

City of Lake Elmo
3800 Laverne Avenue North

March 17, 2009

7:00 p.m.

- A. CALL TO ORDER
- B. PLEDGE OF ALLEGIANCE:
- C. ATTENDANCE: ___Johnston___DeLapp___Emmons___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. Consider approval of March 3, 2009 minutes
- 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. Arbor Day Proclamation
 - 4. Authorize landscape partnership agreement, Resolution no. 2009-010
- J. REGULAR AGENDA:
 - 5. Requests by Friends of Washington County (Resolution and Funding), Resolution no. 2009-008

6. Consideration of a variance to permit the construction of an in-ground pool, spa, pergola and fireplace with the 100 ft buffer setback from the edge of the development at 2931 Jonquil Trail N , Resolution no. 2009-009.
7. Presentation of the 2009 Street Improvements Feasibility Report
8. Discuss Sewer and Water Improvement Petition for Lanes DeMontreville Country Club Addition
9. Wireless telecommunications ordinance update
10. Authorize distribution of Lake Elmo Village Area Final AUAR

K. REPORTS AND ANNOUNCEMENTS:

(These are verbal updates and do not have to be formally added to the agenda.

- Mayor and City Council
- Administrator
- Planning Director

L. Adjourn



City of Lake Elmo

651/777-5510

3800 Laverne Avenue North / Lake Elmo, MN 55042

The Lake Elmo City Council will hold City Attorney Interviews on

Wednesday, March 18 2009, 5 p.m.-9 p.m.

and on

Thursday, March 19, 2009, 5 p.m.-7 p.m.

Lake Elmo City Hall
3800 Laverne Avenue N.
Lake Elmo, MN 55042



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City of Lake Elmo
City Council Minutes

March 3, 2009

Mayor Johnston called the meeting to order at 7:00 p.m.

Present: Mayor Johnston and Council Members DeLapp, Emmons, Park and Smith

Also present: Interim City Administrator Dawson, Planning Director Klatt, City Engineer Griffin, City Attorney Filla, Paul Donna-Northland Securities, John North-Ehlers, Inc., Finance Director Bouthilet and City Clerk Lumby

APPROVAL OF AGENDA:

MOTION: Council Member Smith moved to approve the March 3, 2009 agenda as presented. Council Member Park seconded the motion. The motion passed 5-0.

ORDER OF BUSINESS:

GROUND RULES:

APPROVED MINUTES:

The minutes of February 17, 2009 were approved by consensus after Council Member Emmons noted revisions made to the Planning Commission's 2009 Work Plan.

PUBLIC COMMENTS/INQUIRIES:

John Cavanaugh, 2456 Springside Dr. E, Maplewood, explained the Minnesota Boat Club (MBC) will be requesting Council approval to host the 106th Northwestern International Rowing Association Championship Regatta, a two day rowing regatta on Lake Elmo on August 21-22, 2009. NWIRA has sent letters out to 64 property owners with lake shore access explaining the event.

CONSENT AGENDA:

MOTION: Council Member Park moved to approve the Consent Agenda as presented. Council Member Smith seconded the motion. The motion passed 5-0.

- Approve payment of disbursements and payroll in the amount of \$192,373.49
- Adopt Resolution no. 2009-06 recognizing the Washington County Historical Society's 75th Anniversary

REGULAR AGENDA:

Announce and introduce the promotions of two new Captains, Barney Sachs and Mike Cornell

District Chief Brad Winkels introduced Lake Elmo firefighters Barney Sachs and Mike Cornell, both of whom were recently promoted to the rank of captain.

Refunding of Bonds

Paul Donna, senior vice president with Northland Securities, explained given the anticipated market for municipal bonds over the next few months, the City should achieve notable savings in future interest costs. (The average interest rates of the current bond issues are approximately 4.8%; the projected average interest rate is approximately 2.9 %.) By refunding the bonds, the City would be able to free up funds to address other financial needs.

The two bond issues, under consideration, totaling just over \$1 million in outstanding principal are: 1) General obligation State Aid Street Bonds, Series 2001A and 2) General Obligation Water Revenue Bonds, Series 2002B.

MOTION: Council Member DeLapp moved to adopt Resolution no. 2009-007 authorizing the commencement of refunding State Aid Bonds Series 2001A, and Water Improvement Bonds, Series 2002B, provided the total net savings is at least \$60,000 and to authorize the services of Northland Securities, Inc., for this transaction. Council Member Smith seconded the motion. The motion passed 5-0.

Special Assessment Policy & Financing of Projects in 2009-2013 Streets Capital Improvement Program (CIP)

Interim City Administrator Dawson requested the City Council determine the basis for any special assessments to be used for projects in 2009 (i.e., a percentage of costs, or a fixed dollar amount); and identify and direct staff to prepare any modifications the Council wishes to make to the City's policy.

Jack Griffin presented several options for how the Council could finance the \$2.8 million in local street improvements planned between now and 2013. Proposals had the net effect of assessing individual property owners up to 30 percent of project costs over the five-year period. If the City sells general obligation bonds to fund the work, at least 20 percent of the cost must be paid for with assessments, and if assessments are substantial the City must be able to prove that the property is benefiting to those amounts from the street work.

Council Member DeLapp presented an alternate proposal and a set of maps showing different roads in the City and their type of use. He believed the City should pay for a base standard for roadways, a 22-foot street designed to carry nine tons regardless of when and where the streets are built. If the residents determine they wish to have more in their neighborhood streets such as curb and gutter, wider streets or bike paths, then the neighborhood should be assessed for those additions.

Council Member Smith suggested the council assess affected properties for 30 percent of those projects scheduled for 2009, and take a more in-depth look at alternate assessment schemes in the near future.

MOTION: Council Member Smith moved to set the special assessments to be used for 2009 street projects at a maximum of 30 percent of project cost per the City Engineer's proposal and address in-depth the City's public improvement and assessment policy in the near future. Council Member Park seconded the motion. The motion passed 5-0.

Selection Process for City Attorney

Interim City Administrator Dawson asked the Council how it will proceed with the next steps of the city attorney selection process. The schedule anticipated in the RFP that firms would be interviewed during the week of March 9. The Council will interview representatives from Campbell Knutson; Eckberg, Lammers, Briggs, Wolff & Vierling; Hoff Barry & Kozar; Kelly & Lemmons; and Kennedy & Graven.

MOTION: Council Member Smith moved to interview five law firms stated that expressed interest in representing the City in civil legal matters on March 18 and 19th, starting at 5 p.m. Council Member Park seconded the motion. The motion passed 5-0.

The meeting was adjourned at 9:00 p.m.

Respectfully submitted by Sharon Lumby, City Clerk

City Council
3/17/2009
CONSENT
Item: 2

ITEM: Approve disbursements in the amount of \$ 324,071.34

SUBMITTED BY: Tom Bouthilet, Finance Director

<u>Claim #</u>	<u>Amount</u>	<u>Description</u>
ACH	\$ 7,937.02	Payroll Taxes to IRS 03/12/09
ACH	\$ 1,160.04	Payroll Taxes to Mn Dept.of Revenue 03/12/09
DD2089 - DD2119	\$ 20,402.92	Payroll Dated 03/12/2009 (Direct Deposit)
33961 - 33969	\$ 15,767.90	Payroll Dated 03/12/2009 (Payroll & Benefits)
33970 - 34015	\$ 278,803.46	Accounts Payable Dated 03/17/2009

Total: \$ 324,071.34

SUMMARY AND ACTION REQUESTED: The City Council is being asked to approve disbursements in the total amount of \$324,071.34

Accounts Payable

Checks for Approval

User: julie

Printed: 03/12/2009 - 10:59 AM

Check Number	Check Date	Fund Name	Account Name	Vendor Name	Amount
33990	03/17/2009	Sewer	Sewer Utility - Met Council	Metropolitan Council	1,068.66
33980	03/17/2009	General Fund	Software Support	City of Roseville	1,551.58
33979	03/17/2009	General Fund	Conferences & Training	Century College	1,200.00
34005	03/17/2009	General Fund	Office Supplies	S&T Office Products, Inc.	63.10
34005	03/17/2009	General Fund	Office Supplies	S&T Office Products, Inc.	206.22
34005	03/17/2009	General Fund	Office Supplies	S&T Office Products, Inc.	38.86
34005	03/17/2009	General Fund	Office Supplies	S&T Office Products, Inc.	52.65
33992	03/17/2009	General Fund	Dues & Subscriptions	MN Fire Service Cert Board	40.00
34012	03/17/2009	General Fund	Miscellaneous	Washington Conservation Dist.	12.00
33998	03/17/2009	Water	Postage	Pitney Bowes	1,000.00
33984	03/17/2009	General Fund	Miscellaneous	Hagbergs Country Market	17.57
34007	03/17/2009	General Fund	Physicals	Stillwater Medical Group	720.00
33993	03/17/2009	General Fund	Miscellaneous	Lille Suburban Newspapers Inc.	31.50
34011	03/17/2009	General Fund	Repairs/Maint Bldg	VISA	120.29
34011	03/17/2009	General Fund	Miscellaneous	VISA	15.00
33991	03/17/2009	General Fund	Conferences & Training	MN Dept. of Labor & Industry	50.00
34004	03/17/2009	General Fund	Repairs/Maint Contractual Bldg	Diane Rud	340.80
34004	03/17/2009	General Fund	Repairs/Maint Bldg	Diane Rud	255.60
34004	03/17/2009	General Fund	Cleaning Supplies	Diane Rud	22.52
34004	03/17/2009	General Fund	Use Tax Payable	Diane Rud	-36.40
34010	03/17/2009	General Fund	Miscellaneous	VISA	45.20
34010	03/17/2009	General Fund	Miscellaneous	VISA	9.68
34010	03/17/2009	General Fund	Miscellaneous	VISA	20.50
34001	03/17/2009	General Fund	Cable Operation Expense	Steven Press	62.71
34001	03/17/2009	General Fund	Use Tax Payable	Steven Press	-3.83
33981	03/17/2009	General Fund	Miscellaneous	Compensation Consultants, Ltd	40.00
33985	03/17/2009	General Fund	Repairs/Maint Eqpt	HSBC Business Solutions	17.58
33985	03/17/2009	General Fund	Repairs/Maint Eqpt	HSBC Business Solutions	83.24
33975	03/17/2009	Tablyn Park/LEH/3M Grant	Miscellaneous	Berkley Risk Administrators Co	500.00
33975	03/17/2009	General Fund	Insurance	Berkley Risk Administrators Co	500.00
34002	03/17/2009	General Fund	Fuel, Oil and Fluids	River Country Cooperative	21.50
34002	03/17/2009	General Fund	Fuel, Oil and Fluids	River Country Cooperative	25.50
33999	03/17/2009	General Fund	Repairs/Maint Contractual Bldg	Plunkett's Pest Control	79.88

Check Number	Check Date	Fund Name	Account Name	Vendor Name	Amount
34003	03/17/2009	General Fund	Newsletter/Website	Rogers Printing Services, Corp	1,656.75
33976	03/17/2009	Village	Contract Services	Bonestroo, Inc	1,353.05
33988	03/17/2009	General Fund	Repairs/Maint Contractual Eqpt	Loffler Companies, Inc.	143.48
33988	03/17/2009	General Fund	Use Tax Payable	Loffler Companies, Inc.	-8.76
34015	03/17/2009	General Fund	Repairs/Maint Bldg	Yocum Oil Company, Inc.	160.13
33970	03/17/2009	General Fund	Repairs/Maint Eqpt	Advanced Graphix, Inc.	260.80
33987	03/17/2009	General Fund	Fuel, Oil and Fluids	Lake Elmo Oil, Inc.	19.50
33987	03/17/2009	General Fund	Fuel, Oil and Fluids	Lake Elmo Oil, Inc.	27.50
33987	03/17/2009	General Fund	Fuel, Oil and Fluids	Lake Elmo Oil, Inc.	49.67
33987	03/17/2009	General Fund	Fuel, Oil and Fluids	Lake Elmo Oil, Inc.	32.60
33987	03/17/2009	General Fund	Fuel, Oil and Fluids	Lake Elmo Oil, Inc.	22.44
33987	03/17/2009	General Fund	Fuel, Oil and Fluids	Lake Elmo Oil, Inc.	17.00
33987	03/17/2009	General Fund	Fuel, Oil and Fluids	Lake Elmo Oil, Inc.	23.01
33987	03/17/2009	General Fund	Fuel, Oil and Fluids	Lake Elmo Oil, Inc.	52.00
33987	03/17/2009	General Fund	Fuel, Oil and Fluids	Lake Elmo Oil, Inc.	39.00
33987	03/17/2009	General Fund	Fuel, Oil and Fluids	Lake Elmo Oil, Inc.	24.93
33987	03/17/2009	General Fund	Fuel, Oil and Fluids	Lake Elmo Oil, Inc.	47.66
33987	03/17/2009	General Fund	Fuel, Oil and Fluids	Lake Elmo Oil, Inc.	36.01
33987	03/17/2009	General Fund	Fuel, Oil and Fluids	Lake Elmo Oil, Inc.	24.51
33987	03/17/2009	General Fund	Fuel, Oil and Fluids	Lake Elmo Oil, Inc.	26.35
33977	03/17/2009	General Fund	Repairs/Maint Bldg	Car Quest Auto Parts	10.88
33977	03/17/2009	General Fund	Equipment Parts	Car Quest Auto Parts	43.56
33989	03/17/2009	General Fund	Repairs/Maint Bldg	Menards - Oakdale	48.50
34008	03/17/2009	General Fund	Public Notices	SUN NEWSPAPERS	109.00
34008	03/17/2009	General Fund	Public Notices	SUN NEWSPAPERS	-39.50
33979	03/17/2009	General Fund	Conferences & Training	Century College	894.96
34000	03/17/2009	General Fund	Shop Materials	PRAXAIR DISTRIBUTION INC.	44.31
34009	03/17/2009	Water	Utility System Maintenance	Twin City Water Clinic, Inc.	65.00
34014	03/17/2009	General Fund	Electric Utility	Xcel Energy	335.33
34014	03/17/2009	Sewer	Electric Utility	Xcel Energy	68.99
34014	03/17/2009	General Fund	Street Lighting	Xcel Energy	27.75
34014	03/17/2009	General Fund	Street Lighting	Xcel Energy	29.72
34014	03/17/2009	General Fund	Electric Utility	Xcel Energy	284.69
34014	03/17/2009	General Fund	Electric Utility	Xcel Energy	1,750.83
34014	03/17/2009	General Fund	Street Lighting	Xcel Energy	25.47
34014	03/17/2009	General Fund	Electric Utility	Xcel Energy	9.24
34014	03/17/2009	General Fund	Electric Utility	Xcel Energy	310.69
34014	03/17/2009	General Fund	Electric Utility	Xcel Energy	9.24
34014	03/17/2009	Water	Electric Utility	Xcel Energy	1,454.20
34014	03/17/2009	General Fund	Street Lighting	Xcel Energy	35.34
34014	03/17/2009	General Fund	Electric Utility	Xcel Energy	210.45
34014	03/17/2009	Sewer	Electric Utility	Xcel Energy	16.80
34014	03/17/2009	Sewer	Electric Utility	Xcel Energy	15.21
34014	03/17/2009	General Fund	Electric Utility	Xcel Energy	595.59
34014	03/17/2009	General Fund	Electric Utility	Xcel Energy	237.75

Check Number	Check Date	Fund Name	Account Name	Vendor Name	Amount
34014	03/17/2009	General Fund	Street Lighting	Xcel Energy	1,872.58
34014	03/17/2009	General Fund	Street Lighting	Xcel Energy	26.26
34014	03/17/2009	General Fund	Electric Utility	Xcel Energy	45.82
34014	03/17/2009	General Fund	Electric Utility	Xcel Energy	2,571.07
34014	03/17/2009	Water	Electric Utility	Xcel Energy	220.08
34014	03/17/2009	General Fund	Street Lighting	Xcel Energy	10.33
33985	03/17/2009	General Fund	Shop Materials	HSBC Business Solutions	30.10
33973	03/17/2009	General Fund	Repairs/Maint Bldg	Aramark, Inc.	37.23
33973	03/17/2009	General Fund	Repairs/Maint Contractual Bldg	Aramark, Inc.	55.37
33973	03/17/2009	General Fund	Uniforms	Aramark, Inc.	114.09
33973	03/17/2009	General Fund	Uniforms	Aramark, Inc.	36.14
33973	03/17/2009	General Fund	Repairs/Maint Contractual Bldg	Aramark, Inc.	74.13
33973	03/17/2009	General Fund	Repairs/Maint Contractual Bldg	Aramark, Inc.	24.23
33973	03/17/2009	General Fund	Uniforms	Aramark, Inc.	36.14
33973	03/17/2009	General Fund	Repairs/Maint Contractual Bldg	Aramark, Inc.	66.95
33973	03/17/2009	General Fund	Repairs/Maint Bldg	Aramark, Inc.	37.01
33973	03/17/2009	General Fund	Repairs/Maint Contractual Bldg	Aramark, Inc.	24.23
33973	03/17/2009	General Fund	Repairs/Maint Bldg	Aramark, Inc.	38.54
34013	03/17/2009	General Fund	Law Enforcement Contract	Washington County	226,663.13
33982	03/17/2009	General Fund	Telephone	CP Telecom, Corp	523.29
33982	03/17/2009	General Fund	Telephone	CP Telecom, Corp	442.68
33995	03/17/2009	General Fund	Sand/Salt	North American Salt Company	13,025.72
33995	03/17/2009	General Fund	Sand/Salt	North American Salt Company	1,285.16
33971	03/17/2009	General Fund	Sign Repair Materials	Advanced Waterfet Tech, LLC	169.20
33994	03/17/2009	General Fund	Telephone	Nextel Communications	85.36
33994	03/17/2009	General Fund	Telephone	Nextel Communications	172.99
33994	03/17/2009	General Fund	Telephone	Nextel Communications	30.62
33994	03/17/2009	General Fund	Telephone	Nextel Communications	169.90
33994	03/17/2009	General Fund	Telephone	Nextel Communications	102.93
33972	03/17/2009	General Fund	Radio	ANCOM COMMUNICATIONS, INC.	2,817.09
34002	03/17/2009	General Fund	Fuel, Oil and Fluids	River Country Cooperative	23.00
34002	03/17/2009	General Fund	Fuel, Oil and Fluids	River Country Cooperative	20.00
34002	03/17/2009	General Fund	Fuel, Oil and Fluids	River Country Cooperative	16.50
33978	03/17/2009	Capital Aquisitions	Engineering Services	Center for Municipal Solutions	2,600.00
34006	03/17/2009	General Fund	Telephone	Sprint	157.46
34002	03/17/2009	General Fund	Fuel, Oil and Fluids	River Country Cooperative	25.50
33974	03/17/2009	General Fund	Uniforms	Aspen Mills, Inc.	106.50
33974	03/17/2009	General Fund	Uniforms	Aspen Mills, Inc.	30.95
33987	03/17/2009	General Fund	Fuel, Oil and Fluids	Lake Elmo Oil, Inc.	37.26
33996	03/17/2009	General Fund	Contract Services	Gopher State One-Call One Call Concept	17.40
33986	03/17/2009	General Fund	Contract Services	Kern DeWenter Viere Ltd	6,102.00
33983	03/17/2009	General Fund	Shop Materials	Fastenal	27.36
33997	03/17/2009	General Fund	Repairs/Maint Imp Not Bldgs	Parts Associates Inc.	57.62

Check Number	Check Date	Fund Name	Account Name	Vendor Name	Amount
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Total for this Date:	278,803.46
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Report Total:	278,803.46
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City Council
Date: 3/17/09
Consent
Item: **4**
Resolution 2010 - 010

ITEM: Consider approving Agreement No. 94119 and authorizing the Interim City Administrator to execute an agreement with MnDOT for the Community Roadside Landscaping Partnership Program

SUBMITTED BY: Kelli Matzek, Planner

REVIEWED BY: Craig Dawson, City Administrator
Kyle Klatt, Planning Director

SUMMARY AND ACTION REQUESTED: The City Council is being asked to approve Agreement No. 94119 and to authorize Interim City Administrator Craig Dawson to execute that agreement with MnDOT for the reimbursement of up to \$13,000 in landscaping materials for a proposed Highway 5 beautification project. This resolution is required by MnDOT to officially enter into the agreement and for the city to receive the reimbursement money after the project is complete.

In January of 2009, the City Council approved an application to participate in the MnDOT Community Roadside Landscaping Partnership Program and to authorize resident Susan Kane as the primary contact person for the application. The proposed project is a continuation of the landscaping projects completed through this grant over the past two years along Highway 5. The landscaping project to be accomplished in May 30, 2009 would be near the Old Village area of the city at the entrance to The Fields of St. Croix Second Addition, Little Bluestem Trail North.

The MnDOT Community Landscaping Partnership Program provides a venue through which cities, residents, and the State work together on landscaping projects to beautify highway rights-of-way. The grant funds cover costs related to the purchase of landscaping materials while the City staff and community residents provide the manual labor.

Members of The Fields of St. Croix neighborhood landscape committee and the City Forester have attended preliminary meetings, reviewed the proposed landscape plan and are supportive of the proposed project.

ADDITIONAL INFORMATION

- The City utilized this same program to beautify an area along State Highway 5 approximately eight years ago and for the past two years.
- The project completed in 2007 near Carriage Station Park resulted in the planting of 60 trees with assistance by approximately 35 volunteers. The project completed in 2008 was also successful and resulted in the planting of many shrubs and trees south of Carriage Station Park.
- The City has opted to combine the tree planting with the city's Arbor Day celebration.

ATTACHMENTS (1):

1. Resolution 2009- 010
2. Agreement No. 94119

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

RESOLUTION NO. 2009-010

**A RESOLUTION APPROVING AGREEMENT NO. 94119 WITH THE STATE
OF MINNESOTA, DEPARTMENT OF TRANSPORTATION AND
AUTHORIZING THE INTERIM CITY ADMINISTRATOR TO EXECUTE THE
AGREEMENT**

IT IS RESOLVED, that the City of Lake Elmo enter into Mn/DOT Agreement No. 94119 with the State of Minnesota, Department of Transportation for the following purposes:

To provide for payment by the State to the City of the State's share of the costs of the acquisition of landscape materials to be placed by the City adjacent to Trunk Highway No. 5 from 200 feet west of Little Bluestem Trail to County Road No. 15 within the corporate City limits under State Project No. 8214-969E.

IT IS FURTHER RESOLVED that the Mayor and the Interim City Administrator are authorized to execute the Agreement and any amendments to the Agreement.

CERTIFICATION

I certify that the above Resolution is an accurate copy of the Resolution adopted by the Council of the City of Lake Elmo at an authorized meeting held on the 17th day of March, 2009, as shown by the minutes of the meeting in my possession.

(signature)

Subscribed and sworn to before me this

(Type or Print Name)

_____ day of _____, 2009

(Title)

Notary Public _____

My Commission Expires _____

Notary Stamp

PRE-LETTING
SERVICES
SECTION

STATE OF MINNESOTA
DEPARTMENT OF TRANSPORTATION
LANDSCAPE PARTNERSHIP PROJECT

Mn/DOT
AGREEMENT NO.

94119

S.P. 8214-969E (T.H. 5=045)
State Funds

The State of Minnesota
Department of Transportation, and
The City of Lake Elmo

ORIGINAL
AMOUNT ENCUMBERED

Re: State cost landscape materials
acquisition by the City for use
along T.H. 5

\$13,000.00

AMOUNT RECEIVABLE

(None)

THIS AGREEMENT is made and entered into by and between the State of Minnesota, Department of Transportation, hereinafter referred to as the "State", and the City of Lake Elmo, Minnesota, acting by and through its City Council, hereinafter referred to as the "City".

WHEREAS, the City is about to perform landscaping along Trunk Highway No. 5 from 200 feet west of Little Bluestem Trail to County Road No. 15 within the corporate City limits in accordance with plans, specifications and special provisions designated as the "Lake Elmo Landscape Partnership Plan", which project has been designated by the State as State Project No. 8214-969E (T.H. 5=045); and

WHEREAS, the City has requested participation by the State in the costs of landscape materials acquisition in accordance with the terms of the State's "Community Roadside Landscaping Partnership Program"; and

WHEREAS, the State is willing to participate in the costs of the landscape materials acquisition as hereinafter set forth; and

WHEREAS, Minnesota Statute Section 161.20, subdivision 2 authorizes the Commissioner of Transportation to make arrangements with and cooperate with any governmental authority for the purposes of constructing, maintaining and improving the trunk highway system.

IT IS, THEREFORE, MUTUALLY AGREED AS FOLLOWS:

ARTICLE I - PROJECT ADMINISTRATION BY THE CITY

Section A. Landscape Materials Acquisition

The City shall acquire landscape materials in accordance with plans, specifications and special provisions designated as the "Lake Elmo Landscape Partnership Plan". Landscaping shall be performed by City forces in accordance with plans, specifications and special provisions that are on file in the City's office and in the State's Office of Technical Support in St. Paul, and are incorporated into this Agreement by reference.

Section B. Purchase Order to be Furnished to the State

The City shall, within 7 days after ordering the landscape materials, submit to the State's Landscape Partnership Program Coordinator in St. Paul a copy of the purchase order for the landscape materials.

Section C. Direction, Supervision and Inspection

Landscape materials acquisition performed in accordance with this Agreement shall be under the direction of the City; however, the State cost participation landscape materials to be acquired under this Agreement shall be open to inspection by the State's authorized representatives. The City shall give the State's Landscape Partnership Program Coordinator five days notice of its intention to receive delivery of the landscape materials.

Responsibility for the control of the State cost participation landscape materials acquisition covered under this Agreement shall be on the City and shall be carried out in accordance with plans, specifications and special provisions designated as the "Lake Elmo Landscape Partnership Plan".

The City must verify that the nursery vendor has a valid nursery certificate as required by the Minnesota Department of Agriculture, hereinafter referred to as the "MDA". Nursery stock originating outside Minnesota must have been certified under all applicable MDA and United States Department of Agriculture, hereinafter referred to as the "USDA", quarantines. Certification documents issued by the appropriate regulatory official at origin must accompany all nursery stock shipments, including but not limited to, USDA quarantines for Gypsy Moth, Phytophthora ramorum, Emerald Ash Borer and Black Stem Rust. MDA Japanese Beetle Quarantine nursery stock from Minnesota

must be inspected and certified to be free of harmful plant pests, but is not subject to MDA external Japanese Beetle Quarantine.

Section D. Completion of Materials Acquisition and Installation

The City shall cause the acquisition and installation of landscape materials to be started and completed in accordance with the time schedule in the Community Roadside Landscaping Partnership Program Project Application, which is on file in the State's Office of Technical Support and is incorporated into this Agreement by reference. An exchange of letters between the appropriate City official and the State's Landscape Partnership Program Coordinator, for unavoidable delays encountered in the performance thereof, may extend the completion date for the landscape materials acquisition and installation.

Section E. Compliance with Laws, Ordinances and Regulations

The City shall, in connection with the acquisition of the landscape materials, comply with all Federal, State and Local laws, and all applicable ordinances and regulations.

Section F. Right-of-Way, Easements and Permits

The City is hereby authorized to work on State right-of-way for the purposes of installing and maintaining the landscape materials, including any necessary replacement of landscape materials that fail to survive.

The City shall, without cost or expense to the State, obtain all rights-of-way, easements, construction permits and any other permits and sanctions that may be required in connection with the installation of landscape materials. Prior to advance payment by the State, the City shall furnish the State with certified copies of the documents for those rights-of-way and easements, and certified copies

of those construction permits and other permits and sanctions required for State landscaping.

ARTICLE II - STATE COST

Section A. Basis

The State's full and complete share of the costs of the landscaping to be performed along Trunk Highway No. 5 from 200 feet west of Little Bluestem Trail to County Road No. 15 within the corporate City limits under State Project No. 8214-969E (T.H. 5=045) shall be equal to the delivered cost of the landscaping materials acquired in accordance with the "Lake Elmo Landscape Partnership Plan."

Section B. Payment

It is estimated that the cost of the landscape materials acquisition is \$13,000.00. The maximum obligation of the State under this Agreement shall not exceed \$17,000.00, unless the maximum obligation is increased by execution of an amendment to this Agreement.

The State shall pay to the City an amount equal to the delivered cost of the landscape materials, not to exceed the maximum obligation, after the following conditions have been met:

1. Encumbrance by the State of the State's total cost share.
2. Execution and approval of this Agreement and the State's transmittal of it to the City.
3. Receipt by the State's Landscape Partnership Program Coordinator, from the City, of the following:

- a. Copies of the purchase orders for the landscape materials, as provided for in Article I, Section B. of this Agreement.
- b. Certified copies of the documents, as provided for in the second paragraph of Article I, Section F. of this Agreement.
- c. Written request for payment, accompanied by copies of supplier invoices for the landscape materials acquisition and delivery.

ARTICLE III - GENERAL PROVISIONS

Section A. Installation and Maintenance by the City

After acquisition of the landscape materials, the City shall install the landscape materials along Trunk Highway No. 5 and provide for the proper maintenance thereof, without cost or expense to the State. Maintenance includes, but is not limited to, removal and replacement of all materials that fail to survive. Criteria for maintenance and replacement are shown and described in EXHIBIT "A", Maintenance Responsibilities Plan and Schedule, which is attached and incorporated into this Agreement.

