

FILE

Mayor: Dean Johnston Council members: Rita Conlin Steve DeLapp Liz Johnson Anne Smith	<h1 style="text-align: center;">Lake Elmo City Council</h1> <h2 style="text-align: center;">Wednesday, JULY 5, 2006</h2> <p style="text-align: center;">(The regular scheduled Council meeting would have fallen on July 4th)</p>	3800 Laverne Avenue No. Lake Elmo, MN 55042 777-5510 777-9615 (fax)
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Please read:

Since the City Council does not have time to discuss every point presented, it may appear that decisions are preconceived. However, staff provides background information to the City Council on each agenda item in advance; and decisions are based on this information and experience. In addition, some items may have been discussed at previous council meetings.

If you are aware of information that has not been discussed, please fill out a "Request to Appear Before the City Council form; or, if you came late, raise your hand to be recognized. Comments that are pertinent are appreciated. Items may be continued to a future meeting if additional time is needed before a decision can be made.

Agenda

City Council Meeting Convenes 7:00 PM

Pledge of Allegiance		
1. Agenda		
2. Minutes:	June 20, 2006	
3. <u>PUBLIC INQUIRIES/INFORMATIONAL:</u> A. PUBLIC INFORMATIONAL: B. Public Inquiries	Public Inquiries/Informational is an opportunity for citizens to bring the Council's attention any items not currently on the agenda. In addressing the Council, please state your name and address for the record, and a brief summary of the specific item being addressed to the Council. To allow adequate time for each person wishing to address the Council, we ask that individuals limit their comments to three (3) minutes. Written documents may be distributed to the Council prior to the meeting or as bench copies, to allow a more timely presentation.	
4. <u>CONSENT AGENDA</u> A. Resolution No. 2006-062: Approving Claims B. Union Pacific Pipeline Crossing Agreement	Those items listed under the Consent Calendar are considered to be routine by the City Council and will be enacted by one motion under a Consent Calendar format. There will be no separate discussion of these items unless a Council member so requests, in which event, the item will be removed from the general order of business and considered separately in its normal sequence on the agenda.	
5. <u>FINANCE:</u>		
6. <u>NEW BUSINESS:</u>		
7. <u>MAINTENANCE/PARK/FIRE/BUILDING:</u>		
8. <u>CITY ENGINEER'S REPORT:</u> A. PUBLIC HEARING: 2006 Overlays, Order Plans and Specifications - Resolution No. 2006-063 B. PUBLIC HEARING: 2006 MSA Resurfacing, Order Plans and Specifications - Resolution No. 2006-064	Tom Prew	

<p>C. Easement for Northern Watermain: verbal update</p> <p>D. Approve Plans for Eagle Point Blvd.; Resolution No. 2006-065 Approve Plans</p>		
<p>9. <u>PLANNING, LAND USE & ZONING:</u></p> <p>A. Zoning Ordinance Text Interpretation - Accessory Buildings in AG</p> <p>B. Hidden Meadows 2nd Addition Final Plat and Development Agreement; Resolution No. 2006-066</p> <p>C. HOA 2nd Addition Final Plat and Development Agreement; Resolution No. 2006- 067</p>	C. Dillerud	
<p>10. <u>CITY ATTORNEY'S REPORT:</u></p>		
<p>11. <u>CITY ADMINISTRATOR'S REPORT:</u></p>	M. Rafferty	
<p>12. <u>CITY COUNCIL REPORTS:</u></p> <p>A. Mayor Johnston</p> <p>B. Council Member Conlin</p> <p>C. Council Member DeLapp</p> <p>D. Council Member Johnson</p> <p>E. Council Member Smith</p>		
<p>13. <u>CLOSED MEETING:</u> Legal Update</p> <p>July 11, 6 p.m. City Council Workshop</p>		

CITY OF LAKE ELMO
CITY COUNCIL MEETING
JUNE 20, 2006

1. AGENDA
2. MINUTES: March 21, 2006, May 2, 2006
3. PUBLIC INQUIRIES/INFORMATIONAL:
 - A. PUBLIC INQUIRIES: None
 - B. PUBLIC INFORMATIONAL:
 - (1) John Binkowski, Ind. Candidate
4. CONSENT AGENDA:
 - A. Resolution No. 2006-052: Approving Claims
 - B. Monthly Operating Report
 - C. Authorization for Professional Services 2006 Overlays: Jamaca Court, Irvine Circle, Isle Avenue, Irvine Court, and Ivy Court
 - D. Authorization for Professional Services 2006 MSA Repaving: 45th Street, Julep Avenue, and 47th Street
 - E. Change Order Conduit Relocating for Water Tower
 - F. Resolution No. 2006-053: Partial Payment for Water System Interconnect Phase I – Riley Brothers Construction
 - G. Resolution No. 2006-054: Partial Payment for Water System Interconnect Phase II – Riley Brothers Construction
 - H. City Logo (removed for discussion)
5. FINANCE: None
6. NEW BUSINESS: None
7. MAINTENANCE/PARK/FIRE/BUILDING:
 - A. Update on Building Dept.: Jim McNamara
8. CITY ENGINEER'S REPORT:
 - A. 2006 Overlays Feasibility Report: Resolution No. 2006-055 (changed to 8C)
 - B. 2006 MSA Repaving Feasibility Report: Resolution No. 2006-056 (changed to 8D)
 - C. Approve Plans for Northern Water Main: Resolution No. 2006-057 (changed to 8E)
 - D. Public Hearing: Excavating & Grading Permit–Krueger, 4452 Lake Elmo Ave (changed to 8A)
 - E. Public Hearing: Excavating & Grading Permit–Kaufhold, 9999 10th St. (changed to 8B)
 - F. Hurt Septic System (Consolidated 11A and 8F)
9. PLANNING, LAND USE & ZONING:
 - A. Village Area Planning Team – Subsequent Phase Work Plan
 - B. Zoning Variance – Hamerly, 9249 Jane Road N.: Resolution 2006-058
 - C. Preliminary Plat of HOA 2nd Addition: Resolution No. 2006-060; Site Plan Review – Rasmussen College: Resolution No. 2006-059
 - D. CDBG – Cimarron Gas Service Project: Resolution No. 2006-061

- E. Zoning Text Amendments–Architectural Performance Standards in BP, LB, PF, GB: Ordinance No. 97 – 172-175
- 10. CITY ATTORNEY’S REPORT:
 - A. Northern Watermain Easement Acquisition Update: verbal (added to 8E)
- 11. CITY ADMINISTRATOR’S REPORT:
 - A. Austad, Pierre, Hurt – Septic Systems: verbal (see 8F)
 - B. Report on HOA Training Seminar: verbal
 - C. City of Minneapolis – Letter of Appreciation (addition)
 - D. PFC Meetings (addition)
- 12. CITY COUNCIL REPORTS:
 - A. Mayor Johnston – Lake Elmo Compensation Plan, Performance Review Procedure
 - B. Council Member Conlin
 - C. Council Member DeLapp
 - D. Council Member Johnson
 - E. Council Member Smith
- 13. CLOSED SESSION: Legal Update

Mayor Johnston called the Council meeting to order at 7:00 p.m. in the Council Chambers. COUNCIL MEMBERS PRESENT: Johnson, Smith, DeLapp (arrived at 8:20 p.m.) and Conlin (arrived at 8:32 p.m.). STAFF PRESENT: Administrator Rafferty, City Planner Dillerud, Finance Director Bouthilet, City Engineer Prew, City Attorney Filla, Building Official McNamara, and Recording Secretary Freeman.

Pledge of Allegiance

1. AGENDA:

Remove 4H (Logo) from Consent and change to discussion;
Additions: 12D (Groundwater Report), 8F (Hurt Septic System);
Consolidate Items 10A and 8C, 11A and 8F;
Move Items 8D and 8E before 8A, 8B and 8C.

M/S/P Smith/Johnson – to approve the amended June 20, 2006, City Council Agenda.
(Motion passed 3-0)

2. MINUTES:

M/S/P Johnson/Smith – to approve the May 16, 2006, City Council Minutes, as presented. (Motion passed 3-0)

M/S/P Smith/Johnson – to approve the amended June 6, 2006, City Council Minutes.
(Motion passed 3-0)

3. PUBLIC INQUIRIES/INFORMATIONAL:

A. Public Informational: None

B. Public Inquiries:

Independent Governor Candidate John Binkowski – did not appear

4. CONSENT AGENDA:

A. Resolution No. 2006-052: Approving Claims:

M/S/P Johnson/Smith – to adopt Resolution No. 2006-052 approving Claim Numbers 330, 331, DD763 through DD785, 29210 through 29230, were used for Staff Payroll dated June 8, 2006; claims 29231 through 29275, in the total amount of \$94,333.15.
(Motion passed 3-0)

B. Monthly Operating Report:

M/S/P Johnson/Smith – to accept the May 2006 Monthly Operating Report.
(Motion passed 3-0)

C. Authorization for Professional Services 2006 Overlays: Jamaca Court, Irvine Circle, Isle Avenue, Irvine Court, and Ivy Court:

M/S/P Johnson/Smith – to authorize TKDA to proceed with the bidding phase for the 2006 Overlays Project - Jamaca Court, Irvine Circle, Isle Avenue, Irvine Court, and Ivy Court. (Motion passed 3-0)

D. Authorization for Professional Services 2006 MSA Repaving: 45th Street, Julep Avenue, and 47th Street:

M/S/P Johnson/Smith – to authorize TKDA to proceed with the bidding phase for the 2006 MSA Repaving of 45th Street, Julep Avenue, and 47th Street. (Motion passed 3-0)

E. Change Order Conduit Relocation for Water Tower:

City Engineer Prew recommends the conduits relocation between the tower and Public Works building. The revised route saves money by reducing the cost of running conduit inside of the building.

M/S/P Johnson/Smith – to authorize Change Order No. 1R, Elevated Storage Tank No. 2, verified by the City Engineer in his Memo dated June 15, 2006. (Motion passed 3-0)

F. Partial Payment for Water System Interconnect Phase I – Riley Brothers Construction: Resolution No. 2006-053:

City Engineer Prew recommended Partial Payment for Water Systems Interconnect Phase I to Riley Brothers Construction. Residents Neil and Debbie Krueger submitted their concerns about the process, and work not being done.

Staff stated that the City has been in contact about the delay, letters have been sent, and Travelers Insurance (bonding company) was put on notice. Riley Construction has hired extra crew, and it would be another three weeks before completion.

M/S/P Johnson/Smith – to adopt Resolution No. 2006-053, authorizing partial payment for Water System Interconnect Phase I to Riley Brothers Construction, Certificate No. 5, in the amount of \$14,187.00. (Motion passed 3-0)

G. Partial Payment for Water System Interconnect Phase III – Riley Brothers Construction: Resolution No. 2006-054:

M/S/P Johnson/Smith – to adopt Resolution No. 2006-054, authorizing partial payment for Water System Interconnect Phase III to Riley Brothers Construction, Certificate No. 4, in the amount of \$222,561.78. (Motion passed 3-0)

G. City Logo: (removed for discussion)

The current City of Lake Elmo logo is approximately 25 years old. At the May 9, 2006, Council Workshop, new signage was discussed for the new water tower and Public Works building. City Administrator Rafferty requested Council direction to move forward with a new City Logo/design.

Council discussed approaching the logo issue a different way, and did not believe a new logo was needed.

M/S/F Johnson/Smith – to approve updating the City Logo, Step One, with Wright Design, for an estimated cost of \$1800.00. (Motion Failed 1-2: Smith-not cost \$4,300.00 and approach it a different way; Johnston-does not believe the City needs a logo)

5. **FINANCE:**

Finance Director submitted a Tentative 2007 Budget Calendar for Council. It will be discussed at a future Council meeting.

6. **NEW BUSINESS:** None

7. **MAINTENANCE/PARK/FIRE/BUILDING:**

A. Update on Building Dept.: Jim McNamara

Building Official McNamara informed the Council that carbon monoxide detectors are not part of the current Building Code, but will be required by State Statute in January 2007 for all new one and two family dwelling units. Currently, detectors are not required in existing single-family residences either but will be required by August 2008. The MN Building Code could also reflect the changes in the 2009 edition of the International Building Code (IBC).

8. **CITY ENGINEER'S REPORT:**

A. 2006 Overlays Feasibility Report: Resolution No. 2006-055: (changed to Agenda Item 8C)

The City Engineer presented the Council the Feasibility Report for 2006 Overlays – Irvin Court, Irvin Circle Isle Avenue, Ivy Court, and Jamaca Court. He stated the original roads dated to the mid-70's. The streets would be reclaimed and paved. Bituminous curbs would also be replaced.

M/S/P Smith/Johnson – to adopt Resolution No. 2006-055, and accept the Feasibility Report and Ordering Plans and Specifications for 2006 Overlays - Irvin Court, Irvin Circle Isle Avenue, Ivy Court, and Jamaca Court. (Motion passed 3-0)

B. 2006 MSA Repaving Feasibility Report: Resolution No. 2006-056: (changed to Agenda Item 8D)

The City Engineer presented the Council the Feasibility Report for 2006 MSA Repaving – 45th Street, Julep Avenue, and 47th Street. Paved shoulders, versus gravel are proposed on 45th Street and Julep Avenue. Driving lanes will be narrowed. Funds in MSA are available for the project.

M/S/P Johnson/Smith – to adopt Resolution No. 2005-056, and accept the Feasibility Report for 2006 MSA Repaving – 45th Street, Julep Avenue, and 47th Street. (Motion passed 3-0)

C. Approve Plans for Northern Water Main: Resolution No. 2006-057: (changed to Agenda Item 8E and to include Agenda Item 10A)

City Engineer Prew recommends approval of Resolution 2006-057, approving plans and specifications for the Northern Watermain Extensions Project and authorizing the advertisement of bids. The Project will not be awarded until the easements have been secured.

City Attorney Filla requested that Agenda Item 10A be included in the discussion. He informed the Council that the process of easements being acquired is currently being negotiated and results will be brought to the July 5, 2006, Council meeting.

M/S/P Smith/Johnson – to adopt Resolution No. 2006-057, accepting plans and specifications and authorizing the advertisement for bids, verified by the City Engineer in his Memo dated June 15, 2006. (Motion passed 3-0)

D. PUBLIC HEARING: Excavating & Grading Permit, Krueger, 4452 Lake Elmo Avenue: (changed to Agenda Item 8A)

A grading permit has been submitted by the Neil Krueger, 4452 Lake Elmo Avenue, which involves removing soil from a small hill near their garage and using it to level an area near Lake Elmo Avenue. He said this would provide a larger flat area for Christmas tree sales and better parking. The area around the west side of the tree barn will have better drainage. The plans have been reviewed and approved by both the City and Valley Branch Watershed District.

The Mayor opened the Public Hearing at 7:15 p.m.

Residents Neil and Debbie Krueger stated that it was too late in the season for the work to be completed this year, and would need to finish next year. Staff advised them to apply for the building permit now, and to keep the Building Dept. current.

City staff determined that the volume threshold for grading permits should be discussed at the July 11, 2006, Council Workshop.

The Public Hearing was closed to Public Comment at 7:20 p.m.

M/S/P Smith/Johnson – to approve the Krueger Grading Permit in accordance with the plans on file, and subject to a \$1,500.00 escrow. This escrow would be released once the turf is established and no erosion is evident. (Motion passed 3-0)

E. PUBLIC HEARING: Excavating & Grading Permit, Kaufhold, 9999 10th St.: (changed to Agenda Item 8B)

A grading permit has been submitted by James Kaufhold, 9999 10th Street, which involves leveling material left behind from filling done by a previous owner, and improving the drainage in other areas.

