

Mayor:
Dean Johnston
Council members:
Rita Conlin
Steve Delapp
Liz Johnson
Anne Smith

Lake Elmo City Council
Tuesday,
January 17, 2006

3800 Laverne Avenue No.
Lake Elmo, MN 55042
777-5510 777-9615 (fax)

Please read:

Since the City Council does not have time to discuss every point presented, it may appear that decisions are preconceived. However, staff provides background information to the City Council on each agenda item in advance; and decisions are based on this information and experience. In addition, some items may have been discussed at previous council meetings. If you are aware of information that has not been discussed, please fill out a "Request to Appear Before the City Council form; or, if you came late, raise your hand to be recognized. Comments that are pertinent are appreciated. Items may be continued to a future meeting if additional time is needed before a decision can be made.

Agenda
City Council Meeting Convenes 7:00 PM

Pledge of Allegiance

1. Agenda	
2. Minutes:	December 6, 2005, January 3, 2006
3. <u>PUBLIC INQUIRIES/INFORMATIONAL:</u> A. <u>PUBLIC INFORMATIONAL:</u> (1) Lake Elmo Jaycees Donation	Public Inquiries/Informational is an opportunity for citizens to bring the Council's attention any items not currently on the agenda. In addressing the Council, please state your name and address for the record, and a brief summary of the specific item being addressed to the Council. To allow adequate time for each person wishing to address the Council, we ask that individuals limit their comments to three (3) minutes. Written documents may be distributed to the Council prior to the meeting or as bench copies, to allow a more timely presentation. Those items listed under the Consent Calendar are considered to be routine by the City Council and will be enacted by one motion under a Consent Calendar format. There will be no separate discussion of these items unless a Council member so requests, in which event, the item will be removed from the general order of business and considered separately in its normal sequence on the agenda.
4. <u>CONSENT AGENDA</u> A. (1) Resolution No. 2006-007: Approving Claims Claim (2) Resolution No. 2006-008: Approving B. Pay Scale Adjustment C. Trade-in 321 Case Loader for 580 Case Backhoe	
5. <u>FINANCE</u> 6. <u>NEW BUSINESS</u> A. Organizational: Planning Commission Appointments B. Organizational: Parks Commission Appointment C. Mayor - Four Year Term	

FILE

1. AGENDA
2. MINUTES; November 15, 2005
3. PUBLIC INQUIRIES/INFORMATIONAL
 - A. Public Inquiries
 - B. Public Informational
4. CONSENT AGENDA:
 - (1) Donation to Lake Elmo: Betsy Lundquist
 - (2) John Elholm - Lake Elmo Park Reserve Master Plan
- A. Resolution No. 2005-128: Approving Claims
- B. Resolution No. 2005-130: Statutory Tort Limits on Liability Insurance
- C. 2006 Liquor Licenses
- D. Resolution No. 2005-129: Partial Payment to Tower Asphalt for Hilltop Avenue
- E. Workers' Compensation for Elected Officials; Resolution No. 2005-140
5. FINANCE:
 - A. Tax Levy Adoption; Resolution No. 2005-131
 - B. General Fund Budget; Resolution No. 2005-132
6. NEW BUSINESS:
 - A. Out-of-State Travel Policy for City Council; Resolution No. 2005-133
7. MAINTENANCE/PARK/FIRE/BUILDING:
 - A. Fire Department; Promote Mutual Aid Agreement; Resolution No. 2005-134
 - B. (1) Building Department: Update on Building Activities
 - (2) Council Discussion of Side Yard Retaining Wall - verbal
 - (3) Relationship of Garage to Home Size - Verbal
8. CITY ENGINEER'S REPORT
 - A. Resolution No. 2005-135: Accept Feasibility Report for Phase IV Water System Interconnect Project and Order Public Hearing
 - B. Agreement for Overhead Street lighting on 10th Street and Keats Avenue
 - C. Revised Authorization for Professional Services: Civil Defense Sirens - Verbal
9. PLANNING, LAND USE, AND ZONING:
 - A. Final Plat, Final PUD Plan and Site Plan - United Properties; Resolution No. 2005-136
 - B. 2006-2010 Capital Improvements Program (CIP); Resolution No. 2005-137
 - C. Final Plat and Development Agreement: Sanctuary of Lake Elmo; Resolution No. 2005-138
 - D. CDBG Application; Resolution No. 2005-139
10. CITY ATTORNEY'S REPORT:
 - A. Council Discussion Public Communication Personnel Issues - Council Member Johnson - verbal

- 11. CITY ADMINISTRATOR'S REPORT:
 - A. Snowmobile Ordinance; Ordinance No. 97-164
 - B. 3M Park Donation - Verbal
- 12. CITY COUNCIL REPORTS:

Mayor Johnston called the Council meeting to order at 7:00 p.m. in the Council chambers. PRESENT: Conlin, Smith, Johnson, Johnson, Delapp, City Engineer Prew, City Planner Dillerud, City Attorney Filla, Building Official McNamara, Finance Director Tom Bouthilet and Administrator Rafferty.

1. AGENDA

5A. Public Hearing tax adoption; Nov 1st meeting minutes reconsidered; 10B. Update by City Attorney on closed session.

M/S/P Johnson/Delapp - to approve the December 6, 2005 City Council agenda, as amended. (Motion passed 5-0).

2. MINUTES: November 15, 2005

M/S/P Johnson/Smith - to approve the November 15, 2005 City Council Minutes, as amended. (Motion passed 4-0-1: Abstain:Delapp).

MINUTES: November 1, 2005.

M/S/P Johnson/Johnston - to reconsider amending November 1st City Council Minutes. (Motion passed 5-0)
 Amendments to November 1st Council meeting will be in bold print.

3. PUBLIC INQUIRIES/INFORMATIONAL

A. Public Inquiries

Susan Dunn asked if the Lake Elmo Comprehensive Plan had been submitted to the neighboring communities and the Met Council. The City Planner responded that the City's Comp plan had been submitted to the Metropolitan Council and the neighboring communities, school districts and Watershed Districts. He explained when the Met Council staff received the Plan for review there were things they would like to see and found it incomplete... recognizing what they are defining what is complete.

