term and the Renewal Terms when such Renewal Terms have been exercised.

This Lease shall be automatically renewed for each successive Renewal Term without any action by either party. Tenant shall have the right not to renew this Lease if Tenant gives written notice of non-renewal to Landlord no later than ninety (90) days prior to the expiration of the Initial Term or any Renewal Term, such notice to be provided in accordance with Paragraph 21 of this Lease.

4. Tenant's Use.

A. User Priority. Tenant agrees that the following priorities of use, in descending order, shall apply in the event of communication interference or other conflict while this Lease is in effect, and Tenant's use shall be subordinate accordingly:

1. Landlord;

2. Public safety agencies, including law enforcement, fire, and ambulance services, that are not part of the Landlord;

B. Purposes. Tenant shall use the Leased Premises only for the purpose of installing, maintaining, and operating a Landlord-approved antenna array, equipment, cables and appurtenances as necessary to connect to cabinetry on the Property (all herein "Wireless Telecommunication Facility"). The Wireless Telecommunication Facility is illustrated on Exhibit B attached hereto. Except for the specific area on the Property housing Tenant's cabinetry and the specific area on the Water Tower housing Tenant's antenna array and other equipment, which areas shall be for Tenant's exclusive use, the use of the Leased Premises shall be

non-exclusive, and Landlord specifically reserves the right to allow the Leased Premises to be used by other parties and to make all additions, deletions, or modifications to its own facilities on the Leased Premises. Tenant shall comply with all applicable ordinances, statutes, and regulations of local, state, and federal government agencies.

C. Technical Studies. Before obtaining the initial building permit and prior to constructing any changes to the Wireless Telecommunication Facility, Tenant must obtain and pay for the reasonable costs of:

1. A Radio Frequency Interference study ("RFI Study") carried out by an independent and qualified professional showing that Tenant's intended use will not interfere with any existing communications facilities; and

2. An Engineering Study ("Engineering Study") showing that the Water Tower is able to support the Wireless Telecommunication Facility, without prejudice to the City's use of the Water Tower.

The RFI study will be conducted including the frequencies and power levels for each existing communications tenant provided to Tenant by Landlord within fifteen days of the Effective Date of this agreement. If a list is not provided to Tenant by Landlord within fifteen (15) days of the Effective Date, Tenant shall have the study prepared using frequencies and power levels for each existing tenant, in this case Sprint and T-Mobile, as determined by the independent and qualified engineers professional judgment based on their knowledge and experience of frequencies and power levels commonly used by the current water tower tenants (Sprint and T-Mobile) in the St. Paul/Minneapolis Market. If the RFI Study determines that there is a potential for interference that cannot be reasonably remedied or, if the Engineering Study determines that the Wireless Telecommunication Facility cannot be constructed without prejudice to the Water Tower, the Landlord may terminate this Lease immediately and refund the initial rent to Tenant. Landlord must consent to the installation of additional antennas if necessary in order to reasonably accommodate Tenant's needs. If and when the number of antennas shall exceed four (4) per sector, the parties will negotiate the amount of additional rent for the additional antennas prior to the erection of such additional antennas.

D. Operation. Tenant shall have the right, at its sole cost and expense, to operate and maintain the Wireless Telecommunication Facility on the Leased Premises in accordance with good engineering practices, and with all applicable FCC rules and regulations. Tenant's installation of the

Wireless Telecommunication Facility shall be done according to plans approved by Landlord, which approval shall not be unreasonably withheld. Any damage done to the Leased Premises or other Landlord property, during installation or during operations, shall be repaired at Tenant's expense within 30 days after notification of damage. The Wireless Telecommunication Facility shall remain the exclusive property of the Tenant, unless otherwise provided in this Lease.

E. Maintenance, Improvement Expenses. All modifications to the Leased Premises and all improvements made for Tenant's benefit shall be at the Tenant's expense and such Wireless Telecommunication Facility shall be maintained in a good state of repair and secured by Tenant. Equipment mounted on the Water Tower shall, at all times, be painted, at Tenant's expense, the same color as the Water Tower. Tenant, at its cost, shall plant vegetation in the area around Tenant's ground based equipment, as generally depicted in Exhibit B.

F. Replacements. Tenant may update or replace but not expand the Wireless Telecommunication Facility from time to time as Tenant determines to be necessary for the continued safety and operational capacity of the facility. Prior to any major updating or replacement of the Wireless Telecommunications Facility, Tenant shall notify Landlord and provide detailed plans and specifications of such updated or replacement equipment to Landlord. Such plans and specifications shall be reviewed and approved by Landlord and/or a consultant selected by Landlord and paid for by Tenant, such approval shall not to be unreasonably withheld, delayed or conditioned. Any and all objections to such plans and specifications shall be made in writing within fifteen (15) business days after submission. Failure to object within such fifteen-day period shall be deemed to be consent by Landlord of all of the plans and specifications.

G. Drawings. Tenant shall provide Landlord with as-built drawings of the Wireless Telecommunication Facility installed on the Leased Premises that generally depicts the Tenant's equipment located on the Leased Premises.

H. No Interference. Tenant shall, at its own expense, maintain any Wireless Telecommunication Facility placed on the Leased Premises in a safe condition, in good repair and in a manner suitable to Landlord so as not to conflict with the use of the surrounding premises by Landlord. Tenant shall not unreasonably interfere with the operations of any prior tenant using the Water Tower and operating within its licensed frequencies in accordance with all applicable laws and regulations, and shall not

interfere with the working use of the Water Tower located on the Property or to be located on the Property by Landlord.

I. Access. Except for the Water Tower, Tenant shall have access to the Leased Premises at all times, 24 hours a day, seven days a week. Tenant, at all times during this Lease, shall have access to the Water Tower only with the approval of the Landlord. Tenant shall request access to the Water Tower twenty-four (24) hours in advance, except in an emergency, and Landlord's approval thereof shall not be unreasonably withheld or delayed. In the event it is necessary for Tenant to have access to the Water Tower at some time other than the normal working hours of Landlord, Landlord may charge Tenant for whatever reasonable expense, including employees' wages, that Landlord may incur in providing such access to Tenant.

J. Payment of Utilities. Unless prohibited by the local power or telephone company, Tenant shall separately meter charges for the consumption of electricity and other utilities associated with its use of the Leased Premises and shall promptly pay all costs associated therewith.

5. Governmental Approval Contingency.

A. Tenant Application. Tenant's right to use the Leased Premises is expressly made contingent upon its obtaining all the certificates, permits, zoning and other approvals that may be required by any federal, state, or local authority. This shall include the technical studies referred to in Subparagraph 4.C. above. Landlord shall cooperate with Tenant in its efforts to obtain and retain such approvals and shall take no action which would adversely affect the status of the Leased Premises with respect to the Tenant's proposed use thereof.

B. Non-approval. In the event that any application necessary under Subparagraph 5A above is finally rejected or any certificate, permit, license, or approval issued to Tenant is canceled, expires, lapses, or is otherwise withdrawn or terminated by governmental authority so that Tenant, in its sole discretion, will be unable to use the Leased Premises for its intended purposes, Tenant shall have the right to terminate this Lease and be reimbursed for the rental payment if made pursuant to Subparagraph 2B above. Notice of Tenant's exercise of its right to terminate shall be given to Landlord in writing by certified mail, return receipt requested, and shall be effective upon receipt of such notice by Landlord as evidenced by the return receipt. Except as required under Subparagraph 12D below, upon such termination, this Lease shall

become null and void and the parties shall have no further obligations to each other.

6. Emergency Facilities. In the event of a natural or man-made disaster, in order to protect the health, welfare, and safety of the community, Tenant, at its sole cost, may erect additional equipment on a temporary basis on the Leased Premises to assure continuation of service. Such temporary operation shall not exceed 90 days unless Tenant obtains written approval from the Landlord, which approval shall not be unreasonably withheld.

7. Additional Maintenance Expenses. Upon notice from Landlord, Tenant shall promptly pay to Landlord all reasonable additional Landlord expenses incurred in maintaining the Leased Premises, including painting or other maintenance of the Water Tower, that are caused by Tenant's occupancy of the Leased Premises.

8. Additional Cabinetry. Tenant acknowledges that Landlord may permit additional cabinetry to be constructed on adjoining property owned by Landlord. Said additional cabinetry will be made at no cost to Tenant and will not compromise the structural integrity of Tenant's cabinetry.

9. Defense and Indemnification.

A. General. Tenant and Landlord each agrees to defend, indemnify and hold each other harmless from and against any and all claims, costs, losses, expenses, demands, actions, or causes of action, including reasonable attorneys' fees and other costs and expenses of litigation, which may be asserted against or incurred by either party or for which either party may be liable in the performance of this Lease, except those which arise solely from the negligence or willful misconduct of the other. Except as provided in the preceding sentence, Tenant shall defend, indemnify and hold the Landlord harmless from all claims arising out of the installation, operation, use, maintenance, repair, removal, or presence of the Wireless Telecommunication Facility, equipment and related facilities.

B. Hazardous Materials. Without limiting the scope of Subparagraph 9A above, Tenant will be solely responsible for and will defend, indemnify, and hold Landlord, its agents, and employees harmless from and against any and all claims, costs, and liabilities, including attorney's fees and costs, arising out of or in connection with the cleanup or restoration of the Leased Premises resulting from Tenant's use of Hazardous Materials. For purposes of this Lease, "Hazardous Materials" shall be interpreted broadly and specifically includes, without limitation, asbestos, fuel,

batteries or any hazardous substance, waste, or materials as defined in any federal, state, or local environmental or safety law or regulations including, but not limited to, CERCLA. Landlord represents that there are currently no hazardous substances as commonly defined by CERCLA, MERLA or other statutory or regulatory provisions being used, stored, disposed, transported, leached, emitted, pumped, poured, spilled, leaking, dumping, discharging or otherwise escaping in, on or about Landlord's property.

C. Tenant's Warranty. Tenant represents and warrants that its use of the Leased Premises will not generate and Tenant will not dispose of on the Leased Premises, any Hazardous Materials unless Tenant specifically informs Landlord thereof in writing twenty-four hours prior to such storage, disposal or transport, or otherwise as soon as Tenant becomes aware of the existence of Hazardous Materials on the Leased Premises. Any use, storage, transportation or disposal of Hazardous Substances on or over the Leased Premises by Tenant will be done in compliance with all applicable environmental laws, rules and regulations. The obligations of this Paragraph 9 shall survive the expiration or other termination of this Lease.

D. Landlord's Warranty. Landlord represents that Landlord has no knowledge of any substance, chemical, or waste on the Property that is identified as hazardous, toxic or dangerous in any applicable federal, state or local law or regulation. Landlord shall hold Tenant harmless from and indemnify Tenant against any damage, loss, expense, response costs, or liability, including consultant fees and attorney's fees resulting from the presence of hazardous substances on, under or around the Property or resulting from hazardous substances being generated, stored, disposed of, or transported to, on, under, or around the Property as long as the hazardous substances were not generated, stored, disposed of, or transported by Tenant or its employees agents or contractors.

10. Insurance.

A. Workers Compensation. The Tenant must maintain Workers Compensation insurance in compliance with all applicable statutes. The policy shall also provide Employer's Liability coverage with limits of not less than $500,000 Bodily Injury each accident, $500,000 Bodily Injury by disease policy limit, and $500,000 Bodily Injury by disease, each employee.

B. General Liability. Tenant must maintain an occurrence form comprehensive general liability coverage.

1. Such coverage shall include, but not be limited to, bodily injury, property damage -- broad form, and personal injury, for the hazards of premises/operation, contractual, independent contractors, and products/completed operations.

2. Tenant must maintain the aforementioned comprehensive general liability coverage with limits of liability not less than $2,000,000 each occurrence; $2,000,000 personal injury; $4,000,000 general aggregate, and $4,000,000 products and completed operations aggregate. These limits may be satisfied by the comprehensive general liability coverage or in combination with an umbrella or excess liability policy, provided coverage afforded by the umbrella or excess policy is no less than the underlying comprehensive general liability coverages.

C. Automobile Liability. Tenant must carry Automobile Liability coverage.

1. Coverage shall afford total liability limits for Bodily Injury Liability and Property Damage Liability in the amount of $2,000,000 per accident. The liability limits may be afforded under the Commercial Policy, or in combination with an Umbrella or Excess Liability Policy provided coverage afforded by the Umbrella Excess Policy is no less than the underlying Commercial Auto Liability coverage.

2. Coverage shall be provided for Bodily Injury and Property Damage for the ownership, use, maintenance or operation of all owned, non-owned and hired automobiles.

3. The Commercial Automobile Policy shall include at least statutory personal injury protection, uninsured motorists and underinsured motorists coverages.

D. Tenant Property Insurance. Tenant must keep in force during the term and any renewals of this Lease a policy covering damages to its property at the Leased Premises. The amount of coverage shall be sufficient to replace the damaged property, loss of use and comply with any ordinance or law requirements.

E. Additional Insured, Certificate of Insurance. Tenant shall provide, prior to tenancy, evidence of the required insurance in the form of a Certificate of Insurance issued by a company authorized to do business in the state of Minnesota, and reasonably acceptable to Landlord, which Certificate includes all coverages required in this Paragraph 10. Tenant will name Landlord as an Additional Insured on the General Liability and Commercial Automobile Liability Policies. The Certificate(s) shall also provide the coverage may not be canceled, non-renewed, or materially changed without thirty (30) days prior written notice to Landlord.

F. Adjustment to Insurance Coverage Limits. The coverage limits set forth herein shall be increased at the time of any Renewal Term, so that the then value of the coverage taking into account inflation is at least equal to the value of the coverage existing on the date hereof.

11. Damage or Destruction. If the Leased Premises is destroyed or damaged, so as, in Tenant's judgment, to hinder its effective use of the Wireless Telecommunication Facility, Tenant may elect to terminate this Lease upon thirty (30) days, written notice to Landlord. In the event Tenant elects to terminate this Lease, Tenant shall be entitled to reimbursement of prepaid rent covering the period subsequent to the date of damage to or destruction of the Leased Premises.

Neither party shall be liable to the other (or to the other's successors or assigns) for any loss or damages caused by fire or any of the risks enumerated in a standard "All Risk" insurance policy, and in the event of an insured loss, neither party's insurance company shall have a subrogated claim against the other party.

