

City of Lake Elmo  
3800 Laverne Avenue North

April 7, 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 17, 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. a. Approve payment of disbursements and payroll
  - b. Abatement of Special Assessment, Delinquent Utility, Resolution No. 2009-016
  - 3. Approve Resolution No. 2009-011 supporting the 106<sup>th</sup> NWIRA Championship Regatta on Lake Elmo
- J. REGULAR AGENDA:
  - 4. Bond Refunding, Resolution No. 2009-012
  - 5. Update from South Washington Watershed District (SWWD)

6. PUBLIC HEARING: 2009 Street Improvements; Resolution No. 2009-013  
Ordering Improvements
7. 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. 2009-014
8. Municipal Consent for Washington County improvement project CoRd 13 (Inwood Ave.) and 15<sup>th</sup> Street North; Resolution No. 2009-017
9. I-94 Corridor Joint Powers Agreement – Appointment of Representative and Alternate; Resolution No. 2009-015
10. MAC Joint Airport Zoning Board, Lake Elmo Airport
11. Approve consultant services for wireless telecommunications ordinance revisions
12. Discussion on Special Event Permit
13. Appoint City Attorney for Civil Legal Services
14. City Administrator Selection Process
15. Update of Regional Council of Mayors

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

Lake Elmo City Council Meeting

WELCOME

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The mayor will call upon you when it is time for you to speak during the time designated for public comments on each agenda item.

Name MEL FRIENDT

Address 2749 LEGION AVE. N.

What item # and topic H-6

(If your topic is not a numbered on the agenda, it will be heard at the beginning of the meeting under public comments and inquiries).

① 37 YEARS  
② 30TH ST

① Time line - patch  
before repair

② Price of Oil  
project cost

③ Legion Lane N

What is wrong  
with what we  
have

## Lake Elmo City Council Meeting

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Name Silvia Huguec Silvia Huguec  
Address 2931 Jonquil Trl 2931 Jonquil Trl  
What item # and topic #7, pool #7, pool

(If your topic is not a numbered on the agenda, it will be heard at the beginning of the meeting under public comments and inquiries).



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Name Mark Dezic

Address 2783 Legion

What item # and topic Pool 2931 Joyant Tule

(If your topic is not a numbered on the agenda, it will be heard at the beginning of the meeting under public comments and inquiries).

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Name

Dave Moore

Address

8680 Stillwater Blvd

What item # and topic

(If your topic is not a numbered on the agenda, it will be heard at the beginning of the meeting under public comments and inquiries).

Lake Elmo City Council Meeting

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Name

Alan Kupferschmidt Alan Kupferschmidt

Address

2769 Legion Ave N 2769 Legion Ave N

What item # and topic

#6 #6

(If your topic is not a numbered on the agenda, it will be heard at the beginning of the meeting under public comments and inquiries).

#1

8:11  
Turn around for  
Garbage Trucks  
Tear-up turn around

#2

What if  
SEWER

Lake Elmo City Council Meeting

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Name

DAVE SHIMMER

Address

2225 LOGAN LN N

What item # and topic

#6 2009 STREET IMPROVEMENTS

(If your topic is not a numbered on the agenda, it will be heard at the beginning of the meeting under public comments and inquiries).

8:16  
① gas pipeline  
delay for new  
8:17

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Name Mark Deziel

Mark Deziel

Address 2783 Legion Ave N

2783 Legion Ave N

What item # and topic Street Improvements

Street Improvements

(If your topic is not a numbered on the agenda, it will be heard at the beginning of the meeting under public comments and inquiries).

8:17  
① unify neighborhood  
② rain garden - good  
- spill from Heritage Park  
③ new numbers - thanks  
④ NO CURB with food

Lake Elmo City Council Meeting

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Name Dave Moore

Address 8680 Stillwater

What item # and topic \_\_\_\_\_

(If your topic is not a numbered on the agenda, it will be heard at the beginning of the meeting under public comments and inquiries).

- 8:21
- ① Concrete curb & fire pad
  - ② Subgrade correction done beams
  - ③ rding order COMMERCIAL TOW



8:24  
Natural Gas  
Project Consideration

## Lake Elmo City Council Meeting

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Name Cindy Gackle

Address 2201 Legion Lane N

What item # and topic 6

(If your topic is not a numbered on the agenda, it will be heard at the beginning of the meeting under public comments and inquiries).

① ASPHALT CURBS OK  
② Fair

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Name James T. Smith

Address 11933 21st St N

11933 21st St N

What item # and topic Road improvements

Road Improvements

(If your topic is not a numbered on the agenda, it will be heard at the beginning of the meeting under public comments and inquiries).



Lake Elmo City Council Meeting

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Name ERLING ZETTERLUND

Address 2866 LEGION AVE NO

What item # and topic LEGION AVE NO.

(If your topic is not a numbered on the agenda, it will be heard at the beginning of the meeting under public comments and inquiries).

8:28

① 40 YEARS

② GARBAGE TRUCK ABUSE  
SOME BACK OUT

③ BEAUTIFUL FIRE TRUCK

④ RECLAIM - GOOD

⑤ CURB - BAD

⑥ COST - BY NEIGHBORS

① Assess by  
Neighborhood

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Name Mike Jara

Address 2921 Legion

What item # and topic Cost Assessment by Neighborhood

(If your topic is not a numbered on the agenda, it will be heard at the beginning of the meeting under public comments and inquiries).

① DO 21ST ST NEW CURB  
② LEAVE CONCERN  
③ NET 6 HOURS TO

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Name Tom Becken

Address 11860 21ST N

What item # and topic DO 21ST

(If your topic is not a numbered on the agenda, it will be heard at the beginning of the meeting under public comments and inquiries).

Lake Elmo City Council Meeting

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Name LAKE ELMO JAYCEES

Address HEATHER

What item # and topic UPCOMING PROJECTS

(If your topic is not a numbered on the agenda, it will be heard at the beginning of the meeting under public comments and inquiries).

Fire Station  
Annual Egg Hunt  
& Easter Egg  
Coloring

NOON  
Saturday

May  
Saturday Fil.

H.T. P.L.

FILE

City of Lake Elmo  
City Council Minutes

March 17, 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, Finance Director Bouthilet and City Clerk Lumby

APPROVAL OF AGENDA:

*MOTION: Council Member Park moved to approve the March 17, 2009 agenda as amended: Postpone Item #6 to April 7<sup>th</sup> per applicants request and add Item #11 Discuss questions for city attorney interviews. Council Member DeLapp seconded the motion. The motion passed 5-0.*

ORDER OF BUSINESS:

GROUND RULES:

APPROVED MINUTES:

The minutes of March 3, 2009, were approved by consensus.

PUBLIC COMMENTS/INQUIRIES:

Charlie Stockwell, Regatta Chair of the Minnesota Boat Club, updated the Council on responses from property owners with lake shore access to Lake Elmo and MBC progress in preparing a resolution for the City Council to consider on April 7, 2009.

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 \$324,071.34
- Proclaim April 24, 2009, to be Arbor Day and the month of May, 2009, to be Arbor Month in the City
- Adopt Resolution No. 2009-010 authorizing landscape partnership agreement no. 94119 with MnDot for the reimbursement of up to \$13,000

REGULAR AGENDA:

Requests by Friends of Washington County (Resolution and Funding)

Marc Hugunin, Executive Director of The Friends of Washington County, reported his organization was 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.

*MOTION: Council Member DeLapp moved to adopt Resolution No. 2009-008 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 authorize \$2,500 from the General Fund for The Friends to use for technical services for its participation in the MPCA's Landfill Advisory Group. Council Member Smith seconded the motion. The motion passed 5-0.*

Consider an application from Vladimir and Silvia Hugec to allow construction of a pool, pergola, fireplace, and spa within the required 100 foot buffer setback in Open Space Preservation (OP) development at 2931 Jonquil Trail North

This agenda item was postponed to the April 7th Council meeting per the request of applicants, Vladimir and Silvia Hugec.

Presentation of the 2009 Street Improvements Feasibility Report – Resolution accepting the report and calling of a public improvement hearing

City Engineer Griffin provided three options for repairing the streets. The first is to repair the streets, leaving the current curb in place; the second is to repair the streets and build new bituminous curbs; and the third is to repair the streets and build concrete curbs into the project. The City Engineer recommended the second option, although all three options remain on the table until after the City's public hearing.

Council Member DeLapp asked why should each property owner pay the same amount, when some property owners live on large cul-de-sacs and others live on smaller lots with less frontage. He also asked that the City Engineer present at the public hearing the cost per each project.

Council Member Emmons suggested the integrating of rain gardens as part of this project.

City Engineer Griffin explained an open house will be held on March 30, 2009, from 6:00-7:30 p.m. to present the property owners/residents the scope of the proposed project, the potential cost of the project, and to receive their comments and questions. In

addition, they will seek the neighborhoods' desire to integrate rain gardens as part of this project to further improve water quality in our ponds and lakes.

*MOTION: Council Member Smith moved to adopt Resolution No. 2009-009 accepting the Feasibility Report for the 2009 Street Improvements and calling for a Public Improvement Hearing including costs per project to be held on April 7, 2009, and to consider the use of rain gardens in street designs. Council Member Park seconded the motion. The motion passed 5-0.*

#### Discuss Sewer and Water Improvement Petition for Lanes DeMontreville Country Club Addition

City Engineer Griffin reported the properties in question are located outside 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.

City Engineer Griffin explained if the initial study is authorized the Council would receive a report estimating the potential assessment of a project of this scope. He recommended that the initial study include only sanitary sewer service and not include a water study as 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.

Roger Johnson, 8048 Hill Trail N., reported Lanes DeMontreville Country Club residents have asked through a petition to have the City conduct a study on cost for putting sewer and water improvements in the area. He said the density of the neighborhood and the proximity of the homes to lakes calls for a sewer system.

Council Member Smith objected to the expenditure saying if there are failing septic systems in the area and a threat to the lakes, then the City would have the responsibility to provide a sewer system, but if septic systems are not failing, the residents who want the study done should pay for the study.

Mayor Johnston objected to that notion, saying that a sewer system in the neighborhood would benefit the entire City and residents should expect the City to pay for the study.

*MOTION: Council Member Smith moved to deny the request for a sewer improvement study for Lanes DeMontreville Country Club for the reason that more information is needed on the status of septic systems as to threats to health, safety, and welfare of the residents and the lakes. Council Member DeLapp seconded the motion. The motion passed 3-2 (Mayor Johnston and Council Member Park voting no).*

*MOTION: Council Member DeLapp moved to amend the motion to work with the residents if they came back with the funding of \$2,000 to pay for the sewer study. Council Member Smith seconded the motion. The motion passed 4-1 (Mayor Johnston voting no).*



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

Planning Director Klatt reported he will be seeking Council authorization to work with a consulting firm at the April 7, 2009, meeting.

Authorize distribution of Lake Elmo Village Area Final AUAR

Ciara Schlichting, Bonestroo, presented an overview of the Lake Elmo Village AUAR. She responded to additional comments received from Council Member Emmons and the Metropolitan Airport Commission and the proposed revisions to the Final AUAR.

Planning Director Kyle Klatt recommended 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.

Council Member Emmons was of the opinion that the Council needed more time to look at the stormwater section because it was added later and the section addressing commuter traffic in the area.

*MOTION: Mayor Johnston moved to authorize distribution of the Lake Elmo Village Area Final AUAR and distribute the document in accordance with the State of Minnesota's Environmental Quality Board rules for the 10-day public comment period. Council Member Park seconded the motion. The motion passed 3-2 (Council Members DeLapp and Emmons voting no).*

Interview questions for city attorney.

Interim City Administrator Dawson provided the Council with a list of interview questions for the City Attorney interviews. Each Council Member will pick ten interview questions and send them to the Administrator.

The meeting was adjourned at 9:50 p.m.

Respectfully submitted by Sharon Lumby, City Clerk



City Council

4/7/2009

CONSENT

Item: 2

ITEM: Approve disbursements in the amount of \$ 123,163.10

SUBMITTED BY: Tom Bouthilet, Finance Director

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<u>Claim #</u>	<u>Amount</u>	<u>Description</u>
ACH	\$ 6,913.85	Payroll Taxes to IRS 03/26/09
ACH	\$ 1,123.46	Payroll Taxes to Mn Dept.of Revenue 03/26/09
DD2120 - DD2133	\$ 17,919.00	Payroll Dated 03/26/2009 (Direct Deposit)
34016 - 34023	\$ 9,753.60	Payroll Dated 03/26/2009 (Payroll & Benefits)
34024 - 34073	\$ 87,453.19	Accounts Payable Dated 04/07/2009

**Total: \$ 123,163.10**

SUMMARY AND ACTION REQUESTED: The City Council is being asked to approve disbursements in the total amount of \$123,163.10

# Accounts Payable

## Checks for Approval

User: julie

Printed: 04/02/2009 - 11:41 AM

Check Number	Check Date	Fund Name	Account Name	Vendor Name	Amount
34024	04/07/2009	General Fund	Miscellaneous	Ace Hardware , Inc	18.09
Check Total:					18.09
34025	04/07/2009	General Fund	Radio	ANCOM COMMUNICATIONS, INC.	80.00
34025	04/07/2009	General Fund	Radio	ANCOM COMMUNICATIONS, INC.	105.50
Check Total:					185.50
34026	04/07/2009	General Fund	Contract Services	Animal Control Services	993.00
Check Total:					993.00
34027	04/07/2009	General Fund	Repairs/Maint Bldg	Aramark, Inc.	36.14
34027	04/07/2009	General Fund	Uniforms	Aramark, Inc.	36.14
34027	04/07/2009	General Fund	Uniforms	Aramark, Inc.	36.14
34027	04/07/2009	General Fund	Repairs/Maint Contractual Bldg	Aramark, Inc.	75.96
34027	04/07/2009	General Fund	Uniforms	Aramark, Inc.	36.14
Check Total:					220.52
34028	04/07/2009	General Fund	Uniforms	Aspen Mills, Inc.	61.45
34028	04/07/2009	General Fund	Small Tools & Equipment	Aspen Mills, Inc.	99.95
34028	04/07/2009	General Fund	Uniforms	Aspen Mills, Inc.	61.45
34028	04/07/2009	General Fund	Uniforms	Aspen Mills, Inc.	34.50
Check Total:					257.35
34029	04/07/2009	Water	Utility System Maintenance	Automatic Systems Co.	299.55
Check Total:					299.55

Check Number	Check Date	Fund Name	Account Name	Vendor Name	Amount
34030	04/07/2009	General Fund	Repairs/Maint Eqpt	Emergency Automotive Technology Inc.	24.75
				Check Total:	24.75
34031	04/07/2009	General Fund	Rentals - Buildings	Biff's Inc.	61.27
				Check Total:	61.27
34032	04/07/2009	General Fund	Repairs/Maint Eqpt	Carquest Auto Parts Store	16.36
				Check Total:	16.36
34033	04/07/2009	General Fund	Repairs/Maint Bldg	Catco	22.44
				Check Total:	22.44
34034	04/07/2009	General Fund	Conferences & Training	Century College	300.00
				Check Total:	300.00
34035	04/07/2009	Water	Water Utility	City of Oakdale	2,106.12
				Check Total:	2,106.12
34036	04/07/2009	General Fund	Contract Services	City of Roseville	925.00
				Check Total:	925.00
34037	04/07/2009	General Fund	Miscellaneous	Cornerstone Copy Burnsville	334.41
				Check Total:	334.41
34038	04/07/2009	General Fund	Mileage	Craig Dawson	45.10
34038	04/07/2009	General Fund	Conferences & Training	Craig Dawson	7.00
				Check Total:	52.10
34039	04/07/2009	General Fund	Landscaping Materials	Dege Garden Center	84.14
34039	04/07/2009	General Fund	Use Tax Payable	Dege Garden Center	-5.14
				Check Total:	79.00

Check Number	Check Date	Fund Name	Account Name	Vendor Name	Amount
34040	04/07/2009	General Fund	Contract Services	Ehlers & Associates, Inc.	950.00
34040	04/07/2009	General Fund	Contract Services	Ehlers & Associates, Inc.	237.50
Check Total:					1,187.50
34041	04/07/2009	General Fund	Repairs/Maint Eqpt	Fred's Tire	21.07
Check Total:					21.07
34042	04/07/2009	General Fund	Miscellaneous	Friends of Washington County	2,500.00
Check Total:					2,500.00
34043	04/07/2009	General Fund	Assessing Services	FXL, Inc.	2,000.00
Check Total:					2,000.00
34044	04/07/2009	General Fund	Repairs/Maint Eqpt	HSBC Business Solutions	225.16
34044	04/07/2009	General Fund	Repairs/Maint Eqpt	HSBC Business Solutions	-23.46
Check Total:					201.70
34045	04/07/2009	General Fund	Contract Services	Kern DeWenter Viere Ltd	3,793.50
Check Total:					3,793.50
34046	04/07/2009	Fall Festival	Miscellaneous	Lake Elmo Fire Relief Assn.	1,303.52
34046	04/07/2009	General Fund	Fire State Aid	Lake Elmo Fire Relief Assn.	1,690.00
Check Total:					2,993.52
34047	04/07/2009	General Fund	Dues & Subscriptions	Metropolitan Area Manager Asociation	45.00
34047	04/07/2009	General Fund	Conferences & Training	Metropolitan Area Manager Asociation	23.00
Check Total:					68.00
34048	04/07/2009	General Fund	Refuse	Maroney's Sanitation, Inc	103.66
34048	04/07/2009	General Fund	Refuse	Maroney's Sanitation, Inc	45.62
34048	04/07/2009	General Fund	Refuse	Maroney's Sanitation, Inc	103.66
34048	04/07/2009	General Fund	Refuse	Maroney's Sanitation, Inc	198.87
Check Total:					451.81

Check Number	Check Date	Fund Name	Account Name	Vendor Name	Amount
34049	04/07/2009	General Fund	Small Tools & Minor Equipment	Marv's Professional Tools	113.39
34049	04/07/2009	Water	Small Tools & Minor Equipment	Marv's Professional Tools	5.24
34049	04/07/2009	General Fund	Small Tools & Minor Equipment	Marv's Professional Tools	29.71
Check Total:					148.34
34050	04/07/2009	General Fund	Contract Services	McCombs Frank Roos Assoc inc	3,384.00
Check Total:					3,384.00
34051	04/07/2009	General Fund	Repairs/Maint Bldg	Menards - Oakdale	6.42
34051	04/07/2009	General Fund	Repairs/Maint Eqpt	Menards - Oakdale	41.41
Check Total:					47.83
34052	04/07/2009	General Fund	Conferences & Training	MN Fire Service Cert Board	70.00
34052	04/07/2009	General Fund	Conferences & Training	MN Fire Service Cert Board	140.00
Check Total:					210.00
34053	04/07/2009	General Fund	Books	MnFIAM	258.80
34053	04/07/2009	General Fund	Books	MnFIAM	249.21
Check Total:					508.01
34054	04/07/2009	General Fund	Telephone	Nextel Communications	100.62
34054	04/07/2009	General Fund	Telephone	Nextel Communications	101.27
34054	04/07/2009	General Fund	Telephone	Nextel Communications	34.18
34054	04/07/2009	General Fund	Telephone	Nextel Communications	58.28
34054	04/07/2009	General Fund	Telephone	Nextel Communications	17.09
Check Total:					311.44
34055	04/07/2009	General Fund	Shop Materials	Northland Chemical Corp.	138.96
34055	04/07/2009	General Fund	Use Tax Payable	Northland Chemical Corp.	-8.48
Check Total:					130.48
34056	04/07/2009	General Fund	Contract Services	Gopher State One-Call One Call Concept	285.75
Check Total:					285.75
34057	04/07/2009	General Fund	Legal Services	Peterson Fram & Bergman Corp	1,095.00

Check Number	Check Date	Fund Name	Account Name	Vendor Name	Amount
34057	04/07/2009	General Fund	Attorney Criminal	Peterson Fram & Bergman Corp	4,161.99
34057	04/07/2009	General Fund	Legal Services	Peterson Fram & Bergman Corp	231.00
Check Total:					5,487.99
34058	04/07/2009	General Fund	Repairs/Maint Contractual Bldg	Pitney Bowes	693.00
Check Total:					693.00
34059	04/07/2009	General Fund	Office Supplies	Pitney Bowes Supplies	170.23
Check Total:					170.23
34060	04/07/2009	General Fund	Cable Operation Expense	Steven Press	78.38
34060	04/07/2009	General Fund	Cable Operation Expense	Steven Press	62.71
34060	04/07/2009	General Fund	Cable Operation Expense	Steven Press	62.71
34060	04/07/2009	General Fund	Use Tax Payable	Steven Press	-12.44
34060	04/07/2009	General Fund	Cable Operation Expense	Steven Press	62.71
34060	04/07/2009	General Fund	Cable Operation Expense	Steven Press	62.71
34060	04/07/2009	General Fund	Use Tax Payable	Steven Press	-7.66
Check Total:					309.12
34061	04/07/2009	Water	Contract Services	Roettger Welding	135.00
Check Total:					135.00
34062	04/07/2009	General Fund	Repairs/Maint Contractual Bldg	Diane Rud	511.20
34062	04/07/2009	General Fund	Repairs/Maint Bldg	Diane Rud	383.40
34062	04/07/2009	General Fund	Use Tax Payable	Diane Rud	-54.60
Check Total:					840.00
34063	04/07/2009	General Fund	Office Supplies	S&T Office Products, Inc.	311.61
34063	04/07/2009	General Fund	Office Supplies	S&T Office Products, Inc.	21.03
Check Total:					332.64
34064	04/07/2009	General Fund	Miscellaneous	Sam's Club	42.05
34064	04/07/2009	General Fund	Miscellaneous	Sam's Club	9.22
34064	04/07/2009	General Fund	Miscellaneous	Sam's Club	27.97

Check Number	Check Date	Fund Name	Account Name	Vendor Name	Amount
Check Total:					79.24
34065	04/07/2009	General Fund	Information Technology/Web	Springbrook Software	4,013.90
Check Total:					4,013.90
34066	04/07/2009	General Fund	Telephone	Sprint	163.96
Check Total:					163.96
34067	04/07/2009	General Fund	Street Maintenance Materials	T.A. Schifsky & Sons Inc	240.16
Check Total:					240.16
34068	04/07/2009	General Fund	Telephone	TDS METROCOM - LLC	163.58
34068	04/07/2009	General Fund	Telephone	TDS METROCOM - LLC	153.94
34068	04/07/2009	Sewer	Telephone	TDS METROCOM - LLC	102.87
34068	04/07/2009	Water	Telephone	TDS METROCOM - LLC	41.59
Check Total:					461.98
34069	04/07/2009	Water	Engineering Services	TKDA, Inc.	2,456.44
34069	04/07/2009	Water	Engineering Services	TKDA, Inc.	46.29
34069	04/07/2009	Development Fund	Engineering Services	TKDA, Inc.	326.84
34069	04/07/2009	Development Fund	Engineering Services	TKDA, Inc.	46.28
34069	04/07/2009	Development Fund	Engineering Services	TKDA, Inc.	3,366.50
34069	04/07/2009	Village	Engineering Services	TKDA, Inc.	79.52
34069	04/07/2009	Infrastructure Reserve	Engineering Services	TKDA, Inc.	348.56
34069	04/07/2009	Surface Water Utility	Engineering Services	TKDA, Inc.	5,430.00
34069	04/07/2009	Water	Engineering Services	TKDA, Inc.	1,644.11
34069	04/07/2009	Sewer	Engineering Services	TKDA, Inc.	2,851.60
34069	04/07/2009	Water	Engineering Services	TKDA, Inc.	1,522.24
34069	04/07/2009	Surface Water Utility	Engineering Services	TKDA, Inc.	620.22
34069	04/07/2009	Infrastructure Reserve	Engineering Services	TKDA, Inc.	5,990.50
34069	04/07/2009	General Fund	Engineering Services	TKDA, Inc.	7,611.98
34069	04/07/2009	General Fund	Engineering Services	TKDA, Inc.	5,084.22
34069	04/07/2009	Water	Engineering Services	TKDA, Inc.	6,245.81
34069	04/07/2009	Infrastructure Reserve	Engineering Services	TKDA, Inc.	1,062.82
Check Total:					49,633.93

Check Number	Check Date	Fund Name	Account Name	Vendor Name	Amount
34070	04/07/2009	General Fund	Repairs/Maint Eqpt	Tri-State Bobcat	70.49
Check Total:					70.49
34071	04/07/2009	General Fund	Information Technology/Web	Washington County	420.00
Check Total:					420.00
34072	04/07/2009	General Fund	Repairs/Maint Bldg	Yocum Oil Company, Inc.	160.13
Check Total:					160.13
34073	04/07/2009	General Fund	Small Tools & Minor Equipment	Zack's, Inc.	63.02
34073	04/07/2009	General Fund	Miscellaneous	Zack's, Inc.	39.99
Check Total:					103.01
Report Total:					87,453.19



City Council  
Date: 04/07/09  
CONSENT  
Item: 2B

ITEM: Abatement of Special Assessment, Delinquent Utility

SUBMITTED BY: Tom Bouthilet, Finance Director

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**SUMMARY AND ACTION REQUESTED:** The City Council is being asked to consider approving the abatement of a Special Assessment Delinquent Utility in the total amount of \$429.96.

The City submitted its annual unpaid utility special assessment in November, 2008. One of the assessments submitted on Exhibit A was listed with an incorrect Property Identification Number (PIN) resulting in a property not serviced by City water to be charged \$429.96.

**RECOMMENDATION:** Approve Resolution No. 2009-016 authorizing abatement of the Special Assessment Delinquent Utility for the property located at 5715 Highlands Trl. N.

**ATTACHMENTS:** Resolution 2009-016 Authorizing Abatement of Special Assessment, Delinquent Utility.  
Washington County Application for Abatement

CITY OF LAKE ELMO  
WASHINGTON COUNTY, MINNESOTA

RESOLUTION NO. 2009 – 016  
RESOLUTION AUTHORIZING ABATEMENT  
OF SPECIAL ASSESSMENT DELINQUENT UTILITY

WHEREAS, The City of Lake Elmo submitted Unpaid Utility Special Assessment in November 2008, Payable 2009

WHEREAS, One of the Assessment was submitted with an incorrect PIN #

WHEREAS, The property Assessed is not serviced by City Water Utilities.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LAKE ELMO, MINNESOTA, THAT:

1. Special Assessment, Delinquent Utility, for PID# 04-029-21-23-0004 be submitted to Washington County for Abatement.

ADOPTED, by the Lake Elmo City Council on the 7th day of April, 2009.

---

Dean Johnston, Mayor

ATTEST:

---

Craig Dawson, Interim City Administrator

## WASHINGTON COUNTY - ASSESSMENT DIVISION

Form 4 Revised 3/2000

Worksheet#

APPLICATION FOR ABATEMENT - GENERAL FORM (M.S. 375.192)  
CLASSIFICATION / DISASTER CREDIT / SPECIAL ASSESSMENTS

County of:

WASHINGTON

For property assessed (year) 2008

and payable in (year) 2009

Please print or type

Applicant's Name City of Lake Elmo

Applicant's Mailing Address

Applicant's Social Security Number

3800 Laverne Ave N.

Telephone (work) 651 ) 777-5510

Lake Elmo MN 55042

Telephone (home) ( )

Street Address (if different from above)

Reference 5715 Highlands Trl N.

Lake Elmo MN 55042

Description of Property

Property ID Number 04-029-21-23-0004

MP Number

Legal Description of Property

School District #

City or Township Name

District #

Demontreville Highlands 6th Add

832

City of Lake Elmo

Lot 001 Blk 003

Assessor's Estimated Market Value

Land \$

Structure \$

Total \$

Class

Applicant's Statement of Facts: Unpaid Utility Special Assessment submitted with incorrect  
PIN #

Applicant's Request: Please remove the Special Assessment Unpaid Utility for:

PIN # 04-029-21-23-0004

# 2608053 2009

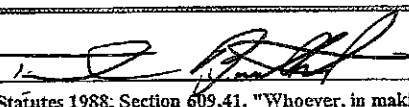
Name: James Edward Thiens

Class: Special Assessment

5715 Highlands Trl N.

Type: C-Delq Util

Lake Elmo MN 55042

Applicant's Signature: 

Date: 4/01/2009

Note: Minnesota Statutes 1988, Section 609.41, "Whoever, in making any statement, oral or written, which is required or authorized by law to be made as a basis of imposing, reducing, or abating any tax or assessment, intentionally makes any statement as to any material matter which the maker of the statement knows is false may be sentenced, unless otherwise provided by law, to imprisonment for not more than one year or to payment of a fine of not more than \$3,000.00, or both.

Note: Must include City/Township Resolution for reductions on assessments

Note: Must include Fire report for Local Option Disaster Credit

City Council  
Date: 4/7/09  
Consent  
Item: I-3  
Resolution 2009-11

ITEM: **Resolution of support for the 106<sup>th</sup> NWIRA Championship Regatta on Lake Elmo**

SUBMITTED BY: Kyle Klatt, Planning Director *kl*

REVIEWED BY: Craig Dawson, Interim City Administrator  
Kelli Matzek, City Planner

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SUMMARY AND ACTION REQUESTED:

The City Council is being asked to consider adopting Resolution 2009-11 supporting a request by the Minnesota Boat Club to host the 106<sup>th</sup> Northwestern International Rowing Association Championship Regatta on Lake Elmo on August 21 and 22, 2009. A representative of the Minnesota Boat Club has previously appeared before the City Council seeking the Council's support for the event, which is needed as part of the application for water surface use from the County Sheriff's office. The City does not require a special permit for an event on a water body within Lake Elmo, except for water ski shows, which require an administrative permit.

In order to conduct the proposed rowing event, the Minnesota Boat Club will need to secure a water use permit from the County Sheriff's office. The Club intends to submit an application to the Sheriff following the Council's action on the support resolution. One aspect of the event that does require special action by the City Council involves the establishment of a "no-wake" restriction outside of the hours specified in Section 97.21 (Water Surface Use) of the City Code. This action cannot be approved by resolution and must be addressed as an amendment to the existing Ordinance. Staff is recommending that the Council consider changing the current ordinance to allow a waiver of the "no-wake" requirements as part of the Boat Club's request.

The event that is being proposed should not have any significant impacts on the City of Lake Elmo since all of the activity either takes place on Lake Elmo or in the Regional Park Reserve. The Boat Club has also attempted to contact all of the property owners around the Lake, and has given the City a summary of survey that was sent to these residents asking for their opinions and concerns regarding the proposed regatta.

ADDITIONAL INFORMATION

- The City's water surface use regulations may be found at Sections 97.20 through 97.23 of the City Code.
- A proposed ordinance that amends this section to allow for a waiver of the no-wake restrictions is attached for consideration by the City Council. Should the Council adopt the resolution of support for the proposed event, staff will bring the proposed ordinance change to the Council for action at its next meeting.
- The resolution of support specifically allows the County Sheriff to work with the applicant to install buoys on the Lake. The City's ordinance allows the Council to authorize the placement buoys on the Lake (or in this case, to allow the Sheriff's office to make this determination).
- The City of Lake Elmo does not have an ordinance that requires a special event permit for activities such as the Boat Regatta. Staff is recommending that the City Council consider an amendment to the

City Code to require a permit for certain types of special events that would apply to any future requests like the one from the Minnesota Boat Club. This recommendation is included as a separate item on the regular Council agenda.

ATTACHMENTS (1):

1. Resolution 2009-011
2. Description of event
3. Appendix A – boat launch location
4. Appendix B – course location
5. Update on responses from property owners
6. Draft ordinance revision (Section 97.21)

Date: March 12, 2009  
To: Lake Elmo City Council members  
From: Minnesota Boat Club (MBC)  
Subject: Hosting the 106<sup>th</sup> Annual Northwestern International Rowing Association (NWIRA) Championship Regatta on Lake Elmo on August 21-22, 2009.

Beginning in November 2008, the Minnesota Boat Club (MBC) began exploring the possibility of hosting the 106<sup>th</sup> Annual Northwestern International Rowing Association (NWIRA) Championship Regatta. This two-day championship event would be held at Lake Elmo on Friday and Saturday, August 21-22, 2009. MBC selected Lake Elmo because it is ideal for championship caliber rowing and it was the rowing venue for the 1990 U.S. Olympic Summer Sports Festival and the 73<sup>rd</sup> NWIRA Championship Regatta in 1976.

To gauge the interest of the residents around Lake Elmo, a letter was sent to 64 property owners with lake shore access in late February 2009 along with a self-addressed stamped post card requesting their consent or remarks about holding a rowing regatta on the lake. The letter explained the event and noted that the request for a resolution by the City Council would include a NO WAKE rule for the lake during the regatta.

The specifics of the event are as follows:

- 300 athletes from US and Canadian rowing clubs will be competing in 49 rowing events.
- 200 people will be at the event as volunteers, spectators, coaches and other support staff.
- The regatta will be sanctioned by the US Rowing Association, the sport's national governing body, which carries with it the necessary insurance to cover the standard liability issues.
- The regatta will be controlled by 15 licensed referees of the US Rowing Association.
- The event will be managed from the Lake Elmo Park Preserve.
- The race on Lake Elmo will encompass a 2000 meter buoyed course starting at the south end of the lake and finishing at the north end. The course can be easily crossed by any outboard as the buoy cables are six feet below the surface and supported by the cylindrical buoys which suspend the cable far below the surface (See Appendix B).
- The event will run from 6 AM to 6 PM both days.
- Request the City of Lake Elmo to create a NO WAKE rule for the duration of the event on both days.

We are also requesting Washington County Commissioners to close the public access boat ramp in the park preserve from normal motorized traffic during the two-day event.

In addition, we will also complete the following applications to the Washington County Sheriff's Office:

- (1) APPLICATION FOR WATER SURFACE USE PERMIT - To Place a raft, buoy, or other structure on or in the waters of this county pursuant to MN Rules 6110.1800
- (2) WATER SURFACE USE APPLICATION - For a Contest, Race, Regatta or other Event on or in the waters of this county

These requests and applications will allow the regatta to be conducted in a safe and manageable fashion.

To date, 51 residents (80%) replied back in favor of the proposal. We received one objection outright and a second objection due to a family gathering involving water skiing.

In addition to the letter sent to the residents, we also visited residences on February 28 and March 7 with the help of two local residents. The overall response from these citizens has been one of excitement and anticipation about this event. With the proposal of closing the public access ramp in the park preserve, the residents truly welcome a quieter lake and the fascination of watching competitive rowing.

The community has embraced the transparent nature of the proposal, the invitation of the community at large to be involved as volunteers and the promise of conducting our business with the local vendors. These are strong elements for building a firm bridge of support within the residents of Lake Elmo and the area rowing community.

Finally, we ask the City Council members to give serious consideration of our proposal and vote in the affirmative in the following resolution.