Council member Delapp asked for a detailed set of minutes of the November 19th hearing where Council members Johnston and Smith, Administrator Rafferty and Planner Dillerud met the Met Council staff members. He said the purpose of the meeting was to discuss litigation deficiencies the Met Council staff expected to see in the Comprehensive Plan.

B. Public Informational

(1) Donation to Lake Elmo: Betsy Lundquist

Brad Winkels, President of the Lake Elmo Fire Relief Association, read a letter from the Lundquist family describing their father, Bill Lundquist, as a man who always wanted to be involved in his community. Bill Lundquist supported the Lake Elmo Fire Department and toured their skill and needs to everyone and made a \$20,000 donation to the relief association.

M/S/P Delapp/Conlin - to install a plaque of thanks on the wall of the Lake Elmo Fire Station in recognition of Lundquist donation to the Firemen Relief Association and the community over the years. (Motion passed 5-0.)

(2) John Elholm - Lake Elmo Park Reserve Master Plan

County Parks Director Jim Luger and Larry Walker, reviewed the Lake Elmo Park Master Plan draft that contained additions of a natural & cultural resource protection/restoration, interpretation, camping, picnicking, water based facilities, trails (cross country ski trails) (mountain bike) (paved trails), miscellaneous facilities (archery) (winter recreation)

John Elholm, Washington County Senior Parks Planner, stated that most of the plan was based on public comments. Suggestions were approved or rejected based on how well the proposed item fit into the area and the park's purpose

Mike DeNoma, who lives on Klondike Avenue, said he supported what they have done but had concerns on who pays the cost of this unimproved road.

The City Planner responded this is a critical part of the systems plan which focuses on the Old Village that we never had before. This will be a City project.

Mr. Luger said the County officials are expecting to have a final draft available in early January with a public hearing tentatively slated for February or March. The County board will vote on the plan after the public hearing, and if approved, it would be sent to the Metropolitan Council for review. The reserve is a regional park and as such, the council works with the county to develop policies that fit into the overall system and its priorities.

Mr. Elholm said this is really a vision for the next 15 years. There may be nothing happening even with the plan in place for years. It guides development as funds become available.

Council member Delapp asked questions - if there is a provision for ultimate buyout, what are the current canopy and the proposed canopy. Mr. Delapp said he received a letter from Bob Schumacher, Chair of the Lake Elmo Parks Commission, asking where these trails came from. Mr. Luger said he would take all the questions and add to the draft which will be made public.

The Council said it appreciated the opportunities for discussion because preserving the park reserve is a very important item to Lake Elmo.

M/S/P DeLapp/Conlin - to schedule a workshop meeting with our three City representatives on the Lake Elmo Park Master Plan Draft Committee and extend an invite to the Parks Commission. (Motion passed 5-0.)

4. CONSENT AGENDA:

A. Resolution No. 2005-128: Approving Claims

M/S/P Johnson/Conlin - to approve Resolution No. 2005-128, A Resolution Approving claim numbers 292 through 295, DD573 through DD582, 28269 through 28308 which were used for Staff Payroll dated November 23, 2005; claims 28309 through 28350, in the total amount of \$448,493.35. (Motion passed 5-0.)

B. Resolution No. 2005-130: Statutory Tort Limits on Liability Insurance

The Finance Director reported the City obtains liability coverage through the League of Minnesota Cities Insurance Trust for buildings and vehicles. The coverage also covers tort liability. Because of this coverage, the City must decide whether or not to waive the monetary limits on municipal tort liability as established by Minnesota Statutes 466.04. He noted that the City has elected not to waive the tort liability and staff recommended that the City adopt a resolution stating that the City does not waive the monetary limits on municipal tort liability.

M/S/P Johnson/Conlin - to adopt Resolution No. 2005-130, A Resolution Stating the City of Lake Elmo Does Not Waive the Monetary Limits on Municipal Tort Liability. (Motion passed 5-0.)

C. 2006 Liquor Licenses

M/S/P Johnson/Conlin - to grant a 2006 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 and Inn; based on approval of the Washington County Sheriff's Department. (Motion passed 5-0.)

M/S/P Johnson/Conlin - to grant a 2006 On-sale intoxicating liquor, Off-Sale intoxicating liquor, and On-Sale Sunday intoxicating liquor license to the Twin Point Tavern and Lake Elmo Inn; based on approval of the Washington County Sheriff's Department. (Motion passed 5-0.)

M/S/P Johnston/Delapp resolution No. 2005-132, A Resolution Adopting the proposed 2006 General Fund Budget in the amount of \$3,566,804. (Motion passed 5-0).

B. General Fund Budget: Resolution No. 2005-132

M/S/P Johnston/Smith - to adopt Resolution No. 2005-131 Adopting the Final Tax Levy in the total amount of \$2,149,940. (Motion passed 5-0).
The Finance Director provided two resolutions for Adoption of the Final 2006 Budget and Levy. He reported the 2006 proposed tax rate remains the same as 2005 and reflects an 11.74% increase in the Levy which is attributed to an increase in property valuations. Future development related fees accounts for 88% of the total increase in revenue.
The Mayor opened up the subsequent Hearing at 8:47 p.m. in the City Council chambers. There were no comments.
The Mayor closed the Hearing at 8:48 p.m.

5. FINANCE:
A. Tax Levy Adoption: Resolution No. 2005-131

M/S/P Johnson/Conlin - to approve Resolution No. 2005-140, A Resolution Regarding Workers' Compensation Coverage for Elected Officials. (Motion passed 5-0).
The Finance Director reported Minnesota Statute 176.001 subd 9, (5) provides 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 effect. This would provide coverage for elected officials injured while performing his or her duties.