Section B. Responsibilities of the City

The City shall, in connection with the landscape materials acquisition, installation and maintenance, comply with the following conditions:

1. Use of State right-of-way shall in no way impair or interfere with the safety or convenience of the traveling public in its use of the highway.

2. Preserve and protect all utilities located on lands covered by this Agreement, without cost or expense to the State.
3. As required by Minnesota Statute 216D, notify Gopher State One Call System (1-800-252-1166) at least 48 hours before any excavation is done on this project.
4. No advertising signs or devices of any form or size shall be constructed or shall be permitted to be constructed or placed upon State right-of-way.
5. Upon completion of the installation of landscape materials and during performance of maintenance operations, restore all disturbed areas of State right-of-way so as to perpetuate satisfactory drainage, erosion control and aesthetics.

Any use of State right-of-way permitted by this Agreement shall remain subordinate to the right of the State to use the property for highway and transportation purposes. This Agreement does not grant any interest whatsoever in land, nor does it establish a permanent park, recreation area or wildlife or waterfowl refuge facility that would become subject to Section 4(f) of the Federal-Aid Highway Act of 1968.

Section C. Examination of Books, Records, Etc.

As provided by Minnesota Statute Section 16C.05, subdivision 5, the books, records, documents, and accounting procedures and practices of each party relevant to this Agreement are subject to examination by each party, and either the legislative auditor or the state auditor, as appropriate, for a minimum of six years from final payment.

Section D. Termination of Agreement

The State may terminate this Agreement if it's the State's desire to use any portion of State right-of-way subject to this Agreement for transportation purposes, by giving the City written notice at least 90 days prior to the date that such termination shall become effective. Upon termination of this Agreement, the City will be required to restore and return the area to a condition satisfactory to the State's District Engineer at Roseville.

Each party may terminate this Agreement, with or without cause, by providing the other party with written or fax notice of effective date of termination. The State is not obligated to pay for services performed after notice and effective date of termination. Upon such termination, the City is entitled to payment for services satisfactorily performed under this Agreement prior to the effective date of termination.

The State may immediately terminate this Agreement if it does not obtain funding from the Minnesota Legislature, or other funding source; or if funding cannot be continued at a level sufficient to allow for the payment of the services covered under this Agreement. Termination must be by written or fax notice to the City. The State is not obligated to pay for services performed after notice and effective date of termination. Upon such termination, the City is entitled to payment for services satisfactorily performed under this Agreement prior to the effective date of termination, to the extent the funds are available.

Section E. Claims

Each party is responsible for its own employees for any claims arising under the Workers Compensation Act. Each party is responsible for its own acts, omissions and the results thereof to

the extent authorized by law and will not be responsible for the acts and omissions of others and the results thereof. Minnesota Statutes Section 3.736 and other applicable law govern liability of the State. Minnesota Statutes Chapter 466 and other applicable law govern liability of the City.

Section F. Nondiscrimination

The provisions of Minnesota Statute Section 181.59 and of any applicable law relating to civil rights and discrimination shall be considered part of this Agreement as if fully set forth herein.

Section G. Agreement Approval

Before this Agreement becomes binding and effective, it shall be approved by a City Council resolution and executed by such State and City officers as the law may provide in addition to the Commissioner of Transportation or their authorized representative.

ARTICLE IV - AUTHORIZED AGENTS

The State's Authorized Agent for the purpose of the administration of this Agreement is Todd Carroll, Landscape Partnership Program Coordinator, or his successor. His current address and telephone number are 395 John Ireland Boulevard, Mailstop 686, St. Paul, MN 55155, (651) 366-4617.

The City's Authorized Agent for the purpose of the administration of this Agreement is Kelli Matzek, City Planner, or her successor. Her current address and telephone number are 3800 Laverne Avenue North, Lake Elmo, MN 55042, (651) 233-4617.

IN TESTIMONY WHEREOF the parties have executed this Agreement by their authorized officers.

STATE ENCUMBRANCE VERIFICATION

Individual certifies that funds have been encumbered as required by Minn. Stat. §§ 16A.15 and 16C.05.

By _____

Date _____

MAPS Encumbrance No. _____

CITY OF LAKE ELMO

By _____
Mayor

Date _____

By _____

Title _____

Date _____

DEPARTMENT OF TRANSPORTATION

Recommended for approval:

By _____
Landscape Partnership Program Coordinator

By _____
District Engineer

Approved:

By _____
State Design Engineer

Date _____

Approved as to form and execution:

By _____
Contract Management

Date _____

COMMISSIONER OF ADMINISTRATION

As delegated to Materials Management Division

By _____

Date _____

EXHIBIT "A"

Maintenance Responsibilities Plan and Schedule

Table 1a. REQUIRED LANDSCAPE MAINTENANCE ACTIVITIES

MAINTENANCE CONSIDERATION				
PLANT GROUPS	PRUNING		WEED CONTROL	FERTILIZATION See Table 5, Fertilization Schedule
	When To	Type Of		
Evergreen Trees	Anytime - Dry	Corrective and Deadwood Removal	Maintain mulch at 3" minimum around trees in mowed areas, keep weed free.	Yes
Shade Trees	Anytime - Dry*	Training and Corrective		Yes
Ornamental Trees	Winter**	Corrective		Yes
Evergreen Shrubs	Anytime - Dry	Deadwood Removal		Yes
Deciduous Shrubs	Dormant	Corrective and Renewal	Maintain minimum 3" woodchip mulch in a weed free condition until shrub crown closure.	Yes
Vines	Dormant	Deadwood Removal		No
Groundcovers				

* Do not prune oaks during April, May and June. Do not prune Honeylocust while dormant or when humid or wet.

** Do not prune apples, crabapples or Mountain Ash during April, May and June.

TABLE 1b. REQUIRED LANDSCAPE MAINTENANCE ACTIVITIES

MAINTENANCE CONSIDERATION				
PLANT GROUPS	WATERING	INSECT AND DISEASE CONTROL	RODENT PROTECTION	REMOVALS AND REPLACEMENTS
Evergreen Trees	Yes until established (2 yrs.).	As needed. Remove diseased plants that pose threats to adjacent plantings.	Yes - Pine Only	Remove all dead plants.
Shade Trees			Yes	Replace dead or dying plants unless the lost plants do not noticeably compromise the visual appearance or design intent.
Ornamental Trees	Yes			
Evergreen Shrubs	No*			
Deciduous Shrubs	No*			
Vines	No*			
Groundcovers	No*			
	Supplemental watering may be needed during drought periods (especially during July and August) even after plants are established.			

* Rodent protection is generally not practical for mass shrub plantings, maintaining clean mulched planting areas free of weed growth will reduce problems. Mowed turf in formal planting areas will help reduce rodent problems.

TABLE 2a. CALENDAR OF LANDSCAPE MAINTENANCE

ACTIVITY	January	February	March	April	May	June
Pruning	See Table 1a for Best Time for Specific Species.					
Weed Control:	Planting beds must be kept in a weed free condition.					
Remulch				0XX	XXXX	XO
Herbicide	Must be applied by a licensed Pesticide Applicator.					
Fertilization: Turf Shrubs, Trees				XXXX		
Insect & Disease	Time of control depends on the type of insect or disease and when it is detected.					
Sunsclad Protection				Remove wrap*		
Watering	During first and second growing seasons approximately once a week or as needed to maintain adequate but not excessive soil moisture.					
Maintain Rodent Protection	0000	0000	0000	0000	0000	0000
Turf Maintenance Mowing					OOX	XXXX
Mower Damage Prevention				X	XXXX	XXXX
Replanting Evergreen Trees Deciduous Trees Container Plants Turf				0XX 0XX XXX O	XXO XXXX XXXX XXXX	XXXO XXOO

X - Optimum Time O - Less than Optimum Time

* Undiluted white latex paint is recommended, repaint as necessary until trees reach 4" caliper.

TABLE 2b. CALENDAR OF LANDSCAPE MAINTENANCE

ACTIVITY	July	August	September	October	November	December
Pruning	See Table 1a for Best Time for Specific Species.					
Weed Control:	Planting beds must be kept in a weed free condition.					
Remulch	XXXX	XXXX	XXXX	XXXX	OO	XO
Herbicide	Must be applied by a licensed Pesticide Applicator.					
Fertilization: Turf Shrubs, Trees				XXXX XXXX		
Insect & Disease	Time of control depends on the type of insect or disease and when it is detected.					
Sunscauld Protection				Apply or maintain paint. Install wrap*.		
Watering	During first and second growing seasons approximately once a week or as needed.					
Maintain Rodent Protection	OOOO	OOOO	XXXX	XXXX	XOOO	OOOO
Turf Maintenance Mowing	XXXX	XXXX	XXXX	XXOO		
Mower Damage Prevention	XXXX	XXXX	XXXX	XXOO		
Replanting Evergreen Trees Deciduous Trees Container Plants Turf		OX	XXXO			
	OOOO	OOOX	XXXO	OXXX	XO	
	OOOO	OOXX	XXXX	OO		

X - Optimum Time O - Less than Optimum Time

* Undiluted white latex paint is recommended, repaint as necessary until trees reach 4" caliper.

TABLE 3. DESCRIPTIONS OF TYPES OF PRUNING

TYPES OF PRUNING	WHEN TO PRUNE	DESCRIPTION
Disease Removal	After Diagnosis	Removal of fungal bacterial growths. Sterilize pruners between cuts.
Deadwood Removal	See Table 1	Removal of dead branches, normally from the interior portion of the crown.
Training	See Table 1	Maintaining the central leaders and acceptable symmetry in evergreen, shade and ornamental trees. Removal of suckers and water sprouts.
Corrective	See Table 1	Removal of storm-damaged, vehicle-damaged or vandalized limbs.
Renewal	See Table 1	Removing all top growth at or near the ground line and remulch. Or removal of 1/3 of the oldest stems at the ground line.

TABLE 4. WEED CONTROL METHODS - INTEGRATED APPROACH

METHOD	CATEGORY		
	TREES	SHRUB BEDS	TURF
Replanting - Filling Voids		X	X
Fertilization	X	X	X
Remulch*	X	X	X
Herbicides	X	X	X
Weed Whip	No	X	

* Wood chip mulch should be replenished around shade trees and low growing shrubs every 3-5 years. Place mulch to a 4" depth. Mulching will help control weeds, reduce mower damage and conserve moisture.

TABLE 5. FERTILIZATION SCHEDULE

CATEGORY	FREQUENCY	TIME OF APPLICATION	ANALYSIS **	RATE
Mowed Turf	Every 3 Years	April or October	23-0-30	1 lb (N)/1000 sq. ft.
Shrub Beds*	Every 3 Years	October or April	23-0-30	1 lb (N)/1000 sq. ft.
Shade Trees*	Every 3 Years	October or April	23-0-30	.5 lbs/1 Cu. Yd. of soil

Note: Do not fertilize trees and turf during the same season. Offset tree fertilization by one season in order to prevent fertilizer burn on turf.

* Plants that fix nitrogen, like Silver Buffaloberry, Caragana, Honeylocust, Russian Olive or other legumes, should not be fertilized except under special conditions.
Tall shrubs do not need to be fertilized if leaf color remains normal.

** Analysis will be allowed within the following ranges: N (16-24) - P (0) - K (20-30).

City Council

Date: March 17, 2009

REGULAR

Item: 5

Motion

ITEM: Requests by Friends of Washington County (Resolution and Funding)

SUBMITTED BY: Craig W. Dawson, Interim City Administrator

SUMMARY AND ACTION REQUESTED: The Friends of Washington County is seeking support for its efforts related to state-wide rulemaking on landfills that will have an effect on the proposed Xcel fly ash landfill in West Lakeland Township. It is requesting that the City Council adopt a resolution to support The Friends' efforts to participate in the rule-making process, and to authorize \$2,500 toward its funding of technical support by a hydrogeologist.

BACKGROUND: The Minnesota Pollution Control Agency (MPCA) will be writing new rules to define and include "groundwater sensitivity" as a criterion in the siting and permitting of landfills throughout the state. It will be advised by a Landfill Advisory Group (LAG) comprised of a variety of stakeholders, and will include two representatives from the Friends. The new rules may affect Xcel Energy's decision to proceed with its proposed fly ash landfill in West Lakeland Township. The Friends of Washington County has raised \$30,000 of its \$50,000 goal for technical services, as it wants professional assistance to help articulate its position regarding groundwater resource protection.

RECOMMENDATION: A resolution of support for The Friends of Washington County has been prepared for Council consideration. Should the Council wish to provide funds for The Friends of Washington County, it should authorize moneys from the General Fund for The Friends to use for technical services for its participation in the MPCA's Landfill Advisory Group.

SUGGESTED MOTION FOR CONSIDERATION

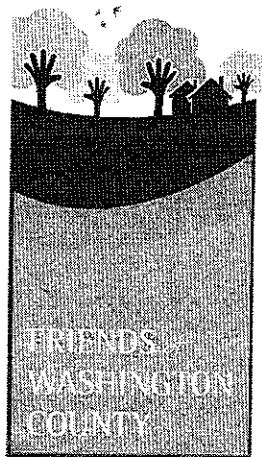
Move to: (1) *adopt the Resolution supporting the efforts of The Friends of Washington County in the Landfill Advisory Group of the MPCA to protect groundwater resources in the siting of landfills; and*
(2) *authorize moneys from the General Fund for The Friends to use for technical services for its participation in the MPCA's Landfill Advisory Group.*

ATTACHMENTS:

- Communication from The Friends of Washington County
- Proposed resolution

ORDER OF BUSINESS:

- Introduction Craig Dawson
- Report by staff or other presenter Marc Huginin
- Questions from City Council members to the presenter facilitated by Mayor
- Questions/comments from the public to the City Council facilitated by Mayor
- Action on motion City Council



P.O. Box 2058
Stillwater, MN 55082

651.491.1981
friendsofwashco.org

Request for Your Support Landfill Siting/Groundwater Protection

The Friends of Washington County, a not-for-profit organization, is seeking the support of your city for our efforts to help protect groundwater resources in Minnesota, as it relates to the siting and permitting of landfill facilities. The fate of the proposed Xcel fly ash landfill in West Lakeland Township could be decided by rules that the Minnesota Pollution Control Agency (MPCA) will write in 2009, and the Friends of Washington County is the only environmental group in the state that has a seat at the table.

The new rules will define and operationalize "groundwater sensitivity" as a criteria in the siting and permitting of landfills throughout the state. As it writes the rules, the MPCA will be advised by a Landfill Advisory Group (LAG) made up of stakeholders from the landfill, waste hauler and mining industries, and regulatory agencies of the state of Minnesota—and two representatives from the Friends of Washington County.

The Friends of Washington County has developed a comprehensive and professional strategy and work plan for our participation on the LAG. We are poised to propose reasonable policies for the protection of Minnesota's groundwater resources while not placing an undue burden on our ability to site landfills in the state of Minnesota.

1. We have engaged a hydrogeologist as a technical consultant. Together with our consultant, we will be developing and articulating a policy that provides greater protection to our groundwater resources.

2. With our technical consultant, we will then have the opportunity to review and comment on draft language that the MPCA may propose.

3. We are working with the Minnesota Environmental Partnership (MEP) to inform the environmental community on this issue, and to generate support for our policy. We are also working to keep key legislators informed of our proposed policies.

4. We have identified legal counsel with whom we may engage should this become necessary.

We are seeking the support for these efforts from cities and individuals in the lower St. Croix Valley.

First, we are seeking a resolution of support from your city for our objectives. Draft language for such a resolution is provided (over), though you are welcome to formulate your own language.

Second, we are seeking a financial contribution to enable us to engage the professional counsel—both scientific/technical and legal—mentioned above.

For more information, feel free to contact Marc Hugunin, Executive Director, Friends of Washington County marc@pepinhugunin.com 651-491-1981. Thank you for your consideration.

BOARD OF DIRECTORS

Dave Engstrom - Afton
Dorian Grilley - Mahtomedi
Chuck Haas - Hugo
Mary Hauser - Birchwood
Barry Johnson - Woodbury
Dave Junker - Stillwater
Peg Larsen - Lakeland
John Leinen - May Township
Len Price - Woodbury
Roger Tomten - Stillwater

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David Harwell - Minneapolis
Jane Krenz - May Township
Dick Stafford - Woodbury

EXECUTIVE DIRECTOR

Marc Hugunin - Grant

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

RESOLUTION NO. 2009 - 008

**A RESOLUTION SUPPORTING THE FRIENDS OF WASHINGTON COUNTY
IN ITS EFFORTS CONCERNING THE SITING OF LANDFILLS
AND PROTECTION OF GROUNDWATER RESOURCES
IN THE STATE OF MINNESOTA AND WASHINGTON COUNTY**

- WHEREAS, the State of Minnesota has a statutory goal "that groundwater is maintained in its natural condition, free from any degradation caused by human activities"; and
- WHEREAS, in recent years, Minnesotans and residents of Washington County have experienced many cases of groundwater contamination in which the contaminants originated from landfill facilities; and
- WHEREAS, in 2009, the Minnesota Pollution Control Agency (MPCA) will write rules defining and including "groundwater sensitivity" as a criterion in the siting and permitting of landfills in the State of Minnesota ; and
- WHEREAS, The Friends of Washington County, a non-profit organization, is the only environmental group participating in a Landfill Advisory group which is advising the MPCA concerning these new rules; and
- WHEREAS, the City Council of the City of Lake Elmo appreciates the stated mission of The Friends of Washington County is the encouragement of excellent stewardship of our natural resources in Washington County;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Lake Elmo that it supports and endorses the efforts of The Friends of Washington County to encourage the MPCA to write such landfill siting rules as are necessary and sufficient to protect Minnesota's groundwater resources consistent with the statutory goal of "non-degradation."

ADOPTED by the City Council of the City of Lake Elmo on March 17th, 2009

ATTEST:

Dean Johnston, Mayor

Craig W. Dawson, Interim City Administrator

ITEM: Consider an application from Vladimir and Silvia Hugel to allow construction of a pool, pergola, fireplace, and spa within the required 100 foot buffer setback in Open Space Preservation (OP) developments at 2931 Jonquil Trail North – A zoning - PID 22-029-21-21-0024.

SUBMITTED BY: Kelli Matzek, City Planner

REVIEWED BY: Kyle Klatt, Planning Director

SUMMARY AND ACTION REQUESTED

The City Council is being asked to consider a variance request from Vladimir and Silvia Hugel to allow the construction of a pergola, fireplace, spa, and in-ground pool within the required 100 foot buffer setback from the edge of an Open Space Preservation (OP) development at 2931 Jonquil Trail North. The property currently has a home, garage, deck, and screened porch on the property which conforms to the setback requirements. The pool section of city code identifies a six foot setback from the primary structure or frost footings, so in combination with the 100 foot setback and the requirement that pools be built in rear yards only, there remains approximately 24 feet in the rear yard where a pool could potentially be built.

The Hugel's property is located in the Farms of Lake Elmo development which was approved as an OP development in 2005. The Lake Elmo OP development requirements include a provision for a buffer setback from the edge of the development for any structure or driving surface not constructed at a 90 degree angle. At the time of the review for the Farms of Lake Elmo development, the required buffer setbacks were addressed. The City Council at that time had approved a reduction from a 200 foot buffer setback to 100 foot buffer setback from the West, South, and East edges of the development because the neighborhood was adjacent to the Lake Elmo Regional Park Reserve to the south and east and would not be developed.

Although the Hugel's property does not abut the edge of the development and is buffered from the southern edge of the development by sixty feet of Outlot A of the development, the buffer setback still encroaches into their rear yard by forty feet.

The variance has been requested in order to build the planned pool, spa, fireplace, and open pergola in the location originally designed. The applicant has stated that the variance is justified due to the following:

- They bought the existing home with the intention of building a pool in the back yard for their children to practice for competitive swimming. The back yard was chosen as the windows at the back of the home allow viewing the pool for safety purposes.
- They were not aware of the 100 foot buffer setback at the time of the initial design of the pool, spa, pergola, and fireplace.
- Sixty feet of Outlot A exists between their property and the Lake Elmo Regional Park Reserve and effectively serves as a preserved, undisturbed space. The land slopes uphill approximately 2' to 6' over a 60' distance to the park boundary.

- The neighbor directly to the east was allowed to build their home and pool within the 100 foot buffer setbacks from both the south and eastern borders of the development. This property has a much smaller outlot between the property and the Park Reserve.
- The placement of the home to the east pushed the building of their home further back on the lot to be in line with that home, thereby reducing the amount of buildable area in their rear yard.
- The neighbor directly to their west also has a pool.
- The proposed pool would be completely obscured from view of the street and greatly obscured from many adjacent properties with existing trees. Additional trees that would further reduce any visibility are being proposed in the new pool landscape as well.
- No other location on the property is free from both restrictions and undesirable conditions that prohibit a pool. The 30 feet between the house and setback line, which given the shape of the floor plan of the house, the setbacks needed, and the proper drainage needed from the house, the pool and landscape would be impossible.

For variance applications, the burden is on the applicant to demonstrate why this situation is unique and necessitates flexibility to code requirements. To make this case, a variance can only be granted by the city when strict enforcement of the code would cause undue hardship on a property owner. "Hardship" is broken down into the following three components:

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

In reviewing the request against the three criteria listed above, staff determined all criteria were NOT met, as more completely explained in the attached full staff report.

ADDITIONAL INFORMATION:

- The Planning Commission held a public hearing at their March 9th meeting. The commission voted 5:3 with 1 abstention to recommend approval of the variance application subject to the conditions outlined in the staff report and discussed at the meeting. However, their recommendation was conditional on the applicant moving the proposed pergola and fireplace to be no further into the setback than the proposed pool and spa.
- One of the commissioners who voted against the application suggested that the City Council may review the ordinance to ensure that its implementation meets the intent of the regulation.
- The proposed hardcover is 23.7%, therefore the applicant is seeking ways to mitigate the extra allowed impervious surface through rain gardens. This will be reviewed with the City Engineer through the building permit process should the variance be approved.
- The DNR and Valley Branch Watershed District did not submit any comments concerning the application.

- The Washington County Parks and Planning Department submitted a letter with some concerns regarding the view of the proposed pergola and fireplace from the park.
- The Minnesota Land Trust which co-holds a conservation easement over Outlot A with the city, submitted a letter stating their only concern would be the storage of material during construction on the outlot. They expressed no concerns regarding the proposed structure locations.

RECOMMENDATION:

As mentioned, by majority the Planning Commission recommended approval of the variance application subject to conditions and provided that the proposed pergola and fireplace are located no further into the setback than the proposed pool and spa.

Although this application does provide some substantive arguments for approval of the variances requested, in following a strict review of the variance criteria outlined in city code, Staff is recommending that the City Council deny the proposed variances for Vladimir and Silvia Hugel to allow construction of a pool, spa, pergola, and fireplace within the 100 foot buffer setback in OP developments at 2931 Jonquil Trail North.

A resolution of approval is provided should the Council choose to approve the application following the Planning Commission's recommendation. A resolution of denial is also provided for consideration.

ORDER OF BUSINESS:

- Introduction Craig Dawson, City Administrator
- Report by staff..... Kelli Matzek, Planner
- 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 (10):

1. Staff Report
2. Draft Resolution of Approval
3. Alternative Draft Resolution of Denial
4. Area Map
5. Proposed Survey
6. Application Form
7. Applicant's Narrative
8. Applicant's Photograph

9. Aerial Photo
10. April 5, 2005 City Council minutes
11. Comment from Washington County Parks
12. Comment from Minnesota Land Trust

City of Lake Elmo Planning Department
Variance Review

To: City Council

From: Kelli Matzek, City Planner

Meeting Date: 3-17-09

Applicant: Vladimir and Silvia Hugec

Location: 2931 Jonquil Trail North

Current Zoning: A – Agricultural (Open Space Preservation Development)

Introductory Information

Request: The applicant is seeking approval of a variance from the required 100 foot buffer setback from the edge of the Open Space Preservation development to allow the construction of a pergola, pool, fireplace and spa at 2931 Jonquil Trail North. Specifically, the pergola and fireplace would be located 31 feet within the setback, the spa would be 12 feet, and the in-ground pool would be 6 feet.

Background: *Farms of Lake Elmo Development*
The applicant's property is Lot 12, Block 1 within the Farms of Lake Elmo development which was approved on October 18, 2005 as an Open Space Preservation (OP) development. OP developments are allowed by code as a Conditional Use Permit (CUP) in the Agricultural, Rural Residential, and Residential Estate zoning districts.

Application

The applicants have provided a description of their request for a variance as a part of the application materials submitted to the City. The existing house, garage, and screen porch at 2931 Jonquil Trail North was built in 2006 with an approved building permit from the city.

Outlot A Adjacent to the Rear Yard of the Property

The property at 2931 Jonquil Trail North has a rear yard that abuts Outlot A of the development which is restricted by a Conservation Easement. The easement is co-held by the City of Lake Elmo and the Minnesota Land Trust. In that area, Outlot A is approximately sixty feet wide and serves as a contiguous open space buffer to the Lake Elmo Regional Park Reserve.

Applicable Codes: § 150.175 **PURPOSE.**

(A) The purpose of open space preservation (OP) is to maintain the rural character

(cont.) of Lake Elmo by preserving agricultural land, woodlands, corridors, and other significant natural features while allowing residential development consistent with the goals and objectives of the city's Comprehensive Plan. This type of development will allow an alternative to large lot, single-family housing and will reduce the cost of constructing and maintaining public facilities and infrastructure.

(B) Protected open space will enhance and preserve the natural character of the community and create distinct neighborhoods.

§ 150.180 DEVELOPMENT STANDARDS.

(B) (1) *Land area.* Applications for a residential development in the OP District shall meet all the following criteria.

(c) Dwelling units shall be grouped so that at least 50% of the buildable land area of the proposed development remains preserved open space. The preserved open space shall consist of agricultural lands, natural habitat, pedestrian corridors, or neighborhood or community recreational areas.

(2) *Open space easement required.*

(a) *Preserved open space standards.*

1. All preserved open space shall be subject to a conservation easement and used for the purposes as defined by §§ 150.175 *et seq.*

(d) *Buffer zones.* Where a proposed OP development abuts an existing residential development or a parcel of land not eligible for future development under the OP ordinance due to insufficient parcel area, a 200 foot setback shall be provided between the property line of the abutting parcel and any structure or driving surface within the OP development. Driving surfaces that cross the setback area at a 90 degree angle shall be the only exception. Where a proposed OP development abuts an existing OP development, or a land parcel eligible for future development under the OP ordinance, a 100 foot setback from any structure within the proposed OP development and the property line of the abutting parcel may be substituted. The setback substitution shall only be approved when there is existing mature vegetation and/or changes in topography occurring on the site proposed for development; and/or where the OP site developer introduces the physical features that provide an effective year round buffer of the structures proposed for the OP site from existing residences or development. The determination of the buffering effectiveness of existing or introduced physical features that qualify a site for a 100 foot buffer shall be at the sole discretion of the City Council.

(h) *Minimum district requirements.* The requirement states that a side yard setback for a single-family home is 15 feet or 10% of lot width, whichever is greater.

(cont.) **§ 151.085 SWIMMING POOLS; GENERALLY.**

(C) *Application for permit.*

(3) Pools shall not be located within 20 feet of any septic tank/drainfield nor within 6 feet of any principal structure or frost footing. Pools shall not be located within any required front or side yard setbacks.

(K) *Location.*

All Swimming pools or appurtenances to swimming pools shall be located in the rear yard and meet the setback requirements of the district in which it is located....

Findings & General Site Overview

Site Data:	<i>Existing Zoning</i> – A (Agricultural); OP use with a CUP <i>Land Use Guidance</i> – RAD – 0.45 DU/Acre (Rural Agricultural Density) <i>Parcel size</i> – 0.94 acres <i>Property Identification Number (PID)</i> : 22-029-21-21-0024
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Application Review:

Applicable Code Definitions:	<p>§ 11.01 DEFINITIONS.</p> <p>ACCESSORY STRUCTURE. A use or structure on the same lot with, and of a nature customarily incidental and subordinate to, the principal use or structure.</p> <p>BUILDING SETBACK LINE. A line within a lot parallel to a public right-of-way line, a side or rear lot line, a bluff line, or a high water mark or line, behind which buildings or structures must be placed.</p> <p>BUILDING. Any structure, either temporary or permanent, having a roof and used or built for the shelter or enclosure of any person, animal, or movable property of any kind. When any portion of a building is completely separated from every other part of a building by area separation, each portion of the building shall be deemed as a separate building.</p> <p>HARDSHIP. The proposed use of the property and associated structures in question cannot be established under the conditions allowed by the city's zoning regulations and no other reasonable alternative use exists; that the plight of the landowner is due to the physical conditions unique to the land, structure, or building involved and are not applicable to other lands, structures, or buildings in the same zoning district; and that these unique conditions of the site were not caused or accepted by the landowner after the effective date of the city's zoning regulations.</p> <p>SETBACK. The minimum horizontal distance between a structure, sewage treatment system, or other facility and an ordinary high water level, sewage treatment system, top</p>
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(cont.)

of a bluff, road, highway, property line, or other facility. Distances are to be measured perpendicularly from the property line to the most outwardly extended portion of the structure at ground level.