Regards,

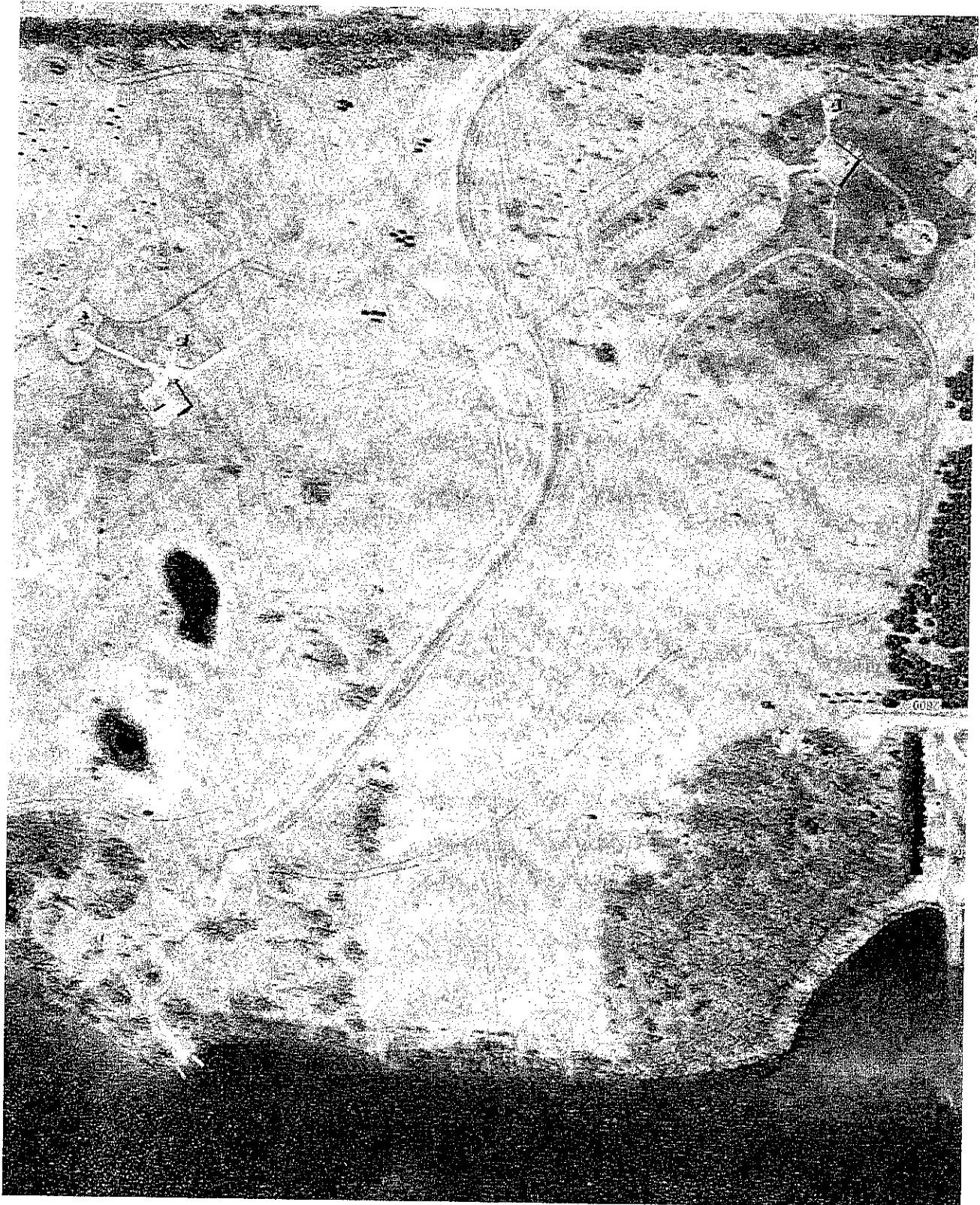
Charlie Stockwell  
Regatta Chair  
Minnesota Boat Club

John Cavanaugh  
US Rowing Association Referee  
Minnesota Boat Club



## APPENDIX A

REGATTA SITE – By Boat Launch Area at Lake Elmo Park Reserve





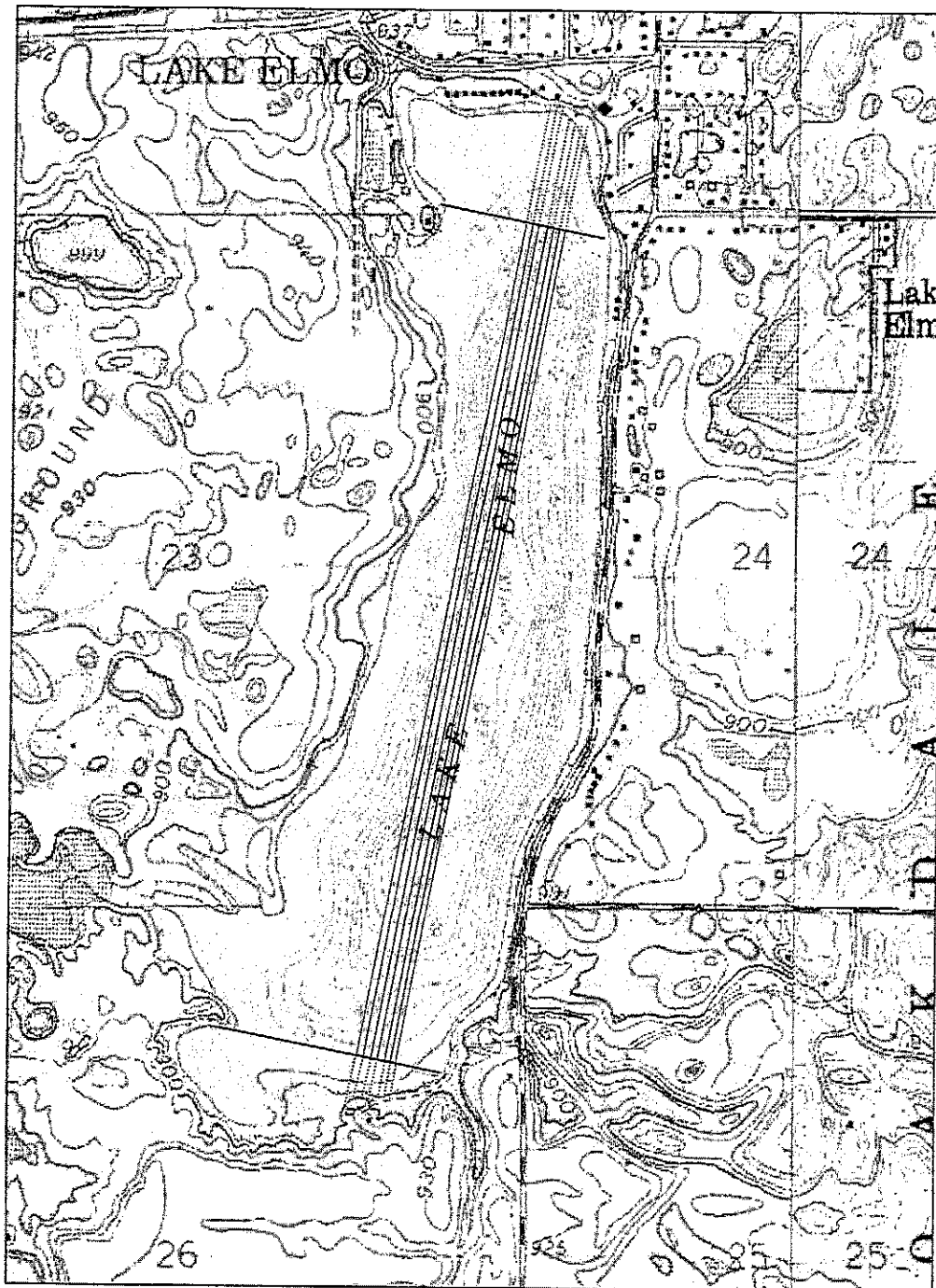
## APPENDIX B

2000 Meters Course

Width of each Lane -15 Meters

Lane 1 West Side (park side of the lake)

Lane 7 East Side (Lake Elmo Avenue North side of the lake)



Date: March 12, 2009  
To: Lake Elmo City Council members  
From: Minnesota Boat Club (MBC)  
Subject: Update on responses from property owners with lake shore access to Lake Elmo.

As we mentioned in our March 12, 2009 letter to the Lake Elmo City Council, we sent out a letter to 67 property owners with lake shore access along with a self-addressed stamped post card requesting their consent or remarks about holding a rowing regatta on the lake. The letter explained the event and noted that the request for a resolution by the City Council would include a NO WAKE rule for the lake during the regatta.

In addition to the letter sent to the residents, we also visited residences on February 28 and March 7 with the help of two local residents. Shown below is the latest tabulation of our inquiry:

- 52 residents (78%) replied back in favor of the proposal.
- 2 residents (3%) replied back in objection to the proposal, one outright and another due to a family gathering involving water skiing.
- 13 residents (19%) have not responded to our proposal. They were not at home during our visit.

Thus, the majority of those residents contacted indicated that they are in agreement with our proposal and welcome the opportunity to be involved with the event as volunteers and/or enjoy a quieter lake and the fascination of watching competitive rowing.

A list of residents with lake shore access to Lake Elmo and their responses to the proposal is attached.

Once again, we ask the City Council members to give serious consideration of our proposal and vote in the affirmative in the following resolution.

Regards,

Charlie Stockwell  
Regatta Chair  
Minnesota Boat Club

John Cavanaugh  
US Rowing Association Referee  
Minnesota Boat Club

## List of residents with lake shore access to Lake Elmo

### Residents replied back in favor of the proposal

	Name	Address
1	Robert B. & Carol J. Novak	2925 Klondike Ave. N
2	Sharon M. Magnuson	3047 Klondike Ave. N
3	James L. Moline	3077 Klondike Ave. N
4	Stephen M. & Sharon J. Bachman	3141 Klondike Ave. N
5	Scott L. & Saralyn S. Knudson	10865 32nd Street N
6	Colleen M. & Terrance Bouthilet	10891 32nd Street N
7	Michael P. Downs & Patricia E. Korlin-Downs	10899 32nd Street N
8	John T. & Debra J. Prokosch	10907 32nd Street N
9	Mike J. & Donna M. Finn	1350 Neal Ave. N
10	Carol V. Kelm	10975 32nd Street N
11	Roy L. & Betty M. Schmoeckel	10997 32nd Street N
12	Donald G. & Joyce Mehsikomer	P.O. Box 47
13	Anthony J. Miller & M. B. Satre	11055 32nd Street N
14	Matthew E. & Constance Northrup	11075 32nd Street N
15	Constance K. Smith	P.O. Box 184
16	Dale F. & Lisa M. Dorschner	3150 Lake Elmo Ave. N
17	Mark T. Zdechlik	3078 Lake Elmo Ave. N
18	George E. & Susan W. Johnson	3070 Lake Elmo Ave. N
19	William C. & Patricia Hagberg	P.O. Box 179
20	W. C. & Daria D. Blanton	632 W 59th St.
21	Marlon O. Gunderson & Julie Bunn	2986 Lake Elmo Ave. N
22	John & Bonnie Butenhoff	P.O. Box 95
23	Elizabeth M. Johnson	2945 Lake Elmo Ave. N
24	Stephen D. Johnson	2915 Lake Elmo Ave. N
25	Donald P. & Shirley J. Durand	2901 Lake Elmo Ave. N
26	Clyde J. Durand	2860 Lake Elmo Ave. N
27	John J. & Colleen Bourdaghs	2855 Lake Elmo Ave. N
28	Wendy L. Griffin	2835 Lake Elmo Ave. N
29	Craig D. & Tammy L. Saeger	2813 Lake Elmo Ave. N
30	George S. & Vicki L. Bias	2795 Lake Elmo Ave. N
31	Nancy Johansen	2767 Lake Elmo Ave. N
32	Daniel D. & Deborah C. Raleigh	2737 Lake Elmo Ave. N
33	Dennis F. & Barbara J. Trembl	2715 Lake Elmo Ave. N
34	Gust Kempf Jr.	2685 Lake Elmo Ave. N
35	Carol Jeanne Novak	2925 Klondike Ave. N

36	Jan A. Leite	2575 Lake Elmo Ave. N
37	Thad & Jennifer Rich	2543 Lake Elmo Ave. N
38	Stephen L. Hopkins & Gail Olson	2525 Lake Elmo Ave. N
39	Richard L. & Sharon A. Engdahl	2491 Lake Elmo Ave. N
40	George R. & Julie A. Tait	P.O. Box 116
41	Larry W. & Kathryn L. Bush	11140 24th Street N
42	Steven R. Schwartz	2393 Lake Elmo Ave. N
43	Robert L. Gardner	2315 Lake Elmo Ave. N
44	Jay A. & Christian Johnson	2269 Lake Elmo Ave. N
45	Marian N. & Clifford N. Adkins	2227 Lake Elmo Ave. N
46	Lawrence J. Nachtwey	2211 Lake Elmo Ave. N
47	James R. & Mary G. Banister	2197 Lake Elmo Ave. N
48	Richard T. & Norrine Travers	2151 Lake Elmo Ave. N
49	Donald A. & Ardis R. Wright	2069 Lake Elmo Ave. N
50	Daniel A. & Wendy Tacheny	11040 20th Street N
51	Elizabeth Krongard	P.O. Box 882
52	Christopher and Karen Cook	11120 20th Street Ct. N.

#### **Residents replied back in objection to the proposal**

	<b>Name</b>	<b>Address</b>
1	David B. & Mary Patricia Schwarz	10961 32nd Street N
2	Susan A. Fuller	4058 Deerwood Trail

#### **Residents that have not responded to our proposal**

	<b>Name</b>	<b>Address</b>
1	Sandra S. Roubik & Toby J. Velte.	2975 Klondike Ave. N
2	Michael L. Denoma	3065 Klondike Ave. N
3	Robert Basset Jr. & Pamela A. Bailey	3161 Klondike Ave. N
4	Scott & Louise Engwer	10823 32nd Street N
5	Daniel D. Martin	10941 32nd Street N
6	John R. & Rosalinda C. Thompson	2119 Lake Elmo Ave. N
7	Paul J. & Joann Larson	2041 Lake Elmo Ave. N
8	Jerome and Sandra Junker	11130 20th Street Ct. N.
9	James and Beth Burns	11140 20th Street Ct. N.
10	Diane Morgan	13780 Manning Trl N.
11	Richard J. Lacher	2185 Capp Road
12	Paul R. & Kimberly A. Bohjanen	1481 Thornhill Lane
13	Paul & Nancy Neumann	11033 32nd Street N

CITY OF LAKE ELMO  
COUNTY OF WASHINGTON  
STATE OF MINNESOTA

ORDINANCE NO. \_\_\_\_\_  
AN ORDINANCE TO ALLOW THE CITY COUNCIL TO WAIVE THE "NO  
WAKE" REQUIREMENTS UNDER THE WATER SURFACE USE  
ORDINANCE FOR SPECIAL EVENTS

**Section 1. The City Council of the City of Lake Elmo hereby ordains that Section 97.21 subdivision (B) is hereby amended to read as follows:**

(B) *Hours of operation.* No person shall operate any motorboat at a speed other than a slow, no-wake speed between sunset and noon the following day unless a different no-wake time is established by the City Council as part of a special event.

**Section 2. Adoption Date**

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

This Ordinance No. 09-\_\_\_\_\_ was adopted on this 21<sup>st</sup> day of April, 2009, by a vote of \_\_\_\_\_ Ayes and \_\_\_\_\_ Nays.

<signature>

Mayor Dean Johnston

ATTEST:

<signature>

Craig Dawson, Interim City Administrator

This Ordinance No. 09-\_\_\_\_\_ was published on the \_\_\_\_\_ day of April, 2009.

**City of Lake Elmo  
Washington County, Minnesota**

**Resolution 2009-011**

A RESOLUTION SUPPORTING A REQUEST BY THE MINNESOTA BOAT CLUB TO  
HOST THE 106<sup>TH</sup> NORTHWESTERN INTERNATIONAL ROWING ASSOCIATION  
CHAMPIONSHIP REGATTA ON LAKE ELMO ON AUGUST 21 AND 22, 2009.

**WHEREAS**, the Minnesota Boat Club is seeking support from the City of Lake Elmo to host the 106<sup>th</sup> Annual Northwestern International Rowing Association (NWIRA) Championship Regatta on Lake Elmo from August 21 through August 22, 2009; and

**WHEREAS**, Lake Elmo's namesake lake has been chosen as the site for the two-day championship rowing competition;

**WHEREAS**, Lake Elmo fully supports the efforts of the Minnesota Boat Club and welcomes the opportunity to be a host city to this international event for the second time in its history.

**NOW, THEREFORE**, based on the testimony elicited and information received, the City Council makes the following:

**FINDINGS**

- 1) That the Minnesota Boat Club will need to obtain a Water Surface Use Permit from the Washington County Sheriff's Office in order to conduct a Regatta on the waters of Lake Elmo.
- 2) That the application for water surface use will include the following components:
  - a. The Minnesota Boat Club will receive the sanctioning of the US Rowing Association, the sport's national governing body to host the regatta, and will need to demonstrate adequate insurance to cover the standard liability issues as part of the permit request.
- 3) During the rowing competition on Lake Elmo, residential boat traffic will be required to follow the No Wake rule. The dates and times are as follows: August 21 and August 22 – 6 a.m. to 6 p.m. The City Council will need to approve an amendment to the current ordinance to allow the establishment of a no-wake speed outside of the current hours established by Section 97.21 (B) of the City Code.
- 4) The City Council consents to the placement of buoys, floating starting platforms, and pontoon boats in the water subject to final approval by the Washington County Sheriff as part of the Water Surface Use Permit.

- 5) The Minnesota Boat Club will encourage all spectators, officials, rowers, coaches, and others to refrain from parking on residential streets in close proximity to Lake Elmo and on County Road 17. This plan will protect the property and privacy of the City's residents, and to prevent spectators from parking along city streets and entering the Park from the north end.
- 6) The Minnesota Boat Club will request that Washington County close the public access boat ramp in the Lake Elmo Park Preserve from normal motorized traffic during the event. This closure will allow the regatta to be conducted in a safe and manageable fashion.
- 7) The City of Lake Elmo does not require a special permit to conduct a rowing event that takes place on a public water body within the City.

**NOW THEREFORE, BE IT FURTHER RESOLVED** that the City of Lake Elmo supports the application by the Minnesota Boat Club to host the 106<sup>th</sup> Northwestern International Rowing Association Championship Regatta on Lake Elmo on August 21 and 22, 2009.

Passed and duly adopted this 7<sup>th</sup> day of April, 2009, by the City Council of the City of Lake Elmo, Minnesota.

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Dean A. Johnston, Mayor

ATTEST:

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Craig W. Dawson, Interim City Administrator

City Council

Date:

April 7, 2009

REGULAR

Item: 4

Motion

ITEM: Refunding of City Bond Issues, Series 2001A and 2002B

SUBMITTED BY: Craig W. Dawson, Interim City Administrator  
Tom Bouthilet, Finance Director

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**SUMMARY AND ACTION REQUESTED:** On March 3, the City Council adopted a resolution authorizing the process for refunding (the technical term for refinancing) two bond issues dating from 2001 and 2002. The resolution authorized the City Administrator and Finance Director to approve the sale and execute the purchase agreement for the bonds with Northland Securities, Inc., provided that the refunding resulted in total net savings of least \$60,000. The Council would thereafter adopt the necessary approving resolutions to complete the City's action on the sale. Those resolutions are presented for Council approval.

**BACKGROUND:** The staff memorandum relating the reasons to consider refunding (1) the General Obligation State Aid Street Bonds, Series 2001A, and (2) General Obligation Water Revenue Bonds, Series 2002B, is attached. The projected net present value (NPV) savings in future interest costs on the \$1,070,000 refunding bonds was estimated to be \$65,000, given the City's Aa3 credit rating by Moody's. On March 30, Tom Bouthilet, Joe Rigdon, Craig Dawson, and Paul Donna (with Northland Securities) participated in a rating call with staff in the Chicago office of Standard & Poors, Inc.. S & P gave the City an AA credit rating on April 1, 2009. This rating is comparable to an Aa2 rating from Moody's, which last rated the City as Aa3. With this rating upgrade, the City is only two steps below the highest rating possible: AAA. Northland Securities placed the bonds on Thursday, April 2. The bonds are being sold with \$78,876 (or 5.75%) NPV savings, an average interest rate of 3.29%, and a true interest cost of 3.19%. These figures are more favorable than the ones anticipated in the staff memorandum for the Council's March 3 meeting.

The Resolution has been prepared by the City's bond counsel, Dorsey & Whitney, to effect the sale and issuance of the bonds.

In the March 3, 2009, memorandum, staff recommended that the Council consider transfer of approximately \$240,000 revenue from the 2001 G.O State Aid and Improvement Fund (Fund #310) to the Tablyn Park/Lake Elmo Heights Project Fund (Fund #202), which has a deficit of approximately \$236,000. This action would eliminate the deficit in the latter fund and, as the City would not be "spending" any funds but rather would reassign them, retain the entire amount in cash during the current economic challenges. Staff plans to present this matter to Council when action is appropriate.

**RECOMMENDATION:** Staff recommends that Council adopt the resolution necessary to approve the issuance of the bonds refunding the City's 2001A and 2002B issues. Note that the resolution will need to be put in final form later as there are many final numbers that will be needed.

#### **SUGGESTED MOTION FOR CONSIDERATION**

*Move to adopt*

- 1) *Resolution No. 2009- 012 approving issuance of bonds refunding the General Obligation State Aid Street Bonds, Series 2001A, and the General Obligation Water Revenue Bonds, Series 2002B.*



ATTACHMENTS:

- Refunding Summary by Northland Securities
- Standard & Poor's media release re: Bond Rating (i.e., upgrade)
- March 3, 2009, staff memorandum proposing refunding of these bonds
- Mr. Donna will present information regarding the sale at the April 7 Council meeting
- Proposed resolution

ORDER OF BUSINESS:

- |  |                           |
|--|---------------------------|
| • Introduction   | Craig Dawson              |
| • Report by presenters                                   | Paul Donna and City staff |
| • Questions from City Council members to the presenter   | Mayor facilitates         |
| • Questions/comments from the public to the City Council | Mayor facilitates         |
| • Action on motion                                       | City Council              |

Final

**City of Lake Elmo, Minnesota**

G.O. Refunding Bonds, Series 2009A

2001 and 2002

**Refunding Summary**

Dated 05/01/2009 | Delivered 05/12/2009

	2001	2002	Issue Summary
<b>Sources Of Funds</b>			
Par Amount of Bonds	\$535,000.00	\$515,000.00	\$1,050,000.00
Reoffering Premium	15,937.30	9,239.70	25,177.00
Accrued Interest from 05/01/2009 to 05/12/2009	469.79	517.31	987.10
<b>Total Sources</b>	<b>\$551,407.09</b>	<b>\$524,757.01</b>	<b>\$1,076,164.10</b>

<b>Uses Of Funds</b>			
Deposit to Crossover Escrow Fund	531,970.00	508,744.06	1,040,714.06
Total Underwriter's Discount (1.960%)	10,486.00	10,094.00	20,580.00
Costs of Issuance	7,770.00	5,205.00	12,975.00
Rounding Amount	711.30	713.95	1,425.25
Deposit to Debt Service Fund	469.79	-	469.79
<b>Total Uses</b>	<b>\$551,407.09</b>	<b>\$524,757.01</b>	<b>\$1,076,164.10</b>

**Flow of Funds Detail**

State and Local Government Series (SLGS) rates for Date of OMP Candidates	4/02/2009	4/02/2009	4/02/2009
Primary Purpose Fund Solution Method	Net Funded	Net Funded	Net Funded
Total Cost of Investments	\$531,970.00	\$508,744.06	\$1,040,714.06
Interest Earnings @ 0.402%	-	1,131.77	1,131.77
Total Draws	\$531,970.00	\$509,875.83	\$1,041,845.83

**PV Analysis Summary (Net to Net)**

Net PV Cashflow Savings @ 2.811%(Bond Yield)	34,658.56	28,477.86	63,136.42
Accrued Interest Credit to Debt Service Fund	469.79	-	469.79
Contingency or Rounding Amount	711.30	713.95	1,425.25
Net Present Value Benefit	\$35,839.65	\$29,191.81	\$65,031.46
Net PV Benefit / \$1,025,000 Refunded Principal	6.827%	5.838%	6.345%
Net PV Benefit / \$1,050,000 Refunding Principal	6.699%	5.668%	6.193%

**Bond Statistics**

Average Life	4.135 Years	7.438 Years	5.755 Years
Average Coupon	3.0330571%	3.4420101%	3.2922976%
Net Interest Cost (NIC)	2.7866242%	3.4643132%	3.2162198%
Bond Yield for Arbitrage Purposes	2.8106027%	2.8106027%	2.8106027%
True Interest Cost (TIC)	2.7605965%	3.4528478%	3.1902323%
All Inclusive Cost (AIC)	3.1444329%	3.6131590%	3.4353320%

Ref | Issue Summary | 4/2/2009 | 12:10 PM

April 1, 2009

## Lake Elmo, MN's Series 2009 GO Refunding Bonds Rated 'AA'; Outlook Stable

**Primary Credit Analyst:**

Caroline West, Chicago 312-233-7047; caroline\_west@standardandpoors.com

**Secondary Credit Analyst:**

Corey Friedman, Chicago (1) 312-233-7010; corey\_friedman@standardandpoors.com

CHICAGO (Standard & Poor's) April 1, 2009--Standard & Poor's Ratings Services has assigned its 'AA' long-term rating to the city of Lake Elmo, Minn.'s \$1.07 million general obligation (GO) refunding bonds series 2009A. The outlook is stable.

The rating reflects participation in the deep and diverse Minneapolis-St. Paul economic base; very strong income and wealth measures exceeding the national averages; strong and stable finances, including a very strong general fund balance reserve; and low-to-moderate overall debt burden.

"We expect that the city will maintain a strong reserve level, even if residential growth remains slow, by continuing to use conservative budgeting practices," said Standard & Poor's credit analyst Caroline West. Participation in the deep and diverse Minneapolis-St Paul economic base provides further stability to the rating.

The series 2009A bond proceeds will refund a portion of the series 2001 GO state-aid and improvement bonds and will crossover refund part of the 2002B GO water revenue bonds in order to obtain interest cost savings. The city's ad valorem property tax pledge secures the bonds.

Lake Elmo, a mostly residential suburb, is located in Washington County about 14 miles east of St. Paul.

Complete ratings information is available to RatingsDirect subscribers at [www.ratingsdirect.com](http://www.ratingsdirect.com). All ratings affected by this rating action can be found on Standard & Poor's public Web site at [www.standardandpoors.com](http://www.standardandpoors.com); select your

City Council

Date: March 3, 2009

REGULAR

Item:

Motion

ITEM: Refunding of Bonds

SUBMITTED BY: Craig W. Dawson, Interim City Administrator

REVIEWED BY: Tom Bouthilet, Finance Director  
Joe Rigdon, Finance Specialist

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**SUMMARY AND ACTION REQUESTED:** Paul Donna, a senior vice-president with Northland Securities, has alerted staff about a favorable market climate for the possible refunding (i.e., refinancing) of two bond issues. 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 is approximately 4.8%; the projected average interest rate is approximately 2.9%.) In addition, by refunding the bonds, the City will be able to free up funds to address other financial needs. The City Council would need to adopt a resolution to authorize the process for the bond refunding to begin.

**BACKGROUND:**

There is greater efficiency in the financing transaction costs when larger amounts are financed, and generally when the amount is greater than \$1 million. Two bond issues, under consideration, totaling just over \$1 million in outstanding principal, are:

1. General Obligation State Aid Street Bonds, Series 2001A

These bonds were issued in 2001 for roadway improvements in the Eagle Point commercial area. The streets were financed with special assessments and future Municipal State Aid (MSA) revenues. Approximately \$525,000 of outstanding bond principal remains. The bond issue is scheduled to mature in 2017, and the bonds are callable at any time.

The City's Bond Fund has a balance of approximately \$240,000, as all special assessments have been paid and have been accruing interest. This balance would be freed up for any purpose as deemed by the Council. Interest on the existing bonds is currently \$27,000, and is paid from the City's current \$94,000 annual MSA maintenance allocation. As projected in the refunding, the interest amount could be reduced to \$23,000 in 2010, and would steadily decrease to \$5,500 in 2016; the savings would be used for better maintenance of the City's MSA-designated streets. Projected savings in future interest costs for the MSA Bond would have a net present value benefit of \$35,000 (given the current market).

2. General Obligation Water Revenue Bonds, Series 2002B

These bonds were issued in 2002 for trunk water system improvements – Well No. 2 and its pumphouse, and drilling Well No. 3. Payments for these bonds are included in the rates paid by all water customers. Approximately \$500,000 of outstanding bond principal remains. The bond issue is scheduled to mature in 2022, and the bonds are callable late in 2009.

As projected in the refunding, the savings in future interest costs for the Water Fund would have a net present value benefit of \$29,000 (given the current market)..

Net Present Value Savings: State law requires that the calculated net present value savings be at least 3.0 percent in order for advance refunding bonds to be issued. The projected net present value savings for these two issues is nearly \$65,000, or to just over 6.0 percent, with the savings on the MSA bonds being slightly higher than that percentage.

Advance Crossover Refunding Bonds: As the Water refunding bonds would be issued before the call date of the existing bonds, the proceeds from the refunding would need to be placed in escrow until the call date. These funds will be placed in a very low-risk account (direct obligations of the U.S. Treasury,) in order to preserve the refunding principal until it is needed on the call date.

Use of Balance in 2001A Bond Fund: The City's bond attorney has advised that the approximate \$240,000 balance from special assessment revenue in the 2001A Bond Fund can be used for any purpose deemed appropriate by the Council. Staff would suggest that the Council transfer these funds to the Tablyn Park improvement fund in order to eliminate a deficit there. These improvements were made with funding by the City and 3M, and at year-end 2008 the fund has a deficit of approximately \$340,000. The last installment due from 3M is \$104,000, leaving the City's cost for the project underfunded by about \$236,000, and no strategy yet developed to address it. Applying the balance from the 2001A Bond Fund would remove this deficit from the City's books and help keep the City in the good graces of the auditors and credit rating agencies. Another advantage is that the City would not be "spending" funds, but rather reassigning them, and thus be able to retain the entire \$240,000 in cash during the current economic challenges.

Financial Services: The City historically has used the services of Northland Securities, Inc., for these financial transactions. The firm receives compensation only upon issuance of the bonds. If the Council decides at any time not to continue with the process, no fees will be due to Northland Securities, Inc.

**RECOMMENDATION:** Staff recommends that the City Council adopt the resolution authorizing the process to begin the refunding of these bonds, and to authorize the services of Northland Securities, Inc., to assist the City in this process. Based on its discussion with Northland Securities during the meeting, a target level of savings should be stated within the resolution in order to guide the timing and future consideration of the bond sale.

**SUGGESTED MOTION FOR CONSIDERATION**

***Move to adopt the resolution authorizing the commencement of refunding State Aid Bonds Series 2001A, and Water Improvement Bonds, Series 2002B, and to authorize the services of Northland Securities, Inc., for this transaction.***

**ATTACHMENTS:**

Proposed resolution  
Financial information from Northland Securities, Inc., related to the refundings

**ORDER OF BUSINESS:**

- |  |                      |
|--|----------------------|
| • Introduction   | Craig Dawson         |
| • Report by staff or other presenter                     | Paul Donna           |
| • 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         |

CERTIFICATION OF MINUTES RELATING TO  
GENERAL OBLIGATION REFUNDING BONDS, SERIES 2009A

Issuer: City of Lake Elmo, Minnesota

Governing Body: City Council

Kind, date, time and place of meeting: A regular meeting held April 7, 2009, at 7 o'clock P.M., at the City Hall, Lake Elmo, Minnesota.

Members present:

Members absent:

Documents Attached:

Minutes of said meeting (including):

RESOLUTION NO. \_\_\_\_\_

RESOLUTION AUTHORIZING ISSUANCE, AWARDING  
SALE, PRESCRIBING THE FORM AND DETAILS AND  
PROVIDING FOR THE PAYMENT OF \$1,070,000 GENERAL  
OBLIGATION REFUNDING BONDS, SERIES 2009A

I, the undersigned, being the duly qualified and acting recording officer of the public corporation issuing the bonds referred to in the title of this certificate, certify that the documents attached hereto, as described above, have been carefully compared with the original records of said corporation in my legal custody, from which they have been transcribed; that said documents are a correct and complete transcript of the minutes of a meeting of the governing body of said corporation, and correct and complete copies of all resolutions and other actions taken and of all documents approved by the governing body at said meeting, so far as they relate to said bonds; and that said meeting was duly held by the governing body at the time and place and was attended throughout by the members indicated above, pursuant to call and notice of such meeting given as required by law.

WITNESS my hand officially as such recording officer on April \_\_, 2009.

\_\_\_\_\_  
City Administrator

Councilmember \_\_\_\_\_ introduced the following resolution and moved its adoption, which motion was seconded by Councilmember \_\_\_\_\_:

RESOLUTION AUTHORIZING ISSUANCE, AWARDING  
SALE, PRESCRIBING THE FORM AND DETAILS AND  
PROVIDING FOR THE PAYMENT OF \$1,070,000 GENERAL  
OBLIGATION REFUNDING BONDS, SERIES 2009A

BE IT RESOLVED by the City Council of the City of Lake Elmo, Minnesota (the "Issuer"), as follows:

Section 1. Authorization and Sale.

1.01. Authorization. By resolution adopted March 3, 2009, this Council has determined that it is in the best interests of the Issuer to issue its General Obligation Refunding Bonds, Series 2009A (the "Bonds") in the principal amount of \$1,070,000. The proceeds of the Bonds will be used, together with funds on hand as may be required, to (i) refund, in a current refunding on or about May 12, 2009, all or a portion of the Issuer's General Obligation State Aid and Improvement Bonds, Series 2001, dated, as originally issued, as of October 1, 2001 (the "Original Series 2001 Bonds") and maturing February 1 in the years 2010 through 2017 (the "Series 2001 Refunded Bonds"), (ii) refund, in a crossover refunding on December 1, 2009 (the "Crossover Date"), all or a portion of the Issuer's General Obligation Water Revenue Bonds, Series 2002B, dated, as originally issued, as of May 1, 2002 and maturing on December 1 in the years 2010 through 2021 (the "Series 2002 Refunded Bonds"; together with the Series 2001 Refunded Bonds, the "Refunded Bonds") and (iii) fund costs of issuance of the Bonds. The portion of the Original Series 2001 Bonds issued under Minnesota Statutes, Chapters 429 and 475 has matured. The portion of the Bonds allocable to the refunding of the Series 2001 Refunded Bonds is \$550,000 (the "2001 Refunding Bonds"). The portion of the Bonds allocable to the refunding of the Series 2002 Refunded Bonds is \$520,000 (the "2002 Refunding Bonds"). The Crossover Date is the earliest date on which the Series 2002 Refunded Bonds may be redeemed. The refunding of the Refunded Bonds is being carried out for the purpose described in Minnesota Statutes, Section 475.67, subdivision 3, section (b)(2)(i) and in compliance with Minnesota Statutes, Chapter 475.