The Mayor opened the Public Hearing at 7:25 p.m.

The Public Hearing was closed to Public Comment at 7:26 p.m.

No one spoke for or against the Kaufhold Excavating & Grading permit.

M/S/P Johnson/Smith – to approve the Kaufhold Grading Permit in accordance with the plans on file, and subject to a \$1,500.00 escrow. This escrow would be released once the turf is established and no erosion is evident. (Motion passed 3-0)

F. Septic Permit for Hurt, 5751 Hytrail Avenue North (added to Agenda):
Residents Kregg and Paula Hurt requested that their Septic Permit application be approved.

City Administrator Rafferty deferred to City Engineer Prew's Memo dated June 20, 2006, to City Council.

City Engineer Prew stated he is not recommending the proposed plan not be approved as it does provide a long term solution. He believes the system should be repaired to operate as designed and approved. However, if the City chooses to allow the applicants to proceed with the proposed design, two test pits are recommended to confirm the soil borings and that the monitoring and mitigation plans are submitted with better detail and more stringent reporting.

M/S/P Johnson/Johnston – to accept the City Engineer's Memo dated June 20, 2006, as submitted and for Staff to continue processing the Permit application for the septic system. (Motion passed 2-1: Smith, owners doing everything asked, due diligences, support of letting them move forward)

9. PLANNING, LAND USE & ZONING:

A. Village Area Planning Team – Subsequent Phase Work Plan:

It was reported that the City Planner and Staff has met with the Village Area Planning Team to provide guidance as to the format and content of the Team's proposal for the Village Area, including detail planning, coordination and project (s) execution efforts. The Planning Teams proposal to complete subsequent planning tasks was presented to the City Council by Team Members.

M/S/P Smith/Johnson – to accept and proceed with the Planning Team's proposal for continuing services to the City based on the June 16, 2006, draft proposal including the budget of \$158,000.00, refining deliverables and adjustments. (Motion passed 5-0)

B. Zoning Variance, Hamerly, 9249 Jane Road North: Resolution No. 2006-058:

The City Planner reported that the Planning Commission conducted a Public Hearing on June 12, 2006, and unanimously adopted a recommendation for approval of street yard (front) and side yard setback variances. The Commission added an additional design modification condition to the approval recommendation that requires the applicant to encroach no further on the south side setback than the existing garage encroachments.

M/S/P Johnson/Johnston – to adopt Resolution No. 2006-058, approving street and side yard setback variances for construction of an attached garage, based on the Findings and Conditions recommended by the Planning Commission, and plans staff dated June 12, 2006, as modified by the approval conditions. (Motion passed 5-0)

C. Preliminary Plat of HOA 2nd Addition: Resolution No. 2006-060; Site Plan Review – Rasmussen College: Resolution No. 2006-059:

The City Planner reported that the Planning Commission conducted a Public Hearing on June 12, 2006, and it was unanimously recommended to approve the Preliminary Plat of the HOA 2nd Addition, and the Section 520 Site for a 20,500 square foot Rasmussen Business College – to be located on a 4.11 acre HOA 2nd Addition lot. United Properties (applicant) agreed to modify the site plan to mitigate the City Code/Zoning Ordinance non-compliance matters. Street, water and sewer will be designed by TKDA.

M/S/P Conlin/Johnson – to adopt Resolution 2006-059, approving the Preliminary Plat of the HOA 2nd Addition based on the recommendation of the Planning Commission and City Council per plans Staff dated June 12, 2006. (Motion passed 5-0)

M/S/P Conlin/Smith – to adopt Resolution No. 2006-060, approving Section 520 Site Plan for Rasmussen College based on the recommendation of the Planning Commission and Council, per plans Staff dated June 12, 2006, as modified by the conditions of approval. (Motion passed 5-0)

Council directed Staff to bring the Street Lighting Ordinance to the July 11, 2006, Council Workshop, and deferred the approval of street lighting of Eagle Point Circle to the July 18, 2006, Council meeting with additional information.

D. CDBG – Cimarron Gas Service Project: Resolution 2006-061:

The City Planner reported that Staff has been advised by Washington County that it is necessary for the City Council to make a finding that the normal competitive bidding process has resulted in no qualified bidders and that single source contracting by staff on this contract is therefore authorized.

M/S/P Smith/DeLapp – to adopt Resolution 2006-061, finding that no qualified bidders have responded to the Cimarron Gas Service Project competitive bidding process and authorizing City Staff to proceed with single source contracting for the project subject to Washington County and HUD approval. (Motion passed 5-0)

E. Zoning Text Amendments – Performance Standards in the PF, LB, GB, and BP Districts: Ordinance Nos. 97-172, 97-173, 97-174, and 97-175:

The City Planner reported the Planning Commission conducted a Public Hearing on June 12, 2006, to consider minor terms amendments to architectural performance standards of the several zoning districts that share the same standards. The City Council had previously directed preparation of those amendments during discussion and adoption of amended PF district standards

M/S/P DeLapp/Johnson – to adopt Ordinance No. 97-172 (PF), 97-173 (BP), 97-174 (LB), and 97-175 (GB), amending the architectural performance standards in the PF, LB, GB, and BP zoning districts. (Motion passed 5-0)

F. RR Setbacks:

The City Planner reported that the Planning Commission held a Public Hearing on June 12, 2006, regarding amendment of the RR district setback standards to correspond to the RE district setback standards. The Commission unanimously adopted a Motion to table the amendment pending its further consideration of the amendment concurrent with the on-going overall zoning ordinance re-write project underway by the Commission.

M/S/P Smith/Johnston – to direct staff to place on the July 18, 2006, City Council meeting. (Motion passed 4-1: Johnson – there is no urgency and should go along with the Planning Commission's recommendation.)

10. CITY ATTORNEY'S REPORT:

A. Northern Watermain Easement Addition Acquisition Update: verbal (moved to Agenda Item 8E)

11. CITY ADMINISTRATOR'S REPORT:

A. Austad, Pierre, Hurt – Septic Systems: verbal (moved to Agenda Item 8F)

B. HOA Training Seminar – Report: verbal

Administrator Rafferty reported that Kurt Sparks, NAWA President, presented a 2-hour training for HOA's with Constructive Wetland Treatment Systems. It was well attended by the 13 HOA's in Lake Elmo. The City now has a tape of the presentation and it will be available for residents to check out.

Mayor Johnston thanked Administrator Rafferty for organizing the quarterly HOA meetings, dealing with various forms of waste treatment systems. The quarterly meetings have provided the HOA members to become educated, share knowledge and develop appropriate solutions when necessary.

C. City of Minneapolis Thank You – verbal:

Administrator Rafferty suggested the City send a thank you letter to the City of Minneapolis for the used equipment made available to Lake Elmo. The City is cramped for space, and the new Assistant Planner now has an office, along with some necessary equipment.

M/S/P Johnson/Conlin – to direct Staff to send a letter of appreciation to the City of Minneapolis for the equipment provided. (Motion passed 5-0)

D. PFC Meetings:

A PFC Task Force has been meeting monthly, and suggested another public meeting the second week in September to update the residents on PFC's. More details and information will be coming.

12. CITY COUNCIL BUSINESS AND REPORTS:

A. Mayor Johnston – Lake Elmo Compensation Plan, Performance Review Procedures:

Mayor Johnston would like to consider forming a team, to include the City Administrator, Finance Director, Mayor and a Council Member to develop proposals for review procedures and compensation. Council Members Smith and Johnson expressed interest. City Attorney Filla reminded Council about the Open Meeting Law, and it applies if it's a Committee.

Mayor Johnston reminded Council of the opportunities available by becoming a member of AMM Committees. Several Council Members and Staff are current members of the four Committees.

Council Member Conlin: None
Council Member DeLapp: None
Council Member Johnson: None
Council Member Smith: None

REMINDER: The next Council meeting is on Wednesday, July 5, 2006 at 7:00 p.m.

13. CLOSED SESSION: Legal Update:

- A. Case No. 82-C6-05-006209 – City of Lake Elmo vs. Sessing Pretrial Mediation

Council Meeting adjourned at 9:40 p.m. for a Closed Session

Respectfully submitted by Carole Freeman, Recording Secretary

Resolution No. 2006-052: Approved Claims
Resolution No. 2006-053: Partial Payment for Water System Interconnect Phase I – Riley Brothers Construction
Resolution No. 2006-054: Partial Payment for Water System Interconnect Phase III – Riley Brothers Construction
Resolution No. 2006-055: 2006 Overlays Feasibility Report
Resolution No. 2006-056: 2006 MSA Repaving Feasibility Report
Resolution No. 2006-057: Approved Plans for Northern Water Main
Resolution No. 2006-058: Zoning Variance, 9429 Jane Road N (Hamerly)
Resolution No. 2006-059: Preliminary Plat of HOA 2nd Addition
Resolution No. 2006-060: Site Plan Review – Rasmussen College
Resolution No. 2006-061: CDBG – Cimarron Gas Service Project
Ordinance No. 97-172: Amendment-Architectural Performance Standards in the Public Facilities Zoning District
Ordinance No. 97-173: Amendment-Architectural Performance Standards in the Business Park Zoning District

Ordinance No. 97-174: Amendment-Architectural Performance Standards in the Limited Business Zoning District

Ordinance No. 97-175: Amendment-Architectural Performance Standards in the General Business Zoning District

4A.

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

**RESOLUTION NO. 2006-062
RESOLUTION APPROVING CLAIMS**

BE IT RESOLVED THAT Claim Numbers 332, 333, DD786 through DD798, 29276 through 29292, were used for Staff Payroll dated June 22nd, 2006; claims 334, 29293 through 29335, in the total amount of \$1,074,334.68 are hereby approved.

ADOPTED, by the Lake Elmo City Council on the 5th day of July, 2006.

Dean A. Johnston
Mayor

ATTEST:

Martin J. Rafferty
City Administrator

Accounts Payable Computer Check Proof List

User: administrator
Printed: 06/29/2006 - 1:10 PM

SPRINGBROOK SOFTWARE

Invoice No	Description	Amount	Payment Date	Acct Number	Reference
Vendor:REVENUE May 2006 May 2006	MN Department of Revenue Use Tax May 2006 Sales Tax May 2006 Check Total:	236.00 1,147.00 1,383.00	07/05/2006 07/05/2006	Check Sequence: 1 101-410-1320-44300 601-494-9400-44300	ACH Enabled: No
Total for Check Run:		1,383.00			
Total Number of Checks:		1			

Accounts Payable Computer Check Proof List

User: administrator
Printed: 06/29/2006 - 1:12 PM

SPRINGBROOK SOFTWARE

Invoice No	Description	Amount	Payment Date	Acct Number	Reference
Vendor:ACS 562	Animal Control Services Animal Control June 2006 Check Total:	545.71 545.71	07/05/2006	Check Sequence: 1 101-420-2700-43150	ACH Enabled: No
Vendor:AMPLAN 123247-060604	American Planning Association Dues - Planning Adv. Service Check Total:	695.00 695.00	07/05/2006	Check Sequence: 2 101-410-1910-44330	ACH Enabled: No
Vendor:ARAM 629-6003029	Aramark Mats, Linen - City Hall Check Total:	65.94 65.94	07/05/2006	Check Sequence: 3 101-410-1940-44010	ACH Enabled: No
Vendor:ASPENMI 67874	Aspen Mills, Inc. Gold Tags - Yarusso - Fire Dept Check Total:	13.31 13.31	07/05/2006	Check Sequence: 4 101-420-2220-44170	ACH Enabled: No
Vendor:BOUTHM Tvl Claim 06/20	MichaelBouthilet Lodging - Wastewater School Check Total:	219.70 219.70	07/05/2006	Check Sequence: 5 602-495-9450-43310	ACH Enabled: No
Vendor:Davies S01024098.001	Northern Water Works Supply Water Meters Check Total:	1,777.74 1,777.74	07/05/2006	Check Sequence: 6 601-494-9400-42300	ACH Enabled: No
Vendor:DITCHWIT 17166	Ditch Witch of Mn, Inc. Excavator Check Total:	37,669.05 37,669.05	07/05/2006	Check Sequence: 7 410-480-8000-45800	ACH Enabled: No

Invoice No	Description	Amount	Payment Date	Acct Number	Reference
Vendor:DIVCON 10-0266	Diversified Contracting Spec. Pmt.10 New PW Bldg Construction Check Total:	560,795.94 560,795.94	07/05/2006	Check Sequence: 8 410-480-8000-45200	ACH Enabled: No
Vendor:FOUR 23-042656	Four Seasons Service Supplies - City Hall Check Total:	52.35 52.35	07/05/2006	Check Sequence: 9 101-410-1940-44300	ACH Enabled: No
Vendor:FXL July 2006	FXL, Inc. Assessing Services for July 2006 Check Total:	2,000.00 2,000.00	07/05/2006	Check Sequence: 10 101-410-1550-43100	ACH Enabled: No
Vendor:INTERARS 12210	Internation Assoc of Arson Inv Membership - Greg Malmquist Check Total:	75.00 75.00	07/05/2006	Check Sequence: 11 101-420-2220-44330	ACH Enabled: No
Vendor:JH Larso 1452555-01	J.H. Larson Company PVC - New Public Works Check Total:	132.28 132.28	07/05/2006	Check Sequence: 12 410-480-8000-45200	ACH Enabled: No
Vendor:LEADER 1000056653	Lake Elmo Leader Subscription - LE Leader Check Total:	28.00 28.00	07/05/2006	Check Sequence: 13 101-410-1320-44330	ACH Enabled: No
Vendor:Magnuson TVL Claim	GeraldMagnuson Lodging - Wastewater School Check Total:	198.00 198.00	07/05/2006	Check Sequence: 14 602-495-9450-43310	ACH Enabled: No
Vendor:MATCO 178412	Matco Tools Blower - Public Works Check Total:	58.58 58.58	07/05/2006	Check Sequence: 15 101-430-3100-42400	ACH Enabled: No
Vendor:MCFOA SLumby	MCFOA 2006 Dues Check Total:	35.00 35.00	07/05/2006	Check Sequence: 16 101-410-1320-44330	ACH Enabled: No
Vendor:MENARDST 55943	Menards - Stillwater Edger, mesh, groover, etc. - PW	117.94	07/05/2006	Check Sequence: 17 101-430-3100-42150	ACH Enabled: No

Invoice No	Description	Amount	Payment Date	Acct Number	Reference
	Check Total:	117.94			
Vendor:METROCA P0318076F	Metrocall Pagers - Fire Dept Check Total:	74.00 74.00	07/05/2006	Check Sequence: 18 101-420-2220-43210	ACH Enabled: No
Vendor:MPCA D-4262	MN Pollution Control Agency Certification - M. Bouthilet Check Total:	23.00 23.00	07/05/2006	Check Sequence: 19 602-495-9450-44370	ACH Enabled: No
Vendor:MYRONS FIRE	Myron's Service Center Oil Change, Diagnostics - Fire Dept Check Total:	42.18 42.18	07/05/2006	Check Sequence: 20 101-420-2220-44040	ACH Enabled: No
Vendor:Natl Wat 3585538	National Waterworks Water Meters Check Total:	1,585.79 1,585.79	07/05/2006	Check Sequence: 21 601-494-9400-42300	ACH Enabled: No
Vendor:NEXTEL 761950227-039 761950227-039 761950227-039 761950227-039 761950227-039	Nextel Communications Cellular Service - Admin Cellular Service - Fire Dept Cellular Service - Bldg Dept Cellular Service - Public Works Cellular Service - Parks Check Total:	74.81 111.49 33.02 69.09 25.83 314.24	07/05/2006 07/05/2006 07/05/2006 07/05/2006 07/05/2006	Check Sequence: 22 101-410-1940-43210 101-420-2220-43210 101-420-2400-43210 101-430-3100-43210 101-450-5200-43210	ACH Enabled: No
Vendor:NORTHL 143-6412710	Northland Trust Services, Inc. Bond Interest 2004A Check Total:	77,033.75 77,033.75	07/05/2006	Check Sequence: 23 410-480-8000-46110	ACH Enabled: No
Vendor:NSTAR Post 9351	Northern Star Council/BSA Young Firefighters Dues Check Total:	97.00 97.00	07/05/2006	Check Sequence: 24 101-420-2220-44330	ACH Enabled: No
Vendor:OAKDRC 10045574	Oakdale Rental Center Concrete Trailer Rental Check Total:	359.97 359.97	07/05/2006	Check Sequence: 25 101-430-3100-43150	ACH Enabled: No