12. Lease Termination.

A. Events of Termination. Except as otherwise provided herein, this Lease may be terminated upon sixty (60) days written Notice of Termination to the other party as follows:

1. by either party upon a default of any covenant or term hereof by the other party, which default is not cured within sixty (60) days of receipt of written notice of default to the other party (without, however, limiting any other rights of the parties pursuant to any other provisions hereof) unless such default may not reasonably be cured within the 60-day period, in which case, this Lease may not be terminated if the defaulting party commences action to cure the default within such 60-day' period, proceeds with due diligence to fully cure the default and thereafter cures the default;

2. by Tenant for cause if its unable to obtain or maintain any license, permit or other governmental approval necessary for the construction and/or operation of the Wireless Telecommunication Facility or Tenant's business;

3. by Tenant for cause if the Leased Premises is or becomes unacceptable for technological reasons including without limitation shadowing or interference under Tenant's Wireless Telecommunication Facility, design or engineering specifications or the communications systems to which the Wireless Telecommunication Facility belongs;

4. by Landlord, upon one (1) year's prior written notice to Tenant if its Council decides, for any reason, to redevelop the Leased Premises in a manner inconsistent with continued use of the Leased Premises by Tenant and/or discontinue use of the Water Tower for all purposes;

5. by Landlord if it determines that the Water Tower is structurally unsound, including, but not limited to, consideration of age of the Water Tower, drainage or destruction of all or part of the Water Tower on the Leased Premises from any source, or factors relating to the condition of the Leased Premises. In the event of such termination, Tenant shall have the right to maintain mobile cellular sites on wheels on the Property or, after approval by Landlord, on any other land owned or controlled by Landlord in the immediate area of the Property, such right to continue for a reasonable period of time (not to exceed one year) until Tenant has had the opportunity to find a substitute site for the Leased Premises and to install its Wireless Telecommunication Facility on such substitute site;

6. by Landlord if it determines that a potential user with a higher priority under Subparagraph 4A above cannot find another adequate location, or the Wireless Telecommunication Facility unreasonably interferes with another user with a higher priority, regardless of whether or not such an interference was predicted in the initial RFI Study that was part of the application process, provided that Landlord shall not for a period of three (3) years after termination lease the Leased Premises to another party with equal or lesser priority for the same use as that of Tenant. In the event of such termination, Tenant shall have the right to maintain mobile cellular sites on wheels on the Property or, after approval by Landlord, on any other land owned or controlled by Landlord in the immediate area of the Property, such right to continue for a reasonable period of time (not to exceed one year) until Tenant has had the opportunity to find a substitute site for the Leased Premises and to install its Wireless Telecommunication Facility on such substitute site ; or

7. by Landlord if Tenant has failed to comply with applicable ordinances, or state or federal law, or any conditions attached to government approvals granted thereunder, and such default is not cured within sixty (60) days of receipt of written notice from Landlord, and where final determination of whether there is a default is made by a court of competent jurisdiction.

B. Notice of Termination. The parties shall give Notice of Termination in writing by certified mail, return receipt requested. Such Notice shall be effective upon receipt as evidenced by the return receipt, or such later date as stated in the Notice. All rentals paid for the Lease prior to said termination date shall be retained by Landlord and any prepaid rent from the termination date forward shall be refunded to Tenant within thirty (30) days of the termination date by Landlord.

C. Tenant's Liability for Early Termination. If Tenant terminates this Lease within the Initial Term of this agreement for other than of right as provided in Paragraphs 5.B., 12 A.1., 2., and 3., 14. and 15.A., B. and D. of this Lease, Tenant shall pay to Landlord as liquidated damages for early termination, three (3) months rent for the year in which Tenant terminates.

D. Site Restoration. In the event that this Lease is terminated or not renewed, Tenant shall have 90 days from the termination or expiration date to remove its Wireless Telecommunication Facility and related equipment from the Leased Premises and restore the Leased Premises to the condition existing upon the commencement date, normal wear and tear excepted. Notwithstanding the foregoing, Tenant will not be responsible for the replacement of any trees, shrubs or other vegetation, nor will Tenant be required to remove from the Premises or the Property any underground utilities. In the event that the Tenant's Wireless Telecommunication Facility and related equipment are not removed to the reasonable satisfaction of the Landlord within such ninety-day period, they shall be deemed abandoned and Tenant shall reimburse Landlord for all costs incurred by Landlord to remove such equipment and restore the Leased Premises as provided for herein; and, as security for the removal of the Wireless Telecommunication Facility, Tenant shall, at the time of the execution of this Lease, provide the City with a Removal Bond in the amount of Ten Thousand Dollars ($10,000) or in the alternative provide the City with a Ten Thousand Dollar ($10,000) payment to be placed in a restricted account, to be returned, together with interest as provided below, to Tenant upon satisfaction of Tenant's removal and restoration obligations. If a restricted account is utilized, the City will accrue interest thereon at the same rate as other City investments. Tenant has notified the Landlord that the following entities (if any) have an interest in the Wireless Telecommunication Facility and related equipment because of financing arrangements:

_____

_____

_____

If Landlord removes the Wireless Telecommunication Facility or related equipment, Landlord must give written notice to the above entities at the addresses provided, informing them that Wireless Telecommunication Facility and related property have been removed and will be deemed abandoned if not claimed and the storage fees and other reasonable costs paid within thirty (30) days.

13. Limitation of Landlord's Liability. If Landlord terminates this Lease other than as of right as provided in this Lease, or Landlord causes interruption of the business of Tenant or Landlord breaches this Lease, Landlord's liability for damages to Tenant shall be limited to the actual and direct costs of equipment installation, removal, relocation and repair and loss of business and related damages to Tenant, and shall specifically exclude any recovery for value of the business of Tenant as a going concern, or lost profits or future expectation of profits. Nothing contained herein shall prevent Tenant from specifically enforcing the terms of this Lease or obtaining injunctive or equitable relief, including, without limiting, the right to enjoin the termination of this Lease.

14. Temporary Interruptions of Service. If Landlord determines, with verification and concurrence by the FCC or other regulatory governmental agency having jurisdiction in the matter, that continued operation of the Wireless Telecommunication Facility would cause or contribute to an immediate threat to public health and/or safety (except for any issues associated with human exposure to radio frequency omissions, which is regulated by the federal government), Landlord may order Tenant to discontinue its operation. Tenant shall immediately comply with such an order. Service shall be discontinued only for the period that the immediate threat exists. If Landlord does not give prior notice to Tenant, Landlord shall notify Tenant as soon as possible after its action and give its reason for taking the action. Landlord shall not be liable to Tenant or any other party for any interruption in Tenant' s service or interference with Tenant's operation of its Wireless Telecommunication Facility, except as may be caused by the willful misconduct or the arbitrary or capricious act of the Landlord, its employees or agents. If the discontinuance extends for a period greater than three days, either consecutively or cumulatively, Tenant shall have the right to terminate this Lease within its sole discretion, without recourse or demand by Landlord and without payment of any liquidated damages.

15. Tenant Interference.

A. With Water Tower. Tenant shall not interfere with Landlord's use of the Water Tower and agrees to cease all such actions which unreasonably and materially interfere with Landlord's use thereof no later than three business days after receipt of written notice of the interference from Landlord. In the event that Tenant's cessation of action is material to Tenant's use of the Leased Premises and such cessation frustrates Tenant's use of the Leased Premises, within Tenant's sole discretion, Tenant shall have the immediate right to terminate this Lease without payment of any liquidated damages.

B. With Higher Priority Users. If Tenant's Wireless Telecommunication Facility causes impermissible interference with higher priority users as set forth in under Subparagraph 4A above or with preexisting tenants, Tenant shall take all measures necessary to correct and eliminate the interference. If the interference cannot be eliminated within 48 hours after receiving Landlord's written notice of the interference, Tenant shall immediately cease operating its Wireless Telecommunication Facility and shall not reactivate operation, except intermittent operation for the purpose of testing, until the interference has been eliminated. If the interference cannot be eliminated within 30 days after Tenant received Landlord's written notice, either party may at its option terminate this Lease immediately. If Tenant elects to terminate under this Subparagraph 15.B., Tenant shall not be required to pay liquidated damages.

C. Interference Study - New Occupants. Upon written notice by Landlord that it has a bona fide request from any other party to lease an area including or in close proximity to the Leased Premises ("Adjacent Area"), Tenant agrees to provide Landlord, within sixty (60) days, the radio frequencies currently in operation or to be operated in the future of each transmitter and receiver installed and operational by Tenant on the Leased Premises at the time of such request. Landlord may then have an independent, registered professional engineer of Landlord's choosing perform the necessary interference studies to determine if the new applicant's frequencies will cause harmful radio interference to Tenant. Landlord shall require the new applicant to pay for such interference studies, unless the Landlord or other higher priority user requests the use. In that event, the Landlord and the higher priority user shall pay for the necessary interference studies, pro rata.

D. Interference - New Occupants. Landlord agrees that it will not grant a future lease in the Adjacent Area to any party who is of equal or lower priority to Tenant, if such party's use is reasonably anticipated to interfere with Tenant' s operation of its Wireless Telecommunication

Facility as determined pursuant to subparagraph 15C above. Landlord agrees further that any future lease of the Adjacent Area will prohibit a user of equal or lower priority from interfering with Tenant's Wireless Telecommunication Facility. Landlord agrees that it will require any subsequent occupants of the Adjacent Area of equal or lower priority to Tenant to provide Tenant these same assurances against interference. Landlord shall have the obligation to eliminate any interference with the operations of Tenant caused by such subsequent occupants. If such interference is not eliminated, Tenant shall have the right to terminate this Lease or seek injunctive relief against the interfering occupant, at Tenant's expense. If Tenant elects to terminate this Lease pursuant to this Subparagraph 15.D., Tenant shall not be required to pay liquidated damages, and Tenant shall be reimbursed for all unused prepaid rent.

16. Assignment. This Lease, or rights thereunder, may be sold, assigned or transferred at any time by Tenant to Tenant's affiliates or subsidiaries or to any party who acquires all or substantially all of the assets of Tenant within the Twin Cities metropolitan area. As to other parties, this Lease may not be sold, assigned, or transferred without the written consent of the Landlord, which consent shall not be unreasonably withheld, delayed or conditioned. For purposes of this paragraph, an "affiliate" or "subsidiary" means an entity which Tenant controls, is controlled by or is under common control with Tenant. Landlord hereby consents to the assignment by Tenant of its rights under this Lease as collateral to any entity which provides financing for the equipment to be installed at the Leased Premises.

17. Condemnation. In the event the whole of the Leased Premises is taken by eminent domain, this Lease shall terminate as of the date title to the Leased Premises vests in the condemning authority. In event a material portion of the Leased Premises is taken by eminent domain, either party shall have the right to terminate this Lease as of said date of title transfer, by giving thirty (30) days' written notice to the other party. In the event of any taking under the power of eminent domain, Tenant shall not be entitled to any portion of the reward paid for the taking and the Landlord shall receive full amount of such award. Tenant hereby expressly waives any right or claim to any portion thereof. Although all damages, whether awarded as compensation for diminution in value of the leasehold or to the fee of the Leased Premises, shall belong to Landlord, Tenant shall have the right to claim and recover from the condemning authority, but not from Landlord such compensation as may be separately awarded or recoverable by Tenant on account of any and all damage to Tenant's business and any costs or expenses incurred by Tenant in moving/removing its equipment, personal property, Wireless Telecommunication Facility, and leasehold improvements.

18. Disputes. Any claim, controversy or dispute arising out of this Lease not resolved within thirty (30) days following notice of the dispute, shall be submitted first and promptly to mediation. Each party shall bear its own costs of mediation. If mediation does not result in settlement within forty-five (45) days after the matter was submitted to mediation, either party may file a claim in any court having jurisdiction thereof.

19. Enforcement and Attorneys' Fees. In the event that either party to this Lease shall bring a claim in court to enforce any rights hereunder, the prevailing party shall be entitled to recover costs and reasonable attorneys' fees incurred as a result of such claim.

20. Notices. All notices hereunder must be in writing and shall be deemed validly given if delivered personally or if sent by certified mail, return receipt requested, or a nationally recognized overnight courier, addressed as follows (or any other address that the party to be notified may have designated to the sender by like notice):

A. If to Landlord, to:
City Administrator
City of Lake Elmo
3800 Laverne Ave. North
Lake Elmo, MN 55042

B. If to Tenant, to:
New Cingular Wireless PCS, LLC
Attn: Network Real Estate Administration
Re: Cingular Wireless Cell Site #: MPLSMN3500
Cell Site Name: Lake Elmo
Fixed Asset #: 10122628
12555 Cingular Way, Suite 1300
Alpharetta, GA 30004

with a copy to:
Cingular Wireless PCS LLC
Attn.: Legal Department
Re: Cingular Wireless Cell Site #: MPLSMN3500
Cell Site Name: Lake Elmo
Fixed Asset #. 10122628
15 East Midland Ave.
Paramus, NJ 07652

21. Authority. Each of the individuals executing this Lease on behalf of the Tenant or the Landlord represents to the other party that such individual is authorized to do so by requisite action of the party to this Lease.

22. Binding Effect. This Lease shall run with the Leased Premises. This Lease shall extend to and bind the heirs, personal representatives, successors and assigns of the parties hereto.

23. Complete Lease; Amendments. This Lease constitutes the entire agreement and understanding of the parties and supersedes all offers, negotiations, and other agreements of any kind. There are no representations or understandings of any kind not set forth herein. Any modification of or amendment to this Lease must be in writing and executed by both parties.

24. Governing Law. This Lease shall be construed in accordance with the laws of the State of Minnesota.

25. Limitation of Liability. Nothing in the Lease shall be deemed a waiver of any limitation of liability or defenses under Minnesota Statutes Chapter 466 or any other provision of law.

26. Severability. If any term of this Lease is found be void or invalid, such invalidity shall not affect the remaining terms of this Lease, which shall continue in full force and effect.

27. Memorandum. Upon request by either party, the parties agree to promptly execute and deliver a recordable Memorandum of this Lease in a form acceptable to both parties which may be recorded by the party requesting the Memorandum of Lease.

IN WITNESS WHEREOF, the parties hereto have executed this Lease the day and year first above written.

LANDLORD:

CITY OF LAKE ELMO

By: _____
Dean A. Johnston
Its: Mayor

By: _____
Susan Hoyt
Its: City Administrator

STATE OF MINNESOTA)
)ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2008, by Dean A. Johnston and Susan Hoyt known to be respectively the Mayor and City Administrator of the City of Lake Elmo and represented that the instrument was signed pursuant to City Council authorization.