STRUCTURE. Anything constructed or erected on the ground or attached to the ground or on-site utilities, including, but not limited to, buildings, factories, sheds, detached garages, cabins, manufactured homes, signs, and other similar items.

SWIMMING POOL, PRIVATE OR RESIDENTIAL. Any pool which is used, or intended to be used, as a swimming pool in connection with a single-family residence, and which is available only to the family of the household and private guests.

USE, ACCESSORY. A use subordinate to and serving the principal use or structure on the same lot and customarily incidental to the principal use.

VARIANCE. A modification of a specific permitted development standard required to allow an alternative development standard not stated as acceptable in the official control, but only as applied to a particular property for the purpose of alleviating a hardship as defined in the zoning code. Economic considerations alone shall not constitute a hardship.

**Variance
Review:**

The applicants are proposing to build an in-ground pool, spa, pergola, and fireplace within the required 100 foot buffer setback from the edge of the development.

Farms of Lake Elmo Development Review History

The city staff report for the Farms of Lake Elmo development identified early on in the development review process that the lots in the west, east, and south side of the proposed development would not be buildable with the 200 foot buffer setback required from the edge of the development.

In the March 28, 2005 staff report, the planner noted:

“It appears that several of the proposed lots along the east and south peripheries of the Concept would also fail to meet the 200 foot buffer requirements once house pads are identified. In both cases the lots will back onto the Lake Elmo Regional Park Reserve. In a recent similar situation lots of the Tapestry OP backed onto the City’s Sunfish Park. In that case staff found that the Intents and Purposes of the OP ordinance would be complied with without a buffer to a major natural park environment.”

The City Council approved a 4/5 waiver of the requirement (as outlined in the city code). The City Council minutes from April 5, 2005:

“M/SP Conlin/Johnson – to waive the 200 foot buffer requirement and require the 100 foot buffering setback standards to the west, south and east based on the findings of the size of lots, adjoins the majority of the Regional Park, trees are planted on the top and the elevation difference.

(cont.)

(Motion passed 4-0." [Sic]

Therefore, the City Council reduced the setback from the edge of the Farms of Lake Elmo development and Lake Elmo Regional Park Reserve border from 200 feet to 100 feet.

Purpose of the 100 foot buffer setback

In reading through section 150.180 B 2 D regarding buffer zones in OP developments, the implied intent of the buffer area is to provide a physical and visual buffer of structures from existing residences of development.

This property and others on the southeast side of the development abut an open space outlot and the regional park, which will not be used for residences or development now or in the future. However, as mentioned previously, the City Council was made aware of this situation and made the decision at that time to require a 100 foot buffer setback.

Other homes in the Farms Neighborhood

Of the twelve properties in the neighborhood currently with homes, two were built within the buffer setback. Five properties subject to the same 100 foot buffer setback were built on and currently meet that requirement. The remaining five homes were built on lots that were outside 100 feet (or 200 feet from the north) of the development borders.

Vacant Lots to be Affected in the Future

Staff has identified an additional nine lots in this development that are impacted to any degree by the 100 foot buffer setbacks from the west, south, or east edge of the development or by the 200 foot buffer setback from the north edge of the development. Although staff has not conducted a full analysis at the time of this report, it is possible that some of those lots may have limited building area which may result in future variance requests.

Additional Information

Outlot A as mentioned before is restricted by a conservation easement co-held by the Minnesota Land Trust and the City of Lake Elmo. Within the easement document, it outlines as one of the Conservation Values that "The Protected Property provides continuity with nearby Lake Elmo Regional Park Preserve, which preserves wildlife habitat within the wetlands and open space in this region of rapidly developing residential communities." The applicant is not proposing to add any improvements within the outlot, nor are they proposing any improvements within 9 feet of the outlot. However, it is important to establish that the rear yard abuts the outlot and the intent of the MN Land Trust's easement on the outlot.

(cont.) *Application Submittal*

The applicant has stated that the variance is justified due to the following:

- They bought the existing home with the intention of building a pool in the back yard for their children to practice for competitive swimming. The back yard was chosen as the windows at the back of the home allow viewing the pool for safety purposes.
- They were not aware of the 100 foot buffer setback at the time of the initial design of the pool, spa, pergola, and fire pit.
- Sixty feet of Outlot A exists between their property and the Lake Elmo Regional Park Reserve and effectively serves as a preserved, undisturbed space. The land slopes uphill approximately 2' to 6' over a 60' distance to the park boundary.
- The neighbor directly to the east was allowed to build their home and pool within the 100 foot buffer setbacks from both the south and eastern borders of the development. This property has a much smaller outlot between the property and the Park Reserve.
- The placement of the home to the east pushed the building of their home further back on the lot to be in line with that home, thereby reducing the amount of buildable area in their rear yard.
- The neighbor directly to their west also has a pool.
- The proposed pool would be completely obscured from view of the street and greatly obscured from many adjacent properties with existing trees. Additional trees that would further reduce any visibility are being proposed in the new pool landscape as well.
- No other location on the property is free from both restrictions and undesirable conditions that prohibit a pool. The 30 feet between the house and setback line, which given the shape of the floor plan of the house, the setbacks needed, and the proper drainage needed from the house, the pool and landscape would be impossible.

Criteria Review

A review of the City's variance criteria follows, focusing on the information submitted by the applicants. By code, a variance can only be granted where the city finds the request can successfully address all three criteria as outlined below for the proposed structures.

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

The property is currently used for residential purposes by the Hugec family; therefore the applicants are allowed a reasonable use of the property.

(cont.)

The design and location of the proposed pool, spa, fireplace and pergola was established by a professional landscaper. At the time of his design, the contractor was not made aware of the 100 foot setback from the edge of the OP development.

However, although the proposed pool, spa, fireplace and pergola are unable to be built in a conforming location on the lot in its current configuration, there is a small conforming location in which at least the in-ground pool could potentially be constructed. The city's pool ordinance calls for a six foot setback from a building or frost footing. The result is approximately 24 feet between the existing home and the 100 foot setback line. Without consideration to aesthetics and pending conformance with other requirements (impervious surface, building/structure separation, grading, etc.), and if revisions to the size, design and location were redesigned, a pool, spa, fireplace and pergola may be placed in a conforming location on the site. It should be noted that an alternate site plan was not designed by staff and this alternative located is based on the knowledge that a typical rectangular in-ground pool is often 20 feet by 40 feet in size.

The property is currently allowed a reasonable use and other locations on the site could be an option so **this criteria is not met.**

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

The applicants' property is not unique. Ten other properties within the Farms of Lake Elmo development have a shorter distance between the edge of the development (from which the setback applies) to their front property line. Therefore these ten properties have the 100 foot setback affect more of their rear yard than the applicant's property. All ten properties are similar in shape to the applicant's property and all ten are smaller in lot size, providing additional challenges.

Three of these ten properties are built on, one of which currently has a structure that encroaches into this 100 foot buffer setback. [An additional property adjacent to the Hugec's was also built within the buffer setback, but was not included in this calculation due to the lot's size and shape.] However, although the setback was not enforced on previous properties in this development and most likely other developments, this is not considered a hardship as defined in the city code. City staff must enforce the city code requirements as they exist.

Twelve lots in the development are not impacted to any degree by a buffer setback.

As mentioned on page 4, this development was reviewed in a similar manner to the Tapestry at Charlotte's Grove OP development which abuts a City Park. The 200 foot buffer setback was reduced by the City Council to 100 feet to acknowledge the adjacent preserved open space.

Recent applications made by other property owners in the OP developments have been required to comply with this regulation.

(cont.)

Therefore, this criteria is not met.

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

The applicants bought the property after the existing home, deck, and screen porch was built in the summer of 2006. The home was built further back on the lot to be more in line with the home directly to the east, which was built in the 100 foot buffer setback. This reduced the area available for a structure to be built in the rear yard of the property.

Therefore, staff finds this criteria is met.

**Variance
Conclusions:**

Based on our analysis of the review criteria in City Code and because all three criteria are not met, staff recommends denial of the variance requests for 2931 Jonquil Trail North.

**Resident
Concerns:**

The city has received no objection of the proposal by any neighbor within the Farms of Lake Elmo. The applicant submitted as part of their application a letter signed by three neighbors in support of their application.

**Additional
Information:**

- The Department of Natural Resources and the Valley Branch Watershed District did not provide any comments on the application.
- The Minnesota Land Trust has reviewed the application and has no specific comments or concerns with the variance being requested. Staff has added as a condition of approval, per the Land Trust's written submittal, that the easement area must not be used for material storage, vehicle travel, or other activities that would be in violation of the conservation easement during the construction process.
- The Washington County Parks manager submitted a written statement with concern regarding the intensity of the proposed uses and the potential visual impact of the pergola and outdoor fire place structure as viewed from the Lake Elmo Park Reserve boundary. They suggest placing the pergola and fireplace structure outside the required setbacks to minimize the visual impact from the park. Additional screening with fencing, berms and coniferous trees may also lessen the visual impact of the pool facility.
- The City Engineer has submitted a review with comments regarding the application. The items outlined can be addressed at the building permit stage if the variance is approved and is thus not added as a condition of approval.

Conclusion

The applicant is seeking approval of a variance from the required 100 foot buffer setback from the edge of the Open Space Preservation development to allow the construction of a pergola, pool, fireplace and spa at 2931 Jonquil Trail North. Specifically, the pergola and fireplace would be located 31 feet within the setback, the spa would be 12 feet, and the in-ground pool would be 6 feet.

Commission Rec.: The Planning Commission reviewed the variance application and held a public hearing at the March 9th meeting. The commission recommended by a 5:3 vote, with one abstention, to approve the variances with the conditions outlined in the staff report and with the additional condition that the applicant move the proposed pergola and fireplace to a location which would not be located any further into the 100 foot buffer setback than the proposed pool and spa.

One commissioner who voted against the application suggested that the Council has the ability to alter the regulations by a 4/5 vote (as outlined in the OP regulations) and may want to consider that option.

Council Options: The City Council must examine the proposed variances to determine whether it meets all conditions of approval outlined by city code. The City Council should consider the following options:

- A) Approve the requested variances based on the applicants' submission and findings of fact.
- B) Approve the requested variances based on the applicant's submission and findings of fact with the conditions outlined in the staff report and recommended by the Planning Commission
- C) Deny the requested variances based on the applicants' submission and findings of fact.

D) Table the request and ask for additional information.

The deadline for a Council decision on this item is April 10, 2009 which can be extended an additional 60-days if needed.

Recommended Action: **Staff recommended option C:** Denial of the requested variance with the following findings of fact:

- 1) The applicant has reasonable use of the property as it is currently used for residential purposes.
- 2) A swimming pool, spa, pergola and fireplace of a different configuration and

(cont.)

size could potentially be located on the lot in a conforming location.

- 3) Thirteen lots within the Farms of Lake Elmo development are subject to the 100 foot buffer setback. Therefore, this property is not unique.
- 4) Although two homes within the Farms of Lake Elmo development were permitted to be built within the 100 foot buffer setback, this does not constitute a hardship as the city staff must enforce the existing regulations.

Should the City Council choose to approve the requested variances, the following findings of fact may be used in addition to any found by the council at the meeting.

- 1) The proposed variances would be in keeping with the neighborhood as the two adjacent properties currently have in-ground swimming pools and other accessory structures in their rear yards.
- 2) The home directly to the east currently encroaches further into the 100 foot buffer setback than the applicant is proposing. The home and pool are closer to the Lake Elmo Park Reserve than the applicant is proposing to place the structures.
- 3) The rear yard of the property abuts Outlot A which is restricted by a conservation easement intended to be utilized for open space. The county park is on the other side of Outlot A.
- 4) Existing and proposed vegetation, the slope of the rear yard, and the location of the structures in the rear yard reduce or in some cases eliminate the visual impact to others.
- 5) Outlot A serves as a sixty foot open space buffer and undisturbed area between the Hugec's property and the Lake Elmo Regional Park Reserve which meets the intent of the buffer setback.
- 6) The home on the property was built further back on the property to be in keeping with the property to the east, thereby reducing the buildable area in the rear yard.
- 7) The home at 2931 Jonquil Trail North was built to match adjoining setbacks and is thus located further back on the lot than required.
- 8) The applicable setbacks from the edge of the development, from existing structures, and from the property lines leave limited room in the back yard of the property for the proposed structures. By city code, swimming pools are required to be located in the rear yard of a property, further reducing the potential conforming locations on the property.

Denial Motion Template (as recommended by staff): To deny the requested variances as recommended by staff, you may use the following motion as a guide:
Move to deny the variance application for 2931 Jonquil Trail North based on the findings provided in the staff report: (or cite your own findings)

Approval Motion Template: To approve the requested variances, you may use the following motion as a guide:
Move to approve the variances with the additional condition that the proposed pergola and fireplace be located so as not to encroach further on the 100 foot setback than the proposed pool and spa for 2931 Jonquil Trail North based on the findings listed in the staff report and as articulated tonight, subject to the conditions recommended by staff. (use staff's findings provided above or cite your own)
with the following conditions:

1. A building permit must be received from the city prior to any work taking place. A certified survey in addition to any information requested by the City Engineer, City Planner, and Building Official must be provided before a building permit is issued.
2. The City Engineer must review and approve mitigation measures for the increase of impervious coverage beyond 20% prior to issuance of a building permit.
3. A revised landscape plan approved by the Planning Director prior to issuance of a building permit.
4. Outlot A must not be used for material storage, vehicle travel, or other activities that would be in violation of the conservation easement during the construction process.
5. All structures must be located outside the drainage and utility easement.

cc: Vladimir and Silvia Hugec, 2931 Jonquil Trail North
David Sonka, Applicant's Contractor

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

RESOLUTION NO. 2009-0419

*A RESOLUTION APPROVING A VARIANCE FROM THE 100 FOOT BUFFER SETBACK
REQUIRED FROM THE EDGE OF AN OPEN SPACE PRESERVATION DISTRICT TO
ALLOW THE CONSTRUCTION OF AN IN-GROUND POOL AT
2931 JONQUIL TRAIL NORTH.*

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

WHEREAS, Vladimir and Silvia Hugec, 2931 Jonquil Trail North (the "Applicants"), have submitted an application to the City of Lake Elmo (the "City") for a twelve-foot variance from the 100-foot buffer setback from the edge of Open Space Preservation developments at 2931 Jonquil Trail North to allow the construction of an in-ground pool, spa, pergola, and fireplace, a copy of which is on file with the City; and

WHEREAS, notice has been published, mailed and posted pursuant to the Lake Elmo Zoning Ordinance, Section 154.017; and

WHEREAS, the Lake Elmo Planning Commission held a public hearing on said matter on March 9, 2009; and

WHEREAS, the Lake Elmo Planning Commission has submitted its recommendation to the City Council as part of a Staff Memorandum dated March 17, 2009; and

WHEREAS, the City Council considered said matter at its March 17, 2009 meeting.

NOW, THEREFORE, based on the testimony elicited and information received, the Board of Adjustment makes the following:

FINDINGS

- 1) That the procedures for obtaining said Variance is found in the Lake Elmo Zoning Ordinance, Section 154.017.
- 2) That all the submission requirements of said 154.017 have been met by the Applicants.

- 3) That the proposed 12 foot variance is to allow the construction of an in-ground pool, spa, pergola, and fireplace at 2931 Jonquil Trail North.
- 4) That the Variance will be located on property legally described as Lot 12, Block 1, Farms of Lake Elmo, Washington Co., Minnesota.
- 5) The proposed structures would be in keeping with the neighborhood as the two adjacent properties currently have in-ground swimming pools and other accessory structures in their rear yards.
- 6) The home directly to the east currently encroaches further into the 100 foot buffer setback than the applicant is proposing. The home and pool are closer to the Lake Elmo Park Reserve than the applicant is proposing to place the structures.
- 7) The rear yard of the property abuts Outlot A which is restricted by a conservation easement and intended to be utilized for open space. The Lake Elmo Regional Park Reserve is located directly to the south of Outlot A.
- 8) Existing and proposed vegetation, the slope of the rear yard, and the location of the proposed structures in the rear yard reduce, or in some cases, eliminate the visual impact to others.
- 9) Outlot A serves as a sixty-foot open space buffer and undisturbed area between the Hugec's property and the Lake Elmo Regional Park Reserve which meets the intent of the buffer setback outlined in the Open Space Preservation development regulations.
- 10) The proposed in-ground swimming pool, spa, pergola, and fireplace cannot be established under the conditions allowed by the city's zoning regulations and no other reasonable alternative use exists. *The applicants bought the existing home in its existing location with the intention of building a swimming pool in the rear yard. The applicable setback requirements outlined in the Open Space Preservation regulations and swimming pool requirements leave little area in the rear yard of the property to be built upon.*
- 11) The plight of the landowner is due to the physical conditions unique to the land and are not applicable to other lands, structures, or buildings in the same zoning district. The site is unique. *The existing home was built further back on the lot to be in line with the permitted non-conforming home to the east thereby reducing the amount of buildable area in the rear yard of the property. Although the lot abuts Outlot A which functions as preserved open space within the development, approximately forty feet of the buffer setback encroaches on the rear yard of the applicant's property. The forty foot encroachment is an unbuildable area.*
- 12) The unique conditions of the site were not caused or accepted by the landowner after the effective date of the city's zoning regulations. *The applicants bought the home in its existing location after it had been built as a model home by the developer. The home was*

built back further on the lot to be in line with the non-conforming home to the east, thereby reducing the amount of buildable area in the rear yard. The applicants were not aware of the 100-foot buffer setback when they purchased the home with the intent of building a pool as the two adjoining neighbors had.

CONCLUSIONS AND DECISION

Based on the foregoing, the Applicants' application for a Variance is approved, provided the following conditions are met:

1. A building permit must be received from the city prior to any work taking place. A certified survey in addition to any information requested by the City Engineer, City Planner, and Building Official must be provided before a building permit is issued.
2. The City Engineer must review and approve mitigation measures for the increase of impervious coverage beyond 20% prior to issuance of a building permit.
3. A revised landscape plan approved by the Planning Director prior to issuance of a building permit.
4. Outlot A must not be used for material storage, vehicle travel, or other activities that would be in violation of the conservation easement during the construction process.
5. All structures must be located outside the drainage and utility easement.

Passed and duly adopted this 17th day of March 2009 by the City Council of the City of Lake Elmo, Minnesota.

Dean A. Johnston, Mayor

ATTEST:

Craig Dawson, Interim City Administrator

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

RESOLUTION NO. 2009-011

*A RESOLUTION DENYING A VARIANCE FROM THE 100 FOOT BUFFER SETBACK
REQUIRED FROM THE EDGE OF AN OPEN SPACE PRESERVATION DISTRICT TO
ALLOW THE CONSTRUCTION OF AN IN-GROUND POOL, SPA, PERGOLA, AND
FIREPLACE AT 2931 JONQUIL TRAIL NORTH.*

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

WHEREAS, Vladimir and Silvia Hucec, 2931 Jonquil Trail North (the "Applicants"), have submitted an application to the City of Lake Elmo (the "City") for a twelve-foot variance from the 100-foot buffer setback from the edge of Open Space Preservation developments at 2931 Jonquil Trail North to allow the construction of an in-ground pool, spa, pergola, and fireplace, a copy of which is on file with the City; and

WHEREAS, notice has been published, mailed and posted pursuant to the Lake Elmo Zoning Ordinance, Section 154.017; and

WHEREAS, the Lake Elmo Planning Commission held a public hearing on said matter on March 9, 2009; and

WHEREAS, the Lake Elmo Planning Commission has submitted its recommendation to the City Council as part of a Staff Memorandum dated March 17, 2009; and

WHEREAS, the City Council considered said matter at its March 17, 2009 meeting.

NOW, THEREFORE, based on the testimony elicited and information received, the Board of Adjustment makes the following:

FINDINGS

- 1) That the procedures for obtaining said Variance is found in the Lake Elmo Zoning Ordinance, Section 154.017.
- 2) That all the submission requirements of said 154.017 have been met by the Applicants.
- 3) That the proposed 12-foot variance is to allow the construction of an in-ground pool, spa, pergola, and fireplace at 2931 Jonquil Trail North.

- 4) That the Variance will be located on property legally described as Lot 12, Block 1, Farms of Lake Elmo, Washington Co., Minnesota.
- 5) The proposed in-ground swimming pool, spa, pergola, and fireplace cannot be established under the conditions allowed by the city's zoning regulations and no other reasonable alternative use exists. *The applicant has reasonable use of the property as it is currently used for residential purposes. Given the setback and location requirements set forth in the Open Space Preservation development and swimming pool regulations, there remains area available for a building or structure, though not in the size or configuration proposed by the applicant.*
- 6) The plight of the landowner is due to the physical conditions unique to the land and are not applicable to other lands, structures, or buildings in the same zoning district. The site is unique. *Thirteen lots within the Farms of Lake Elmo development are subject to the 100 foot buffer setback. Ten lots within the same development have a shorter distance between the edge of the development (from which the setback applies) to their front property line. Therefore these ten properties have the 100 foot setback affect more of their rear yard than the applicant's property. Although two lots were permitted to build homes within this buffer setback without a variance, this is not considered a hardship as defined in the city code. City staff must enforce the city code requirements as they exist.*
- 7) The unique conditions of the site were not caused or accepted by the landowner after the effective date of the city's zoning regulations. *The Open Space Preservation Development Ordinance was in place well before the Farms of Lake Elmo development was proposed and approved. The reduced buffer setback of 100 feet from the edge of the development was approved at the time of the development. Therefore, the requirements were in place well before the applicant's home was built on the property.*

CONCLUSIONS AND DECISION

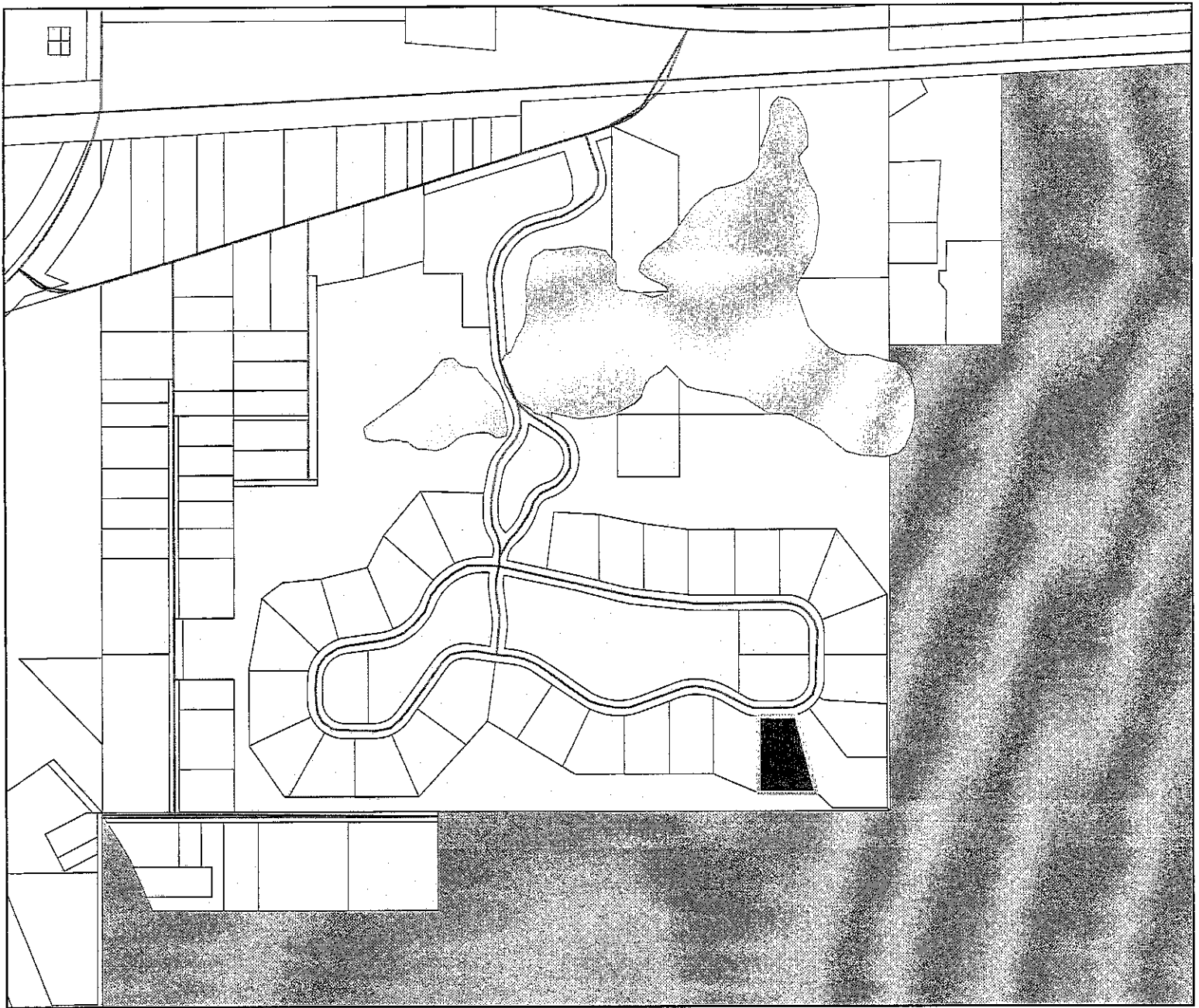
Based on the foregoing, the Applicants' application for a Variance is denied.

Passed and duly adopted this 17th day of March 2009 by the City Council of the City of Lake Elmo, Minnesota.