Invoice No	Description	Amount	Payment Date	Acct Number	Reference
Vendor:OFFICEMX 816127	OfficeMax Paper Check Total:	142.95 142.95	07/05/2006	Check Sequence: 26 101-410-1320-42000	ACH Enabled: No
Vendor:PINNEY 2817997-JN06	Pinney Bowes Postage Equipment Maint. Check Total:	693.00 693.00	07/05/2006	Check Sequence: 27 101-410-1940-44010	ACH Enabled: No
Vendor:POSTOFFFI Check Rec	POSTMASTER Postage - Bulk Mailing Check Total:	422.95 422.95	07/05/2006	Check Sequence: 28 101-410-1320-43220	ACH Enabled: No
Vendor:PRESS 06/20/2006 06/26/2006	StevenPress Cablecast - City Council Cablecast - Planning Check Total:	55.60 55.60 111.20	07/05/2006 07/05/2006	Check Sequence: 29 101-410-1320-43620 101-410-1910-43620	ACH Enabled: No
Vendor:RUD 06/19-06/28 06/19-06/28	DianePrince-Rud Cleaning - City Hall Cleaning - Fire Hall Check Total:	240.00 240.00 480.00	07/05/2006 07/05/2006	Check Sequence: 30 101-410-1940-44010 101-420-2220-44010	ACH Enabled: No
Vendor:S&T 01KX8695	S&T Office Products, Inc. Binders Check Total:	154.80 154.80	07/05/2006	Check Sequence: 31 101-410-1910-42000	ACH Enabled: No
Vendor:SATELLIT 24180636	Satellite Shelters, Inc. Rental - Bldg Dept Trailer Check Total:	319.50 319.50	07/05/2006	Check Sequence: 32 101-420-2400-44120	ACH Enabled: No
Vendor:SENSUS ZZ70000952	SENSUS Annual Support - Water Software Check Total:	1,000.00 1,000.00	07/05/2006	Check Sequence: 33 601-494-9400-43180	ACH Enabled: No
Vendor:SPRINT 0526076028-3	Sprint DataLink - Fire Dept Check Total:	51.14 51.14	07/05/2006	Check Sequence: 34 101-420-2220-43210	ACH Enabled: No

Invoice No	Description	Amount	Payment Date	Acct Number	Reference
Vendor:TASCH 39099	T.A. Schifsky & Sons Sand Mix - Streets Check Total:	53.78 53.78	07/05/2006	Check Sequence: 35 101-430-3100-42240	ACH Enabled: No
Vendor:TITANAPP 228	Titan Apparel & Sportswear Hats, Shirts - Fire Dept Check Total:	545.25 545.25	07/05/2006	Check Sequence: 36 101-420-2220-44170	ACH Enabled: No
Vendor:TKDA	TKDA, Inc.			Check Sequence: 37	ACH Enabled: No
000200602400	Water System Study	1,600.41	07/05/2006	601-494-9400-43030	
000200602403	Water System Interconnection	35,958.21	07/05/2006	601-494-9400-43030	
000200602404	Water Tank	2,040.49	07/05/2006	601-494-9400-43030	
000200602405	Cardinal View, Tapestry, Xing, Sanctuary	6,102.99	07/05/2006	803-490-9070-43030	
000200602406	New PW Building	544.39	07/05/2006	410-480-8000-43030	
000200602407	GIS Mapping & Surface Water	12,611.21	07/05/2006	603-496-9500-43030	
000200602409	Tablyn Pk/LE Hgts Watermain	8,372.14	07/05/2006	202-494-9400-43030	
000200602410	Northern Watermain Extension	433.46	07/05/2006	601-494-9400-43030	
000200602411	New PW Building	111.87	07/05/2006	410-480-8000-43030	
000200602411	Water System, SCADA System	5,322.24	07/05/2006	601-494-9400-43030	
000200602411	Surface Water System, NPDES	4,932.47	07/05/2006	603-496-9500-43030	
000200602411	Trails - Carriage Station Park	1,520.78	07/05/2006	404-480-8000-43030	
000200602411	MSA Reporting & Meetings	111.84	07/05/2006	402-480-8000-43030	
000200602411	Permits, Meetings, Workshops	4,917.03	07/05/2006	101-410-1930-43030	
000200602411	Street Maintenance	2,247.26	07/05/2006	409-480-8000-43030	
000200602414	Manning Ave Construction	439.63	07/05/2006	409-480-8000-43030	
000200602415	Eagle Pt Blvd	3,497.89	07/05/2006	803-490-9070-43030	
	Check Total:	90,764.31			
Vendor:TRAVELER 13186.000	St. Paul Travelers Bond			Check Sequence: 38	ACH Enabled: No
13186.000.002	Pmt. 4, Phase III, Project 13186.000	222,561.78	07/05/2006	601-494-9400-46400	
	Pmt. 5, Phase I, Project 13186.000.002	14,187.83	07/05/2006	601-494-9400-46400	
	Check Total:	236,749.61			
Vendor:TURFWKS TW00877	Turfwerks Repair Cushman Truck - Parks Check Total:	1,184.46 1,184.46	07/05/2006	Check Sequence: 39 101-450-5200-44040	ACH Enabled: No
Vendor:UNIONPAC Fldr # 02374-70	Union Pacific Railroad Company Water Pipeline Crossing	1,500.00	07/05/2006	Check Sequence: 40 601-494-9400-46400	ACH Enabled: No

Invoice No	Description	Amount	Payment Date	Acct Number	Reference
	Check Total:	1,500.00			
Vendor: Universi Horning 552	University of Minnesota Soils Classes - Cont. Education Check Total:	125.00 125.00	07/05/2006	Check Sequence: 41 602-495-9450-44370	ACH Enabled: No
Vendor: WINGFT 124-1036523	Wingfoot Commercial Tire Tire Replacement - Fire Dept Check Total:	704.46 704.46	07/05/2006	Check Sequence: 42 101-420-2220-44040	ACH Enabled: No
Vendor: XCEL 51-4572945-7 51-6429583-8	Xcel Energy Light at 3014 Jamley Ave N. 2759 Legion Ave Check Total:	25.24 12.60 37.84	07/05/2006 07/05/2006	Check Sequence: 43 101-430-3160-43810 101-430-3100-43810	ACH Enabled: No
	Total for Check Run:	1,019,049.72			
	Total Number of Checks:	43			

Lake Elmo City Council 07-05-2006	Agenda Section: CONSENT	<u>No . 4B</u>
<u>Agenda Item: Union Pacific Pipeline Crossing Agreement</u>		
<p><u>Background Information for July 05, 2006:</u> The City is preparing for the construction of a new water main for the Tablyn Park/Lake Elmo Heights neighborhoods. As part of this project, the City will need to enter into an agreement with the Union Pacific Railroad to access their property.</p> <p>Attached please find a Pipeline Crossing Agreement with Union Pacific Railroad which allows the City to Construct and maintain a 12' water pipeline crossing for a one time fee of \$1500.00.</p>		
<u>Action Items:</u> 1. Authorizing the Mayor on the behalf of the City to enter into a Pipeline Crossing Agreement with the Union Pacific Railroad for a one time fee of \$1500.00.	<u>Person responsible:</u> Tom Bouthilet	
<u>Attachments:</u> Union Pacific Pipeline Crossing Agreement		



June 14, 2006
Folder: 02374-70

MR. THOMAS PREW
CITY OF LAKE ELMO, MINNESOTA
3800 LAVERNE AVENUE
LAKE ELMO MN 55042

Re: Proposed 12" Water Pipeline Crossing of Railroad Property at Mile Post 8.51 on the Altoona Subdivision/Branch at or near Lake Elmo, Washington County, Minnesota

Dear Mr. Prew,

Attached are duplicate originals of an agreement covering your use of the Railroad Company's right of way. Please execute or arrange for execution of the attached document and have the signatures witnessed or attested, as indicated. Please RETURN ALL COPIES of the document for execution on behalf of the Railroad Company in the enclosed self-addressed envelope. Your copy of the fully-executed document will be returned to you, if approved by the Railroad Company. Also, please provide a resolution or other authorization for the party executing the documents, and Insurance Certificates, as required by the agreement.

Also attached is Contractor's Right of Entry Agreement which must be executed and returned in accordance with the attached agreement, if work is to be performed by a contractor.

Payment in the amount of **One Thousand Five Hundred Dollars (\$1,500.00)** is due and payable upon your execution of the agreement. Please include your check, **with Folder No. 02374-70 written on the front**, made payable to Union Pacific Railroad Company, with the return of the documents. This agreement will not be accepted by the Railroad Company until the initial payment is received and all Insurance Certificates are in proper form. If you require formal billing, you may consider this letter as a formal bill. In compliance with the Internal Revenue Service's policy regarding Form 1099, I certify that 94-6001323 is the Railroad Company's correct Federal Taxpayer Identification Number and that Union Pacific Railroad Company is doing business as a corporation.

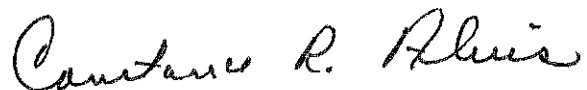
If we have not received the executed documents within six months from the date of this letter, this proposed offer of an agreement is withdrawn and becomes null and void.

Real Estate

UNION PACIFIC RAILROAD
1400 Douglas Street, Stop 1690
Omaha, Nebraska 68179-1690
fx. (402) 501-0340

If you have any questions, please contact me at (402) 544-8553.

Yours truly,

A handwritten signature in cursive script that reads "Constance R. Alvis". The signature is written in dark ink and is positioned above the printed name and title.

Constance R. Alvis
Manager - Contracts

PIPELINE CROSSING AGREEMENT

Mile Post: 8.51, Altoona Subdivision/Branch
Location: Lake Elmo, Washington County, Minnesota

THIS AGREEMENT is made and entered into as of February 22, 2006, by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation, (hereinafter the "Licensor") and **CITY OF LAKE ELMO, MINNESOTA**, a Minnesota municipal corporation to be addressed at 3800 Laverne Avenue, Lake Elmo, Minnesota 55042 (hereinafter the "Licensee").

IT IS MUTUALLY AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:

Article I. LICENSE FEE.

Upon execution of this Agreement, the Licensee shall pay to the Licensor a one-time License Fee of **One Thousand Five Hundred Dollars (\$1,500.00)**.

Article II. LICENSOR GRANTS RIGHT.

In consideration of the License Fee to be paid by the Licensee and in further consideration of the covenants and agreements herein contained to be by the Licensee kept, observed and performed, the Licensor hereby grants to the Licensee the right to construct and thereafter, during the term hereof, to maintain and operate only a

12" water pipeline crossing (hereinafter the "Pipeline")

in the location shown and in conformity with the dimensions and specifications indicated on the attached print dated March 13, 2006, marked Exhibit A. Under no circumstances shall Licensee modify the use of the Pipeline for a purpose other than the above-mentioned, and said Pipeline shall not be used for any other use, whether such use is currently technologically possible, or whether such use may come into existence during the life of this Agreement.

Article III. CONSTRUCTION, MAINTENANCE AND OPERATION.

The grant of right herein made to the Licensee is subject to each and all of the terms, provisions, conditions, limitations and covenants set forth herein and in Exhibit B, attached hereto and hereby made a part hereof.

Article IV. IF WORK IS TO BE PERFORMED BY CONTRACTOR.

If a contractor is to do any of the work performed on the Pipeline (including initial construction and subsequent relocation or substantial maintenance and repair work), then the Licensee shall require its contractor to execute the Railroad's form Contractor's Right of Entry Agreement. Licensee acknowledges

receipt of a copy of the Contractor's Right of Entry Agreement and understanding of its terms, provisions, and requirements, and will inform its contractor of the need to execute the Agreement. Under no circumstances will Licensee's contractor be allowed onto Licensor's premises without first executing the Contractor's Right of Entry Agreement.

Article V. INSURANCE.

A. The Licensee, at its expense, shall obtain the insurance described in Exhibit B-1, hereto attached. The Licensee will also provide to the Licensor a Certificate of Insurance, **identifying Folder No. 02374-70**, issued by its insurance carrier confirming the existence of such insurance and that the policy or policies contain the following endorsement:

UNION PACIFIC RAILROAD COMPANY is named as an additional insured with respect to all liabilities arising out of the existence, use or any work performed on or associated with the 'Pipeline' located on Railroad right-of-way at Mile Post 8.51, on the Altoona Subdivision/Branch, at or near Lake Elmo, Washington County, Minnesota.

B. If the Licensee named in this Agreement is a public entity subject to any applicable statutory tort laws, the limits of insurance described in Exhibit B-1 shall be the limits the Licensee then has in effect or which is required by applicable current or subsequent law, whichever is greater, a portion of which may be self-insured with the consent and approval of the Licensor

C. All insurance correspondence shall be directed to:

Constance R. Alvis
Folder No. 02374-70
Union Pacific Railroad Company
Real Estate Department
1400 Douglas Street STOP 1690
Omaha, NE 68179-1690

Article VI. TERM.

This Agreement shall take effect as of the Effective Date first herein written and shall continue in full force and effect until terminated as herein provided.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first herein written.