_____
Notary Public

TENANT:
NEW CINGULAR WIRELESS PCS, LLC
a Delaware limited liability company
By: AT&T Mobility Corporation, its Manager

By: _____
George Taylor
Its: Director of Network Operations MNP

STATE OF MINNESOTA)
)ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2008 by George Taylor, to me known to be the Director of Network Operations MNP of **AT&T Mobility Corporation, the Manager of New Cingular Wireless PCS, LLC**, a Delaware limited liability company, on its behalf.

_____
Notary Public

F:\users\Jessica\Jerry\LE\Site Lease Agreement.v3.doc

City Council
Date: 12/1/08
Regular
Ordinance No. 08-10
Resolution No. 2008-056
Item: 9A

ITEMS: Consider zoning text amendments to allow a bus/truck terminal as a non-agricultural low impact use in the HD-A-BP zoning district

REQUESTED BY: Terry Emerson, E&E Properties, LLC, Applicant

SUBMITTED BY: Kyle Klatt, Director of Planning KK

REVIEWED BY: Planning Commission
Susan Hoyt, City Administrator
Jerry Filla, City Attorney
Kelli Matzek, City Planner

SUMMARY AND ACTION REQUESTED:

The City Council is being asked to consider text amendments to the zoning ordinance to allow a bus/truck terminal as a non-agricultural low impact use in the HD-A-BP district (agriculture holding zone for properties guided for business park development). This request has been made by Terry Emerson, 11530 Hudson Boulevard South, concurrent with an applicant for an interim use permit that could only proceed if the zoning amendment is approved by the Council.

The applicant's property is located along Interstate Highway 94 near the intersection of Hudson Boulevard South and Manning Avenue and is currently zoned HD-A-BP. The zoning text amendment is required because the current zoning ordinance excludes the parking of "semi-truck trailers or any vehicle over 26,000 pounds capable by design of being licensed for use on public roadways" as a non-agricultural low impact use. This proposed amendment eliminates this limitation on vehicles and would make it permissible to have a bus/truck terminal as an interim use in the HD-A-BP holding zone subject to all restrictions of any other non-agricultural low impact use and the issuance of an interim use permit. The interim use limits the life of the use to when the city deems it is appropriate to terminate it, typically due to a change in conditions such as rezoning due to availability of sewer as guided in the comprehensive plan. The interim use is reviewed every two years by the city to assure conformance to the permit and the opportunity to eliminate the interim use due to changing conditions. Current code requirements in the agricultural holding zones remain the same. This does not affect other agriculturally zoned properties. The planning commission recommended approval of the zoning amendment. The staff concurs with the recommendation.

One comment from the public was received related to the Northern Lights gas line that runs near this property. It was determined that the line was located on an adjacent property and that it would not have an impact on the applicant's property. Another comment was received via email from a resident explaining that previous requests for truck terminals had been rejected by the City Cuncil.

The following is a table that very briefly summarizes the zoning differences that would exist between the A and HD-A-BP zoning districts should the proposed amendment be adopted by the City Council.

	A – Agriculture District	HD-A-BP District
Non-Agricultural Low Impact Use	Conditional Use Permit	Interim Use Permit
Parking of trucks allowed?	No	Yes
Maximum Area	4% of agriculture area	5% of agriculture area
Number of parcels affected (approx)	40	4

Please note that if the proposed amendment is not approved, all other aspects of this chart would remain the same, and non-agricultural low impact uses would continue to require different zoning permits depending on whether or not an agricultural zoning district is located in one of the City's holding zones.

ADDITIONAL INFORMATION:

The Planning Commission conducted a public hearing to consider the zoning amendment request at its November 10, 2008 meeting. A comment regarding the gas line as noted above was acknowledged by the Commission. The Commission recommended approval with a vote of 6 ayes and 2 nays. Those members that voted against the proposal noted that the original ordinance was drafted to specifically prohibit a truck terminal operation from locating in these areas and that the potential impacts from trucks could be much greater than buses or smaller vehicles.

Some of the key questions that are directly related to the proposed interim use, and indirectly related to the zoning amendment request, include the following:

What is the anticipated level of traffic under the interim use? The applicant has indicated that there will approximately 120 vehicle trips from the site each day, with a peak activity level of around 200 vehicle trips per day (this figure includes non-truck traffic to the site). The analysis for the previous bus garage estimated the trip generation for this use at 328 trips per day. The code allows 420 trips per day based on the total acreage owned as agricultural land around the site.

What will the hours of operation be? The level of activity on the site will be spread out fairly evenly throughout the day and will not be based on a specific morning or afternoon rush. Nearly all traffic will be accommodated between the hours of 6 a.m. and 6 p.m.

What routes will trucks take to and from the site? The applicant has stated that almost all anticipated truck traffic will originate to and from the interstate highway adjacent to the site. Although there is a possibility that an occasional truck will need to use an alternate route through Lake Elmo, as an interstate trucking operation there is no reason for these vehicles to use the local street system to gain access to this property.

What are the anticipated negative impacts and how are they accommodated? The anticipated impacts are associated primarily with the conversion from bus to semi-trailer truck traffic, and specifically because the trucks are a little larger and would likely generate more noise than the buses. From the engineering review, it is anticipated that the current road system will be able to accommodate the proposed interim use given the low levels of traffic generated by the site and the lack of a specific peak period of activity. The other impacts from the trucks can be mitigated through screening around the site. The proposed Ordinance contains a restriction that a bus/truck terminal interim use cannot be located more than 1,000 feet from Interstate 94 in order to minimize and impact to areas outside of this corridor.

What are the similarities and differences between the proposed use and the former bus garage? As noted above, the daily traffic in terms of number of vehicles entering and exiting the site will be lower with the bus garage. The total number of vehicles stored will be about the same, around 60 to 80 larger vehicles, and the visibility of these vehicles will also be roughly the same since there are not changes proposed to the existing berm and landscape screen around

the site. One significant difference between the former and proposed use of the site is that the trucks will not be dispatched on routes throughout the City and will instead originate only from Interstate 94.

Does an interim use in this location make sense? The previous bus garage has operated on this site for several years without any major issues, and the conversion to a truck terminal will not result in a significant departure from the past use. The interim use would allow a viable use of the land (and existing improvements on the land) until such time that the property is redeveloped. As an interim use, the City will have control over when the use is terminated, and can review this permit as conditions change. Based on the relatively low traffic generated from the proposed use, it should be able to co-exist with other uses in the area until sewer service is provided to the area.

RECOMMENDATION:

Based upon the above analysis and public input, the planning commission and staff recommend to amend the zoning ordinance requirements for non-agricultural low impact uses to allow for semi-trailer truck parking and a semi-trailer transfer operation as an interim use in the HD-A-BP zoning district in accordance with the draft Ordinance for the following reasons:

1) That the proposed Ordinance amendments will limit a bus/truck terminal to only those portions of the City adjacent to the Interstate 94 corridor. This corridor is an appropriate location for interim uses that will generate larger truck traffic associated impacts until such time conditions warrant major public infrastructure improvements.
2) That the proposed Ordinance will not substantially alter the current uses and activities permitted as a non-agricultural low-impact use. The proposed truck terminal will operate in a very similar manner to the former bus dispatch center/garage use of the property, and in some cases will have less of an impact on areas outside of the affected property. The ordinance limitations placed on non-agricultural low impact uses will not be altered by the proposed amendment and will further restrict the impacts from such uses.
3) That the propose Ordinance will allow the reasonable use of agricultural property on an interim basis until such time that public sewer service is provided to the area south of 10th Street. Sewer is not planned for this area until 2020-2030, during which time zoning changes or non-agricultural development will not be allowed.
4) That the Planning Commission has recommended approval of the request at a meeting conducted on November 10, 2008.

MOTION FOR CONSIDERATION:

Move approval of Ordinance No. 08-010 based on the reasons cited above and based on the following findings:

- *The proposed ordinance amendment is consistent with the City's long range plan for the area south of Tenth Street, and specifically, that it would not allow a permanent use to be established in this area that is inconsistent with the plan.*
- *The proposed ordinance amendment would allow the reasonable use of existing parcels that are planned for future sewered development in advance of the zoning and comprehensive plan updates that will impact this area*

ORDER OF BUSINESS:

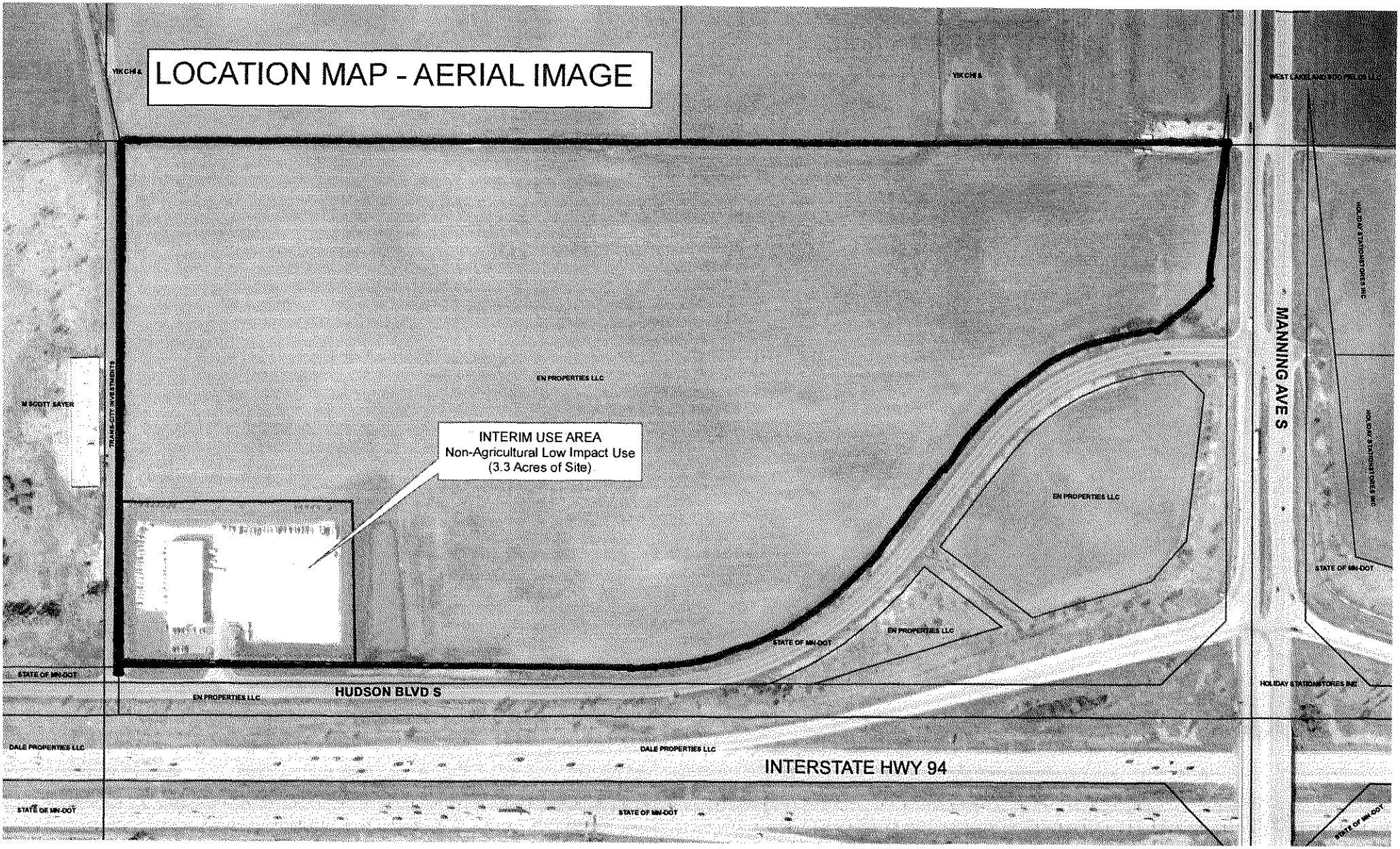
- Report ..... Kyle Klatt, Planning Director
- Questions from the Council ..... Mayor & Council Members

- Questions/Comments from the applicant..... Mayor facilitates
- Questions/Comments from the public..... Mayor facilitates
- Call for a Motion

  (required for further discussion; does not imply approval of the motion..... Mayor facilitates
- Discussion ..... Mayor facilitates
- Action on motion ..... Council

ATTACHMENTS:

1. Location Map
2. Application form
3. Planning analysis report for the zoning amendment
4. Draft ordinance amending non-agricultural low impact use provisions
5. Resolution for summary publication
6. Properties affected by proposed zoning amendment


LOCATION MAP - AERIAL IMAGE
INTERIM USE AREA
Non-Agricultural Low Impact Use
(3.3 Acres of Site)
HUDSON BLVD S
INTERSTATE HWY 94
MANNING AVE S
EN PROPERTIES LLC
DALE PROPERTIES LLC
STATE OF MN-DOT
HOLIDAY STATIONSTORES INC
M SCOTT SAYER

applicant has further submitted a request for this specific use in a location that conforms to the draft Ordinance.

The attached aerial image depicts the parcel that would be affected by the proposed changes, which include four properties in the extreme south eastern portion of the City near the intersection of Manning Avenue and Hudson Boulevard South. These properties are all guided for Business Park Development in the City's Comprehensive Plan, and accordingly, have been placed into the HD-A-BP holding district until such time that sewer service is available to these sites. The applicant owns a parcel immediately adjacent to Hudson Boulevard South and has recently used this property for a school bus garage under the non-agricultural low impact use standards.

Should the proposed amendment be approved by the City, the only change from the current ordinance would be the allowance of semi-trailer parking on parcels zoned HD-A-BP rather than limiting these uses to only off-road mobile construction equipment. All other requirements, including the amount a land that must be set aside for agricultural uses, the total number of trips generated by the use, and other current non-agricultural low impact standards would remain the same.

The standards for all other A – Agriculture districts would not be changed and semi-trailer truck parking would still no longer be allowed in these areas if the amendment were approved.

Ordinance Review:

Staff is recommending approval of the proposed amendment because it is consistent with the City's long range plan for the area south of Tenth Street and because it would continue to allow the reasonable use of existing parcels that are planned for future sewered development in advance of the zoning and comprehensive plan updates that will impact this area. A critical component of the ordinance as drafted is that it allows semi-trailer truck parking only on those parcels that are zoned A – Agriculture and also located within the temporary holding zone along Interstate Highway 94. Since the Ordinance currently allows for the parking of larger vehicles on these sites, including buses and off-road mobile construction equipment, there should not be a significant difference in the operation or impact from these sites.