E. Workers' Compensation for Elected Officials: Resolution No. 2005-140

M/S/P Johnson/Conlin - to approve Resolution No 2005-129, A Resolution Approving Partial Payment to Tower Asphalt in the amount of \$115,822.71 for work completed on 2005 Street Repairs-Hilltop Avenue, as verified by the City Engineer in his memo dated December 1, 2005. (Motion passed 5-0).
The City Engineer reported that Tower Asphalt has completed the 2005 Street Repairs-Hilltop Avenue. The only work remaining is to make sure the grass seed comes up in the spring. The City Engineer recommended approval of Partial Payment No. 2 in the amount of \$115,822.71.

D. Resolution No. 2005-129: Partial Payment to Tower Asphalt for Hilltop Avenue

6. NEW BUSINESS:

A. Out-of-State Travel Policy for City Council: Resolution No. 2005-133
State Statutes 471.661 states that by January 1, 2006, the governing body must develop a policy that controls travel outside the State of Minnesota for the applicable elected officials of the relevant unit of government. A draft policy was provided for Council review.

M/S/P Johnson/Delapp – to delete “reasonable” and in #6 as amended add after tips “under \$10”. (Motion passed 5-0.)

M/S/P Smith/Delapp - to approve Resolution No. 2005-133, as amended, the City of Lake Elmo Elected Officials (Mayor and City Council) Out-of-State Travel Policy. (Motion passed 5-0.)

7. MAINTENANCE/PARK/FIRE/BUILDING:

A. Fire Department: Promote Mutual Aid Agreement: Resolution No. 2005-134

At its November 15th meeting, the City Council delayed action on this item so that the Fire Chief could provide the March 10, 2005 memo which lists the nine steps needed for initial implementation. The Council received a copy of this memo.

M/S/P Johnson/Smith - to adopt Resolution No. 2005-134. A Resolution Promoting the Use of Intrastate Mutual-Aid Agreements. (Motion passed 5-0.)

B. (1) Building Department: Update on Building Activities

The Building Official reported there were two new residential building permits issued and no new commercial building permits for the month of November.

(2) Council Discussion of Side Yard Retaining Wall – See City Attorney's Report
(3) Relationship of Garage to Home Size – See City Attorney's Report

8. CITY ENGINEER'S REPORT:

A. Resolution No. 2005-135: Accept Feasibility Report for Phase IV Water System Interconnect Project and Order Public Hearing

The City Engineer provided and summarized a Water Systems Interconnection Phase IV Feasibility Report. He said the City has undertaken a project to build an elevated storage tank at the new Public Works site near the Intersection of Ideal Avenue and TH5. A trunk water main is necessary to connect the water tower to the remainder of the water system. He said to accomplish this; a 16-inch water main is required from the water tower to the intersection of CSAH6 and TH5. This water main would lie in the south boulevard of TH5. There are a few commercial properties along TH5 that will receive a benefit and will have the ability to connect to this water main.

M/S/P Delapp/Johnson - to adopt Resolution No. 2005-135, A Resolution Receiving the Feasibility Report and Calling A Hearing for January 17, 2006 on the Water Systems Interconnection - Phase IV Project. (Motion passed 5-0).

Council member Delapp brought up his concern on the City not requiring sprinkling the buildings because of the interpretation of State Building Codes and Standards. Council member Delapp will work with staff on reinstating the sprinkling ordinance.

B. Agreement for Overhead Street Lighting on 10th Street and Keats Avenue
The City Engineer reported Washington County is requesting that the City enter an agreement to place a street light at the intersection of CSAH10 and CSAH19 near the entrance to the Park Reserve. Because of the size of the intersection, two lights may be necessary to adequately light it. He said this is a standard agreement which calls for the County to prepare the plans and the City to pay for the electricity and maintenance. The City Engineer recommended approval of this agreement with the stipulation that the light is a shoe box style or cut-off cobra head that meets City Code.

Council members asked what the basis was for this street lighting request and asked the City Engineer to go back to Washington County to find out their reasoning and purpose behind this request.

M/S/P Johnson/Conlin - to direct the City Engineer to contact Washington County as to the purpose behind the overhead street lighting request on 10th Street and Keats Avenue and bring back the reasoning to the Council. (Motion passed 5-0)

C. Revised Authorization for Professional Services: Civil Defense Sirens -
Verbal

The City Engineer reported the City will provide civil defense coverage to that portion of the City not presently covered, in accordance with the Fire Protection Need Study done by DSU Research dated March 2005. Compensation for the services shall be an estimated amount of \$14,626.

M/S/P Johnson/Johnson - to approve the revised authorization for professional services for civil defense sirens. (Motion passed 3-2; Delapp said the numbers of sirens are excessive, Smith)

9. PLANNING, LAND USE AND ZONING:

A. Final Plat, Final PUD Plan and Site Plan - United Properties: Resolution No. 2005-136

The City Planner reported the Planning Commission recommended approval of the Final Plat, Final PUD Plan and Site Plan submitted by United Properties to create a 3.7 acre lot as Eagle Point Business Park 5th Addition and construct a 30,000 square foot office building at the northwest corner of Hudson Blvd. and Eagle Point Blvd.

The Planner explained the applicant's graphics and documentation found the proposal compliant with applicable City Code and PUD Plan requirements and the applicant has agreed to adjusting the location of the building a few feet easterly (to overcome a setback variance) and submit a photometric plan for the exterior lighting of the site.

M/S/P Delapp/Smith - to adopt Resolution No. 2005-136, A Resolution Approving the Final Plat of Eagle Point Business Park 5th Addition and a Final PUD Plan and Site Plan for a 30,000 square foot office building on Lot 1, Block 1, Eagle Point Business Park 5th Addition. (Motion passed 5-0).

B. 2006-2010 Capital Improvements Program (CIP): Resolution No. 2005-137

The City Planner reported the Planning Commission conducted the required Public Hearing on November 28, 2005 and recommended approval of the 2006-2010 Capital Improvements Program as presented by City Staff. The Park Commission had completed its review and recommendations regarding the CIP at its November 21 meeting, and those recommendations were incorporated into the draft CIP presented to the Planning Commission.

Tom McCormick, 12276 Marquess Way N., questioned the Parks CIP, specifically the amount allotted for the Carriage Station Park, which would service 110 homes and approximately 300 children compared to the money budgeted for Heights Park servicing only 27 homes.