UNION PACIFIC RAILROAD COMPANY

CITY OF LAKE ELMO, MINNESOTA

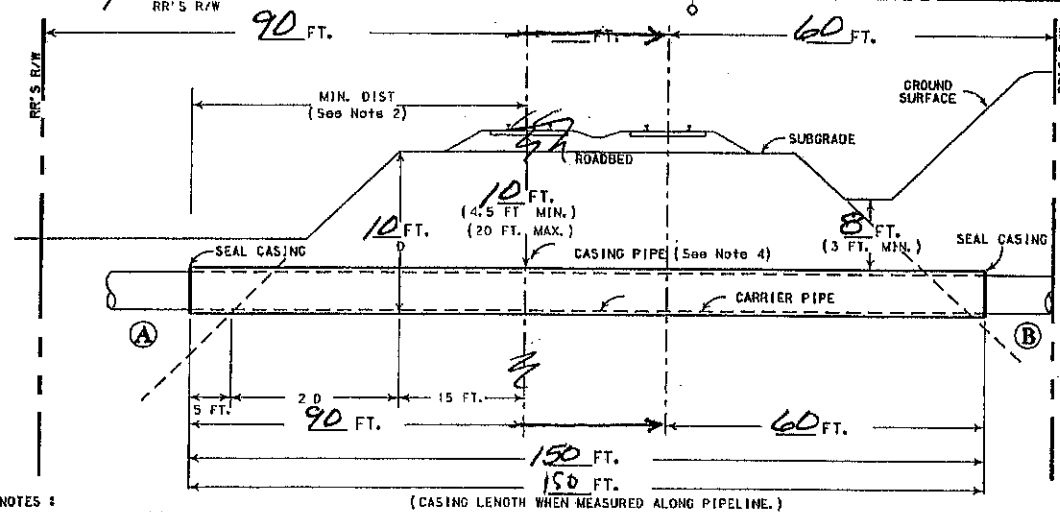
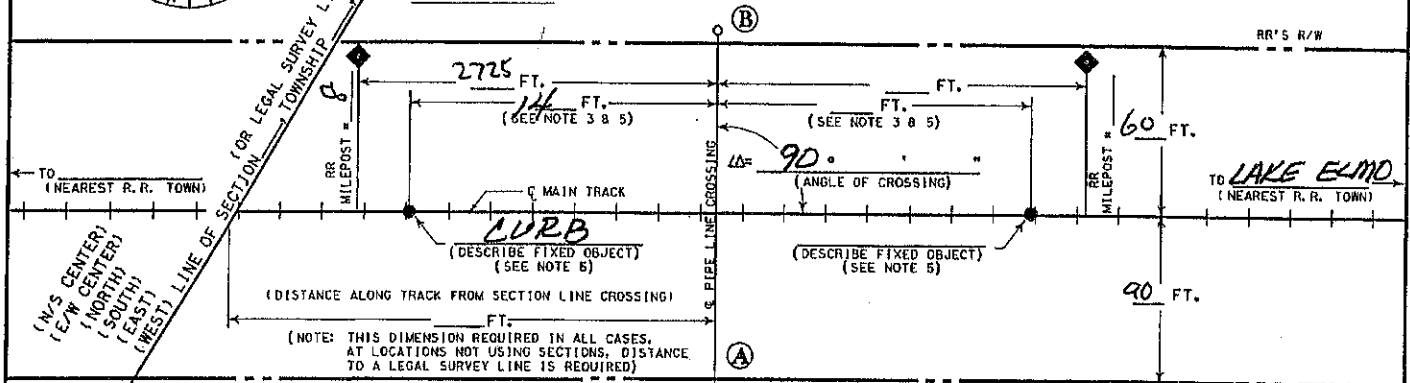
By: _____
 Manager - Contracts

By: _____
 Title: _____

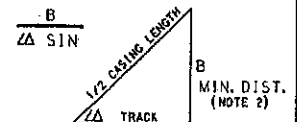
FEB 22 2006

FORM DR-0404-B
REV. 5-15-98PLACE ARROW INDICATING NORTH
DIRECTION RELATIVE TO CROSSINGENCASED NON-FLAMMABLE
PIPELINE CROSSINGNOTE: ALL AVAILABLE DIMENSIONS MUST BE
FILLED IN TO PROCESS THIS APPLICATION.

NO SCALE

STEEL CASING WALL
THICKNESS CHART

MINIMUM THICKNESS	DIAMETER OF CASING PIPE
.2500"	1/4"
.3125"	5/16"
.3750"	3/8"
.4375"	7/16"
.5000"	1/2"
.5625"	9/16"
.6250"	5/8"

OVER 48" MUST BE
APPROVED BY R. R. CO.NOTE: THIS CHART IS ONLY
FOR SMOOTH STEEL CASING
PIPES WITH MINIMUM YIELD
STRENGTH OF 35,000 PSI.FORMULA TO FIGURE CASING
LENGTH WITH ANGLE OF
CROSSING OTHER THAN 90°

NOTES:

- ALL HORIZONTAL DISTANCES TO BE MEASURED AT RIGHT ANGLES FROM C. OF TRACK.
- CASING TO EXTEND BEYOND THE C. OF TRACK AT RIGHT ANGLES THE GREATER OF 20 + 20 FT., OR 30 FT., AND BEYOND LIMIT OF RAILROAD RIGHT-OF-WAY IF NECESSARY TO PROVIDE PROPER LENGTH OUTSIDE OF TRACK.
- MINIMUM OF 50' FROM THE END OF ANY RAILROAD BRIDGE, C. OF ANY CULVERT, OR FROM ANY SWITCHING AREA.
- SIGNAL REPRESENTATIVE MUST BE PRESENT DURING INSTALLATION IF RAILROAD SIGNALS ARE IN THE VICINITY OF CROSSING.
- ALLOWABLE FIXED OBJECTS INCLUDE: BACKWALLS OF BRIDGES; C. OF ROAD CROSSINGS OR OVERHEAD VIADUCTS (GIVE ROAD NAME), OR CULVERTS.
- CASING AND CARRIER PIPE MUST BE PLACED A MINIMUM OF 2 FEET BELOW THE EXISTING FIBER OPTIC CABLE. ANY EXCAVATION REQUIRED WITHIN 5 FEET OF THE EXISTING FIBER OPTIC CABLE MUST BE HAND DUG.

- A) IS PIPELINE CROSSING WITHIN DEDICATED STREET? YES; NO;
B) IF YES, NAME OF STREET IDEAL AVE. N. (CSAH 13)
C) DISTRIBUTION LINE _____ OR TRANSMISSION LINE _____
D) CARRIER PIPE:
COMMODITY TO BE CONVEYED WATER
OPERATING PRESSURE 80 PSI
WALL THICKNESS CL-52; DIAMETER 12"; MATERIAL DIP;
E) CASING PIPE:
WALL THICKNESS 7/16"; DIAMETER 24"; MATERIAL STEEL;
NOTE: CASING MUST HAVE 2" CLEARANCE BETWEEN GREATEST
OUTSIDE DIAMETER OF CARRIER PIPE AND INTERIOR DIAMETER OF
CASING PIPE. WHEN FURNISHING DIMENSIONS, GIVE OUTSIDE OF
CARRIER PIPE AND INSIDE OF CASING PIPE.
F) METHOD OF INSTALLING CASING PIPE UNDER TRACK(S):
X DRY BORE AND JACK (WET BORE NOT PERMITTED);
TUNNEL; OTHER _____
G) WILL CONSTRUCTION BE BY AN OUTSIDE CONTRACTOR? X YES; _____ NO;
H) DISTANCE FROM CENTER LINE OF TRACK TO NEAR FACE OF BORING AND
JACKING PITS WHEN MEASURED AT RIGHT ANGLES TO TRACK 60 (30' MIN.)
I) APPLICANT HAS CONTACTED 1-800-336-9193,
U. P. COMMUNICATION DEPARTMENT, AND HAS DETERMINED FIBER
OPTIC CABLE X DOES; _____ DOES NOT; EXIST IN VICINITY OF
WORK TO BE PERFORMED. TICKET NO. 2006-0209021

EXHIBIT "A"

(FOR RAILROAD USE ONLY)

UNION PACIFIC RAILROAD CO.

ALTOONA

(SUBDIVISION)

M. P. 8.51 E. S. 398+13±ENCASED Pipeline CROSSING ATLAKE ELMO WASHINGTON IND.

(NEAREST CITY)

(COUNTY)

(STATE)

CITY OF LAKE ELMO

(APPLICANT)

RR FILE NO. 2374-70 DATE 3-13-06

WARNING

IN ALL OCCASIONS, U. P. COMMUNICATIONS
DEPARTMENT MUST BE CONTACTED IN ADVANCE
OF ANY WORK TO DETERMINE EXISTENCE AND
LOCATION OF FIBER OPTIC CABLE.
PHONE: 1-800-336-9193



EXHIBIT B

Section 1. LIMITATION AND SUBORDINATION OF RIGHTS GRANTED.

(a) The foregoing grant of right is subject and subordinate to the prior and continuing right and obligation of the Licensor to use and maintain its entire property including the right and power of the Licensor to construct, maintain, repair, renew, use, operate, change, modify or relocate railroad tracks, signal, communication, fiber optics, or other wirelines, pipelines and other facilities upon, along or across any or all parts of its property, all or any of which may be freely done at any time or times by the Licensor without liability to the Licensee or to any other party for compensation or damages.

(b) The foregoing grant is also subject to all outstanding superior rights (including those in favor of licensees and lessees of the Licensor's property, and others) and the right of the Licensor to renew and extend the same, and is made without covenant of title or for quiet enjoyment.

Section 2. CONSTRUCTION, MAINTENANCE AND OPERATION.

(a) The Pipeline shall be constructed, operated, maintained, repaired, renewed, modified and/or reconstructed by the Licensee in strict conformity with Union Pacific Railroad Co. Common Standard Specification 1029 adopted November 1949, and all amendments thereof and supplements thereto, which by this reference is hereby made a part hereof, except as may be modified and approved by the Licensor's Vice President-Engineering Services. In the event such Specification conflicts in any respect with the requirements of any federal, state or municipal law or regulation, such requirements shall govern on all points of conflict, but in all other respects the Specification shall apply.

(b) All work performed on property of the Licensor in connection with the construction, maintenance, repair, renewal, modification or reconstruction of the Pipeline shall be done to the satisfaction of the Licensor.

(c) Prior to the commencement of any work in connection with the construction, maintenance, repair, renewal, modification, relocation, reconstruction or removal of the Pipeline where it passes underneath the roadbed and track or tracks of the Licensor, the Licensee shall submit to the Licensor plans setting out the method and manner of handling the work, including the shoring and cribbing, if any, required to protect the Licensor's operations, and shall not proceed with the work until such plans have been approved by the Vice President-Engineering Services of the Licensor and then the work shall be done to the satisfaction of the Vice President-Engineering Services or his authorized representative. The Licensor shall have the right, if it so elects, to provide such support as it may deem necessary for the safety of its track or tracks during the time of construction, maintenance, repair, renewal, modification, relocation, reconstruction or removal of the Pipeline, and, in the event the Licensor provides such support, the Licensee shall pay to the Licensor, within fifteen (15) days after bills shall have been rendered therefor, all expense incurred by the Licensor in connection therewith, which expense shall include all assignable costs.

(d) The Licensee shall keep and maintain the soil over the Pipeline thoroughly compacted and the grade even with the adjacent surface of the ground.

Real Estate

Section 3. NOTICE OF COMMENCEMENT OF WORK.

If an emergency should arise requiring immediate attention, the Licensee shall provide as much notice as practicable to Licensor before commencing any work. In all other situations, the Licensee shall notify the Licensor at least ten (10) days (or such other time as the Licensor may allow) in advance of the commencement of any work upon property of the Licensor in connection with the construction, maintenance, repair, renewal, modification, reconstruction, relocation or removal of the Pipeline. All such work shall be prosecuted diligently to completion.

Section 4. LICENSEE TO BEAR ENTIRE EXPENSE.

The Licensee shall bear the entire cost and expense incurred in connection with the construction, maintenance, repair and renewal and any and all modification, revision, relocation, removal or reconstruction of the Pipeline, including any and all expense which may be incurred by the Licensor in connection therewith for supervision, inspection, flagging, or otherwise.

Section 5. REINFORCEMENT, RELOCATION OR REMOVAL OF PIPELINE.

(a) The license herein granted is subject to the needs and requirements of the Licensor in the operation of its railroad and in the improvement and use of its property, and the Licensee shall, at the sole expense of the Licensee, reinforce the Pipeline, or move all or any portion of the Pipeline to such new location as the Licensor may designate, whenever, in the furtherance of its needs and requirements, the Licensor shall find such action necessary or desirable.

(b) All the terms, conditions and stipulations herein expressed with reference to the Pipeline on property of the Licensor in the location hereinbefore described shall, so far as the Pipeline remains on the property, apply to the Pipeline as modified, changed or relocated within the contemplation of this section.

Section 6. NO INTERFERENCE WITH LICENSOR'S OPERATION.

The Pipeline and all parts thereof within and outside of the limits of the property of the Licensor shall be constructed and, at all times, maintained, repaired, renewed and operated in such manner as to cause no interference whatsoever with the constant, continuous and uninterrupted use of the tracks, property and facilities of the Licensor, and nothing shall be done or suffered to be done by the Licensee at any time that would in any manner impair the safety thereof.

Section 7. PROTECTION OF FIBER OPTIC CABLE SYSTEMS.

(a) Fiber optic cable systems may be buried on the Licensor's property. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. Licensee shall telephone the Licensor at 1-800-336-9193 (a 24-hour number) to determine if fiber optic cable is buried anywhere on the Licensor's premises to be used by the Licensee. If it is, Licensee will telephone the telecommunications company(ies) involved, arrange for a cable locator, make arrangements for relocation or other protection of the fiber optic cable, all at Licensee's expense, and will commence no work on the right of way until all such protection or relocation has been accomplished. Licensee shall indemnify and hold the Licensor harmless from and against all costs, liability and expense whatsoever (including, without limitation, attorneys' fees, court costs and expenses) arising out of or caused in any way by Licensee's failure to comply with the provisions of this paragraph.

(b) In addition to other indemnity provisions in this Agreement, the Licensee shall indemnify and hold the Licensor harmless from and against all costs, liability and expense whatsoever (including, without limitation, attorneys' fees, court costs and expenses) caused by the negligence of the Licensee, its contractor, agents and/or employees, resulting in (1) any damage to or destruction of any telecommunications system on Licensor's property, and/or (2) any injury to or death of any person employed by or on behalf of any telecommunications company, and/or its contractor, agents and/or employees, on Licensor's property, except if such costs, liability or expenses are caused solely by the direct active negligence of the Licensor. Licensee further agrees that it shall not have or seek recourse against Licensor for any claim or cause of action for alleged loss of profits or revenue or loss of service or other consequential damage to a telecommunication company using Licensor's property or a customer or user of services of the fiber optic cable on Licensor's property.

Section 8. CLAIMS AND LIENS FOR LABOR AND MATERIAL; TAXES.

(a) The Licensee shall fully pay for all materials joined or affixed to and labor performed upon property of the Licensor in connection with the construction, maintenance, repair, renewal, modification or reconstruction of the Pipeline, and shall not permit or suffer any mechanic's or materialman's lien of any kind or nature to be enforced against the property for any work done or materials furnished thereon at the instance or request or on behalf of the Licensee. The Licensee shall indemnify and hold harmless the Licensor against and from any and all liens, claims, demands, costs and expenses of whatsoever nature in any way connected with or growing out of such work done, labor performed, or materials furnished.

(b) The Licensee shall promptly pay or discharge all taxes, charges and assessments levied upon, in respect to, or on account of the Pipeline, to prevent the same from becoming a charge or lien upon property of the Licensor, and so that the taxes, charges and assessments levied upon or in respect to such property shall not be increased because of the location, construction or maintenance of the Pipeline or any improvement, appliance or fixture connected therewith placed upon such property, or on account of the Licensee's interest therein. Where such tax, charge or assessment may not be separately made or assessed to the Licensee but shall be included in the assessment of the property of the Licensor, then the Licensee shall pay to the Licensor an equitable proportion of such taxes determined by the value of the Licensee's property upon property of the Licensor as compared with the entire value of such property.

Section 9. RESTORATION OF LICENSOR'S PROPERTY.

In the event the Licensor authorizes the Licensee to take down any fence of the Licensor or in any manner move or disturb any of the other property of the Licensor in connection with the construction, maintenance, repair, renewal, modification, reconstruction, relocation or removal of the Pipeline, then in that event the Licensee shall, as soon as possible and at Licensee's sole expense, restore such fence and other property to the same condition as the same were in before such fence was taken down or such other property was moved or disturbed, and the Licensee shall indemnify and hold harmless the Licensor, its officers, agents and employees, against and from any and all liability, loss, damages, claims, demands, costs and expenses of whatsoever nature, including court costs and attorneys' fees, which may result from injury to or death of persons whomsoever, or damage to or loss or destruction of property whatsoever, when such injury, death, damage, loss or destruction grows out of or arises from the taking down of any fence or the moving or disturbance of any other property of the Licensor.

Section 10. INDEMNITY.

