THE CITY OF LAKE ELMO

STAFF REPORT

DATE: August 1, 2017
REGULAR
MOTION

TO: City Council

FROM: Emily Becker, City Planner

AGENDA ITEM: Reconsideration of Shoreland Variance - 9359 Jane Road North

REVIEWED BY: Stephen Wensman, Planning Director

BACKGROUND:

The Council adopted Resolution 2017-062 at its June 20, 2017 meeting, which approved a variance request from Scott and Julie Drommerhausen of 9359 Jane Road North for variances to allow expansion of a non-conforming structure which does not meet the required minimum structure setback from the Ordinary High Water Level (OHWL) and maximum impervious surface standards of the City's shoreland district. The approval was subject to the following conditions:

1) The Applicant shall secure any required permits and plan approvals from the City and other applicable jurisdictions.
2) The Applicant shall direct appropriate rain gutter discharges into a rain garden (infiltration basin designed to capture and infiltrate runoff) designed by a professional engineer or landscape architect and installed under their direction. The rain garden should mitigate the increased impervious surface of the entire addition to the home (685 square feet).

The Council has now expressed the desire to reconsider the variance, specifically condition #2 outlined above.

ISSUE BEFORE THE COUNCIL:

The Council is being asked to hold a public hearing and consider if the variance approval granted by adopted Resolution 2017-062 should be rescinded and if it should adopt a new resolution that approves the variance request with amended conditions of approval.

PROPOSAL DETAILS/ANALYSIS:

MNDNR Comments. The Minnesota Department of Natural Resources (MNDNR) was noticed of the variance request as required by the City's Shoreland Ordinance, Section 154.800 of the Zoning Code. The MNDNR recommended denial of the variance request, as the proposed addition would increase the impervious surface on the property to 29.7% (which is almost twice the maximum impervious surface allowed for unsewered properties within a recreational development shoreland (15%)) and is in a shore impact zone. The MNDNR also recommended was made that if a variance was granted for this project, mitigation conditions should be included with the variance approval. These mitigation conditions could include modify construction design to minimize impact; direct rain gutter discharges into a rain garden; or restore shoreline vegetation to natural state.

Planning Commission Recommendation. Because of the MNDNR's aforementioned recommendation, Staff and the Planning Commission recommended that a condition of approval of the requested variance be that the applicant direct appropriate rain gutter discharges into a rain garden (infiltration basin designed to capture and infiltrate runoff). Staff believed that this would be the least expensive and most reasonable option. Staff also added that the design of the rain garden be done by a professional engineer or landscape architect and installed under their direction in order to ensure the rain garden's effectiveness. The Planning Commission recommended adding the Staff-recommended condition by adding that the rain garden should mitigate the increased impervious surface of the entire condition (685 square feet).

Impervious Surface Added. As mentioned in the report and presentation to Council as it considered the variance request, the proposed addition will be in place of an existing deck. The City does not consider decks to be impervious surface, while many other cities and the MNDNR do. The proposed addition will only add a total of 105 square feet to the existing footprint of the deck, but because the deck is considered pervious, a total of 685 square feet of impervious surface will be added.

Rain Garden Cost. Staff has asked the City's Consulting Landscape Architect for a quote for the installation of a rain garden that would mitigate 685 square feet of impervious surface. This quote is attached. The projected costs of such a rain garden would be $12,000.00. The City has required an escrow with release of the building permit for this addition to ensure the rain garden is installed. Should the Council wish to remove the condition of approval that the rain garden be installed, this escrow will be released back to the applicant.

Public Hearing. The City Attorney has verified that a public hearing is required for a variance amendment. The public hearing notice was advertised in the City's official newspaper, and notices were sent to property owners within 350 feet of the subject property. Additionally, the MNDNR was notified per State Statute.

FISCAL IMPACT:

None.

OPTIONS:

The Council may:

- Adopt Resolution 2017-075, declaring Resolution 2017-067 rescinded and no longer in effect and approving the variance requests, subject to the amended conditions of approval.
- Amend Resolution 2017-075 and adopt as amended.
- Not adopt Resolution 2017-075.

RECOMMENDATION:

If the Council wishes to adopt Resolution 2017-075, it may do so with the following motion:

"Move to adopt Resolution 2017-075, rescinding Resolution 2017-067 and approving requests for shoreland variances from the minimum structure setback from the Ordinary High Water Level and maximum impervious surface standards, subject to one condition of approval."