Council member Delapp said he would support more money designated to Carriage Station Park.

This agenda item will be discussed at a later Council meeting.

C. Final Plat and Development Agreement: Sanctuary of Lake Elmo: Resolution No. 2005-138

The City Planner reported Lake Elmo Development Company has provided a Final Plat and Final landscape plan for this 55/62 lot OP development on 175 acres for which the Council approved a Preliminary Plat and OP development Stage Plan/CUP on October 4, 2005. He said staff reviewed the Final Plat and construction plans and finds that the developer has complied with and/or incorporated these specific project design conditions of the Preliminary Plat approval resolution. He noted that Outlots G through M will not be legally buildable until such time as the Zoning ordinance is amended to allow 18 units per 40 Acres in OP projects as prescribed by the adopted Comp Plan. Once the code amendment is adopted by the City, the owner of the seven outlots will need to have a new Final Plat approved converting those outlots to buildable lots.

City staff prepared a Development Agreement for the project.

M/S/P Smith/Conlin - to adopt Resolution No. 2005-138, A Resolution Approving the Final Plat, Final OP Plan and Development Agreement of "Sanctuary of Lake Elmo". (Motion passed 5-0).

D. CDBG Application; Resolution No. 2005-139

The City Planner reported Washington County is soliciting 2006 CDBG applications from communities. To date the City has received CDBG contract obligations totaling \$120,000 for the Cimarron Gas Service Replacement Program. He said that program is underway, with eligibility interview complete for the initial block of 20+ homes and out of that group, 62 homeowners have been interviewed and as many as 54 will be eligible for grant assistance. Work will commence on those homes in early 2006.

The Planner explained depending on the outcome of the re-solicitation of bids for the work, it appears that the \$120,000 now under contract will be sufficient to complete the work on well under 100 homes. He suggested the Council consider again applying for CDBG funding to both inspect the balance of the CDBG units and to provide further grant funds for additional eligible home owners from the Phase 1 group and the group that results from the additional inspections. A suggested \$80,000 is applied for from the 2006 CDBG program.

M/S/P Johnston/Johnson - to adopt Resolution No. 2005-139, A Resolution Approving the City's 2006 CDBG application. (Motion passed 5-0).

10. CITY ATTORNEY'S REPORT:

A. Council Discussion Public Communication Personnel Issues - Council Member Johnson - verbal

With the variety of meetings we have, Council member Johnson voiced her concern that many times they talk about situations in the City and try to identify what has been done or not done, and sometimes come close to violating personnel laws in questioning staff performance rather than generalizing. Attorney Filla explained from a legal standpoint employees are entitled to a performance evaluation at a non public setting. If you step over the line, the rights of the employee are not being upheld.

B. Update on Closed Meeting

Attorney Filla reported on the closed meeting where he met and talked about issues in the Session lawsuit, things that should be expanded in the lawsuit and things that came up that the Council thought should be discussed at a public meeting such as:

(1) Size of Garage to Residential Dwelling

(2) Allowed Uses for Side Yard Setback

(Please refer to the December 5, 2005 letter from Jerry Filla, which is made part of these minutes, for his review on these sections of the code.)

Size of Garage to Residential Dwelling:

Attorney Filla reported the recent addition to the Session home has a first floor area that is designated as workshop/storage area. He said most residential dwelling have workshops/storage areas and such areas are considered as permissible incidental uses. Deeming the actual use of these areas will occur as part of the discovery process in a

current litigation and will impact the ultimate determination of whether the property is being used for an illegal commercial purpose or for a permissible home occupation.

Allowed Uses for Side Yard Setback:

Attorney Filla reported that in the case of the Sessing property, the City allowed field stone to be used as a form of landscaping material within the side yard area (Lake Elmo Resolution No. 99-37). He concluded that a retaining wall of some type is a permissible encroachment within a side yard setback area and that all side yard setback improvements must be maintained in an attractive and well kept condition by the property owner. Mayor Johnston stated the City has a responsibility to manage runoff and grading and implied in that responsibility is an authority to manage things that affect grading and runoff. In his opinion, the retaining wall was installed without authorization and has had a detrimental affect on runoff, therefore, he would require the retaining wall to be removed.

Attorney Filla stated that in this case the City would be hard pressed to say that the property owner could not use fieldstone on this property. He said that he didn't believe a drain tile was a permitted encroachment in the side yard. He said the City is on very weak grounds regarding size of garage to residential dwelling and the Council needs to tell staff what regulations they want to see regarding garage size versus house size. Then staff can tell the Council how to fix the code.

Council member Smith pointed out that the property owner has mentioned and stated in writing, which is documented, that this is a retaining wall. She noted that in her opinion the illegal structures that need to be removed are the pet containment system, which crosses the property line, the retaining wall, drainage systems, berm and restore the natural drainage and made the following motion.

M/S/P Smith/Johnston - to direct the staff to take enforcement action against the property owner of 5699 Keats Avenue by requiring all four illegal structures need to be moved to the required 10' side yard setback; the pet containment system, retaining wall, drainage system and manmade berm, the natural drainage pattern needs to be restored and a legal landscape material used in the required side yard setback (sod, seed, mulch and plantings); the removal of the structures and restoration of natural grade along with appropriate landscaping needs to be done from the screening structure on the east to the end of the retaining wall on the west. The 4" drainage pipe that runs under the driveway and is laying in the required 10' side yard setback needs to be removed and that water needs to be redirected to stay on the Sessing property. (Motion passed 5-0.)

Attorney Filla also noted that the property owner had been instructed to install gutters and change the drainage so that it goes across the driveway to the southeast. As of now, the property owner has not done as directed. The Council said they would take a wait and see what happens on this.

Joan Zierman said it had been discussed at a previous Council workshop and she would like to know what the legal bearing would be that the inspector interpreted the code for 23 years that you cannot have more garage space than the size of the principal building. She felt this needed further discussion. Mayor Johnston responded that the City Attorney has interpreted the code, that there is no legal basis, and the City has to fix this section of the code.