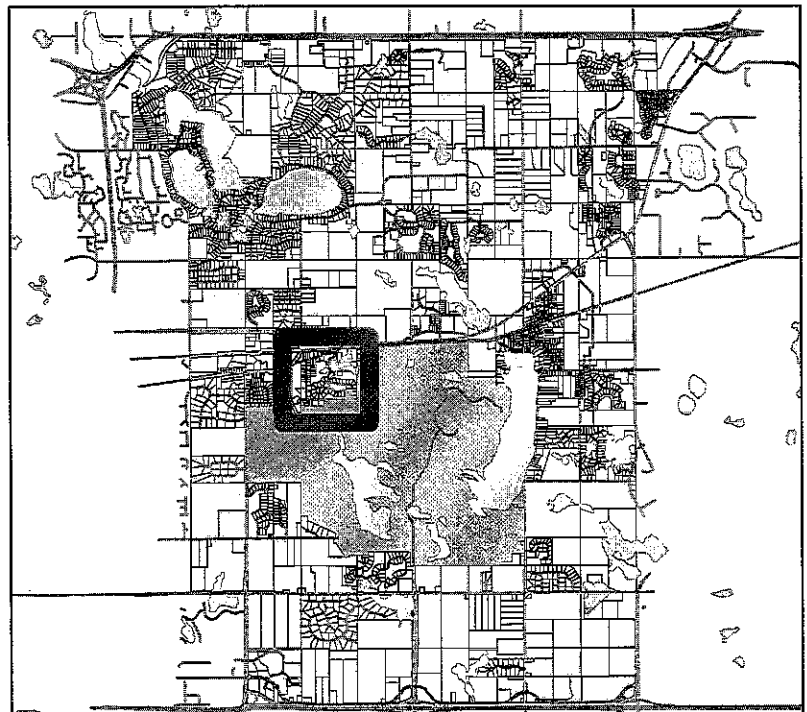
Dean A. Johnston, Mayor

ATTEST:

Craig Dawson, Interim City Administrator



2931 Jonquil Trail North
Lake Elmo, MN



Lot 12, Block 1, Farms of
Lake Elmo, Washington
County, Minnesota

Parcel ID number:
2202921210024

Parcel Size: 41,340 SF
or .95 acres

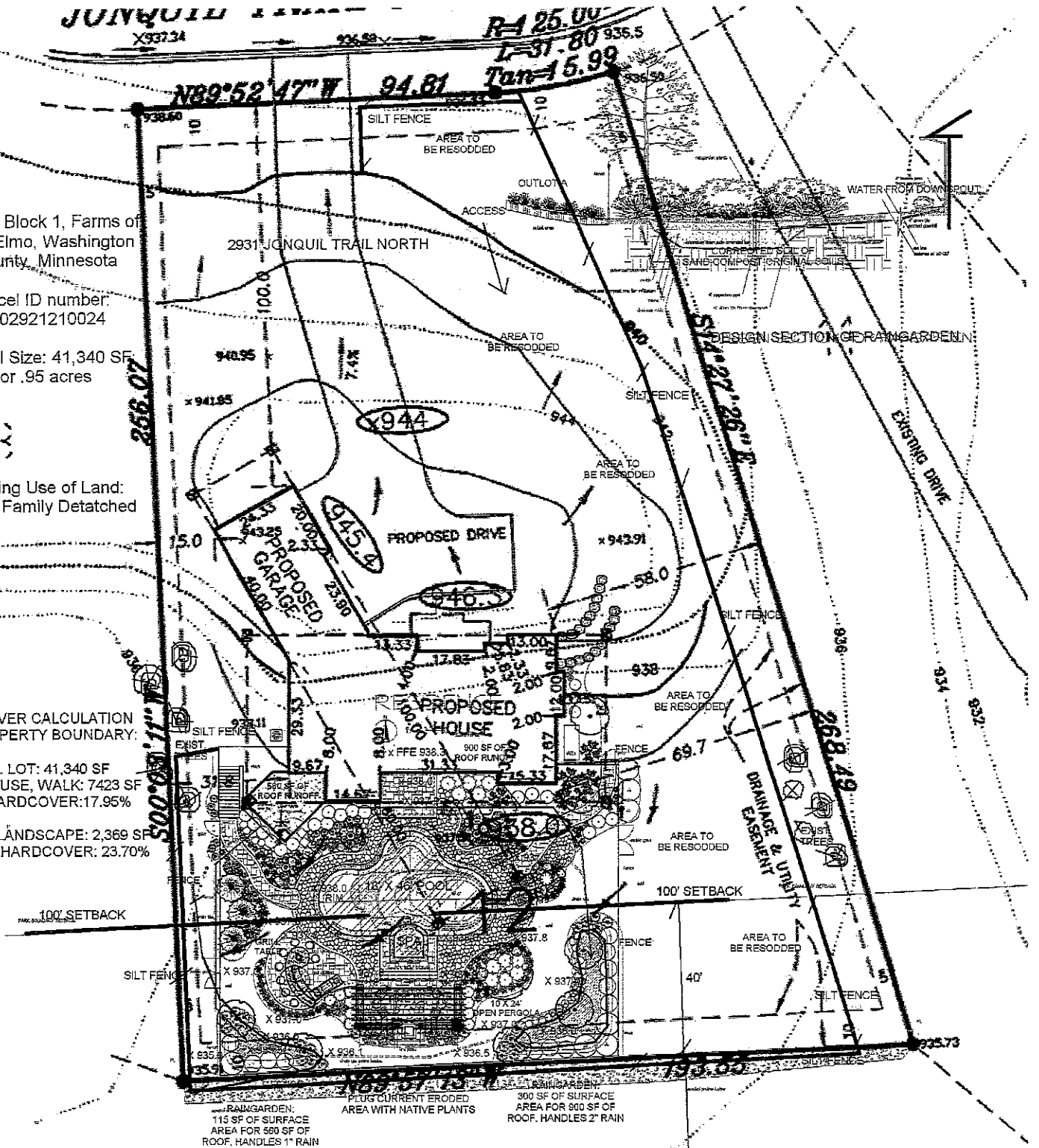
13

Existing Use of Land:
Single Family Detached

HARDCOVER CALCULATION
W/IN PROPERTY BOUNDARY:

EXIST. LOT: 41,340 SF
DRIVE, HOUSE, WALK: 7423 SF
EXIST. HARDCOVER: 17.95%

ADD POOL LANDSCAPE: 2,369 SF
PROPOSED HARDCOVER: 23.70%



UNDISTURBED OUTLOT
OUTLOT A

HUGE POOL LANDSCAPE
VERSION 5

EXIST. SPRUCE
TREES IN ROW

DESIGNED BY DAVID SONKA, MNL A CLP
2-04-08

*BUILDER TO VERIFY USE DIMENSIONS, SEWER DEPTH AND FOUNDATION DE
651-777-3333
www.davidsonka.com



HOUSE DIAGONAL:
(9 FOOT POI

Fee \$ 725

City of Lake Elmo
DEVELOPMENT APPLICATION FORM

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

APPLICANT: c/o DAVID SONKA
VLADIMIR HUGEC 2931 JONGUIL TR. N., LAKE ELMO, MN 55042
(Name) (Mailing Address) (Zip)

TELEPHONES: 651-777-3333
(Home) (Work) (Mobile) (Fax)

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

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

PROPERTY LOCATION (Address and Complete (Long) Legal Description): LOT 12, BLOCK 1,
FARMS OF LAKE ELMO, WASHINGTON COUNTY, MINNESOTA

DETAILED REASON FOR REQUEST: (PLEASE SEE ATTACHED SUPPLEMENT)

***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:

(PLEASE SEE ATTACHED SUPPLEMENT)

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

Signature of Applicant

2/7/09
Date

Signature of Applicant

Date



Supplemental Information for 2931 Jonquil Trail Variance Application:

Detailed Reason for Request:

Vladimir and Silvia Hucec have lived at 2931 Jonquil Trail North for two years. They purchased their home with the intention of adding an in-ground swimming pool and landscape into the flat, sodded area of the back yard directly behind their home. They have sought this as a way to better enjoy their property, to entertain neighborhood friends, and to provide a place for their children a safe place to practice for competitive swimming.

The Hucec's were only recently made aware of the 100' setback that exists from the Lake Elmo Park Preserve in January of 2009. This 100' setback extends through a 60' wide Outlot for an additional 40' into their property, which would prohibit a pool and useable landscape that they had been planning for years. (150.180 Development Standards, (B), (2), (d) Buffer zones)

Between their property and the Lake Elmo Park Preserve is a buffer area, Outlot A. They had assumed that this area was established to preserve an undisturbed space between the park and their property, as it effectively does. But they were unaware of any setback from the park boundary that would extend an additional 40' through the middle of their back yard, to within 30' of their home. It was not indicated on the Certificate of Survey and As-Built Survey they had received. (See Appendix A, B)

Their neighbors and friends on both sides of them have swimming pools. The neighbors to the east, the Gustafson's at 2395 Jonquil Trail, have a beautiful swimming pool and fountain feature that is well within this same setback, on two sides of the park boundary. This property, as well as the next one to the north, appear to have homes which seem very much on, or within, the same setback. They both also do not have the presence of an Outlot buffer to the park preserve. (See Appendix C) Therefore, the existence of this code was unrecognizable, nor could be interpreted by them. It was not brought to their attention until considerable time and money had been invested into the plans for the pool landscape, long after conversations had been initiated with the city about their desire for a pool landscape.



Variance Request. (Hardship is described.)

Here is the portion of building code that was recently cited to address the proposed pool project at 2931 Jonquil Trail North:

"...Where a proposed OP development abuts an existing OP development, or a land parcel eligible for future development under the OP ordinance, a 100 foot setback from any structure within the proposed OP development and the property line of the abutting parcel may be substituted. The setback substitution shall only be approved when there is existing mature vegetation and/or changes in topography occurring on the site proposed for development; and/or where the OP site developer introduces the physical features that provide an effective year round buffer of the structures proposed for the OP site from existing residences or development. The determination of the buffering effectiveness of existing or introduced physical features that qualify a site for a 100 foot buffer shall be at the sole discretion of the City Council."

(150.180 Development Standards, (B), (2), (d) Buffer zones)

The enforcement of the 100' setback from Lake Elmo Park Preserve would prohibit the ability for of an in-ground swimming pool, spa, and landscape at 2931 Jonquil Trail North. This property is occupied by the family of Vladimir and Silvia Hugec. Dr. Hugec relocated his family to the area two years ago from eastern Europe as a cancer research doctor.

The location for any kind of pool on their lot would be the logical area in the flat, buildable portion of the back yard, situated directly behind the house. This would be in violation of the 100' setback requirement that was recently cited to us six weeks after it was originally brought to the attention of the city. This setback line extends an additional 40' into their property beyond Outlot A, within 30' of their house. Outlot A currently serves as an effectively buffer to their back yard from the Lake Elmo Park Preserve. It consists of an uphill slope of 3' to 7' over a 60' distance to the park boundary. Along the inside edge of the park boundary is also a fencerow planting of black hills spruce trees that are currently growing from 10 to 16' in height. (See Appendix D)

In this backyard location, the pool would seem in a recessed location that is 80' to 90' from the park property. It would also be completely obscured from view of the street, and greatly obscured from any adjacent properties with existing spruce trees planted along the boundary between the properties. Additional trees that would further reduce any visibility are being proposed in the new pool landscape as well.

No other location on the property is free from both restrictions and undesirable conditions that prohibit a pool. The setback leaves less than 30' at the back of the house, which cannot support a pool design considering the required setbacks from the home itself with its staggered footprint. A combination of issues such as conforming to

setbacks from the side lots, setbacks from the house, grading and drainage issues, and utility service connections to the house also compound any other options. There simply is not other viable alternative than in the logical place in the backyard.

The backyard location is the only area on the property where sufficient space is currently available for the pool, drainage patterns on the lot can be maintained, and the pool can be supervised from all windows along the back of the house. This will ensure safety and security for their children, neighbors, friends, and family members visiting to use the pool and surrounding landscape.

Vladimir and Silvia Hucec's children are both active in competitive swimming. Their intention is to create a pool, spa, and useable landscape which would provide their young children a place to enjoy and practice swimming. They want the swimming area to be large enough to allow lap swimming, but intimate enough where they can dine and sit, relax and enjoy the outdoors. The proposed pool is 18 x 46' with an extended shallow area for entry. They intend to employ some of the most recent energy-efficient heating technologies where they can extend the pool season and use it in after-school and after-business hours of the day. The pool landscape will provide an attached spa, a dining area, and an intimate place for a fire to keep warm in cooler temperatures while their children use the pool.

As Dr. Hucec describes, he moved to this home in Lake Elmo with the intention of having a nice, safe home with wonderful neighbors, a nice, peaceful place to enjoy being outside, and great place to spend time with his kids while the play and practice what they love to do. This is all part of his American dream.

(Please see attached Appendices, A, B, C, D)

Additional Information for Variance Procedure:

Supplemental Information for 2931 Jonquil Trail Variance Application:

Item List:

1. A completed land use application form:
 - Please see the enclosed sheet and supplemental information.

2. Written Statements:

- a. A list of all current property owners:
Dr. Vladimir and Silvia Hugec

b. Site Data:

Legal Description:

Lot 12, Block 1, Farms of Lake Elmo, Washington County, Minnesota

Parcel ID number: 2202921210024

Parcel Size: 41,340 SF or .95 acres

Existing Use of Land: Single Family Detached Residential

Current Zoning:

The 2007 Zoning Map for Lake Elmo lists it as A-Agricultural, as shown on the current zoning map on the City of Lake Elmo website.

Assumption is that it has since been re-zoned as OP/OS since the 2007 Survey.

c. The provisions of the City of Lake Elmo Code for which a variance is sought:

“...Where a proposed OP development abuts an existing OP development, or a land parcel eligible for future development under the OP ordinance, a 100 foot setback from any structure within the proposed OP development and the property line of the abutting parcel may be substituted. The setback substitution shall only be approved when there is existing mature vegetation and/or changes in topography occurring on the site proposed for development; and/or where the OP site developer introduces the physical features that provide an effective year round buffer of the structures proposed for the OP site from existing residences or development. The determination of the buffering effectiveness of existing or introduced physical features that qualify a site for a 100 foot buffer shall be at the sole discretion of the City Council.”

(150.180 Development Standards, (B), (2), (d) Buffer zones)



Also, for compliance with recent updates to the hardcover provisions (which was not available online) :

Maximum Impervious Surface of Gross Lot Area: "20%. This percentage may be increased to 25% provided a pervious paver or comparable system is installed consistent with the City of Lake Elmo Engineering Standards Manual or storm water mitigation measures are installed to mitigate the runoff created by the additional coverage above the base district amount. All mitigation measures must be approved by the City Engineer."

d. Specific written description of the proposal and how it varies from the application provisions of Lake Elmo code:

Vladimir and Silvia Hugec have lived at 2931 Jonquil Trail North for two years. They purchased their home with the intention of adding an in-ground swimming pool and landscape into the flat, sodded area of the back yard directly behind their home. They have sought this as a way to better enjoy their property, to entertain neighborhood friends, and to provide a safe place for their children to be outdoors and practice their sport of competitive swimming. Their neighbors and friends on either side of their property have built in-ground pools. Given the varying setbacks of these pools, and the varying setback of the houses from Lake Elmo Park Preserve as other pools and homes are well within this setback, there was no way for them to discern that building a pool at their home would be prohibited. So they purchased this home and proceeded to invest time and money into their plans for the pool. They had many conversation with their neighbors and initiated conversation with the city to gather information on Outlot A, and existing utility easements.

The ideas for the pool they have discussed since moving into their home, and after becoming friends with their neighbors, have developed into more formalized plans. These plans include an in-ground swimming pool of a free-form shape to allow for lap swimming, with an attached spa. The plan would also provide a place to prepare food and dine in the outdoors, as it will be used often in the after-business hours. The plan also offers a place to be in the shade of a 24'L x 10'W x 8.5'H pergola with open sides and open canopy. The pergola is centered on a fireplace that will be used for when the pool season is extended into the spring and late summer to fall months.

As the 100' setback has recently been brought to their attention, the restriction on building any kind of pool would extend 40' into their property from Outlot A. This invisible line would fall within the body of the pool. This would leave less than 30' between the house and setback line, which given the shape of the floor plan of the house, the setbacks needed, and the proper drainage needed from the house, their pool and landscape would be impossible.

e. Preapplication discussions with the City of Lake Elmo:

The Huges' were only recently made aware of the 100' setback that exists from the Lake Elmo Park Preserve, in January of 2009, six weeks into the process, and after at least two years that they had been discussing the pool project among themselves and their neighbors. They had purchased this home with the intent of adding a pool, so in saving money for two years and allowing their children to get older, they engaged in starting plans for the pool and continued dialog with their neighbors.

In Fall of 2008, they hired a landscape designer, David Sonka MNLA CP, through a school fundraiser to work on getting the plans started. The first meeting with David was in December of 2008. As David started investigating the site, he almost immediately emailed the City of Lake Elmo office to ask Kyle or Kelly about the Outlot A buffer area which showed up on a plat, and whether they had a Survey which would describe this and what it was for. He had been familiar with Kyle and Kelly and has always found them helpful to work with. In his initial questioning, he asked about the specifics of this outlot, whether there was any utility usage of it, or if it was just setup as a buffer zone. In this early communication, he mentioned the swimming pool and hardcover issue for this area.

David received a phone call the very next day and was told of the hardcover and the existence of this Outlot as part of the open space provision. He was told that the City of Lake Elmo had the Certificate of Survey and an As-Built Grading Survey for the property, as it was in the hand of the official while conducting the phone conversation. The pool project was specifically mentioned in this conversation. It was also discussed that constructing raingardens to collect runoff, or incorporating permeable pavers, could allow for an additional 5% of hardcover, from 20% to 25%, given they are adequately constructed for performance and maintenance.

David received another phone call right before the new year, on December 30 or 31, 2008. However, David was away with family over the holidays and was not able to call back or return to the City of Lake Elmo office until January. The voicemail message was very brief, and so it was assumed that all questions had been answered appropriately from the conversation on December 17. David was already 40 + hours into the plan by this point.

On January 28, David picked up paperwork for filing permits for the pool and the landscape features with the City of Lake Elmo. He received applications for the building permit, fence permit, and asked about any other permits that might apply for which to collect applications. He talked with two of the city officials on the classification of the pergola and fireplace structure, and the grades and setbacks of the utility easements. After this point of the conversation, it was indicated that this lot might have a setback or easement that extends into the property from the Lake Elmo Park Preserve. This was the first mention of this setback, to which he was a bit surprised. The following afternoon, January 29, he received a phone call confirming this setback that would not allow for the construction of the pool, or other landscape features within the setback. David was shocked, so he reassessed the design and the implications on

the project with the homeowner, and it was determined that this effectively would not permit a pool on this property given this and other setbacks.

In the homeowner's amazement and dismay, he is hoping for the opportunity afforded to both of his neighbor's a friends, for the chance to be able to implement a pool landscape of his own, which was his intention in buying this house. The city officials have been gracious and supportive, and a bit apologetic that this project and all of the time and energies that have been put forth, have gotten trapped by this code.

It has also been made apparent that a great deal of information regarding the Open Space designation is not fully available online, nor is the recent zoning classification of this development property. According to the 2007 Zoning Map currently found online, it has this development still classified as agricultural.

f. Explain why the property cannot be put to reasonable use under the zoning code:

The Huges moved into their home with the intention of putting in a pool, just as their neighbors and friends on both sides have a pool and landscape. This 100' setback extends through a 60' wide Outlot (Outlot A) for an additional 40' into their property at 2931 Jonquil Trail North, which would prohibit any pool and useable landscape. (150.180 Development Standards, (B), (2), (d) Buffer zones) This would leave less than 30' between the house and setback line, which given the shape of the floor plan of the house, the setbacks needed, and the proper drainage needed from the house, their pool and landscape would be impossible.

Vladimir and Silvia Huges's children are both active in competitive swimming. Their intention is to create a pool and useable landscape which would provide their young children a place to enjoy and practice swimming. They want the swimming area to be large enough to allow lap swimming, but intimate enough where they can dine and sit, relax and enjoy the outdoors. The proposed pool is 18 x 46' with an extended shallow area for entry. They intend to employ some of the most recent energy-efficient heating technologies where they can extend the pool season and use it in after-school and after-business hours of the day. The pool landscape will provide an attached spa, a dining area, and an intimate place for a fire to keep warm in cooler temperatures while their children use the pool.

With the prohibition of installing the pool, there is also a restrictive hardcover code which would allow very minimal surface area to create places to be around the edge of the pool. The lot is currently at just under 18% hardcover including the driveway. To have useable space around the pool, they want to incorporate a concrete paver pool deck to allow for a dining area and a place to sit in the shade of an open pergola by a fire. With these surrounding landscape improvements, the hardcover would be 23.5%.

However, the intention is to also construct stormwater rain gardens which would collect, store, and infiltrate the water coming from the gutters along the entire back of the house. Under the supervision of Rusty Schmidt, Natural Resource Specialist with

the Washington County Conservation Office, a raingarden of this scale was designed for this site.

g. Explain why the plight of the landowner is due to circumstances unique to the property and not created by the landowner.

The location for any kind of pool on their lot would be the logical, flat, buildable portion of the back yard that is situated directly behind their house. This would be in violation of the 100' setback requirement, but no other location on the property is free from both restrictions and undesirable conditions that prohibit a pool. The setback leaves less than 30' at the back of the house, which cannot support a pool design considering the required setbacks from the home itself with its staggered footprint. A combination of issues such as conforming to setbacks from the side lots, setbacks from the house, grading and drainage issues, and utility service connections to the house compound issues and rule out any other options. There simply is not other viable alternative than in the logical place in the backyard.

The backyard location is the only area on the property where sufficient space is currently available, where drainage patterns on the lot can be maintained, and where the pool can be supervised from all windows along the back of the house. This will ensure safety and security for their children, neighbors, friends, and family members visiting to use the pool and surrounding landscape. Both neighbors on either side of their property have a pool in the same scenario, and they hope that the same circumstances could be afforded to their family.

h. Justify that granting of the variance would not alter the essential character of the neighborhood:

The Farms of Lake Elmo development blends well into pastoral landscape of the Lake Elmo Park Preserve, and other hamlet characteristics of the area. Outlot A currently serves as an effective buffer to their back yard from the Lake Elmo Park Preserve. It consists of an uphill slope of approximately 2' to 6' over a 60' distance to the park boundary. Along the inside edge of the park boundary is also a fencerow planting of black hills spruce trees that are currently growing from 10 to 16' in height.

In this backyard location, the pool would seem in a recessed location that is generally 70' to 100' from the park property. It would also be completely obscured from view of the street, and greatly obscured from any adjacent properties with existing spruce trees planted along the boundary between the properties. Additional trees that would further reduce and almost totally obstruct any visibility from the park, street, and adjacent properties, are being proposed in the new pool landscape as well.

With these improvements and enhancements, the long open views afforded in the Farms of Lake Elmo neighborhood will remain intact. Just as the neighbors to the east

and west, a pool landscape will be tucked behind their home in the useable space. This pool will have a high aesthetic value with a free-form shape, natural building materials, lots of perennial color and planting beds, strategically-placed trees, and a low profile to ensure that views toward the horizon line to the south will be maintained.

Dr. Hugec moved to this home in Lake Elmo from eastern Europe, as a cancer research doctor. As he describes, his intention is to have a nice, safe home win Minnesota with wonderful neighbors; a nice, peaceful place to enjoy being outside; and great place to spend time raising his kids while the play and practice what they love to do. This is all part of his American dream.

3. Verification of Ownership (Title report or purchase agreement, property tax statement, etc.)
SEE ENCLOSED

4. Address Labels: A list of property owners located within 350' of the subject property obtained by a licensed abstractor.
SEE ENCLOSED

5. Fifty Copies of a certified survey; includes the required information on the lot with proposed plan.
SEE ENCLOSED

APPENDIX D

10-15' spruce trees

2-7' elevation change

60'

property line

40'

fire place patio

spa

pool

grill & dining

setback line

less than 30'

APPENDIX D

10-15' spruce trees

2-7' elevation change

60'

property line

40'

fire place patio

spa

pool

grill & dining

setback line

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10-15' spruce trees

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setback line

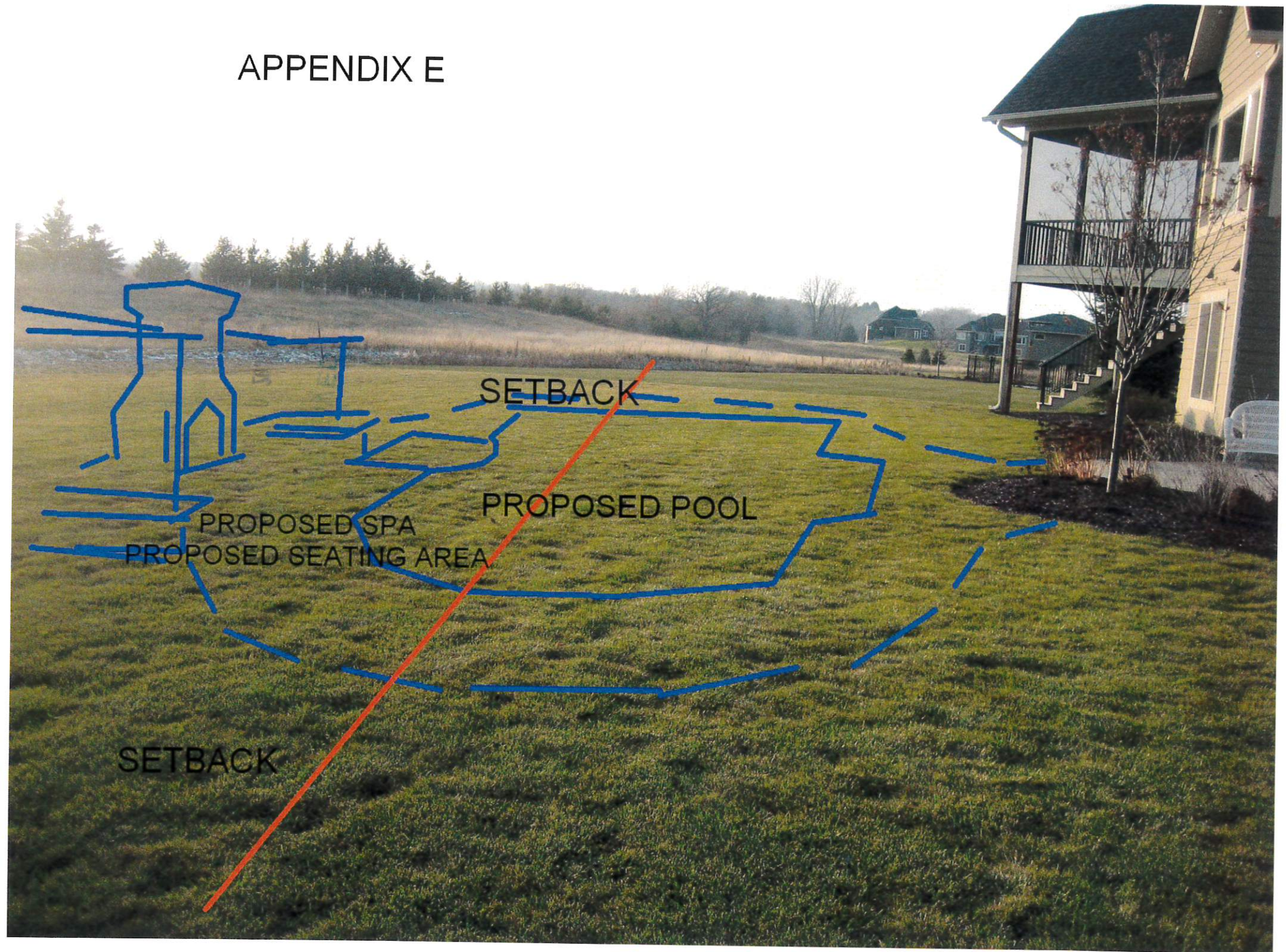
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RECEIVED

FEB 10 2009

CITY OF LAKE ELMO

APPENDIX E

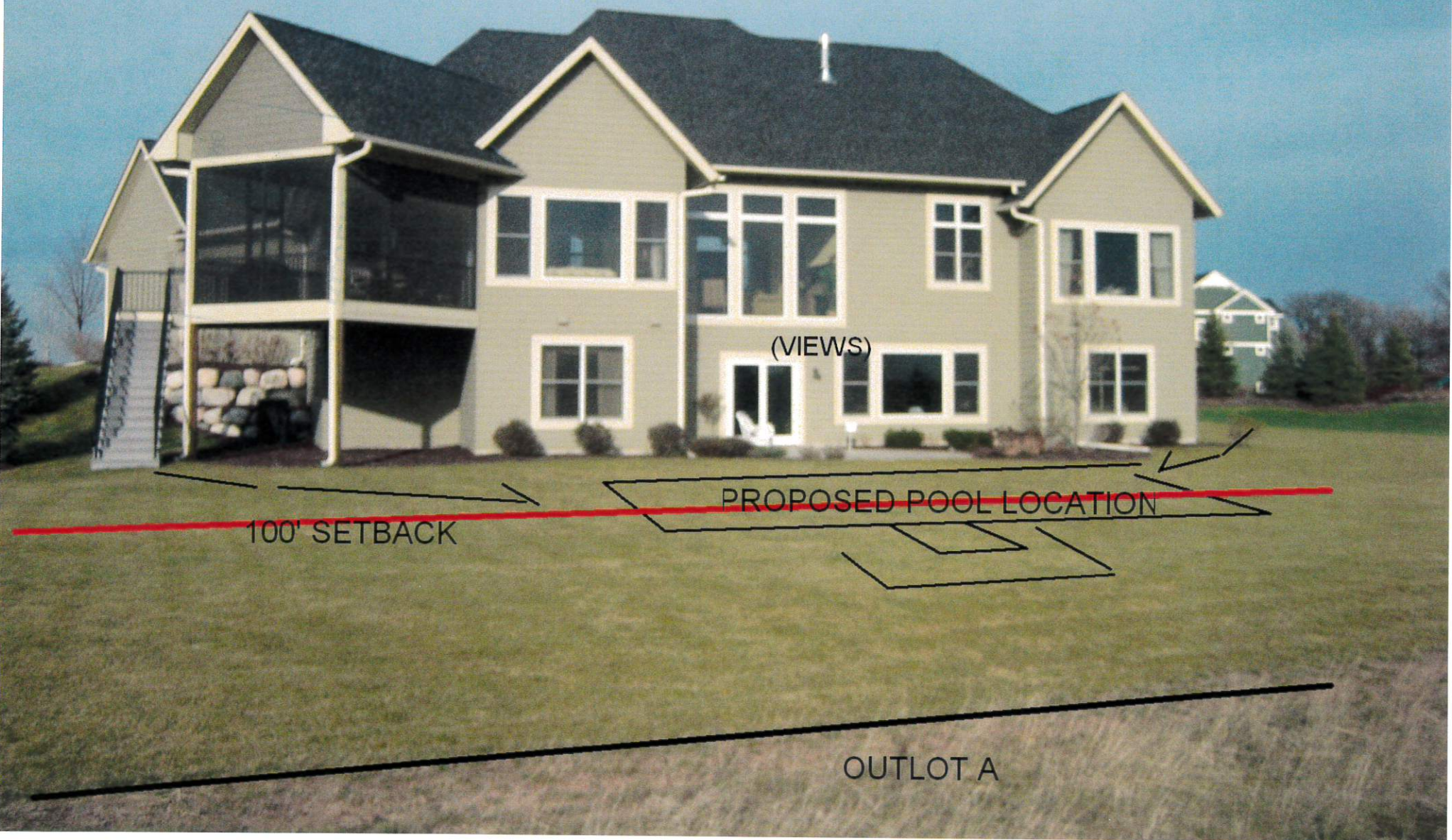


RECEIVED

FEB 10 2009

CITY OF LAKE ELMO

APPENDIX F



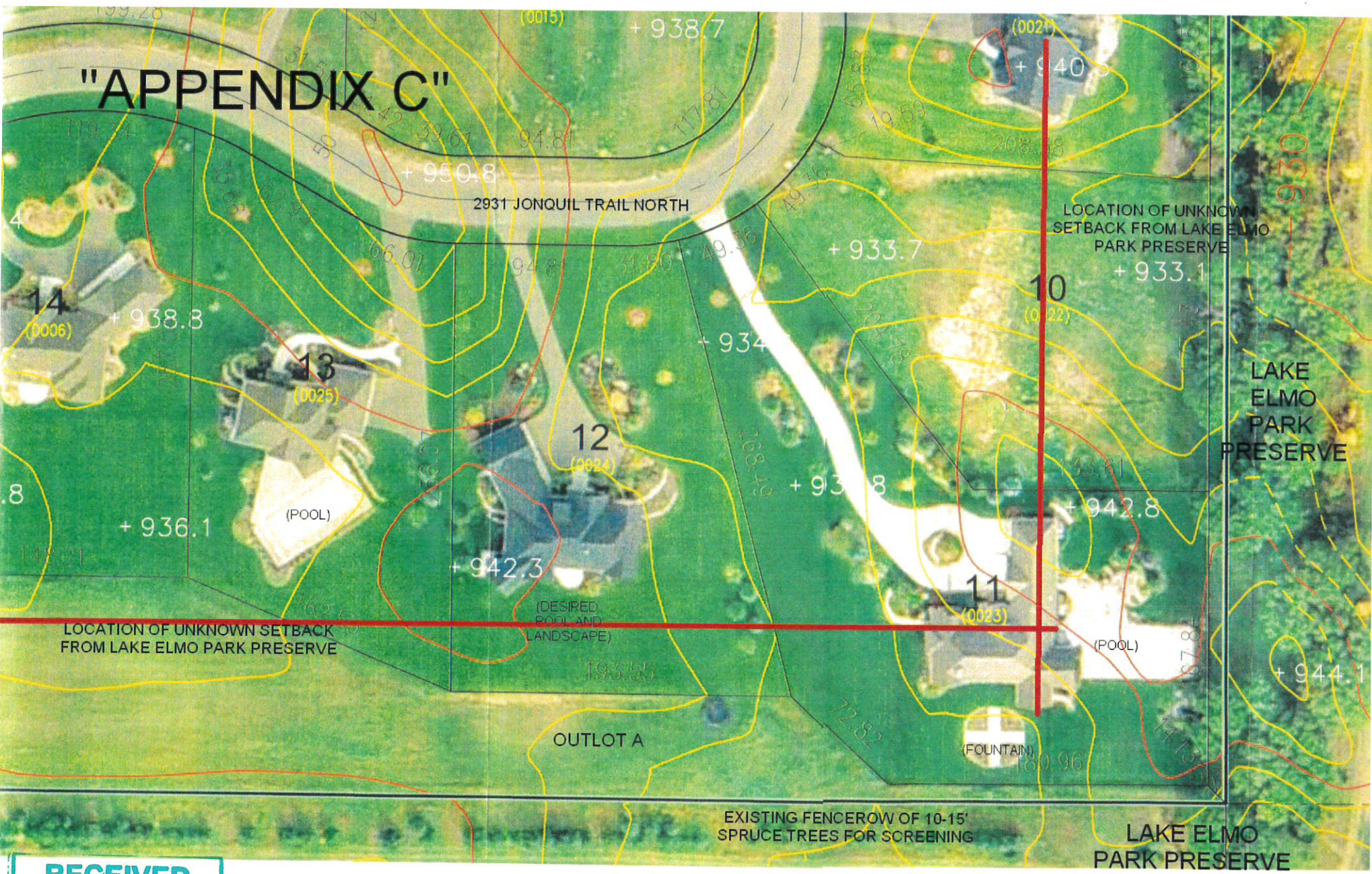
RECEIVED

FEB 10 2009

CITY OF LAKE ELMO



"APPENDIX C"



RECEIVED

FEB 10 2009

CITY OF LAKE ELMO

LEGEND

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

CONTOUR LEGEND

- 10 FOOT INTERVAL CONTOUR
- 2 FOOT INTERVAL CONTOUR
- DEPRESSION
- DASHED CONTOURS INDICATE QUESTIONABLE ACCURACY DUE TO GROUND VEGETATION



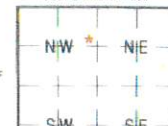
SECTION/TOWNSHIP-RANGE INDEX

16022921	1502921	1402921
21022921	2002921	2302921

COUNTY VICINITY MAP



SECTION VICINITY MAP



PROPERTY IDENTIFICATION NUMBER FORMAT (GEOC)

SECTION NUMBER	TOWNSHIP NUMBER	RANGE NUMBER	QUARTER	QUARTER	SPEC. PARC.
00	00	00	00	00	00

(0001) = LAST FOUR DIGITS OF PROPERTY IDENTIFICATION NUMBER

C. Resolution No. 2005- 036: Award Bid for Phase I of the Water System Interconnect Project

In his letter dated March 24, 2005, the City Engineer reported bids were opened on February 18, 2005 for this project. The City engineer recommended awarding the contract to the lowest bidder, Chris Riley Utilities, Inc. for their bid of \$348,626.18.