By limited the allowed sites for Bus/Truck Terminals to only those parcels within a certain distance of the interstate, the ordinance has been drafted to ensure that only those parcels that have close access to the Highway will be allowed to accommodate semi-trailer truck parking on a limited basis.

Council Options:

The City Council has the following options:

A) Recommend approval of the proposed ordinance to amend the non-agricultural low-impact use regulations;

B) Recommend staff make changes to the proposed ordinances, or add additional changes;

C) Table the item for further study; or

D) Recommend denial of the request upon finding that the proposed ordinance would have a negative effect on the City or that the ordinance is inconsistent with the Lake Elmo Comprehensive Plan.

The 60-day review period for this application will end on December 30, 2008, and can be extended another 60 days if needed.

Staff Rec: Staff is recommending approval of the request by Terry Emerson of E & E Properties, LLC, to amend the Zoning Ordinance requirements for non-agricultural low impact uses to allow for semi-trailer truck parking and a semi-trailer transfer operation as an interim use in the HD-A-BP zoning district in accordance with the draft Ordinance, based on the following:

1) That the proposed Ordinance amendments will affect a small number of parcels within the City that are planned for future business park development.
2) That the proposed Ordinance will not substantially alter the current uses and activities permitted as a non-agricultural low-impact use.
3) That the propose Ordinance will allow the reasonable use of agricultural property on an interim basis until such time that public sewer service is provided to the area south of 10th Street.

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

I move to deny the request to amend the non-agricultural low impact section of the Zoning Ordinance to allow a bus/truck terminal as an interim use in the HD-A-BP zoning district based on the following findings…(please site reasons for the recommendation)

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

I move to approve the request to amend the non-agricultural low impact section of the Zoning Ordinance to allow a bus/truck terminal as an interim use in the HD-A-BP zoning district based on the following findings…(use staff's findings provided above or cite your own)

CITY OF LAKE ELMO
COUNTY OF WASHINGTON
STATE OF MINNESOTA

ORDINANCE NO. 08-010

AN ORDINANCE AMENDING REGULATIONS GOVERNING NON-AGRICULTURAL LOW IMPACT USES

Section 1. The City Council of the City of Lake Elmo hereby ordains that Section 11.01 (Definitions) is hereby amended to read as follows:

NON-AGRICULTURAL LOW IMPACT. The outdoor storage of off-road mobile construction equipment of any weight~~, excluding semi-truck trailers, or any vehicle over 26,000 pounds capable by design of being licensed for use on public roadways~~; the indoor storage of the aforementioned items and other goods and materials which, in the determination of the City Council, do not jeopardize the health, safety, or welfare of the city; nature farms; agricultural museums; farmer's markets; small engine repair shops; contractor maintenance shops; or office space as an accessory use to the aforementioned uses.

TERMINAL, BUS/TRUCK. An area and building where buses, trucks, and cargo are stored, where loading and unloading is carried on regularly, and where minor maintenance of these types of vehicles is performed.

Section 2. The City Council of the City of Lake Elmo hereby ordains that Section 154.033 subd (F) is hereby amended to read as follows:

(F) Non-agricultural low impact use standards.

(1) (a) 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 conditional use permit, might allow a farmer or large property owner an economical use of his or her property that is zoned for agriculture. The following standards shall apply to these types of uses.

(b) It 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.

(2) (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 as approved by the city and is hereafter known as the "Non-Ag Area." The Non-AgArea shall not exceed 4% of the property owner's contiguous agricultural zone gross lot area. The 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.

(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 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.

(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, 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 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.

(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 1% 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 1 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.

(l) Non-agricultural low impact uses may not include a Bus/Truck Terminal or the parking or storage of semi-trailer trucks or any vehicle over 26,000 pounds capable by design of being licensed for use on public roadways except as otherwise permitted as an Interim Use in the HD-A-BP zoning district.

(l) 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 2-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 chapter.

Section 3. The City Council of the City of Lake Elmo hereby ordains that Section 154.034 Agricultural Business Park Holding District (HD-A-BP) is hereby amended to read as follows:

(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) Use 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.

2) A non-agricultural low impact use as permitted under this Section may include a Bus/Truck Terminal provided the use is located on a parcel within 1,000 feet of Interstate Highway 94

(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.

(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.

(H) Cluster development. Cluster development in the HD-A-BP zoning district is prohibited.

(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. 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.

<signature>_____
Mayor Dean Johnston

ATTEST:

<signature>_____
Susan Hoyt
Administrator

This Ordinance No. _____ was published on the _____ day of _____, 20___.

CITY OF LAKE ELMO

RESOLUTION NO. 2008-56

RESOLUTION AUTHORIZING PUBLICATION OF ORDINANCE NO. 08-010 BY TITLE AND SUMMARY

WHEREAS, the city council of the city of Lake Elmo has adopted Ordinance No. 08-010, an ordinance to amend the requirements for non-agricultural low impacts uses; and

WHEREAS, the ordinance is lengthy; and

WHEREAS, Minnesota Statutes, section 412.191, subd. 4, allows publication by title and summary in the case of lengthy ordinances or those containing charts or maps; and

WHEREAS, the city council believes that the following summary would clearly inform the public of the intent and effect of the ordinance.

NOW, THEREFORE, BE IT RESOLVED by the city council of the city of Lake Elmo, that the city administrator shall cause the following summary of Ordinance No. 08-010 to be published in the official newspaper in lieu of the entire ordinance:

Public Notice

The City Council of the city of Lake Elmo has adopted Ordinance No. 08-010. The ordinance amends the definition for the term "non-agricultural low impact" to eliminate an exception related to the parking of semi-truck trailers and adds a new definition for "bus/truck terminal". The Ordinance also amends the zoning district standards to allow a bus/truck terminal as an interim use (non-agricultural low impact use) in the HD-A-BP Agriculture Holding District but to prohibit such a use as a non-agricultural low impact use in the A-Agriculture Districts.

The full text of Ordinance No. 08-010 is available for inspection at Lake Elmo city hall during regular business hours.

_____

Mayor Dean Johnston

BE IT FURTHER RESOLVED by the city council of the city of Lake Elmo that the city administrator keep a copy of the ordinance in her office at city hall for public inspection and that she post a full copy of the ordinance in a public place within the city.

Dated: _____ ___, 20___.

_____
Mayor Dean Johnston

ATTEST:

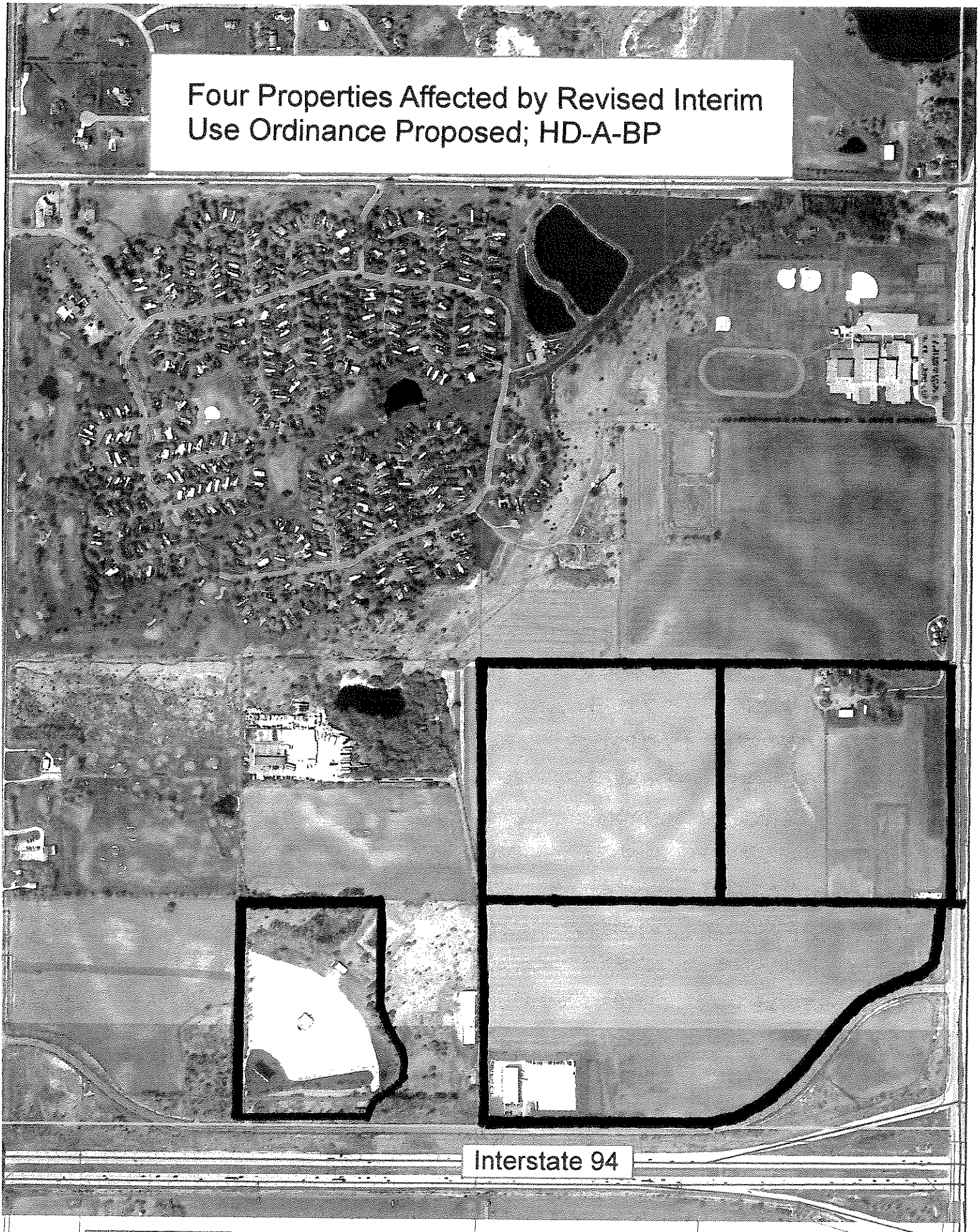
_____
Susan Hoyt
City Administrator

(SEAL)

The motion for the adoption of the foregoing resolution was duly seconded by member _____ and upon vote being taken thereon, the following voted in favor thereof:

and the following voted against same:

Whereupon said resolution was declared duly passed and adopted.


Four Properties Affected by Revised Interim Use Ordinance Proposed; HD-A-BP
Interstate 94
October 29, 2008

City Council
Date: 12/1/08
Regular
Resolution No. 2008-057
Item: 9b

ITEMS: Consider an interim use permit for a truck terminal within a HD-A-BP zone at 11530 Hudson Boulevard.

REQUESTED BY: Terry Emerson, E&E Properties, LLC, Applicant

SUBMITTED BY: Kyle Klatt, Director of Planning

REVIEWED BY: Planning Commission
Susan Hoyt, City Administrator
Jerry Filla, City Attorney
Kelli Matzek, City Planner

SUMMARY AND ACTION REQUESTED:

The Lake Elmo City Council is being asked to consider a request for an interim use permit to establish a bus/truck terminal facility as a non-agricultural low impact use at 11530 Hudson Blvd. South in Lake Elmo to replace the vacancy on the site from the legally permitted bus garage that was on the property until July 2008. The comprehensive plan identifies this property, and several other parcels around it, as being guided for business park development. The application requires approval of the zoning code text amendment considered in the previous action.

The applicant's property is located at the intersection of Manning Avenue South and Hudson Boulevard South and along the Interstate 95 corridor. The portion of the property that has been used as a non-agricultural low impact use is at the far eastern edge of the parcel, nearly 2,000 feet from the Manning Ave./Hudson Blvd. intersection. The current land uses surrounding the site include mostly agricultural farms fields and vacant land, with the drive-in theater located further west along Hudson Blvd. The zoning of surrounding lands varies, but is predominately agricultural with the parcels on either side of the drive-in property along Hudson Blvd. zoned General Business (the small island at the intersection of Manning Ave. and Hudson Blvd. is zoned Rural Residential). All of the land south of 10th Street is incorporated as part of a holding zone.

The previous use of the property was a school bus garage and dispatch facility under the non-agricultural low impact use provisions of the A-Agriculture zoning district; no site changes from the previous plan are proposed in order to accommodate the proposed truck facility.

The planning commission recommended approval of the permit following its approval of the rezoning. Interim uses are reviewed every two years by the city staff for conformance to the interim use requirements and to determine if the interim nature of the use should be terminated due to a change in conditions such as the rezoning of the site due to the availability of sewer. The planning commission recommended approval of the interim use permit following its approval of the text amendment allowing this as an interim use.

The proposed interim use would fall under the newly created definition for a bus/truck terminal and HD-A-BP zoning district as amended. In this case, the request meets the criteria for a non-agricultural low impact use because the site is located within 1,000 feet of Interstate Highway 94 and meets all requirements for an interim uses in a HD-A-BP zoning district.

ADDITIONAL INFORMATION:

- Public input at the public hearing: The Planning Commission received one comment at the hearing related to the Northern Lights gas line that runs near this property. It was determined that the line was located on an adjacent property and that it would not have an impact on the applicant's request. An email from a resident was also submitted prior to the meeting noting that pervious truck terminal proposals have been rejected by the City Council.

- A consent agreement for the interim use, which is required under the Zoning Ordinance, has been drafted is attached as part of the resolution of approval.

- Because the proposed site is located adjacent to an interstate highway and county highway, the adjacent transportation authorities were asked to review the interim use permit request. The Minnesota Department of Transportation has submitted a response to the request and found the site plan to be acceptable; Washington County has not submitted a response. In reviewing these requests, engineers will typically comment if there are any anticipated impacts to the County or State road system. In this case, the lack of comments indicates that there are no such impacts expected with the proposed interim use.

- The Planning Commission recommended that a shorter review period of one year be put in place as opposed to the two years required by code. The Commission wanted to make sure that there would be an opportunity to respond to any unforeseen issues related to the proposed use in a timely manner rather than waiting two years to review the use.

RECOMMENDATION:

The recommendation is to approve the request because it meets the conditions of the zoning code for an interim use permit based upon the following findings:

1) That the applicant has demonstrated compliance with all of the standards for a non-agricultural low impact use; and

2) That the applicant has demonstrated compliance with all applicable City Code standards for the issuance of an interim use.