(a) As used in this Section, "Licensor" includes other railroad companies using the Licensor's property at or near the location of the Licensee's installation and their officers, agents, and employees; "Loss" includes loss, damage, claims, demands, actions, causes of action, penalties, costs, and expenses of whatsoever nature, including court costs and attorneys' fees, which may result from: (a) injury to or death of persons whomsoever (including the Licensor's officers, agents, and employees, the Licensee's officers, agents, and employees, as well as any other person); and/or (b) damage to or loss or destruction of property whatsoever (including Licensee's property, damage to the roadbed, tracks, equipment, or other property of the Licensor, or property in its care or custody).

(b) As a major inducement and in consideration of the license and permission herein granted, the Licensee agrees to indemnify and hold harmless the Licensor from any Loss which is due to or arises from:

1. The prosecution of any work contemplated by this Agreement including the installation, construction, maintenance, repair, renewal, modification, reconstruction, relocation, or removal of the Pipeline or any part thereof; or
2. The presence, operation, or use of the Pipeline or contents escaping therefrom,

except to the extent that the Loss is caused by the sole and direct negligence of the Licensor.

Section 11. REMOVAL OF PIPE LINE UPON TERMINATION OF AGREEMENT.

Prior to the termination of this Agreement howsoever, the Licensee shall, at Licensee's sole expense, remove the Pipeline from those portions of the property not occupied by the roadbed and track or tracks of the Licensor and shall restore, to the satisfaction of the Licensor, such portions of such property to as good a condition as they were in at the time of the construction of the Pipeline. If the Licensee fails to do the foregoing, the Licensor may do such work of removal and restoration at the cost and expense of the Licensee. The Licensor may, at its option, upon such termination, at the entire cost and expense of the Licensee, remove the portions of the Pipeline located underneath its roadbed and track or tracks and restore such roadbed to as good a condition as it was in at the time of the construction of the Pipeline, or it may permit the Licensee to do such work of removal and restoration to the satisfaction of the Licensor. In the event of the removal by the Licensor of the property of the Licensee and of the restoration of the roadbed and property as herein provided, the Licensor shall in no manner be liable to the Licensee for any damage sustained by the Licensee for or on account thereof, and such removal and restoration shall in no manner prejudice or impair any right of action for damages, or otherwise, that the Licensor may have against the Licensee.

Section 12. WAIVER OF BREACH.

The waiver by the Licensor of the breach of any condition, covenant or agreement herein contained to be kept, observed and performed by the Licensee shall in no way impair the right of the Licensor to avail itself of any remedy for any subsequent breach thereof.

Section 13. TERMINATION.

(a) If the Licensee does not use the right herein granted or the Pipeline for one (1) year, or if the Licensee continues in default in the performance of any covenant or agreement herein contained for a period of thirty (30) days after written notice from the Licensor to the Licensee specifying such default, the Licensor may, at its option, forthwith immediately terminate this Agreement by written notice.

(b) In addition to the provisions of subparagraph (a) above, this Agreement may be terminated by written notice given by either party hereto to the other on any date in such notice stated, not less, however, than thirty (30) days subsequent to the date upon which such notice shall be given.

(c) Notice of default and notice of termination may be served personally upon the Licensee or by mailing to the last known address of the Licensee. Termination of this Agreement for any reason shall not affect any of the rights or obligations of the parties hereto which may have accrued, or liabilities, accrued or otherwise, which may have arisen prior thereto.

Section 14. AGREEMENT NOT TO BE ASSIGNED.

The Licensee shall not assign this Agreement, in whole or in part, or any rights herein granted, without the written consent of the Licensor, and it is agreed that any transfer or assignment or attempted transfer or assignment of this Agreement or any of the rights herein granted, whether voluntary, by operation of law, or otherwise, without such consent in writing, shall be absolutely void and, at the option of the Licensor, shall terminate this Agreement.

Section 15. SUCCESSORS AND ASSIGNS.

Subject to the provisions of Section 14 hereof, this Agreement shall be binding upon and inure to the benefit of the parties hereto, their heirs, executors, administrators, successors and assigns.



EXHIBIT B-1

**Union Pacific Railroad
Contract Insurance Requirements**

Pipeline, Wireline, Drainage Agreement on Union Pacific Property

Licensee shall, at its sole cost and expense, procure and maintain during the life of this Agreement (except as otherwise provided in this Agreement) the following insurance coverage:

A. Commercial General Liability insurance. Commercial general liability (CGL) with a limit of not less than \$2,000,000 each occurrence and an aggregate limit of not less than \$4,000,000. CGL insurance must be written on ISO occurrence form CG 00 01 12 04 (or a substitute form providing equivalent coverage).

The policy must also contain the following endorsement, which must be stated on the certificate of insurance:

- Contractual Liability Railroads ISO form CG 24 17 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Railroad Company Property" as the Designated Job Site.

B. Business Automobile Coverage insurance. Business auto coverage written on ISO form CA 00 01 (or a substitute form providing equivalent liability coverage) with a combined single limit of not less \$2,000,000 for each accident.

The policy must contain the following endorsements, which must be stated on the certificate of insurance:

- Coverage For Certain Operations In Connection With Railroads ISO form CA 20 70 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Property" as the Designated Job Site.
- Motor Carrier Act Endorsement - Hazardous materials clean up (MCS-90) if required by law.

C. Workers Compensation and Employers Liability insurance. Coverage must include but not be limited to:

- Licensee's statutory liability under the workers' compensation laws of the state(s) affected by this Agreement.
- Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 disease policy limit \$500,000 each employee.

If Licensee is self-insured, evidence of state approval and excess workers compensation coverage must be provided. Coverage must include liability arising out of the U. S. Longshoremen's and Harbor Workers' Act, the Jones Act, and the Outer Continental Shelf Land Act, if applicable.

The policy must contain the following endorsement, which must be stated on the certificate of insurance:

- Alternate Employer endorsement ISO form WC 00 03 01 A (or a substitute form providing equivalent coverage) showing Railroad in the schedule as the alternate employer (or a substitute form providing equivalent coverage).

D. Umbrella or Excess insurance. If Licensee utilizes umbrella or excess policies, these policies must "follow form" and afford no less coverage than the primary policy.

Real Estate

UNION PACIFIC RAILROAD
1400 Douglas Street, Stop 1690
Omaha, Nebraska 68179-1690
fx. (402) 501-0340

Other Requirements

E. All policy(ies) required above (except worker's compensation and employers liability) must include Railroad as "Additional Insured" using ISO Additional Insured Endorsements CG 20 26, and CA 20 48 (or substitute forms providing equivalent coverage). The coverage provided to Railroad as additional insured shall, to the extent provided under ISO Additional Insured Endorsement CG 20 26, and CA 20 48 provide coverage for Railroad's negligence whether sole or partial, active or passive, and shall not be limited by Licensee's liability under the indemnity provisions of this Agreement.

F. Punitive damages exclusion, if any, must be deleted (and the deletion indicated on the certificate of insurance), unless (a) insurance coverage may not lawfully be obtained for any punitive damages that may arise under this agreement, or (b) all punitive damages are prohibited by all states in which this agreement will be performed.

G. Licensee waives all rights against Railroad and its agents, officers, directors and employees for recovery of damages to the extent these damages are covered by the workers compensation and employers liability or commercial umbrella or excess liability insurance obtained by Licensee required by this agreement.

H. Prior to commencing the work, Licensee shall furnish Railroad with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements in this Agreement.

I. All insurance policies must be written by a reputable insurance company acceptable to Railroad or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the work is to be performed.

J. The fact that insurance is obtained by Licensee or by Railroad on behalf of Licensee will not be deemed to release or diminish the liability of Licensee, including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by Railroad from Licensee or any third party will not be limited by the amount of the required insurance coverage.

8A.

CITY OF LAKE ELMO
WASHINGTON COUNTY, MINNESOTA

RESOLUTION NO. 2006-063

A RESOLUTION ORDERING IMPROVEMENT
FOR 2006 OVERLAYS ON IRVIN COURT, IRVIN CIRCLE, ISLE AVENUE,
IVY COURT, AND JAMACA COURT

WHEREAS, a resolution of the city council adopted the 20th of June, 2006, fixed a date for a council hearing on the proposed improvement of Irvin Court, Irvin Circle, Isle Avenue, Ivy Court, and Jamaca Court; and

WHEREAS, ten days' mailed notice and two weeks' published notice of the hearing was given, and the hearing was held thereon the 5th day of July, 2006, at which all persons desiring to be heard were given an opportunity to be heard thereon.

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

1. Such improvement is 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 5th of July, 2006.
3. Tom Prew, TKDA & Associates, 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.

ADOPTED by the Lake Elmo City Council this 5th day of July, 2006

Dean A. Johnston, Mayor

ATTEST:

Martin J. Rafferty, City Administrator
City Administrator

CITY OF LAKE ELMO
WASHINGTON COUNTY, MINNESOTA

RESOLUTION NO. 2006-064

A RESOLUTION ORDERING IMPROVEMENT
FOR 2006 MSA RESURFACING ON 45TH STREET, JULEP AVENUE,
AND 47TH STREET

WHEREAS, a resolution of the city council adopted the 20th of June, 2006, fixed a date for a council hearing on the proposed improvement of 45TH Street, Julep Avenue, and 47th Street; and

WHEREAS, ten days' mailed notice and two weeks' published notice of the hearing was given, and the hearing was held thereon the 5th day of July, 2006, at which all persons desiring to be heard were given an opportunity to be heard thereon.

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

1. Such improvement is 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 5th of July, 2006.
3. Tom Prew, TKDA & Associates, 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.

ADOPTED by the Lake Elmo City Council this 5th day of July, 2006

Dean A. Johnston, Mayor

ATTEST:

Martin J. Rafferty, City Administrator
City Administrator

June 29, 2006

Honorable Mayor and City Council
City of Lake Elmo, Minnesota

Re: Approve Plans and Specifications
Eagle Point Boulevard
City of Lake Elmo, Minnesota
TKDA Project No. 13649.000

Dear Mayor and City Council:

Plans and specifications are complete for Eagle Point Boulevard, south of Hudson Boulevard.

The street design mirrors the existing Eagle Point Boulevard design and includes a landscaped cul-de-sac island. A right turn lane from east bound Hudson Boulevard into the site is also included.

The developer will be installing the improvements and the City will perform construction inspection on it.

City Council Action Requested

Approve plans for the Eagle Point Boulevard.

Sincerely;

Thomas D. Prew, P. E.
City Engineer

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

**RESOLUTION NO. 2006-065
A RESOLUTION APPROVING PLANS AND SPECIFICATIONS AND
ORDERING ADVERTISEMENT FOR BIDS
FOR EAGLE POINT BOULEVARD**

WHEREAS, the City Engineer has prepared plans and specifications for the Eagle Point Boulevard and has presented such plans and specifications to the Council for approval.

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

1. Such plans and specifications, a copy of which is attached hereto and made a part hereof, are hereby approved.
2. Th City Clerk shall prepare and cause to be inserted in the official paper and in the Construction Bulletin an advertisement for bids upon the making of such improvement under such approved plans and specifications. The advertisement shall be published for two weeks, shall specify the work to be done, shall state that bids will be opened and considered by the Council at the _____ Council meeting, in the Council chambers of the City Hall, and that no bids will be considered unless sealed and filed with the clerk and accompanied by a cash deposit, cashier's check, bid bond, or certified check payable to the clerk for 5% of the amount of such bid.

ADOPTED BY THE COUNCIL this 5th day of July, 2006.

Dean A. Johnston, Mayor

ATTEST:

Martin J. Rafferty, City Administrator

Lake Elmo City Council July 5, 2006	Agenda Section: Planning, Land Use and Zoning	<u>No.</u> 9A
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Agenda Item: Zoning Ordinance Text Interpretation – Accessory Buildings

Background Information for July 5, 2006:

Staff has recently discovered what appears to be a wording problem within the table of the Zoning Ordinance that prescribes the number and allowable area of accessory structures in the various zoning districts. The nature of the possible problem is fully described by the attached June 22 Memo by Staff to the Planning Commission – essentially involving whether certain area standards where multiple buildings are other wise permitted are intended to be aggregated or individual, as well as the possible logic (or illogic) in the manner the standards are now written.

On June 26 the Planning Commission considered the questions raised by staff in this regard at length. The Commission's conclusion (and resulting recommendation to the Council) is that the term "combined" is used where the ordinance describes multiple buildings in the R1, RED, and OP section of the table. If the intent of the drafters had been to aggregate the stated allowable area then the term "combined" would have been used along with the terms "total area" in the text of the "Agricultural (Non-conforming)" of the subject table.

The Commission did consider recommending a formal amendment to that end, but concluded that a simple interpretation direction should suffice pending completion of the new zoning ordinance – where additional modifications to Accessory Building standards are likely as well.

Action items:

Motion directing staff regarding the interpretation of the terms "total area" contained within the "Agricultural – Non-conforming" paragraph of the table in Section 300.07 Subd. 4.B.2.b. of the City Code.

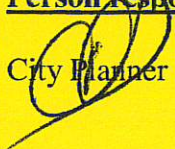
Person responsible:

City Planner 

Attachments:

1. Draft Planning Commission Minutes of June 26, 2006
2. Planning Staff Memo and Attachment of June 22, 2006

Time Allocated:

Lake Elmo City Council July 5, 2006	Agenda Section: Planning, Land Use and Zoning	<u>No.</u> 9B
<u>Agenda Item:</u> Final Plat and Development Agreement – Hidden Meadows 2 nd Addition		
<p><u>Background Information for July 5, 2006:</u></p> <p>An application for Final Plat of Hidden Meadows 2nd Addition has been presented for City Council approval. This Final Plat is for the 69.68 acre residential (OP) portion of the Rock Point Church site at 59th Street North and Keats Avenue, and plats 25 lots and the remaining street right-of-way not platted with the Rockpoint Church Final Plat. The Preliminary Plat was approved on April 18, 2006.</p> <p>Staff has prepared a Development Agreement including content and format similar to those of prior OP plats. The City Forester has reviewed and approved the Final Landscape Plan. Note that the City Engineer has determined that the primary drainfield setback to the west property line is (and always was) 100 feet or more. The applicant has delineated a secondary drainfield site, and the water main/trail easements thereon will be provided in written format rather than by plat notation – the usual method for these types of easements.</p> <p>As this is written the City Attorney is continuing review of the various Covenants/Declarations/Easements that will be required prior to release of the plat by the City for recording. The Conservation Easement over the Preserved Open Space may be held by the City rather than the Land Trust – as is permitted by the Zoning Ordinance. The applicant and the Land Trust are still conversing on those matters. In no case can the plat be released for recording prior to the Conservation Easement (as well as the other required written easements) being provided to either the City or the Land Trust or both.</p>		
<p><u>Action items:</u> 066</p> <p>Motion to adopt Resolution #2006 - approving the Final Plat and Development Agreement for Hidden Meadows 2nd Addition.</p>	<p><u>Person responsible:</u></p> <p>City Planner </p>	
<p><u>Attachments:</u> 066</p> <ol style="list-style-type: none"> 1. Draft Resolution #2006 - Approving Final Plat and DA 2. Draft Development Agreement 3. Final Plat 038 4. Resolution #2006 – Approving Preliminary Plat 5. Approved Preliminary Plat 	<p><u>Time Allocated:</u></p>	

CITY OF LAKE ELMO
WASHINGTON COUNTY, MINNESOTA

RESOLUTION NO. 2006-066

A RESOLUTION APPROVING THE FINAL PLAT AND DEVELOPMENT
AGREEMENT FOR HIDDEN MEADOWS 2ND ADDITION

WHEREAS, the Lake Elmo Planning Commission reviewed the preliminary plat of HIDDEN MEADOWS 2ND ADDITION on March 27, 2006;

WHEREAS, the Lake Elmo City Council considered and approved on April 18, 2006 the preliminary plat of HIDDEN MEADOWS 2ND ADDITION;

WHEREAS, the Final Plat and Development Agreement of HIDDEN MEADOWS 2ND ADDITION presented to the City Council conforms to the standards of Section 400 of the City Code.