11. CITY ADMINISTRATOR'S REPORT:

A. Snowmobile Ordinance: Ordinance No. 97-164

The Administrator explained he had a visit from the homeowner and the snowmobile problem has not been eliminated. The City has to have this ordinance in place in order to be enforced by the Deputies and recommended passing the ordinance.

Valdi Stefenson, representing two organizations the Stillwater Snow Lords and Star Trail, said they were in opposition to adopting this ordinance as this would be bad public policy to make a revision upon one single complaint. This ordinance will negatively impact other residents and is much stricter than state or county regulations. He said it was his understanding that the problem with the affected homeowner was resolved by moving the trail.

M/S/P Johnson/Johnson – to adopt Ordinance No. 97-164, A Snowmobile Ordinance. As presented. (Motion passed 3-2: Conlin, Johnson).

Council member Conlin voiced her concern that in her neighborhood a snowmobile could be within 50' of a residential dwelling not owned by the operator and still be on her property because her lot is only 95' wide.

Attorney Filla said this is a common problem and asked where you draw the line. He said it's difficult to craft an ordinance to fit all neighborhoods.

M/S/P Delapp/Johnson - to reconsider the motion. (Motion passed 5-0).

The Council tried to develop language that would meet the needs to insure the safety issue to children and prevent snowmobiles being a nuisance, but was not successful.

M/S/P Johnson/Johnson - to table this agenda item until the December 20th Council meeting. (Motion passed 5-0).

B. 3M Park Donation – Verbal

The City Administrator reported he, Chuck Dillernud, and Tom Bouthilet had a meeting with staff members from the City of Oakdale regarding the donation by 3M announced in the newspaper. He said it was a positive discussion and it was made certain that a donation of this sort would be a joint venture. They set the right tone and plan for the future in how this facility might mature into a park with a partnership. The Oakdale City

Administrator will go back and discuss with its leadership in Oakdale. He said he has met with 3M representatives as well.

Council member Johnson stated the City had not approved any partnership before the announcement in the newspaper. Council member DeLapp stated that a community playfield in this area was never part of our park plan. He said the City would be heading in the wrong direction because the plan was to centralize the ball fields in the Old Village area.

12. CITY COUNCIL REPORTS

Council Member Johnson thanked Mike Bouthilet and staff for their quick response in repairing the waterman that burst after all the snowplowing they had done.

Council adjourn the meeting at 10:56 p.m.

Respectfully submitted by Sharon Lumby, City Clerk

DRAFT

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December 5, 2005
December 6, 2005

Mayor Dean Johnston
Lake Elmo City Council
City of Lake Elmo
3800 Laverne Avenue North
Lake Elmo, Minnesota 55042

RE: Accessory Structure/Building Regulations
Construction with Side Yard Setbacks
RR Zoning District
Our File No.: 11155.04-2

Dear Mayor and City Council Members:

The City's regulations (City Code 100.03) incorporate the Minnesota Statutory Rules of Construction (MS Chapter 645). In part, the state rules of legislative construction indicate that the following presumptions should apply when construing the City Code provisions:

1. The City Council did not intend a result that is absurd, impossible of execution or unreasonable (MS 645.17 Subd. 1); and
2. The City Council did intend that the entire City Code be effective and certain (MS 645.17 Subd. 2).

RELATIONSHIP OF GARAGE TO HOME

In order to ascertain the City Council's intent in regard to the use and regulation of accessory buildings and accessory structures in the RR Zoning District, it is my opinion that a person must review the definitions of accessory building, accessory structure, building, private garage, principal structure or use, and structure (all contained in City Code Section 150) in conjunction with the City Code provisions relating to the RR Zoning District (City Code 300.07 Subd. 4.B.) and the design standards for accessory buildings and structures (City Code Section 300.13 Subds. 3 and 4). When I review those sections in conjunction with each other, I conclude:

1. That the terms "accessory building" and "accessory structure" refer to detached buildings or structures.

the case of the Sessing property, the City also allowed field stone to be used as a form of landscaping material within the side yard area (Lake Elmo Resolution No. 99-37).

Based upon my review of the above sections, I conclude that a retaining wall of some type is a permissible encroachment within a side yard setback area and that all side yard setback improvements must be maintained in an attractive and well kept condition by the property owner (Lake Elmo Code 1365.05).

Very truly yours,

/s/ JPF

Jerome P. Filla

JPF:jtc

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¹ Uses and structures which are customarily accessory and clearly incidental and subordinate to allowed uses and structures; accessory structures cannot exceed the size of the principal building.

² No accessory building used or intended for the storage of passenger automobiles shall exceed 1,000 square feet of gross area, nor shall any access door or other opening exceed the height of ten (10) feet, nor shall any structure exceed one (1) story in height except when the garages are located in business, industrial or planned unit developments.

³ On parcels of 20,000 square feet in area or less, no detached accessory building or garage shall exceed the size of the principal building in gross floor area.

2. That the owner of a 10+ acre parcel in the RR Zoning District can have one (1) 2,500 square foot detached building in addition to an attached garage.
3. That the last clause of the provisions of Lake Elmo Code Section 300.07 Subd. 4.B.2.a. 'seems to apply to all accessory structures which, depending upon your interpretation, would include both attached and detached accessory structures; and that this clause does not further define the term "size of principal building" so that it could be interpreted to mean just the square footage of the first floor of the dwelling unit or the total square footage of all dwelling space contained in the building.
4. That the meaning of the first sentence in Section 300.13 Subd. 3.D.² depends upon whether the term "accessory building" refers to an attached building/structure or to a detached building/structure. If it refers to an attached building/structure, the area of the principal building which is intended for the storage of passenger automobiles cannot exceed 1,000 square feet. If, instead, the above referenced sentence refers to a detached building, then the area of a detached building intended for the storage of passenger automobiles cannot exceed 1,000 square feet.
5. That the restrictions of the last sentence of Section 300.13 Subd. D³ do not apply to property in the RR Zoning District.