...with the following conditions

1) That the applicant enters into a consent agreement with the City in accordance with Section 154.019, Subd. (B, 5) of the City Code.

2) That additional screening be provided in all locations recommended by the City Forester in order to replace vegetation that has either died or been removed. The intent of this condition is to provide for full screening of the interim use.

3) That the interim use be reviewed within one year of approval instead of the two years specified in the City Code.

4) That the interim use will terminate when any portion of the property is rezoned or when public sanitary sewer is provided to the site.

5) That the interim use permit commence upon the effective date of the applicant's current request to amend the non-agricultural low impact use sections of the City Code.

MOTION FOR CONSIDERATION

Move to approve Resolution 2008-057 for the interim use permit to establish a truck terminal at 11530 Hudson Boulevard.

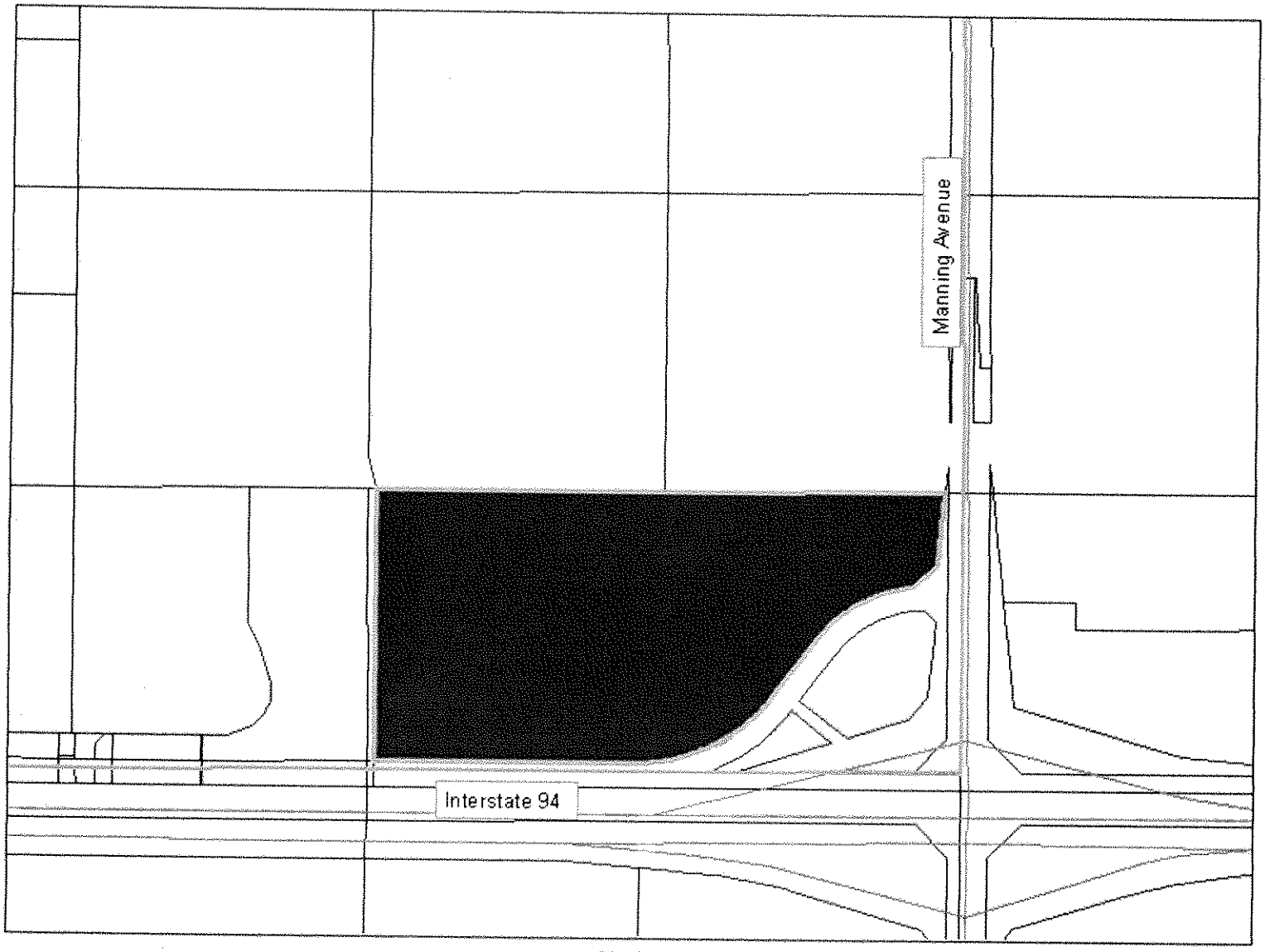
ORDER OF BUSINESS:

- Report ..... Kyle Klatt, Planning Director
- Questions from the Council ..... Mayor & Council Members
- Questions/Comments from the applicant ..... Mayor facilitates
- Questions/Comments from the public ..... Mayor facilitates
- Call for a Motion

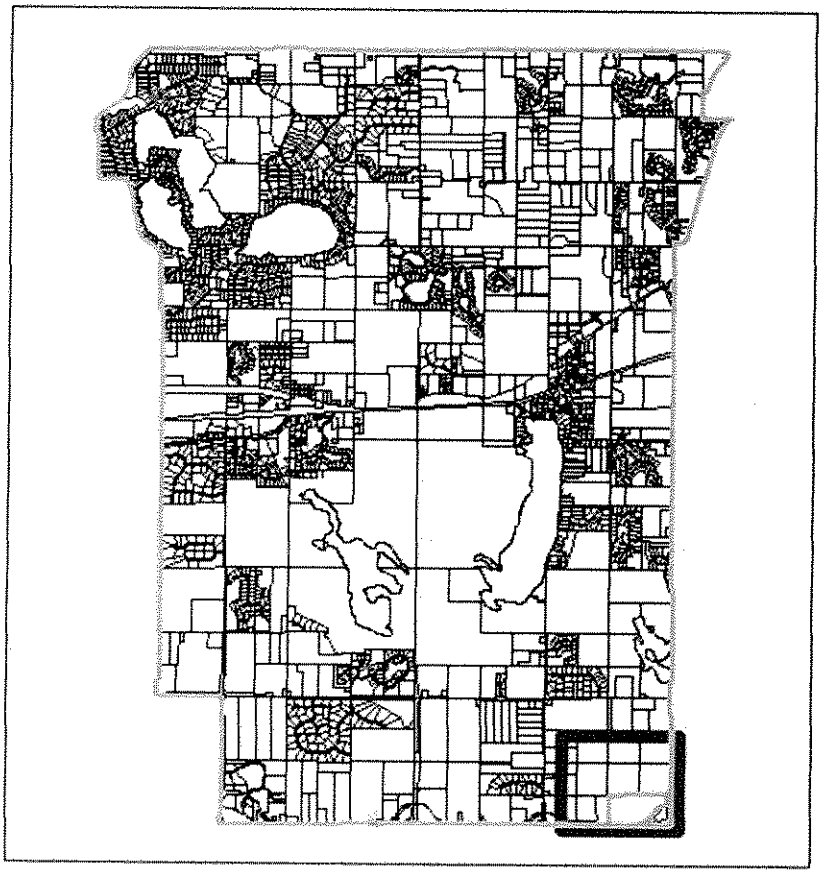
  (required for further discussion; does not imply approval of the motion ..... Mayor facilitates
- Discussion ..... Mayor facilitates
- Action on motion ..... Council

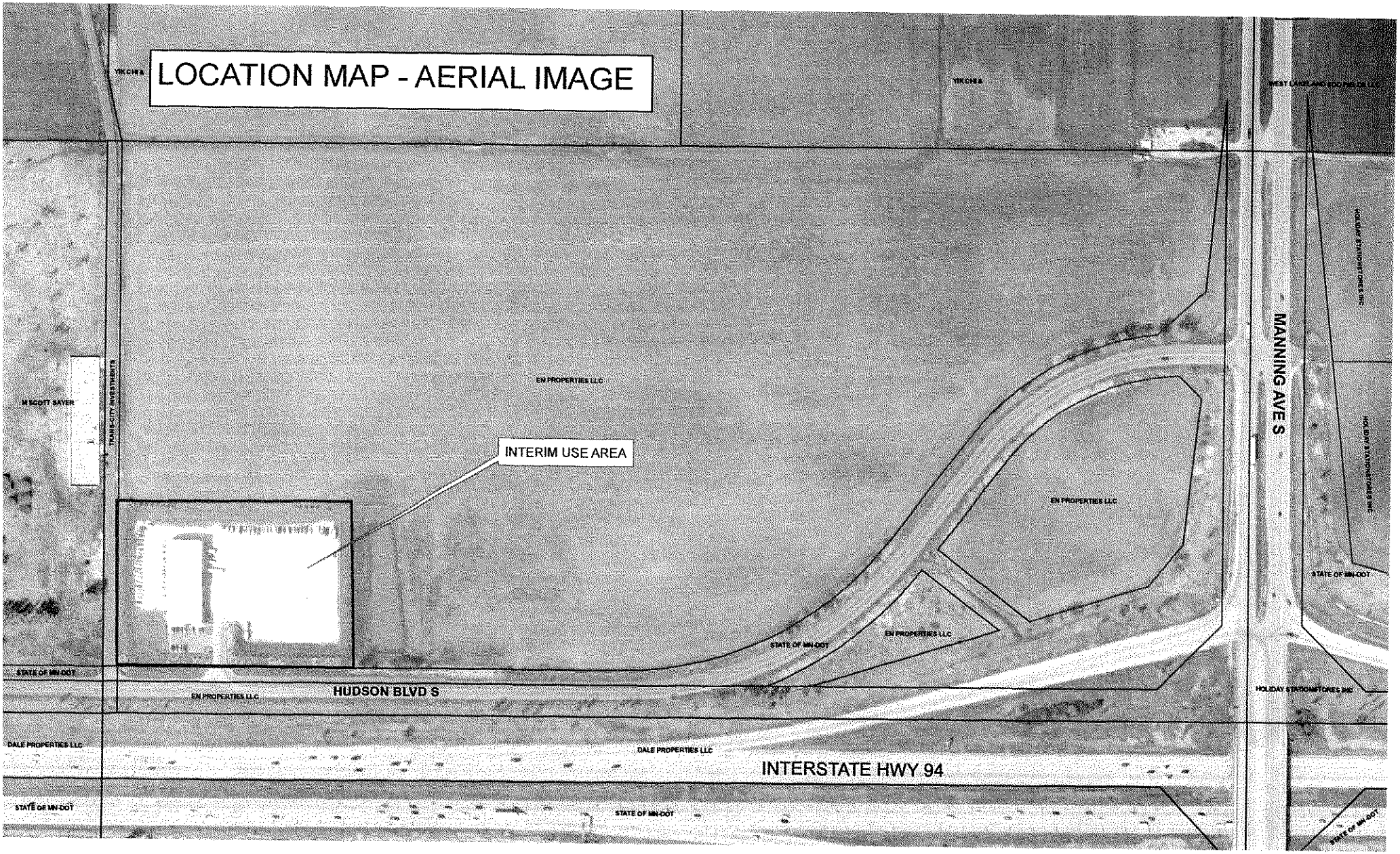
ATTACHMENTS:

1. Location Map
2. Resolution No. 2008-057
3. Consent Agreement
4. Application form
5. Planning analysis report for the interim use permit
6. Project description
7. Additional project information (10/30/08)
8. Site plan
9. Existing site conditions (aerial image)
10. City Engineer traffic review
11. MnDOT review comments
12. Public comments



11530 Hudson Boulevard




LOCATION MAP - AERIAL IMAGE
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TRANS-CITY INVESTMENTS LTD
M SCOTT SAYER
EN PROPERTIES LLC
DALE PROPERTIES LLC
STATE OF MN-DOT
HOLIDAY STATIONSTORES INC

CITY OF LAKE ELMO
WASHINGTON COUNTY, MINNESOTA

RESOLUTION NO. 2008-057

A RESOLUTION GRANTING AN INTERIM USE PERMIT TO ALLOW A BUS/TRUCK TREMINAL AT 11530 HUDSON BOULEVARD SOUTH AND APPROVING A CONSENT AGREEMENT FOR THE INTERIM USE

WHEREAS, Terry Emerson, E & E Properties, 11530 Hudson Boulevard South, has requested an Interim Use Permit to establish a non-agricultural low impact use at 11530 Hudson Boulevard South to establish a bus/truck terminal in a HD-A-BP zoning district.

WHEREAS, the Lake Elmo Planning Commission held a Public Hearing on November 10, 2008, and reviewed and recommended approval of the Interim Use Permit for a bus/truck terminal on the site based on the following findings:

1) That the applicant has demonstrated compliance with all of the standards for a non-agricultural low impact use; and

2) That the applicant has demonstrated compliance with all applicable City Code standards for the issuance of an interim use.

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

WHEREAS, the Lake Elmo City Council reviewed the interim use permit request and consent agreement at its December 1, 2008 meeting.

NOW, THERFORE, BE IT RESOLVED that the Lake Elmo City Council hereby approves an Interim Use Permit at 11530 Hudson Boulevard South to establish a bus/truck terminal as a non-agricultural low impact use and authorizes the execution of the consent agreement for this interim use subject to the following conditions:

1) That the applicant signs the approved consent agreement with the City in accordance with Section 154.019, Subd. (B, 5) of the City Code.

2) That additional screening be provided in all locations recommended by the City Forester in order to replace vegetation that has either died or been removed. The intent of this condition is to provide for full screening of the interim use.

3) That the interim use be reviewed within one year of approval instead of the two years specified in the City Code.

4) That the interim use will terminate when any portion of the property is rezoned or when public sanitary sewer is provided to the site.

5) That the interim use permit commence upon the effective date of the applicant's current request to amend the non-agricultural low impact use sections of the City Code.

This resolution was adopted by the City Council of the City of Lake Elmo on the 1st day of December 2008, by a vote of ___ Ayes and ___ Nays.

_____
Dean A. Johnston, Mayor

ATTEST:

_____
Susan Hoyt, City Administrator

(SEAL)

CONSENT AGREEMENT
INTERIM USE PERMIT

1.0 Parties. This Consent Agreement/Interim Use Permit ("Agreement") is entered into by and between the City of Lake Elmo, a Minnesota statutory ("City"); E and E Properties, LLC, a Minnesota limited liability corporation ("Applicant").