1.02. Sale. Pursuant to Minnesota Statutes, Section 475.60, subdivision 2, paragraph (2), the requirements as to public sale do not apply to the issuance of the Bonds. A proposal has been received from Northland Securities, Inc., Minneapolis, Minnesota (the "Purchaser"). In accordance with the terms of offering for the Bonds, it is hereby determined to issue the Bonds in the principal amount of \$1,070,000 at a price of \$\_\_\_\_\_ plus accrued interest, and upon the further terms and conditions set forth herein. The sale of the Bonds is hereby awarded to the Purchaser, and the Mayor and City Administrator are hereby authorized and directed to execute a contract on behalf of the Issuer for the sale of the Bonds in accordance with the terms of the proposal.

1.03. Savings. It is hereby determined that:

(a) by the issuance of the Series 2002 Refunding Bonds, the Issuer will realize a substantial interest rate reduction, a gross savings of approximately \$35,602.66 and a present value savings (using the yield on the Bonds, computed in accordance with Section 148 of the Internal Revenue Code of 1986, as amended (the "Code"), as the discount factor) of approximately \$29,422.42; and

(b) as of the Crossover Date, the sum of (i) the present value of the debt service on the Series 2002 Refunding Bonds, computed to their stated maturity dates, after deducting any premium, using the yield of the Bonds as the discount rate, plus (ii) any expenses of the refunding payable from a source other than the proceeds of the Series 2002 Refunding Bonds or investment earnings thereon, is lower by 3.000% (not less than 3%) than the present value of the debt service on the Series 2002 Refunded Bonds, exclusive of any premium, computed to their stated maturity dates, using the yield of the Bonds as the discount rate.

## Section 2. Bond Terms; Registration; Execution and Delivery.

2.01. Issuance of Bonds. All acts, conditions and things which are required by the Constitution and laws of the State of Minnesota to be done, to exist, to happen and to be performed precedent to and in the valid issuance of the Bonds having been done, now existing, having happened and having been performed, it is now necessary for the City Council to establish the form and terms of the Bonds, to provide security therefor and to issue the Bonds forthwith.

2.02. Maturities; Interest Rates; Denominations and Payment. The Bonds shall be originally dated as of May 1, 2009, shall be in denominations of \$5,000 or any integral multiple thereof, of single maturities, shall mature on December 1 in the years and amounts stated below, and shall bear interest from the date of issue until paid or duly called for redemption at the annual rates set forth opposite such years and amounts, as follows:

<u>Year</u>	<u>Amount</u>	<u>Rate</u>
2009	\$70,000	%
2010	100,000	
2011	105,000	
2012	110,000	
2013	105,000	
2014	115,000	
2015	115,000	
2016	110,000	
2017	45,000	
2018	45,000	
2019	50,000	
2020	50,000	
2021	50,000	



[REVISE MATURITY SCHEDULE FOR ANY TERM BONDS]

Of the Bond maturities referenced above, the following amounts are allocable to the Series 2001 Refunding Bonds:

<u>Year</u>	<u>Amount</u>	<u>Rate</u>
2009	\$70,000	%
2010	65,000	
2011	65,000	
2012	70,000	
2013	65,000	
2014	70,000	
2015	75,000	
2016	70,000	

[REVISE MATURITY SCHEDULE FOR ANY TERM BONDS]

Of the Bond maturities referenced hereinabove, the following amounts are allocable to the Series 2002 Refunding Bonds:

<u>Year</u>	<u>Amount</u>	<u>Rate</u>
2010	35,000	%
2011	40,000	
2012	40,000	
2013	40,000	
2014	45,000	
2015	40,000	
2016	40,000	
2017	45,000	
2018	45,000	
2019	50,000	
2020	50,000	
2021	50,000	

[REVISE MATURITY SCHEDULE FOR ANY TERM BONDS]

The Bonds shall be issuable only in fully registered form. The interest thereon and, upon surrender of each Bond, the principal amount thereof shall be payable by check or draft issued by the Registrar described herein, provided that, so long as the Bonds are registered in the name of a securities depository or a nominee thereof, in accordance with Section 2.08 hereof, principal and interest shall be payable in accordance with the operational arrangements of the securities depository.

2.03. Dates and Interest Payment Dates. Upon initial delivery of the Bonds pursuant to Section 2.07 and upon any subsequent transfer or exchange pursuant to Section 2.06, the date of authentication shall be noted on each Bond so delivered, exchanged or transferred.

The interest on the Bonds shall be payable on December 1 and June 1 in each year, commencing December 1, 2009, to the owner of record thereof as of the close of business on the fifteenth day of the preceding month, whether or not such day is a business day. Interest shall be computed on the basis of a 360-day year composed of twelve 30-day months.

2.04. Redemption. Bonds maturing in 2018 and later years shall be subject to redemption and prepayment at the option of the Issuer, in whole or in part, in such order of maturity dates as the Issuer may select and, within a maturity, by lot as selected by the Registrar (or, if applicable, by the bond depository in accordance with its customary procedures) in multiples of \$5,000, on December 1, 2017, and on any date thereafter, at a price equal to the principal amount thereof and accrued interest to the date of redemption. The City Administrator shall cause notice of the call for redemption thereof to be published if and as required by law, and at least thirty and not more than 60 days prior to the designated redemption date, shall cause notice of call for redemption to be mailed, by first class mail, to the registered holders of any Bonds to be redeemed at their addresses as they appear on the bond register described in Section 2.06 hereof, but no defect in or failure to give such mailed notice of redemption shall affect the validity of proceedings for the redemption of any Bond not affected by such defect or failure. Official notice of redemption having been given as aforesaid, the Bonds or portions of Bonds so to be redeemed shall, on the redemption date, become due and payable at the redemption price therein specified and from and after such date (unless the Issuer shall default in the payment of the redemption price) such Bonds or portions of Bonds shall cease to bear interest. Upon partial redemption of any Bond, a new Bond or Bonds will be delivered to the owner without charge, representing the remaining principal amount outstanding.

[COMPLETE THE FOLLOWING PROVISIONS IF THERE ARE TERM BONDS -  
ADD ADDITIONAL PROVISIONS IF THERE ARE MORE THAN TWO TERM BONDS]

[Bonds maturing on December 1, 20\_\_ and 20\_\_ (the "Term Bonds") shall be subject to mandatory redemption prior to maturity pursuant to the sinking fund requirements of this Section 2.04 at a redemption price equal to the stated principal amount thereof plus interest accrued thereon to the redemption date, without premium. The Registrar shall select for redemption, by lot or other manner deemed fair, on December 1 in each of the following years the following stated principal amounts of such Bonds:

Term Bonds Maturing December 1, 20\_\_

<u>Year</u>	<u>Principal Amount</u>
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The remaining \$\_\_\_\_\_ stated principal amount of such Bonds shall be paid at maturity on December 1, 20\_\_.

Term Bonds Maturing December 1, 20\_\_

Year

Principal Amount

The remaining \$ \_\_\_\_\_ stated principal amount of such Bonds shall be paid at maturity on December 1, 20\_\_\_\_.

Notice of redemption shall be given as provided in the preceding paragraph.]

2.05. Appointment of Initial Registrar. The Issuer hereby appoints Northland Trust Services, Inc., Minneapolis, Minnesota, as the initial bond registrar, transfer agent and paying agent (the "Registrar"). The Mayor and City Administrator are authorized to execute and deliver, on behalf of the Issuer, a contract with the Registrar. Upon merger or consolidation of the Registrar with another corporation, if the resulting corporation is a bank or trust company organized under the laws of the United States or one of the states of the United States and authorized by law to conduct such business, such corporation shall be authorized to act as successor Registrar. The Issuer agrees to pay the reasonable and customary charges of the Registrar for the services performed. The Issuer reserves the right to remove the Registrar, effective upon not less than thirty days' written notice and upon the appointment and acceptance of a successor Registrar, in which event the predecessor Registrar shall deliver all cash and Bonds in its possession to the successor Registrar and shall deliver the Bond Register to the successor Registrar.

2.06. Registration. The effect of registration and the rights and duties of the Issuer and the Registrar with respect thereto shall be as follows:

(a) Register. The Registrar shall keep at its principal corporate trust office a bond register in which the Registrar shall provide for the registration of ownership of Bonds and the registration of transfers and exchanges of Bonds entitled to be registered, transferred or exchanged.

(b) Transfer of Bonds. Upon surrender for transfer of any Bond duly endorsed by the registered owner thereof or accompanied by a written instrument of transfer, in form satisfactory to the Registrar, duly executed by the registered owner thereof or by an attorney duly authorized by the registered owner in writing, the Registrar shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new Bonds of a like aggregate principal amount and maturity, as requested by the transferor. The Registrar may, however, close the books for registration of any transfer after the fifteenth day of the month preceding each interest payment date and until such interest payment date.

(c) Exchange of Bonds. Whenever any Bonds are surrendered by the registered owner for exchange the Registrar shall authenticate and deliver one or more new Bonds of a like aggregate principal amount and maturity, as requested by the registered owner or the owner's attorney in writing.

(d) Cancellation. All Bonds surrendered upon any transfer or exchange shall be promptly canceled by the Registrar and thereafter disposed of as directed by the Issuer.

(e) Improper or Unauthorized Transfer. When any Bond is presented to the Registrar for transfer, the Registrar may refuse to transfer the same until it is satisfied that the endorsement on such Bond or separate instrument of transfer is valid and genuine and that the requested transfer is legally authorized. The Registrar shall incur no liability for the refusal, in good faith, to make transfers which it, in its judgment, deems improper or unauthorized.

(f) Persons Deemed Owners. The Issuer and the Registrar may treat the person in whose name any Bond is at any time registered in the bond register as the absolute owner of the Bond, whether the Bond shall be overdue or not, for the purpose of receiving payment of or on account of, the principal of and interest on the Bond and for all other purposes; and all payments made to any registered owner or upon the owner's order shall be valid and effectual to satisfy and discharge the liability upon Bond to the extent of the sum or sums so paid.

(g) Taxes, Fees and Charges. For every transfer or exchange of Bonds (except for an exchange upon a partial redemption of a Bond), the Registrar may impose a charge upon the owner thereof sufficient to reimburse the Registrar for any tax, fee or other governmental charge required to be paid with respect to such transfer or exchange.

(h) Mutilated, Lost, Stolen or Destroyed Bonds. In case any Bond shall become mutilated or be destroyed, stolen or lost, the Registrar shall deliver a new Bond of like amount, number, maturity date and tenor in exchange and substitution for and upon cancellation of any such mutilated Bond or in lieu of and in substitution for any Bond destroyed, stolen or lost, upon the payment of the reasonable expenses and charges of the Registrar in connection therewith; and, in the case of a Bond destroyed, stolen or lost, upon filing with the Registrar of evidence satisfactory to it that the Bond was destroyed, stolen or lost, and of the ownership thereof, and upon furnishing to the Registrar of an appropriate bond or indemnity in form, substance and amount satisfactory to it, in which both the Issuer and the Registrar shall be named as obligees. All Bonds so surrendered to the Registrar shall be canceled by it and evidence of such cancellation shall be given to the Issuer. If the mutilated, destroyed, stolen or lost Bond has already matured or been called for redemption in accordance with its terms it shall not be necessary to issue a new Bond prior to payment.

(i) Authenticating Agent. The Registrar is hereby designated authenticating agent for the Bonds, within the meaning of Minnesota Statutes, Section 475.55, Subdivision 1, as amended.

(j) Valid Obligations. All Bonds issued upon any transfer or exchange of Bonds shall be the valid obligations of the Issuer, evidencing the same debt, and entitled to the same benefits under this Resolution as the Bonds surrendered upon such transfer or exchange.

2.07. Execution, Authentication and Delivery. The Bonds shall be prepared under the direction of the City Administrator and shall be executed on behalf of the Issuer by the signatures of the Mayor and the City Administrator, provided that the signatures may be printed, engraved or lithographed facsimiles of the originals. In case any officer whose signature or a facsimile of whose signature shall appear on the Bonds shall cease to be such officer before the delivery of any Bond, such signature or facsimile shall nevertheless be valid and sufficient for all purposes, the same as if such officer had remained in office until delivery. Notwithstanding such execution, no Bond shall be valid or obligatory for any purpose or entitled to any security or benefit under this Resolution unless and until a certificate of authentication on the Bond has been duly executed by the manual signature of an authorized representative of the Registrar. Certificates of authentication on different Bonds need not be signed by the same representative. The executed certificate of authentication on each Bond shall be conclusive evidence that it has been authenticated and delivered under this Resolution. When the Bonds have been prepared, executed and authenticated, the City Administrator shall deliver them to the Purchaser upon payment of the purchase price in accordance with the contract of sale heretofore executed, and the Purchaser shall not be obligated to see to the application of the purchase price.

2.08. Securities Depository. (a) For purposes of this section the following terms shall have the following meanings:

“Beneficial Owner” shall mean, whenever used with respect to a Bond, the person in whose name such Bond is recorded as the beneficial owner of such Bond by a Participant on the records of such Participant, or such person’s subrogee.

“Cede & Co.” shall mean Cede & Co., the nominee of DTC, and any successor nominee of DTC with respect to the Bonds.

“DTC” shall mean The Depository Trust Company of New York, New York.

“Participant” shall mean any broker-dealer, bank or other financial institution for which DTC holds Bonds as securities depository.

“Representation Letter” shall mean the Representation Letter pursuant to which the sender agrees to comply with DTC’s Operational Arrangements.

(b) The Bonds shall be initially issued as separately authenticated fully registered bonds, and one Bond shall be issued in the principal amount of each stated maturity of the Bonds. Upon initial issuance, the ownership of such Bonds shall be registered in the bond register in the name of Cede & Co., as nominee of DTC. The Registrar and the Issuer may treat DTC (or its nominee) as the sole and exclusive owner of the Bonds registered in its name for the purposes of payment of the principal of or interest on the Bonds, selecting the Bonds or portions thereof to be redeemed, if any, giving any notice permitted or required to be given to registered owners of Bonds under this resolution, registering the transfer of Bonds, and for all other purposes whatsoever, and neither the Registrar nor the Issuer shall be affected by any notice to the contrary. Neither the Registrar nor the Issuer shall have any responsibility or obligation to any Participant, any person claiming a beneficial ownership interest in the Bonds under or through DTC or any Participant, or any other person which is not shown on the bond register as

being a registered owner of any Bonds, with respect to the accuracy of any records maintained by DTC or any Participant, with respect to the payment by DTC or any Participant of any amount with respect to the principal of or interest on the Bonds, with respect to any notice which is permitted or required to be given to owners of Bonds under this resolution, with respect to the selection by DTC or any Participant of any person to receive payment in the event of a partial redemption of the Bonds, or with respect to any consent given or other action taken by DTC as registered owner of the Bonds. So long as any Bond is registered in the name of Cede & Co., as nominee of DTC, the Registrar shall pay all principal of and interest on such Bond, and shall give all notices with respect to such Bond, only to Cede & Co. in accordance with DTC's Operational Arrangements, and all such payments shall be valid and effective to fully satisfy and discharge the Issuer's obligations with respect to the principal of and interest on the Bonds to the extent of the sum or sums so paid. No person other than DTC shall receive an authenticated Bond for each separate stated maturity evidencing the obligation of the Issuer to make payments of principal and interest. Upon delivery by DTC to the Registrar of written notice to the effect that DTC has determined to substitute a new nominee in place of Cede & Co., the Bonds will be transferable to such new nominee in accordance with paragraph (e) hereof.

(c) In the event the Issuer determines that it is in the best interest of the Beneficial Owners that they be able to obtain Bonds in the form of bond certificates, the Issuer may notify DTC and the Registrar, whereupon DTC shall notify the Participants of the availability through DTC of Bonds in the form of certificates. In such event, the Bonds will be transferable in accordance with paragraph (e) hereof. DTC may determine to discontinue providing its services with respect to the Bonds at any time by giving notice to the Issuer and the Registrar and discharging its responsibilities with respect thereto under applicable law. In such event the Bonds will be transferable in accordance with paragraph (e) hereof.

(d) The execution and delivery of the Representation Letter to DTC, if not previously filed with DTC, by the Mayor or City Administrator is hereby authorized and directed.

(e) In the event that any transfer or exchange of Bonds is permitted under paragraph (b) or (c) hereof, such transfer or exchange shall be accomplished upon receipt by the Registrar of the Bonds to be transferred or exchanged and appropriate instruments of transfer to the permitted transferee in accordance with the provisions of this resolution. In the event Bonds in the form of certificates are issued to owners other than Cede & Co., its successor as nominee for DTC as owner of all the Bonds, or another securities depository as owner of all the Bonds, the provisions of this resolution shall also apply to all matters relating thereto, including, without limitation, the printing of such Bonds in the form of bond certificates and the method of payment of principal of and interest on such Bonds in the form of bond certificates.

2.09. Form of Bonds. The Bonds shall be prepared in substantially the following form:

UNITED STATES OF AMERICA  
STATE OF MINNESOTA

CITY OF LAKE ELMO

GENERAL OBLIGATION REFUNDING BOND, SERIES 2009A

<u>Interest Rate</u>	<u>Maturity Date</u>	<u>Date of Original Issue</u>	<u>CUSIP No.</u>
%	December 1, 20__	May 1, 2009	

REGISTERED OWNER: CEDE & CO.

PRINCIPAL AMOUNT: THOUSAND DOLLARS

The City of Lake Elmo, State of Minnesota (the "Issuer") acknowledges itself to be indebted and for value received hereby promises to pay to the registered owner specified above, or registered assigns, the principal amount specified above on the maturity date specified above, with interest thereon from the date of original issue specified above or from the most recent interest payment date to which interest has been paid or duly provided for, at the annual rate specified above, payable on December 1 and June 1 in each year, commencing December 1, 2009, to the person in whose name this Bond is registered at the close of business on the fifteenth day (whether or not a business day) of the immediately preceding month, all subject to the provisions referred to herein with respect to the redemption of this Bond before maturity. Interest hereon shall be computed on the basis of a 360-day year composed of twelve 30-day months. The interest hereon and, upon presentation and surrender hereof, the principal hereof are payable in lawful money of the United States of America by check or draft by Northland Trust Services, Inc., Minneapolis, Minnesota, as Bond Registrar and Paying Agent, or by other means of payment if its designated successor under the Resolution described herein. For the prompt and full payment of such principal and interest as the same respectively become due, the full faith and credit and taxing powers of the Issuer have been and are hereby irrevocably pledged.

This Bond is one of an issue in the aggregate principal amount of \$1,070,000 (the "Bonds") issued pursuant to a resolution adopted by the City Council on April 7, 2009 (the "Resolution"), to provide funds to refund certain outstanding general obligation bonds of the Issuer and is issued pursuant to and in full conformity with the Constitution and laws of the State of Minnesota thereunto enabling, including Minnesota Statutes, Chapter 475. The Bonds are issuable only in fully registered form, in denominations of \$5,000 or any integral multiple thereof, of single maturities.

Bonds maturing in 2018 and later years shall be subject to redemption and prepayment at the option of the Issuer, in whole or in part, in such order of maturity dates as the Issuer may select and, within a maturity, by lot as selected by the Registrar (or, if applicable, by the bond depository in accordance with its customary procedures) in multiples of \$5,000, on December 1, 2017, and on any date thereafter, at a price equal to the principal amount thereof and accrued interest to the date of redemption. The Issuer shall cause notice of the call for redemption thereof to be published as required by law, and at least thirty and not more than 60 days prior to the designated redemption date, shall cause notice of call for redemption to be mailed, by first class mail, to the registered holders of any Bonds, at the holders' addresses as they appear on the bond register maintained by the Bond Registrar, but no defect in or failure to give such mailed notice of redemption shall affect the validity of proceedings for the redemption of any Bond not affected by such defect or failure. Official notice of redemption having been given as aforesaid,

the Bonds or portions of Bonds so to be redeemed shall, on the redemption date, become due and payable at the redemption price therein specified and from and after such date (unless the Issuer shall default in the payment of the redemption price) such Bonds or portions of Bonds shall cease to bear interest. Upon partial redemption of any Bond, a new Bond or Bonds will be delivered to the owner without charge, representing the remaining principal amount outstanding.

[COMPLETE THE FOLLOWING PROVISIONS IF THERE ARE TERM BONDS -  
ADD ADDITIONAL PROVISIONS IF THERE ARE MORE THAN TWO TERM BONDS]

[Bonds maturing in the years 20\_\_\_\_ and 20\_\_\_\_ shall be subject to mandatory redemption, at a redemption price equal to their principal amount plus interest accrued thereon to the redemption date, without premium, on December 1 in each of the years shown below, in an amount equal to the following principal amounts:

<u>Term Bonds Maturing in 20--</u>		<u>Term Bonds Maturing in 20--</u>	
<u>Sinking Fund</u> <u>Payment Date</u>	<u>Aggregate</u> <u>Principal Amount</u>	<u>Sinking Fund</u> <u>Payment Date</u>	<u>Aggregate</u> <u>Principal Amount</u>
	\$		\$

Notice of redemption shall be given as provided in the preceding paragraph.]

Bonds in the principal amount of \$525,000 have been deemed designated as "qualified tax-exempt obligations" pursuant to Section 265(b)(3) of the Internal Revenue Code of 1986. The remaining \$545,000 in principal amount of bonds have been designated by the Issuer as "qualified tax-exempt obligations."

As provided in the Resolution and subject to certain limitations set forth therein, this Bond is transferable upon the books of the Issuer at the office of the Bond Registrar, by the registered owner hereof in person or by the owner's attorney duly authorized in writing upon surrender hereof together with a written instrument of transfer satisfactory to the Bond Registrar, duly executed by the registered owner or the owner's attorney; and may also be surrendered in exchange for Bonds of other authorized denominations. Upon such transfer or exchange the Issuer will cause a new Bond or Bonds to be issued in the name of the transferee or registered owner, of the same aggregate principal amount, bearing interest at the same rate and maturing on the same date, subject to reimbursement for any tax, fee or governmental charge required to be paid with respect to such transfer or exchange.

Notwithstanding any other provision of this Bond, so long as this Bond is registered in the name of Cede & Co., as nominee of The Depository Trust Company, or in the name of any other nominee of The Depository Trust Company or other securities depository, the Registrar shall pay all principal of and interest on this Bond, and shall give all notices with respect to this Bond, only to Cede & Co. or such other nominee in accordance with the operational arrangements of The Depository Trust Company or other securities depository as agreed to by the Issuer.



The Issuer and the Bond Registrar may deem and treat the person in whose name this Bond is registered as the absolute owner hereof, whether this Bond is overdue or not, for the purpose of receiving payment and for all other purposes, and neither the Issuer nor the Bond Registrar shall be affected by any notice to the contrary.

IT IS HEREBY CERTIFIED, RECITED, COVENANTED AND AGREED that all acts, conditions and things required by the Constitution and laws of the State of Minnesota to be done, to exist, to happen and to be performed precedent to and in the issuance of this Bond in order to make it a valid and binding general obligation of the Issuer in accordance with its terms, have been done, do exist, have happened and have been performed as so required; that the Issuer has established its General Obligation Refunding Bonds, Series 2009A Bond Fund and has appropriated thereto certain earnings from the escrow account established for a portion of the refunding, allotments to be received by the Issuer from its account in the Municipal State-Aid Street Fund of the State of Minnesota, net revenues of the municipal water utility system and ad valorem taxes heretofore duly levied on all taxable property in the City, which are estimated to be receivable in years and amounts not less than five percent in excess of the principal of and interest on the Bonds when due; that if necessary for the payment of such principal and interest when due, additional ad valorem taxes are required to be levied upon all taxable property in the Issuer, without limitation as to rate or amount and that the issuance of this Bond, together with all other indebtedness of the Issuer outstanding on the date hereof and on the date of its actual issuance and delivery, does not cause the indebtedness of the Issuer to exceed any constitutional or statutory limitation of indebtedness.

This Bond shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Resolution until the Certificate of Authentication hereon shall have been executed by the Bond Registrar by manual signature of one of its authorized representatives.

IN WITNESS WHEREOF, the Issuer, by its City Council, has caused this Bond to be executed on its behalf by the facsimile signatures of the Mayor and City Administrator and has caused this Bond to be dated as of the date set forth below.

CITY OF LAKE ELMO, MINNESOTA

(facsimile signature City Administrator)

(facsimile signature Mayor)

#### CERTIFICATE OF AUTHENTICATION

Dated \_\_\_\_\_

This is one of the Bonds delivered pursuant to the Resolution mentioned within.

NORTHLAND TRUST SERVICES, INC.,  
as Bond Registrar

By \_\_\_\_\_  
Authorized Representative

The following abbreviations, when used in the inscription on the face of this Bond, shall be construed as though they were written out in full according to the applicable laws or regulations:

TEN COM - as tenants in common	UTMA ..... as Custodian for .....
	(Cust) (Minor)
TEN ENT - as tenants by the entireties	under Uniform Transfers to Minors Act .....
	(State)
JT TEN -- as joint tenants with right of survivorship and not as tenants in common	

Additional abbreviations may also be used.

#### ASSIGNMENT

For value received, the undersigned hereby sells, assigns and transfers unto \_\_\_\_\_ the within Bond and all rights thereunder, and does hereby irrevocably constitute and appoint \_\_\_\_\_ attorney to transfer the said Bond on the books kept for registration of the within Bond, with full power of substitution in the premises.

Dated: \_\_\_\_\_

NOTICE: The assignor's signature to this assignment must correspond with the name as it appears upon the face of the within Bond in every particular, without alteration or enlargement or any change whatsoever.

Signature Guaranteed: \_\_\_\_\_

Signature(s) must be guaranteed by an "eligible guarantor institution" meeting the requirements of the Registrar, which requirements include membership or participation in STAMP or such other "signature guaranty program" as may be determined by the Registrar in addition to or in substitution for STAMP, all in accordance with the Securities Exchange Act of 1934, as amended.

PLEASE INSERT SOCIAL SECURITY OR OTHER IDENTIFYING NUMBER OF

ASSIGNEE: \_\_\_\_\_

[End of the Bond form]

Section 3. Use of Proceeds. Upon payment for the Bonds by the Purchaser, the Finance Director shall deposit and apply the proceeds of the Bonds as follows: (a) \$ \_\_\_\_\_ shall be deposited in the sinking funds established for the Series 2001 Refunded Bonds to be applied to their redemption and prepayment on their date of redemption (May 12, 2009), in accordance with the provisions of the resolution authorizing their issuance;

(b) \$ \_\_\_\_\_ shall be applied as described in an Escrow Agreement relating to the Series 2002 Refunded Bonds (the "Escrow Agreement") between the Issuer and Northland Trust Services, Inc. (the "Escrow Agent"); (c) \$ \_\_\_\_\_ shall be used to pay issuance expenses of the Bonds; and (d) \$ \_\_\_\_\_ shall be deposited in the Bond Fund created pursuant to Section 4.01 hereof. The funds deposited in escrow shall be invested in securities authorized for such purpose by Minnesota Statutes, Section 475.67, subdivision 8 (as directed by Section 475.67, subdivision 13 thereof), maturing on such dates and bearing interest at such rates as are required to provide funds sufficient, with cash retained in the escrow account, to pay all interest to become due on the Series 2002 Refunding Bonds to and including the Crossover Date and to pay and redeem the Series 2002 Refunded Bonds on the Crossover Date (and the amounts in such account are irrevocably appropriated to such purpose). The Mayor and City Administrator are hereby authorized to enter into an Escrow Agreement with the Escrow Agent establishing the terms and conditions for the escrow account in accordance with Minnesota Statutes, Section 475.67.

Section 4. General Obligation Refunding Bonds, Series 2009A Bond Fund and Pledge of Taxing Powers and Revenues.

4.01. General Obligation Refunding Bonds, Series 2009A Bond Fund. The Bonds shall be payable from a separate and special General Obligation Refunding Bonds, Series 2009A Bond Fund (the "Bond Fund") of the Issuer, which the Issuer agrees to maintain until the Bonds have been paid in full. If the money in the Bond Fund should at any time be insufficient to pay principal and interest due on the Bonds, such amounts shall be paid from other moneys on hand in other funds of the Issuer, which other funds shall be reimbursed therefor when sufficient money becomes available in the Bond Fund. The moneys on hand in the Bond Fund from time to time shall be used only to pay the principal of and interest on the Bonds. Into the Bond Fund shall be paid: (a) any accrued interest and unused discount received from the Purchaser upon delivery of the Bonds; (b) subsequent to the Crossover Date, all municipal water utility system revenues collected in accordance with Section 4.03 hereof and all ad valorem taxes with respect to the Series 2002 Refunded Bonds collected as specified in Section 4.02; (c) all receipts of principal and interests on the investments held in the escrow account established pursuant to the Escrow Agreement to and including the Crossover Date (other than the sum of \$ \_\_\_\_\_ received from maturing investments on the Crossover Date to be used to retire the Series 2002 Refunded Bonds); (d) all moneys allotted or to be allotted to the Issuer from its account in the municipal state aid street fund under Minnesota Statutes, Chapter 162 and (e) any other funds appropriated by the Council for the payment of the Bonds. All interest due on the Series 2001 Refunding Bonds shall be paid from deposits made to the Bond Fund from the Issuer's normal maintenance account in the municipal state aid street fund.

4.02. Pledge of Taxing Powers. For the prompt and full payment of the principal of and interest on the Bonds as such payments respectively become due, the full faith, credit and unlimited taxing powers of the Issuer shall be and are hereby irrevocably pledged. In order to produce aggregate amounts which, together with the collections of other amounts as set forth in Section 4.01, will produce amounts not less than 5% in excess of the amounts needed to meet when due the principal and interest payments on the Bonds, ad valorem taxes have previously been levied on all taxable property in the Issuer. The taxes will be levied and collected in years and amounts shown on the attached levy computation. Said taxes shall be irrepealable as long as

any of the Bonds are outstanding and unpaid, provided that the Issuer reserves the right and power to reduce said levies in accordance with the provisions of Minnesota Statutes, Section 475.61.

4.03. Sufficiency of Revenues. It is hereby found, determined and declared that the Issuer owns and operates the municipal water utility system (the "System") as a revenue-producing utility and convenience and that the net operating revenues of the System, after deducting from the gross receipts derived from charges for the service, use and availability of the System the normal, current and reasonable expenses of operation and maintenance thereof, will be sufficient, together with any other funds actually appropriated by the Issuer, for the payment when due of the principal of and interest on the Bonds herein authorized, and on any other bonds to which such revenues are pledged.

4.04. Rate Covenant. Pursuant to Minnesota Statutes, Section 444.075, the Issuer hereby covenants and agrees with the registered owners from time to time of the Bonds, that until the Bonds and the interest thereon are paid in full, or are discharged as provided in Section 5, the Issuer will impose and collect reasonable charges for the service, use and availability of the System according to schedules which will produce net revenues sufficient, with any other funds appropriated by the Issuer, to pay all principal and interest when due on the Bonds and any other bonds to which said net revenues have been pledged; and said net revenues, to the extent necessary, are hereby irrevocably pledged and appropriated to the payment of the Bonds. Nothing herein shall preclude the Issuer from hereafter making further pledges and appropriations of the net revenues of the System for payment of additional obligations of the Issuer hereafter authorized if the governing body of the issuing entity determines before the authorization of such additional obligations that the estimated net revenues of the System will be sufficient, together with any other sources pledged to the payment of the outstanding and additional obligations, for payment of the outstanding bonds and such additional obligations. Such further pledges and appropriations of said net revenues may be made superior or subordinate to, or on a parity with, the pledge and appropriation herein made.

Section 5. Defeasance. When all of the Bonds have been discharged as provided in this section, all pledges, covenants and other rights granted by this Resolution to the registered owners of the Bonds shall cease. The Issuer may discharge its obligations with respect to any Bonds which are due on any date by depositing with the Registrar on or before that date a sum sufficient for the payment thereof in full; or, if any Bond should not be paid when due, it may nevertheless be discharged by depositing with the Registrar a sum sufficient for the payment thereof in full with interest accrued from the due date to the date of such deposit. The Issuer may also at any time discharge its obligations with respect to any Bonds, subject to the provisions of law now or hereafter authorizing and regulating such action, by depositing irrevocably in escrow, with a bank or trust company qualified by law as an escrow agent for this purpose, cash or securities which are authorized by law to be so deposited, bearing interest payable at such time and at such rates and maturing or callable at the holder's option on such dates as shall be required to pay all principal and interest to become due thereon to maturity.

Section 6. Tax Covenants; Arbitrage Matters and Continuing Disclosure.

6.01. General Tax Covenant. The Issuer covenants and agrees with the registered owners from time to time of the Bonds that it will not take, or permit to be taken by any of its officers, employees or agents, any actions that would cause interest on the Bonds to become includable in gross income of the recipient under the Code and applicable Treasury Regulations (the "Regulations"), and covenants to take any and all actions within its powers to ensure that the interest on the Bonds will not become includable in gross income of the recipient under the Code and the Regulations. The Issuer has not and will not enter into any lease, management contract, operating agreement, use agreement or other contract relating to the use or operation of the facilities refinanced by the Bonds, or any portion thereof, or security for the payment of the Bonds which would cause the Bonds to be considered "private activity bonds" or "private loan bonds" pursuant to Section 141 of the Code.

6.02. Certification. The Mayor and City Administrator being the officers of the Issuer charged with the responsibility for issuing the Bonds pursuant to this Resolution, are authorized and directed to execute and deliver to the Purchaser a certificate in accordance with the provisions of Section 148 of the Code, and applicable Regulations, stating the facts, estimates and circumstances in existence on the date of issue and delivery of the Bonds which make it reasonable to expect that the proceeds of the Bonds will not be used in a manner that would cause the Bonds to be "arbitrage bonds" within the meaning of the Code and Regulations.

6.03. Arbitrage Rebate. It is hereby found that the Issuer has general taxing powers, that no Bond is a "private activity bond" within the meaning of Section 141 of the Code, that 95% or more of the net proceeds of the Bonds are to be used for local governmental activities of the Issuer, and that the aggregate face amount of all tax-exempt obligations (other than private activity bonds) issued by the Issuer and all subordinate entities thereof during the year 2009 is not reasonably expected to exceed \$5,000,000. Therefore, pursuant to Section 148(f)(4)(D) of the Code, the Issuer shall not be required to comply with the arbitrage rebate requirements of paragraphs (2) and (3) of Section 148(f) of the Code.