ATTACHMENTS:

- Previously adopted Resolution 2017-062
- MNDNR review letter
- Resolution 2017-075

- Quote for rain garden

CITY OF LAKE ELMO
WASHINGTON COUNTY
STATE OF MINNESOTA

RESOLUTION 2017-062

A RESOLUTION APPROVING A VARIANCE FROM MINIMUM STRUCTURE SETBACK FROM ORDINARY HIGH WATER LEVEL AND MAXIMUM IMPERVIOUS SURFACE STANDARDS OF THE CITY'S SHORELAND DISTRICT

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

WHEREAS, Scott and Julie Drommerhausen, 9359 Jane Road North, Lake Elmo, MN 55042 ("Applicant"), has submitted an application to the City of Lake Elmo (the "City") for variances to allow construction of an approximately 685 square-foot addition, which will replace an existing deck, to the east of an existing home currently setback 45.4 feet from the Ordinary High Water Level (OHWL) and maximum impervious surface standards to increase the current impervious surface percentage from 26.9% to 29.7%.

WHEREAS, notice has been published, mailed and posted pursuant to the Lake Elmo Zoning Ordinance, Section 154.109; and

WHEREAS, the Lake Elmo Planning Commission held a public hearing on said matter on June 12, 2017; and

WHEREAS, the Lake Elmo Planning Commission has submitted its report and recommendation to the City Council as part of a Staff Memorandum dated June 12, 2017; and

WHEREAS, the City Council considered said matter at its June 20, 2017 meeting.

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

FINDINGS

1) That the procedures for obtaining said Variance are found in the Lake Elmo Zoning Ordinance, Section 154.109.

2) That all the submission requirements of said Section 154.109 have been met by the Applicant.

3) That the proposed variance includes the following components:

a) A variance to allow for an addition to an existing single-family detached home that does not meet the minimum setback from the OHWL or maximum impervious surface requirements.

4) That the Variance will be located on property legally described as follows: Lots 9 & 10, Berschen's Shores, Washington County, Minnesota. PID# 10.029.21.24.0006.

5) That the strict enforcement of Zoning Ordinance would cause practical difficulties and that the property owner proposes to use the property in a reasonable manner not permitted by an official control. ***Specific findings: The subject property was platted prior to adjustment of the Ordinary High Water of Lake Jane and the adoption of Shoreland standards by the City, and therefore the lot is much wider than it is long. Because of the shape of the lot, the Applicant is proposing to expand the home laterally rather than further encroaching on the current setback of the Ordinary High Water Level. Additionally, the addition will not expand much more of the footprint of the principal structure, as a slightly smaller deck that will be torn down exists where the addition is being proposed. Additionally, although the City's ordinance does not treat decks as impervious, many do. If decks were considered impervious, the addition would only add 109 square feet of impervious surface, or an increase of about 0.46%.***

6) That the plight of the landowner is due to circumstances unique to the property not created by the landowner. ***Specific findings: The property is unique in that it is much wider than it is long, and the Applicant was not involved in the platting process of this property nor the adoption of the City's shoreland standards. The Applicant also was not involved in any previous variance requests for the subject property.***

7) That the proposed variance will not alter the essential character of the locality in which the property in question is located. ***Specific findings: The proposed addition is in place of an existing deck and only slightly increases the footprint of the existing principal structure, including the existing deck, by 109 square feet. Additionally, the proposed addition does not further encroach on the existing setback of the principal structure from the OHWL of the property and has a setback from the OHWL similar to those of adjacent principal structures.***

8) That the proposed variance will not impair an adequate supply of light and air to properties adjacent to the property in question or substantially increase the congestion of the public streets or substantially diminish or impair property values within the neighborhood. ***Specific findings: The proposed addition will not further encroach on the setback of the existing structure from the OHWL and therefore will not further impair lake views of neighboring properties and will not impair an adequate supply of light and air. It also will not increase congestion of public streets or substantially diminish or impair property values within the neighborhood. Adjacent properties, including the subject property, have been granted similar variances and are setback a similar distance from the OHWL.***

CONCLUSIONS AND DECISION

Based on the foregoing, the Applicant's application for a Variance is granted, subject to the following conditions.

1) The Applicant shall secure any required permits and plan approvals from the City and other applicable jurisdictions.
2) The Applicant shall direct appropriate rain gutter discharges into a rain garden (infiltration basin designed to capture and infiltrate runoff) designed by a professional engineer or landscape architect and installed under their direction. The rain garden should mitigate the increased impervious surface of the entire addition to the home (685 square feet).

Passed and duly adopted this 20th day of June 2017 by the City Council of the City of Lake Elmo, Minnesota.