2.0 Recitals.

A. Applicant is the record fee owner of the following described property situated in Lake Elmo, MN ("Property"):

That part of the South Half of the Southeast Quarter of Section 36, Township 29 North, Range 21 West, Washington County, Minnesota lying easterly of the West 33.00 feet (2 rods) thereof, EXCEPT that part designated as Parcel 44 on Minnesota Department of Transportation Right of Way Plat No. 82-35, State Project No. 8292 (94-392)904, recorded as Document No. 424557 in the office of the County Recorder, Washington County, Minnesota.

Subject to highway easements in favor of Washington County as described in Book 258 of Deeds, page 91, and Book 309 of Deeds, page 831, of record, and on file in said office of the County Recorder.

Also, subject to highway easements in favor of the State of Minnesota as described in Book 109 of Deeds, page 622, Book 109 of Deeds, page 638, and Book 220 of Deeds, page 11, of record and on file in said office of the County Recorder.

B. The Property is zoned HD-A-BP.

C. Interim uses are allowed in the HD-A-BP zoning district subject to the regulations contained in Lake Elmo City Code Section 154.019.

D. Applicant has requested that the City allow the portion of the Property described on Exhibit A as the "Interim Use Area" to be used as a bus/truck terminal:

E. On the 23rd day of October 2008, Applicant submitted a completed application for an Interim Use Permit.

F. On the 10th day of November 2008, the Lake Elmo Planning Commission, at a public hearing, reviewed the Interim Use Permit application, city staff comments and reports, Applicant's comments

and reports, public comments, and recommended approval of the interim bus/truck terminal use subject to certain conditions.

G. On the 1st day of December 2008, the Lake Elmo City Council reviewed the Interim Use Permit application, city staff comments and reports, Applicant's comments and reports, public comments, and the recommendations of the Lake Elmo Planning Commission, and made the following findings:

1. The proposed bus/truck terminal is allowed as an interim in the HD-A-BP zoning district and conforms to standard zoning regulations.

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

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

5. The Applicant will sign a consent agreement and agree that the Applicant, its successors and assigns, is not entitled to future re-approval of the Interim Use Permit, and that the Interim Use Permit will not impose additional cost on the public if it is necessary for the public to fully or partially take all or a portion of the property in the future.

6. The Applicant agrees to all conditions that the city council deems appropriate including the requirement of financial security to cover the cost of removing the interim use and any interim use structures upon the expiration of the Interim Use Permit.

7. There are no delinquent property taxes, special assessments, interest or city utility fees due on the Property.

8. The term of the interim use will not exceed two (2) years.

3.0 Terms and Conditions. The Lake Elmo City Council hereby authorizes and Applicant, for itself, and its successors and assigns, agree that the interim bus/truck terminal use shall be subject to the following conditions:

A. The Applicant, and its successors and assigns, shall have no entitlement to future re-approval of the Interim Use Permit,

and will provide a financial surety in the amount of $_____ to ensure 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.

B. Applicant will provide additional screening in all locations recommended by the City Forester in order to replace vegetation that has either died or been removed. The intent of this condition is to provide for full screening of the interim use as illustrated on Exhibit A attached hereto.

C. Interim use shall utilize the Interim Use Areas illustrated on Exhibit A attached hereto.

D. The Interim Use Permit is valid until the first occurring following event:

1. For one (1) year from the date of the approval of this Agreement;

2. Until a violation of the conditions of this Consent Agreement;

3. Until a change in the City's zoning regulations, which renders the interim use non-conforming; or

4. Until the redevelopment of the Property for a permitted or conditional use as allowed by the City's zoning regulations.

4.0 Rescission of the Conditional Use. The Conditional Use Permit, which was previously issued for the Property is hereby rescinded and replaced by this Consent Agreement.

5.0 Acknowledgement and Consent. Applicant acknowledges that this is a legally binding agreement and that Applicant has had an opportunity to review the Agreement with legal counsel. Applicant consents to the terms of this Agreement and its restrictions on the use of the Property and the Interim Use Area.

CITY OF LAKE ELMO

Dated: _____ By: _____
Dean Johnston
Mayor

E and E Properties, LLC

Dated: _____ By: _____
Terry Emerson

Its: _____

F:\users\Jessica\Jerry\LE\Interim use Agr.-v2.doc

Exhibit A

SITE PLAN
Bus Storage Site
E & E PROPERTIES, LLC

INTERIM USE AREA

Folz, Freeman, Dupay & Associates, LAND SURVEYORS, 1815 NORTHWESTERN AVENUE

SCALE: 1 inch = 30 Feet

SECTION 36 T 29 N R 21 W

Private Road

Proposed Drainfield Area

6 foot high chainlink fence with 3 barbs

Edge Of Sod Field

End Of Berm

Pond (Sized for 1% Rules)

Weir Outlet Structure

Trailers

Cars

Trucks

Gravel

Double Light Pole

Single Light Pole

80 x 160 Maintenance & Storage Building Floor Elevation 984.0

52 x 80 Office Building

60 x 80 Bituminous Parking Area

Gravel Parking Area

Bituminous Surface

Concrete Curb & Gutter

Retaining Wall

5 Foot High Berm

Existing Highway R/W Line

Silt Fence

Riprap

30 LF, 24" RCP Pipe 2 Aprons Set at Existing Grade

PARCEL 44

TRUNK HIGHWAY 12 -- I-94

INPLACE 1/2" IRON PIPE MONUMENT MARKED WITH A PLASTIC CAP INSCRIBED "RLS 18092"

51/4 CORNER OF SEC. 36, T29N, R21W

TOTAL AREA OF PARCEL = 70 ACRES (PARCEL ID #36.029.21.43.0001)
IMPERVIOUS SURFACE = 0.64 ACRES = 0.9%
SITE AREA = 2.76 ACRES = 3.94%

VICINITY MAP
SEC. 36 T29N, R

Private Road, STATE, Frontage Road, Trunk Highway 12, I-94

Parking Spaces
72 Buses
48 Cars
2 Handicap Cars
9 Van (Inside)

South To North Cross-Section Depicting Typical Line Of Site Across Grave

Typical Line of Site, 5 Foot High Trees, Car, Ditch, Bus, Graveled Area

1 inch = 50 feet horizontal
1 inch = 10 feet vertical

0 50 100 150 200 250 300 350

LEGEND

Elevations Are Based On N.G.V.D. -

Denotes Existing Contours

X(903.5) Denotes Proposed Spot Elev

Denotes Proposed Drainage

Denotes Proposed Evergreen

Denotes Proposed Deciduous

Denotes 4 Receptacle Outlet

Denotes 2 Receptacle Outlet

West To East Cross-Section (A-A) Depicting Line Of Site From Private Road

Car (Private Road), Typical Line of Site, 5 Foot High Trees, Truck, Grass Area, Bituminous Surface, Rock Riprap, Gravel Surface, Bus

1 inch = 50 feet horizontal
1 inch = 10 feet vertical

0 50 100 150 200 250 300 350 400 450 500 550

Reviewed 5-20-02 — Add outlet Berm

I HEREBY CERTIFY THAT SURVEY OR PLAN OR UNDER MY DIRECT SUPERVISION AND T LAND SURVEYOR UNDER THE LAWS OF

TIMOTHY J. FREEMAN MINNESOTA LICENSE
DAVID L. DUPAY MINNESOTA LICENSE

Fee $ pd 1185.00
ck #3377

City of Lake Elmo
DEVELOPMENT APPLICATION FORM

RECEIVED
OCT 15 2008

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

APPLICANT: E+E Properties, LLC (Name) 11530 Hudson Blvd. N. (Mailing Address) 55042 (Zip)

TELEPHONES: 777-9022 (Home) 436-6055 (Work) 612-845-3373 (Mobile) 436-2068 (Fax)

FEE OWNER: EN Properties, LLC (Name) (Mailing Address) (Zip)

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

PROPERTY LOCATION (Address and Complete (Long) Legal Description):
11530 Hudson Blvd. N. Lake Elmo, Mn. 55042
See Attached

DETAILED REASON FOR REQUEST: To allow the use of existing building with freeway access. To amend zoning code 154.034 Section E to allow truck Terminal and Mechanic repair facility with access to I-94 Frontage road

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

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

Terry Emerson 10-13-08
Signature of Applicant Date

Signature of Applicant Date

City of Lake Elmo • 3800 Laverne Avenue North • Lake Elmo • 55042 • 651-777-5510 • Fax 651-777-9615

City of Lake Elmo Planning Department

Interim Use Permit Request: Non-Agricultural Low Impact Use

To: **City Council**

From: Kyle Klatt, Planning Director

Meeting Date: **12/1/08**

Applicant: **Terry Emerson, E & E Properties, LLC**

Owner: E & E Properties, LLC

Location: **11530 Hudson Boulevard South**

Zoning: HD-A-BP (Agricultural District Holding Zone)

Introductory Information

Requested Permit: The applicant has submitted request for an Interim Use Permit to establish a Bus/Truck Terminal facility as a non-agricultural low impact use at 11530 Hudson Blvd. S. in Lake Elmo. This application was submitted concurrently with a request to amend the Zoning Ordinance to specifically allow the proposed interim use. For the purpose of this review, it is assumed that the amendment will be approved by the City Council. If it is not, the application for an interim use will be invalid.

Application Summary: The requested interim use would allow a bus/truck terminal to be established on this property as a non-agricultural low impact use. The site has previously been used as a school bus garage and office; however, the bus company did not renew it lease with the property owner for this past year and the previously approved Conditional Use Permit for this particular activity is no longer valid. In the interests of finding a suitable use for the old garage building and parking area, the applicant is proposing bring a truck terminal and storage operation on to this site.

The attached application proposal, with the October 30, 2008 update, provides information about the trucking operation that is proposed fort his site. Details include the following:

Name of company: D & T Trucking

Type of business: Regional and long haul trucking

On-Site Activity: Trailer storage, dispatching, minor repair and maintenance, fueling station

Materials transported: Light refrigerated and dry goods

Daily Trips: 120 trips per day

Truck traffic: 20-25 per day/40 per day peak

Truck Traffic Origin: Primarily outstate, all traffic coming to the site will originate from the interstate highway

Employees: 17 office, 3 mechanics

Hours of operation: 6:00 am to 6:00 pm, limited truck access after 6:00 pm

Zoning Classification: Bus/Truck Terminal under the Non-agricultural low impact use standards

The applicant has not proposed any changes to the site plan that has previously been approved by the City for the bus garage, and will make use of the existing building, driveway, and parking areas that were used formerly by the bus company. A fueling station will be included as part of the site plan in the same location as a similar facility that served the bus garage.

Applicable Codes:

Section 154.033, Subd. (F) Non-agricultural low impact use standards

This section is referenced in the HD-A-BP zoning district to determine the standards for non-agricultural low impact uses within the holding zone.

Section 154.034 HD-A-BP - AGRICULTURAL BUSINESS PARK HOLDING DISTRICT (as amended)

Specifies that a bus/truck terminal is allowed as an interim use under the requirements for a non-agricultural low impact use.

Section 11.02 Definitions (as amended)

NON-AGRICULTURAL LOW IMPACT. The outdoor storage of off-road mobile construction equipment of any weight; the indoor storage of the aforementioned items and other goods and materials which, in the determination of the City Council, do not jeopardize the health, safety, or welfare of the city; nature farms; agricultural museums; farmer's markets; small engine repair shops; contractor maintenance shops; or office space as an accessory use to the aforementioned uses.

TERMINAL, BUS/TRUCK. An area and building where buses, trucks, and cargo are stored, where loading and unloading is carried on regularly, and where minor maintenance of these types of vehicles is performed.

Findings & General Site Overview

Site Data:

Lot Size: 70 acres (excludes road right-of-way)

Existing Use: Agriculture/Vacant school bus garage

Existing Zoning: HD-A-BP: Agriculture District Holding Zone

Property Identification Number (PID): 36-029-21-43-0001

Although this site is less than 70 acres once road right-of-way and road easements are deducted from the total land, all previous reviews for non-agricultural low impact uses on the site have used the net total of 70 acres for purposes of determining compliance with the standards. This is the amount used in the current review to maintain consistency with past decisions on the property.

Application Review:

Permit Review: Under the present ordinance, the storage or maintenance of semi-trailer trucks is not permitted as a non-agricultural low impact use based on the definition that excludes such uses. Should the ordinance be amended in accordance with the request submitted by the applicant, a trucking terminal would be permitted as an interim use in the HD-A-BP district subject to the same requirements for non-agricultural low impact uses. A review of the current request compared to these standards is as follows:

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.*** Because this use is classified as an interim use under the HD-A-BP district, any rezoning of the property would terminate the property owner's ability to continue operation of the use.

b) ***The area where the non-agricultural low impact use is located shall be legally defined as approved by the city and is hereafter known as the "Non-Ag Area." The Non-Ag Area shall not exceed 4% of the property owner's contiguous agricultural zone gross lot area. The 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.*** The HD-A-BP interim use requirements follow these standards, but allow the "Non-Ag" area to be a maximum of 5% of the gross lot area. Of the applicant's 70 acres, 3.5 acres may be devoted to the "Non-Ag" portion of the site. The total area that is currently devoted to the non-agricultural activities is slightly less than 3.3 acres. With no changes proposed to the parking areas, driveways, or buildings, the applicant will be able to meet this requirement.

   A review of the building footprint and asphalt/concrete surfaces on the applicant's site plan shows that building is 15,360 square feet in size and the other asphalt and concrete surfaces total 9,500 square feet which is 0.8% of the continuous agricultural gross lot area. The total area for these surfaces fall under the maximum permitted by this section.

c) ***Non-agricultural low impact uses shall only be allowed on a parcel of a nominal 40 acres or larger.*** The applicant's parcel is 70 acres in size and therefore meets this standard.

d) ***Non-agricultural low impact uses 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. Since the applicant's property has frontage along Hudson Boulevard, he is allowed to have 6 trips per day per acre for a maximum of 420 vehicle trips per day. The description for the trucking operation indicates that there will be a total of 60 vehicles accessing the site everyday for a net total of 120 vehicle trips per day. The applicant has also stated that there is potential for additional truck traffic during peak times which would push the total vehicle trips closer to 200 per day. Even factoring in additional trips by employees working in the office, the total trips under the proposal presented will be well under the maximum for the site. The estimates for the bus garage, in comparison, showed that there had been 328 vehicle trips each day on this site. The proposed truck terminal should generate a fewer number of vehicle trips based on this and fall within the required limits prescribed by the Ordinance.