SIDE YARD RETAINING WALLS

The recent addition to the Sessing home has a first floor area that is designated as workshop/storage area. Most residential dwellings have workshops/storage areas and such areas are considered as permissible incidental uses. Determining the actual use of these areas will occur as part of the discovery process in a current litigation and will impact the ultimate determination of whether the property is being used for an illegal commercial purpose or for a permissible home occupation.

Except for buildings that house livestock, the required side yard setback for primary and accessory buildings/structures in the RR Zoning District is ten (10) feet (Lake Elmo Code 300.07 Subd. 4.B.3). Various items, including gutters, fences, walls, hedges, trees, shrubs and plants are permitted encroachments in the side yard setback area (Lake Elmo Code 300.07 Subd. 1 and Subd. 2). Drain tile is not enumerated as a permissible encroachment within the side yard setback area. Fences are defined as "a partition, structure, wall, or gate erected as a dividing marker, visual or physical barrier, or enclosure (Lake Elmo Code Section 150).

Other than the permitted side yard encroachments, side yards should be landscaped with materials such as sod, mulch and plantings (Lake Elmo Code 1365.01). In

**CITY OF LAKE ELMO
CITY COUNCIL MEETING
JANUARY 3, 2006**

1. AGENDA
2. MINUTES: December 20, 2005
3. PUBLIC INQUIRIES/INFORMATIONAL:
 - A. PUBLIC INQUIRIES:
 - B. PUBLIC INFORMATIONAL:
- (1) Lake Elmo Jaycees Proclamation
- (2) 2006 Board of Appeal and Equalization Meeting
4. CONSENT AGENDA:
 - A. Resolution No. 2006-001: Authorizing Signature for Payments of Funds from the Lake Elmo Bank
 - B. Resolution No. 2006-002: Approving Claims
5. ORGANIZATIONAL MEETING:
 - A. Election of Acting Mayor
 - B. Designation of Legal Newspaper
 - C. Designation of Official Depositories for 2006
 - D. Appointment of City Engineer
 - E. Appointment of City Attorney (Civil and Criminal)
 - F. Appointment of Financial Advisor
 - G. Appointment of Auditing Firm
 - H. Cable Operator: Steven Press
 - I. IT: Next Genesis
 - J. Animal Control
 - K. Change Council Committees to Council Workshops: Resolution No. 2006-006
6. NEW BUSINESS:
 - A. Employee and Volunteer Recognition Party
 - B. Whiting letter received December 2, 2003 - lighting
7. MAINTENANCE/PARK/FIRE/BUILDING:
 - A. Update on Fire Dept.: Chief Malmquist
8. CITY ENGINEER'S REPORT:
9. PLANNING, LAND USE & ZONING:
 - A. Comprehensive Plan Amendment-Trails Guide Plan: Resolution 2006-003
 - B. 2030 Comprehensive Plan Amendments: Resolution 2006-004
 - C. 2006-2010 Capital Improvements Program (CIP): Resolution 2006-005
 - D. Metropolitan Council System Statement - verbal
10. CITY ATTORNEY'S REPORT:
11. CITY ADMINISTRATOR'S REPORT:
12. CITY COUNCIL REPORTS:

Council recessed at 10:46 pm for a Closed Meeting.

Mayor Johnston called the Council meeting to order at 7:00 p.m. in the Council Chambers. COUNCIL MEMBERS PRESENT: Conlin, DeLapp, Johnson, and Smith, STAFF PRESENT: Administrator Rafferty, City Planner Dillierud, Finance Director Bouthilet, City Engineer Prew, Attorney Filla, Recording Secretary Freeman.

Pledge of Allegiance

1. AGENDA:

M/S/P Johnson/Conlin - to approve the January 3, 2006, agenda as amended. (Motion passed 5-0).

2. MINUTES:

M/S/P Johnson/Smith- to approve the December 20, 2005, City Council minutes, as amended. (Motion passed 5-0).

3. PUBLIC INQUIRIES/INFORMATIONAL:

A. PUBLIC INQUIRIES:

Robert Meyer, Director, Ramsey Center For Arts, announced the Grand Opening and invited residents to the Ribbon Cutting Ceremony on Saturday, January 7, at 1:00 p.m.

Kathy Pelnar, Lake Elmo Animal Control Officer, commented about the untruths printed in the December 23, 2005, issue of the *Lake Elmo Leader*. She stated that she had talked with Mayor Johnston, Council Member Smith and City Administrator Rafferty. Ms. Pelnar stated that the *Leader* stands by its story.

In her 22 years of animal control, and of her four years with the City, Ms. Pelnar stated she has always responded to calls. She felt blind-sided, with the false allegations, written in the newspaper. Response time to calls is approximately 15 minutes, and 10 minutes to Cimarron. In 2005, Ms. Pelnar responded to 221 calls in Lake Elmo, of which five involved dog bites. If the City Council desired, documentation could be provided regarding her response times, actions taken and follow-up. Ms. Pelnar said no calls were received about the "...two dog bites" quoted in the article.

Ms. Pelnar stated, if allowed, she will continue to provide services for the City. She will also be submitting her contract proposals for 2006.

B. PUBLIC INFORMATIONAL:

(1) Lake Elmo Jaycees Proclamation

Josh Ackerman introduced himself as Jaycees President for 2006. Mayor Johnston proclaimed the Week of January 15-21, 2006, as Jaycees Week and urged all citizens to recognize the importance of community service to all of its citizens.

(2) 2006 Board of Appeal and Equalization Meeting
The Lake Elmo Board of Review will meet at City Hall on Wednesday, May 3, 2006, between the hours of 4:00 and 6:00 p.m., for the purpose of reviews and correcting the assessment of said Real Estate for the year 2006.