M/S/P Johnson/Conlin - to adopt Resolution No. 2005-036, A Resolution Awarding the bid for the Phase I of the Water System Interconnect Project to Chris Riley Utilities in the amount of \$348,626.18. (Motion passed 4-0).

9. PLANNING, LAND USE & ZONING:

A. Preliminary Plat, Comprehensive Plan Amendment, Rezoning, Conditional Use Permit and OP Concept Plan – Deer Glen/Evangelical Free Church (Continuation)

Attorney Filla reported he received a 13-page document from the representatives of the church late this afternoon and has not had time to review the submittals. He asked the applicant if they would agree to a two week extension of their application. Chuck Palmer, the applicant, said he would agree to the two week extension as long as it had no impact on the merits of the case.

M/S/P Smith/Johnson - to approve the extension for two weeks agreed to by the applicant, Chuck Palmer. (Motion passed 4-0.)

B. OP Concept Plan – Farms of Lake Elmo

This is an OP Concept Plan for Earl Friedrich Farm for 30-single family building lots on a site of 84 acres. The Planner explained the three lots at the southwestern edge of the site may not meet buffer requirements, but an adjoining parcel is eligible for OP development. The zoning ordinance does not provide for monument signs, so the letters have to be taken down and the wall left up.

Tim Freeman, Surveyor with FFE, indicated these lots sizes match or exceeds neighboring properties and only a few houses are close. Their plan would have the existing berm cut in with houses and planted above with additional buffering and screening. Freeman said the intent of the ordinance is met with 100 feet of buffer, and that they worked hard to keep each lot not having a neighbor across or behind them.

The Planner pointed out that the Planning Commission's recommendation deleted the staff condition #1 requiring the developer to install a full 200 foot OP buffer between the house pads of the westerly 3 lots and the west project property line. By implication, a 100 foot buffer with appropriate landscaping would be the expectation for the Development Stage Plan, but a 4/5 City Council waiver will be necessary to adopt that design strategy.

M/SP Conlin/Johnson - to waive the 200 foot buffer requirement and require the 100 foot buffering setback standards to the west, south and east based on the findings of the size of lots, adjoins the majority of the Regional Park, trees are planted on the top and the elevation difference. (Motion passed 4-0).

M/S/P Johnson/Conlin - to adopt Resolution No. 2005-038, as amended, A Resolution Approving the OP Concept Plan of Farms of Lake Elmo per the plans staff dated March 18, 2005, and subject to conditions #1-#3, of the Staff Report of March 18, 2005 and a 4th condition that the nameplate be removed from the rock wall at the entrance. (Motion passed 4-0).

C. Minor Subdivision: Olinger, 9057 Lake Jane Trail

The City Planner reported that the Planning Commission recommended approval of this application to divide an existing 16 acres parcel into parcels of 2.04 acres, .75 acres, and 13.3 acres. This application is responsive to the Comprehensive Plan amendment actions and a rezoning that was approved by the Council in 2004. A condition of the approval recommendation is that the .75 parcel be either combined with the parcel to the south (across Lake Jane Trail), or that a "No Build" covenant be placed on the title.

M/S/P Johnson/Johnston - to adopt Resolution No. 2005-037, A Resolution approving the Minor Subdivision for Daniel and Jean Olinger at 9057 Lake Jane Trail, per plans staff dated March 8, 2005, and subject to the conditions of the March 8, 2005 Staff Report. (Motion passed 4-0).

D. Section 520 Site Plan – 11051 Stillwater Blvd.

The City Planner reported the Planning Commission recommended approving this application to modify the site and make a building addition that nearly doubles the size of this existing 2,057 square foot structure. Since the additions will not double the size of the structure, the GB Architectural Standards do not apply. The two issues that form conditions to approval are proper placement of the pylon sign and the City Engineer's recommendation that a septic site be identified on the site. The Building Official pointed out that this building must be sprinkled.

M/S/P Smith/Conlin - to adopt Resolution No. 2005-039, A Resolution approving a Section 520 Site Plan for site modifications and a 2,046 square foot addition to 11051 Stillwater Blvd. per plans Staff dated March 9, 2005, and subject to the conditions of the Staff Report. (Motion passed 4-0).

E. Zoning Ordinance Text Amendment-Home Occupation in Rural Residential Zoning

The City Planner reported the Planning Commission conducted a Public Hearing and adopted a recommendation to approve an amendment to the text of the RR zoning district to permit Home Occupation as an Accessory Use. The Commission considered the reports of the City Attorney and City Planner on the matter and concluded that the amendment amounts to a code housekeeping item.



Public Works Department

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

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

February 27, 2009

Kelli Matzek, Planner
City of Lake Elmo
3800 Laverne Avenue North
Lake Elmo, MN 55042

Ms. Matzek,

Washington County has reviewed the development application submitted by Vladmir and Silvia Hucec for a variance request for the construction of a spa, in-ground swimming pool, pergola and outdoor fire place structure. The property is located at 2931 Jonquil Trail North in Lake Elmo adjacent to the Lake Elmo Park Reserve. The proposal raises a number of concerns regarding the intensity of the proposed uses and the potential visual impact of the pergola and outdoor fireplace structure as viewed from the Lake Elmo Park Reserve boundary.

A Master Plan for the park reserve was adopted by the County Board in May, 2006. The Master Plan process included several opportunities for public involvement and input. In addition, the Plan was developed with assistance from a Technical Advisory Committee, which included local officials, residents, and professional staff. One result of the planning process involved retaining the 'park reserve' status of the park. The 'park reserve' status requires that no more than 20% of the entire park can be developed. The remaining 80% is to remain undeveloped and natural. The park area directly adjacent to 2931 Jonquil Trail North is within the 80% undeveloped and natural area of the park reserve and the site contains a restored native tall grass prairie. This environment provides for very natural and scenic experiences for park visitors.

In review of the site plan, there may be opportunities to place the pergola and outdoor fireplace structure within the required setbacks to minimize the visual impact. Additional screening with fencing, berms and coniferous trees may also lessen the visual impact of the pool facility from the park.

Thank you for your request to comment on this variance request. We look forward to working with the City of Lake Elmo as we implement our park plan.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter A. Mott".

Peter A. Mott, Park Manager
Washington County Parks

Kelli Matzek

From: Sarah Strommen [sstrommen@mnland.org]
Sent: Tuesday, March 03, 2009 3:30 PM
To: Kelli Matzek
Subject: Farms of Lake Elmo variance request

Dear Kelli:

Thank for you sending the Land Use Review packet regarding a request for a variance at 2931 Jonquil Trail North in the Farms of Lake Elmo development. I have reviewed the packet and do not see that any activity is proposed to occur within the Outlot A, which is covered by a conservation easement held by the Minnesota Land Trust. Therefore, the Land Trust has no specific comments on or concerns with the variance being requested.

However, we would like to take this opportunity to remind the City and the applicant that the easement area must not be used for material storage, vehicle travel, or other activities that would be in violation of the conservation easement during the construction process. If there are any questions related to the conservation easement, I would be happy to address them.

Thanks again for contacting me. The Land Trust very much appreciates the up-front communication and cooperative relationship.

Sincerely,

Sarah Strommen

Sarah Strommen

Conservation Director, Central Region

Minnesota Land Trust

2356 University Ave. W.

Suite 240

St. Paul, MN 55114

Phone: 651-647-9590

Fax: 651-647-9769

www.mnland.org <<http://www.mnland.org>>

City Council
Date: March 17, 2009
REGULAR
Item: 7
Motion

ITEM: 2009 Street Improvements – Resolution Accepting the Report and Calling for a Public Improvement Hearing

SUBMITTED BY: Jack Griffin, City Engineer

REVIEWED BY: Craig Dawson, Interim City Administrator
Ryan Stempksi, Assistant City Engineer

SUMMARY AND ACTION REQUESTED: The City Council is being asked to receive the Feasibility Report for the 2009 Street Improvements and pass a Resolution Accepting the Report and Calling for a Public Improvement Hearing to be held on April 7, 2009.

TKDA has completed the Feasibility Report for the 2009 Street Improvements including the residential streets in the Myron Ellman, Eden Park, Eden Park 2nd, and The Forest subdivisions. TKDA will present the findings of the Feasibility Report to the City Council. The Report findings will be presented at a neighborhood meeting prior to the Improvement Hearing.

BACKGROUND:

On February 17, 2009 the City Council adopted the 2009-2013 Street CIP and passed a motion directing TKDA to complete the 2009 Street Improvement Feasibility Report. On March 3, 2009 the City Council received information on the financing options for the Street CIP and provided direction to assess 30% of the total project costs for the 2009 Street Improvement projects.

RECOMMENDATION:

Staff recommends that the City Council accept the recommendations for the 2009 Street Improvements Feasibility Report and call for the Public Improvement Hearing.

SUGGESTED MOTION FOR CONSIDERATION

Move to adopt Resolution No. 2009-012 Accepting the Feasibility Report for the 2009 Street Improvements and Calling for a Public Improvement Hearing to be held on April 7, 2009.

ATTACHMENTS:

1. Resolution No. 09-012
2. Notice of Improvement Hearing
3. Proposed Project Schedule
4. 2009 Street Improvements Feasibility Report dated March, 2009 – submitted under separate cover.

ORDER OF BUSINESS:

- Introduction

Craig Dawson, Interim City Administrator

- Report by staff or other presenter
- Questions from city council members to the presenter
- Questions/comments from the public to the city council
(a maximum of three minutes per question/statement)
- Action on motion

Jack Griffin, City Engineer

Mayor and council members

Mayor facilitates

City Council

CITY OF LAKE ELMO
NOTICE OF HEARING
2009 STREET IMPROVEMENTS

Notice is hereby given that the City Council of Lake Elmo will meet in the council chambers of the city hall at or approximately after 7:00 P.M. on Tuesday, April 7, 2009, to consider the making of the following improvements, pursuant to Minnesota Statutes, Sections 429.011 to 429.111;

The improvement of the city streets within the Myron Ellman, Eden Park, Eden Park 2nd Addition, and The Forest subdivisions, including Legion Avenue North, Legion Lane North, Legion Lane Court North, Legion Lane Circle North, Lisbon Avenue North, 21st Street North, and 3rd Street Place North. The improvements will consist of reclaiming the existing bituminous surface and providing a new bituminous surface in the current location and grade.

The area proposed to be assessed for these improvements include the abutting properties along the above referenced streets. The estimated cost of the street improvements is \$588,000. A reasonable estimate of the impact of the assessment to each property will be available at the hearing. Such persons as desire to be heard with reference to the proposed improvements will be heard at this meeting.

DATED: March 18, 2009

BY ORDER OF THE LAKE ELMO CITY COUNCIL

Dean Johnston, Mayor

(Published in the Oakdale-Lake Elmo Review on March 25, 2009 and April 1, 2009)

**CITY OF LAKE ELMO
2009 STREET IMPROVEMENTS
TKDA PROJECT NO. 14353.000
PROPOSED PROJECT SCHEDULE**

February 17, 2009	Council orders TKDA to prepare a Feasibility Report for project area.
March 17, 2009	Presentation of Feasibility Reports for project area. Council passes resolution receiving Report and calling for Hearing on Improvements to be held on April 7.
March, 2009	Resident workshop meetings held to review preliminary Report findings.
April 7, 2009	Public Improvement Hearing for project area. Council passes resolution ordering Improvement and preparation of Plans.
June 2, 2009	Presentation of Plans and Specifications to the City Council for all project areas. Council approves Plans and Specifications and orders Advertisement for Bids.
June 5, 2009	Placement of Advertisement for Bids – Oakdale - Lake Elmo Review. Publication date of June 10 and June 17.
June 8, 2009	Placement of Advertisement for Bids - Construction Bulletin. Publication date of June 16 and June 23.
July 6, 2009	Receive Contractor bids/review and award recommendation. Prepare preliminary assessment roll.
July 7, 2009	City Council accepts bids and awards Contract.
July 10, 2009	Process and send out Contract Documents.
July 27, 2009	Receipt of Contractor's Bonds/Legal Review and Issue Notice to Proceed.
July 30, 2009	Conduct Pre-construction Meeting.
August 3, 2009	Contractor begins work.
June, 2010	Final Completion
Sept./Oct., 2010	Final assessment hearing.

City Council

Date:

March 17, 2009

REGULAR

Motion

#8

ITEM: Lanes DeMontreville Country Club Addition – Resolution Declaring Adequacy of Petition and Ordering the Preparation of Feasibility Report for Sanitary Sewer and Water Improvements

SUBMITTED BY: Jack Griffin, City Engineer
Craig W. Dawson, Interim City Administrator

REVIEWED BY: Ryan Stempski, Assistant City Engineer

SUMMARY AND ACTION REQUESTED: The City has received a petition for sewer and water improvements to the Lanes DeMontreville Country Club Addition. The Council is being asked to adopt a Resolution Declaring Adequacy of Petition and Ordering the Preparation of Feasibility Report for Sanitary Sewer and Water Improvements to this area.

BACKGROUND: In November 2008, staff received a petition from owners of more than 70% in frontage of the real property located in the Lanes DeMontreville Country Club Addition, and they are requesting the City of Lake Elmo to develop a sewer and water improvement plan for the area together with an estimate of the cost to implement the plan. As stated in statute, with a petition having more than "35% in frontage of the real property abutting the streets named in the petition", the project may be ordered by a 3/5ths vote of the Council.

The petition contains certain statements that may suggest that the petitioners have signed the petition without fully understanding the public improvement process. The petition instructs that the project "would not proceed without the approval of the required number of property owners". In the statutory process for proceeding with the project, the Council would be holding a public hearing if the project moved that far into the process, and the Council would be listening to the comments made by the property owners; thus, the process does not call for a vote of the property owners.

The properties in question are located outside of the planned municipal service boundary for sanitary sewer services per the Comprehensive Plan. In addition, there is no current plan by the City to extend municipal water to this area. The petition area is about 1,500 feet from the Oakdale City limits, and about 3/4 of a mile from the nearest Oakdale sewer connection point.

Comprehensive Plan Issues: As stated above, the area of the petition is one where the City's Comprehensive Plan does not anticipate that public sewer service will be provided. However, the 2005 Memorandum of Understanding with the Metropolitan Council anticipates that sewer use may be extended to existing neighborhoods, if and when there are failing septic systems that need to be mitigated to protect the environment. The City has not yet articulated or adopted a policy on this scenario. An amendment to the Comprehensive Plan, which will likely be needed, would require a 2/3rds vote of the Council.

Policy Consideration regarding Feasibility Report: In following the "429 process" (i.e., the one in Chapter 429 of Minnesota Statutes, relating to public improvements and the possibility of special assessments), an improvement project may not proceed without the preparation of a feasibility report. The cost for the feasibility report may be assessed if the Council orders the improvement. If the improvement is not ordered, then the City (in this case, its sewer and water funds,) will bear the cost of the feasibility study. As recommended below, a very general (or "high-level") feasibility study could be undertaken to provide a wide range of probable cost, and become the basis for a more refined feasibility study if the Council so desired. This very general, and much less expensive, initial Report may satisfy the statutory requirement.

RECOMMENDATION: Staff recommends that the City Council declare the petition adequate and order an initial Report by the City Engineer to develop a preliminary project cost estimate to determine an order of magnitude of the proposed assessments to the benefitting properties for sanitary sewer only. This order of magnitude study would be a quick cost estimate using aerial mapping and scaled drawings without in depth investigation of the properties, utilities, rights-of-way, topography, or identification of issues impacting the feasibility of a potential project. The high-level study would assume a sewer connection to the City of Oakdale and would assume a low-pressure gravity sewer system with individual grinder pumping stations at each property. The City Engineer would complete this study for an amount not to exceed \$2,000.

Staff recommends that a study not include water at this time, as a hook-up to the Oakdale system appears difficult for Oakdale to accommodate, and the City's system is too far away to be feasible at this time.

By authorizing this initial study, the Council will receive a Report by the City Engineer estimating the potential assessment of a project of this scope. This estimate may then be used to determine if the project is worth further investigation. It is recommended that the initial study include only sanitary sewer service. Upon receipt of the initial study information, should the Council wish to proceed further with this project, a detailed feasibility study meeting Chapter 429 requirements could then be authorized for sanitary sewer and, if desired, water improvements.

If the Council declares the petition adequate and orders the feasibility report, the resolution should be published per Minn. Stat. Section 429.036. Any person aggrieved by the determination may post a \$250 bond and appeal within 30 days after the adoption and publication of the resolution.

SUGGESTED MOTION FOR CONSIDERATION

Move to adopt the Resolution Declaring Adequacy of Petition and Ordering the Preparation of preliminary Feasibility Report for Sanitary Sewer to the properties of the Lanes Demontreville Country Club Addition. The initial study would be completed in an amount not to exceed \$2,000.

ATTACHMENTS:

1. Proposed Resolution
2. Lanes Demontreville Country Club Addition – Sewer and Water Improvements Petition

ORDER OF BUSINESS:

- | | |
|---|--|
| • Introduction | Craig Dawson, Interim City Administrator |
| • Report by staff or other presenter | Jack Griffin, City Engineer |
| • Questions from city council members to the presenter | Mayor and council members |
| • Questions/comments from the public to the City Council
(a maximum of three minutes per question/statement) | Mayor facilitates |
| • Action on motion | City Council |

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

RESOLUTION NO. 2009-011

**A RESOLUTION DECLARING ADEQUACY OF PETITION
AND ORDERING PREPARATION OF FEASIBILITY REPORT**

WHEREAS, the City has received a Petition for Local Improvements to complete a feasibility report to provide municipal sewer and water service for the properties in the Lanes DeMontreville Country Club Addition; and

WHEREAS, the City follows the provisions of Chapter 429 Minnesota Statutes relating to public improvements,

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Lake Elmo, that

1. A certain petition requesting sanitary sewer and water improvements for the properties in the Lanes DeMontreville Country Club Addition, submitted to the City on November 3, 2008, is hereby declared to be signed by the required percentage of owners of property affected thereby. This declaration is made in conformity to Minn. Stat. Section 429.035.
2. The petition is hereby referred to the City Engineer and that person is instructed to report to the Council with all convenient speed advising the Council in a preliminary way as to whether the proposed improvement for sanitary sewer service is cost-effective and as to whether it should best be made as proposed or in connection with some other improvement.
3. The preliminary cost estimate will be developed for sanitary sewer service for an amount not to exceed \$2,000. Should the project appear to be cost-effective the Council may authorize further Feasibility Studies to pursue the necessity and feasibility of sanitary sewer and/or water improvements as initially requested by petition.

ADOPTED by the City Council of the City of Lake Elmo this 17th day of March, 2009

Dean A. Johnston
Mayor

ATTEST:

Craig W. Dawson
Interim City Administrator

Sewer and Water Improvement Petition

for

Lanes Demontreville Country Club Addition, Washington County, Minnesota

To the City Council of Lake Elmo, Minnesota:

We, the undersigned, owners of property within Lanes Demontreville Country Club Addition abutting on 50th Street, Hill Trail, Hill Trail Court, and Argyle-Bennett Street hereby request the City of Lake Elmo to develop a sewer and water improvement plan for our area and an estimate of the cost/property to implement such plan.

Our signatures below are not to be construed as an agreement to proceed with any such sewer and water project. It is expressly understood that upon completion of the improvement plan and cost estimates that the City will hold public hearings on this matter and that implementation of the project will not proceed until the required number of property owners approve.

Name	Address	Phone (H/W)	Date/E-Mail
Print: <u>ROGER JOHNSON</u>	<u>8048 HILL TRAIL</u>	H <u>651-777-7766</u>	Sept. <u>19</u> , 2008
Sign: <u>[Signature]</u>		W <u>651-777-7766</u>	e-mail <u>rocan1@comcast.net</u>
Print: <u>FATKE SUCRAH</u>	<u>8164 Hill Trail</u>	H <u>651-777-9582</u>	Sept. <u>23</u> , 2008
Sign: <u>[Signature]</u>		W <u>651-259-9081</u>	e-mail <u>FBLOUP@HOTMAIL.COM</u>
Print: <u>George Taylor</u>	<u>7945 Hill Trail</u>	H <u>651-770-6935</u>	Sept. <u>22</u> , 2008
Sign: <u>[Signature]</u>		W <u>651-771-3145</u>	e-mail <u>GTBT@NetZero.com</u>
Print: <u>Deb Tierney</u>	<u>7978 Hill Trail</u>	H <u>651-770-2910</u>	Sept. <u>24</u> , 2008
Sign: <u>[Signature]</u>		W <u>651-730-2740</u>	e-mail <u>demontlake@aol.com</u>
Print: <u>Phil Eason</u>	<u>7934 Hill Trail N.</u>	H <u>651-439-3993</u>	Sept. <u>24</u> , 2008
Sign: <u>[Signature]</u>		W <u>612-750-2221</u>	e-mail <u>lason6@comcast.net</u>
Print: <u>Jan Kiefner</u>	<u>8001 50th St. N.</u>	H <u>651-770-1177</u>	Sept. <u>24</u> , 2008
Sign: <u>[Signature]</u>		W _____	e-mail <u>jankiefner@comcast.net</u>
Print: <u>ROGER KOSTELNIK</u>	<u>8098 Hill Trail</u>	H <u>651-777-8111</u>	Sept. <u>24</u> , 2008
Sign: <u>[Signature]</u>		W _____	e-mail _____

Name	Address	Phone (H/W)	Date/E-Mail
Print: <u>JAMES FAZZONE</u> 8148 Hill Tr.	H 651-779-7457	Sept. 24, 2008	
Sign: <u>[Signature]</u> Lake Elmo	W _____	e-mail <u>jfazzone@krisssproducts.com</u>	
Print: <u>Jamie Standt</u> 8012 Hill Tr.	H 651-770-5337	Sept. 24, 2008	
Sign: <u>[Signature]</u> Lake Elmo	W 612-986-8162	e-mail <u>jstandt@comcast.net</u>	
Print: <u>Louis LeMire</u> 8084 Hill Tr.	H 651-2454657	Sept. 26, 2008	
Sign: <u>[Signature]</u>	W _____	e-mail _____	
Print: <u>NEAL FILLA</u> 8033 50th St. N.	H 651-653-7329	Sept. 26, 2008	
Sign: <u>[Signature]</u> LAKE ELMO	W _____	e-mail <u>nifilla@hotmail.com</u>	
Print: <u>Bruce Weisbrod</u> 8111 Hill Tr. N.	H 651-770-2084	Sept. 26, 2008	
Sign: <u>[Signature]</u> Lake Elmo	W _____	e-mail <u>bweisbrod@yahoo.com</u>	
Print: <u>DAVID W. BROWN</u> 7990 50th St. N.	H 651-770-0648	Sept. 30, 2008	
Sign: <u>[Signature]</u> LAKE ELMO	W NA	e-mail <u>DBROWNLEM@MSU.EDU</u>	
Print: <u>Diane Lemire</u> 8051 50th St. N.	H 651-770-3325	Sept. 30, 2008	
Sign: <u>[Signature]</u>	W _____	e-mail <u>dlemire55@hotmail.com</u>	
Print: <u>G. Rick Larson</u> 8054 50th St. N.	H 612-366-3419	Sept. 30, 2008	
Sign: <u>[Signature]</u> Lake Elmo	W _____	e-mail _____	
Print: <u>CLAYTON MICHAELS</u> 8066 Hill Tr.	H 651-770-5325	Sept. 30, 2008	
Sign: <u>[Signature]</u> LAKE ELMO	W _____	e-mail _____	
Print: <u>DANIEL LINDSTROM</u> 7959 Hill Tr. G	H 651-770-9207	Sept. 30, 2008	
Sign: <u>[Signature]</u> LAKE ELMO	W _____	e-mail _____	
Print: <u>James R. Normann</u> 7966 Hill Tr. G	H 651-770-0798	Sept. 30, 2008	
Sign: <u>[Signature]</u>	W _____	e-mail _____	

Name	Address	Phone (H/W)	Date/E-Mail
Print: <u>J Peter Zetterberg</u>	<u>8018 Hill Trail N</u>	H <u>651-777-2414</u>	Oct. <u>5</u> , 2008
Sign: <u>J Peter Zetterberg</u>	<u>Lake Elmo</u>	W <u>651-492-4886</u>	e-mail <u>j-zett@umn.edu</u>
Print: <u>Charles R. Lee</u>	<u>7582 Hill Trail N</u>	H <u>651-777-6290</u>	Oct. <u>5</u> , 2008
Sign: <u>Charles R. Lee</u>	<u>Lake Elmo, MN</u>	W _____	e-mail <u>charlee@401.com</u>
Print: <u>Troy D. West</u>	<u>7972 Hill Trail N</u>	H <u>651-261-2056</u>	Oct. <u>5</u> , 2008
Sign: <u>Troy D. West</u>	<u>Lake Elmo, MN</u>	W _____	e-mail <u>troydwest@comcast.net</u>
Print: <u>Dan Burgess</u>	<u>8085 Hill Tr</u>	H <u>651 283 4654</u>	Oct. <u>5</u> , 2008
Sign: <u>Dan Burgess</u>	<u>Lake Elmo</u>	W _____	e-mail _____
Print: <u>Peter Pavlek</u>	<u>8130 Hill Trail</u>	H <u>612 221 1425</u>	Oct. <u>5</u> , 2008
Sign: <u>Peter Pavlek</u>	_____	W _____	e-mail <u>petridish34@aol.com</u>
Print: <u>STEVE BUTLER</u>	<u>8180 Hill TR N.</u>	H <u>651-770-8055</u>	Oct. <u>5</u> , 2008
Sign: <u>Steve Butler</u>	_____	W _____	e-mail _____
Print: <u>Tom Linnell</u>	<u>8056 Hill Tr N</u>	H <u>651-748-8022</u>	Oct. <u>11</u> , 2008
Sign: <u>Tom Linnell</u>	_____	W _____	e-mail _____
Print: <u>TOM FROST</u>	<u>8151 HILL TRAIL N</u>	H <u>651-777-6199</u>	Oct. <u>12</u> , 2008
Sign: <u>Tom Frost</u>	_____	W _____	e-mail _____
Print: <u>CARL ABRAHAMSON</u>	<u>8061 HILL TRAIL N.</u>	H <u>651-777-7688</u>	Oct. <u>14</u> , 2008
Sign: <u>Carl W. Abrahamson</u>	_____	W _____	e-mail _____
Print: <u>GREG LOHMEYER</u>	<u>8199 Hill Tr. N</u>	H <u>651-777-7565</u>	Oct. <u>14</u> , 2008
Sign: <u>Greg Lohmeyer</u>	_____	W _____	e-mail _____
Print: <u>Josh Granlund</u>	<u>8195 Hill trl.</u>	H <u>651-735-0880</u>	Oct. <u>14</u> , 2008
Sign: <u>Josh Granlund</u>	_____	W _____	e-mail _____

jgranlund.nws.k12.mn.
05.