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, 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 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.*** The current parking areas are located at or beyond 50 feet from the Hudson Boulevard right-of-way, an the building is set back a distance of 100 feet. A landscape berm with plantings has been provided around the perimeter of the site and provides an effective screen from the adjacent property and roads. There are a few areas within this screening area where plants have recently died; there plants should be replaced to fill in any screening holes as a condition of approval for the interim use. As the berm and screening is presently in place, Staff has not recommended that the applicant be required to submit a cross section diagram. With no changes proposed to the current site the applicant will be able to meet this condition.

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.*** Based on the past use of this property, the proposed truck terminal should not generate any additional impact than the bus garage. The usage by the site will need to be monitored to ensure that the total limit established by this provision is not exceeded.

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. There are no changes proposed with the applicant's request.

h) ***All lighting shall comply with the city's regulations***. No changes to the current lighting situation is proposed; any such changes would need to be approved after submission of a revised lighting plan for the property.

i) ***All signs shall comply with the city's regulations***. The business owner will need to secure the proper sign permits before installing any new signage on the property.

j) ***Rate and volume of runoff from the CUP shall not exceed the 1% rule and shall be verified by the City Engineer***. Because there are no site changes proposed under the applicant's proposal, the City Engineer was not asked to revisit the storm water calculations submitted with past proposals on the property. There is a storm water pond on the site that should continue to function the way it was originally designed.

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 1 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***. The City's interim use requirements are somewhat different than this section in that an interim use will terminate if any of the following occur: 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; or 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. Because this use is classified as an interim use under the HD-A-BP regulations, the interim standards should be applied to this particular use. The major differences between these two sections are that the property owner is not given one year to remove the business when the comprehensive plan or zoning is changed for the site and the City may initiate a rezoning that requires the removal of the business.

l) ***Non-agricultural low impact uses may not include the parking or storage of semi-trailer trucks or a Bus/Truck Terminal except as otherwise permitted as an Interim Use in the HD-A-BP zoning district***. As a interim use in the HD-A-BP district the applicant is permitted to request a truck terminal.

m) ***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 2-week notice and a public hearing, if the Council finds that the public health,***

safety, or welfare is jeopardized. As an interim use, the property will be subject to the violation and termination requirements for interim uses.

n) ***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 chapter.*** This section is not applicable to the current request.

The City Engineer was asked to perform a traffic review for the proposed business and noted that the proposed traffic that will be generated by the proposed business falls well below the threshold for a MnDOT traffic impact study. The most significant area of concern indentified in this report is the turning movements on and off of Manning Avenue. Additional study of these intersections is encouraged as part of the City's ongoing transportation planning efforts.

Permit Review: Staff is recommending approval of the request for an interim use permit primarily because the proposed use is not intended to have any additional impacts beyond the former use of the property, and in some instances, should reduce the overall impacts that can be observed. The most significant change from the previous operation on this site is the size of the vehicles that will be stored on the site. Given its close proximately to an interstate highway; however, this area seems well-suited for the traffic that is anticipated compared to other portions of the City. The bus garage also generated a fair amount of additional traffic (beyond normal bus routes) since it was located in the extreme southern portion of the City. The truck terminal is anticipated to produce very little traffic outside of the immediate connecting roads to Highway 94.

In reviewing the standards for granting an interim use, Staff has made the following findings:

1) The use is allowed as an interim use in the respective zoning district and conforms to standard zoning regulations. ***This criterion is met.***

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. ***Although the truck terminal will produce noise and other impacts associated with the entering and existing of semi-trailer trucks, its isolated location and close proximately to a major interstate corridor will help the use remain compatible with the surrounding land uses until such time the zoning regulations change on the property. Given the restrictions on the size and net traffic generated by the use under the non-agricultural low impact use provisions, the impact to adjacent properties will be minimal. This criterion is met.***

3) The use will not adversely impact implementation of the Comprehensive Plan. ***The improvements occupy a minor percentage of the overall parcel and may not be expanded beyond the current limits. This criterion is met.***

4) The date or event that will terminate the use is identified with certainty. The applicant has specified in the application materials that the use will terminate

once the property is sold or developed under future zoning. ***Staff is recommending that the termination date be set at either 1) when the property is rezoned or 2) at such time that sewer service is provided to the site. Either of these actions will be required before the property may be redeveloped into some other use. With the proposed change in language staff finds that this criterion is met.***

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. ***A consent agreement will need to be approved by the City Council as a condition of approval.***

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. ***This item can also be addressed as part of a consent agreement with the City.***

7) There are no delinquent property taxes, special assessments, interest, or city utility fees due upon the subject parcel. This criterion is met.

8) The term of the interim use does not exceed 2 years. ***The interim use permit will need to be revisited by the City in two years.***

Interim Use Permit Conclusions:

Based on a review of the applicable code sections, Staff is recommending that the Planning Commission recommend approval of the interim use permit based on the following:

1) That the applicant has demonstrated compliance with all of the standards for a non-agricultural low impact use; and

2) That the applicant has demonstrated compliance with all applicable City Code standards for the issuance of an interim use.

Staff is further recommending that the following conditions be included with this recommendation:

1) That the applicant enters into a consent agreement with the City in accordance with Section 154.019, Subd. (B, 5) of the City Code.

2) That additional screening be provided in all locations recommended by the City Forester in order to replace vegetation that has either died or been removed. The intent of this condition is to provide for full screening of the interim use.

3) That the interim use is valid for a period of two years and must be renewed by the City Council prior to the end of this time period in order to continue operating from the site.

4) That the interim use will terminate when any portion of the property is rezoned or when public sanitary sewer is provided to the site.

5) That the interim use permit commence upon the effective date of the applicant's current request to amend the non-agricultural low impact use sections of the City Code.

Other Options: The City Council may consider denying the request for an interim use provided it can demonstrate that the applicant has failed to comply standards of the non-agricultural low impact use provisions or the interim use ordinance. These requirements are detailed in the preceding sections of this report.

Examples of information that would support a recommendation for denial include:

- that the use will generate more vehicle trips per day than allowed as a non-agricultural low impact use,
- that the interim use will adversely impact the implementation of the Comprehensive Plan

This list is not intended as an exclusive recording of all possible findings that could be made and should be used as an example to formulate findings that are not in or differ from the Staff report.

Resident Concerns: There have been no letters or other comments submitted to the City in advance of the public hearing on this matter.

Additional Information: Neither the watershed district nor the DNR provided comment in opposition to the proposed interim use permit. The Minnesota Department of Transportation has submitted comments and found the site plan to be acceptable.

Conclusion:

Terry Emerson of E&E Properties, LLC has submitted request for a Interim Use Permit to establish a Bus/Truck Terminal facility as a non-agricultural low impact use at 11530 Hudson Blvd. S. in Lake Elmo.

Council Options: The City Council has the following options:

A) Recommend approval of the interim use permit request;

B) Recommend denial of the interim use permit request.

The 60-day review period for this application will end on 12/30/08 and may be extended an additional 60 days if more time is needed for the City's review of this

application.

Planning Commission Rec: **The Planning Commission is recommending approval** of the interim use permit for a Interim Use Permit to establish a Bus/Truck Terminal facility as a non-agricultural low impact use at 11530 Hudson Blvd. S. in Lake Elmo based on the following:

1) That the applicant has demonstrated compliance with all of the standards for a non-agricultural low impact use; and
2) That the applicant has demonstrated compliance with all applicable City Code standards for the issuance of an interim use.

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

I move to deny the requested interim use permit based on the following findings…*(please site reasons for the recommendation)*

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

I move to approve the requested interim use permit based on the following findings…*(use staff's findings provided above or cite your own)*

cc: Terry Emerson, E&E Properties, LLC

RECEIVED
OCT 15 2009

Proposal:

E&E Properties is requesting to amend the zoning code 154.034 HD-A-BP Section E, which is "Use permitted by interim use permit".

The building was built for outside storage of equipment and repair facility. As you know the property was used as the school bus terminal for the Stillwater Area Schools for the past six years. The company lost their contract with the School District and the School District leased property in Oak Park Heights for the new bus company. The building has been vacant since July 2008.

E&E Properties is requesting this zoning code to be amended to allow us to lease a portion of the building and property to D&T Trucking. The building location affords easy access to exit and enter the I -94 corridor. D&T Trucking is a regional and long haul over the road trucking company providing light refrigerated and dry goods transportation services to the continental 48 states. This means their trucks are gone 2-7 days. There would be no negative impact on traffic flow.

Under the current zoning the allowable trips per day is 420. D&T Trucking trips per day including office personnel and shop mechanic personnel and trucks would be 1/3 of the previous trips of the bus company. The typical daily use would be approximately 35 cars and 20-25 trucks per day. The total of 60 vehicles would generate 120 trips/day. This total could be 200 trips/day once a month. The majority of that would traffic on and off I-94. Their would be approximately 25 Tractor trucks and 40 trailers parked on the property.

The remaining portion of building and property upon lease would not exceed or generate more trips than the previous tenants Laidlaw Transit. The nature of these types of business would be less trips and the flow would be on/off I-94. The use of the property and building and impact does not differ from its previous use. Impact would be directed to the on/off of I-94 and would generate less trips.

A fueling station would be installed where the previous station was with Laidlaw Transit.

Under the Interim use zoning code stated above we are requesting language be added to allow a trucking terminal and mechanic repair facility with access to I-94 frontage road.

The building and site has not changed from the original plan. All signage if any will be approved by the city and lighting changes if any would also be by city approval.

October 30, 2008

In response to your letter dated October 21, 2008.

- The property within 500 feet of 11530 Hudson Blvd. consists of, road right of way, vacant, or in farm land. The closest business is the Vali Hi Drive In theater.
- A copy is enclosed with proof of ownership.
- D& T Trucking will have 20 full time employees. Approximately 17 office and 3 mechanics. There will be 20 to 25 trucks that will come and go on a normal day. Once a month this number could be as high as 40. The office and shop personnel would come in morning and leave afternoon. The trucks would run through out the day from 6am to 6pm without any peak periods of activity. The route these trucks will take is the frontage road to Manning Avenue then east or west on I-94. There would be little impact on Lake Elmo public streets. The type of trucks operating from the site would be approx 76' long with tractor trailer. The trailers are approx. 53' long.
- A plan of the existing sewer and water is enclosed.
- In regards to definitive termination date for Interim use. The building exists and I need to lease it to provide my income until the property is sold or developed under future zoning.

The above should address each of the items stated in the letter.

Terry Emerson

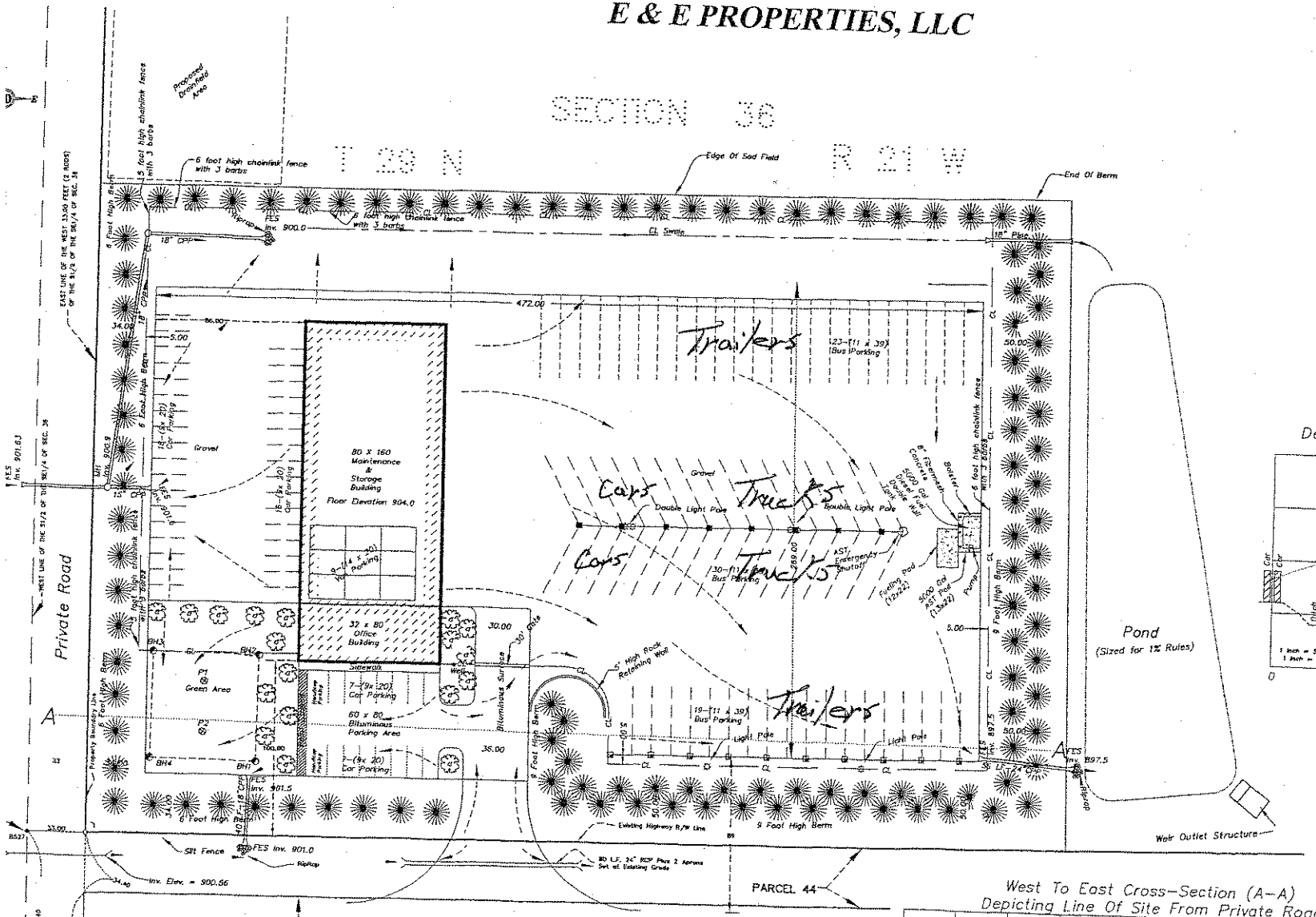
SITE PLAN 2002

Bus Storage Site

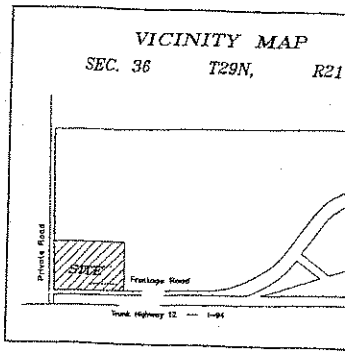
E & E PROPERTIES, LLC

Folz, Freeman, Dupay & As
LAND SURVEYS
1815 NORTHWESTERN AVENUE - ST

SCALE:
= 30 Feet

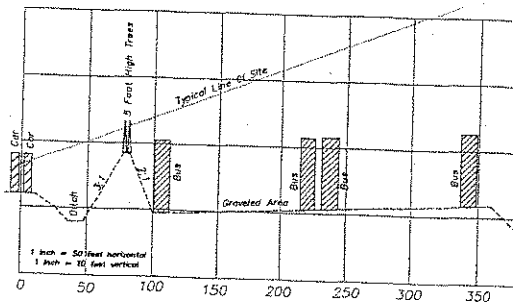


VICINITY MAP
SEC. 36 T29N, R21



Parking Spaces
72 Buses
48 Cars
2 Handicap Cars
9 Van (Inside)