NOW, THEREFORE BE IT RESOLVED, that the Lake Elmo City Council does hereby approve and accept the Final Plat and Development Agreement of HIDDEN MEADOWS 2ND ADDITION as the same on file with the City Administrator subject to the following conditions:

1. Compliance with the recommendations/requirements of the City Engineer.
2. Compliance with the recommendations/requirements of the Valley Branch Watershed District as found to be appropriate by the City Engineer.
3. Trail setback to the Ziertman property be increased and screening be considered in the Landscape Plan.
4. Confirm drain field setback is to be 100' feet from property line.
5. Provide size and delineation of the alternate drain field.
6. Secondary drain field have the appropriate easement for trail use.
7. A trail easement be added to the proposed waterman easement.

ADOPTED by the Lake Elmo City Council this 5th day of July, 2006.

Dean A. Johnston, Mayor

ATTEST:

Martin J, Rafferty, City Administrator

DEVELOPMENT AGREEMENT

CITY OF LAKE ELMO

Draft 6/30/06

- 1.00 Parties. This Agreement is dated the day of 2005, and is entered into by and between City of Lake Elmo, a Minnesota municipal corporation (herein "**City**"); and Hidden Meadows Development, LLC, a Minnesota limited liability company (herein "**Developer**").
- 2.00 Property Description. The Developer represents that it is the record fee owner of property described on **Exhibit A**, attached and incorporated herein, which will be platted as Hidden Meadows of Lake Elmo 2nd Addition.
- 3.00 Final Plat Approval. On the day of , 2005, the City Council approved the final plat of Hidden Meadows of Lake Elmo 2nd Addition, which is attached and incorporated as **Exhibit B** . The City's approval was conditioned upon the Developer entering into this Development Contract.
- 4.00 Terms and Conditions. NOW, THEREFORE, in reliance upon the representations contained herein; in compliance with the City's Zoning and Subdivision Regulations; and in consideration of the mutual undertakings herein expressed, the parties agree as follows:
 - 4.01 Developer Improvements. The Developer shall construct the following improvements in compliance with plans and specifications which have been reviewed and approved by the City's Consulting Engineer, which are attached and incorporated herein as **Exhibit** :
 - A. Site Grading and Turf Restoration. Site grading improvements shall include common excavation, subgrade correction, embankment and pond excavation. Turf restoration shall include seeding, mulching and erosion control.
 1. Site Grading Improvements shall be completed on or before the 15th day of June, 2007.
 2. Turf restoration improvements shall be completed on or before the 30th day of November, 2007.
 - B. Landscaping. Developer shall complete all landscaping improvements on or before the 30th day of November, 2007 .

C. Storm Sewer. Storm sewer improvements include all necessary storm sewers, catch basins, culverts, and other apparatus. Storm sewer improvements shall be completed by the 30th day of November, 2006.

D. Street Improvements. Street improvements include subgrade preparation, gravel base, bituminous surfacing, bituminous curb and concrete curbs, where required.

1. Unusable material within the roadway shall be removed by the Developer.

2. All subgrade excavation and filling shall be completed by the Developer in accordance with MNDOT's specifications. The City reserves the right to test as necessary, at the Developer's expense, all grading work. A test roll of the street subgrade shall be passed prior to acceptance of the subgrade by the City.

3. Subgrade and the initial course of street improvements shall be completed by the 1st day of July, 2007. The final wear course of the street shall be completed by the 1st day of July, 2008.

E. Waste Water Treatment System/Drain Field. The waste water treatment system/drain field shall be comprised of a series of pipes, septic tanks, treatment ponds, drain fields and appurtenances, and shall be completed prior to the issuance of any certificates of occupancy.

F. Street Signs. The City will order and install street signs. The Developer shall pay for all costs incurred by the City.

G. Water Main. Water main improvements include pipes, hydrants and appurtenances and shall be completed on or before the 30th day of November, 2007. Developer is over-sizing water mains and the City shall reimburse Developer in the amount of \$38,785 for such over-sizing.

4.02 Estimated Cost of Developer Secured Improvements. The estimated costs of Developer constructed improvements are as follows:

Improvement

Estimated Cost

Site Grading/Turf Restoration

Valley Branch

Landscaping	\$ 113,000
Storm Sewer	\$ 143,780
Street Improvements	\$ 243,750
Waste Water Treatment System/Drain Fields	\$ 261,800
Sanitary Sewer Collection	\$ 197,000
Street Signs	\$ 500
Trails	\$ 43,500
Water Mains	\$ 160,535
Subtotal	\$1,163,865

Total Security Required (125% of
Improvements)

\$1,454,831

- 4.03 Improvement Security. Prior to the City's endorsement of approval on the final plat, the Developer shall deposit security with the City Administrator in an amount equal to 125% of the City Engineer's estimate of the cost of constructing the Developer secured improvements which have not been completed and accepted by the City prior to final plat approval. The security may be in the form of a cash escrow fund, a performance bond, or a letter of credit. The form of security shall be approved by the City Attorney.
- 4.04 Reduction of Security. Upon completion of required improvements for the Property and acceptance by the City, the City Council shall reduce the amount of security for the completed improvements provided that in no case shall the total remaining security be equal to less than 125% of the estimated costs of the incomplete improvements.
- 4.05 Administrative Fees. Developer agrees to pay an administrative fee to the City in an amount equal to 2.5% of the Developer's secured improvements. The administrative fee for this project equals \$29,096.
- 4.06 Utility Company Improvements. The utility improvements include underground gas, electric, and telephone service as installed by the appropriate utility company at the direction of the Developer. The Developer shall arrange for the installation of underground gas, electric, telephone and cable television before the final lift is started. Utility improvements shall be completed by the 31st day of July, 2007.
- 4.07 Recording Requirements. Prior to the conveyance of any of the lots in Hidden Meadows of Lake Elmo 2nd Addition, and except as hereinafter provided, prior to the issuance of any development permits, the Developer shall provide the City with evidence that the following documents have been recorded.

- A. Plat.
 - B. A Declaration of Covenants in a form approved by the City's Attorney. The Declaration of Covenants shall include the following provisions:
 - 1. Require the Homeowner Association to be responsible for the Owner's obligations as contained in the appropriate Conservation or Open Space Easements.
 - 2. Require the Homeowner Association to maintain and operate the waste water treatment system/drain field.
 - 3. Provide that, in the event of a failure by the Homeowner Association to satisfy the obligations defined in Section 4.07B and its subdivisions of this Development Agreement, as determined by the City's Consulting Engineer, the City may undertake such obligations and assess all costs incurred to the Homeowner Association; and in such event, the Developer for itself and for the Homeowner Association hereby waives the requirements otherwise imposed by MS 429.
 - 4. Provide that any provisions in the Covenants relating to the obligations defined in Section 4.07B and its subdivisions of this Development Agreement may not be repealed or amended without consent of the City.
 - C. Homeowner Association Articles of Incorporation.
 - E. A Conservation Easement from the property owner to the Minnesota Land Trust and/or the City, attached and incorporated as herein **Exhibit** .
 - F. The public railway easement attached and incorporated herein as **Exhibit** .
 - G. Valley Branch Watershed District permit.
- 4.08 Public Use Dedication. The Developer's public use dedication requirement for Hidden Meadows of Lake Elmo 2nd Addition shall consist of the following:
- A. a payment in the amount of \$142,600;

- B. the dedication or conveyance of the public trail easement; and
 - C. the construction of the public railway per plans approved by the City Engineer at a cost to the Developer of \$24,000.
- 4.09 Inspection. The City, through its City Engineer, shall provide for competent inspection during construction of publicly dedicated infrastructure and private waste water treatment systems/drain fields. The Developer shall pay the City the amount of \$30,000 to compensate the City for construction inspection services. The City Engineer shall provide continuous inspections at the site to ensure that the Developer and its contractors are in compliance with the terms of this Agreement, and with the infrastructure design standards of the City. The City Engineer shall be provided a minimum of 24 hours notice prior to the commencement of underground pipe laying; and prior to subgrade, gravel base, and bituminous surface construction. Developer's failure to comply with the terms of this section shall permit the City Engineer to issue a stop work order which may result in rejection of the work and which shall obligate the Developer to take all reasonable steps, as directed by the City's Engineer, to insure that the improvements are constructed and inspected pursuant to the terms of this Agreement; and shall further result in the assessment of a penalty in an amount equal to 1%, per occurrence, of the amount of security required in Section 4.03 of this Agreement.
- 4.10 Prior Land Occupancy. No Certificate of Occupancy shall be issued for any homes until the first course of a public street is completed and approved by the City Engineer, and the developer has provided the City a certified "as built" of the mass grading of the site which complies with the approved grading plan. If homes are occupied prior to completion of street improvements and acceptance by the City, Developer shall provide all maintenance necessary for such streets including snowplowing, until final acceptance by the City.
- 4.11 Binding Effect. The terms and provisions of this agreement shall be binding upon and inure to the benefit of the heirs, representatives, successors and assigns of the parties hereto and shall be binding upon all future owners of all or any part of the Property. This Agreement, at the option of the City, shall be placed of record so as to give notice thereto to any subsequent purchasers and encumbrancers of all or any part of the Property and all recording fees, if any, shall be paid by the Developer.
- 4.12 Notices. Whenever in this Agreement notice is required to be given by one party to the other, such notice shall be delivered personally or shall

be sent by certified mail, return receipt requested to the following addressees. Such notice shall be deemed timely given when delivered personally or when deposited in the mail in accordance with this section.

If to the City:

Mr. Martin Rafferty
City Administrator
City of Lake Elmo
3800 Laverne Avenue North
Lake Elmo, MN 55042

If to the Developer:

Pat Kinney, Chief Manager
Hidden Meadows Development, LLC

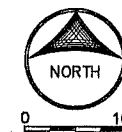
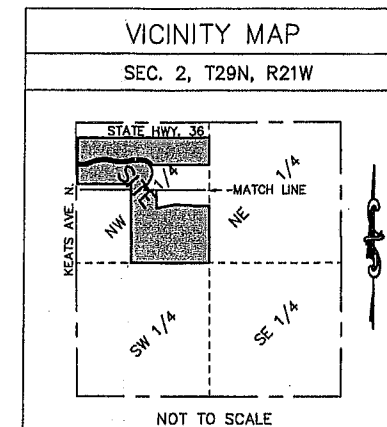
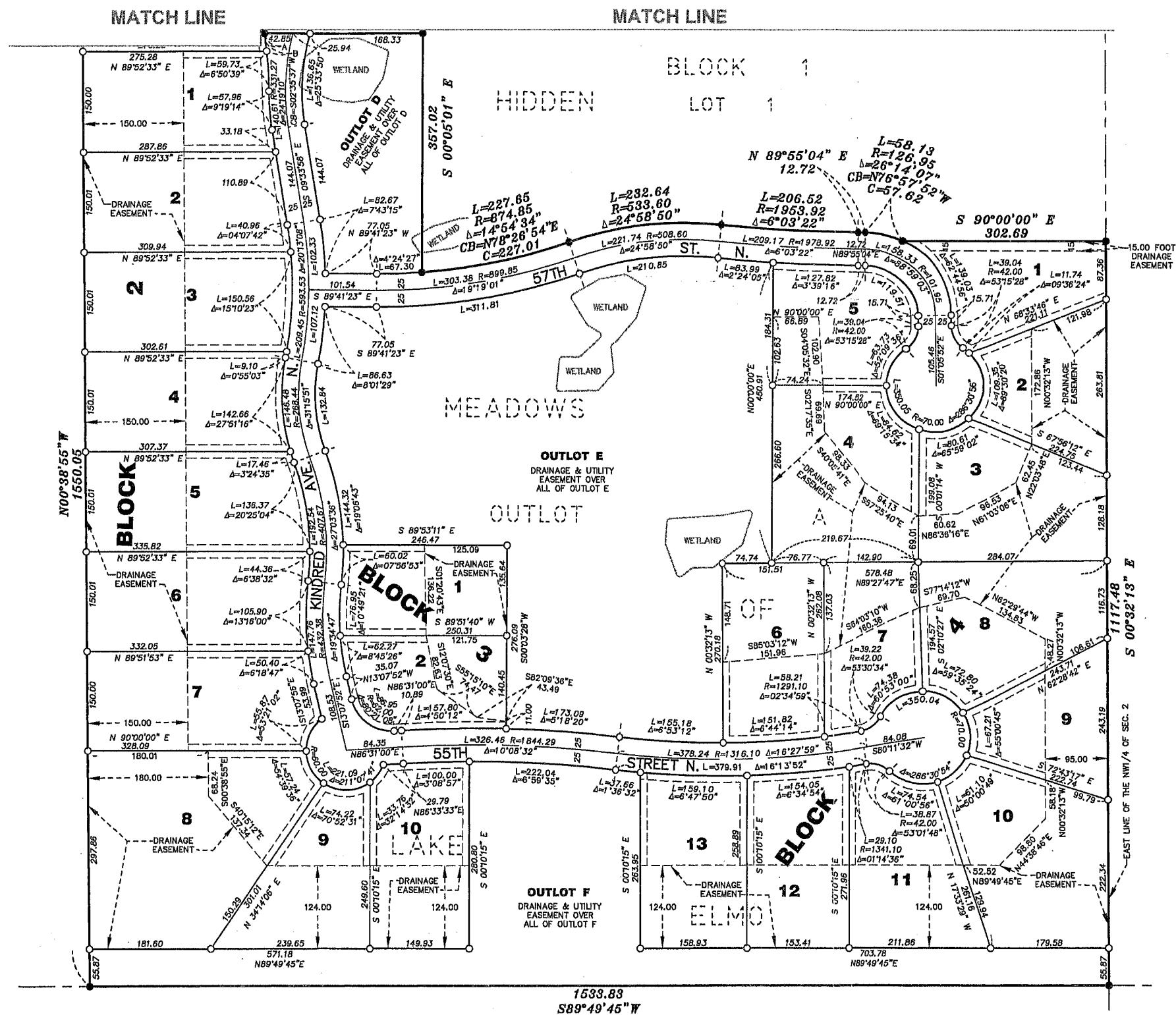
(ADDRESS REQUIRED PRIOR TO EXECUTION)

- 4.13 Incorporation by Reference. All plans, special provisions, proposals, specifications and contracts for the improvements furnished and let pursuant to this Agreement shall be and hereby are made a part of this Agreement by reference as if fully set out herein.
- 4.14 Default. The occurrence of any of the following shall be considered an "event of default" in the terms and conditions contained in this Agreement:
- A. Failure of the Developer to comply with any of the terms and conditions contained in this Agreement.
 - B. The failure of the Developer to comply with any applicable ordinance or statute with respect to the development of the Property.
- 4.15 Remedies. Upon the occurrence of any event of default, the City, in addition to any other remedy which may be available to it, shall be permitted to do any of the following:
- A. City may make advances or take other steps to cure the default, and, where necessary, enter the Property for that purpose. The Developer shall pay all sums so advanced or expenses incurred by the City, upon demand, with interest from the dates of such advances or expenses at the rate of 10% per annum. No action

taken by the City pursuant to this section shall be deemed to relieve the Developer from curing any such default to the extent that it is not cured by the City or from any other default hereunder. The City shall not be obligated, by virtue of the existence or exercise of this right, to perform any such act or cure any such default. The Developer shall save, indemnify, and hold harmless, including reasonable attorney fees, the City from any liability or other damages which may be incurred as a result of the exercise of the City's rights pursuant to this section.