6.04. Qualified Tax-Exempt Obligations. It is hereby determined that the portion of the Bonds which is equal to the outstanding principal amount of the Series 2001 Refunded Bonds, \$525,000, is deemed designated as "qualified tax-exempt obligations" as provided in Section 265(b)(3)(D) of the Code, since:

- (a) the Series 2001 Refunded Bonds, when issued, were designated by the Issuer as qualified tax-exempt obligations under Section 265(b) of the Code;
- (b) the aggregate face amount of the issue of which the Bonds are a part does not exceed \$30,000,000;
- (c) the weighted average maturity of the Series 2001 Refunding Bonds does not exceed the remaining weighted average maturity of the Series 2001 Refunded Bonds; and
- (d) no Series 2001 Refunding Bond has a maturity date which is later than thirty (30) years after the date of issuance of the Series 2001 Refunded Bonds.

The City Council hereby designates the remaining \$545,000 in principal amount of Bonds as "qualified tax-exempt obligations" for purposes of Section 265(b)(3) of the Code, and hereby

finds that the reasonably anticipated amount of tax-exempt obligations which are not private activity bonds (not treating qualified 501(c)(3) bonds under Section 145 of the Code as private activity bonds for the purpose of this representation) and are not excluded from this calculation by Section 265(b)(3)(C)(ii) of the Code which will be issued by the Issuer and all subordinate entities during calendar year 2009 does not exceed \$30,000,000.

6.05. Continuing Disclosure. (a) Limited Exemption from Rule. The Securities and Exchange Commission (the "SEC") has promulgated amendments to Rule 15c2-12 under the Securities Exchange Act of 1934 (17 C.F.R. § 240.15c2-12) (as in effect and interpreted from time to time, the "Rule") which govern the obligations of certain underwriters to require that issuers of municipal Bonds enter into contracts for the benefit of the Bondholders to provide continuing disclosure with respect to the Bonds. This City Council hereby finds, determines and declares that the Bonds are exempt from the application of paragraph (b)(5) of the Rule by reason of the exemption granted in paragraph (d)(2) thereof. Specifically, this City Council hereby finds that the only "obligated person" (within the meaning of the Rule) with respect to the Bonds is the Issuer and that, giving effect to the issuance of the Bonds and any other securities required to be integrated with the Bonds, there will be no more than \$10 million in principal amount of municipal securities outstanding on the date of issuance of the Bonds as to which the Issuer is an obligated person (excluding municipal securities exempt from the Rule under paragraph (d)(1) thereof because, among other things, they were issued in minimum denominations of \$100,000). In making such finding, the Issuer hereby represents that it has not issued within the six months before the date of issuance of the Bonds and that it reasonably expects that it will not issue within six months after the date of issuance of the Bonds, other securities of the Issuer of substantially the same security and providing financing for the same general purpose or purposes as the Bonds. The exemption from the Rule for the Bonds is conditioned upon the Issuer agreeing to provide certain continuing disclosure as hereinafter provided. The Issuer has complied in all material respects with any undertaking previously entered into by it under the Rule.

(b) Purpose and Beneficiaries. To provide for the public availability of certain information relating to the Bonds and the security therefor and to permit participating underwriters in the primary offering of the Bonds to comply with paragraph (b)(5) of the Rule, which will enhance the marketability of the Bonds, the Issuer hereby makes the covenants and agreements contained in this section for the benefit of the Owners (as hereinafter defined) from time to time of the Outstanding Bonds. If the Issuer fails to comply with any provisions of this section, any person aggrieved thereby, including the Owners of any Outstanding Bonds, may take whatever action at law or in equity may appear necessary or appropriate to enforce performance and observance of any agreement or covenant contained in this section, including an action for specific performance or a writ of mandamus. Direct, indirect, consequential and punitive damages shall not be recoverable for any default hereunder to the extent permitted by law. Notwithstanding anything to the contrary contained herein, in no event shall a default under this section constitute a default under the Bonds or under any other provision of this resolution. As used in this section, "Owner" or "Bondowner" means, in respect of a Bond, the registered owner or owners thereof appearing in the Bond register maintained by the Registrar or any "Beneficial Owner" (as hereinafter defined) thereof, if such Beneficial Owner provides to the Registrar evidence of such beneficial ownership in form and substance reasonably satisfactory to the Registrar. As used herein, "Beneficial Owner" means, in respect of a Bond, any person or entity which (i) has the

power, directly or indirectly, to vote or consent with respect to, or to dispose of ownership of, such Bond (including persons or entities holding Bonds through nominees, depositories or other intermediaries), or (ii) is treated as the owner of the Bond for federal income tax purposes.

(c) Information To Be Disclosed. The Issuer will provide, either directly or indirectly through an agent designated by the Issuer, the following information at the following times in an appropriate manner:

(1) At least annually to the state information depository then designated or operated by the State of Minnesota (the "State Depository"), if any, or, if no State Depository then exists, to any person or entity upon request, the information (the "Disclosure Information") in the Issuer's audited financial statements, which shall be for the most recent fiscal year of the Issuer (if in response to a request, the most recent fiscal year ending not less than 365 days before the date of the request), and, for other such information, the information most recently compiled by the Issuer on a customary basis and publicly available under applicable data privacy or other laws.

Requests for Disclosure Information should be directed to:

City Administrator  
City of Lake Elmo  
3800 Laverne Avenue North  
Lake Elmo, MN 55042  
Telephone: (651) 777-5510

Any or all of the Disclosure Information may be incorporated by reference, if it is updated as required hereby, from other documents, including official statements, which have been submitted to each then nationally recognized municipal securities information repository under the Rule or the SEC. If the document incorporated by reference is a final official statement, it must be available from the Municipal Securities Rulemaking Board. The Issuer shall clearly identify in the Disclosure Information each document so incorporated by reference. If the Disclosure Information is changed because it is no longer compiled or publicly available or this paragraph (c)(1) is amended as permitted by subsection (d), then the Issuer shall include in the next Disclosure Information to be delivered hereunder, to the extent necessary, an explanation of the reasons for the amendment and the effect of any change in the type of information provided.

(2) In a timely manner, to the Municipal Securities Rulemaking Board and to the State Depository, if any, notice of the occurrence of any of the following events which is a Material Fact (as hereinafter defined):

- (A) Principal and interest payment delinquencies;
- (B) Non-payment related defaults;
- (C) Unscheduled draws on debt service reserves reflecting financial difficulties;
- (D) Unscheduled draws on credit enhancements reflecting financial difficulties;
- (E) Substitution of credit or liquidity providers, or their failure to perform;

- (F) Adverse tax opinions or events affecting the tax-exempt status of the security;
- (G) Modifications to rights of security holders;
- (H) Bond calls;
- (I) Defeasances;
- (J) Release, substitution, or sale of property securing repayment of the securities; and
- (K) Rating changes.

As used herein, a "Material Fact" is a fact as to which a substantial likelihood exists that a reasonably prudent investor would attach importance thereto in deciding to buy, hold or sell a Bond or, if not disclosed, would significantly alter the total information otherwise available to an investor from the Official Statement, information disclosed hereunder or information generally available to the public. Notwithstanding the foregoing sentence, a "Material Fact" is also an event that would be deemed "material" for purposes of the purchase, holding or sale of a Bond within the meaning of applicable federal securities laws, as interpreted at the time of discovery of the occurrence of the event.

(3) In a timely manner, to the Municipal Securities Rulemaking Board and to the State Depository, if any, notice of the occurrence of any of the following events or conditions:

- (A) the amendment or supplementing of this section pursuant to subsection (d), together with a copy of such amendment or supplement; and
- (B) the termination of the obligations of the Issuer under this section pursuant to subsection (d);
- (C) any change in the accounting principles pursuant to which the financial statements constituting a portion of the Disclosure Information are prepared; and
- (D) any change in the fiscal year of the Issuer.

(d) Term; Amendments; Interpretation. The covenants of the Issuer in this section shall remain in effect so long as any Bonds are Outstanding. Notwithstanding the preceding sentence, however, the obligations of the Issuer under this section shall terminate and be without further effect as of any date on which the Issuer delivers to the Registrar an opinion of Bond Counsel to the effect that, because of legislative action or final judicial or administrative actions or proceedings, the failure of the Issuer to comply with the requirements of this section will not cause participating underwriters in the primary offering of the Bonds to be in violation of the Rule or other applicable requirements of the Securities Exchange Act of 1934, as amended, or any statutes or laws successory thereto or amendatory thereof. This section may be amended or supplemented by the Issuer from time to time, without notice to or the consent of the Owners of any Bonds, by a resolution of this City Council filed in the office of the recording officer of the Issuer accompanied by an opinion of Bond Counsel, who may rely on certificates of the Issuer and others and the opinion may be subject to customary qualifications, to the effect that: (i) such amendment or supplement (a) is made in connection with a change in circumstances that arises from a change in law or regulation or a change in the identity, nature or status of the Issuer or the



type of operations conducted by the Issuer, or (b) is required by, or better complies with, the provisions of paragraph (d)(2) of the Rule; (ii) this section as so amended or supplemented would have complied with the requirements of paragraph (d)(2) of the Rule at the time of the primary offering of the Bonds, giving effect to any change in circumstances applicable under clause (i)(a) and assuming that the Rule as in effect and interpreted at the time of the amendment or supplement was in effect at the time of the primary offering; and (iii) such amendment or supplement does not materially impair the interests of the Bondowners under the Rule. This section is entered into to comply with, and should be construed so as to satisfy the requirements of, paragraph (d)(2) of the Rule.

Section 7. Certification of Proceedings and Redemption of Refunded Bonds.

7.01. Registration of Bonds. The City Administrator is hereby authorized and directed to file a certified copy of this resolution with the County Auditor of Washington County and obtain a certificate that the Bonds have been duly entered upon the County Auditor's bond register and the tax required by law has been levied.

7.02. Authentication of Transcript. The officers of the Issuer and the County Auditor are hereby authorized and directed to prepare and furnish to the Purchaser and to Dorsey & Whitney LLP, Bond Counsel, certified copies of all proceedings and records relating to the Bonds and such other affidavits, certificates and information as may be required to show the facts relating to the legality and marketability of the Bonds, as the same appear from the books and records in their custody and control or as otherwise known to them, and all such certified copies, affidavits and certificates, including any heretofore furnished, shall be deemed representations of the Issuer as to the correctness of all statements contained therein.

7.03. Redemption of Refunded Bonds. The Finance Director is hereby directed to advise U.S. Bank National Association, in St. Paul, Minnesota, as paying agent for the Refunded Bonds, to call the Refunded Bonds for redemption and prepayment on the respective redemption dates using the form attached hereto, all in accordance with the provisions of the resolutions authorizing the issuance of the Refunded Bonds.

Upon vote being taken thereon, the following voted in favor thereof:

and the following voted against the same:

whereupon the resolution was declared duly passed and adopted.

## NOTICE OF REDEMPTION

\$1,080,000 General Obligation State Aid and Improvement Bonds, Series 2001

Dated as of October 1, 2001

City of Lake Elmo, Minnesota

NOTICE IS HEREBY GIVEN THAT there have been called for redemption and prepayment on May 12, 2009, all outstanding Bonds of the above-referenced issue, dated, as originally issued, as of October 1, 2001, maturing February 1 in the following years and having the interest rates listed below:

<u>Maturity</u>	<u>Amount</u>	<u>CUSIP #</u>	<u>Rate</u>
2010	\$55,000	*	4.25%
2011	60,000	*	4.40
2012	60,000	*	4.50
2013	65,000	*	4.65
2014	65,000	*	4.80
2017	220,000	*	4.90

\*Indicates full call.

The Bonds will be redeemed at a price of 100% of their principal amount plus accrued interest to the date of redemption. Holders of the Bonds should present them for payment to U.S. Bank National Association, St. Paul, Minnesota, successor to U.S. Bank Trust National Association, on or before said date, when they will cease to bear interest, in the following manner:

If by Mail:

U.S. Bank National Association  
Corporate Trust Operations, 3<sup>rd</sup> Floor  
P. O. Box 64111  
St. Paul, MN 55164-0111

If by Hand or Overnight Mail:

U.S. Bank National Association  
60 Livingston Avenue  
EP-MN-WS3C  
Bond Drop Window, 1<sup>st</sup> Floor  
St. Paul, MN 55107

In compliance with the Interest and Dividend Compliance Act of 1983 and Broker Reporting Requirements, the redeeming institutions are required to withhold 31% of the principal amount of your holdings redeemed unless they are provided with your social security number or federal employer identification number, properly certified. This requirement is fulfilled through the submitting of a W-9 Form, which may be obtained at a bank or other financial institution.

Additional information may be obtained from the undersigned or from Northland Securities, Inc., 45 S. 7<sup>th</sup> St., Ste. 1900, Minneapolis, Minnesota 55402 (612-851-5900), financial consultants to the City of Lake Elmo, Minnesota.

Dated: \_\_\_\_\_, 2009.

## NOTICE OF REDEMPTION

\$730,000 General Obligation Water Revenue Bonds, Series 2002B

Dated as of May 1, 2002

City of Lake Elmo, Minnesota

NOTICE IS HEREBY GIVEN THAT there have been called for redemption and prepayment on December 1, 2009, all outstanding Bonds of the above-referenced issue, dated, as originally issued, as of May 1, 2002, maturing December 1 in the following years and having the interest rates listed below:

<u>Maturity</u>	<u>Amount</u>	<u>CUSIP #</u>	<u>Rate</u>
2010	\$30,000	*	4.10%
2011	35,000	*	4.20
2012	35,000	*	4.30
2013	35,000	*	4.40
2014	40,000	*	4.55
2015	40,000	*	4.70
2018	130,000	*	4.90
2021	155,000	*	5.00

\*Indicates full call.

The Bonds will be redeemed at a price of 100% of their principal amount plus accrued interest to the date of redemption. Holders of the Bonds should present them for payment to U.S. Bank National Association, St. Paul, Minnesota, on or before said date, when they will cease to bear interest, in the following manner:

If by Mail:

U.S. Bank National Association  
Corporate Trust Operations, 3<sup>rd</sup> Floor  
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St. Paul, MN 55107

In compliance with the Interest and Dividend Compliance Act of 1983 and Broker Reporting Requirements, the redeeming institutions are required to withhold 31% of the principal amount of your holdings redeemed unless they are provided with your social security number or federal employer identification number, properly certified. This requirement is fulfilled through the submitting of a W-9 Form, which may be obtained at a bank or other financial institution.

Additional information may be obtained from the undersigned or from Northland Securities, Inc., 45 S. 7<sup>th</sup> St., Ste. 1900, Minneapolis, Minnesota 55402 (612-851-5900), financial consultants to the City of Lake Elmo, Minnesota.

Dated: \_\_\_\_\_, 2009.

COUNTY AUDITOR'S CERTIFICATE AS TO REGISTRATION AND TAX LEVY

The undersigned, being the duly qualified and acting County Auditor of Washington County, Minnesota, hereby certifies that there has been filed in my office a certified copy of a resolution duly adopted on April 7, 2009, by the City Council of the City of Lake Elmo, Minnesota, setting forth the form and details of an issue of \$1,070,000 General Obligation Refunding Bonds, Series 2009A, dated as of May 1, 2009, and levying taxes for their payment.

I further certify that the issue has been entered on my bond register and the tax required by law for their payment has been levied and filed as required by Minnesota Statutes, Sections 475.51 to 475.74.

WITNESS my hand and official seal \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
County Auditor

(SEAL)



## Lake Elmo, Minnesota

### \$1,050,000 General Obligation Refunding Bonds, Series 2009A

#### Bond Sale Summary April 7, 2009

**PURPOSE:** To current refund on May 13, 2009 the 2010 through 2017 maturities of the City's General Obligation State Aid Improvement Bonds, Series 2001 totaling \$525,000 and to crossover refund on December 1, 2009 the 2010 – 2022 maturities of the City's General Obligation Water Revenue Bonds, Series 2002 totaling \$500,000 for interest cost savings.

**FINANCE PLAN:** To provide the City with maximum interest cost savings. The term of the new bonds does not exceed the term of the bonds being refunded.

**RESULTS:** The City's credit rating was increased from "Aa3" (Moody's) to "AA" by Standard & Poor's Corporation.

Total net savings of F.V. \$78,876 / P.V. \$65,031

Summary of Savings Analysis	Final on <u>04/02/09</u>	Finance Plan <u>03/03/09</u>
Par Amount	\$1,050,000	\$1,070,000
Average Interest Rate	3.29%	2.88%
True Interest Cost (TIC)	3.19%	3.21%
All Inclusive Cost (AIC)	3.43%	3.43%
Net F.V. Savings	\$ 78,876	\$ 77,894
Net P.V. Savings	\$ 65,031	\$ 64,899
Net P.V. Benefit	5.757%	5.759%

## Debt Service Comparison

Date	Net New D/S	Old Net D/S	Savings
02/01/2010	131,838.71	134,365.00	2,526.29
02/01/2011	130,905.00	135,827.50	4,922.50
02/01/2012	127,905.00	136,957.50	9,052.50
02/01/2013	129,905.00	137,787.50	7,882.50
02/01/2014	127,280.00	133,260.00	5,980.00
02/01/2015	129,130.00	138,600.00	9,470.00
02/01/2016	125,830.00	138,350.00	12,520.00
02/01/2017	121,980.00	132,795.00	10,815.00
02/01/2018	53,680.00	57,160.00	3,480.00
02/01/2019	52,127.50	54,955.00	2,827.50
02/01/2020	55,575.00	57,750.00	2,175.00
02/01/2021	53,850.00	55,250.00	1,400.00
02/01/2022	51,925.00	57,750.00	5,825.00
Total	\$1,291,931.21	\$1,370,807.50	\$78,876.29

City Council  
Date: April 7, 2009  
REGULAR  
Item: 5.  
No Motion – Informational Item

ITEM: Update from South Washington Watershed District (SWWD)  
SUBMITTED BY: Craig W. Dawson, Interim City Administrator

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**SUMMARY AND ACTION REQUESTED:** Matt Moore, Administrator of the South Washington Watershed District (SWWD), has requested that the Board of Managers be able to spend a few minutes updating the City Council on current activities of the SWWD. This is an informational item; no action of the Council is needed. Councilmembers are encouraged to ask any questions they may have.

**BACKGROUND:** The SWWD includes the southwesternmost portion of Lake Elmo, approximately one square mile roughly southwest of a line from the Ideal Avenue/15<sup>th</sup> Street North intersection to the I-94/Keats Avenue (CR 19) interchange.

In February, the SWWD informed cities within its jurisdiction that the Lower St. Croix Watershed Management Organization has been discussing the possibility of dissolution and consolidating with either the SWWD or Valley Branch Watershed District. The Lower St. Croix WMO covers approximately 46 square miles.

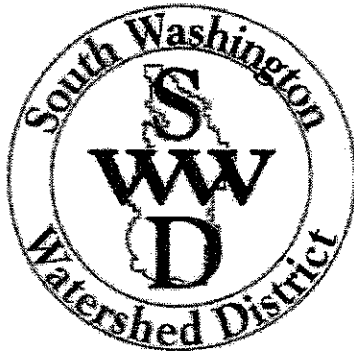
**ATTACHMENTS:**

- February 11, 2009, memorandum from SWWD regarding Lower St. Croix WMO

**ORDER OF BUSINESS:**

- Introduction Craig Dawson
- Report by presenter Matt Moore, SWWD Administrator
- Questions from City Council members to the presenter Mayor facilitates
- Questions/comments from the public to the City Council Mayor facilitates





February 11, 2009

The South Washington Watershed District (SWWD) Board would like to inform member Cities of a potential enlargement of the current SWWD boundary. The Lower St. Croix Watershed Management Organization has been discussing potential dissolution and consolidation with either the SWWD or Valley Branch Watershed District (VBWD) or both. Currently, no decisions have been made, however the LSCWMO Board may consider the issue on February 11<sup>th</sup> (today) and Washington County has prepared draft documents to commence the process. Therefore, the SWWD Board would like to communicate this potential boundary change to those member Cities not involved in this process.

In May 1998, the Washington County Board of Commissioners authorized a Water Governance Study to identify and evaluate the best governance structure for water management for the County. In April 2002, the County developed a plan defining the expectations of watershed management organizations for actively managing the water resources of the county. The County continues to be interested in creating watershed administration efficiencies and supports voluntary consolidation of watershed management organizations.

The LSCWMO is approximately 46 square miles and includes all or parts of the City of Afton, Cottage Grove and Hastings and Denmark Township. Preliminary discussions by the LSCWMO Board have centered on splitting the area between the VBWD and SWWD. At this time several options for a split have been placed on the table, a final decision will be made by the LSCWMO Board and supported by Washington County to be approved by the State of Minnesota Board of Water and Soil Resources.

Washington County is working with the LSCWMO to prepare the necessary resolutions of support and petition. There are two areas that will affect the current SWWD beyond the addition of geographic area. The two issues are; 1) Board of Managers representation of the new area; 2) project financing in the expanded area. The currently drafted petition addresses the first issue of representation through the appointment of Managers by the County Board. Minnesota State Statute requires that the County Board appoint Managers to "fairly represent the various hydrologic areas" of the watershed district. The petition states that "The County will establish a plan to shift representation throughout the entire enlarged watershed through the appointment of new managers."

Q:\swwd\PublicRelations\LSCWMO City Update.doc



Lower St. Croix WMO  
2/11/2009

At their regular meeting on Tuesday February 10, 2009, the SWWD Board of Managers passed a motion recommending Washington County amend the petition to enlarge the SWWD boundary. The suggested amendment changes the number of managers on the Board of the enlarged watershed district from 5 to 6. The additional member would be appointed from the LSCWMO area or enlarged boundary area. This information has been communicated to the members of the WMO and Washington County.

The second issue of financing is more defined since the SWWD has some flexibility through the use of stormwater utility fees. When the SWWD enlarged it's boundary to include the East Mississippi WMO (EMWMO), this area was established has a water management district. Project costs for the East Mississippi Watershed are collected through stormwater utility fees from that area and applied to those projects separate from the South Washington Watershed. The current draft petition states that all financing options available to watershed districts will be considered for funding projects. A general fund and watershed wide programs will be financed through an ad-valorem levy over the entire area.

No decisions have been made, however the SWWD Board wanted to make the other City members not involved in this process aware of the status. The SWWD Board welcomes your comments and questions. We will keep you informed of any developments regarding the potential enlargement of the SWWD Boundary.

If you have any questions please contact Matt Moore at the SWWD office, 651-714-3729 or [mmoore@ci.woodbury.mn.us](mailto:mmoore@ci.woodbury.mn.us).

City Council  
Date: April 7, 2009  
REGULAR  
Item: 6  
Motion

ITEM: 2009 Street Improvements – Public Improvement Hearing and Resolution No. 2009-013 Ordering Improvement and the Preparation of Plans and Specifications

SUBMITTED BY: Jack Griffin, City Engineer

REVIEWED BY: Craig W. Dawson, Interim City Administrator  
Ryan Stempski, Assistant City Engineer

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SUMMARY AND ACTION REQUESTED: Pursuant to Minnesota Statutes, Sections 429.011 to 429.111 a Public Improvement Hearing has been noticed for April 7, 2009 at 7:00 PM to consider making street improvements to the following street sections:

- Legion Avenue North (south of 30<sup>th</sup> Street North for a length of 1,300 feet)
- Legion Lane North (the entire loop off Legion Avenue North for a length of 2,835 feet)
- Lisbon Avenue North (length of 568 feet)
- Legion Lane Circle North (length of 220 feet)
- Legion Lane Court North (length of 137 feet)
- 21<sup>st</sup> Street North (length of 560 feet)
- 3<sup>rd</sup> Street Place North (length of 1,623 feet)

The City Council needs to adopt, with at least four affirmative votes, a resolution ordering the improvements in order for them to be made this year.

We are recommending the type of improvement to be street reclamation. For the purposes of the assessment process, we are recommending that the existing curb be removed and replaced with bituminous curbing. The estimated total project cost of the improvements is therefore \$588,000. Unless otherwise directed by the Council, we would review the existing curb while completing the design of the project with the intent to salvage the in-place curbing where deemed to be adequately functional. To the extent curbing can be salvaged the project costs can be reduced accordingly.

The Report outlines a proposed assessment of \$1,950 for each benefiting property. This unit assessment rate was determined by assessing 30% of the total project costs for all street improvements distributed equally to all 91 benefitting properties. An alternate assessment calculated has been prepared for consideration at the Council's request. Please see the attached assessment breakdown.

The attached notice was published in the official newspaper and individual notifications were sent to each address that potentially will be impacted by these improvements. A Feasibility Report has been completed and adopted by the City Council defining the scope of the proposed improvements together with the estimated project costs. This report is available for review at City Hall.

ADDITIONAL INFORMATION: Staff held a Resident meeting on Monday, March 30th at City Hall. Approximately 30 properties were represented at the meeting. The findings of the Feasibility Report were presented to the residents similar to the presentation given to the City Council on March 17th, followed by questions and answers. Also, at the Council's request, staff communicated to the residents the Council's potential interest to incorporate Rain Gardens as part of this project in an effort to further improve and protect water quality in Lake Elmo ponds and lakes. Resident feedback on Rain Gardens would be requested at the Improvement Hearing.

Staff will be seeking direction on whether or not to include Rain Gardens as part of the project design.

RECOMMENDATION: It is recommended that the Council select a preliminary assessment methodology, if different than the method and unit assessment amount outlined in the Feasibility Report, and adopt the Feasibility Report as amended.

It is further recommended that the City Council adopt Resolution No. 2009-013, Ordering the Improvement and the preparation of Plans and Specifications for the 2009 Street Improvements. Please note that because this project was initiated by the City Council, and not by a resident petition, the improvements must be ordered by a 4/5th majority of the City Council.

SUGGESTED MOTION FOR CONSIDERATION:

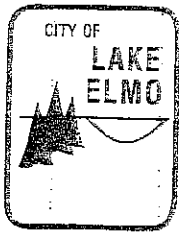
*Move to approve Resolution No. 2009-013, Ordering the Improvement and the preparation of Plans and Specifications.*

ATTACHMENTS:

1. Public Notice of Hearing dated March 18, 2009
2. Breakdown of Costs per Neighborhood
3. Resolution No. 2009-013

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 Facilitates
- Questions/comments from the public to the city council Mayor Facilitates
- Action on motion



# City of Lake Elmo

651/777-5510

3800 Laverne Avenue North / Lake Elmo, MN 55042

## 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 2<sup>nd</sup> 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)*



printed on recycled paper

## ALTERNATIVE NO. 2: RECLAIM STREET WITH BITUMINOUS CURB

Neighborhood Area	Total Estimated Project Cost	No. of Benefiting Properties	City Cost Participation	Estimated Unit Assessment	Annual Payment if Financed
Myron Ellman (Legion Ave N)	\$72,000	27	\$50,400	\$800	\$112
Eden Park	\$315,000	39	\$220,230	\$2,430	\$330
Eden Park 2nd (21st Street N)	\$56,000	7	\$39,200	\$2,400	\$326
The Forest (3rd Street Place N)	\$145,000	18	\$101,440	\$2,420	\$329
Project Totals	\$588,000	91	\$411,270		

### Assumptions

30% Assessment Rate

10 year payment period

6% interest

# **ALTERNATIVE NO. 1: RECLAIM STREET (NO CURB REPLACEMENT)**

<b>Neighborhood Area</b>	<b>Total Estimated Project Cost</b>	<b>No. of Benefiting Properties</b>	<b>City Cost Participation</b>	<b>Estimated Unit Assessment</b>	<b>Annual Payment if Financed</b>
Myron Ellman (Legion Ave N)	\$72,000	27	\$50,400	\$800	\$112
Eden Park	\$268,000	39	\$187,270	\$2,070	\$281
Eden Park 2nd (21st Street N)	\$49,000	7	\$34,300	\$2,100	\$285
The Forest (3rd Street Place N)	\$120,000	18	\$84,000	\$2,000	\$271
<b>Project Totals</b>	<b>\$509,000</b>	<b>91</b>	<b>\$355,970</b>		

## **Assumptions**

**30% Assessment Rate**

**10 year payment period**

**6% interest**

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

**RESOLUTION NO. 2009-013**

**A RESOLUTION ORDERING THE IMPROVEMENT AND  
PREPARATION OF PLANS AND SPECIFICATIONS  
FOR THE 2009 STREET IMPROVEMENTS**

WHEREAS, pursuant a resolution of the City Council adopted the 17th day of March, 2009, the Council ordered a hearing on Improvement for the 2009 Street Improvements, and

WHEREAS, ten days' mailed notice and two weeks published notice of the hearing was given, and the hearing was held thereon on the 7th day of April, 2009, at which all persons desiring to be heard will be given the opportunity to be heard thereon,

NOW, THEREFORE, BE IT RESOLVED,

1. Such improvement is deemed necessary, cost-effective, and feasible as detailed in the Feasibility Report.
2. Such improvement is hereby ordered as proposed in the Council resolution adopted the 17th day of March, 2009.
3. TKDA is hereby designated as the engineer for this improvement. The engineer shall prepare Plans and Specifications for the making of such improvement.
4. The City Council declares its official intent to reimburse itself for the costs of the improvement from the proceeds of a tax exempt bond.

Date: \_\_\_\_\_, 2009      CITY OF LAKE ELMO

By: \_\_\_\_\_  
Dean A. Johnston  
Mayor

ATTEST:

\_\_\_\_\_  
Craig W. Dawson  
City Administrator



City Council  
Date: 3/17/09, 4-7-09  
Regular  
Resolution 2009-014  
Item: 7

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

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#### 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 9<sup>th</sup> 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 Huges 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**

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**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)**

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***Introductory Information***

<b><i>Request:</i></b>	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.
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<b><i>Background:</i></b>	<p><b><i>Farms of Lake Elmo Development</i></b></p> <p>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.</p>
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***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.

<b><i>Applicable Codes:</i></b>	<b><i>§ 150.175 PURPOSE.</i></b>
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<b><i>Applicable Codes:</i></b>	(A) The purpose of open space preservation (OP) is to maintain the rural character
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(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.

(C) *Application for permit.*

(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....

<b>Site Data:</b>	Existing Zoning – A (Agricultural); OP use with a CUP
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*Land Use Guidance* – RAD – 0.45 DU/Acre (Rural Agricultural Density)

Parcel size — 0.94 acres

Property Identification Number (PID): 22-029-21-21-0024

*Applicable  
Code*

**§ 11.01 DEFINITIONS.**

**Definitions:**

**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.

***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.

***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.

***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.

**SETBACK.** The minimum horizontal distance between a structure, sewage treatment system, or other facility and an ordinary high water level, sewage treatment system, top

(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 Intent 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 Huger'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 9<sup>th</sup> 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 Hugue'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. 2009-014**

*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 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 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 Huges'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 17<sup>th</sup> day of March 2009 by the City Council of the City of Lake Elmo, Minnesota.

ATTEST:

\_\_\_\_\_  
Dean A. Johnston, Mayor

\_\_\_\_\_  
Craig Dawson, Interim City Administrator

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

**RESOLUTION NO. 2009-014**

*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 Huges, 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 17<sup>th</sup> day of March 2009 by the City Council of the City of Lake Elmo, Minnesota.