4. CONSENT AGENDA:

A. Resolution No. 2006-001: Authorizing Signature for Payments of Funds from the Lake Elmo Bank
M/S/P Johnson/Smith – to adopt Resolution No. 2006-001 authorizing Signature for Payments of Funds from the Lake Elmo Bank. (Motion passed 5-0)

B. Resolution No. 2006-002: Approving Claims
M/S/P Johnson/Smith – to adopt Resolution No. 2006-002 approving Claim Numbers 299, 300, DD594 through DD603, 28448 through 28463, which were used for staff payroll dated December 20, 2005; claims 301, 28464 through 28494, in the total amount of \$357,039.78. (Motion passed 5-0)

5. ORGANIZATIONAL MEETING:

A. Election of Acting Mayor
The Council must select an Acting Mayor to act on the City's behalf if Mayor Johnston is unable to attend a meeting, sign an agreement, or attend functions on behalf of the City. Any member of the Council is eligible for this position.

M/no Second Delapp – to nominate Steve Delapp as Acting Mayor.
M/S/P Conlin/Johnson – to nominate Anne Smith as Acting Mayor for 2006. (Motion passed 5-0)

B. Designation of Legal Newspaper
M/S Johnson/Conlin – to designate the Lake Elmo Leader as the City's legal newspaper for 2006.

M/S/F Delapp/Johnson – to amend the motion to designate the Oakdale-Lake Elmo Review as the City's legal newspaper for 2006. (Motion failed 4-1; Delapp more research needed; Leader rates are high)

M/S/P Conlin/Johnson – to designate the Lake Elmo Leader as the City's legal newspaper for 2006, subject to Affidavit of Circulation submitted from Lake Elmo Leader. (Motion 4-1; Delapp)

C. Designation of Official Depositories for 2006
Staff recommended the designation of the following depositories for the City: Lake Elmo Bank, Wachovia Securities, Smith Barney Citigroup and Northland Securities.

K. Change Council Committees to Council Workshops: Resolution No. 2006-006
 Administrator Rafferty recommended this informal public setting as a more efficient way of learning and discussion of City items. Council Member Smith inquired who will be conducting the Council Committee meetings. Administrator Rafferty said the Mayor would be in charge and minutes kept. Council Member Delapp requested a thorough Agenda. At the December 20, 2005, Council meeting, a Motion was made by Council

J. Animal Control
 M/S/P Johnson/Conlin -- to request Proposals for Animal Control Services for 2006, and to extend contract with Kathi Pelnar as the City's Animal Control Officer through February 2006. (Motion 5-0.)

I. IT: Next Genesis
 Council Member Delapp wondered why the City chose this company, and requested an update on the City's new webpage. Finance Director Boutillet stated the rates and services provided were 65% higher elsewhere. The new webpage should be ready in 30 days for Staff to be trained.
 M/S/P Johnson/Conlin - to approve the reappointment of the computer service contract between the City and Next Genesis (Ryan Masanz). (Motion passed 5-0.)

H. Cable Operator: Steven Press
 M/S/P Delapp/Conlin -- to approve the reappointment of Steven Press as the City's part-time Cable Operator at \$13.90/hour for taping and broadcasting City's meetings. (Motion passed 5-0.)

G. Appointment of Auditing Firm
 M/S/P Johnson/Conlin - to appoint Steven R. McDonald, CPA, Abdo, Bick & Meyers, LLP as the City's Auditing Firm for 2006. (Motion passed 5-0.)

F. Appointment of Financial Advisor
 M/S/P Johnson/Smith - to appoint Paul Donna, Northland Public Finance Group as the City's Financial Advisor for 2006. (Motion passed 5-0.)

E. Appointment of City Attorney (Civil and Criminal)
 M/S/P Smith/Johnson - to appoint Jerry Filla, Peterson, Fram & Bergman as the City Attorney, for both civil and criminal matters for 2006. (Motion passed 5-0.)

D. Appointment of City Engineer
 M/S/P Smith/Delapp - to appoint Tom Prew/TKDA as the City Engineer for 2006. (Motion 5-0.)

M/S/P Johnson/Smith -- to designate Lake Elmo Bank, Wachovia Securities, Smith Barney Citigroup and Northland Securities. (Motion passed 4-1; Delapp wanted the City to contact Bremer Bank since they are located in the City).

Member Conlin about televising the Workshop meetings. Motion failed. Council Member Conlin voted for the Motion because she felt it would be a learning experience for the community.

M/S/P Johnson/Conlin – Resolution 2006-006, approving the change from Council Committee structure to a Council Workshop, with meetings to be held on the second Tuesday of each month, beginning at 6 p.m. (Motion passed 4-1 DeLapp, too much goes on at the meetings, minutes not approved and meeting should be cabled.)

6. NEW BUSINESS:

A. Employee and Volunteer Recognition Party

Staff was directed to provide possible dates for The Employee and Volunteer Recognition Banquet for 2006. The City will extend invitations to all employees, community volunteers and their spouse/guest to attend.

M/S/P Conlin/Johnson – to pursue funding from the Lake Elmo Jaycees and to come back with recommendations on dates. (Motion passed 5-0)

B. Whiting letter received December 2, 2003

Neighbors of 35th Street have requested something be done about the lighting being very bright at Animal Inn. City Planner Dillnerud said the lighting met City codes when built, but he would contact Animal Inn about their concerns.

7. MAINTENANCE/PARK/FIRE/BUILDING:

A. Update on Fire Dept.: Chief Malmquist-no report.

8. CITY ENGINEER'S REPORT-no report.

9. PLANNING, LAND USE & ZONING:

A. Comprehensive Plan Amendment-Trails Guide Plan: Resolution 2006-003
City Planner reported that the Planning Commission recommended adoption of the Trail Plan as an element of the Lake Elmo Comprehensive Plan. Glen VanWarmer of SEH presented an overview of the Trail Guide Plan.

M/S Johnson/Conlin – to adopt Resolution 2006-003 Comprehensive Plan Amendment - "Comprehensive Trail Guide Plan".

Council Member Delapp discussed 14 modifications/issues he has with the plan from a map provided to the Council. He asked that City Council adopt Resolution 2006-003. The City Planner said he would bring Council Member Delapp's maps and concerns to the Parks Commission for further discussion, and possible future amendments to the Trails Guide Plan.