- B. Obtain an Order from a Court of competent jurisdiction requiring the Developer to specifically perform its obligations pursuant to the terms and provisions of this Agreement.
- C. Exercise any other remedies which may be available to it including an action for damages.
- D. Withhold the issuance of any or all building permits and/or prohibit the occupancy of all building(s) for which permits have been issued.
- E. In addition to the remedies and amounts payable as set forth herein, upon the occurrence of an event of default, the Developer shall pay to the City all fees and expenses, including reasonable attorney, engineering and consulting fees, incurred by the City as a result of the event of default, whether or not a lawsuit or other action is formally taken.

HIDDEN MEADOWS OF LAKE ELMO 2ND ADDITION

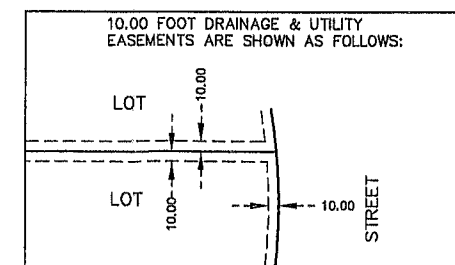


- DENOTES IRON MONUMENT FOUND AND MARKED RLS 10832, UNLESS NOTED
- DENOTES 1/2 INCH X 14 INCH IRON MONUMENT SET AND MARKED RLS 43806, UNLESS NOTED
- ⊕ DENOTES WASHINGTON COUNTY MONUMENT

- DENOTES EDGE OF EASEMENT(S)
- DENOTES ACCESS CONTROL
- DENOTES EDGE OF WETLAND

CURVE TABLE

CURVE NO.	LENGTH	RADIUS	DELTA
A	12.74	118.06	06°10'52"
B	13.70	500.00	01°34'12"



Howard R. Green Company

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

RESOLUTION NO. 2006-038

**A RESOLUTION APPROVING THE OPEN SPACE PRESERVATION
DEVELOPMENT STAGE PLAN, PRELIMINARY PLAT, AND
CONDITIONAL USE PERMIT OF HIDDEN MEADOWS OF LAKE ELMO.**

WHEREAS, on the 30th day of June, 2005, Pat Kinney of Hidden Meadows Development, LLC ("Applicant") submitted a completed application requesting that the City of Lake Elmo approve an Open Space Preservation Development Concept Plan for a residential subdivision on 69.68 acres of a 108.62 acre parcel; AND

WHEREAS, on the 25th day of July, 2005, at a public hearing, the Lake Elmo Planning Commission reviewed the Concept Plan, the City Planner's reports and comments, the comments of the Applicant and the Applicant's representatives, and recommended approval of the Concept Plan; AND

WHEREAS, on the 20th day of September, 2005, the Lake Elmo City Council reviewed changes to the Concept Plan, the City Planner's reports and comments dated September 6, 2005, the comments of the Applicant and the Applicant's representatives, and recommended approval of the Concept Plan.

WHEREAS, on the 27th day of March, 2006, at a public hearing, the Lake Elmo Planning Commission reviewed the Development Stage Application, the City Planner's reports and comments, the comments of the Applicant and the Applicant's representatives, and recommended approval of the OP Development Stage Application, Conditional Use Permit, and Preliminary Plat of HIDDEN MEADOWS OF LAKE ELMO based upon the following Findings:

1. The OP Development Stage Plan and Preliminary Plat are generally compliant with the approved OP Concept Plan, and condition of Concept Plan approval.
2. The Development Stage Plan is compliant with the standards of Section 301 of the City Code (Open Space Development).
3. The Preliminary Plat and preliminary construction plans are compliant with Section 400 of the City Code (platting).
4. The Conditional Use Permit complies with the pertinent findings required by Section 300.06 of the City Code.

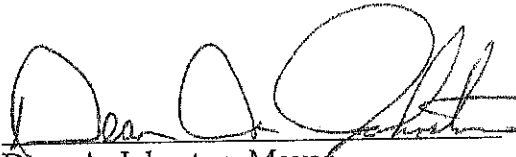
And subject to the following Conditions:

1. Compliance with the recommendations/requirements of the City Engineer.
2. Compliance with the recommendations/requirements of the Valley Branch Watershed District as found to be appropriate by the City Engineer.

3. Trail setback to the Ziertman property be increased and screening be considered in the Landscape Plan.
4. Confirm drainfield setback is to be 100' feet from property line.
5. Provide size and delineation of the alternate drainfield.
6. Secondary drainfield have the appropriate easement for trail use.
7. A trail easement be added to the proposed watermain easement.

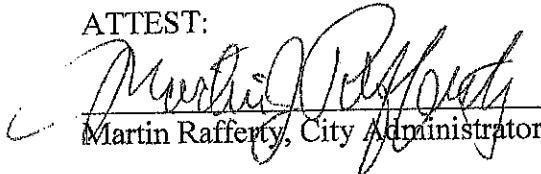
NOW, THEREFORE, BE IT RESOLVED that the Lake Elmo City Council hereby approves the Open Space Development Stage Plan, Preliminary Plat, and Conditional Use Permit for HIDDEN MEADOWS OF LAKE ELMO, as illustrated on the Preliminary Plat prepared by Kimley-Horn and Associates, Inc., dated March 3, 2006.

ADOPTED, by the Lake Elmo City Council on the 18th day of April, 2006.

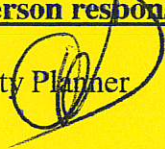


Dean A. Johnston, Mayor

ATTEST:



Martin Rafferty, City Administrator

Lake Elmo City Council July 5, 2006	Agenda Section: Planning, Land Use and Zoning	<u>No.</u> 9C
<u>Agenda Item:</u> Final Plat and Development Agreement – HOA 2 nd Addition		
<p><u>Background Information for July, 2006:</u></p> <p>United Properties has applied for Final Plat approval of the 12.6 acre Outlot A of the HOA Addition for which the City Council approved a Preliminary Plat on June 20. One 4.6 acre lot of this plat will become the Rasmussen Business College site. No Planning Commission review of Final Plats and Development Agreements is required by the City Code.</p> <p>The draft Development Agreement has been prepared by staff and is attached. This DA differs in content to some degree since we are addressing a non-residential property to which earlier Eagle Point DA's still apply (as to Public Use Dedication, Covenants and Declarations). Also TKDA has been retained by United (through a City contract) to design all plat infrastructure, and the City Engineer has opted to not require line item specific cost estimates for infrastructure improvements in the DA – simply a total "Street and Utilities" estimates.</p>		
<p><u>Action items:</u></p> <p>Motion to adopt Resolution #2006 - approving the Final Plat and Development Agreement of the HOA 2nd Addition.</p>	<p><u>Person responsible:</u></p> <p>City Planner </p>	
<p><u>Attachments:</u></p> <ol style="list-style-type: none"> 1. Draft Resolution #2006 - Approving Final Plat and DA 2. Draft Development Agreement 3. Final Plat 4. Resolution #2006 - 059 Approving Preliminary Plat 5. Approved Preliminary Plat 	<p><u>Time Allocated:</u></p>	

CITY OF LAKE ELMO
WASHINGTON COUNTY, MINNESOTA

RESOLUTION NO. 2006-067

A RESOLUTION APPROVING THE FINAL PLAT AND DEVELOPMENT
AGREEMENT FOR HOA 2ND ADDITION

WHEREAS, the Lake Elmo Planning Commission reviewed the preliminary plat of HOA 2nd ADDITION on June 12, 2006;

WHEREAS, the Lake Elmo City Council considered and approved on June 20, 2006 the preliminary plat of HOA 2nd ADDITION, a 12.6 acre Outlot A of the HOA Addition;

WHEREAS, the Final Plat and Development Agreement of HOA 2nd ADDITION presented to the City Council conforms to the standards of Section 400 of the City Code.

NOW, THEREFORE BE IT RESOLVED, that the Lake Elmo City Council does hereby approve and accept the Final Plat and Development Agreement of HOA 2ND ADDITION as the same on file with the City Administrator subject to the following conditions:

1. Compliance with the requirements of the City Engineer and City Attorney.

ADOPTED by the Lake Elmo City Council this 5th day of July, 2006.

Dean A. Johnston, Mayor

ATTEST:

Martin J, Rafferty, City Administrator

DEVELOPMENT AGREEMENT

CITY OF LAKE ELMO

(Draft June 30, 2006)

- 1.00 Parties. This Agreement is dated the ____ day of ____, 2006, and is entered into by and between City of Lake Elmo, a Minnesota municipal corporation (herein **ACity@**); and United Land LLC, a Minnesota limited liability company (herein "**Developer**").
- 2.00 Property Description. The Developer represents that it is the record fee owner of the property described on **Exhibit A**, attached and incorporated herein, which will be platted as Eagle Point Circle, as dedicated on proposed HOA 2nd Addition Plat.
- 3.00 Final Plat Approval. On the day of ____, 2006, the City Council approved the final plat of HOA 2nd Addition, which is attached and incorporated as **Exhibit B**. The City's approval was conditioned upon the Developer entering into this Development Contract.
- 4.00 Terms and Conditions. NOW, THEREFORE, in reliance upon the representations contained herein; in compliance with the City's Zoning and Subdivision Regulations; and in consideration of the mutual undertakings herein expressed, the parties agree as follows:
 - 4.01 Developer Improvements. The Developer shall construct the following improvements in compliance with plans and specifications which have been reviewed and approved by the City's Consulting Engineer, which are attached and incorporated herein as **Exhibit__**:
 - A. Site Grading and Turf Restoration. Site grading improvements shall include common excavation, subgrade correction, embankment and pond excavation. Turf restoration shall include seeding, mulching and erosion control.
 1. Site Grading Improvements shall be completed on or before the 31st day of October, 2006.
 2. Turf restoration improvements shall be completed on or before the 31st day of October, 2006.
 - B. Landscaping. Developer shall complete all landscaping improvements on or before the 30th day of November, 2006.
 - C. Storm Sewer. Storm sewer improvements include all necessary storm sewers, catch basins, culverts, and other apparatus. Storm sewer

improvements shall be completed by the 31st day of October, 2006.

- D. Street Improvements. Street improvements include subgrade preparation, gravel base, bituminous surfacing, bituminous curb and concrete curbs, where required.
1. Unusable material within the roadway shall be removed by the Developer.
 2. All subgrade excavation and filling shall be completed by the Developer in accordance with MNDOT's specifications. The City reserves the right to test as necessary, at the Developer's expense, all grading work. A test roll of the street subgrade shall be passed prior to acceptance of the subgrade by the City.
 3. Subgrade and the initial course of street improvements shall be completed by the 31st day of October, 2006. The final wear course of the street shall be completed by the 30th day of May, 2007.
- E. Sanitary Sewer. All sanitary sewer improvements shall be completed on or before the 31st day of October, 2006.
- F. Street Signs. The City will order and install street signs. The Developer shall pay for all costs incurred by the City.
- G. Water Main. Water main improvements include pipes, hydrants and appurtenances and shall be completed on or before the 31st day of October, 2006.

4.02 Estimated Cost of Developer Secured Improvements. The estimated costs of Developer constructed improvements are as follows:

<u>Improvement</u>	<u>Estimated Cost</u>
Site Grading/Turf Restoration	\$ 50,000
Landscaping	\$ 25,000
Street & Utility Improvements	\$243,750
Street Signs	\$ 1,500
Subtotal	\$320,250
Total Security Required (125% of Improvements)	\$400,313

- 4.03 Improvement Security. Prior to the City's endorsement of approval on the final plat, the Developer shall deposit security with the City Administrator in an amount equal to 125% of the City Engineer's estimate of the cost of constructing the Developer secured improvements which have not been completed and accepted by the City prior to final plat approval. The security may be in the form of a cash escrow fund, a performance bond, or a letter of credit. The form of security shall be approved by the City Attorney.
- 4.04 Reduction of Security. Upon completion of required improvements for the Property and acceptance by the City, the City Council shall reduce the amount of security for the completed improvements provided that in no case shall the total remaining security be equal to less than 125% of the estimated costs of the incomplete improvements.
- 4.05 Administrative Fees. Developer agrees to pay an administrative fee to the City in an amount equal to 2.5% of the Developer's secured improvements. The administrative fee for this project equals \$8,006.25.
- 4.06 Utility Company Improvements. The utility improvements include underground gas, electric, and telephone service as installed by the appropriate utility company at the direction of the Developer. The Developer shall arrange for the installation of underground gas, electric, telephone and cable television before the final lift is started. Utility improvements shall be completed by the 31st day of October, 2006.
- 4.07 Recording Requirements. Prior to the conveyance of any of the lots in HOA 2nd Addition, and except as hereinafter provided, prior to the issuance of any development permits, the Developer shall provide the City with evidence that the following documents have been recorded.
- A. Plat.
 - B. The following documents, which have previously been recorded against this property and are of record at Washington County.
 - 1. Terms and conditions of Declaration of Protective Covenants dated December 1, 1997, filed December 31, 1997, as Document No. 1065503.
 - 2. Terms and conditions of Development Standards filed July 18, 2000, as Document No. 1092260.
 - 3. Declaration for Storm Water Retention Area Maintenance dated August 29, 2000, filed September 29, 2000, as Document No. 1094004.

4. Declaration of Monument Easement and Landscaping Maintenance Covenants dated August 29, 2000, filed September 29, 2000, as Document No. 1094005.
5. Memorandum of Agreement Concerning Outlot A, Eagle Point Business Park, dated August 21, 2000, filed December 5, 2000, as Document No. 1095358.

C. South Washington Watershed District permit.

4.08 Public Use Dedication. Public use dedication shall be paid with individual building permits consistent with the formula specified by Paragraph 4.08 of the Development Agreement for Eagle Point Business Park, dated July 11, 2000.

4.09 Inspection. The City shall provide the services of a Resident Project Representative (and assistants as agreed) at the site to provide more continuous observation of the Contractor(s) work. The Resident Project Representative's dealings in matters pertaining to the on-site work shall in general, be only with The City and the Developer, and dealings with contractors shall only be through or with full knowledge of the Developer. Through the observations of the work in progress and field checks of materials and equipment by the Resident Project Representative shall endeavor to provide further protection for the City against defects and deficiencies in the work of the Contractor; but the furnishing of such resident Project representation will not make City responsible for construction means, methods, techniques, sequences or procedures or for safety precautions or programs, or for the Contractor's failure to perform his work in accordance with the Contract Documents. The developer shall pay the City the sum of \$17,000 for the City inspection services.

The City shall be provided a minimum of 24 hours notice prior to the commencement of underground pipe laying; and prior to subgrade, gravel base, and bituminous surface construction. Developer's failure to comply with the terms of this section shall permit the City Engineer to issue a stop work order which may result in rejection of the work and which shall obligate the Developer to take all reasonable steps, as directed by the City's Engineer, to insure that the improvements are constructed and inspected pursuant to the terms of this Agreement; and shall further result in the assessment of a penalty in an amount equal to 1%, per occurrence, of the amount of security required in Section 4.03 of this Agreement.

4.10 Prior Land Occupancy. No Certificate of Occupancy shall be issued for any buildings until the first course of a public street is completed and approved by the

City Engineer, and the Developer has provided the City a certified "as built" of the mass grading of the site which complies with the approved grading plan. If buildings are occupied prior to completion of street improvements and acceptance by the City, Developer shall provide all maintenance necessary for such streets including snowplowing, until final acceptance by the City.