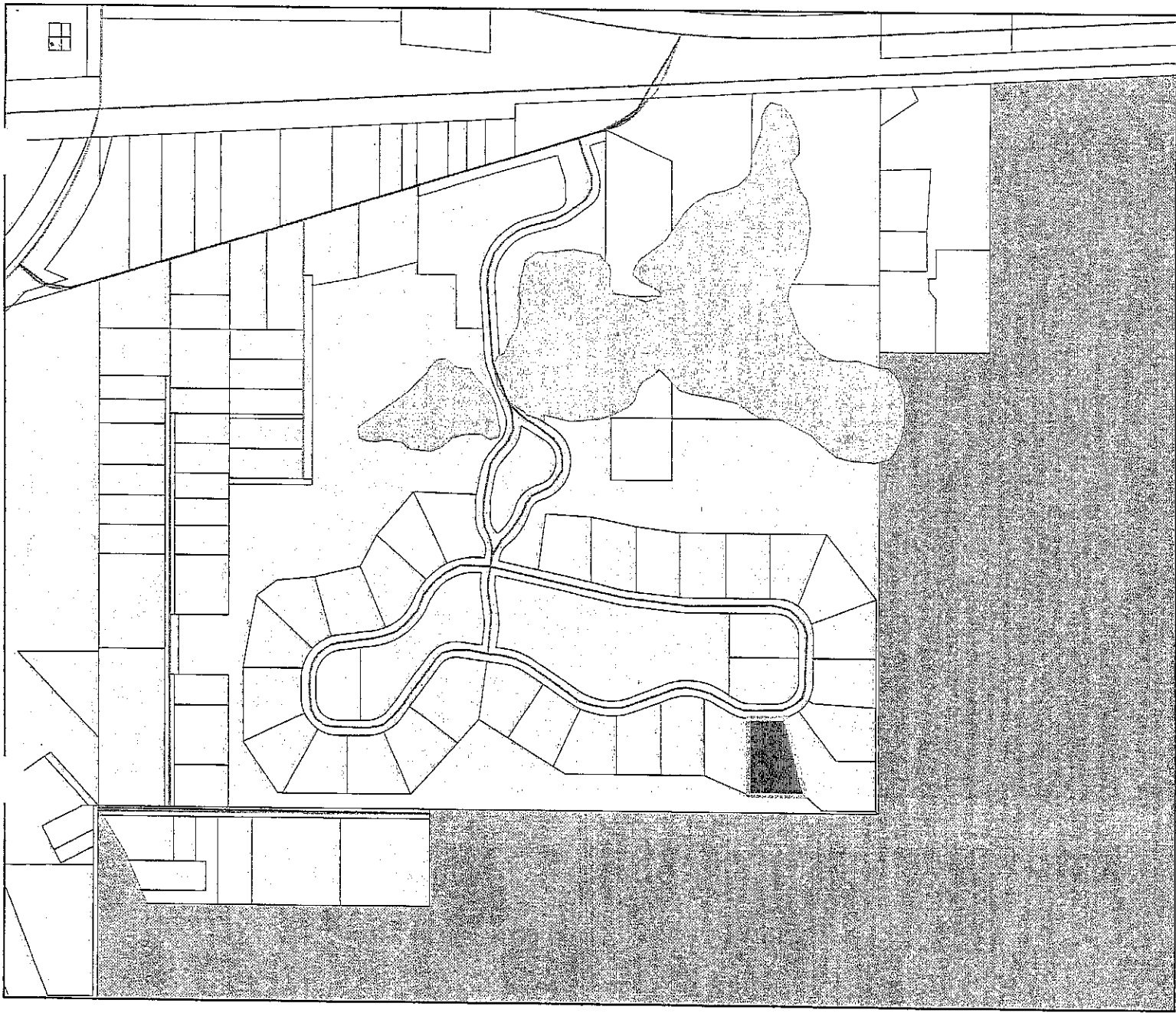
ATTEST:

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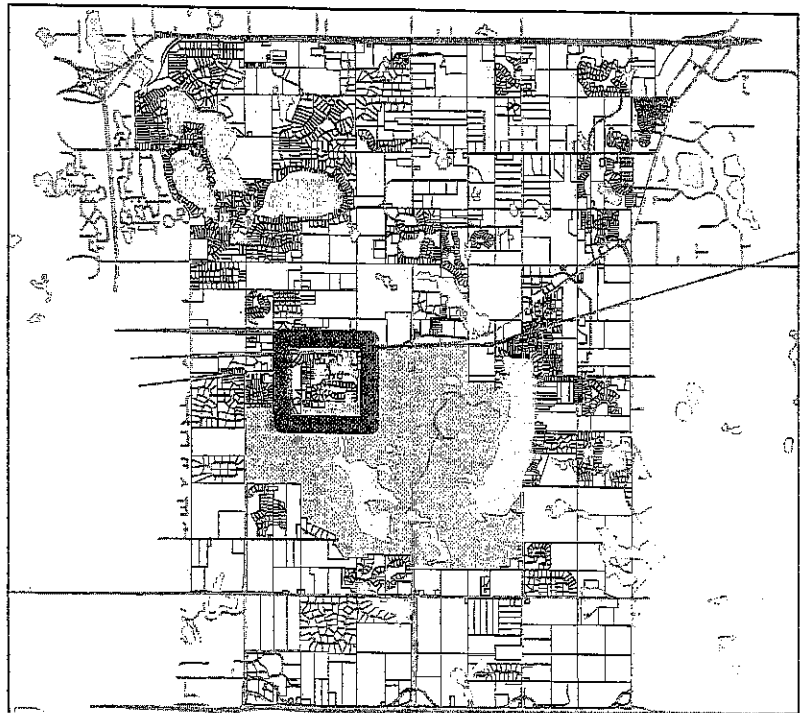
Dean A. Johnston, Mayor

---

Craig Dawson, Interim City Administrator



2931 Jonquil Trail North  
Lake Elmo, MN



JONQUIL TRAIL

R-1 25.00  
L=31.80  
Tan=15.99

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

Parcel ID number:  
2202921210024

Parcel Size: 41,340 SF  
or .95 acres

13

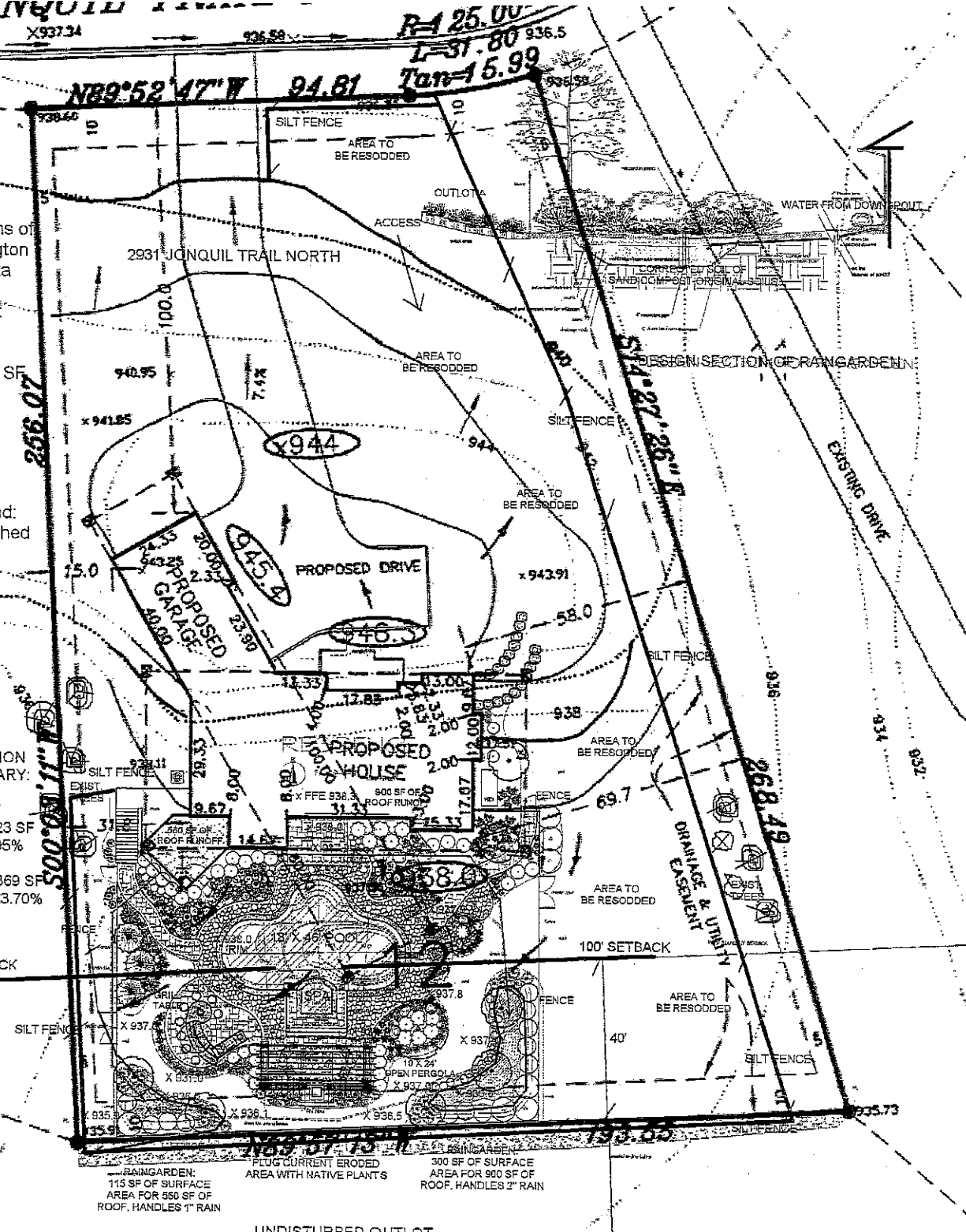
Existing Use of Land:  
Single Family Detached

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%

100' SETBACK



OUTLOT A

HUGE POOL LANDSCAPE

EXIST. SPRUCE TREES IN ROW

EXIST. SPRUCE TREES IN ROW

PARK BOUNDARY

EXIST. SPRUCE TREES IN ROW

DESIGNED BY DAVID SONKA, MNLAC  
2-04-08

\*BUILDER TO VERIFY USE DIMENSIONS, SEWER DEPTH AND FOUNDATION DE



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 JONGMIL 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.

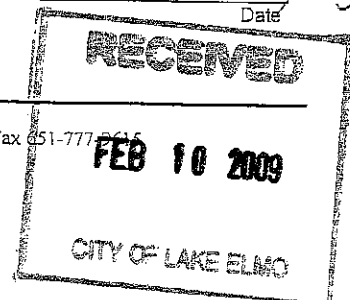
Signature of Applicant

2/7/09

Date

Signature of Applicant

Date



## Supplemental Information for 2931 Jonquil Trail Variance Application:

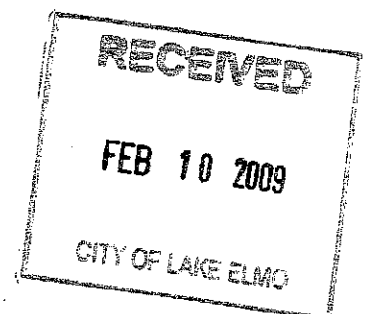
### Detailed Reason for Request:

Vladimir and Silvia Huges 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 Huges'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 they 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:

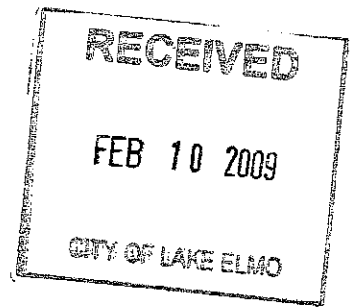
The 2007 Zoning Map for Lake Elmo lists it as A-Agricultural, as shown on the current zoning map on the City of Lake Elmo website.

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 Hugec's 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.

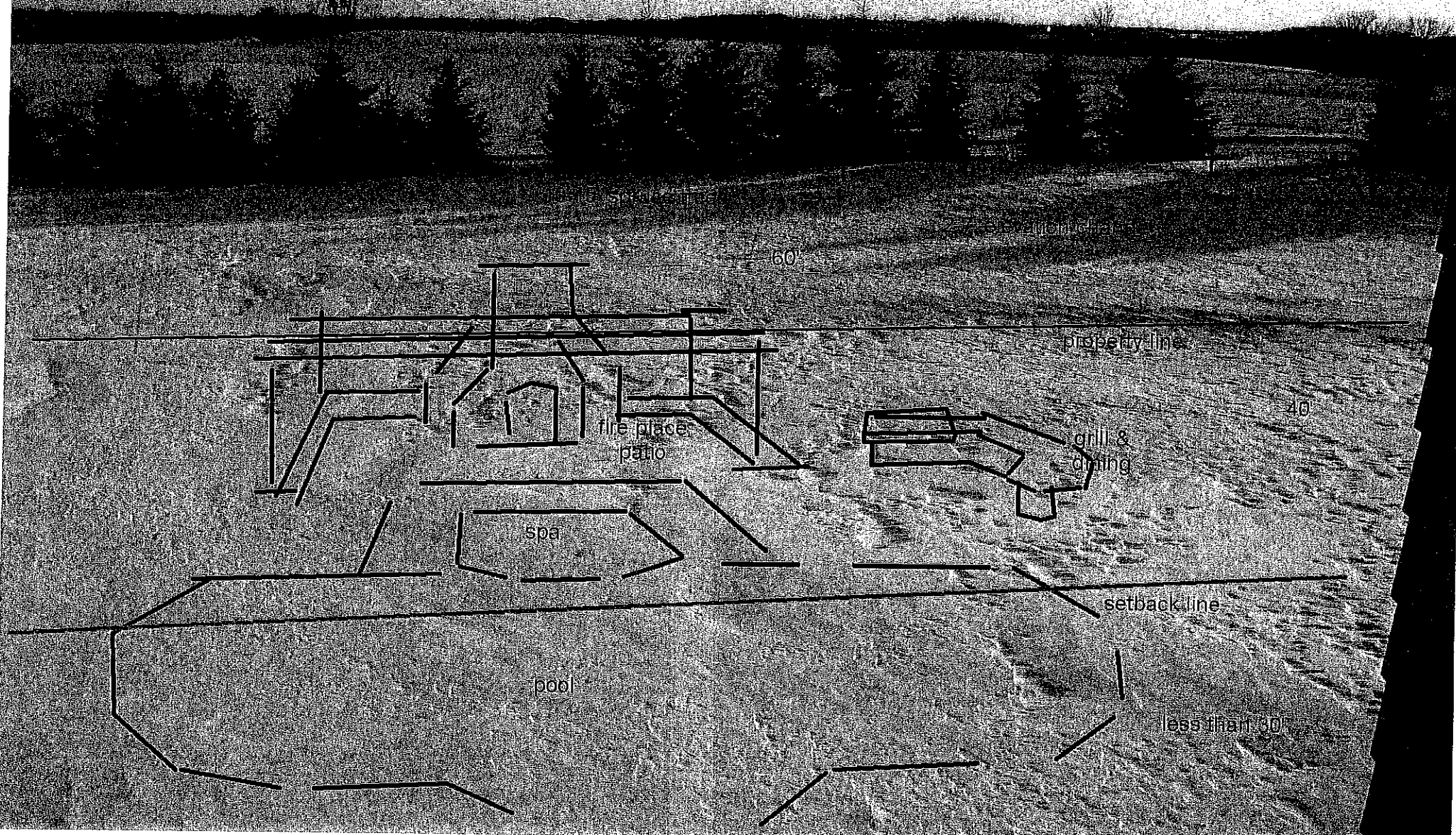
3. Verification of Ownership (Title report or purchase agreement, property tax statement, etc.)  
*SEE ENCLOSED*

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*

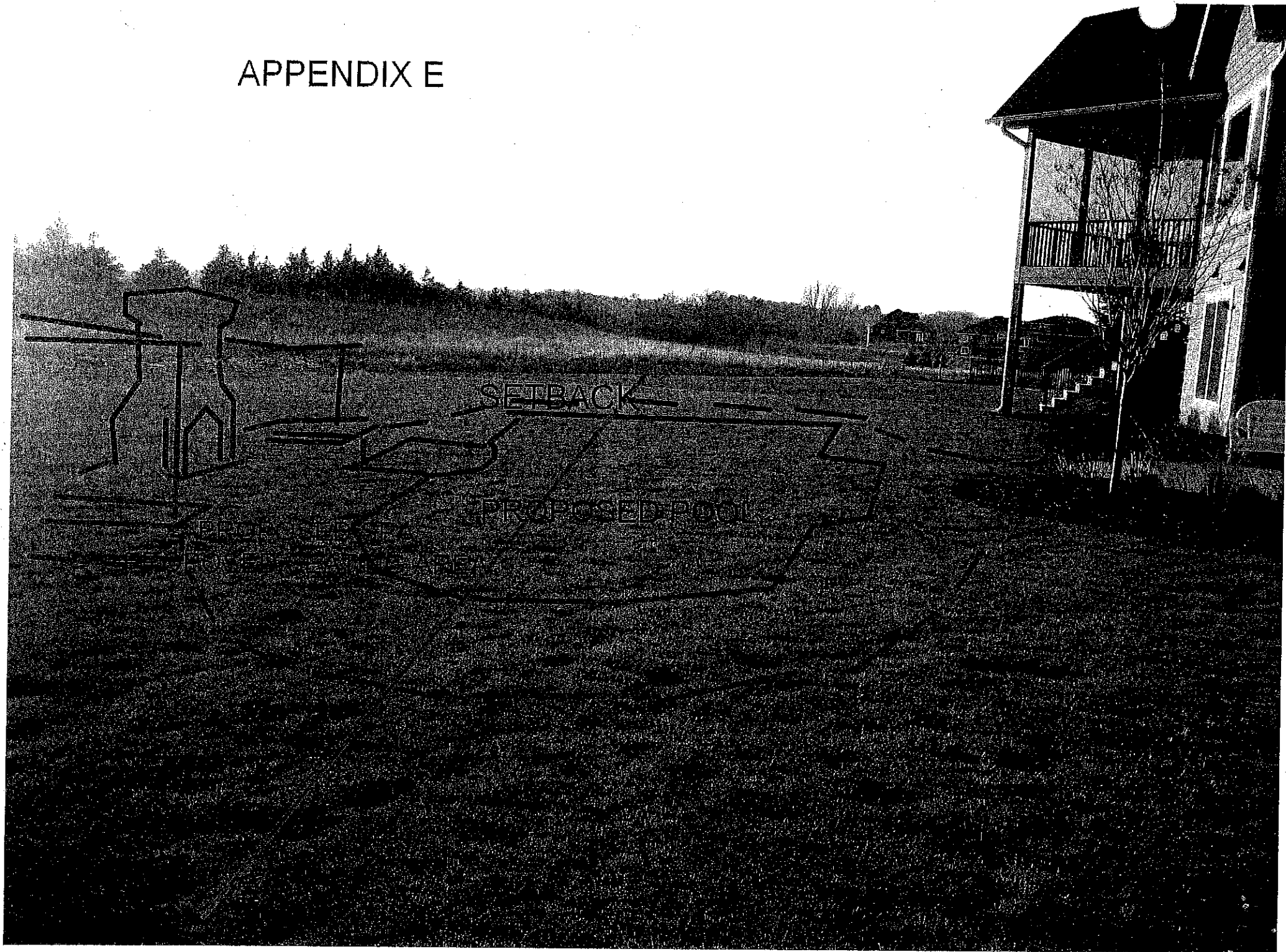


# APPENDIX D





# APPENDIX E



# APPENDIX F









# "APPENDIX C"

2931 JONQUIL TRAIL NORTH

LOCATION OF UNKNOWN  
SETBACK FROM LAKE  
PARK PRESERVE

LAKE  
ELMO  
PARK  
PRESERVE

(POOL)

LOCATION OF UNKNOWN SETBACK  
FROM LAKE ELMO PARK PRESERVE

(POOL)

OUTLOT A

(FOUNTAIN)

EXISTING FENCE ROW OF 10-15  
SPRUCE TREES FOR SCREENING

LAKE ELMO  
PARK PRESERVE

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



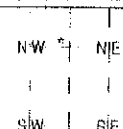
## SECTION/TOWNSHIP/RANGE INDEX

16022921 1502921 1402921  
21022921 2202921 2302921

## COUNTY VICINITY MAP



## SECTION VICINITY MAP



## PROPERTY IDENTIFICATION NUMBER/FORMANT AGENCY

SECTION NUMBER	TOWNSHIP NUMBER	RANGE NUMBER	ADJUTANT GENERAL	SPRINT PAGE
10	22	22	22	22

FORM 1 - LAST FOR PROPERTIES OF PROPOSED  
IDENTIFICATION NUMBER



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

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 4<sup>th</sup> 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.

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

City Council  
Date: 4-7-09  
REGULAR  
Item: 8  
Motion

ITEM: Inwood Avenue (CSAH 13) Turn Lane Improvements, Resolution of  
Municipal Consent

SUBMITTED BY: Jack Griffin, City Engineer

REVIEWED BY: Ryan Stempski, Assistant City Engineer

---

SUMMARY AND ACTION REQUESTED: The City Council is being asked approve the resolution for Municipal Consent for the Inwood Avenue (CSAH 13) Turn Lane Improvements.

This is a County State Aid project and is being funded through the Minnesota Department of Transportation's Local Road Improvement Program (LRIP). Projects funded by LRIP require Municipal Consent.

BACKGROUND INFORMATION:

The project consists of the construction of a center turn lane in both directions on Inwood Avenue (CSAH 13) at its intersection of 15<sup>th</sup> Street North. The turn lanes will allow for storage of the left turn movement, allowing the driving lane to freely pass through the intersection. The addition of the turn lane will also increase safety by discouraging vehicles from illegally passing on the shoulder.

The project will be constructed entirely within the County Right-of-Way and will be funded by the Local Road Improvement Program (LRIP), at no cost to the City of Lake Elmo.

RECOMMENDATION:

It is recommended that the Council approve Resolution 09-017, Approving County Project within Municipal Corporate Limits. By approving this Resolution the Council is authorizing the City Engineer to sign the Washington County Construction Plans.

SUGGESTED MOTION FOR CONSIDERATION:

*Move to approve Resolution No. 2009-017, Approving County Project within Municipal Corporate Limits.*

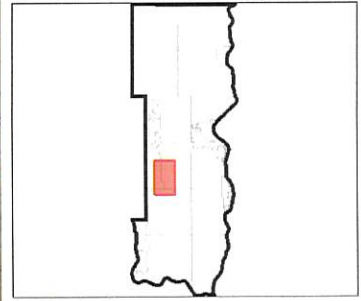
ATTACHMENTS:

1. Project Location Map
2. Resolution No. 09-017



## ORDER OF BUSINESS

- Introduction Craig Dawson, Interim City Administrator
- Report by staff or other presenter Jack Griffin, City Engineer
- Questions/comments from the public to the City Council Mayor Facilitates
- Action on motion



**Legend**



Scale: 1:31,639

This drawing is the result of a compilation and reproduction of land records as they appear in various Washington County offices. The drawing should be used for reference purposes only. Washington County is not responsible for any inaccuracies.

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

**RESOLUTION NO. 09-017**

**A RESOLUTION APPROVING COUNTY PROJECT  
WITHIN MUNICIPAL CORPORATE LIMITS**

WHEREAS, Washington County has completed the design and plans, dated February 26, 2009, for Project No. SAP 82-613-27, showing proposed excavation, grading, alignment, cross-sections and bituminous paving for the improvement of County State Aid Highway (CSAH) No. 13 (Inwood Avenue), and

WHEREAS, the plans have been reviewed by City Staff and presented to the City Council, and

WHEREAS, the project is necessary to improve safety along CSAH 13 at the intersection of 15<sup>th</sup> Street by adding a left turn lane in each direction, and

NOW, THEREFORE, BE IT RESOLVED,

1. The City hereby approves said final plans for the improvements of CSAH 13 within the corporate limits.
2. The City Engineer is hereby authorized to sign the County Construction Plans on the City's behalf.

Date: April 7, 2009      CITY OF LAKE ELMO

By: \_\_\_\_\_  
Dean Johnston  
Mayor

ATTEST:

\_\_\_\_\_  
Craig Dawson  
Interim City Administrator



City Council

Date:

April 7, 2009

Item: 9.

Motion

ITEM: I-94 Corridor Joint Powers Agreement;  
Appointment of Representative and Alternate

SUBMITTED BY: Craig W. Dawson, Interim City Administrator

---

**SUMMARY AND ACTION REQUESTED:** The Washington and Ramsey County Railroad Authorities have approved the joint powers agreement (JPA) to establish the I-94 Corridor Commission. The focus of work of the Commission will be on transit. The JPA gives the eight cities and one town directly along I-94 from Saint Paul to the Saint Croix River the opportunity to join the organization as "non-financial parties." The City Council needs to adopt a resolution to approve the JPA and to appoint its representative and alternate (each of whom must serve on the City Council) to the Board of the Commission.

**BACKGROUND:** The City Council reviewed the draft JPA for this proposed commission at its February 10, 2009, work session, and officially indicated its intent to participate in the commission at its February 17, 2009, meeting. The regional railroad authorities of Washington County and Ramsey County have since made revisions based on comments by the several parties, and their governing boards approved the JPA on March 10 and 17, respectively. The Commission now officially exists. The other cities/town who may participate, and it is expected that all of them will, have since been adopting resolutions to join the Commission and to appoint their representatives and alternates to the board.

The revisions have been relatively minor, and have been designed so as minimize the need (and cumbersome process) to make amendments to the JPA. The revised JPA also provides that only one of the positions of chair or vice-chair needs to be filled by a Financial Party member (i.e., from the railroad authorities). Additionally, the official name of the organization may easily be changed if it's deemed appropriate to do so.

General background for this item is summarized in the one-page staff memorandum for the February 10 work session (attached).

It is expected that the Commission's Board will begin meeting in late April.

**RECOMMENDATION:** Staff recommends that the Council adopt the resolution approving and authorizing execution of the joint powers agreement for the I-94 Corridor Commission, and appointing the City's representative and alternate to the Commission for 2009.

**SUGGESTED MOTION FOR CONSIDERATION**

*Move adoption of the resolution to:*

- 1) *approve and authorize execution of the joint powers agreement for the I-94 Corridor Commission, and*
- 2) *appoint the City's representative and alternate to the Commission for 2009. (The representative and the alternate must currently serve on the City Council.)*

ATTACHMENTS:

Resolution to approve JPA and appoint City's representatives  
Staff memorandum for February 10 work session  
Final version of I-94 Corridor Commission joint powers agreement (JPA)

ORDER OF BUSINESS:

- |  |                      |
|--|----------------------|
| • Introduction   | Craig Dawson         |
| • Report by staff or other presenter                     | Craig Dawson         |
| • 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         |

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

**RESOLUTION NO. 2009 - \_\_\_\_\_**

**A RESOLUTION APPROVING JOINT POWERS AGREEMENT  
FOR THE I-94 CORRIDOR COMMISSION  
AND APPOINTING THE CITY'S REPRESENTATIVE AND ALTERNATE  
TO THE BOARD OF THE I-94 CORRIDOR COMMISSION**

**WHEREAS**, the I-94 Corridor currently carries over 130,000 vehicles per day at Highway 52 and 110,000 vehicles per day at Interstate 694; and

**WHEREAS**, the 2030 Transportation Policy Plan has been approved by the Metropolitan Council and shows that traffic and congestion are forecast to increase substantially by 2030 resulting in the entire length of I-94 from downtown St Paul to the St Croix River as being congested; and

**WHEREAS**, the 2030 Transportation Policy Plan identifies the I-94 Corridor as a Transitway Corridor in need of additional analysis;

**WHEREAS**, the transitway analysis is needed to identify how mobility can be maintained and improved in the corridor; and

**WHEREAS**, transitway analysis has been completed on similar Ramsey and Washington County transitway corridors including Red Rock and Rush Line; and

**WHEREAS**, this partnership on these similar transitway corridors has been formalized through a joint powers agreement, the members of which include the Washington County Regional Railroad Authority, the Ramsey County Regional Railroad Authority, and may include any of the municipalities through which I-94 traverses from Union Station in St. Paul to the St. Croix River.

**NOW THEREFORE BE IT RESOLVED**, by the City Council of the City of Lake Elmo that the it approves the I-94 Corridor Joint Powers Agreement and authorizes its execution.

**BE IT FURTHER RESOLVED**, that the City Council hereby appoints \_\_\_\_\_  
as the I-94 Corridor Commission representative and \_\_\_\_\_  
as the alternate for 2009.

ADOPTED by the City Council of the City of Lake Elmo this 7<sup>th</sup> day of April, 2009

ATTEST:

\_\_\_\_\_  
Dean A. Johnston, Mayor

\_\_\_\_\_  
Craig W. Dawson, Interim City Administrator



# City of Lake Elmo

651/777-5510

3800 Laverne Avenue North / Lake Elmo, MN 55042

## MEMORANDUM

**TO:** City Council  
**FROM:** Craig W. Dawson, Interim City Administrator  
**DATE:** February 5, 2009  
**SUBJECT:** I-94 Corridor Joint Powers Agreement (Work Session Item #4)

**Background:** Efforts by numerous parties, primarily with the lead taken by Washington and Ramsey counties, resulted in the designation of I-94 as a transitway corridor in the Metropolitan Council's 2030 Transportation Policy Plan. The specific form of transit – light rail transit (LRT), busway, bus rapid transit (BRT), or commuter rail – is not identified in the plan, but rather all of these forms of transit and others will be considered.

**Purpose:** To get started on the planning process, the Washington County Regional Railroad Authority and the Ramsey County Regional Railroad Authority have drafted a joint powers agreement (JPA) to create the I-94 Corridor Commission. The Commission would be the forum for “collaborative planning of multi-modal transportation improvements along the Corridor and for the related land use and development impacts.” Those invited to be parties to the JPA are the regional railroad authorities, the eight cities, and the one township along the Corridor from the Union Depot in Saint Paul to the Saint Croix River.

In speaking with Washington County staff, the Commission will be formed of the regional railroad authorities and of those municipalities that wish to join. It is not necessary for all of the municipalities along the corridor to become members in order for the Commission to be established.

**Highlights of the JPA :** The JPA is straightforward and the obligations of the municipalities are relatively few. There will be two types of members: Financial Parties (the two regional railroad authorities), and Non-financial Parties (all of the member cities/township). The financial parties shall each have two votes, and each non-financial party shall have one vote on the Joint Powers Board. The non-financial parties would have no financial obligations unless the JPA is amended, and any amendment needs unanimous approval by the parties (both financial and non-financial). As drafted, all actions of the Commission's Board requiring the expenditure of funds would need a simple majority of the members and the unanimous vote of the financial members. Essentially, the only obligation of any municipality is to invest the time to participate in the Commission's activities.

**Discussion by Council:** The regional railroad authorities have asked for comments on the draft JPA and an indication of the city's intent to participate by February 13. Given the late date we received this communication, the first date that the City Council can take any formal action is February 17. This item will be placed on the agenda for the Council's February 17 meeting.



**JOINT POWERS AGREEMENT  
ESTABLISHING THE  
INTERSTATE 94 CORRIDOR COMMISSION**

**THIS AGREEMENT**, is entered into by and between the undersigned Regional Railroad Authorities, Cities, and Townships all being governmental units of the State of Minnesota, pursuant to the authority contained the Minn. Statutes §§471.59 and 398A.

**WITNESSETH**

**WHEREAS**, the Interstate 94 Corridor is defined as the transitway corridor originating at the Union Depot in downtown St. Paul and traveling east through Washington County with connections to other multi-modal transportation options; and

**WHEREAS**, the Interstate 94 Corridor has significant transportation safety, and land use issues; and

**WHEREAS**, there are opportunities for a variety of multi-modal transportation improvements to the Interstate 94 Corridor, including light rail transit, bus rapid transit or commuter rail along with multi-use trails, Intelligent Transportation Systems (ITS) and roadway improvements as related to the implementation of light rail transit, bus rapid transit or commuter rail; and

**WHEREAS**, the parties wish to collaboratively plan for multi-modal transportation improvements to the Interstate 94 Corridor and for the related land use and development impacts; and

**WHEREAS**, the Interstate 94 Corridor Commission intends to work collaboratively with the Minnesota Department of Transportation and the Metropolitan Council for the planning and development of light rail transit, bus rapid transit or commuter rail along with multi-use trails, Intelligent Transportation Systems (ITS) and roadway improvements as related to the implementation of light rail transit, bus rapid transit or commuter rail in the Interstate 94 Corridor.

**NOW, THEREFORE**, in consideration of the mutual promises and covenants herein, the parties hereto agree to as follows:

**ARTICLE 1.**

**DEFINITIONS**

Unless context otherwise requires, the terms defined in this section shall have the meanings stated herein:

**Agreement** means this Joint Powers Agreement as it now exists and as it may hereafter be amended.

**Commission (I-94 Corridor Commission)** shall mean the Joint Powers body established hereby



**Party or Parties** shall mean any Regional Railroad Authorities, Cities or Townships identified in Article 6 of this Agreement as signatories to this Agreement.

**Financial Parties** shall mean the financial party or parties so identified in Article 6 of this Agreement.

**Interstate 94 (I-94) Corridor** shall be defined as the Interstate 94 transportation corridor originating at the Union Depot in downtown St. Paul and traveling east through Washington County.

**Member** shall mean an individual appointed to the Commission as provided in Article 4 of this Agreement.

**Quorum** shall mean a majority of members, provided such majority includes at least two (2) Financial Members as defined in the Agreement. A quorum shall not be found if fewer than two (2) Financial Members are present.

## **ARTICLE 2.**

### **PURPOSE**

The purpose of this Agreement is to form a joint powers board under the provision of Minnesota Statutes Section 471.59 and 398.A to enable the parties to cooperatively analyze the feasibility, environmental impacts, engineering, and construction of multi-modal transportation improvements in the I-94 Corridor including light rail transit, bus rapid transit or commuter rail along with multi-use trails, Intelligent Transportation Systems (ITS), roadway improvements as related to the implementation of light rail transit, bus rapid transit or commuter rail and the associated land use and development impacts. These activities may include but not be limited to the acquisition and management of federal, state, and local funding in conjunction with the Minnesota Department of Transportation and the Metropolitan Council, and may perform any responsibilities delegated by the Commissioner of Transportation or Metropolitan Council Chair subject to the conditions that sufficient funds are received.

The Parties will communicate and coordinate the Commission's activities as necessary with private corporations, state agencies, counties, municipalities, the Federal Transit Administration, other regulatory, planning, and funding agencies, and other stakeholders for advancement of the Commission's purposes.

The method of accomplishing the purpose of this Agreement is the establishment of a Joint Powers Board to provide a mechanism whereby the Parties jointly address the stated purposes.

## **ARTICLE 3.**

### **TERM**

This Agreement shall be effective (the Effective Date) and the joint powers board established herein may commence exercising the powers and authorized in this Agreement on the day that the Agreement has been approved by resolution and duly executed by the Ramsey County Regional Railroad Authority and the Washington County Regional Railroad Authority by action of their governing boards. This Agreement shall remain in full force and effect until terminated by the Parties pursuant to Article 10 of the Agreement.

#### **ARTICLE 4.**

#### **JOINT POWERS BOARD**

- A. There is hereby created a Joint Powers Board as a public entity, to be known as the I-94 Corridor Commission. The Commission shall be an entity separate from its member Parties and shall not be deemed an agent or partner of the member Parties and the member Parties shall not be liable for the actions of the Commission. The Commission shall have full authority to exercise all powers stated herein.
- B. The Commission shall consist of one Member and one alternate appointed through resolution by a Party for an initial term commencing with the execution of this Agreement until January 15, 2010. Each Member or alternate must be a member of the governing body, commission, or council which appoints him or her, and must remain so during his or her term.
- C. After January 15, 2010, the governing body, commission, or council shall appoint by resolution its member and alternate for one year terms. In the event that any Member or alternate shall not have been appointed by January 15 in any year, the incumbent Member shall serve until a successor has been appointed. Removal of any Member or alternate during the term for which the Member has been appointed may be done at any time but shall be done only by resolution of the appointing governing body, commission, or council, or automatically if the Member ceases to be a member of the Party which appointed him or her.

#### **ARTICLE 5.**

#### **VOTING**

Board voting shall be as follows: Each Financial Party Member receives three (3) votes and each non-Financial Party Member receives one (1) vote.

- A. In the event that the appointed Member is not present at the meeting, their alternate may cast all of their Party's allocated votes.
- B. All actions of the Board require both a simple majority vote of the Members present and a simple majority vote of the Financial Members present. However, for all actions involving the expenditure of funds and adoption of the budget, a simple majority of the whole Board plus a unanimous vote of all Financial Members is required.

#### **ARTICLE 6.**

#### **MEMBERSHIP**

The government units that are eligible for participation in this Commission upon adoption of this agreement by resolution and duly executed by their respective governmental units on or before December 31, 2009 include:

- A. Financial Parties
  - a. Ramsey County Regional Railroad Authority

- b. Washington County Regional Railroad Authority
- B. Non-financial Parties
  - a. City of St. Paul
  - b. City of Maplewood
  - c. City of Landfall
  - d. City of Oakdale
  - e. City of Woodbury
  - f. City of Lake Elmo
  - g. City of Afton
  - h. City of Lakeland
  - i. Town of West Lakeland
- C. If an entity identified in this Article 6 does not elect to become a Party by December 31, 2009, it may do so thereafter by amendment to this Agreement pursuant to Article 11 hereof.
- D. Following the initial term, Commission Members' terms shall commence on January 15 of a calendar year and end on January 14 of the next succeeding year, or until a successor is appointed.

#### **ARTICLE 7.**

#### **POWERS OF COMMISSION**

The Commission has such authority as is necessary and proper to make all decisions to carry out its purpose as described in Article 2. Such powers shall be subject to the provisions of Minn. Stat. § 471.59 and 398A and will include, but not be limited to, any or all of the following:

- A. Adopt an annual budget, together with a statement of the sources of funding and an estimated amount required of each Financial Party.
- B. Enter into transactions, including contracts or leases, required in furtherance of this Agreement and statutory mandate and enforce such transactions to the extent available in equity or at law. The contracting and purchasing requirements of one of the Financial Parties designated by the Commission shall apply hereto. The Commission may approve any contract relating to this Agreement up to the amount approved in the annual budget and may authorize the Chair of the Commission to execute those contracts.
- C. Have the power to adopt such by-laws that it may deem necessary or desirable for the conduct of its business. Such by-laws shall be consistent with this Agreement and any applicable laws or regulations. The by-laws may provide for the appointment of ex officio, non-voting members to the Board by the Commission. Approval of the by-laws shall be in accordance with Article 5 of this Agreement.
- D. Apply for and accept gifts, grants and loans of money, other property, or assistance from the United States government, the State of Minnesota, or any person, corporation, partnership, association, or agency public or private for any of its purposes; enter into any

agreement in connection therewith to hold, use and dispose of such money, other property; and assistance in accordance with the terms of the gifts, grants, or loans relating thereto.