Name	Address	Phone (H/W)	Date/E-Mail
Print: <u>Larry + Carol Paul</u>	<u>8186 Hill Tr. N</u>	<u>H 651-779-8897</u>	<u>Oct. 16</u> , 2008
Sign: <u>Carol A Paul</u>	<u>Lake Elmo, MN</u> <u>56042</u>	W _____	e-mail <u>Swanscar@comcast.net</u>
Print: <u>Christopher Smith</u>	<u>8036 50th St N</u>	<u>H 651-206-9953</u>	<u>Oct. 18</u> , 2008
Sign: <u>Christopher Smith</u>	_____	W _____	e-mail <u>cs9182@comcast.net</u>
Print: <u>Mark Deziel</u>	<u>Hill Trail N</u>	<u>H 651-748-2835</u>	<u>Oct. 21</u> , 2008
Sign: <u>Mark Deziel</u>	_____	W <u>651-631-0571</u>	e-mail <u>mark@deziels tax service.com</u>
Print: <u>SUSAN BARKER</u>	<u>8034-8038</u>	<u>H 651-848-0646</u>	<u>Oct. 22</u> , 2008
Sign: <u>Susan Barker</u>	<u>HILL TRAIL</u>	W _____	e-mail _____
Print: <u>Diane Esch</u>	<u>8032 Hill Trail</u>	<u>H 651-771-1013</u>	<u>Oct. 22</u> , 2008
Sign: <u>Diane Esch</u>	_____	W <u>Diane Esch@smail.com</u>	e-mail _____
Print: <u>KEVIN HAIRE</u>	<u>8160 HILL TRAIL</u>	<u>H 612-369-3538</u>	<u>Oct. _____</u> , 2008
Sign: <u>Kevin Haire</u>	_____	W _____	e-mail <u>KHAIRE@INDUSTRIAL LUMBER.NET</u>
Print: <u>Michael Severin</u>	<u>8012 50th St N</u>	<u>H 651-770-8319</u>	<u>Oct. 27</u> , 2008
Sign: <u>Michael Severin</u>	_____	<u>W 651-779-8612</u>	e-mail _____
Print: <u>NEIL MILLER</u>	<u>8012 50th St N</u>	<u>H 651-770-8319</u>	<u>Oct. 27</u> , 2008
Sign: <u>Neil Miller</u>	_____	W _____	e-mail <u>neilmiller1@msn.com</u>
Print: <u>Shenandoah Jason Tachy</u>	<u>8009 Hill Trail N</u>	<u>H 651-983-7087</u>	<u>Oct. 31</u> , 2008
Sign: <u>Jason Tachy</u>	_____	W _____	e-mail <u>MJSTachy@yahoo.com</u>

Examined, checked, and found to be in proper form and to be signed by the required number of owners of property affected by the making of the improvement petitioned for.

City Clerk

City Council
Date: 3/17/09
Staff Update
Item: 9.

ITEM: Update concerning the hiring of consultant to assist with the wireless communications tower ordinance amendment project

SUBMITTED BY: Kyle Klatt, Planning Director *KK*

REVIEWED BY: Craig Dawson, Interim City Administrator

SUMMARY AND ACTION REQUESTED:

The City Council has previously asked to be kept up-to-date concerning the wireless communications tower ordinance update project and specifically the progress made towards hiring a consultant to assist the City with this project. Staff has taken a little more time than proposed under the work schedule to formally seek out outside expertise, but during this additional time has been successful at making contact with several potential firms to discuss Lake Elmo's current situation. These conversations have been very informative for staff and will ultimately help with the selection process by identifying those firms that are best suited to help the City draft a sound ordinance.

ADDITIONAL INFORMATION:

Staff has attached a list of the consulting firms that have been identified, which includes preliminary comments regarding each firm based on the initial conversations that have been conducted. Also attached is a copy of the request for services that has been distributed to the identified consultants. Please note the response date of March 31, 2009 which would allow the Council to make a final selection in time for the April 7th Council meeting.

Based on the research done to date, there are four firms on this list that clearly provide the range of services and expertise being sought by the City. The remaining consultants focus much more specifically on the installation, planning, and maintenance of wireless services facilities, and may not have as much experience dealing with the legal and local government issues associated with wireless telecommunication ordinances.

The Planning Commission will be discussing the wireless communications ordinance at its next regular meeting on March 23rd, and staff is currently planning for an open house either late in March or early April to solicit community feedback concerning this ordinance.

RECOMMENDATION:

No action is required at this time. Staff will be seeking Council authorization to work with a consulting firm at the April 7, 2009 meeting.

ATTACHMENTS:

1. Listing of Wireless Communications Consultants
2. Request for Services

ORDER OF BUSINESS:

- Introduction/Report..... Kyle Klatt, Planning Director
- Questions from the CouncilMayor & Council Members

Potential Wireless Communication Consultants List
Lake Elmo Planning Department: 2/24/09; Updated 3/12/09

Company	Contact	Notes
Kramer Telecom Law Firm 2001 S. Barrington Avenue Suite 306 Los Angeles, CA 90025	Jonathon Kramer Attorney at Law 310-405-7333 Kramer@TelecomLawFirm.com	Provided written inquiry regarding Lake Elmo's request to hire an outside firm. Experience as outside wireless siting planner. Training and experience as FCC-licensed and APCO-certified RF engineer. Submitted background sheet with credentials and previous experience.
Short Elliott Hendrickson, Inc. 3535 Vadnais Center Drive St. Paul, MN 55110	Dan Zienty Senior Professional Specialist NACE #3186 651-490-2160 dzienty@sehinc.com	Sent information concerning recent assistance provided to the City of Eagan. Analysis of lease application process and master lease. Site surveys and structural assessments. GIS data management system. Forwarded information on stealth tower design.
Twin Cities Industrial Control 13005 16 th Avenue North Suite 500 Plymouth, MN 55441	Craig Ross Sales Manager 763-557-6648 craig@tcicinc.com	Has performed installs of SCADA and other wireless public works equipment in Lake Elmo. Installation of communications equipment and towers. RF Engineers – no experience with code development.
Steel in the Air 16001 Waterleaf Lane Fort Myers, FL 33908	Ken Schmidt Attorney at Law 877-428-6937 info@steelintheair.com	Has arrangement with CityScape – see information below. Works primarily with private entities, will typically refer public agencies to CityScape. Cell tower lease issues.
CityScape Consultants, Inc. 7040 W. Palmetto Park Rd. Suite 4, PMB 652 Boca Raton, FL 33433-3483	Richard Edwards Engineering Group Director 919-845-6700 rick@cityscapeconsultants.com	Experience in both planning and RF Engineering. Work only with government organizations, set up to help level the playing field for the

(cont.)		<p>public. Act as a "referee" in dealing with issues.</p> <p>Offer master planning services to identify potential tower sites.</p>
Center for Municipal Solutions 70 Cambridge Road Glenmount, NY 12077	<p>Richard Comi Co-Founder 518-439-3079 dick@telecomsol.com</p>	<p>Assisted City of Lake Elmo with review of T-mobile application.</p> <p>Assist local governments with regulation of wireless carriers.</p> <p>Services are provided at no-cost to community (requires contract to handle all of the communities wireless issues)</p> <p>Experience in cable and communications fields.</p>
Kreines & Kreines, Inc. 58 Paseo Mirasol Tiburon, CA 94920	<p>Ted Kreines 415-435-9214 mail@planwireless.com</p>	<p>Helps local governments regulate wireless and generate revenue from wireless.</p> <p>Experience with preparation and review of wireless communications ordinances.</p> <p>Specializes in helping communities find alternatives to towers.</p> <p>Places emphasis on submittal process and making sure Cities are receiving adequate information to make decisions.</p>
Owl Engineering & EMC Test Labs 5844 Hamline Avenue North Shoreview, MN. 55126	<p>Garrett G. Lysiak, P.E. 651-784-7445 Info@owleng.com</p>	<p>Communications Consulting Engineering Firm specializing in Radio Licensing, Intermodulation Studies, Radio Coverage Predictions, Radio Field Measurements, Antenna Tower Engineering, and EMC Test Facility.</p> <p>Installation, planning, and maintenance of systems.</p> <p>Limited experience in code development and administration.</p>
Smith and Fisher 2237 Tacketts Mille Drive Suite A Lake Ridge, VA 22192	<p>Kevin Fisher 703-494-2101 kevin@smithandfisher.com</p>	<p>Specialization in working with broadcast industry.</p> <p>RF and interference studies, signal propagation studies, population studies.</p> <p>Used by the City of Shoreview for larger projects.</p>

Evans Associates 210 S. Main Street Thiensville, WI 53092	Ralph E. Evans III Founding Partner 262-242-6000 Ralphiii@evansassoc.com	Design and implementation of wireless networks.
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Request for Services

Lake Elmo Wireless Communications Ordinance Update Project

Introduction and Background

The City of Lake Elmo is seeking technical assistance from qualified firms to help develop revisions to the City's existing wireless communications tower ordinance.

The City of Lake Elmo current has an estimated population of 8,182 people and is located approximately 10 miles east of St. Paul, Minnesota and within the greater Twin Cities Metropolitan area. The City prides itself at maintaining its rural character and is nationally known for its use of open space/conservation developments. The community is located within a major metropolitan area, however, and abuts a major interstate highway corridor on both its northern and southern boundaries.

The City's current wireless communications tower ordinance was written in 1998, shortly after the Federal Telecommunications Act of 1996 was passed. Although the code was drafted with the intent of minimizing adverse visual effects of wireless towers, it does require that new towers be designed for co-location, and in essence, encourages bigger and taller towers where allowed. The code also permits new towers on most agricultural and residentially-zoned over ten acres in size, and does not provide any specific direction concerning the City's preferred locations for new facilities.

Until this past year, the City of Lake Elmo has been fortunate to be able to locate new wireless communications antennas on existing water towers in the community. However, last summer, the City received an application from a telecommunications company to build on a site in very close proximity to one of the City's prime natural parks and lakes. The City Council ultimately denied the permit for this request, and adopted a moratorium on the construction of any new towers until the City completed a review and revisions to the existing wireless telecommunications ordinance.

Finding a suitable balance between the provision of wireless services and the City's stated desire to preserve its rural character will be a challenge. The City is different from many of its neighbors due to the lack of urban development that could otherwise help camouflage antenna sites. Although there are major highways that border the City to the north, south, and west, these corridors are already well-served by existing towers. The City is anticipating that future requests for wireless facilities will focus on serving residential areas between the two major road corridors and in areas that could potentially impact residential neighborhoods, parks, trails, open space, and other important view sheds.

Scope of Services

The primary responsibilities of a consultant will be to assist with the drafting of a new ordinance by providing technical expertise regarding the implementation of wireless communications networks on a community-wide scale and the appropriate tools that a City can use to mitigate and reduce the impact of new facilities. The preferred firm will have a strong knowledge of the wireless communications industry; will have had experience in the design and siting of cellular sites; and should have a thorough understanding of the legal requirements for drafting legislation at the local level.

The City Council has adopted a work plan (attached) for the project with an anticipated completion date of July or August, 2009.

Some of the specific services that are being requested by the City of Lake Elmo include the following:

- To identify the submittal requirements and technical details necessary for the City to review a request for a wireless communications facility.
- To establish the appropriate type and amount of information (to be provided by applicants) that is required to demonstrate the need for wireless services, especially with regards to the size, location, and number of towers or other facilities needed in Lake Elmo.
- To make sure that the City's regulations are supported by sound technical knowledge regarding the operation of wireless technology.
- To transform the City's current ordinance from its current emphasis on towers to promote alternatives for the provision of wireless facilities.
- To review and help draft language for a revision to the City's wireless telecommunications tower ordinance, and to help ensure that this ordinance will remain in compliance with the Federal Telecommunications Act of 1996.
- To help the City identify the preferred location for new towers and other facilities necessary to provide wireless services within the community and to evaluate the various options that are available to provide these services.
- To identify opportunities for alternative designs and to draft provisions in a new ordinance that will effectively minimize the adverse visual impacts of wireless communications facilities.
- To analyze potential existing co-location sites for their suitability at meeting the coverage and aesthetic needs of the community.
- To provide other recommendations that will help preserve and protect the communities rural character from the visual effects of wireless communications towers.

The City's Planning Department will be coordinating the update process and will be completing specific tasks related to the project, including the following tasks:

- Drafting ordinance changes based on input from public meetings and direction provided by the Lake Elmo City Council and Planning Commission.
- Reviewing model ordinances, including the work that has been done to date by the St. Croix Valley Wireless Communication Service Group.
- Coordinating the Planning Commission and City Council review of the proposed ordinance amendments.

Proposal Criteria

Responses to this request for services must include, at a minimum, the following information:

- 1) A transmittal letter that states the respondent's desire to perform the required services.
- 2) A general information statement that provides a brief description of the candidate firm or consulting team.
- 3) The specific experience of the consultants who would be assigned to the project. Please provide a list of such individuals and their experience with similar work.
- 4) The firm's relevant project experience as it relates to the drafting of wireless communication ordinance revisions or administration of such codes.
- 5) A list of references, including names of individuals and phone numbers or other contact information as appropriate.
- 6) Estimated fees and expenses. If based on an hourly rate, provide the hourly rates to be charged for each individual who would be assigned to this project. Also, provide an explanation if fees will be calculated on any other basis.
- 7) Estimated time schedule for the project, which can be expressed in total elapsed time and capacity to proceed immediately and without delay.
- 8) Expectation of information and resources to be provided by the City.

Evaluation of Qualifications:

Submittals will be reviewed and respondents will be evaluated according to the following evaluation criteria:

- Experience of key staff on similar projects and knowledge of the technical issues associated with the provision of wireless communications services.;
- Commitment of key staff for the project;
- Candidate firm or consulting team's ability to accomplish the proposed work in a timely manner;
- Project approach, including public participation, organization, and management.

Proposal Deadlines

Three (3) copies of your response must be received in the offices of the Lake Elmo Planning Department by 4:30 p.m. on Tuesday, March 21, 2009. Proposals should be mailed (email submissions will be accepted) or delivered to:


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

Inquiries

Please direct all inquiries concerning this request for qualifications to:

Kyle Klatt, Planning Director
City of Lake Elmo

City Council
Date: 3/17/09
Regular
Item: 10

ITEM: Authorize Distribution of Lake Elmo Village Area Final AUAR
REQUESTED BY: Planning Department
SUBMITTED BY: Kyle Klatt, Planning Director 
REVIEWED BY: Craig Dawson, Interim City Administrator
Ciara Schlichting, Bonestroo

SUMMARY AND ACTION REQUESTED:

The City Council is being asked to formally authorize distribution of the Lake Elmo Village Area Final AUAR for the required 10-day public comment period for a Final AUAR. The Council has previously conducted a workshop session to review the draft AUAR comments that have been submitted to the City during the 30-day comment period along with a draft response to these comments and proposed revisions to the AUAR document to address comments received. In addition to the revisions proposed the City's planning consultant, the Council directed staff to incorporate additional mitigation strategies that were discussed during the workshop session. These changes are incorporated as part of the attached documents.

Once the Lake Elmo Village Area Final AUAR is distributed and the 10-day comment period ends, the City Council can adopt the Final AUAR provided there are no objections filed by a state agency or the Metropolitan Council.

ADDITIONAL INFORMATION:

After reviewing the list of comments previously reviewed by the City Council, staff realized that a response letter had been submitted by the Metropolitan Airports Commission (MAC) that was not included in the previous documentation provided to the City Council. The full text of the MAC letter is now included with the other comments, and new responses to the issues raised in this letter have also been incorporated into the Lake Elmo Village Area Final AUAR.

Proposed revisions to the Lake Elmo Village Area Final AUAR to address comments received from the City Council and the public at the February 17, 2009 City Council workshop and a comment letter received from the Metropolitan Airports Commission (MAC) are provided in the attached memo from the City's planning consultant.

NEXT STEPS:

Once the Final AUAR document is adopted by the City, the Council may then begin the process of identifying a preferred development scenario to implement. As part of this process, the Council intends to study all or some of the development scenarios for financial feasibility. Amendments to the Comprehensive Plan will be necessary to move forward with any scenario that differs from the City's existing land use plan.

RECOMMENDATION

Staff recommends that the City Council authorize distribution of the Lake Elmo Village Area Final AUAR and distribute the document in accordance with the State of Minnesota's environmental rules for the 10-day public comment period.

ORDER OF BUSINESS:

- Introduction/Report Ciara Schlichting, Bonestroo
- Questions from the Council Mayor & Council Members
- 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. See AUAR Workshop Materials (the Council Packet only includes those itmes that have changed since the workshop).
2. Memo from Ciara Schlichting to Kyle Klatt regarding additional comments received and proposed revisions to the Final AUAR.
3. Comment Letter from Metropolitan Airports Commission
4. Appendix K: Response to Lake Elmo Village Area Draft AUAR Comments
5. Amended Pages from Lake Elmo Village Area AUAR

Memorandum



To: Kyle Klatt Project: Lake Elmo AUAR Date: 3/11/09

From: Ciara Schlichting Client: City of Lake Elmo

Re: Proposed Revisions to Final AUAR & Mitigation Plan File No: 38-06001

2335 Highway 36 W
St. Paul, MN 55113

Tel 651-636-4600
Fax 651-636-1311

www.bonestroo.com

The purpose of this memo is to transmit proposed revisions to the Lake Elmo Village Area Final Alternative Urban Areawide Review (AUAR) to address comments received from the City Council and the public at the February 17, 2009 City Council workshop and a comment letter received from the Metropolitan Airports Commission (MAC), dated December 22, 2008, that was discovered at City Hall by you on March 4, 2009.

City Council Workshop – February 17, 2009

The following new mitigation strategies are proposed to address comments received at the Council workshop regarding green development principles and the preferred character of Stillwater Blvd (TH 5):

- 11.14. Require the use of conservation development design and/or Low Impact Development (LID) principles and encourage neighborhood development and buildings to incorporate Leadership in Energy Efficiency and Design (LEED) principles.
- 21.11 Work to enhance the character of Stillwater Blvd. as a key community roadway.

Metropolitan Airports Commission Comment Letter (Dated 12/22/08)

MAC submitted a comment letter during the 30-day public comment period and the city is required to provide a response to their comments. Addressing MAC's comments warranted several revisions/clarifications to the Final AUAR that was previously transmitted to the City Council prior to the February 17, 2009 workshop. The following attachments to this memo are an addendum to the Final AUAR materials transmitted to the City Council in February and are outlined below:

- MAC Comment Letter (with comment response tracking system notations). The responses to MAC's comments are found in comment responses 8-3, 9-6, 9-7, 9-8, 9-9, 17-21, 18-2, 21-11, and 21-12
- Appendix K – Draft Response to Lake Elmo Village Area Draft AUAR Comments. Only the pages that contain responses to MAC's comments are provided
- Proposed Revisions to Final AUAR and Mitigation Plan. To address MAC's comments, revisions are proposed to the Executive Summary, Table 8-1, Item 9 – Land Use, Item 17- Water Quality: Surface Water Runoff, and the Mitigation Plan (Items 8, 9, 17, and 21). Only the pages that contain revisions to address MAC's comments are provided.



METROPOLITAN AIRPORTS COMMISSION

Minneapolis-Saint Paul International Airport
6040 - 28th Avenue South • Minneapolis, MN 55450-2799
Phone (612) 726-8100

December 22, 2008

Mr. Kyle Klatt
Planning Director
City of Lake Elmo
3800 Laverne Avenue North
Lake Elmo, MN 55042-9629

Re: Old Village Draft AUAR
Lake Elmo Airport

Dear Mr. Klatt:

The Metropolitan Airports Commission (MAC) has reviewed the Lake Elmo Village Area AUAR document dated November 13, 2008. We appreciate the opportunity to review the document, and offer the following comments.

References to an Airport Zoning Ordinance

96 The Executive Summary indicates that "All scenarios propose to locate single family residential uses within portions of the safety zones and noise contours/impact areas, which is typically considered an incompatible use. Any future development proposed to be located within the safety zones and noise contour/impact areas will be subject to the development restrictions within each safety zone (e.g. land use type, building height) and noise contours (e.g. land use type) established by state statute and the city. To minimize land use compatibility issues with the airport, the city will work with a Joint Airport Zoning Board (JAZB) to prepare an airport zoning ordinance prior to new development occurring within or near the safety zones and updated noise contours."

Portions of this text are repeated in some areas of the document, and slightly modified in others, including paragraph 7, paragraph 9, paragraph 24 and paragraph 29. Please ensure that all of the text within the AUAR is consistent with the Executive Summary with regard to the JAZB language.

9-7 To be compliant with regional planning, it is paramount that the AUAR acknowledge the state safety zone process and potential restrictions on land use and building heights. Residential development within noise sensitive areas of the airport is discouraged as well as within incompatible areas of state safety zones. Further there should be no development within the Runway 14-32 Runway Protection Zone (RPZ) that lies within the AUAR area. Greenbelt buffers should be used to the maximum extent possible to minimize impacts resulting from airport operations and noise.

Mr. Kyle Klatt
December 22, 2008
Page 2

9-6 The AUAR correctly states that a Joint Airport Zoning Board (JAZB) is responsible to determine the size of the safety zones as well as the extent of land use and height restrictions. On page ten ("x") of the Executive Summary is a comment regarding the representatives who will make up the JAZB. There are to be two representatives each from Lake Elmo, Baytown Township, West Lakeland Township, and Washington County. MAC will also have two representatives as well as a chairperson to be selected by all representatives. MAC also encourages the city to develop their own ordinances regarding enhanced structural performance standards for residential properties within the AUAR area to further reduce the potential for noise impacts.

Since the airport zoning process can take from 6 – 18 months depending on the issues and efforts of the JAZB, MAC is interested in commencing the process as soon as possible after the first of the year.

Paragraph 8. Permits and Approvals Required

8-3 It should be noted in this section of the AUAR and on Table 8-1 that approvals from the FAA may be required for certain construction related activities. Once completed, the airport zoning ordinance should identify parcels and document the allowable building heights for each. However, please note that review by the FAA is required for any construction that involves equipment or cranes in excess of the allowed heights, as well as for areas outside the safety zones in proximity to the airport (all of the AUAR area). The City should ensure that the FAA is properly notified via submittal of a Notice of Construction or Alteration (Form 7460-1A) and a "determination of no hazard" received before issuing permits for structures that require this type of review. The form can be found and submitted on line at www.faa.gov.

Paragraph 9. Land Use

9-8 On page 15 of the draft AUAR, it refers to the airport as the Lake Elmo Regional Airport. Please delete "Regional" from this title and any other airport references.

9-9 Under the Mitigation Summary on page 23, the last bullet states "Prohibit the establishment of waterfowl habitat within the airport safety zones (e.g. large stormwater ponds with mown grass edges). Stormwater management facilities located within the airport safety zones should utilize infiltration BMP's to manage storm water." MAC fully supports the use of infiltration basins in the vicinity of the airport, and encourages all ponding areas to be designed to be non-attractive to waterfowl. The FAA has developed guidelines for not only ponds, but other potential wildlife attracting sources that lie within the vicinity of airports. FAA Advisory Circular 150/5200-33B is attached to this letter for your convenience. Note, however, that the prohibition of waterfowl habitat should not just be limited to the safety zones. According to the circular, the entire AUAR area lies within the separation distance recommended by the FAA (5,000 feet for airports serving piston-powered aircraft). Please also see our comments in the next paragraph.

Paragraph 17. Water Quality – Surface Water Runoff

17-21
The AUAR, page 73, discusses some of the proposed mitigation summary efforts that may take place with the proposed development. Table 17-5 indicates pond surface footprints for the differing scenarios. This equates to approximately seven acres for one pond and 25 acres for a second pond. At these sizes, waterfowl will utilize the ponds if they contain open water surfaces. As noted in the comments above, MAC encourages the use of infiltration basins for storm water management, even for areas such as these that lie outside the proposed safety zones. In lieu of infiltration, MAC suggests that any ponds that must contain open water be designed with emergent vegetation to minimize use by waterfowl. As an alternative, the suggestion in the AUAR to design the ponds as a continuous surface water conveyance system along natural drainage routes would be an acceptable alternative, since long and narrow open water passages will help restrict the use by waterfowl.

Paragraph 18. Water Quality - Wastewater

18-2
As part of their review of the long term comprehensive plan update for the Lake Elmo Airport, the Metropolitan Council recommended MAC continue efforts with the City of Lake Elmo and Baytown Township to provide sanitary sewer and water services for the airport. While the proposed alignment for the new sanitary trunk forcemain is not adjacent to the airport, MAC requests that it be sized to handle the limited amount of flow that would come from the airport should it be connected in some manner to the Village system. A typical aircraft storage hangar would only have a toilet and a sink, with usage just a couple of time a week. While we have many aircraft storage hangars, we would certainly not expect all of them to connect should services become available. MAC can estimate the airport contribution in terms of flow and provide that to the city as part of the preliminary design work for the sanitary forcemain. Please keep MAC in the loop regarding this process.

Paragraph 21. Traffic

21-11
This section indicates that the intersection of Manning Avenue and 30th Street will benefit from traffic lights whether or not the Village development moves forward (Table 21-7 on page 105, and table 2 in the executive summary). If the City or Washington County proceed with plans for the installation of a signal at this intersection, the plans must be reviewed by MAC and the FAA prior to installation. The intersection lies in the approach to Runway 4, and the signals need to be designed to not be an obstruction to this approach surface. A Notice of Construction or Alteration form, as noted in our Paragraph 8 comment, must be submitted to the FAA, with a copy to MAC, for a determination to ensure no hazard is created.

21-12
Also note that the reference to exclusive eastbound and westbound turn lanes implies a need for additional road right-of-way. MAC needs to be fairly compensated for any right-of-way taking consistent with federal revenue diversion criteria. If the granting of right-of-way is necessary, and if feasible, the fair-market value for the property would have to be determined by appraisal.

Mr. Kyle Klatt
December 22, 2008
Page 4

Thank you for the opportunity to comment on the AUAR document. The Lake Elmo Airport is an important recreational and transportation asset to the City and the region. The MAC looks forward to working with the City through the airport zoning process to make future redevelopment as compatible as possible.

We look forward to meeting with the City staff and its consultants to discuss the concerns within our letter as well as provide the City with additional information to help you with the planned development of the Old Village area.

If you have any questions, please contact me at 612-725-8371 or via e-mail at bridget.rief@mspmac.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Bridget Rief", is written over the printed name.

Bridget Rief, P.E.
Assistant Director – Airside Development

Attachment

DRAFT Appendix K: Response to Lake Elmo Village Area Draft AUAR Comments

ITEM 8. PERMITS AND APPROVALS REQUIRED

- 8-1 Comment Summary:** If a Clean Water Act (CWA) Section 404 Individual Permit is required by the USACE for any development related activities, then an MPCA CWA Section 401 Water Quality Certification must also be obtained.

Agencies/Persons Commenting: Minnesota Pollution Control Agency

Response: Comment noted. The list of permits and approvals (Table 8-1) has been amended to reflect the potential need for the CWA Section 401 Water Quality Certification.