- 4.11 Binding Effect. The terms and provisions of this Agreement shall be binding upon and inure to the benefit of the heirs, representatives, successors and assigns of the parties herto and shall be binding upon all future owners of all or any part of the Property. This Agreement, at the option of the City, shall be placed of record so as to give notice thereto to any subsequent purchasers and encumbrancers of all or any part of the Property and all recording fees, if any, shall be paid by the Developer.
- 4.12 Notices. Whenever in this Agreement notice is required to be given by one party to the other, such notice shall be delivered personally or shall be sent by certified mail, return receipt requested to the following addressees. Such notice shall be deemed timely given when delivered personally or when deposited in the mail in accordance with this section.

If to the City:

Mr. Martin Raffery
City Administrator
City of Lake Elmo
3800 Laverne Avenue North
Lake Elmo, MN 55042

If to the Developer:

Dale J. Glowa
Senior Vice President
Development
&
George I. Burkards
Assistant Vice President
Marketing – Planning – Development

United Properties
3500 American Blvd. W., Suite 200
Minneapolis, MN 55431

- 4.13 Incorporation by Reference. All plans, special provisions, proposals, specifications and contracts for the improvements furnished and let pursuant to this Agreement shall be and hereby are made a part of this Agreement by reference as if fully set

out herein.

4.14 Default. Continuation of any of the following after 30 days prior written notice to the Developer (except in such cases where the default cannot be reasonably cured within 30 days, in which case said 30-day period shall be extended to period as reasonably required to effectuate the cure, provided the Developer has commenced its cure within 30 days and continues diligently prosecuting such cure) shall be considered an "event of default" under the terms and conditions contained in this Agreement:

- A. Failure of the Developer to comply with any of the terms and conditions contained in this Agreement.
- B. The failure of the Developer to comply with any applicable ordinance or statute with respect to the development of the Property.

4.15 Remedies. Upon occurrence of any event of default, the City, in addition to any other remedy which may be available to it, shall be permitted to do any of the following:

- A. City may make advances or take other steps to cure the default, and, where necessary, enter the Property for that purpose. The Developer shall pay all sums so advanced or expenses incurred by the City, upon demand, with interest from the dates of such advances or expenses at the rate of 10% per annum. No action taken by the City pursuant to this section shall be deemed to relieve the Developer from curing any such default to the extent that it is not cured by the City or from any other default hereunder. The City shall not be obligated, by virtue of the existence or exercise of this right, to perform any such act or cure any such default. The Developer shall save, indemnify, and hold harmless, including reasonable attorney fees, the City from any liability or other damages which may be incurred as a result of the exercise of the City's rights to pursuant to this section.
- B. Obtain an Order from a Court of competent jurisdiction requiring the Developer to specifically perform its obligations pursuant to the terms and provisions of this Agreement.
- C. Exercise any other remedies which may be available to it including an action for damages.
- D. Withhold the issuance of any or all building permits and/or prohibit the occupancy of all building(s) for which permits have been issued.
- E. In addition to the remedies and amounts payable as set forth herein, upon the occurrence of an event of default, the Developer shall pay the City all

fees and expenses, including reasonable attorney, engineering and consulting fees, incurred by the City as a result of the even of default, whether or not a lawsuit or other action is formally taken.

IN WITNESS WHEREOF, the City and Developer have caused this Agreement to be executed as of the date and year first above written.

**City of Lake Elmo,
a Minnesota statutory city**

Dean Johnson, Mayor

ATTEST:

Martin Rafferty, City Administrator

STATE OF MINNESOTA)
) ss.
COUNTY OF)

On this____ day of_____, 2006, before me, a notary public within and for said county, personally appeared Dean Johnson and Martin Rafferty, to me known to be respectively the Mayor and City Administrator of the City of Lake Elmo, and they executed the foregoing instrument and acknowledged that they executed the same authority of and on behalf of City of Lake Elmo.

Notary Public

**[SIGNATURES CONTINUED ON FOLLOWING PAGE
REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

Developer

United Land LLC

By: _____

By: _____

STATE OF MINNESOTA)
) ss.
COUNTY OF)

On this ____ day of _____, 2006, before me, a notary public within and for said county, personally appeared _____ and _____, to me known to be respectively the _____ and _____ of United Land LLC, and they executed the foregoing instrument and acknowledged that they executed the same authority of and on behalf of City of the company.

Notary Public

HOA 2ND ADDITION

KNOW ALL BY THESE PRESENTS, That UNITED LAND LLC, a Minnesota limited liability company, owner and proprietor of the following described property, located in the County of Washington, State of Minnesota to wit:

Outlot A, HOA ADDITION, according to the plat thereof filed of record in the office of the Register of Titles in and for Washington County, Minnesota. As evidenced by Certificate of Title No. 57284

Has caused the same to be surveyed and plotted as HOA 2ND ADDITION, and does hereby donate and dedicate to the public the easements created by this plat for drainage and utility purposes only.

In witness whereof UNITED LAND LLC, a Minnesota limited liability company, has caused these presents to be signed by its proper officers this _____ day of _____, 200__.

UNITED LAND LLC
BY: _____ its _____ and _____ its _____

STATE OF _____
COUNTY OF _____
The foregoing instrument was acknowledged before me this _____ day of _____, 200__, by _____ of said UNITED LAND LLC, a Minnesota limited liability company, on behalf of said company.

Notary Public,
My Commission Expires _____ County: _____
I, John K. Barnes, hereby certify that I have surveyed and plotted the property described on this plat as HOA 2ND ADDITION; that this plat is a correct and complete representation of the survey and plot as shown; and that the outside boundary lines are correctly designated on the plat, and that there are no wet lands as defined in MS 560.02, Subd. 1 or public highways to be designated other than as shown.

John K. Barnes, Land Surveyor
Minnesota License No. 18456

STATE OF MINNESOTA
COUNTY OF HENNEPIN
The foregoing Surveyor's Certificate was acknowledged before me this _____ day of _____, 200__, by John K. Barnes, Minnesota License No. 18456.

Notary Public, Dakota County, Minnesota
My Commission Expires _____

This plat of HOA 2ND ADDITION was approved by the City Council of the City of Lake Park, Minnesota, this _____ day of _____, 200__, and hereby certifies compliance with all requirements as set forth in Minnesota Statutes, Section 560.02, Subd. 2.

SIGNED: _____ Mayor
SIGNED: _____ City Administrator

Pursuant to Chapter 820, Laws of Minnesota, 1971, this plat has been approved this _____ day of _____, 200__.

There are no delinquent taxes, the current taxes due and payable for the year 200__ have been paid, and transfer has been entered this _____ day of _____, 200__.

BY: _____ Washington County Auditor/Treasurer

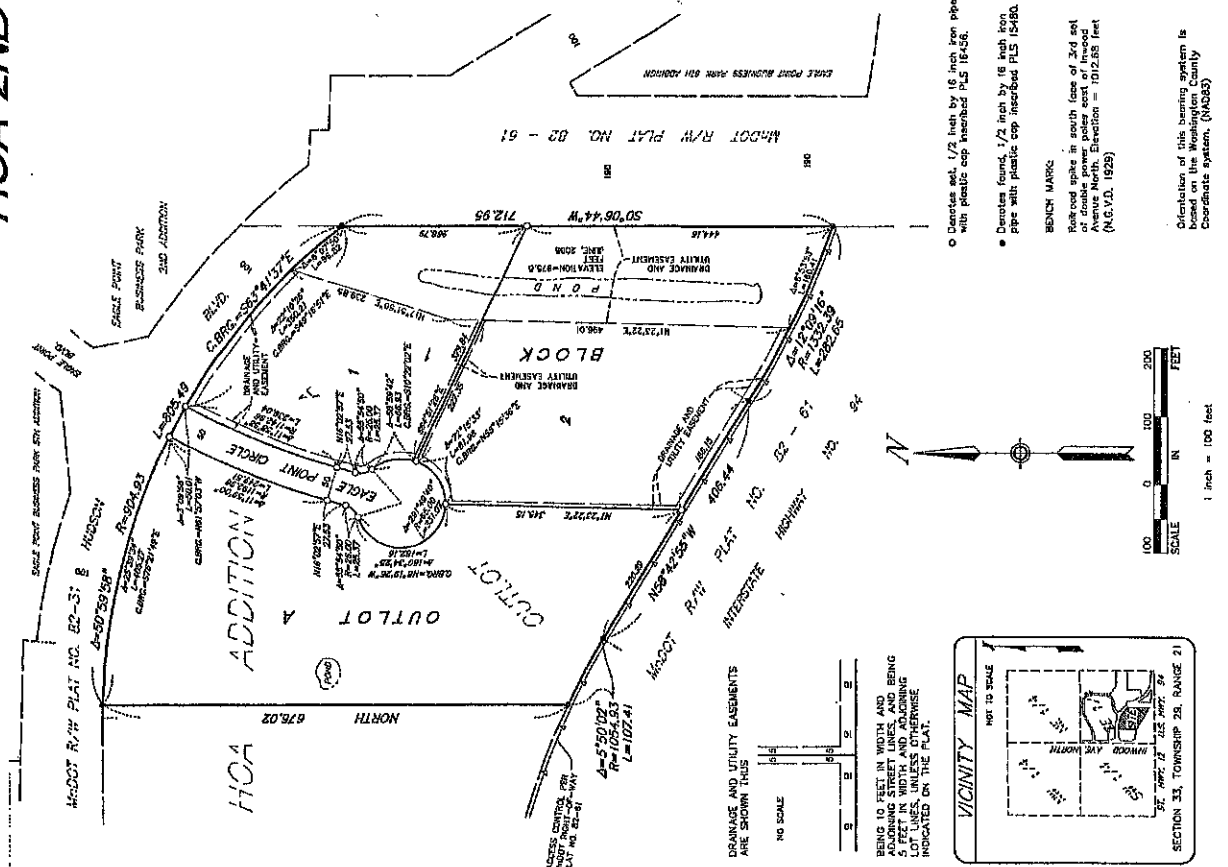
BY: _____ Deputy

Document Number _____
I hereby certify that this instrument was recorded in the Office of the Register of Titles for record on this _____ day of _____, 200__, at _____ o'clock _____ M., and was duly recorded in Washington County Records.

BY: _____ Washington County Registrar of Titles

BY: _____ Deputy

Sunde Land Surveying, LLC.



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

RESOLUTION NO. 2006-059

**A RESOLUTION APPROVING THE
PRELIMINARY PLAT OF HOA 2ND ADDITION**

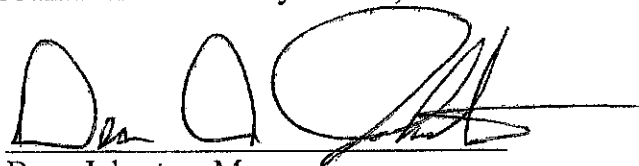
WHEREAS, at its August 7, 2001 meeting, the City Council reviewed and approved the Final Plat of HOA ADDITION.

WHEREAS, at its June 12, 2006 meeting, the Planning Commission conducted a public hearing where they reviewed and recommended approval of United Properties' application for a preliminary plat of HOA 2ND Addition.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City Of Lake Elmo does hereby approve and accept the preliminary plat for HOA 2ND Addition, as the same on file with the City Administrator, subject to the following conditions.

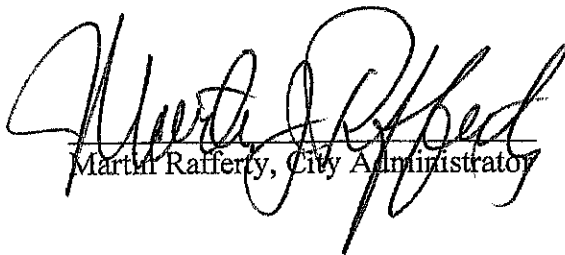
1. Compliance with the recommendations (if any) of the City Engineer, City Attorney, and those of the South Washington Watershed found to be reasonable and practical by the City Engineer.

ADOPTED by the Lake Elmo City Council on the 20th day of June, 2006.



Dean Johnston, Mayor

ATTEST:



Martin Rafferty, City Administrator

OWNER AND APPLICANT
United Properties
3000 American Blvd. W.
Bloomington, MN 55431
Contact: Dan Calvo
952-831-0000
Fax: 952-883-8804

EAGLE POINT
BUSINESS PARK
2ND ADDITION

HUDSON

BLVD

EAGLE POINT CIRCLE
TO BE DEDICATED AS

OUTLOT A

LOT 1
LOT 2

ADDITION

INTERSTATE HIGHWAY NO. 55
HWA 55

AS APPROVED
6/20/06

Legend
AS - ASSESSOR'S MAP
C - CONVEYANCE
D - DEDICATION
E - EASEMENT
F - FILL
G - GRADING
H - HATCH
I - IMPROVEMENT
J - JAIL
K - KILL
L - LIFT
M - MOUNTAIN
N - NATURE
O - OCEAN
P - POND
R - ROAD
S - SURFACE
T - TOWN
U - URBAN
V - VILLAGE
W - WATER
X - X-ROAD
Y - Y-ROAD
Z - Z-ROAD

We hereby certify that this is a true and correct representation of a survey of the boundaries of the property shown on this map and of the location of all buildings, if any, shown on this map.
Dated this 28th day of April, 2006
SUNDE LAND SURVEYING, LLC
By: John K. Barnes, P.L.S. Min. Lic. No. 19456

SCALE
0 20 40 FEET

PRELIMINARY PLAT OF
EAGLE POINT BUSINESS PARK
2ND ADDITION
Sunde
Land Surveying, Inc.
2500-000-00 723/05 Rev. 1.00 L20 L21 L22 20050902.dwg 04/06

- PROPERTY DESCRIPTION
Section A, USA, Section 28, Township 28N, Range 10E, County of Washington, Minnesota.
This survey is a completion of information from various sources.
This survey was prepared without the benefit of current title work.
Comments, representations, and measurements may not be in addition to the current title insurance commitment or attorney's title opinion.
The subject property is used by (Business Park) information obtained from the City of Lake Anne Planning Department.
Lighting and security information shown herein was obtained from the Washington County Sheriff's Office.
Information vehicle, revision upon receipt of a title search by a title insurance company.
Sketch coordinates based: Washington County Coordinate System.
Area: Gross = 530,204 square feet or 10.365 acres.
Proposed Lot 1 = 10,707 square feet or 0.245 acres.
Proposed Lot 2 = 178,572 square feet or 4.077 acres.
Proposed Eagle Point Circle = 27,546 square feet or 0.633 acres.
No indication of wetland delineation by qualified wetland specialist has been located or observed on site.
- NOTES
1) Location and sizes of underground utilities shown herein are approximate only and are based on field location of visible underground utilities and on information provided by utility companies. Utilities shown are dependent on the completeness and accuracy of data provided. Additional underground utilities of which the surveyor may not be aware may exist. Verify all utilities critical to construction or design.
2) Current CORNER OF LOT ONE CALL AT 551-451-0002 for precise corner location of utility pole to any location.
3) This survey is a completion of information from various sources.
4) This survey was prepared without the benefit of current title work. Comments, representations, and measurements may not be in addition to the current title insurance commitment or attorney's title opinion.
5) The subject property is used by (Business Park) information obtained from the City of Lake Anne Planning Department.
6) Lighting and security information shown herein was obtained from the Washington County Sheriff's Office.
7) Information vehicle, revision upon receipt of a title search by a title insurance company.
8) Sketch coordinates based: Washington County Coordinate System.
Area: Gross = 530,204 square feet or 10.365 acres.
Proposed Lot 1 = 10,707 square feet or 0.245 acres.
Proposed Lot 2 = 178,572 square feet or 4.077 acres.
Proposed Eagle Point Circle = 27,546 square feet or 0.633 acres.
No indication of wetland delineation by qualified wetland specialist has been located or observed on site.

Rec'd
5-17-06
KAA