- E. Acquire and hold such real and personal property as may be required to accomplish the purposes of this Agreement and, upon termination of this Agreement, make distribution of such property as is provided for in this Agreement.
- F. Employ agents and employees, and to fix the compensation and all other terms and conditions of employment thereof.
- G. Incur debts, liabilities, or obligations which do not constitute a debt of any of the Parties. The Joint Powers Board does not have authority to incur debts, liabilities, or obligations which constitute a debt of any of the Parties. The obligations or other forms of indebtedness must be issued in the same manner as would apply to one of the Financial Parties.
- H. Enter into agreements and non-binding memoranda of understanding between the Commission and the United States government, the State of Minnesota, or any person, corporation, partnership, association, or agency public or private in accordance with applicable law.
- I. Sue and be sued in its own name.

All powers granted herein shall be exercised by the Commission in accordance with the legal requirements applicable to the regional railroad authorities.

## **ARTICLE 8.**

## **OFFICERS, EMPLOYEES, AND SERVICES**

### **A. Chair and Vice-Chair**

The Commission shall elect a Chair and Vice-Chair at its first regular meeting each year. The Chair and Vice-Chair shall consist of at least one Financial Party member. The Chair and Vice-Chair shall be elected by the Commission for a term of one (1) year. The Chair shall preside at all meetings of the Commission, may establish such committees as may be needed from time to time and shall perform other duties and functions as may be determined by the Commission. The Vice-Chair shall assume the duties of the Chair during the absence of the Chair and perform such other duties as may be determined by the Commission. If both the Chair and Vice-Chair are absent, the Commission may elect a temporary Chair to conduct its business, provided a quorum is present. Election of a temporary chair shall be by a simple majority vote of the quorum.

### **B. Executive Committee**

The Commission may establish an Executive Committee of the Commission consisting of the representative of each Financial Member. The Executive Committee shall develop and make recommendations to the Commission regarding the ongoing responsibilities of

the Commission and shall have such other duties as set forth in the Commission's by-laws.

**C. Staff**

Any Party may provide staff support to the Commission subject to the approval of the Commission.

**D. Vacancies**

If an appointment of any Member or alternate is vacated before the end of his or her term, the vacancy shall be filled by appointment by the appropriate Party pursuant to Articles 4 and 6 of this Agreement. Vacancies shall be filled within thirty (30) days of their occurrence. A vacancy shall be deemed to have occurred when any of the conditions specified in Minn. Stat. § 351.02 exist.

**E. Meetings**

The Commission shall meet at regular intervals at such times and places as the Commission shall establish in its by-laws. Special meetings may be held on reasonable notice by the Chair or any two members upon terms and conditions as the Commission may determine and that conform to the Minnesota Open Meeting Law, Minn. Stat. § 13D.

**F. Committees**

The Commission may establish standing committees of the Commission by providing for such committees by resolution. The Chair may establish ad hoc committees of the Commission.

**ARTICLE 9.**

**FUNDING**

It is understood by the Parties that the activities and duties of the Commission are to be funded primarily by grant monies from the United States Government, the State of Minnesota or any other association or agency. Nevertheless, the Financial Parties identified in this Agreement agree to provide funding, if necessary, for the feasibility, environmental impacts, engineering, and construction of a multi-modal transportation improvement in the I-94 Corridor including light rail transit, bus rapid transit, commuter rail, multi-use trails, and Intelligent Transportation Systems (ITS) along with the associated land use and development impacts, and administrative expenses of the Commission (to the extent not covered by grant funds), and other items deemed necessary to facilitate development of the corridor. The Financial Parties will establish an initial budget. The Financial Members contribution to the initial budget and all subsequent budgets shall be allocated as follows:

50%	Ramsey County Regional Railroad Authority
50%	Washington County Regional Railroad Authority

Each Financial Party shall pay its appropriate initial contribution to the regional railroad authority acting as fiscal agent of the Commission within sixty (60) days of the Commission approving a budget.

**A. Annual Budget**

For the calendar year next following the calendar year in which the Effective Date occurs and all subsequent years, the Commission shall establish and approve a budget. Each Financial Member shall be assessed for its proportionate share of the budget according to the schedule established above. The Commission shall establish its first budget within sixty (60) days of the commencement of the Commission.

**B. Financial Members' Budget Approval**

Adoption of the budget and any other matter requiring expenditure of funds shall be in accordance with Article 5 of this Agreement.

**C. Contribution Date**

Except for any initial contribution required by this Agreement, assessments made under the provisions of this article shall be paid by each Financial Party by January 15 of each year. The initial contribution shall be made within sixty (60) days of the adoption of the budget pursuant to Article 7(A) hereof.

**D. Budgeting, Accounting, Fiscal Agent, and Other Services**

The Commission may contract with any Party to provide contract management, legal review, and budgeting and accounting services necessary or convenient for the Commission and otherwise act as the Commission's fiscal agent. Such services shall include, but not be limited to, management of all funds, including contributions and grant monies, payment for contracted services, and relevant bookkeeping and record keeping. The contracting and purchasing requirements of the Party so selected shall apply to transactions of the Commissions. Such Party shall identify the staff person to work as liaison with the Commission.

**E. Accountability for Funds**

All funds shall be accounted for according to generally acceptable accounting principles. A report on all receipts and disbursements shall be forwarded to the Commission on an annual basis. The Parties have the authority to request reports pertaining to any and all budgeting and accounting services. All interest earned from established Commission funds shall be credited back to that same fund.

**ARTICLE 10.**

**WITHDRAWAL AND TERMINATION**

**A. Withdrawal**

Any Party may withdraw from this Agreement upon 90-days prior written notice evidenced by resolution of the Party's governing body to the Commission. In the event of withdrawal by any Party, this Agreement shall remain in full force and effect as to all remaining Parties.

**B. Effect of Withdrawal, Disposition of Property, Funds, and Obligations**

A Financial Party withdrawing from this Agreement shall, prior to such withdrawal, pay the full amount of any unpaid assessments to the Commission as defined in Article 9. A Party withdrawing from this Agreement shall not receive a distribution of property or

funds until such time as this Agreement is terminated by all Parties pursuant to this Article 10. Such disposition of property shall be in accordance with the provisions of Section D of this Article 10.

Any Financial Party withdrawing shall be liable for any assessment in the year in which the withdrawal becomes final only for the period in such year that the Financial Party remains a party. The Financial Party's assessment shall not exceed the sum of one-twelfth ( $1/12^{\text{th}}$ ) the full assessment multiplied by the number of months or fractions thereof in the year during which the party remains a party.

**C. Termination**

This Agreement shall terminate upon the occurrence of any one of the following events:

- a. When necessitated by operation of law or as a result of a decision by a court of competent jurisdiction; or
- b. When all of the Financial Parties agree, by resolution adopted by the respective governing bodies, to terminate this Agreement and all obligations of the Commission shall have been paid or otherwise defeased in full.

**D. Disposition of Property and Funds**

At such time as this Agreement is terminated, any property interest remaining in the Commission, following discharge of all obligations owed by the Commission shall be disposed of and the proceeds of the property shall be returned to the Parties in proportion to their contribution.

**E. Effect of Withdrawal of Financial Party on Budget**

In the event a Financial Party withdraws, the unpaid assessment allocable to such member in the year of withdrawal and subsequent years shall be reallocated to the remaining Financial Party.

**ARTICLE 11.**

**MISCELLANEOUS**

**A. Amendments**

This Agreement may be amended by unanimous agreement of the Parties as evidenced by resolutions adopted by the respective governing bodies.

**B. Records, Accounts, and Reports**

The Commission shall establish and maintain such funds and accounts as may be required by good accounting practices. The books and records of the Commission shall be subject to the provisions of Minn. Stat. Ch. 13, the Minnesota Government Data Practices Act, and Minn. Stat. § 16C.05, subd. 5. The Commission, within one hundred twenty (120) days after the close of each fiscal year which shall be January 1 to December 31, shall give a complete written report of all financial activities for such fiscal year to the Parties.

**C. Counterparts**

This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

**D. Severability**

The provisions of this Agreement are severable. If any paragraph, section, subdivision, sentence, clause, or phrase of the Agreement is for any reason held to be contrary to law, or contrary to any rule or regulation having the force and effect of law, such decision shall not affect the remaining portions of this Agreement.

**E. Entire Agreement**

This Agreement constitutes the entire agreement between the Parties and supersedes all prior written or oral agreements relating to the Commission.

**F. Alternative Dispute Resolution**

In the event of a dispute arising under this Agreement, the Parties and the Commission agree to attempt to resolve their dispute by following the process described below:

- a. A Party shall provide written notice to the Commission describing perceived conflict, positions, and underlying reasons.
- b. The Commission shall provide written response to notice within seven (7) days of receipt of notice.
- c. The Parties shall meet within 14 days of receipt of response with a neutral facilitator. The neutral facilitator will be a representative from the Minnesota Office of Dispute Resolution. Costs of such facilitator shall be shared equally by all parties to the dispute.
- d. At the first meeting, the neutral facilitator will assist the Parties in identifying the appropriate Parties and participants in the dispute resolution process, their concerns, a meeting agenda and design for any subsequent meetings. The Parties shall agree on a process for resolving the problem that would involve additional negotiations, mediation, or arbitration.
- e. In developing the process, the parties will be guided by the following principles:
  - i. the Parties will attempt in good faith to reach a negotiated settlement;
  - ii. the Parties agree that there must be fair representation of the parties directly involved in the dispute;
  - iii. the Parties will use legal proceedings as a last resort; and



- iv. in the event the Parties are unable to resolve the dispute, each Party retains all rights, remedies, or defenses it had prior to entering the process.
- f. The parties will report to the Commission within 60-days of their first meeting on the resolution of the dispute or a recommendation to commence legal proceedings.

**G. Minnesota Laws Govern**

The Laws of the State of Minnesota shall govern all questions and interpretations concerning the validity and construction of this Agreement and the legal relations between the Parties and their performance. The appropriate venue and jurisdiction for any litigation shall be in State district court located within the County of Ramsey, State of Minnesota. Litigation, however, in the federal courts involving the Parties will be in the appropriate federal court within the State of Minnesota. If any provision of this agreement is invalid, illegal, or unenforceable the remaining provisions will not be affected.

**IN WITNESS WHEREOF**, the parties to this Agreement have hereunto set their hands on the date written below.

## WASHINGTON COUNTY REGIONAL RAIL AUTHORITY

---

Myra Peterson, Chair  
Washington County Board of Commissioners

Date

---

James R. Schug  
County Administrator

Date

Approved as to form:

---

Asst. County Attorney

Date

**CITY OF**

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Date

\_\_\_\_\_  
City Administrator

\_\_\_\_\_  
Date

Approved as to form:

\_\_\_\_\_  
City Attorney

\_\_\_\_\_  
Date

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

**RESOLUTION NO. 2009 - 015**

**A RESOLUTION APPROVING JOINT POWERS AGREEMENT  
FOR THE I-94 CORRIDOR COMMISSION  
AND APPOINTING THE CITY'S REPRESENTATIVE AND ALTERNATE  
TO THE BOARD OF THE I-94 CORRIDOR COMMISSION**

**WHEREAS**, the I-94 Corridor currently carries over 130,000 vehicles per day at Highway 52 and 110,000 vehicles per day at Interstate 694; and

**WHEREAS**, the 2030 Transportation Policy Plan has been approved by the Metropolitan Council and shows that traffic and congestion are forecast to increase substantially by 2030 resulting in the entire length of I-94 from downtown St Paul to the St Croix River as being congested; and

**WHEREAS**, the 2030 Transportation Policy Plan identifies the I-94 Corridor as a Transitway Corridor in need of additional analysis;

**WHEREAS**, the transitway analysis is needed to identify how mobility can be maintained and improved in the corridor; and

**WHEREAS**, transitway analysis has been completed on similar Ramsey and Washington County transitway corridors including Red Rock and Rush Line; and

**WHEREAS**, this partnership on these similar transitway corridors has been formalized through a joint powers agreement, the members of which include the Washington County Regional Railroad Authority, the Ramsey County Regional Railroad Authority, and may include any of the municipalities through which I-94 traverses from Union Station in St. Paul to the St. Croix River.

**NOW THEREFORE BE IT RESOLVED**, by the City Council of the City of Lake Elmo that the it approves the I-94 Corridor Joint Powers Agreement and authorizes its execution.

**BE IT FURTHER RESOLVED**, that the City Council hereby appoints \_\_\_\_\_  
as the I-94 Corridor Commission representative and \_\_\_\_\_  
as the alternate for 2009.

ADOPTED by the City Council of the City of Lake Elmo this 7<sup>th</sup> day of April, 2009

ATTEST:

\_\_\_\_\_  
Dean A. Johnston, Mayor

\_\_\_\_\_  
Craig W. Dawson, Interim City Administrator

City Council

Date:

April 7, 2009

REGULAR

Item: ~~10~~

Motion

ITEM: MAC Joint Airport Zoning Board, Lake Elmo Airport

SUBMITTED BY: Craig W. Dawson, Interim City Administrator

REVIEWED BY: Kyle Klatt, Planning Director  
Jerry Filla, City Attorney

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**SUMMARY AND ACTION REQUESTED:** In a letter received March 4, 2009, the Metropolitan Airports Commission (MAC) proposes to establish a Joint Airport Zoning Board (JABZ) to implement Airport Safety Zoning at and around the Lake Elmo Airport. The Board would consist of two representatives each from Lake Elmo, West Lakeland Township, Baytown Township, Oak Park Heights, Washington County, and the MAC. The MAC would like the Board to begin meeting in late April. The MAC is requesting that Lake Elmo participate and appoint two representatives to the Board.

**BACKGROUND:** State statute provides for the establishment of JABZs in order to regulate land use for the safety of aircraft operations around airports (usually referred to as "safety zones"). The statute provides that "[t]he Metropolitan Airports Commission shall request creation of one joint airport zoning board for each airport operated under its authority." According to MSA § 360.063, Subd. 3(c), if a city, within 60 days of receiving a request from the MAC, fails to join in creating the JABZ, the MAC or the JABZ that is formed with other parties will have zoning jurisdiction within the airport zone in that city. In short, the City of Lake Elmo will be subject to the MAC's/JABZ's airport zone regulations whether the City joins in the JABZ or not.

The MAC adopted the Long-Term Capital Plan for the Lake Elmo Airport late in 2008. In the Plan,

"Shortly following the finalization of the proposed future development plans for Lake Elmo Airport, the MAC will convene a Joint Airport Zoning Board (JABZ) that will include the respective Responsible Governmental Units (RGUs) that control land use development around the Lake Elmo Airport. This effort will address land uses around Lake Elmo Airport in the context of the preferred alternative runway zones."

The JABZ will draft, adopt, and enforce a zoning ordinance specific to the Lake Elmo Airport. Zoning matters generally deal with height restrictions for buildings and vegetation. The JABZ will not be a planning body regarding the future use or expansion of the airport. In a conversation with MAC staff, the MAC will not push the 60-day schedule in the statute, but rather wants to be deliberative in getting the parties together and in agreement with the JABZ for Lake Elmo Airport.

The final draft of the AUAR for Lake Elmo Village, which has been distributed for final comment by agencies, states that the City intends to participate in the JABZ.

**Other JABZs:** Few of the metropolitan airports have JABZs. According to MAC staff, the only one currently active is for Saint Paul/Holman Field. The MAC is currently working on establishing one for Flying Cloud Airport in Eden Prairie. A JABZ exists for Minneapolis/Saint Paul International Airport. The Crystal Airport has a joint airport zoning ordinance that was established in 1984, and the MAC is in the process of re-establishing the JABZ and updating that ordinance.

One of the issues arising with recent formation of JABZs is indemnification of the cities who appoint members of the JABZ. The MAC has provided indemnification for participants in the Saint Paul/Holman Field and MSP JABZs, and its staff has related that it would be the MAC's intention to provide indemnification as other JABZs are established. Should the City Council elect to join the JABZ for Lake Elmo Airport, it state its expectation that the MAC will provide indemnification to the City from claims based upon the City's adoption of more restrictive zoning standards which could have an adverse impact on property values within hazard zone areas.

**Participation/Membership on the JABZ:** As the JABZ is not organized under the joint powers organization statute, there is no requirement that the City's members on the Board be City councilmembers. The Council may appoint anyone to be its representatives on the Board. The Council may wish to consider a member of the Planning Commission, a resident or owner of business property near the airport, a member of the City Council, or a Lake Elmo resident for appointment to the Board.

While only an action (i.e., a motion) of the Council to appoint members to the Board is necessary to join the JABZ, staff suggests that if the Council take action to join by a resolution authorizing the City to join the JABZ, requiring that the MAC indemnify the City for its participation on the JABZ, and appointing the two members to the Board.

**RECOMMENDATION:** Staff recommends that the City Council direct the preparation of a resolution for the City to join the Joint Airport Zoning Board for Lake Elmo Airport, and that this resolution be placed on the agenda for the Council's April 21, 2009, meeting. This timing will provide the Council with two weeks to identify persons who may be appointed the Board.

**SUGGESTED MOTION FOR CONSIDERATION**

*Move that staff prepare a resolution that will authorize the City to join the Joint Airport Zoning Board for the Lake Elmo Airport, and place this item on the agenda for the April 21, 2009, City Council meeting.*

**ATTACHMENTS:**

- March 3, 2009, Letter from the MAC proposing creation of the Lake Elmo Airport JABZ

**ORDER OF BUSINESS:**

- |  |                       |
|--|-----------------------|
| • Introduction   | Craig Dawson          |
| • Report by staff or other presenter                     | Craig Dawson & others |
| • Questions from City Council members to the presenter   | Mayor facilitates     |
| • Questions/comments from the public to the City Council | Mayor facilitates     |
| • Action on motion                                       | City Council          |

# METROPOLITAN AIRPORTS COMMISSION

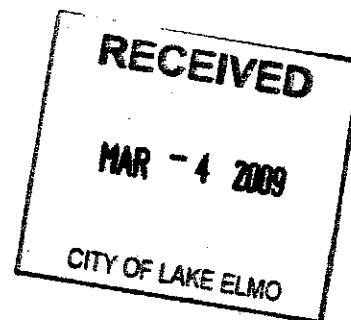
Minneapolis-Saint Paul International Airport

6040 - 28th Avenue South • Minneapolis, MN 55450-2799

Phone (612) 726-8100



March 3, 2009



Mr. Craig Dawson  
City Administrator  
City of Lake Elmo  
Lake Elmo City Hall  
3800 Laverne Avenue North  
Lake Elmo, MN 55042

Dear Mr. Dawson:

The Metropolitan Airports Commission (MAC) proposes to establish a Joint Airport Zoning Board to implement Airport Safety Zoning at the Lake Elmo Airport. State Airport Safety is prescribed in Minnesota Statute and MnDOT Aeronautics rules and deals with both land use and height restrictions in the vicinity of airports, particularly off the ends of runways.

State Statute requires MAC to create a Joint Airport Zoning Board for each of its airports. The Joint Airport Zoning Board consists of two representatives from each affected community and two representatives from MAC (Commissioners Robert Nelson and Andy Westerberg for this Board). While most of the airport affects at the Lake Elmo Airport are within the existing airport boundaries, there are zoning issues in Lake Elmo, West Lakeland Township, Baytown Township, Oak Park Heights, and Washington County. Each of these communities and the County is requested to participate in this process and to appoint two representatives to the Board.

In order to move forward with this process, MAC requests that you appoint two representatives to participate in a Joint Airport Zoning Board for Lake Elmo Airport. We would like to convene the Board for its first meeting in late April. If you would like additional information regarding either airport safety zoning or its potential impacts, please contact Chad Leve at 612-725-6326.

Sincerely,

Dennis Probst  
Deputy Executive Director  
Planning and Environment



City Council  
Date: 4/7/08  
**Staff Update**  
Item: J-11

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

SUBMITTED BY: Kyle Klatt, Planning Director *UK*

REVIEWED BY: Craig Dawson, Interim City Administrator

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**SUMMARY AND ACTION REQUESTED:**

The City of Lake Elmo has received five proposals related to the request for services seeking a consultant to assist the City with the wireless communications ordinance update project. Unfortunately, one of the firms located in California did not receive the request packet (our records show it was mailed with all of the others); therefore, staff has agreed to consider a proposal from this firm with the others provided it is received by Monday morning. All of the proposals, along with the staff review and recommendation for hiring, will be distributed to the City Council on Monday via email.

The firms that submitted proposals include the following:

- The Center for Municipal Solutions (Glenmont, NY)
- CityScape Consultants (Boca Raton, FL)
- OWL Engineering and Test Labs, Inc. (Shoreview, MN)
- Kreines & Kreines (Tiburon, CA)
- Short Elliott Hendrickson, Inc. (St. Paul, MN)

Kramer Telecom Law Firm (Los Angeles, CA) is the firm that will be submitting a proposal in accordance with the schedule noted above.

**ADDITIONAL INFORMATION:**

All of the proposals will be available for viewing at City Hall in addition to the electronic version that will be distributed to members of the Council on Monday.



City Council  
Date: 4/7/09  
REGULAR  
Item: 12  
INFORMATIONAL

ITEM: Provide Direction on Proceeding with an Ordinance and Permit for Special Events Held within the City

REQUESTED BY: Planning Department

SUBMITTED BY: Kelli Matzek, City Planner

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

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#### SUMMARY AND ACTION REQUESTED:

The City Council is being asked to review the attached examples of permits and an ordinance regarding Special Event Permits and to provide staff direction as to whether or not the Council would like to consider adopting a similar ordinance for Lake Elmo. The request received by the Minnesota Boat Club to hold a rowing regatta on Lake Elmo in 2009 has prompted city staff to do a preliminary investigation of the permit and process used by other communities in Minnesota for regulating large temporary events. If the City Council chooses to move forward with a Special Event Permit, it would not pertain to the Boat Club's current request.

A Special Event Permit would be intended to provide some regulation of temporary events on a case-by-case basis and is intended to assure adequate provision of parking, traffic, sanitary facilities, utilities, public safety services, proper insurance, and peace and tranquility of residential neighborhoods.

A special events permit would apply to other events that have occurred within the city such as: Huff n' Puff Days, Pet Carnival, and a Rowing Regatta. The Council may choose to either waive the fee or to not require the permit for public-sponsored events such as the Fall Festival.

#### *City History*

In 2006 the Council approved an ordinance allowing Commercial Social Outdoor Events as a conditional use in the agricultural zoning district, which it then repealed in April of 2007. A Special Event Permit, should the Council direct staff to further research and prepare the information, is different than the Commercial Social Outdoor Events in the following ways:

- 1) - A Special Event permit would be required and reviewed for each event and would not guarantee a future permit would be received by the applicant or property owner.
  - A Commercial Social Outdoor event was established as a conditional use permit (CUP) and would have run with the property in perpetuity.
- 2) - The City Council would have the discretion to deny a Special Event Permit.
  - If a CUP were received and the conditions of a Commercial Social Outdoor Event were being met, the city would have a difficult time revoking the permit.
- 3) - A Special Event permit would not necessarily be based on a zoning district.
  - A CUP for a Commercial Social Outdoor Event was allowed only in the Agricultural zoning district.

- 4) - A Special Event permit could be intended to regulate temporary, outdoor privately-sponsored event open to the general public, held on public or privately-owned property, and impacting city facilities or services. The sample ordinance provided identifies specific gathering types that would not require a permit, such as a wedding.
- The only applicant received by the city to implement the Commercial Social Outdoor Event ordinance was to hold weddings on a property in the city.

**RECOMMENDATION:**

The attached information is being presented for informational purposes.

**SUGGESTED MOTION FOR CONSIDERATION**

*No action is necessary from the Council on this item. City staff is asking for direction from the Council.*

**ORDER OF BUSINESS:**

Introduction ..... Craig Dawson, Interim City Administrator  
Report ..... Kyle Klatt, Planning Director  
Questions to staff ..... Mayor and Councilmembers  
Questions from the public (3 minutes) ..... Mayor facilitates  
Discussion..... Mayor and Councilmembers

**ATTACHMENTS:**

1. Sample Ordinance from the City of North St. Paul
2. Sample Special Event Permit
3. Repealed Ordinance 97-167; Commercial Social Outdoor Events

CITY OF NORTH ST. PAUL

ORDINANCE NO. 668

AN ORDINANCE AMENDING THE NORTH SAINT PAUL CITY CODE OF ORDINANCES BY ADDING A NEW CHAPTER TO TITLE XI : BUSINESS REGULATIONS TO PROMOTE THE ORDERLY, COMPATIBLE AND SAFE USE OF PROPERTY FOR TEMPORARY SPECIAL EVENTS AND TO ASSURE ADEQUATE PROVISION OF PARKING, TRAFFIC, SANITARY FACILITIES, UTILITIES, PEACE AND TRANQUILITY OF RESIDENTIAL NEIGHBORHOODS AND SAFETY SERVICES

The City Council of the City of North St. Paul does hereby ordain:

I.

Ordinance number 668 amends Title XI, Business Regulations, of the City Code of Ordinances by adding Chapter 122: Special Event Permits

II

Purpose and Intent

The purpose of this Chapter is to promote the orderly, compatible and safe use of property for temporary special events and to assure adequate provision of parking, traffic, sanitary facilities, utilities, peace and tranquility of residential neighborhoods and safety services.

III

Definitions

- (a) Applicant means any individual, partnership, corporation, association, society or group seeking and/or receiving a Special Event Permit from the City.
- (b) Permit means a permit issued by the City to allow a special event.
- (c) Outdoor means activity conducted outside of a permanent structure or building.
- (d) Person means any person, association, partnership, firm, business trust, corporation or company.
- (e) Special Event means any temporary, outdoor privately-sponsored event open to the general public and held on public or privately owned property. "Special Event" shall not apply to the following:
  - (1) Any permanent place of worship, stadium, athletic field, arena, theatre, auditorium, or fairs conducted pursuant to Minn. Stats. Chapter 38.
  - (2) Special events or activities permitted or permitted by other State laws or regulations of the City of North St. Paul, including publicly-sponsored activities in the local park system and any other established special event operating prior to adoption of this ordinance.
  - (3) Family gatherings, including family reunions, graduation parties, baptisms, confirmations, weddings, etc.
  - (4) Garage sales

- (5) Events such as but not limited to National Night-Out established through the City of North St. Paul.

#### IV

##### Permit Required

No person on or after the effective date of this Chapter shall conduct or allow to be conducted any special event as defined in this ordinance without first obtaining a Special Event Permit.

#### V

##### Requirements for Issuance of a Permit

- (a) The following standards shall apply to all special events:
- (1) Maximum Number of People. The permittee shall not sell tickets to nor permit attendance at the permit location of more than the maximum number of people stated in the special event permit.
  - (2) Sound Equipment. Sound producing equipment, including but not limited to public address systems, radios, phonographs, musical instruments and other recording devices, shall not be operation on the premises of the special event so as to be unreasonably loud or be a nuisance or disturbance to the peace and tranquility of the citizens of North St. Paul.
  - (3) Sanitary Facilities. In accordance with Minnesota State Board of Health regulations and standards and local specifications, adequate sanitary facilities must be provided which are sufficient to accommodate the projected number of person expected to attend the event.
  - (4) Security. The permittee shall employ at his own expense such security personnel as are necessary and sufficient to provide for the adequate security and protection of the maximum number of persons in attendance at the special event and for the preservation of order and protection of property in and around the event site. No permit shall be issued unless the City's Chief of Police is satisfied that such necessary and sufficient security personnel will be provided by the permittee for the duration of the event.
  - (5) Food Service. If food service is made available on the premises, it shall be delivered only through concessions permitted by the Ramsey County Health Department.
  - (6) Fire Protection. The permittee shall, at his own expense, take adequate steps to insure fire protection as determined by the City of North St. Paul Fire Chief.
  - (7) Duration of Special Event. The permittee shall operate the special event only on those days and during the hours specified on the permit.
  - (8) Cleanup Plan. The special event applicant is responsible for clean up. Any clean up required by the City may be charged to the applicant. Any city service that requires overtime will be at the expense of the applicant.
  - (9) Waiver. The City Council may grant a waiver from the requirements of this Chapter in any particular case where the applicant can show that strict compliance with this Chapter would cause exceptional and undue hardship by reason of the nature of the special event or by reason of the fact that the circumstances make the requirement of this Chapter unnecessary. Such waiver must be granted without detriment to the public health, safety or welfare and without impairing the intent and purpose of these regulations.

- (10) Insurance. Before the issuance of a permit, the permittee shall obtain public liability insurance and property damage insurance with limits determined by the City Manager. Such insurance shall remain in full force and effect in the specified amounts for the duration of the permit. Evidence of insurance shall include an endorsement to the effect that the insurance company will notify the City Clerk in writing at least ten (10) days before the expiration or cancellation of said insurance.
- (11) Miscellaneous. Prior to the issuance of a permit, the City Council may impose any other conditions reasonably calculated to protect the health, safety and welfare of persons attendant or of the citizens of the City of North St. Paul.

## VI

### Application Procedures.

A written application for a Special Event Permit shall be filed on forms provided by the City with the City Manager not less than thirty (30) days before the date proposed for holding the special event. The written application shall be signed by the person, persons, or parties conducting the event and shall be accompanied by the fee payable hereunder. Upon submission of an application for a Special Event Permit, City staff will review the request and advise the applicant of the need for additional information, if any.

## VII

### Fees

The fee for a Special Event License shall be as established by the City Council

## VIII

### Granting a Permit

The City Council, in its sole discretion, reserves the right to review and determine whether or not a request for a special event and/or street closing is acceptable. It is the stated purpose of the City Council that all such special events and/or street closing shall be for family-friendly activities only. Special event activities must be inclusive of events and activities for both adults and children. In the event the City Council determines the activity does not meet these criteria, such application shall be denied.

## IX

### Denial of Permit

The City Council shall have the right to deny the permit if, in the judgment of the City Council, the granting of a license would adversely affect the safety, health and welfare of the citizens of North St. Paul. The applicant shall be notified of such denial and may appear before the City Council to appeal such denial.

## X

### Transferability

No permit granted under this Chapter shall be transferred to any other person or place without consent of the City Council, upon written application made therefore.

XI  
Enforcement and Penalties

- (a) The police department and other such officers, employees, or agents as the City Council or City Manager may designate, shall enforce the provisions of this Chapter.
- (b) The holding of a special event in violation of any provision of this Chapter shall be deemed a public nuisance and may be abated as such.
- (c) Any person violation any provision of this Chapter is guilty of a misdemeanor and upon conviction shall be subject to the penalties set forth in Minnesota Statutes.

XII  
Revocation of Permit

The permit for a special event may be revoked by the City Council at any time if any of the conditions necessary for the issuing of or contained in the license are not complied with or if any of the provisions of this Chapter are violated.

XIII  
Special Event Vendors

- (a) Vendors. A person who temporarily sets up business on public or private property for purposes of selling or delivering goods in conjunction with a City approved Special Event.
- (b) License. All Special Event Vendors shall be licensed by the City.
- (c) Process. The City Manager shall determine appropriate requirements to safeguard the health, safety and welfare of the community and its inhabitants. Forms shall be determined by the City Manager to gather the necessary information to assure safety.
- (d) Fees. All Special Event vendors shall pay an inspection fee the City of North St. Paul as determined by the City Council. Exception to the fee following shall be exempt from the City Fee:
  - (1) All public charities as defined by IRS Code 501C(3)
  - (2) Any governmental institution
  - (3) Any business headquartered in the City of North St. Paul
- (e) Umbrella Fee. Any special event conducted by a public charity as defined by IRS Code 501C(3) is subject to one (1) special event vendor fee for all vendors conducting business at the special event.

XIV  
Effect

This ordinance shall take effect and be in force from and after its adoption and publication as required by law.

**ADOPTED** by the City Council of the City of North St. Paul this 6<sup>th</sup> day of May, 2008.

On motion by Council Member Anderson  
Second by Council Member Walczak

Voting: Ayes: Acting Mayor Kuehn  
Council Member Zick  
Council Member Walczak  
Council Member Anderson  
Absent: None

/s/ Michael R. Kuehn, Acting Mayor

ATTEST:

/s/ Walter T. Wysopal, City Manager

Publish Review: Wednesday, May 14, 2008



SPECIAL EVENT PERMIT APPLICATION

I. TITLE AND BRIEF DESCRIPTION OF EVENT:

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II. APPLICANT INFORMATION:

The Applicant will be responsible for answering all questions, including inquiries from media and citizens.

Applicant: \_\_\_\_\_ Title: \_\_\_\_\_

Address: \_\_\_\_\_

Business/Organization Name: \_\_\_\_\_

Daytime Phone: \_\_\_\_\_ Evening Phone: \_\_\_\_\_ Emergency Phone: \_\_\_\_\_

III. EVENT TIMETABLE:

A. Requested day and date: \_\_\_\_\_

B. Requested hours of operation, from \_\_\_\_\_ a.m./p.m. to \_\_\_\_\_ a.m./p.m.

C. Set-up beginning day and date \_\_\_\_\_, time \_\_\_\_\_ a.m./p.m.

D. Dismantle by day and date \_\_\_\_\_, time \_\_\_\_\_ a.m./p.m.

E. Anticipated number of participants: \_\_\_\_\_ and spectators \_\_\_\_\_

IV. INSURANCE:

Attach to this application either an insurance policy or a certificate of insurance including the policy number and showing liability amounts. The policy must state that any outside area to be used for an event is covered. The policy must also show evidence that the requested event is not excluded from insurance liability.