- 8-2 Comment Summary:** Lake St. Croix, a receiving water for runoff from the AUAR area, is included on the 2008 303(d) Total Maximum Daily Load (TMDL) list of impaired waters as being impaired for aquatic recreation due to eutrophic conditions. Under the CWA, this impaired status requires that a TMDL study and implementation plan for the lake be completed, and the MPCA is currently working on a plan for doing this. Once an implementation plan is in place, targeted for 2011, waste load allocations will be given out to permitted sources throughout the watershed, including the city of Lake Elmo. With this in mind, the city should take all possible measures during development to reduce or eliminate phosphorous and sediment loading to Lake St. Croix. Steps should also be taken to minimize loading to wetlands and other lakes to prevent them from being listed as impaired. It should also be noted that a Lake Pepin TMDL implementation plan is currently in the process of being formulated, which could include a load allocation for the city of Lake Elmo.

Agencies/Persons Commenting: Minnesota Pollution Control Agency

Response: The Lake St Croix TMDL is not scheduled to be completed until 2011 and the Lake Pepin TMDL completion date has not been scheduled. Once the TMDL Implementation is completed and approved for Lake St Croix and Lake Pepin, the City of Lake Elmo will have 18 months to update their Stormwater Pollution Prevention Plan (SWPPP) to incorporate the findings of the TMDL and the methods for meeting the associated waste load allocation. New development in the AUAR area will need to go through review and approval with the City in compliance with their SWPPP.

The List of Permits and Approvals has been updated to include the TMDL implementation plan requirements of the city as follows: "Future review and permitting pending US EPA approval of Lake St Croix and Lake Pepin TMDL Implementation Plans".

- 8-3 Comment Summary:** It should be noted in this section of the AUAR and on Table 8-1 that approvals from the FAA may be required for certain construction related activities. Once completed, the airport zoning ordinance should identify parcels and document the allowable building heights for each. However, please note that review by the FAA is required for any construction that involves equipment or cranes in excess of the allowed heights, as well as for areas outside the safety zones in proximity to the airport (all of the AUAR area). The City should ensure that the FAA is properly notified via submittal of a Notice of Construction or Alteration (Form 7460-1A) and a "determination of no hazard" received before issuing permits for structures that require this type of review. The form can be found and submitted on line at www.faa.gov.

Agencies/Persons Commenting: MAC

DRAFT Appendix K: Response to Lake Elmo Village Area Draft AUAR Comments

Response: The list of permits and approvals required has been amended to reflect the potential need for FAA permits.

ITEM 9. LAND USE

- 9-1 Comment Summary:** Keep low level buildings and rural aesthetics top of mind, with trees and store fronts capturing an era that is all but lost if not for memories. Ensure that current land owners and business' are dealt with fairly and equitably. Keep peoples opinions high on the list, where they make sense.

Agencies/Persons Commenting: Richard Mathus

Response: The Village Master Plan includes thirteen principles, which is intended to build on the existing Village's strengths. These principles were accepted by the City Council in April 2007. The thirteen principles summarized are: 1) provoke a sense of place, 2) balance the natural and built systems, 3) broaden the mix of local goods and services, 4) provide a variety of housing choices, 5) invest in quality public space, 6) preserve and enhance natural and cultural resources, 7) improve connectivity, 8) build partnerships, 9) foster public safety, 10) forward a vision that can be implemented, 11) become a great model, 12) lead by design, and 13) minimize the impact on existing residences and businesses. The complete text of the land use principles is located in Appendix C.

It has been the intent of the planning process and it remains critical that the city follow the Village Master Plan principles when it prepares the Comprehensive Plan update and creates its official controls through zoning, subdivision and other regulations. Examples include adopting building setbacks, screening, landscaping, buffers, heights limits, architectural controls and design.

- 9-2 Comment Summary:** The Screatons object to any extension of Zone 4 beyond the 60 DNL contour. If the City were to extend Zone 4 out to the 55 DNL contour, the development options on the Property should include what is allowed under existing MAC guidelines, including multifamily residential development, office and commercial uses, as well as educational, medical and other institutional uses. A mix of uses is most appropriate at the Property, as it is located at the junction of two (2) major City thoroughfares. Mixed-use development on the Property would be easily accessible to residents and visitors and would limit additional infrastructure needs.

Agencies/Persons Commenting: Screatons

Response: The city and affected local units of government will work with the Metropolitan Airports Commission (MAC) to prepare an airport zoning ordinance prior to new development occurring within or near the safety zones and updated noise contours. According to MAC, the airport ordinance will be prepared by a Joint Zoning Board comprised of two representatives each from Lake Elmo, Baytown Township, West Lakeland Township, Washington County, and MAC. The Joint Zoning Board will determine the development restrictions.

- 9-3 Comment Summary:** The AUAR notes the 2025 Long-Term Comprehensive Plan (LTCP) Update for the Lake Elmo Airport by identifying it as a reasonably foreseen future action. The AUAR needs to reflect that the Metropolitan Council, on October 22, 2008, approved the LTCP. The approved LTCP included the development alternative preferred by the Metropolitan Airports Commission as addressed in the AUAR.

DRAFT Appendix K: Response to Lake Elmo Village Area Draft AUAR Comments

Agencies/Persons Commenting: Met Council

Response: The Final AUAR has been updated to note that the Metropolitan Council, on October 22, 2008, approved the LTCP.

- 9-4 Comment Summary:** p.22, land use compatibility: No mention is made of the fact that lower total development units will mean lower population and hence lower impacts of all kinds: traffic, noise, congestion, impervious surface, etc. p. 143, land use: Clearly, the AUAR shows that the scenarios with lower total population increase have the lower impacts. This is especially true of impacts on existing residents. This is also especially true of the noise impacts (Item 24)

Agencies/Persons Commenting: Todd Williams

Response: Quantifiable impacts associated with the four development scenarios are described throughout the AUAR document (i.e., traffic, impervious surface, water use, etc.).

- 9-5 Comment Summary:** The draft AUAR identifies several properties within or near the AUAR study area with actual or potential soil and/or ground water contamination. State law requires that persons properly manage contaminated soil and water they uncover or disturb – even if they are not the party responsible for the contamination. Developers considering construction on or near contaminated properties should begin working early in their planning process with the MPCA's Petroleum Brownfields Program and/or the Voluntary Investigation and Cleanup Program to receive necessary technical assistance in managing (investigating, remediating, mitigating, etc.) contamination. For some properties, special construction might be needed to prevent the further spreading of the contamination and/or prevent petroleum vapors from entering buildings or utility corridors. Information regarding the Petroleum Brownfields Program can be found at: http://www.pca.state.mn.us/programs/vpic_p.html#factsheets. Information regarding the VIC Program can be found at: <http://www.pca.state.mn.us/cleanup/vic.html>.

Agencies/Persons Commenting: MPCA

Response: Comment noted. The information provided by the MPCA has been added to the Potential Environmental Hazards section of AUAR Item 9.

- 9-6 Comment Summary:** The Executive Summary indicates that “All scenarios propose to locate single-family residential uses within portions of the safety zones and noise contours/impact areas, which is typically considered an incompatible use. Any future development proposed to be located within the safety zones and noise contour/impact areas will be subject to the development restrictions within each safety zone (e.g. land use type, building height) and noise contours (e.g. land use type) established by state statute and the city. To minimize land use compatibility issues with the airport, the city will work with a Joint Airport Zoning Board (JAZB) to prepare an airport zoning ordinance prior to new development occurring within or near the safety zones and updated noise contours.”

Portions of this text are repeated in some areas of the document, and slightly modified in others. Please ensure that all of the text within the AUAR is consistent with the Executive Summary with regard to the JAZB language.

The AUAR correctly states that a Joint Airport Zoning Board (JAZB) is responsible to determine the size of the safety zones as well as the extent of land use and height restrictions. MAC will also have two representatives as well as a chairperson to be selected by all representatives. MAC

DRAFT Appendix K: Response to Lake Elmo Village Area Draft AUAR Comments

also encourages the city to develop their own ordinances regarding enhanced structural performance standards for residential properties within the AUAR area to further reduce the potential for noise impacts.

Agencies/Persons Commenting: MAC

Response: The language regarding the JAZB in AUAR Items 7, 9, 24, and 29 have been reviewed and updated, as necessary, to be consistent with the language in the Executive Summary. New Mitigation Strategy 9.6 requires the city to develop an ordinance regarding structural performance standards for residential properties to reduce the potential for noise impacts.

- 9-7 Comment Summary:** To be compliant with regional planning, it is paramount that the AUAR acknowledge the state safety zone process and potential restrictions on land use and building heights. Residential development within noise sensitive areas of the airport is discouraged as well as within incompatible areas of state safety zones. Further there should be no development within the Runway 14-32 Runway Protection Zone (RPZ) that lies within the AUAR area. Greenbelt buffers should be used to the maximum extent possible to minimize impacts resulting from airport operations and noise

Agencies/Persons Commenting: MAC

Response: Item 9 has been updated to include the runway safety zone and associated land use restriction information contained in the Lake Elmo Airport Long-Term Comprehensive Plan. The RPZ's and safety zones are shown on Figures 9-1, 9-2, and 27-1. Figures 9-3 and 9-4 that were included in the Draft AUAR were obtained from MAC and show the existing and proposed height restrictions.. New Mitigation Strategy 9.5 prohibits development within the Runway Protection Zone (RPZ).

- 9-8 Comment Summary:** On page 15 of the draft AUAR, it refers to the airport as the Lake Elmo Regional Airport. Please delete "Regional" from this title and any other airport references

Agencies/Persons Commenting: MAC

Response: The reference to Lake Elmo Regional Airport was changed to Lake Elmo Airport.

- 9-9 Comment Summary:** Under the Mitigation Summary on page 23, the last bullet states "Prohibit the establishment of waterfowl habitat within the airport safety zones (e.g. large stormwater ponds with mown grass edges). Stormwater management facilities located within the airport safety zones should utilize infiltration BMP's to manage storm water." MAC fully supports the use of infiltration basins in the vicinity of the airport, and encourages all ponding areas to be designed to be non-attractive to waterfowl. The FAA has developed guidelines for not only ponds, but other potential wildlife attracting sources that lie within the vicinity of airports. FAA Advisory Circular 150/5200-33B is attached to this letter for your convenience. Note, however, that the prohibition of waterfowl habitat should not just be limited to the safety zones. According to the circular, the entire AUAR area lies within the separation distance recommended by the FAA (5,000 feet for airports serving piston-powered aircraft).

Agencies/Persons Commenting: MAC

DRAFT Appendix K: Response to Lake Elmo Village Area Draft AUAR Comments

Response: Mitigation Strategy 9.7 was revised to address this comment and now states: *Prohibit the establishment of waterfowl habitat located within the airport safety zones and within 5,000 feet of the Lake Elmo Airport (e.g., large stormwater ponds with mown grass edges). Any ponds or created wetlands that contain open water should be designed with emergent vegetation to minimize use by waterfowl. Stormwater management facilities located within the airport safety zones should utilize infiltration BMPs to manage stormwater.* The discussion of mitigation strategies under Item 9 was revised to reference the FAA Advisory Circular 150/5200-33B and to commit the city to consulting with MAC prior to approving activities that could result in establishing wildlife habitat considered hazardous to airports.

ITEM 11. FISH, WILDLIFE, AND ECOLOGICALLY SENSITIVE RESOURCES

- 11-1 Comment Summary:** A more detailed evaluation/interpretation of the quality of the woodland area may prove useful when evaluating habitat impacts of proposed development(s). Recognition that the minimization of impacts to forests and other natural cover types will reduce overall stormwater impacts is encouraged.

Agencies/Persons Commenting: WCD

Response: Mitigation Strategy 11.13 – “Create a tree/woodland preservation policy” has been expanded to require the evaluation of tree/woodland quality. The discussion of the mitigation strategies has been expanded to note that ecological restoration and management can minimize stormwater impacts.

- 11-2 Comment Summary:** For natural areas that are protected, identification of management and funding strategies to facilitate mitigation strategies such as invasive species control is encouraged.

Agencies/Persons Commenting: WCD

Response: The discussion of such mitigation strategies includes the requirement for a management plan, stewardship funding, and ecological education programs. The phrase “funding source” has been added to the discussion of implementing such mitigation measures.

ITEM 12. PHYSICAL IMPACTS TO WATER RESOURCES

- 12-1 Comment Summary:** The WCD encourages the use of the VBWD’s wetland inventory with function and value assessment to assess and minimize potential wetland impacts.

Agencies/Persons Commenting: WCD

Response: VBWD is the Local Governmental Unit (LGU) that administers the Wetland Conservation Act (WCA) on behalf of the city. The city appreciates the assessment completed by VBWD and VBWD rules require the use of their classification system (VBWD Rule 4).

- 12-2 Comment Summary:** The AUAR should be revised to more clearly indicate where potential wetland impacts are expected. A figure or figures showing the expected impacts should be included in the AUAR. Potential hydrologic, habitat/biological diversity, quality and quantity wetland impacts should be noted.

DRAFT Appendix K: Response to Lake Elmo Village Area Draft AUAR Comments

- 17-21 Comment Summary:** The AUAR, page 73, discusses some of the proposed mitigation summary efforts that may take place with the proposed development. Table 17-5 indicates pond surface footprints for the differing scenarios. This equates to approximately seven acres for one pond and 25 acres for a second pond. At these sizes, waterfowl will utilize the ponds if they contain open water surfaces. As noted in the comments above, MAC encourages the use of infiltration basins for storm water management, even for areas such as these that lie outside the proposed safety zones. In lieu of infiltration, MAC suggests that any ponds that must contain open water be designed with emergent vegetation to minimize use by waterfowl. As an alternative, the suggestion in the AUAR to design the ponds as a continuous surface water conveyance system along natural drainage routes would be an acceptable alternative, since long and narrow open water passages will help restrict the use by waterfowl.

Agencies/Persons Commenting: MAC

Response: The follow text was added to Item 9 and Mitigation Strategy 9.7 and 17.3: Any ponds or created wetlands that contain open water should be designed with emergent vegetation to minimize use by waterfowl.

ITEM 18. WATER QUALITY – WASTEWATER

- 18-1 Comment Summary:** The discussion in the draft AUAR regarding wastewater appeared to adequately address the main issues, and flow estimates based on land use seem reasonable. However, it was unclear to us in our review of the document whether downstream sewer lines have adequate capacity for this development. In the final AUAR, please include a discussion of this for each development scenario. Include any necessary discussion of plans for expansion or addition of downstream capacity.

Agencies/Persons Commenting: MPCA

Response: The municipal sanitary sewer system downstream of the AUAR area is not yet constructed. From Section 18: *The city has been exploring the potential schematic layout of the major sanitary sewer facilities required to extend sewer service into the AUAR area. Current plans calls for a trunk sewer from the I-94 interceptor to 30th Street on the south end of the Village. The trunk sewer is proposed to follow Lake Elmo Avenue. It will be a forcemain sewer to 30th Street with gravity sewer serving properties within the AUAR area, see Figure 18-1. A major lift station would be located near 30th Street. The lift station is being designed to accommodate the projected initial low flow conditions and to allow for staged expansion based on the future growth.*

From Section 18: The planned expansion of the city sewer system is based on MCES providing additional capacity to serve the anticipated development by construction of a new interceptor in northeast Woodbury, called the Lake Elmo East Interceptor. This interceptor has been designed and is currently under construction. The Northeast Regional lift station number 77 (Northeast Regional LS-77) that the interceptor will connect to is currently in the early stages of design. The capacity of the Lake Elmo East Interceptor is 2.7 million gallons per day (MGD) design flow with a peaking factor of 2.7 results in a peak flow of 7.3 million gallons per day

The mitigation plan notes that the future sanitary sewer trunk system will need to be sized adequately to accommodate the flow from development in the AUAR area. The range of predicted flow is summarized in Item 18 of the AUAR

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- 18-2 Comment Summary:** As part of their review of the long term comprehensive plan update for the Lake Elmo Airport, the Metropolitan Council recommended MAC continue efforts with the City of Lake Elmo and Baytown Township to provide sanitary sewer and water services for the airport. While the proposed alignment for the new sanitary trunk forcemain is not adjacent to the airport, MAC requests that it be sized to handle the limited amount of flow that would come from the airport should it be connected in some manner to the Village system. A typical aircraft storage hangar would only have a toilet and a sink, with usage just a couple of times a week. While we have many aircraft storage hangars, we would certainly not expect all of them to connect should services become available. MAC can estimate the airport contribution in terms of flow and provide that to the city as part of the preliminary design work for the sanitary forcemain. Please keep MAC in the loop regarding this process.

Agencies/Persons Commenting: MAC

Response: The city will continue to work with MAC regarding future wastewater and water services. Please provide the city with MAC's estimate wastewater flows so the city can incorporate this information into its future infrastructure planning efforts.

ITEM 21. TRAFFIC

- 21-1 Comment Summary:** All previous traffic comments have been addressed. The Lake Elmo document appears to adequately address land use, environmental concerns including groundwater issues, and addresses potential conflicts with the Lake Elmo Airport.

Agencies/Persons Commenting: Washington County

Response: Comments noted.

- 21-2 Comment Summary:** Regional Impacts of Traffic. The AUAR addresses traffic impacts and mitigation on page 88. Item 21 of the AUAR states that the "analysis must discuss the project's impact on the regional transportation system." The AUAR did not address whether traffic impacts would extend to I-694, I-94, and TH 36, which are principal arterials on the regional highway system. It is possible that there will be no discernible impacts on these highways resulting from the development of the Village Area, but the AUAR needs to determine whether this is the case.

Agencies/Persons Commenting: Met Council

Response: The Village development will have minimal impacts on the regional transportation system. It is expected that the Village development would increase the average daily traffic (ADT) on I-694, I-94, and TH 36 by between 1.2% and 3%. Chapter V Section B of the Traffic Analysis (Appendix E) has been updated to address this comment.

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interstate system with a major intersection at the north end of CSAH 17, less than 2 miles from the AUAR designated area.

Agencies/Persons Commenting: Steve DeLapp

Response: Traffic patterns will continue to evolve as modifications to the existing transportation system are implemented. The AUAR needs to be updated every five years and the evolution of traffic patterns and transportation system improvements will be captured in future updates to this traffic impact analysis. The Village development will have minimal impacts on the regional transportation system. It is expected that the Village development would increase the average daily traffic (ADT) on I-694, I-94, and TH 36 by between 1.2% and 3%.

- 21-11 Comment Summary:** This section indicates that the intersection of Manning Avenue and 30th Street will benefit from traffic lights whether or not the Village development moves forward (Table 21-7 on page 105, and Table 2 in the executive summary). If the City or Washington County proceed with plans for the installation of a signal at this intersection, the plans must be reviewed by MAC and the FAA prior to installation. The intersection lies in the approach to Runway 4, and the signals need to be designed to not be an obstruction to this approach surface. A Notice of Construction or Alteration form, as noted in our Paragraph 8 comment, must be submitted to the FAA, with a copy to MAC, for a determination to ensure no hazard is created.

Agencies/Persons Commenting: MAC

Response: A Notice of Construction or Alteration form will be submitted to the FAA, with a copy to MAC, if signals are proposed for the intersection of Manning Avenue and 30th Street. This permit was added to the list of permits and the discussion of mitigation under Item 21 notes these requirements

- 21-12 Comment Summary:** Also note that the reference to exclusive eastbound and westbound turn lanes implies a need for additional road right-of-way. MAC needs to be fairly compensated for any right-of-way taking consistent with federal revenue diversion criteria. If the granting of right-of-way is necessary, and if feasible, the fair-market value for the property would have to be determined by appraisal.

Agencies/Persons Commenting: MAC

Response: Additional ROW may be needed. If additional ROW is needed, the County and City will need to determine the fair market value of the property.

ITEM 24. DUST, ODORS, AND NOISE IMPACTS

- 24-1 Comment Summary:** According to the AUAR, during more than 10% of the peak hour time, the traffic noise, 100 feet from Manning Ave is at or above 65 dBA. The AUAR also states that 65 dBA, or higher, is the noise level within 50 feet of the railroad tracks. The noise level of a normal conversation from 3 feet away is 60 dBA, so that a normal conversation could not be carried out within 100 feet of the centerline of Manning or 50 feet of the tracks. Anyone with any experience near the tracks in Lake Elmo, knows that the noise levels are far higher than stated in the AUAR. I would also add this article from <http://www.telegraph.co.uk/news/1967803/Noise-pollution-map-warns-of-health-risks.html>.

Elmo Avenue. It will be a forcemain sewer to 30th Street with gravity sewer serving properties within the AUAR area, see Figure 18-1. A major lift station would be located near 30th Street. The lift station is being designed to accommodate the projected initial low flow conditions and to allow for staged expansion based on the future growth.

The planned expansion of the city sewer system is based on Metropolitan Council Environmental Services (MCES) providing additional capacity to serve the anticipated development by construction of a new interceptor in northeast Woodbury, called the Lake Elmo East Interceptor. This interceptor has been designed and is currently under construction. The Northeast Regional lift station number 77 (Northeast Regional LS-77) that the interceptor will connect to is currently in the early stages of design. Sanitary flow from the AUAR area will discharge to the MCES Lake Elmo East interceptor, which will then discharge to the Northeast Regional LS-77.

The capacity of the Lake Elmo East Interceptor is 2.7 million gallons per day (MGD) design flow with a peaking factor of 2.7 results in a peak flow of 7.3 million gallons per day. Anticipated flows from Lake Elmo are being considered in the planning and design of the MCES facilities. Based on the estimated flow from existing development (0.112 MGD, or 412 RECs) and the four development scenarios (ranging from 0.206 MGD, or 755 RECs, for Scenario A to 0.479 MGD, or 1,755 RECs, for Scenario C), the facilities will have adequate capacity to serve Lake Elmo. The proposed major lift station and future trunk sanitary sewer lines will need to be sized to accommodate the flow from existing and future development in the AUAR area.

LAND USE COMPATIBILITY – LAKE ELMO AIRPORT

The Lake Elmo Airport is located adjacent to the AUAR area and portions of its safety zones and noise contours/impact areas are located within the AUAR area. All scenarios propose to locate the greenbelt/buffer alongside TH 15, which provides a buffer from future development in the AUAR area to the airport. All scenarios also propose to locate single family residential uses within portions of the safety zones and noise contours/impact areas, which is typically considered an incompatible land use. Land use compatibility with airports is addressed in the Metropolitan Council's land use compatibility guidelines for aircraft noise and state airport safety zone regulations. Any future development proposed to be located within the safety zones and noise contours/impact areas will be subject to the development restrictions within each safety zone (e.g., land use type, building height) and noise contours (e.g., land use type) established by state statute and the city. To minimize land use compatibility issues with the airport, the city will work with a Joint Airport Zoning Board (JAZB) to prepare an airport zoning ordinance prior to new development occurring within or near the safety zones and updated noise contours. According to the Metropolitan Airports Commission (MAC), the ~~Joint AZoning Board~~ will be comprised of two representatives each from the City of Lake Elmo, Washington County, Baytown and West Lakeland Townships, and MAC. The JAZB will determine the future safety zones; therefore, the draft safety zones displayed on figures in this AUAR may change.

The location of stormwater management features that attract waterfowl should be discouraged within the safety zones as waterfowl pose a safety hazard to aircraft. Large stormwater ponds or created wetlands with mowed grass buffers provide optimal habitat for waterfowl and should not be located within or near the safety zones or within 5,000 feet of the airport. The city should consult with MAC regarding wildlife habitat protection, creation, or restoration in the AUAR area to minimize potentially hazardous wildlife attractants. The majority of the soils within the safety zones are appropriate for stormwater infiltration best management practices (BMPs) that are more appropriate stormwater management strategies than large regional ponds within the airport zones.

8. **Permits and Approvals Required:** List all known local, state, and federal permits, approvals, and financial assistance for the project. Include modifications of any existing permits, governmental review of plans and all direct and indirect forms of public financial assistance, including bond guarantees, Tax Increment Financing and infrastructure. *All of these final decisions are prohibited until all appropriate environmental review has been completed. See Minnesota Rules Chapter 4410.3100.*

AUAR Guidelines: A listing of major approvals (including any comprehensive plan amendments and zoning amendments) and public financial assistance and infrastructure likely to be required by the anticipated types of development projects should be given for each development scenario. This list will help orient reviewers to the regulatory framework that will protect environmental resources. The list can also serve as a starting point for the development of the implementation aspects of the mitigation plan to be developed as part of the AUAR.

MAJOR PERMITS AND APPROVALS

Major permits and approvals likely to be required by the anticipated types of development projects are listed in Table 8-1. Depending on the type of project, the applicant for each permit or approval will vary - applicants may be developers, property owners, or the city. For example, a municipality is required to apply for and obtain the Sewer Permit to Connect from the Metropolitan Council for connection to a Metropolitan Council interceptor and the regional system. Connections needed by developers and homeowners would be covered under the permit received by the municipality and would not need an additional permit from the Metropolitan Council to connect.

On the other hand, the Sewer Extension Permit from the MPCA must be applied for and obtained by the municipality for connection to the regional sanitary system (interceptor), and also by developers and homeowners for connection to the municipal system. Additional information is provided in Item 18 regarding sanitary sewer permits.

Table 8-1
Major Permits and Approvals

Unit of Government	Type of Application
United States Army Corps of Engineers	Section 404 Permit
	Letter of No Wetland Jurisdiction
<u>Federal Aviation Administration</u>	<u>Notice of Construction Alternation (Form 7460-1A) and determination of no hazard for construction in excess of allowed heights in the forthcoming airport ordinance</u>
Minnesota Pollution Control Agency	National Pollutant Discharge Elimination Systems (NPDES) Permit/General Stormwater Construction Permit
	Sewer Extension Permit
	MS-4 permit amendment, if needed
	CWA Section 401 Water Quality Certification
	<u>Future review and permitting pending US EPA approval of Lake St Croix and Lake Pepin TMDL Implementation Plans</u>
Minnesota Department of Transportation	Permit for work in State Highway right-of-way, if proposed
	Right-of-way access permit, if proposed
Minnesota Department of Natural Resources	Water Appropriation Permit for new municipal well, if needed
	Temporary Water Appropriation Permit for construction dewatering
	Public Waters Work Permit (for work within a DNR Public Water)

update and creates its official controls through zoning, subdivision and other regulations to ensure land use compatibility. Examples include adopting building setbacks, screening, landscaping, light pollution, buffers, heights limits, architectural controls and design.

The thirteen principles summarized are: 1) provoke a sense of place, 2) balance the natural and built systems, 3) broaden the mix of local goods and services, 4) provide a variety of housing choices, 5) invest in quality public space, 6) preserve and enhance natural and cultural resources, 7) improve connectivity, 8) build partnerships, 9) foster public safety, 10) forward a vision that can be implemented, 11) become a great model, 12) lead by design, and 13) minimize the impact on existing residences and businesses. The complete text of the land use principles is located in Appendix C.

EXISTING LAND USE – SURROUNDING AREAS

Southwest of the AUAR area is the Lake Elmo Regional Park Reserve. To the south of the AUAR area is a neighborhood consisting of mainly single-family homes. To the northeast of the AUAR area is a gas station, a single commercial property. East of the AUAR area is the Lake Elmo Airport and the Washington County Fairgrounds, which are located in Baytown Township. The rest of the AUAR area is bounded by agricultural and large-lot residential uses. To the north of the AUAR area are Little Bluestem and Fields of St. Croix neighborhoods.

LAND USE COMPATIBILITY – SURROUNDING AREAS

Existing Residential Development

The edge of the Village is a green buffer in all four development scenarios. The buffer is intended to capture the development patterns that are established in the existing conservation developments and to maintain the character of the community with the additional development. It will also create some continuity between the Village area that is newly developed and the surrounding conservation, larger lot and agricultural uses on the edge of the Village. Specific details related to the design (length, width, location, character/purpose (land use buffer, land use screen, environmentally sensitive area conservation, stormwater management, etc.) habitat (type of wildlife habitat being conserved or restored), and the land use mechanisms for reserving the green belt buffer will continue to be addressed as the Village development process continues. This AUAR proposes many recommendations regarding the greenbelt buffer. The area will be officially addressed as part of the city's Comprehensive Plan Update.

Lake Elmo Regional Park Reserve

All scenarios propose to locate the greenbelt/buffer adjacent to the Regional Park Reserve. No land use compatibility issues are anticipated.

Lake Elmo Airport

The Lake Elmo Airport is located adjacent to the AUAR area and portions of its safety zones (see Figure 9-1) and noise contours/impact areas (see Figure 24-1) are located within the AUAR area. All scenarios propose to locate the greenbelt/buffer alongside TH 15, which provides a buffer from future development in the AUAR area to the airport. Scenarios A, B, and C propose to locate residential uses and open space within the safety zones and noise contours/impact areas. The majority of the land within the safety zones and noise contours/impact areas is guided greenbelt in Scenario D and only a small portion of safety zone B includes residential uses. No development will be allowed within the Runway Protection Zone (RPZ).

The State of Minnesota Department of Transportation (Mn/DOT) has established regulations that control the type of development allowed off runway ends in order to prevent incompatible development. These guidelines should be used to establish zoning ordinances to protect areas around an airport. The states zoning areas overlay and extend beyond the RPZs which are defined by FAA. The most restrictive areas

created by Mn/DOT regulations are called State Safety Zones A and B. The recommended safety zones should exist off each runway end and follow the approach zones out to the total length of the respective runway. The length of Safety Zone A is 2/3 of the total runway length; Safety Zone B is 1/3 of the total runway length and extends from Safety Zone A. There is also an area called Safety Zone C which is circular and typically follows the FAA's FAR Part 77 horizontal surface.