South To North Cross-Section
Depicting Typical Line Of Site Across Gravel



LEGEND

Elevations Are Based On N.G.V.D. - 19
Denotes Existing Contours
X(903.5) Denotes Proposed Spot Elevatio
Denotes Proposed Drainage Dire
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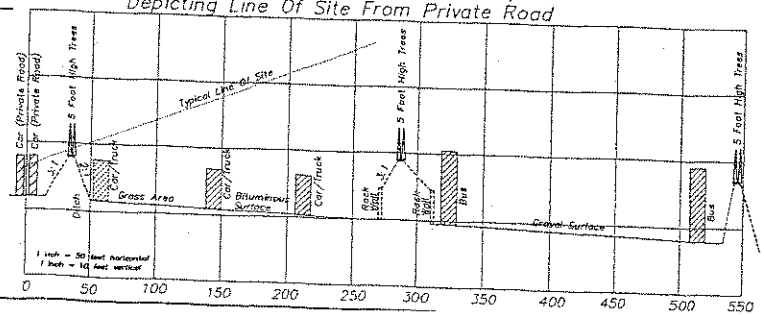
Denotes 4 Receptacle Outlet Bo
Denotes 2 Receptacle Outlet Bo

West To East Cross-Section (A-A)
Depicting Line Of Site From Private Road



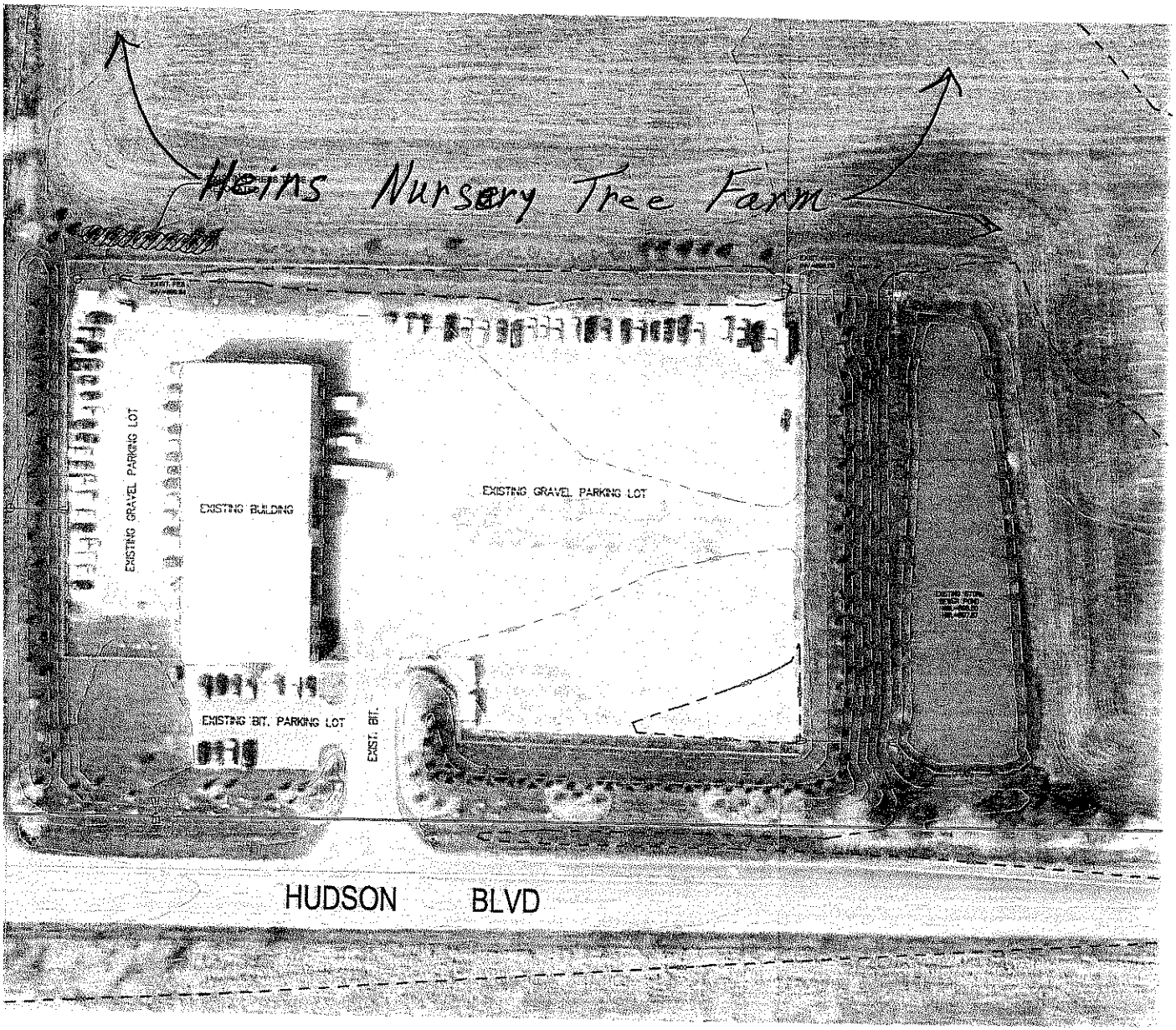
TOTAL AREA OF PARCEL = 70 ACRES (PARCEL ID #36.029.21.43.0001)
IMPERVIOUS SURFACE = 0.64 ACRES = 0.9%
SITE AREA = 2.76 ACRES = 3.94%

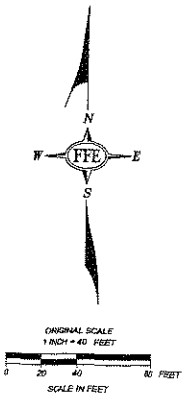
Revised 5-20-02 — Add outlet Boxes, Ad

I HEREBY CERTIFY THAT SURVEY OR PLAN WA
OR UNDER MY DIRECT SUPERVISION AND I AM
LAND SURVEYOR UNDER THE LAWS OF THE ST

TIMOTHY J. FREEMAN MINNESOTA LICENSE NO.
DAVID L. DUPAY MINNESOTA LICENSE NO.

EXISTING CONDITIONS





LEGEND

EXISTING CONTOUR

EXISTING STORM SEWER WITH CATCH BASIN W/ M.H. & F.E.S.

NOTES

1) 2005 AERIAL WASHINGTON COUNTY AERIAL PHOTO

RECEIVED

TODD A.
40418
LICENSE N
DATE
DESIGNED BY
DRAWN BY
CHECKED BY
INITIAL DATE
JOB NO.

Folz, Freeman, Erickson, Inc.
LAND PLANNING
SURVEYING

E&E PROPERTIES

EXISTING CONDITIONS

SHEET NO.

TKDA
ENGINEERS • ARCHITECTS • PLANNERS

444 Cedar Street, Suite 1500
Saint Paul, MN 55101-2140

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MEMORANDUM

To:	Ryan Stempski	**Reference:**	E&E Properties
Copies To:	Jack Griffin, City Engineer		Traffic Review
			City of Lake Elmo, Minnesota
		Proj. No.:	14078.001
From:	Bryant Ficek	**Routing:**	
Date:	October 28, 2008		

As requested, the potential traffic impacts from the proposed development in the Interim Use Permit application have been reviewed. The proposed development is a truck terminal and repair facility, located on the north side of the I-94 frontage road to the west of the Manning Avenue interchange. Although a formal traffic study with detailed analysis was not provided, the site information provided in the application and available traffic data from other sources are sufficient for a traffic review.

On an average day, about 35 vehicles from employees and 20 to 25 trucks are expected from the site, equating to approximately 120 trips per day. The maximum trips per day are expected to be 200, which would include other miscellaneous trips such as mail or parts deliveries and employee trips for lunch. It should be noted that Mn/DOT guidelines indicate that a traffic impact study is not needed if the proposed site will generate less than 2,500 trips per day or 250 trips per peak hour. In this case, the maximum expected trips are well below this threshold.

The majority of trips are expected to be to and from the I-94 and Manning Avenue interchange. Hours of operation were not listed, although truck drivers are more likely to travel during off-peak times to avoid congestion.

The frontage road is an undivided two-lane roadway. Manning Avenue is a four-lane divided roadway. The intersections of Manning Avenue with the frontage road, the I-94 westbound ramps, and the I-94 eastbound ramps will experience the greatest impact from the proposed site. The Manning Avenue approaches at these intersections provide two through lanes in each direction and exclusive left- and right-turn lanes. Exclusive turn lanes are also provided on the ramp approaches to Manning Avenue. The frontage road provides one approach lane for all movements at Manning Avenue. Each intersection is under side-street stop sign control, with Manning Avenue traffic able to proceed without stopping.

At a planning level, the roadway and intersection geometry provides sufficient capacity for the current traffic volumes of 12,000 vehicles per day on Manning Avenue and 940 vehicles per day on the frontage road. This geometry is expected to accommodate the relatively small daily traffic generated by the proposed site. The side-street delay at each intersection will increase with the larger and slower starting truck traffic. In particular, the peak hour delay for the side streets may noticeably increase if a significant number of the expected truck traffic occurs during the peak. As mentioned, truck trips are more likely to occur during non-peak periods, suggesting only a minor overall increase in intersection side-street delays.

With one approach lane on the frontage road at the Manning Avenue intersection, the truck turning movements should be examined. In particular, the eastbound-to-southbound right turn may need additional pavement for the longer trucks. The ramp intersections with Manning Avenue provide sufficient corner radii to accommodate larger vehicles.

The sight distance for the ramp intersections may also need to be reviewed. A recent visit to the site area noted that the rise in elevation to bridge over I-94 limits the sight lines. The actual sight distance was not measured during this visit. The sight distance may therefore be acceptable, but less than comfortable. A cursory review of crash records at the three Manning Avenue intersections and on the frontage road did not reveal a specific crash problem or trend. However, the sight distance should be measured to determine if adequate sight is available for those vehicles stopped on the side-street approaches to the Manning Avenue intersections. In addition, the crash and severity rates should be examined in the future to determine if the introduction of additional truck traffic had a significant effect. Depending upon the exact results of the sight distance study or any future crash study, mitigation such as all-way stop control or signalization may be needed.

The two ramp intersections on Manning Avenue are provided with overhead street lighting. It does not appear that the Manning Avenue and frontage road intersection or the proposed site entrance have street lighting. Depending upon the hours of operation, overhead street lighting at one or both locations may be desired to aid other drivers as they approach the site on the frontage road.

Based upon the traffic review of the information presented in this memorandum, the proposed site detailed in the Interim Use Permit is not expected to adversely affect traffic operations in the area. However, the City is recommended to consider the following items in conjunction with their overall review of the proposed site:

- Providing overhead street lighting at the Manning Avenue and frontage road intersection and/or the site entrance to improve safety.
- Examining the eastbound-to-southbound right-turn movement at the frontage road and Manning Avenue intersection to determine if additional pavement is needed for the larger trucks.
- Examining sight distance at the Manning Avenue intersections with the I-94 ramps to determine if adequate sight distance is provided for both passenger cars and trucks.
- Examining intersection crash rates in the near future to determine if the increase in truck traffic has resulted in an increase in crashes.

The results of the sight distance study or crash rate study may require mitigation such as improved intersection control. Any identification of traffic issues and potential mitigation will need to be discussed with Mn/DOT and Washington County. If you have questions or comments about the information provided in this memorandum, please contact me at (651) 726-7944 or bryant.ficek@tkda.com.

Minnesota Department of Transportation

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

RECEIVED
NOV 14 2008

November 12, 2008

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

SUBJECT: **E & E Properties (Mn/DOT) Review #S08-063**
NW Quadrant of I-94 and Co Rd 15 (Manning Ave)
Lake Elmo/Washington County
Control Section 8282

Dear Mr. Klatt:

The Minnesota Department of Transportation (Mn/DOT) has reviewed the above-referenced site plan and find it to be acceptable.

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

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

Mn/DOT document submittal guidelines require either:

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

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

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

Sincerely,

Jon P. Solberg
Senior Planner

Copy:

Copy via Groupwise to:
Ann Braden
Nancy Jacobson
Adam Josephson
Buck Craig
Douglas Nelson
Haytham Ibrahim
Wayne Lemaniak
Tod Sherman

Kyle Klatt

From: Susan Dunn [susan.dunn@carestreamhealth.com]
Sent: Monday, November 10, 2008 4:47 PM
To: Kyle Klatt
Cc: Susan Hoyt
Subject: RE: Planning Commission Meeting

Truck terminals have been reviewed and rejected for various reasons. Fed Ex wanted to locate in Lake Elmo (Machine Shed area) and ended up in Oakdale by Century Avenue. That trucking use has caused alot of safety issues in the area with the college and residents. .
I think the name was Brockman trucking.. have lots of trailers along I-94 / old County 15 in Afton and that city wants them out of there, so perhaps that's the reason Terry is going for the new designation for the school bus area.

If I-94 is suppose to be great for Woodbury and Lake Elmo's future a truck terminal /trailer graveyard may not be the best fit.
I didn't have time to read the entire packet.. I am sure you covered everything well and the commissioners will get both the pro and con's of the proposal.

Just some thoughts..