V. CHECK ALL ITEMS WHICH APPLY TO YOUR EVENT:

- \_\_\_\_\_ A. Use of Community Center (check with Steve Roe at 747-2486);
- \_\_\_\_\_ B. Event participant and/or spectator parking areas (describe) \_\_\_\_\_;
- \_\_\_\_\_ C. Entertainment or stage locations (provide to-scale drawing);
- \_\_\_\_\_ D. Construction/erection of temporary structure(s) (may need permit, check with Community Services);
- \_\_\_\_\_ E. Trash containers (indicate number/location): \_\_\_\_\_;
- \_\_\_\_\_ F. Portable toilet facilities (indicate number/location) \_\_\_\_\_;
- \_\_\_\_\_ G. First aid facilities (indicate who is providing): \_\_\_\_\_;
- \_\_\_\_\_ H. Parade and/or parade floats (may need permit, check with Fire Department);
- \_\_\_\_\_ I. Fireworks or pyrotechnics site (may need permit, check with Fire Department);
- \_\_\_\_\_ J. Cooking facilities, open flame, or vehicle fuels (may need permit, check with Fire Department);
- \_\_\_\_\_ K. Electricity (The cost of the electrical hook-up is applicants responsibility. Payment must be made to the City of North Saint Paul. Please call Brian Frandle at 747-2472.)
- \_\_\_\_\_ L. Other. Please describe: \_\_\_\_\_

VI. FOOD, BEVERAGES AND/OR ENTERTAINMENT:

- A. If your event includes music, live entertainment, sound amplification or any other noise impact, please describe, including the intended hours of the music, sound or noise.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

B. Will alcoholic beverages be served? \_\_\_\_\_ Yes \_\_\_\_\_ No

C. Name of Liquor Establishment: \_\_\_\_\_

D. For service of alcohol outside a licensed premise, include a diagram showing the defined area of the alcohol concession service and attach a copy of your certificate of liquor liability insurance covering the limits of the alcohol service area.

E. If serving alcohol, describe how you will ensure that alcoholic beverages will be possessed and consumed only by those persons 21 years or older. Describe all security measures in place.

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F. Will food and/or non-alcoholic beverages be served? \_\_\_\_\_ Yes \_\_\_\_\_ No

G. If yes, describe sanitation measures and food handling procedures:

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H. If yes, you will need to have a Temporary Food License from Ramsey County. To obtain such a license, call 773-4466. Attach a copy of your Temporary Food License to this application.

I. If you intend to cook food in the event area, describe your area layout, including fuel or electrical sources to be used.

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## VII. VENDORS OR CONCESSIONAIRES:

A. List what vendors/concessionaires you will have at your event and include Sales Tax ID Number:

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VIII. SECURITY AND SAFETY PROCEDURES:

A. Describe your proposed procedures for security and crowd control:

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B. If the event is to occur at night, describe how you are going to light the event area in order to increase the safety of participants and spectators coming to and leaving the event.

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IX. CLEAN-UP:

List persons responsible for clean-up duties: \_\_\_\_\_

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X. MITIGATION OF THE IMPACT ON OTHERS:

Describe how you intend to mitigate the impact of the special event on businesses, churches, neighbors, motorists, and others.

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**NOTE: Any condition which causes adverse impacts may be cause to revoke the Special Event Permit.**

Applicant Signature: \_\_\_\_\_ Date of Application: \_\_\_\_\_

CITY OF LAKE ELMO  
WASHINGTON COUNTY, MINNESOTA

ORDINANCE NO. 97-167

Repealed by  
Ord. 97-191  
on April 3, 2007

AN ORDINANCE ADDING SECTION 300.07 SUBDIVISION 4.A.2.(h) RELATING  
TO CONDITIONAL USES IN THE AGRICULTURAL ZONING DISTRICT

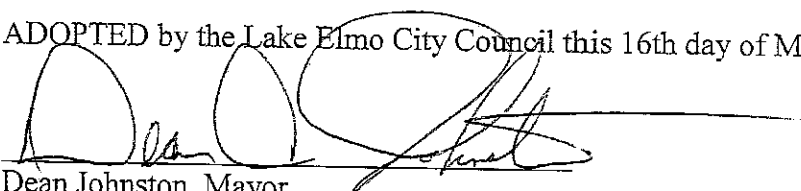
The City Council hereby ordains that Section 300.07, Subdivision 4.A.2(h) of the Lake Elmo Municipal Code is hereby added to read as follows:

h. Commercial Outdoor Social Events, subject to the following required conditions:

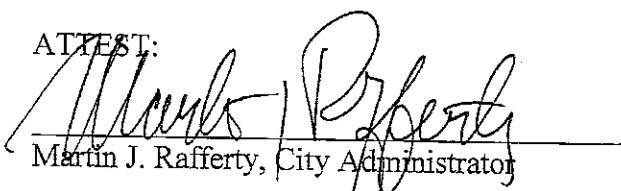
1. A site tax parcel area not less than 10 acres.
2. No existing permanent or newly constructed structures may be used. Tents are allowed.
3. Events limited to twice weekly and only during the months of May through October.
4. Attendance at events shall be limited to 250 people.
5. Compliance with City Code Ambient Noise standards.
6. All parking shall be off-street, and shall be set back and/or adequately screened from adjoining properties.
7. Limiting the hours for any event to 10:00 a.m. to 10:00 p.m. including take down activity. All event-related people must be off the site by 10:00 p.m.
8. On-site portable sanitation adequately sized for the events.
9. Prohibiting charging an admission fee for any commercial outdoor social event.
10. The lighting meets code and lights go off at 10:00 p.m..

This ordinance shall become effective upon its passage and publication according to law.

ADOPTED by the Lake Elmo City Council this 16th day of May, 2006.

  
Dean Johnston, Mayor

ATTEST:

  
Martin J. Rafferty, City Administrator

Published in the MAY 26, 2006 Lake Elmo Leader

City Council

Date:

REGULAR

Item: 12.

Motion

April 7, 2009

ITEM: Appointment of City Attorney for Civil Legal Services

SUBMITTED BY: Craig W. Dawson, Interim City Administrator

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**SUMMARY AND ACTION REQUESTED:**

The City Council has interviewed five firms for appointment as City Attorney for general civil legal services. The Council should decide which firm it wishes to appoint to be City Attorney, and direct the interim city administrator to negotiate an agreement for services with that firm.

**BACKGROUND:** On January 6, the City Council acknowledged the request of Jerry Filla, of Peterson, Fram & Bergman, P.A., not to be appointed as City Attorney but to remain as the City's Prosecuting Attorney. At that meeting, it directed staff to prepare a Request for Proposal for City Attorney (general civil legal) services. Eleven firms responded to the RFP, and on March 3, the City Council selected five firms to interview for the appointment:

Campbell Knutson, P.A.

Eckberg, Lammers, Briggs, Wolff & Vierling, PLLP

Hoff, Barry & Kozar, P.A.

Kelly & Lemmons, P.A.

Kennedy & Graven, Chartered

Interviews were conducted March 18 and 19.

**RECOMMENDATION:** Staff recommends that the Council name the firm it wishes to appoint to be City Attorney, and direct the interim city administrator to negotiate an agreement for services with that firm.

**SUGGESTED MOTION FOR CONSIDERATION**

*Move that the Council direct the interim city administrator negotiate an agreement with \_\_\_\_\_ to provide general civil legal services as the City Attorney for the City of Lake Elmo.*

**ORDER OF BUSINESS:**

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

City Council  
Date:  
REGULAR  
Item: 13  
Motion

April 7, 2009

ITEM: City Administrator Appointment Process  
SUBMITTED BY: Craig W. Dawson, Interim City Administrator

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**SUMMARY AND ACTION REQUESTED:** Craig Dawson has been serving as interim city administrator since January 5, 2009. In its employment agreement, the City Council indicated its expectation that it would take approximately three months to decide on the process for the selection of the City Administrator. There has been discussion among the City Council about conducting a search for the City Administrator, and as well some discussion about whether to forgo a search if the Council is comfortable to work with Mr. Dawson to develop an employment agreement with him for a regular appointment as the City Administrator.

**BACKGROUND:** The City Council may wish to consider the use of services by an executive search firm in filling the position of city administrator. The City has used these services in prior recruitments. A search firm typically develops an announcement and profile of the position, assesses and presents recommendations of candidates to remain in the process, conducts background and reference checks, and assists in the interview process itself. Firms may also have their own capabilities or subcontract for personality/psychological assessments if the City desires them.

Firms in the Twin Cities that provide these services give a general cost estimate range of \$15,000-\$20,000 to conduct a search. They report that typically it's a three- to four-month process from the time the firm is engaged until the City Council selects a person to take the position. After that, it may take a few weeks to finalize an employment agreement, and it's common that someone may need to give 30 days' notice to one's current employer. At the front end of the process is usually a four- to six-week period to request proposals from firms, interview them, and select and engage their services. The whole process from the decision to engage a search firm until someone is in place as the city administrator typically runs from six to eight months.

**SUGGESTED MOTION FOR CONSIDERATION:** *Two motions are suggested for Council's consideration, although the Council of course may formulate different ones.*

- *Move to direct staff to prepare and solicit responses to a Request for Proposal for Executive Search Consulting Services To Select a City Administrator for the City of Lake Elmo.*
- *Move to negotiate an employment agreement with Craig Dawson for regular appointment to the City Administrator position.*

ORDER OF BUSINESS:

- Introduction Mayor Johnston
- Report by presenter Mayor Johnston
- Questions from City Council members to the presenter Mayor facilitates
- Questions/comments from the public to the City Council Mayor facilitates
- Action on motion City Council



City Council  
Date: April 7, 2009  
REGULAR  
Item: 14.  
Informational Item – No Motion

ITEM: Update on Activities at the Regional Council of Mayors  
SUBMITTED BY: Craig W. Dawson, Interim City Administrator

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**SUMMARY AND ACTION REQUESTED:** Mayor Johnston has been active in the Regional Council of Mayors, and wishes to provide an update on the activities of that group. As this is an informational item, no action is requested of the Council, although the Council may wish to offer comments and identify any follow-up for staff.

**ATTACHMENTS:**

- "Economic Development Thoughts", slides from PowerPoint presentation made at March 31, 2009, meeting of the Regional Council of Mayors
- Article by Richard Florida published in the March 2009 issue of *The Atlantic*.

**ORDER OF BUSINESS:**

- |  |                   |
|--|-------------------|
| • Introduction   | Mayor Johnston    |
| • Report by presenter                                    | Mayor Johnston    |
| • Questions from City Council members to the presenter   | Mayor facilitates |
| • Questions/comments from the public to the City Council | Mayor facilitates |
| • Action (if any)  | City Council      |

# Economic Development Thoughts

Stan Harpstead  
Regional Council of Mayors



# **Objectives (Draft)**

- **Develop Long-Term strategy for growth in Gross State Product (specifically emphasize Metro Region)**
- **Enhance relationships/collaborations within Regional Clusters**
- **Develop momentum in Science and Technology Regional Economic Segment**
- **Identify Short-Term and Long-Term investments to achieve strategic goals**
- **Identify and measure appropriate “dashboard” or “scorecard” benchmarks**

# Regional Statistics

- **Other Statistics (2007 Development Report Card)**
  - **MN ranks 48<sup>th</sup> in New Company Formation**
  - **28<sup>th</sup> in SBIR grants**
  - **23<sup>rd</sup> in Manufacturing Investment**
  - **22<sup>nd</sup> in VC Investments**
  - **19<sup>th</sup> in PhD scientists and engineers**

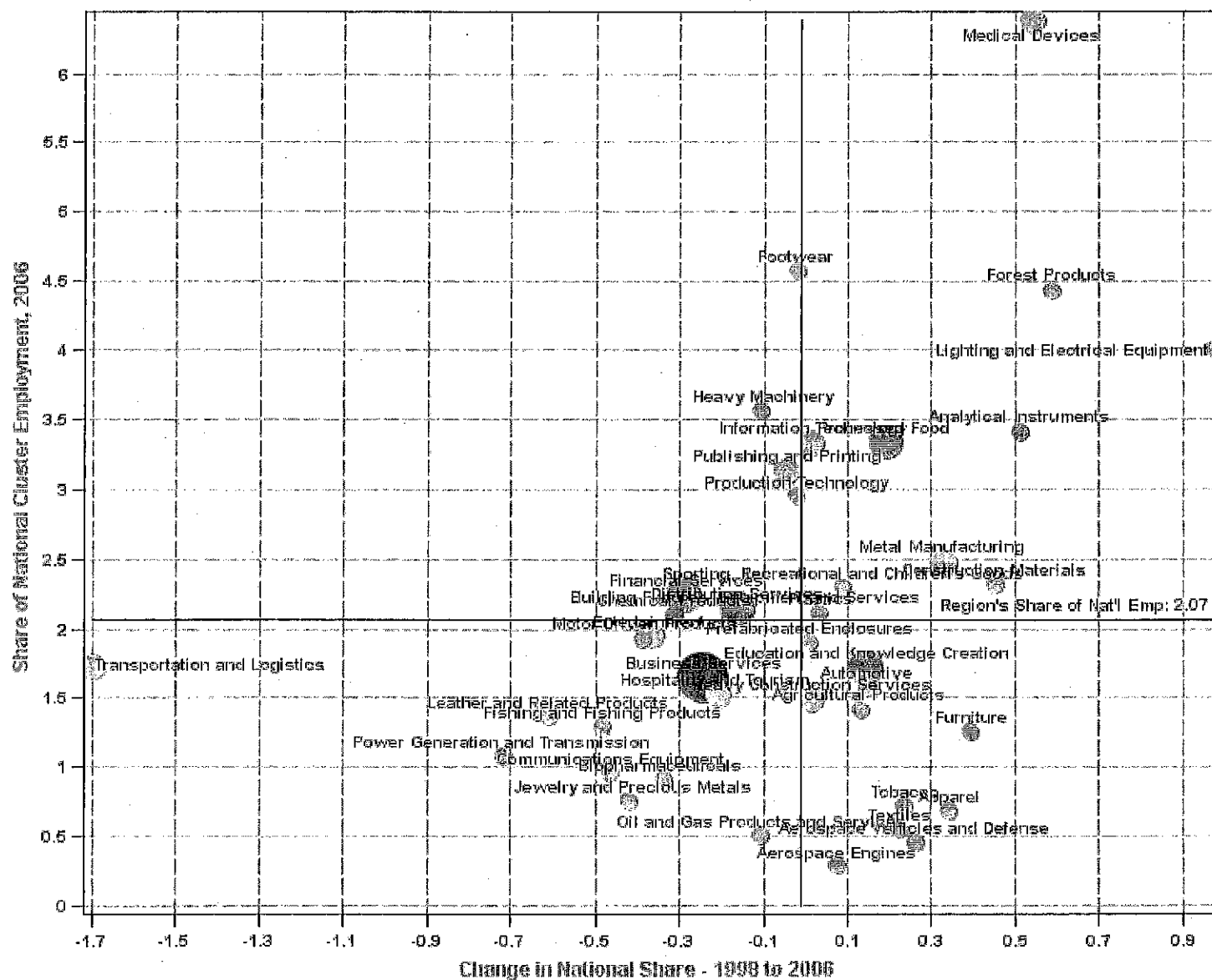
# Regional Statistics

U.S. Metro Economies

U.S. Metro Economies; Gross Metropolitan Product with Housing Update, January 2007

- A key success behind the economic development of metro areas is the proximity of businesses and skilled labor. The synergy provided by
  - **labor,**
  - **extensive business networks,**
  - **cutting edge research at institutes of higher learning, that**
  - **attracts both capital and entrepreneurs to metro areas.**
- Metro areas are at the center of the development of new technologies, such as nanotechnology or biotechnology, and play a major role in shaping the future economic development.

# MN Economic Clusters

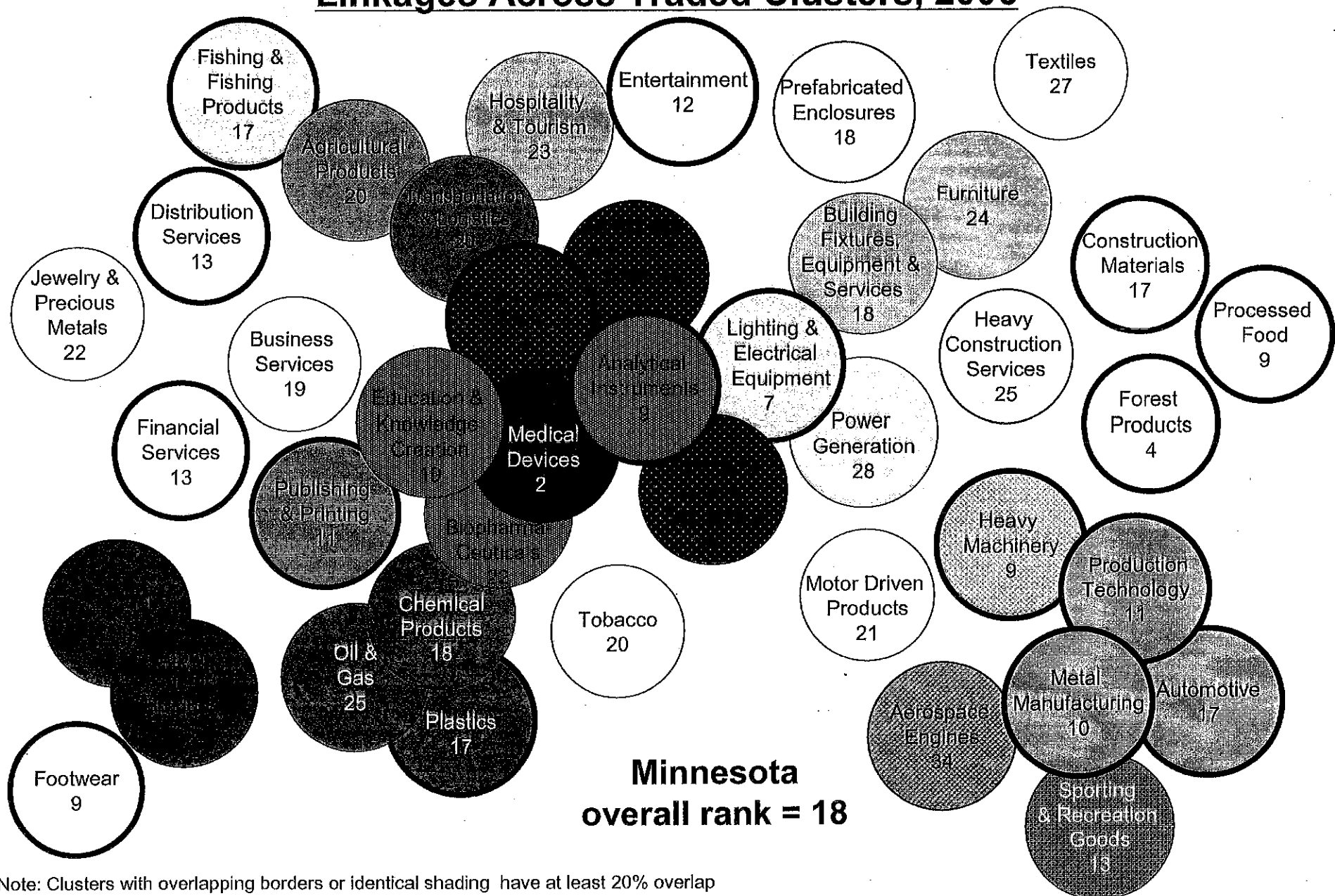


Source: Lee W. Munnich, Jr. University of MN

● 0-19999 ● 20000-39999 ● 40000-79999 ● 80000+

# Competitiveness and Composition of Minnesota Economy

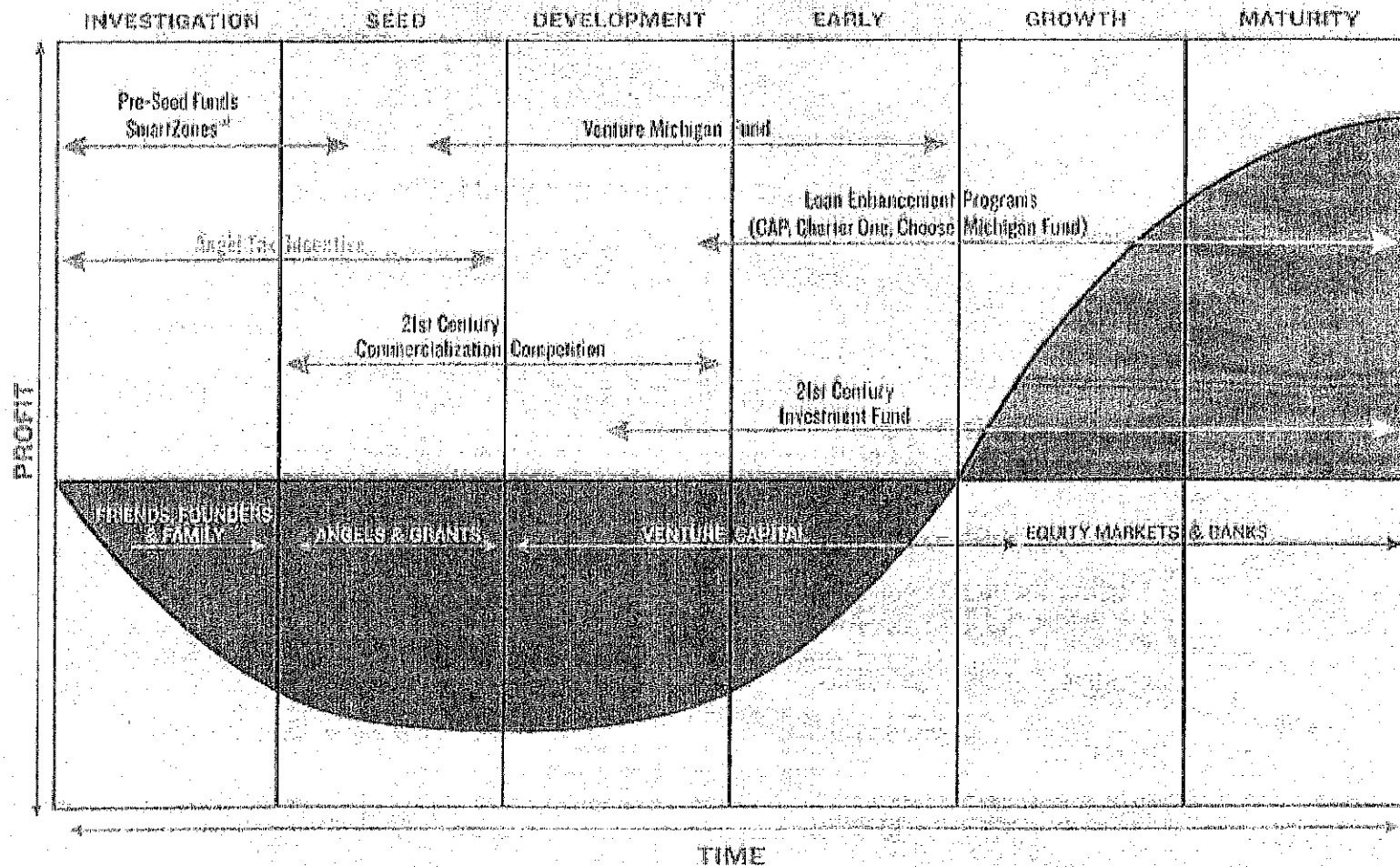
## Linkages Across Traded Clusters, 2006



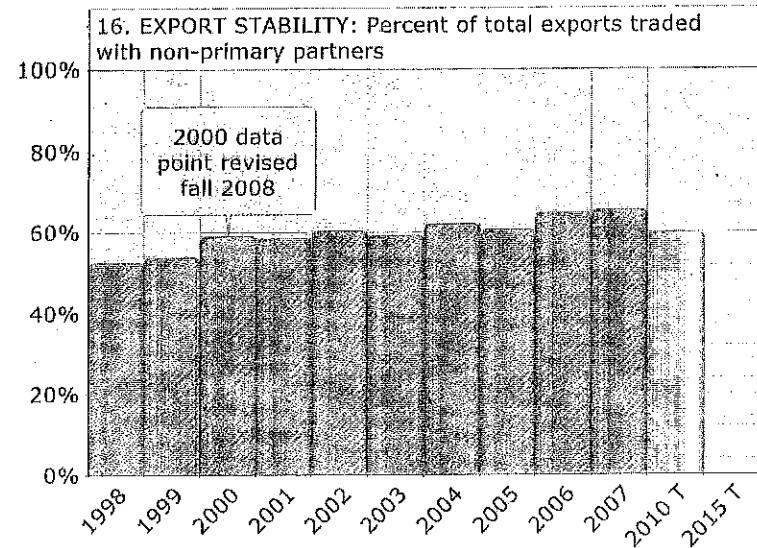
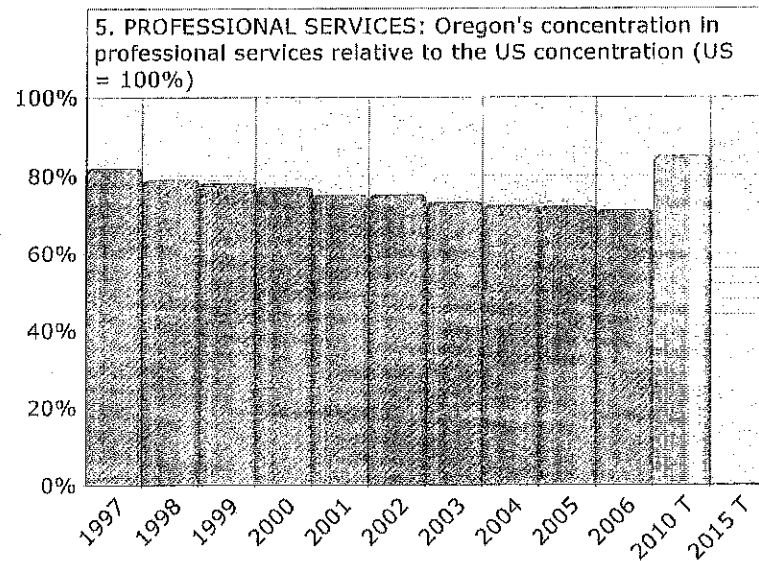
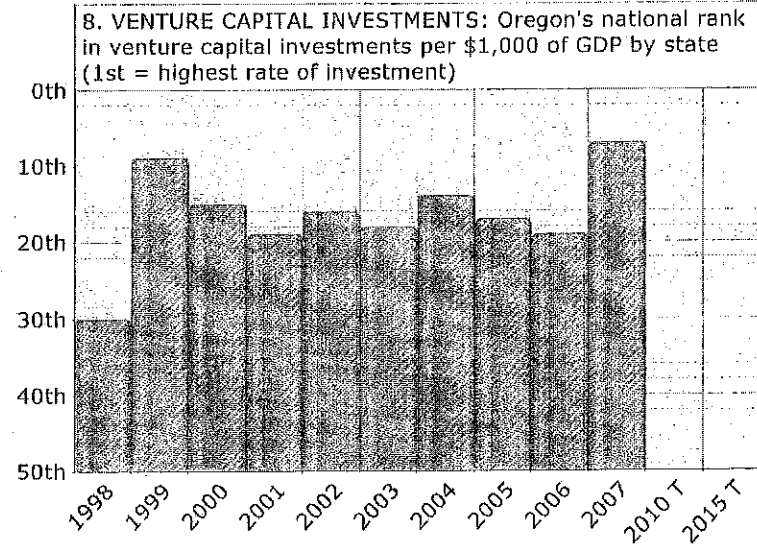
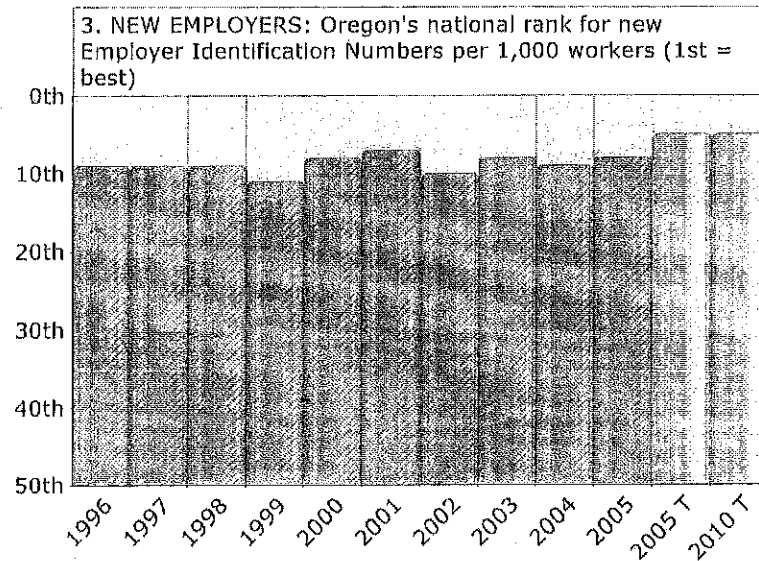
Note: Clusters with overlapping borders or identical shading have at least 20% overlap (by number of industries) in both directions.

Source: Lee W. Munnich, Jr. University of MN

# Business Development - Michigan



# Oregon Benchmarks <http://benchmarks.oregon.gov/>



# **Proposed Current Activities**

- **Setting up a Meeting of Participating Mayor's in Bloomington (Gene's support)**
- **Applying for funding support from appropriate foundations**
- **Networking with Workforce Centers, HT-Alliance, MN-Nano, BioBusiness Alliance, Large Corporations, U of MN, MNSCU**
- **Encouraging meetings between city community development groups (common borders and/or common industries)**
- **Identifying appropriate "dashboard" or "scorecard" benchmarks**
- **Support proposed legislation (this Thursday) in the Senate to establish a North Star Rising Commission  
→ EDCorp with emphasis on Science and Technology Initiative**



# **How to enhance Regional Economic Clusters**

# Industry Clusters (Porter)

- Geographic concentrations of competing, complementary, or interdependent firms
- Common needs for talent, technology, and infrastructure
- Dynamic, changing as the industries themselves or external conditions change
- Centered on firms that sell outside the local, state, national market
- Driving forces in a national, regional, state or metropolitan economy

# How to create a portfolio of clusters?

As with “financial portfolio theory” the benefit of a portfolio of clusters are the spread of risk and ability to maintain regional momentum when clusters behave “out-of-phase”.

However, strategic management of a portfolio of economic clusters will also benefit from:

- Inter-cluster economic transactions (sustainable energy as both an exporter and productivity improver)
- An educational culture that does not depend on the content of education
- Technology spillovers
- Intellectual revolutions of ideas and advocates willing to spend their reputations and careers in spreading ideas through actions as well as words.

For Example: A Science and technology initiative should be developed to focus on the three key areas of need in Minnesota including:

- Human Capital – training and development
- Science and Technology Infrastructure – research labs (public and private)
- Commercialization Assistance – capital for start up company growth; from seed grants to support innovation to investment capital formation (Angel Tax Credits, VC funding)

# High-Technology Location Factors

**EXISTING HIGH-TECH PRESENCE is CRITICAL**

## **Traditional Business Factors**

- Tax Structure
- Compensation Costs
- Space Costs
- Capital Costs
- Business Climate

## **High-Tech Specific Factors**

- Proximity to Excellent Research Institutions
- Access to Venture Capital
- Educated Workforce
- Network of Suppliers
- Technology Spillovers
- Climate and Quality of Life

Source: Milken Institute, *America's High-Tech Economy*, 1999

Source: Atlanta Forum - Mary Jo Waits

# How to enhance a technological cluster?

- *Scientific personal interaction (Watering Holes) are required with minimal “empire building”*
- *Significant data handling technology and informatics will be a cluster backbone*
- *“Re-tooling” of the informatics system to open-source and open-access will increase content and revise access algorithms*
- *Opportunity to perform early feasibility evaluations of the intuitively conceived technologies*
- *First Class scientific characterization facilities and laboratories for prototype design and assessment*
- *Seamless interaction between industry businesses, especially between large and small businesses*

From **The Atlantic**  
March 2009

*The crash of 2008 continues to reverberate loudly nationwide—destroying jobs, bankrupting businesses, and displacing homeowners. But already, it has damaged some places much more severely than others. On the other side of the crisis, America's economic landscape will look very different than it does today. What fate will the coming years hold for New York, Charlotte, Detroit, Las Vegas? Will the suburbs be ineffably changed? Which cities and regions can come back strong? And which will never come back at all?*

by **Richard Florida**

# How the Crash Will Reshape America

This article has been corrected since it was published in the print magazine.

**M**Y FATHER WAS a child of the Great

Depression. Born in Newark, New Jersey, in 1921 to Italian immigrant parents, he experienced the economic crisis head-on. He took a job working in an eyeglass factory in the city's Ironbound section in 1934, at age 13, combining his wages with those of his father, mother, and six siblings to make a single-family income. When I was growing up, he spoke often of his memories of breadlines, tent cities, and government-issued clothing. At Christmas, he would tell my brother and me how his parents, unable to afford new toys, had wrapped the same toy steam shovel, year after year, and placed it for him under the tree. In my extended family, my uncles occupied a pecking order based on who had grown up in the roughest economic circumstances. My Uncle Walter, who went on to earn a master's degree in chemical engineering and eventually became a senior executive at Colgate-Palmolive, came out on top—not because of his academic or career achievements, but because he grew up with the hardest lot.



IMAGE CREDIT: SEAN MCCABE

My father's experiences were broadly shared throughout the country. Although times were perhaps worst in the declining rural areas of the Dust Bowl, every region suffered, and the residents of small towns and big cities alike breathed in the same uncertainty and distress. The Great Depression was a national crisis—and in many ways a nationalizing event. The entire country, it seemed, tuned in to President Roosevelt's fireside chats.

The current economic crisis is unlikely to result in the same kind of shared experience. To be sure, the economic contraction is causing pain just about everywhere. In October, less than a month after the financial markets began to melt down, Moody's Economy.com\* published an assessment of recent economic activity within 381 U.S. metropolitan areas. Three hundred and two were already in deep recession, and 64 more were at risk. Only 15 areas were still expanding. Notable among them were the oil- and natural-resource-rich regions of Texas and Oklahoma, buoyed by energy prices that have since fallen; and the Greater Washington, D.C., region, where government bailouts, the nationalization of financial companies, and fiscal expansion are creating work for lawyers, lobbyists, political scientists, and government contractors.

No place in the United States is likely to escape a long and deep recession. Nonetheless, as the crisis continues to spread outward from New York, through industrial centers like Detroit, and into the Sun Belt, it will undoubtedly settle much more heavily on some places than on others. Some cities and regions will eventually spring back stronger than before. Others may never come back at all. As the crisis deepens, it will permanently and profoundly alter the country's economic landscape. I believe it marks the end of a chapter in American economic history, and indeed, the end of a whole way of life.

#### GLOBAL CRISES AND ECONOMIC TRANSFORMATION

"One thing seems probable to me," said Peer Steinbrück, the German finance minister, in September 2008. As a result of the crisis, "the United States will lose its status as the superpower of the global financial system." You don't have to strain too hard to see the financial crisis as the death knell for a debt-ridden, overconsuming, and underproducing American empire—the fall long prophesied by Paul Kennedy and others.

Big international economic crises—the crash of 1873, the Great Depression—have a way of upending the geopolitical order, and hastening the fall of old powers and the rise of new ones. In *The Post-American World* (published some months before the Wall Street meltdown), Fareed Zakaria argued that modern history's third great power shift was already



upon us—the rise of the West in the 15th century and the rise of America in the 19th century being the two previous sea changes.