Safety Zone A does not allow any buildings or temporary structures, places of public assembly or transmission lines. Permitted uses include agriculture, livestock, cemeteries and auto parking areas.

Safety Zone B does not allow places of public or semipublic assembly (i.e. churches, hospitals, schools) and is subject to site-to-building area ratios and site population limits. Permitted uses are generally the same as Zone A, plus some low-density developments.

Safety Zone C does not allow use that causes interference with radio or electronic facilities on the airport or interference with radio or electronic communications between the airport and aircraft, lighting that makes it difficult for pilots to distinguish between airport lights and other lights or that results in glare in pilot's eyes, and lighting that impairs visibility in the airport vicinity.

A complete description and copy of the Minnesota Rules Chapter 8800 Department of Transportation Aeronautics Section 2400 Airport Zoning Standards can be found at <http://www.dot.state.mn.us/aero/avoffice/planning/zoning.html>.

Land use compatibility with airports is addressed in the Metropolitan Council's land use compatibility guidelines for aircraft noise and state airport safety zone regulations. It is noted that information regarding airport noise and land use compatibility is further discussed in response to AUAR Item 24 – Noise.

The safety zones defined by Mn/DOT are shown on Figures 9-1 and 9-2. The existing and proposed height restrictions are shown on Figures 9-3 and 9-4. Any future development proposed to be located within the safety zones and noise contours/impact areas will be subject to the development restrictions within each safety zone (e.g., land use type, building/structure height) and noise contours (e.g., land use type, structural requirements for minimizing noise impacts) established by state statute and the city.

To minimize land use compatibility issues with the airport, the city will work with a Joint Airport Zoning Board (JAZB) the Metropolitan Airports Commission (MAC) to prepare an airport zoning ordinance prior to new development occurring within or near the safety zones and updated noise contours. According to MAC, the airport ordinance will be prepared by a Joint Airport Zoning Board will be comprised of two representatives each from Lake Elmo, Baytown Township, West Lakeland Township, Washington County, and MAC. The JAZB will determine the future safety zones; therefore, the draft safety zones displayed on figures in this AUAR may change.

The Lake Elmo Regional Airport is included in the MAC Capital Improvement Program (CIP) for expansion of a runway. The runway expansion does not impact the safety zones or height restrictions within the Village AUAR area. However, the safety zones may change based on the ordinance prepared by and adopted by the Joint Airport Zoning Board. The existing and proposed height restrictions associated with the Lake Elmo Airport are shown on Figures 9-3 and 9-4.

According to the FAA, the location of stormwater management features that attract waterfowl should be discouraged within the safety zones and within 5,000 feet of the Lake Elmo Airport as waterfowl pose a safety hazard to aircraft. Large stormwater ponds with mowed grass buffers provide optimal habitat for

waterfowl and should not be located within or near the safety zones. The majority of the soils within the safety zones are appropriate for stormwater infiltration best management practices (BMPs) that are more appropriate stormwater management strategies than large regional ponds within the airport zones. The city should consult with MAC regarding wildlife habitat protection, creation, or restoration in the AUAR area to minimize potentially hazardous wildlife attractants. For example, any ponds or created wetlands within the AUAR area should be designed to be non-attractive to waterfowl and designed with emergent vegetation to minimize use by waterfowl.

PIPELINES

A 24-inch Northern Natural Gas pipeline traverses the AUAR area north-south approximately a quarter mile west of the eastern boundary of the AUAR area (see Figure 9-1). Outside of the AUAR area and just south of 50th Street North an 8-inch gas line branches off and heads east towards the southern end of Bayport. (Source: Protected Waters and Wetlands Map for Washington County, Sheet 1 of 2. 1985. MN DNR Division of Waters.)

A Northern Natural Gas utility station is located within the AUAR area south of the railroad line.

Northern Natural Gas is proposing to extend a new natural gas pipeline through the AUAR area along the same route as the existing pipeline. The project is part of a larger project called the Northern Lights Expansion Project. The phase that is proposed for construction in Washington County (including Lake Elmo) is called the Riverside C-Line Extension and is part of the Northern Lights 2009-2010 Zone EF Expansion. Construction of the project is planned to start May 2009 and is anticipated to be in service November 1, 2009.

POTENTIAL ENVIRONMENTAL HAZARDS

Information received from Environmental Data Resources, Incorporated (EDR) June 18, 2007 was used to assess the presence of potential environmental hazards such as registered underground and aboveground storage tanks (USTs and ASTs), hazardous waste generators currently existing within the AUAR area, and the occurrence of past spills or releases. The EDR report identified several sites of potential concern within and near the AUAR area (see Figure 9-2):

- 5 leaking underground storage tank (LUST) sites (*4 of these have been issued closure by the MPCA*)
- 1 leaking aboveground storage tank (LAST) site (*closure was issued by the MPCA*)
- 2 spill sites (*information regarding closure not provided*)
- 1 VIC site (*investigation in progress*)
- 1 SHWS site (*remediation and monitoring in progress*)
- 10 underground storage tank (UST) sites
- 2 aboveground storage tank (AST) sites
- 1 clandestine drug lab (CDL) site
- 2 sites that are required to submit a chemical inventory report (Tier 2)
- 1 permitted air facility (AIRS)
- 14 small quantity hazardous waste generator (SQG) sites

Of these sites, the LUST, LAST, Spill, VIC and SHWS sites are sites where a release of petroleum product or other chemical substance is documented to have occurred; these sites are summarized in the Tables 9-1 and 9-2. Four of the LUST sites and the LAST site have been issued closure by the MPCA. The MPCA issues closure to sites it determines no longer present a threat to human health or the environment.

Descriptions of the databases in which properties within or near the AUAR area are identified are

MITIGATION SUMMARY

Land Use Compatibility: Mitigation to address compatibility among different land uses of will consist of:

- Follow the Village Master Plan guiding principles that address potential land use compatibility issues between the existing Village residences and business and the new development or redevelopment opportunities supported by the Master Plan composite land use map. Specific examples of mitigation opportunities include establishing requirements for: building setbacks, screening, landscaping, light pollution, buffers, height, architectural controls, and design. These principles should continue to be followed as Village development planning continues (e.g., Comprehensive Plan, zoning, site plan requirements, design standards, etc.)
- Buffers consisting of berms and/or trees and shrubs will be established to shield residential and rural areas from more intensive land uses of commercial retail, office, institutional, and airport properties and between different types of residential uses (e.g., single family, townhomes, and condos).
- Compliance with lighting ordinances will be enforced to minimize conflicts between land uses.
- Prepare an airport zoning ordinance prior to new development occurring within the vicinity of the safety zones and noise contours/impact areas. ~~According to MAC,~~ This airport ordinance will be prepared by a Joint Airport Zoning Board comprised of two representatives from Lake Elmo, Baytown Township, West Lakeland Township, Washington County, and MAC. Follow these land use restrictions for the airport safety zones and noise contours established by the Joint Airport Zoning Board for development proposed to be located within the safety zones and noise contours. The JAZB will determine the future safety zones; therefore, the draft safety zones displayed on figures in this AUAR may change. Additional information regarding noise impacts is presented in AUAR Item 24 – Odors, Noise, and Dust.
- Prohibit the establishment of waterfowl habitat located within the airport safety zones and within 5,000 feet of the Lake Elmo Airport (e.g., large stormwater ponds with mown grass edges). The FAA has developed guidelines for potential wildlife attracting sources that lie within the vicinity of airports. FAA Advisory Circular 150/5200-33B is on file at City Hall. The city will consult with MAC and will refer to the FAA guidelines prior to activities that could result in establishing wildlife habitat considered hazardous to airports. For example, any ponds or created wetlands that contain open water should be designed with emergent vegetation to minimize use by waterfowl. Stormwater management facilities located within the airport safety zones should utilize infiltration BMPs to manage stormwater.

Potential Environmental Hazards: The potential presence of environmental hazards due to past site use will be revisited prior to development activities. At the time specific development is proposed, a Phase I Environmental Site Assessment (Phase I ESA) and possibly follow-up subsurface investigation may be warranted to determine if contamination is present.

A Phase I ESA is a study completed to find out if the potential for contamination exists at a particular property. The study uses reasonably ascertainable data to identify hazardous substances or petroleum products at a property which may indicate a recent release, past release, or a material threat of a release in structures at the property, or into the soil, ground or surface water at the property. A Phase I ESA includes collection and analysis of the following information: regulatory database records; historical information such as aerial photographs, address directories, topographic maps and Sanborn Fire Insurance maps; geologic and hydrologic information; interview information from current and past site occupants,

Surface Water Management Plan in 2009 as part of its required 2030 Comprehensive Plan update.

- Construct ponds 519 and 520 to alleviate existing downtown flooding issues and address rate control and potentially the volume management and water quality treatment goals for the AUAR area in the Downs Lake watershed. Approximate pond sizes required are listed in Table 17-115. The pond size required varies only 5% between Scenario A with the lowest residential development intensity and Scenario C with the highest development intensity. Any ponds that contain open water should be designed with emergent vegetation to minimize use by waterfowl.

Table 17-115
Approximate Pond Size Required

Scenario	Pond	Footprint at HWL (ac)	Flood Storage (ac-ft)
A	519	7.57.1	42.030.5
	520	24.924.7	65.659.1
B	519	7.67.1	43.930.5
	520	25.024.8	67.859.3
C	519	7.67.1	44.230.6
	520	25.024.8	69.059.6
D	519	7.57.0	42.028.4
	520	24.924.7	65.656.9

- Provide runoff volume facilities adequate to maintain existing runoff volume for the 100-year event.
- Encourage utilization of volume management techniques to minimize the stormwater impacts by emphasizing water infiltration, valuing water as a resource and promoting the use of the natural drainage system to treat water runoff. Some examples include:
 - Special ditches, arranged in a series, that soak up more water
 - Vegetated filter strips at the edges of paved surfaces
 - Residential or commercial rain gardens designed to capture and soak in stormwater
 - Porous pavers, concrete and asphalt
 - Decreased and disconnected impervious, narrower streets
 - Rain barrels and cisterns
 - Green roofs
 - Protection of natural areas
 - Minimizing soil compaction and/or mitigating compacted areas
 - Street trees that intercept rainfall, improve water quality, and facilitate stormwater infiltration/treatment

~~There are several options for the city and developers to explore for addressing VBWD volume control requirements for new development. If proposed basins 519 and 520 were constructed as multi-cell regional basins, then infiltration in portions of the basins could occur while still providing for flood storage. Another option is to provide a continuous surface water conveyance system (ponding, infiltration, and conveyance) along natural drainage routes. These options may reduce the pond size required for basins 519 and 520 to store stormwater if stormwater volume is controlled (e.g., less surface water runoff is generated than predicted).~~

- ~~The City of Lake Elmo should work with developers to identify opportunities to include infiltration BMPs to protect the water resources within the Downs Lake watershed. Infiltration BMPs will be considered in areas with HSG A and B soils and where adequate depth to groundwater and bedrock is provided (see Figure 17-2).~~

ITEM 9. LAND USE

Potential Impacts

- Certain types of proposed land use (e.g., residential, commercial, institutional) may not be compatible with existing residential development within and adjacent to the Village.
- Certain types of land use may not be compatible with the adjacent Lake Elmo Airport safety zones.
- Contamination may impact the types of land uses that would be appropriate in certain areas.
- Construction and other development activities may encounter contamination associated with current or past land use (such as a gas station with underground storage tanks) or from material releases that may have occurred.
- Redevelopment activities may require the removal or abandonment of petroleum systems.

Mitigation Strategies

The City will:

- 9.1 Follow the Village Master Plan guiding principles that address potential land use compatibility issues between the existing Village residences and business and the new development or redevelopment opportunities supported by the Master Plan composite land use map. These principles should continue to be followed as Village development planning continues (e.g., Comprehensive Plan, zoning, site plan requirements, design standards, etc.).
- 9.2 Review and update its official controls (e.g., zoning and subdivision ordinances) to ensure that the following requirements are adequate to address the potential land use compatibility issues identified in the AUAR including, but not limited to: building setbacks, screening, landscaping, noise, lighting, buffers, height, architectural controls, and design standards.
- 9.3 Require the establishment of buffers consisting of berms and/or trees and shrubs to shield residential and rural areas from more intensive land uses of commercial retail, office, institutional, and airport properties and between different types of residential uses (e.g., single family, townhomes, and condos).
- 9.4 Prepare an airport zoning ordinance prior to new development occurring within the vicinity of the safety zones and noise contours/impact areas. ~~According to MAC,~~ This ordinance will be prepared by a Joint Airport Zoning Board consisting of two representatives each of Lake Elmo, Baytown and West Lakeland Townships, Washington County, and MAC. Follow these land use restrictions for the airport safety zones and noise contours established by the Joint Airport Zoning Board for development proposed to be located within the safety zones and noise contours.
- 9.5 Prohibit development within the Runway Protection Zone (RPZ).
- 9.6 Develop an ordinance regarding structural performance standards for residential properties to reduce the potential for noise impacts.
- 9.59.7 Prohibit the establishment of waterfowl habitat located within the airport safety zones and within 5,000 feet of the Lake Elmo Airport (e.g., large stormwater ponds with mown grass edges). Any ponds or created wetlands that contain open water should be designed with emergent vegetation to minimize use by waterfowl. Stormwater management facilities located within the airport safety zones should utilize infiltration BMPs to manage stormwater.
- 9.69.8 Require developers to assess the potential presence of environmental hazards due to past site use prior to development activities. At the time specific development is proposed, a Phase I ESA and possibly follow-up subsurface investigation may be warranted to determine if contamination is present. If contamination is discovered prior to or during the course of

development, the developer or other responsible party will be required to address the situation in accordance with MPCA rules.

9.79.9 Work with the MPCA to ensure the removal of all above ground or underground storage tanks and associated underground piping in accordance with applicable state and federal laws.

9.89.10 Work with the MPCA and developers to ensure that any party that may discover residual petroleum contamination shall follow state law and report the information to the MPCA for further investigation and potential remediation.

How Mitigation will be Applied and Assured

Mitigation will be regulated through the city's development approval and permitting process. Proposed master development plans, planned unit development and subdivision applications, plats, and/or site plans must address relevant mitigation measures prior to final approval by the city. Implementation of mitigation measures will be assured through developer agreements with the city, which will require a financial security for land and infrastructure improvements and/or revoke the right to acquire building permits and/or certificates of occupancy until all relevant mitigation measures have been addressed.

Involvement by Other Agencies

Metropolitan Council review is required for any Comprehensive Plan updates or amendment that will address land use changes for the AUAR area. According to MAC, the airport ordinance will be prepared by a Joint Airport Zoning Board comprised of two representatives each from Lake Elmo, Baytown Township, West Lakeland Township, Washington County, and MAC. The FAA has developed guidelines for potential wildlife attracting sources that lie within the vicinity of airports. FAA Advisory Circular 150/5200-33B is on file at City Hall. The city will consult with MAC and will refer to the FAA guidelines prior to approving activities that could result in establishing wildlife habitat considered hazardous to airports. If contamination is discovered during development, it must be reported to the State Duty Officer, and follow-up work must be coordinated with the Minnesota Pollution Control Agency.

ITEM 11. FISH, WILDLIFE, ECOLOGICALLY SENSITIVE RESOURCES

Potential Impacts

- All scenarios propose to convert natural and semi-natural land cover types (forests, woodlands, and herbaceous areas) to urban uses (see Figure 10-1). The majority of these areas are located adjacent to Reid Park.
 - Scenarios A, B, and C result in a loss of 63 acres of forest (a 52% reduction from existing conditions) 18 acres of woodlands (a 77% reduction), and 24 acres of herbaceous areas (a 25% reduction). The amount of potential land cover conversion is the same for Scenarios A, B, and ~~D~~-C as they include the same protection area.
 - Scenario D results in a loss of 61 acres of forest (a 51% reduction from existing conditions) 16 acres of woodlands (a 70% reduction), and 23 acres of herbaceous areas (a 23% reduction).
- All scenarios propose to convert prime farmland to urban uses.
- All scenarios propose to impact ecologically sensitive resources (see Figure 11-3). The majority of these areas are located adjacent to Reid Park.
- All scenarios may impact the use of property as wildlife habitat. Development will likely affect wildlife species of agricultural and old field habitats more so than forest/wooded and wetland habitats because the majority of development will occur on open uplands and wetlands are protected

by various federal, state, and local regulations (see Figures 10-2 and 10-3). However, forest/woodland habitats adjacent to Reid Park are proposed for development in all four scenarios.

Mitigation Strategies

The City will:

- 11.1. Revisit the location of the Buffer Zone/Opens Space (Scenarios A, B, and C) or the Greenbelt (Scenario D) to consider the inclusion of primary ecologically sensitive resources (e.g., primary areas adjacent to Reid Park). This may be compensated by considering the removal of non-ecologically sensitive resources that have been identified for open space. Any modifications to the buffer will also need to address mitigating land use compatibility issues discussed in AUAR Item 9.
- 11.2. Require developers to focus development to areas with lower habitat value areas (agricultural land).
- 11.3. Work with property owners and developers to keep remnant natural areas intact.
- 11.4. Promote the establishment of corridors to connect wildlife habitat on and off site. These corridors can be created as multi-functional greenway corridors that provide for wildlife movement, open space, trails, and areas for surface water management (e.g., infiltration BMPs).
- 11.5. Work with property owners and developers to enhance natural areas on site (through activities such as invasive brush removal, native wildflower seeding, and similar)
- 11.6. Encourage property owners and developers to restore hydrology and vegetation of wetlands that are currently farmed for habitat or stormwater management, where appropriate.
- 11.7. Work with property owners and developers to protect steep slope areas.
- 11.8. Require public land dedication of primary ecologically sensitive areas through the subdivision process, to the extent practical.
- 11.9. Require that cash in lieu of public land dedication for subdivisions within the AUAR area be spent within the AUAR area to purchase, restore, and/or maintain priority natural open space areas. This must be balanced with the park needs of the Village discussed in AUAR Item 25.
- 11.10. Consider provisions for conserving secondary ecologically sensitive areas (see Figure 11-3) during the development review process.
- 11.11. Work with agencies, non-profit organizations and developers to establish mechanisms for ecological restoration, management, stewardship, and education.
- 11.12. Work with property owners and developers to encourage farmers markets and community gardens that can provide local access to food systems.
- 11.13. Create a tree/woodland preservation policy. This policy will require the evaluation of tree/woodland quality.
- 11.14. Require the use of conservation development design and/or Low Impact Development (LID) principles and encourage neighborhood development and buildings to incorporate Leadership in Energy Efficiency and Design (LEED) principles.

Additional Discussion of Mitigation Strategies

Conservation of Ecologically Sensitive Areas (ESA) throughout the AUAR Area

Ecologically Sensitive Areas (ESA, see Figure 11-3) provide the foundation for most of the conservation objectives within the AUAR area. The overall conservation objectives include:

- Conserving the most significant primary ecologically sensitive areas within the Village;
- Protect these conserved ecologically sensitive areas from adjacent land uses by implementing buffering; and

ITEM 17. WATER QUALITY: SURFACE WATER RUNOFF

Potential Impacts

- Development may increase runoff rate and volume, and decrease the quality of runoff flowing into receiving waters, including Down's Lake and the St. Croix River.
- Development may result in bank failure and erosion in streams and drainage ditches.
- Development may result in de-watering of streams and wetlands by limiting infiltration and groundwater recharge.
- Development may result in algal blooms, including toxic blue-green algae, due to high nutrient concentrations in stormwater runoff.
- Development may result in thermal pollution of water bodies as stormwater runoff may have relatively high temperatures after flowing over impervious surfaces.

Mitigation Strategies

The City will:

- 17.1 ~~Continue to Address~~ stormwater runoff volume management, rate control, and water quality treatment measures for the entire city through its Surface Water Management Plan (SWMP) update in compliance with the pertinent agency regulations. ~~Through this process, the city will determine if it needs to adopt more restrictive standards than VBWD. The city is in the process of intends to initiate an updating to its Surface Water Management Plan in by May 29, 2009 as part of its required 2030 Comprehensive Plan update.~~
- 17.2 ~~Work with developers to establish a regional stormwater management system that consists of vegetated swales, wet prairies, and wetlands oriented in series to effectively retard runoff rates, reduce stormwater volume, and enhance water quality~~
- 17.3 ~~Work with project proposers to disperse collection, conveyance, and management of stormwater runoff as much as possible throughout the AUAR site through the use of bio swales, rain gardens, and infiltration areas.~~
- 17.4 ~~Require stormwater management systems to be developed in accordance with Valley Branch Watershed District Rules, including volume management, rate control and water quality pretreatment requirements.~~
- 17.5 ~~Encourage project proposers to use techniques to reduce total phosphorus content of proposed conditions runoff in accordance with VBWD Rules.~~
- ~~17.6~~ 17.2 Complete ongoing maintenance of proposed and existing stormwater facilities.
- ~~17.7~~ 17.3 Construct ponds 519 and 520 to alleviate existing downtown flooding issues and address rate control and potentially the volume management and water quality treatment goals for the AUAR area. The estimated size of the ponds for each scenario is shown in the following table. Implementing stormwater management techniques throughout the Village that decrease estimated stormwater volumes may reduce the estimated size of these ponds. Any ponds that contain open water should be designed with emergent vegetation to minimize use by waterfowl.

Scenario	Pond	Footprint at HWL (ac)	Flood Storage (ac-ft)
A	519	7.17.5	30.542.0
	520	24.724.9	59.165.6
B	519	7.17.6	30.543.9
	520	24.825.0	59.367.8
C	519	7.17.6	30.644.2

- 21.4 Prioritize alternative travel modes within the Village and require project proposers to address alternative travel modes (e.g., bus, bicycle, and pedestrian foot-traffic) by identifying appropriate and safe accommodations in developer's site plans and in the city's plans for trails and transit.
- 21.5 Address the recommendations of the Safe Routes to Schools Study currently underway, as appropriate, during the Village development process.
- 21.6 Consider the need for additional infrastructure improvements in future updates or amendments to the Comprehensive Plan and Village Master Plan. Submit the plan updates to the appropriate agencies (i.e., FHWA, Mn/DOT, Metropolitan Council, etc.).
- 21.7 Achieve effective traffic operations within the city by requiring that site plans make use of access management practices that promote safe, effective traffic flow.
- 21.8 Continue to coordinate capital improvement programming with applicable transportation authorities.
- 21.9 Work with appropriate road authorizes and developers to implement traffic calming measures, where appropriate, prior to or during development of a future project.
- 21.10 Work with MnDOT and the County to identify right-of-way needs for future expansion of the state and county road system.
- 21.11 Work to enhance the character of Stillwater Blvd. as a key community roadway.

How Mitigation will be Applied and Assured

The City will implement an on-going traffic management plan to monitor traffic volume growth and any operational issues that may develop in and around the AUAR area. This monitoring program is intended to give the City, County and other agencies the opportunity to evaluate future development projects within the AUAR area and their cumulative impacts on the transportation system. A traffic impact study will be required for all developments within the AUAR area. To maintain consistency, the traffic impact study will use the following methodology:

- a. Use a traffic simulation model to determine operational traffic impacts for the proposed development.
- b. Identify the deficiencies and reasonable mitigation measures that are related to the development. Address consistency or lack of consistency with City of Lake Elmo subdivision and zoning ordinances, Land Use Plan element of Comprehensive Plan, and the City's Transportation Plan.
- c. If no reasonable mitigation measures are agreed upon or are unfeasible, the intensity or timing of the proposed development would be staged so as to not overly burden the transportation system. For example, if it is determined that full-build out of a proposed development project would overly burden the transportation system, then varying degrees of development, i.e., 75%, 50%, 25% would be analyzed. As surrounding infrastructure is improved, the remaining portion of a proposed development could be evaluated to determine if it could be constructed. This is intended to address the cumulative traffic impacts that occur within the AUAR area.

Mitigation will be regulated through the city's development approval and permitting process. Proposed master development plans, planned unit development and subdivision applications, plats, and/or site plans must address relevant mitigation measures prior to final approval by the city. Implementation of mitigation measures will be assured through developer agreements with the city, which will require a financial security for land and infrastructure improvements and/or revoke the right to acquire building permits and/or certificates of occupancy until all relevant mitigation measures have been addressed.

Involvement by Other Agencies, if applicable

There are a number of potential transportation improvements and issues that have been identified as part of this AUAR. Numerous agencies will be responsible in varying degrees to implement the identified improvements. The following table identifies the improvement(s) and the responsible agencies to initiate and oversee implementation.

Responsible Agencies for Implementation of Improvements

General Improvement	Primary Agency	Additional Agencies
State and County Roadways	Mn/DOT, Washington County	City of Lake Elmo
Local/Frontage Roadways	City of Lake Elmo	--
Access Control	FHWA, Mn/DOT, Washington County, City of Lake Elmo	--
Transit	Metro Transit, Washington County	City of Lake Elmo
Bicycle/Pedestrian	City of Lake Elmo, Washington County	Mn/DOT
Air/Noise	Minnesota Pollution Control Agency	Mn/DOT, Washington County, City of Lake Elmo

If the City or Washington County proceed with plans for the installation of a signal at Manning Avenue and 30th Street, the plans must be reviewed by MAC and the FAA prior to installation. The intersection lies in the approach to Runway 4, and the signals need to be designed to not be an obstruction to this approach surface. A Notice of Construction or Alteration form, must be submitted to the FAA, with a copy to MAC, for a determination to ensure no hazard is created.

ITEM 24. NOISE

Potential Impacts

- Noise levels related to traffic increase may rise above existing levels
- Single family residential uses are proposed within noise exposure zone 4, which are considered incompatible according to Metropolitan Council guidelines.
- Railroad noise and vibrations may affect Village development. The extent of the noise impact depends on if development is located in a no whistle zone or a whistle zone as shown in Table 24-5.

Mitigation Strategies

The City will:

- 24.1 Establish residential structure setback standards in its zoning ordinance to ensure an adequate setback to major roads in the AUAR area to mitigate potential traffic-related noise on residential structures. Tables 24-2 and 24-3 provide a guide in establishing an appropriate setback in that it describes the distance within which noise standards are exceeded; however, these distances are not a recommended structure setback distance. These setbacks will be established by city ordinance and will consider the land use proposed and characteristics of the setback area in that requiring vegetation or berms may mitigate noise and lessen the necessary structure setback distance to the roadway.
- 24.2 Use the aircraft noise land use compatibility guidelines to inform future land use decisions regarding the comprehensive plan. Within its statutory limits, the city needs to prepare an airport zoning ordinance to address building height, land use compatibility, structural performance standards, and noise buffers.
- 24.3 Prepare adequate structure setback standards in its zoning ordinance to ensure an adequate setback to the railroad tracks. The Village has coexisted with the railroad tracks - they are part of the historic

PERMITS AND APPROVALS REQUIRED (AUAR ITEM 8).

Major permits and approvals likely to be required by the anticipated types of development projects are listed in the following table. Depending on the type of project, the applicant for each permit or approval will vary - applicants may be developers, property owners, or the city.

Unit of Government	Type of Application
United States Army Corps of Engineers	Section 404 Permit
	Letter of No Wetland Jurisdiction
<u>Federal Aviation Administration</u>	<u>Notice of Construction Alteration (Form 7460-1A) and determination of no hazard for construction in excess of allowed heights in the forthcoming airport ordinance</u>
Minnesota Pollution Control Agency	National Pollutant Discharge Elimination Systems (NPDES) Permit/General Stormwater Construction Permit
	Sewer Extension Permit
	MS-4 permit amendment, if needed
	CWA Section 401 Water Quality Certification
	<u>Future review and permitting pending US EPA approval of Lake St Croix and Lake Pepin TMDL Implementation Plans</u>
Minnesota Department of Transportation	Permit for work in State Highway right-of-way, if proposed
	Right-of-way access permit, if proposed
Minnesota Department of Natural Resources	Water Appropriation Permit for new municipal well, if needed
	Temporary Water Appropriation Permit for construction dewatering
	Public Waters Work Permit (for work within a DNR Public Water)
Minnesota Department of Health	Permit for new municipal water well
	Permit to abandon and seal private wells, if necessary
	Permit for watermain construction
Washington County Highway Department	Utility Permit to install utilities within County road right-of- ways
	Permit to work in County roadways
	Permit for new accesses to County roadways, if proposed
Valley Branch Watershed District (VBWD)	Development Review and Approval/Permitting – land alterations, impervious surface creation, work below the established 100-year flood level, discharge of municipal or industrial water or wastewater to a surface water drainage system, erosion control plan, grading plan, stormwater management plan, landscape/vegetation plan, etc.
	Wetland Delineation Boundary Confirmation
	Permit for wetland impacts under Minnesota Wetland Conservation Act
	Certificate of Wetland Exemption for temporary impacts due to linear utility extensions
Metropolitan Council	Sewer Permit to Connect
	Comprehensive Plan Updates and Amendments
City of Lake Elmo	Comprehensive Plan Updates and Amendments
	Rezoning
	Conditional Use Permit
	Preliminary Plat
	Site Plan Review
	PUD
	Park Dedication