M/S/P Delapp/Smith - to amend to review the 14 points of interest brought up by Council Member Delapp with the process suggested by the Planner.
(Motion 5-0)

M/S/P Johnson/Conlin – to adopt Resolution 2006-003 Comprehensive Plan Amendment-Trails Guide Plan as amended. (Motion 5-0)

B. 2030 Comprehensive Plan Amendments: Resolution 2006-004
City Planner Dillierud provided the following: Draft Planning Commission minutes from December 19, 2006, Resolution by Tom Armstrong, and redraft with edits of Old Village with text. City Planner Dillierud noted that he had provided City Council with this information on December 20, 2005.

Resident Susan Dunn addressed the need to modify the Old Village Master Plan and the need to add verbiage for buffers to existing developments, to respect the environment of the Old Village and maintain rural character.
Council Member Delapp said that he wants to see buffers between the existing Old Village homes/businesses and new developments.
M/S/P Delapp/Smith – Approve edited document (9A-6) by adding language assuring reasonable buffers between new developments and existing Old Village, and to respect environmental conditions. (Motion 5-0.)

City Attorney Filla provided the City Council amended draft text for Chapter III of the 2030 Comprehensive Plan that addressed the remedial measures that appear as conditions to Metropolitan Council Resolution 2005-20. He recommended the draft text as a substitute for the text prepared by the City Planner.

Council Member Delapp stated that the proposed text amendment is not in the best interests of the City and amounts to a punitive measure by the Metropolitan Council. City Planner Dillierud said that the Lake Elmo City Council did not approve the 2005-20. He advised the City Council that the Metropolitan Council requires the remedial measures found in the December 29, 2005, Metropolitan Council Resolution 2005-20. He advised the City Council that the Metropolitan Council requires the remedial language from Resolution 2005-20 be in the Comprehensive Plan.
Resident Tom Armstrong said he opposed remedial measures as they are a penalty for being granted an extension. He explained the motivation behind the Planning Commission Motion. He asked why MFTC needs to put this language in the Comprehensive Plan regarding penalties for the City of Lake Elmo and no other city. It would be a contractual agreement that the City must then honor.

Resident Susan Dunn stated MFTC reminded the Council that they already rejected the WIF condition of Metropolitan Council Resolution #2005-20 on a 5-0 vote. She noted that MFTC has never had a WIF fee before; it is extortion and the City should say no to a Comprehensive Plan with WIF.

Council Member Conlin asked about the consequences to the City if the remedial conditions were not in the 2030 Comprehensive Plan.

City Attorney Filla said Paragraph 3E of the Met Council Resolution states that if the Metropolitan Council would sue the City to attain compliance, the City would pay the costs of the litigation. He also noted that if we don't comply, the MOU becomes null and void. City Administrator Rafferty stated that he sees the WIF as a remedial action and not as a penalty. If the City fails to follow the staging plan, which is part of the City's budget, the City will pay more but the City will get that money back as credits for future connection charges.

Mayor Johnston said the Metropolitan Council staff is continuing to maintain that the 2030 Lake Elmo Plan is not complete, even though City staff maintains that it is complete per usual Met Council practice, and was submitted on September 6, 2005. Council Member Smith asked City Attorney Filla about Section 3N of Metropolitan Council Resolution 2005-20. Council Member Smith suggested that wording be added to the City's Comprehensive Plan stating, "...provided that Wastewater Inefficiency Fee (WIF) would not be imposed if imposing such a fee would be in conflict with any portions of the MOU."

City Attorney Filla said that you cannot pick and choose. You have to take the whole thing.

Resident Ann Bucheck asked if the City was guaranteeing her no assessment; no guarantee could be provided.

Council Member Delapp stated that METC hasn't rejected the Comprehensive Plan for reasons backed by law. Council Member Conlin would like to see something added that will help the City out in the long run.

Council Member Delapp asked how we could guarantee our residents there would not be penalties imposed by the Metropolitan Council.

Resident Tom Armstrong said conflicts would occur if the City's Plan is submitted with any of the Metropolitan Council Resolution #2005-20 conditions included.

M/S/P Johnston/Johnson - to adopt Resolution 2006-004 amending the 2030 Comprehensive Plan regarding the Village Area text as recommended by the Planning Commission, and regarding the City compliance with Metropolitan Council Resolution #2005-20. This Resolution was amended by Lake Elmo Remedial Measures document drafted by City Attorney Filla and City Council to become part of the Comprehensive Plan Resolution. (Motion 5-0.)

C. 2006-2010 Capital Improvements Program (CIP): Resolution 2006-005
The City Planner recommended adoption of the 2006-2010 CIP for Council consideration.

M/S/P Johnston/Smith – to adopt Resolution 2006-005, adding \$25,000 to the Carriage State Park. (Motion passed 5-0)

D. Metropolitan Council System Statement – verbal
The City Planner reported that Met Council attorney stated at the December 20, 2005, System Statement Hearing that the issues at the Metropolitan Council with the System Statement deal with process, not substance.

10. CITY ATTORNEY'S REPORT:

The City was served Friday, December 30, 2005, by property owners north of 10th Street. The City and Met Council are being sued as the Comprehensive Plan should be following the original nine conditions. If not, the courts should be directed to develop the Comprehensive Plan for the City.

11. CITY ADMINISTRATOR'S REPORT: - no report

12. CITY COUNCIL REPORTS:

Mayor Dean Johnston mentioned again the Ribbon Cutting Ceremony for the Grand Opening of Ramsey Center for the Arts on Saturday, January 7, 2006, at 1:00 p.m. Council Member Delapp thanked City Planner and City Administrator for the good work.

The Council recessed the meeting at 10:46 p.m. for a Closed Meeting.

Respectfully submitted by Carole Freeman, Recording Secretary
Resolution No. 2006-001 Signatures for Payments of Funds from the LE Bank
Resolution No. 2006-002 Claims
Resolution No. 2006-003 Comprehensive Plan Amendment-Trail Guide Plan
Resolution No. 2006-004 Comprehensive Plan Amendments
Resolution No. 2006-005 2006-2010 Capital Improvements Program (CIP)
Resolution No. 2006-006 Change Council Committees to Council Workshops