But Zakaria added that this transition is defined less by American decline than by “the rise of the rest.” We’re to look forward to a world economy, he wrote, “defined and directed from many places and by many peoples.” That’s surely true. Yet the course of events since Steinbrück’s remarks should give pause to those who believe the mantle of global leadership will soon be passed. The crisis has exposed deep structural problems, not just in the U.S. but worldwide. Europe’s model of banking has proved no more resilient than America’s, and China has shown that it remains every bit the codependent partner of the United States. The Dow, down more than a third last year, was actually among the world’s better-performing stock-market indices. Foreign capital has flooded into the U.S., which apparently remains a safe haven, at least for now, in uncertain times.

It is possible that the United States will enter a period of accelerating relative decline in the coming years, though that’s hardly a foregone conclusion—a subject I’ll return to later. What’s more certain is that the recession, particularly if it turns out to be as long and deep as many now fear, will accelerate the rise and fall of specific places *within* the U.S.—and reverse the fortunes of other cities and regions.

By what they destroy, what they leave standing, what responses they catalyze, and what space they clear for new growth, most big economic shocks ultimately leave the economic landscape transformed. Some of these transformations occur faster and more violently than others. The period after the Great Depression saw the slow but inexorable rise of the suburbs. The economic malaise of the 1970s, on the other hand, found its embodiment in the vertiginous fall of older industrial cities of the Rust Belt, followed by an explosion of growth in the Sun Belt.

The historian Scott Reynolds Nelson has noted that in some respects, today’s crisis most closely resembles the “Long Depression,” which stretched, by one definition, from 1873 to 1896. It began as a banking crisis brought on by insolvent mortgages and complex financial instruments, and quickly spread to the real economy, leading to mass unemployment that reached 25 percent in New York.

During that crisis, rising industries like railroads, petroleum, and steel were consolidated, old ones failed, and the way was paved for a period of remarkable innovation and industrial growth. In 1870, New England mill towns like Lowell, Lawrence, Manchester, and

Springfield were among the country's most productive industrial cities, and America's population overwhelmingly lived in the countryside. By 1900, the economic geography had been transformed from a patchwork of farm plots and small mercantile towns to a landscape increasingly dominated by giant factory cities like Chicago, Cleveland, Pittsburgh, Detroit, and Buffalo.

How might various cities and regions fare as the crash of 2008 reverberates into 2009, 2010, and beyond? Which places will be spared the worst pain, and which left permanently scarred? Let's consider how the crash and its aftermath might affect the economic landscape in the long run, from coast to coast—beginning with the epicenter of the crisis and the nation's largest city, New York.

#### WHITHER NEW YORK?

At first glance, few American cities would seem to be more obviously threatened by the crash than New York. The city shed almost 17,000 jobs in the financial industry alone from October 2007 to October 2008, and Wall Street as we've known it has ceased to exist. "Farewell Wall Street, hello Pudong?" begins a recent article by Marcus Gee in the *Toronto Globe and Mail*, outlining the possibility that New York's central role in global finance may soon be usurped by Shanghai, Hong Kong, and other Asian and Middle Eastern financial capitals.

This concern seems overheated. In his sweeping history, *Capitals of Capital*, the economic historian Youssef Cassis chronicles the rise and decline of global financial centers through recent centuries. Though the history is long, it contains little drama: major shifts in capitalist power centers occur at an almost geological pace.

Amsterdam stood at the center of the world's financial system in the 17th century; its place was taken by London in the early 19th century, then New York in the 20th. Across more than three centuries, no other city has topped the list of global financial centers. Financial capitals have "remarkable longevity," Cassis writes, "in spite of the phases of boom and bust in the course of their existence."

The transition from one financial center to another typically lags behind broader shifts in the economic balance of power, Cassis suggests. Although the U.S. displaced England as the world's largest economy well before 1900, it was not until after World War II that New York eclipsed London as the world's preeminent financial center (and even then, the eclipse was not complete; in recent years, London has, by some measures, edged out New York). As Asia

has risen, Tokyo, Hong Kong, and Singapore have become major financial centers—yet in size and scope, they still trail New York and London by large margins.

In finance, “there is a huge network and agglomeration effect,” former assistant U.S. Treasury secretary Edwin Truman told *The Christian Science Monitor* in October—an advantage that comes from having a large critical mass of financial professionals, covering many different specialties, along with lawyers, accountants, and others to support them, all in close physical proximity. It is extremely difficult to build these dense networks anew, and very hard for up-and-coming cities to take a position at the height of global finance without them. “Hong Kong, Shanghai, Singapore, and Tokyo are more important than they were 20 years ago,” Truman said. “But will they reach London and New York’s dominance in another 20 years? I suspect not.” Hong Kong, for instance, has a highly developed IPO market, but lacks many of the other capabilities—such as bond, foreign-exchange, and commodities trading—that make New York and London global financial powerhouses.

“A crucial contributory factor in the financial centres’ development over the last two centuries, and even longer,” writes Cassis, “is the arrival of new talent to replenish their energy and their capacity to innovate.” All in all, most places in Asia and the Middle East are still not as inviting to foreign professionals as New York or London. Tokyo is a wonderful city, but Japan remains among the least open of the advanced economies, and admits fewer immigrants than any other member of the Organization for Economic Cooperation and Development, a group of 30 market-oriented democracies. Singapore remains for the time being a top-down, socially engineered society. Dubai placed 44th in a recent ranking of global financial centers, near Edinburgh, Bangkok, Lisbon, and Prague. New York’s openness to talent and its critical mass of it—in and outside of finance and banking—will ensure that it remains a global financial center.

**I**N THE SHORT RUN, the most troubling question for New York is not how much of its finance industry will move to other places, but how much will simply vanish altogether. At the height of the recent bubble, Greater New York depended on the financial sector for roughly 22 percent of local wages. But most economists agree that by then the financial economy had become bloated and overdeveloped. Thomas Philippon, a finance professor at New York University, reckons that nationally, the share of GDP coming from finance will

probably be reduced from its recent peak of 8.3 percent to perhaps 7 percent—I suspect it may fall farther, to perhaps as little as 5 percent, roughly its contribution a generation ago. In either case, it will be a big reduction, and a sizable portion of it will come out of Manhattan. Lean times undoubtedly lie ahead for New York. But perhaps not as lean as you'd think—and certainly not as lean as those that many lesser financial outposts are likely to experience. Financial positions account for only about 8 percent of the New York area's jobs, not too far off the national average of 5.5 percent. By contrast, they make up 28 percent of all jobs in Bloomington-Normal, Illinois; 18 percent in Des Moines; 13 percent in Hartford; 10 percent in both Sioux Falls, South Dakota, and Charlotte, North Carolina. Omaha, Nebraska; Macon, Georgia; and Columbus, Ohio, all have a greater percentage of population working in the financial sector than New York does.

New York is much, much more than a financial center. It has been the nation's largest city for roughly two centuries, and today sits in America's largest metropolitan area, as the hub of the country's largest mega-region. It is home to a diverse and innovative economy built around a broad range of creative industries, from media to design to arts and entertainment. It is home to high-tech companies like Bloomberg, and boasts a thriving Google outpost in its Chelsea neighborhood. Elizabeth Currid's book, *The Warhol Economy*, provides detailed evidence of New York's diversity. Currid measured the concentration of different types of jobs in New York relative to their incidence in the U.S. economy as a whole. By this measure, New York is more of a mecca for fashion designers, musicians, film directors, artists, and—yes—psychiatrists than for financial professionals.

The great urbanist Jane Jacobs was among the first to identify cities' diverse economic and social structures as the true engines of growth. Although the specialization identified by Adam Smith creates powerful efficiency gains, Jacobs argued that the jostling of many different professions and different types of people, all in a dense environment, is an essential spur to innovation—to the creation of things that are truly new. And innovation, in the long run, is what keeps cities vital and relevant.

In this sense, the financial crisis may ultimately help New York by reenergizing its creative economy. The extraordinary income gains of investment bankers, traders, and hedge-fund managers over the past two decades skewed the city's economy in some unhealthy ways. In 2005, I asked a top-ranking official at a major investment bank whether the city's rising real-estate prices were affecting his company's ability to attract global talent. He responded simply: "We are the cause, not the effect, of the real-estate bubble." (As it turns out, he was only half right.) Stratospheric real-estate prices have made New York less diverse over time,

and arguably less stimulating. When I asked Jacobs some years ago about the effects of escalating real-estate prices on creativity, she told me, “When a place gets boring, even the rich people leave.” With the hegemony of the investment bankers over, New York now stands a better chance of avoiding that sterile fate.

#### AMERICA’S “FAST” CITIES: CRISIS AND REINVENTION

In his 2005 book, *The World Is Flat*, Thomas Friedman argues, essentially, that the global economic playing field has been leveled, and that anyone, anywhere, can now innovate, produce, and compete on a par with, say, workers in Seattle or entrepreneurs in Silicon Valley. But this argument isn’t quite right, and doesn’t accurately describe the evolution of the global economy in recent years.

In fact, as I described in an earlier article for this magazine (“The World Is Spiky,” October 2005 [[link opens PDF](#)]), place still matters in the modern economy—and the competitive advantage of the world’s most successful city-regions seems to be growing, not shrinking. To understand how the current crisis is likely to affect different places in the United States, it’s important to understand the forces that have been slowly remaking our economic landscape for a generation or more.

Worldwide, people are crowding into a discrete number of mega-regions, systems of multiple cities and their surrounding suburban rings like the Boston–New York–Washington Corridor. In North America, these mega-regions include SunBelt centers like the Char-Lanta Corridor, Northern and Southern California, the Texas Triangle of Houston–San Antonio–Dallas, and Southern Florida’s Tampa-Orlando-Miami area; the Pacific Northwest’s Cascadia, stretching from Portland through Seattle to Vancouver; and both Greater Chicago and Tor-Buff-Chester in the old Rust Belt. Internationally, these mega-regions include Greater London, Greater Tokyo, Europe’s Am-Brus-Twerp, China’s Shanghai-Beijing Corridor, and India’s Bangalore-Mumbai area. Economic output is ever-more concentrated in these places as well. The world’s 40 largest mega-regions, which are home to some 18 percent of the world’s population, produce two-thirds of global economic output and nearly 9 in 10 new patented innovations.

Some (though not all) of these mega-regions have a clear hub, and these hubs are likely to be better buffered from the crash than most cities, because of their size, diversity, and regional role. Chicago has emerged as a center for industrial management and has rolled up many of the functions, such as finance and law, once performed in smaller midwestern centers. Los Angeles has a broad, diverse economy with global strength in media and entertainment.

Miami, which is being hit hard by the collapse of the real-estate bubble, nonetheless remains the commercial center for the large South Florida mega-region, and a major financial center for Latin America. Each of these places is the financial and commercial core of a large mega-region with tens of millions of people and hundreds of billions of dollars in output. That's not going to change as a result of the crisis.

Along with the rise of mega-regions, a second phenomenon is also reshaping the economic geography of the United States and the world. The ability of different cities and regions to attract highly educated people—or human capital—has diverged, according to research by the Harvard economists Edward Glaeser and Christopher Berry, among others. Thirty years ago, educational attainment was spread relatively uniformly throughout the country, but that's no longer the case. Cities like Seattle, San Francisco, Austin, Raleigh, and Boston now have two or three times the concentration of college graduates of Akron or Buffalo. Among people with postgraduate degrees, the disparities are wider still. The geographic sorting of people by ability and educational attainment, on this scale, is unprecedented.

The University of Chicago economist and Nobel laureate Robert Lucas declared that the spillovers in knowledge that result from talent-clustering are the main cause of economic growth. Well-educated professionals and creative workers who live together in dense ecosystems, interacting directly, generate ideas and turn them into products and services faster than talented people in other places can. There is no evidence that globalization or the Internet has changed that. Indeed, as globalization has increased the financial return on innovation by widening the consumer market, the pull of innovative places, already dense with highly talented workers, has only grown stronger, creating a snowball effect. Talent-rich ecosystems are not easy to replicate, and to realize their full economic value, talented and ambitious people increasingly need to live within them.

Big, talent-attracting places benefit from accelerated rates of “urban metabolism,” according to a pioneering theory of urban evolution developed by a multidisciplinary team of researchers affiliated with the Santa Fe Institute. The rate at which living things convert food into energy—their metabolic rate—tends to slow as organisms increase in size. But when the Santa Fe team examined trends in innovation, patent activity, wages, and GDP, they found that successful cities, unlike biological organisms, actually get faster as they grow. In order to grow bigger and overcome diseconomies of scale like congestion and rising housing and business costs, cities must become more efficient, innovative, and productive. The researchers dubbed the extraordinarily rapid metabolic rate that successful cities are able to achieve “super-linear” scaling. “By almost any measure,” they wrote, “the larger a city's

population, the greater the innovation and wealth creation per person.” Places like New York with finance and media, Los Angeles with film and music, and Silicon Valley with hightech are all examples of high-metabolism places.

Metabolism and talent-clustering are important to the fortunes of U.S. city-regions in good times, but they’re even more so when times get tough. It’s not that “fast” cities are immune to the failure of businesses, large or small. (One of the great lessons of the 1873 crisis—and of this one so far—is that when credit freezes up and a long slump follows, companies can fail unpredictably, no matter where they are.) It’s that unlike many other places, they can overcome business failures with relative ease, reabsorbing their talented workers, growing nascent businesses, founding new ones.

Economic crises tend to reinforce and accelerate the underlying, long-term trends within an economy. Our economy is in the midst of a fundamental long-term transformation—similar to that of the late 19th century, when people streamed off farms and into new and rising industrial cities. In this case, the economy is shifting away from manufacturing and toward idea-driven creative industries—and that, too, favors America’s talent-rich, fast-metabolizing places.

#### THE LAST CRISIS OF THE FACTORY TOWNS

Sadly and unjustly, the places likely to suffer most from the crash—especially in the long run—are the ones least associated with high finance. While the crisis may have begun in New York, it will likely find its fullest bloom in the interior of the country—in older, manufacturing regions whose heydays are long past and in newer, shallow-rooted Sun Belt communities whose recent booms have been fueled in part by real-estate speculation, overdevelopment, and fictitious housing wealth. These typically less affluent places are likely to become less wealthy still in the coming years, and will continue to struggle long after the mega-regional hubs and creative cities have put the crisis behind them.

The Rust Belt in particular looks likely to shed vast numbers of jobs, and some of its cities and towns, from Cleveland to St. Louis to Buffalo to Detroit, will have a hard time recovering. Since 1950, the manufacturing sector has shrunk from 32 percent of nonfarm employment to just 10 percent. This decline is the result of long-term trends—increasing foreign competition and, especially, the relentless replacement of people with machines—that look unlikely to abate. But the job losses themselves have proceeded not steadily, but rather in sharp bursts, as recessions have killed off older plants and resulted in mass layoffs that are never fully reversed during subsequent upswings.

In November, nationwide unemployment in manufacturing and production occupations was already 9.4 percent. Compare that with the professional occupations, where it was just a little over 3 percent. According to an analysis done by Michael Mandel, the chief economist at *BusinessWeek*, jobs in the “tangible” sector—that is, production, construction, extraction, and transport—declined by nearly 1.8 million between December 2007 and November 2008, while those in the intangible sector—what I call the “creative class” of scientists, engineers, managers, and professionals—increased by more than 500,000. Both sorts of jobs are regionally concentrated. Paul Krugman has noted that the worst of the crisis, so far at least, can be seen in a “Slump Belt,” heavy with manufacturing centers, running from the industrial Midwest down into the Carolinas. Large swaths of the Northeast, with its professional and creative centers, have been better insulated.

Perhaps no major city in the U.S. today looks more beleaguered than Detroit, where in October the average home price was \$18,513, and some 45,000 properties were in some form of foreclosure. A recent listing of tax foreclosures in Wayne County, which encompasses Detroit, ran to 137 pages in the *Detroit Free Press*. The city’s public school system, facing a budget deficit of \$408 million, was taken over by the state in December; dozens of schools have been closed since 2005 because of declining enrollment. Just 10 percent of Detroit’s adult residents are college graduates, and in December the city’s jobless rate was 21 percent.

To say the least, Detroit is not well positioned to absorb fresh blows. The city has of course been declining for a long time. But if the area’s auto headquarters, parts manufacturers, and remaining auto-manufacturing jobs should vanish, it’s hard to imagine anything replacing them.

When work disappears, city populations don’t always decline as fast as you might expect. Detroit, astonishingly, is still the 11th-largest city in the U.S. “If you no longer can sell your property, how can you move elsewhere?” said Robin Boyle, an urban-planning professor at Wayne State University, in a December Associated Press article. But then he answered his own question: “Some people just switch out the lights and leave—property values have gone so low, walking away is no longer such a difficult option.”

Perhaps Detroit has reached a tipping point, and will become a ghost town. I’d certainly expect it to shrink faster in the next few years than it has in the past few. But more than likely, many people will stay—those with no means and few obvious prospects elsewhere, those with close family ties nearby, some number of young professionals and creative types looking to take advantage of the city’s low housing prices. Still, as its population density dips



further, the city's struggle to provide services and prevent blight across an ever-emptier landscape will only intensify.

That's the challenge that many Rust Belt cities share: managing population decline without becoming blighted. The task is doubly difficult because as the manufacturing industry has shrunk, the local high-end services—finance, law, consulting—that it once supported have diminished as well, absorbed by bigger regional hubs and globally connected cities. In Chicago, for instance, the country's 50 biggest law firms grew by 2,130 lawyers from 1984 to 2006, according to William Henderson and Arthur Alderson of Indiana University. Throughout the rest of the Midwest, these firms added a total of just 169 attorneys. Jones Day, founded in 1893 and today one of the country's largest law firms, no longer considers its Cleveland office "headquarters"—that's in Washington, D.C.—but rather its "founding office."

Many second-tier midwestern cities have tried to reinvent themselves in different ways, with varying degrees of success. Pittsburgh, for instance, has sought to reimagine itself as a high-tech center, and has met with more success than just about anywhere else. Still, its population has declined from a high of almost 700,000 in the mid-20th century to roughly 300,000 today. There will be fewer manufacturing jobs on the other side of the crisis, and the U.S. economic landscape will be more uneven—"spikier"—as a result. Many of the old industrial centers will be further diminished, perhaps permanently so.

**T**HAT'S NOT TO SAY that every factory town is locked into decline. You need only

look at the geographic pattern of December's Senate vote on the auto bailout to realize that some places, mostly in the South, would benefit directly from the bankruptcy of GM or Chrysler and the closure of auto plants in the Rust Belt. Georgetown, Kentucky; Smyrna, Tennessee; Canton, Mississippi: these are a few of the many small cities, stretching from South Carolina and Georgia all the way to Texas, that have benefited from the establishment, over the years, of plants that manufacture foreign cars. Those benefits could grow if the Big Three were to become, say, the Big Two.

This phenomenon, a sort of lottery whereby some places win merely by outlasting others, will not be limited to towns built around automobiles, or even around manufacturing. As the recession continues and large companies in a variety of industries fail, their remaining competitors may grow stronger, along with the places where those competitors are situated.

Charlotte, North Carolina, offers an interesting case study. The financial crisis left one of the city's two big banks, Wachovia, ailing; this fall, Wachovia was acquired by San Francisco-based Wells Fargo, in a deal that will cost the city many thousands of jobs. But things could have been much worse; the deal also preserved many jobs. What's more, at roughly the same time, Bank of America, Charlotte's other large bank (and the biggest bank in the U.S.) bought Merrill Lynch for pennies on the dollar.

A business truism holds that when your competitors are retrenching, it's a great time to grow your market share. Deborah Strumsky, an economist at the University of North Carolina at Charlotte, told me she believes that in the end, both Charlotte's banking industry and Charlotte itself will emerge from the crisis all the stronger: "The Wells Fargo deal has saved thousands of jobs by keeping Wachovia afloat. More importantly, Bank of America has taken to the banking crisis like a shopaholic with a new credit card; it has been bargain-hunting and cutting some astonishing deals. Bank of America will come out the other side far better than in any fantasy it might have entertained previously."

In recent years, Charlotte's leaders have made some smart decisions about how to attract businesses and professionals, enabling the city to grow into the nation's second-largest traditional banking center; in the lottery of business failure and consolidation, it was well positioned to win. But it was also lucky, and last fall, it escaped losing, big-time, by no more than a hair's breadth. Overall, the roster of places that benefit from the failure of their champions' rivals will probably be pretty short, and the names on the roster somewhat unpredictable. Especially among cities built around declining industries, more places will be weakened than strengthened; as with all lotteries, most players will lose.

#### **CITIES IN THE SAND: THE END OF EASY EXPANSION**

For a generation or more, no swath of the United States has grown more madly than the Sun Belt. Of course, the area we call the "Sun Belt" is vast, and the term is something of a catch-all: the cities and metropolitan areas within it have grown for disparate reasons. Los Angeles is a mecca for media and entertainment; San Jose and Austin developed significant, innovative high-tech industries; Houston became a hub for energy production; Nashville developed a unique niche in low-cost music recording and production; Charlotte emerged as a center for cost-effective banking and low-end finance.

But in the heady days of the housing bubble, some Sun Belt cities—Phoenix and Las Vegas are the best examples—developed economies centered largely on real estate and construction. With sunny weather and plenty of flat, empty land, they got caught in a classic

boom cycle. Although these places drew tourists, retirees, and some industry—firms seeking bigger footprints at lower costs—much of the cities' development came from, well, development itself. At a minimum, these places will take a long, long time to regain the ground they've recently lost in local wealth and housing values. It's not unthinkable that some of them could be in for an extended period of further decline.

To an uncommon degree, the economic boom in these cities was propelled by housing appreciation: as prices rose, more people moved in, seeking inexpensive lifestyles and the opportunity to get in on the real-estate market where it was rising, but still affordable. Local homeowners pumped more and more capital out of their houses as well, taking out home-equity loans and injecting money into the local economy in the form of home improvements and demand for retail goods and low-level services. Cities grew, tax coffers filled, spending continued, more people arrived. Yet the boom itself neither followed nor resulted in the development of sustainable, scalable, highly productive industries or services. It was fueled and funded by housing, and housing was its primary product. Whole cities and metro regions became giant Ponzi schemes.

Phoenix, for instance, grew from 983,403 people in 1990 to 1,552,259 in 2007. One of its suburbs, Mesa, now has nearly half a million residents, more than Pittsburgh, Cleveland, or Miami. As housing starts and housing prices rose, so did tax revenues, and a major capital-spending boom occurred throughout the Greater Phoenix area. Arizona State University built a new downtown Phoenix campus, and the city expanded its convention center and constructed a 20-mile light-rail system connecting Phoenix, Mesa, and Tempe.

And then the bubble burst. From October 2007 through October 2008, the Phoenix area registered the largest decline in housing values in the country: 32.7 percent. (Las Vegas was just a whisker behind, at 31.7 percent. Housing in the New York region, by contrast, fell by just 7.5 percent over the same period.) Overstretched and overbuilt, the region is now experiencing a fiscal double whammy, as its many retirees—some 21 percent of its residents are older than 55—have seen their retirement savings decimated. Mortgages Limited, the state's largest private commercial lender, filed for bankruptcy last summer. The city is running a \$200 million budget deficit, which is only expected to grow. Last fall, the city government petitioned for federal funds to help it deal with the financial crisis. "We had a big bubble here, and it burst," Anthony Sanders, a professor of economics and finance at ASU, told *USA Today* in December. "We've taken Kevin Costner's Field of Dreams and now it's Field of Screams. If you build it, nobody comes."

Will people wash out of these places as fast as they washed in, leaving empty sprawl and all the ills that accompany it? Will these cities gradually attract more businesses and industries, allowing them to build more-diverse and more-resilient economies? Or will they subsist on tourism—which may be meager for quite some time—and on the Social Security checks of their retirees? No matter what, their character and atmosphere are likely to change radically.

### THE LIMITS OF SUBURBAN GROWTH

Every phase or epoch of capitalism has its own distinct geography, or what economic geographers call the “spatial fix” for the era. The physical character of the economy—the way land is used, the location of homes and businesses, the physical infrastructure that ties everything together—shapes consumption, production, and innovation. As the economy grows and evolves, so too must the landscape.

To a surprising degree, the causes of this crash are geographic in nature, and they point out a whole system of economic organization and growth that has reached its limit. Positioning the economy to grow strongly in the coming decades will require not just fiscal stimulus or industrial reform; it will require a new kind of geography as well, a new spatial fix for the next chapter of American economic history.

Suburbanization was the spatial fix for the industrial age—the geographic expression of mass production and the early credit economy. Henry Ford’s automobiles had been rolling off assembly lines since 1913, but “Fordism,” the combination of mass production and mass consumption to create national prosperity, didn’t emerge as a full-blown economic and social model until the 1930s and the advent of Roosevelt’s New Deal programs.

Before the Great Depression, only a minority of Americans owned a home. But in the 1930s and ’40s, government policies brought about longer-term mortgages, which lowered payments and enabled more people to buy a house. Fannie Mae was created to purchase those mortgages and lubricate the system. And of course the tax deduction on mortgage-interest payments (which had existed since 1913, when the federal income-tax system was created) privileged house purchases over other types of spending. Between 1940 and 1960, the homeownership rate rose from 44 percent to 62 percent.

Demand for houses was symbiotic with demand for cars, and both were helped along by federal highway construction, among other infrastructure projects that subsidized a new suburban lifestyle and in turn fueled demand for all manner of household goods. More recently, innovations in finance like adjustable-rate mortgages and securitized subprime

loans expanded homeownership further and kept demand high. By 2004, a record 69.2 percent of American families owned their home.

For the generation that grew up during the Depression and was inclined to pinch pennies, policies that encouraged freer spending were sensible enough—they allowed the economy to grow faster. But as younger generations, weaned on credit, followed, and credit availability increased, the system got out of hand. Housing, meanwhile, became an ever-more-central part of the American Dream: for many people, as the recent housing bubble grew, owning a home came to represent not just an end in itself, but a means to financial independence.

On one level, the crisis has demonstrated what everyone has known for a long time: Americans have been living beyond their means, using illusory housing wealth and huge slugs of foreign capital to consume far more than we've produced. The crash surely signals the end to that; the adjustment, while painful, is necessary.

But another crucial aspect of the crisis has been largely overlooked, and it might ultimately prove more important. Because America's tendency to overconsume and under-save has been intimately intertwined with our postwar spatial fix—that is, with housing and suburbanization—the shape of the economy has been badly distorted, from where people live, to where investment flows, to what's produced. Unless we make fundamental policy changes to eliminate these distortions, the economy is likely to face worsening handicaps in the years ahead.

Suburbanization—and the sprawling growth it propelled—made sense for a time. The cities of the early and mid-20th century were dirty, sooty, smelly, and crowded, and commuting from the first, close-in suburbs was fast and easy. And as manufacturing became more technologically stable and product lines matured during the postwar boom, suburban growth dovetailed nicely with the pattern of industrial growth. Businesses began opening new plants in green-field locations that featured cheaper land and labor; management saw no reason to continue making now-standardized products in the expensive urban locations where they'd first been developed and sold. Work was outsourced to then-new suburbs and the emerging areas of the Sun Belt, whose connections to bigger cities by the highway system afforded rapid, low-cost distribution. This process brought the Sun Belt economies (which had lagged since the Civil War) into modern times, and sustained a long boom for the United States as a whole.

But that was then; the economy is different now. It no longer revolves around simply making and moving things. Instead, it depends on generating and transporting ideas. The places that thrive today are those with the highest velocity of ideas, the highest density of talented and creative people, the highest rate of metabolism. *Velocity* and *density* are not words that many people use when describing the suburbs. The economy is driven by key urban areas; a different geography is required.

#### THE NEXT ECONOMIC LANDSCAPE

The housing bubble was the ultimate expression, and perhaps the last gasp, of an economic system some 80 years in the making, and now well past its “sell-by” date. The bubble encouraged massive, unsustainable growth in places where land was cheap and the real-estate economy dominant. It encouraged low-density sprawl, which is ill-fitted to a creative, postindustrial economy. And not least, it created a workforce too often stuck in place, anchored by houses that cannot be profitably sold, at a time when flexibility and mobility are of great importance.

So how do we move past the bubble, the crash, and an aging, obsolescent model of economic life? What’s the right spatial fix for the economy today, and how do we achieve it?

The solution begins with the removal of homeownership from its long-privileged place at the center of the U.S. economy. Substantial incentives for homeownership (from tax breaks to artificially low mortgage-interest rates) distort demand, encouraging people to buy bigger houses than they otherwise would. That means less spending on medical technology, or software, or alternative energy—the sectors and products that could drive U.S. growth and exports in the coming years. Artificial demand for bigger houses also skews residential patterns, leading to excessive low-density suburban growth. The measures that prop up this demand should be eliminated.

If anything, our government policies should encourage renting, not buying. Homeownership occupies a central place in the American Dream primarily because decades of policy have put it there. A recent study by Grace Wong, an economist at the Wharton School of Business, shows that, controlling for income and demographics, homeowners are no happier than renters, nor do they report lower levels of stress or higher levels of self-esteem.

And while homeownership has some social benefits—a higher level of civic engagement is one—it is costly to the economy. The economist Andrew Oswald has demonstrated that in both the United States and Europe, those places with higher homeownership rates also suffer

from higher unemployment. Homeownership, Oswald found, is a more important predictor of unemployment than rates of unionization or the generosity of welfare benefits. Too often, it ties people to declining or blighted locations, and forces them into work—if they can find it—that is a poor match for their interests and abilities.

As homeownership rates have risen, our society has become less nimble: in the 1950s and 1960s, Americans were nearly twice as likely to move in a given year as they are today. Last year fewer Americans moved, as a percentage of the population, than in any year since the Census Bureau started tracking address changes, in the late 1940s. This sort of creeping rigidity in the labor market is a bad sign for the economy, particularly in a time when businesses, industries, and regions are rising and falling quickly.

The foreclosure crisis creates a real opportunity here. Instead of resisting foreclosures, the government should seek to facilitate them in ways that can minimize pain and disruption. Banks that take back homes, for instance, could be required to offer to rent each home to the previous homeowner, at market rates—which are typically lower than mortgage payments—for some number of years. (At the end of that period, the former homeowner could be given the option to repurchase the home at the prevailing market price.) A bigger, healthier rental market, with more choices, would make renting a more attractive option for many people; it would also make the economy as a whole more flexible and responsive.

Next, we need to encourage growth in the regions and cities that are best positioned to compete in the coming decades: the great mega-regions that already power the economy, and the smaller, talent-attracting innovation centers inside them—places like Silicon Valley, Boulder, Austin, and the North Carolina Research Triangle.

Whatever our government policies, the coming decades will likely see a further clustering of output, jobs, and innovation in a smaller number of bigger cities and city-regions. But properly shaping that growth will be one of the government's biggest challenges. In part, we need to ensure that key cities and regions continue to circulate people, goods, and ideas quickly and efficiently. This in itself will be no small task; increasing congestion threatens to slowly sap some of these city-regions of their vitality.

Just as important, though, we need to make elite cities and key mega-regions more attractive and affordable for all of America's classes, not just the upper crust. High housing costs in these cities and in the more convenient suburbs around them, along with congested sprawl

farther afield, have conspired to drive lower-income Americans away from these places over the past 30 years. This is profoundly unhealthy for our society.

In his forthcoming book, *The Wealth of Cities*, my University of Toronto colleague Chris Kennedy shows that only wholesale structural changes, from major upgrades in infrastructure to new housing patterns to big shifts in consumption, allow places to recover from severe economic crises and to resume rapid expansion. London laid the groundwork for its later commercial dominance by changing its building code and widening its streets after the catastrophic fire of 1666. The United States rose to economic preeminence by periodically developing entirely new systems of infrastructure—from canals and railroads to modern water-and-sewer systems to federal highways. Each played a major role in shaping and enabling whole eras of growth.

The Obama administration has declared its intention to open the federal government's pocketbook wide to help us get through this recession, and infrastructure spending seems poised to play a key role. Done right, such spending could position the United States for the next round of growth. But that will entail more than patching up roads and bridges.

If there is one constant in the history of capitalist development, it is the ever-more-intensive use of space. Today, we need to begin making smarter use of both our urban spaces and the suburban rings that surround them—packing in more people, more affordably, while at the same time improving their quality of life. That means liberal zoning and building codes within cities to allow more residential development, more mixed-use development in suburbs and cities alike, the in-filling of suburban cores near rail links, new investment in rail, and congestion pricing for travel on our roads. Not everyone wants to live in city centers, and the suburbs are not about to disappear. But we can do a much better job of connecting suburbs to cities and to each other, and allowing regions to grow bigger and denser without losing their velocity.

Finally, we need to be clear that ultimately, we can't stop the decline of some places, and that we would be foolish to try. Places like Pittsburgh have shown that a city can stay vibrant as it shrinks, by redeveloping its core to attract young professionals and creative types, and by cultivating high-growth services and industries. And in limited ways, we can help faltering cities to manage their decline better, and to sustain better lives for the people who stay in them.



But different eras favor different places, along with the industries and lifestyles those places embody. Band-Aids and bailouts cannot change that. Neither auto-company rescue packages nor policies designed to artificially prop up housing prices will position the country for renewed growth, at least not of the sustainable variety. We need to let demand for the key products and lifestyles of the old order fall, and begin building a new economy, based on a new geography.

What will this geography look like? It will likely be sparser in the Midwest and also, ultimately, in those parts of the Southeast that are dependent on manufacturing. Its suburbs will be thinner and its houses, perhaps, smaller. Some of its southwestern cities will grow less quickly. Its great mega-regions will rise farther upward and extend farther outward. It will feature a lower rate of homeownership, and a more mobile population of renters. In short, it will be a more concentrated geography, one that allows more people to mix more freely and interact more efficiently in a discrete number of dense, innovative mega-regions and creative cities. Serendipitously, it will be a landscape suited to a world in which petroleum is no longer cheap by any measure. But most of all, it will be a landscape that can accommodate and accelerate invention, innovation, and creation—the activities in which the U.S. still holds a big competitive advantage.

The Stanford economist Paul Romer famously said, “A crisis is a terrible thing to waste.” The United States, whatever its flaws, has seldom wasted its crises in the past. On the contrary, it has used them, time and again, to reinvent itself, clearing away the old and making way for the new. Throughout U.S. history, adaptability has been perhaps the best and most quintessential of American attributes. Over the course of the 19th century’s Long Depression, the country remade itself from an agricultural power into an industrial one. After the Great Depression, it discovered a new way of living, working, and producing, which contributed to an unprecedented period of mass prosperity. At critical moments, Americans have always looked forward, not back, and surprised the world with our resilience. Can we do it again?

Correction: The print version of this piece incorrectly cited an assessment published by Moody’s Investor Services. The assessment was actually published by Moody’s Economy.com.

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