_____
Mike Pearson, Mayor

ATTEST:

_____
Julie Johnson, City Clerk

DEPARTMENT OF NATURAL RESOURCES

CENTRAL REGION
1200 WARNER ROAD
SAINT PAUL, MN 55106
651-259-5800

6/9/2017

Emily Becker
Lake Elmo City Planner
3800 Laverne Avenue North
Lake Elmo, MN 55042

RE: Shoreland Variance Request at 9359 Jane Road North, Lake Elmo (Lake Jane - 82010400)

Emily –

The primary goal of limiting impervious surfaces within shoreland districts is to reduce the amount of runoff directed into Minnesota waters. Runoff from impervious surfaces travels over the land and carries pollutants such as nutrients, sediment, bacteria, pesticides, heavy metals, and organic wastes. Studies have consistently shown a strong, direct connection between the percentage of impervious surface in a watershed and water quality degradation. As impervious surface area expands, so does the volume of runoff, phosphorus, and sediment entering waters, causing nuisance algae blooms, reducing public enjoyment, and harming aquatic plants and animals.

Please use the attached MNDNR guidance on variances to maximum impervious surface in shoreland districts when evaluating this variance request against statutory criteria and developing a findings of fact. If findings support granting the variance, impacts to Lake Jane should be considered in developing appropriate conditions to mitigate those impacts.

This project would increase impervious surface from 26.9% to 29.7%, where the maximum impervious surface allowed is 15% for unsewered properties within the shoreland district of a recreational development lake. MNDNR recommends denial of this variance request because this additional increase in impervious surface would result in a percent impervious that would be nearly double the City's standard and because the proposed addition is within the shore impact zone (SIZ). If a variance is granted for this project, MNDNR recommends that the City of Lake Elmo include conditions on the variance that mitigate for this increase in percent impervious surface. Examples of appropriate mitigation conditions include:

- Modify construction design (to minimize impact).
- Direct rain gutter discharges into a rain garden (infiltration basin designed to capture and infiltrate runoff).
- Restore shoreline vegetation to natural state (to intercept and filter runoff coming from the structure).

Thank you for the opportunity to comment on this variance request.

Sincerely,

Jenifer L Sorensen

Jenifer Sorensen
MNDNR, East Metro Area Hydrologist
1200 Warner Road
St. Paul, MN 55106
651-259-5754 | jenifer.sorensen@state.mn.us

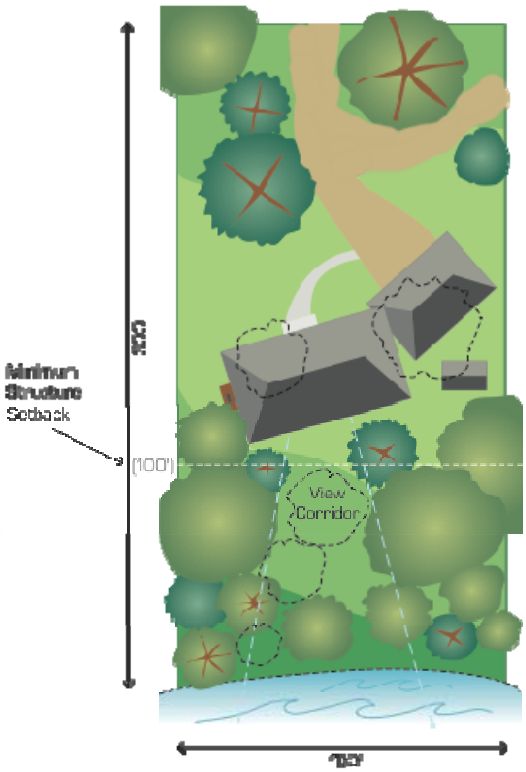
Shoreland & Floodplain *Variance Guidance Series*

Impervious Surfaces

This is one of a series of examples developed as guidance for considering variance requests along lakes and rivers. Consult your local shoreland and floodplain ordinances.

Why are impervious surface coverage limits important?

In the protection of water quality, the management of rainwater on individual lots is one of our most important tasks. Rainwater that does not infiltrate into the ground or evaporate runs downhill to lakes, wetlands, or rivers. As impervious surface coverage increases, the rate and amount of runoff and pollutants entering public waters increases. When runoff from impervious surface coverage is not addressed, pollution increases and the diversity of aquatic life is reduced. Local governments have limited discretion to deviate from - or grant a variance to - impervious surface limits. They may do so only if *all* of the variance criteria established in state statutes and their local ordinances are met. In evaluating such requests, local governments must examine the facts, determine whether all statutory and local criteria are satisfied, and develop findings to support the decision. If granted, local governments may impose conditions to protect resources. An example impervious surface variance request, with considerations, is provided below.



Example Impervious Surface Variance Request

A property owner wishes to build a large lakehome on a conforming lot. The lake lot includes a private driveway with a spur to the neighbor's lot, which was placed to avoid an adjacent wetland. The building plans for the new construction plus the existing private road spur to the neighbor's property would exceed the impervious surface limit provision in the local ordinance.

Considerations for Findings

A good record and findings help keep communities out of lawsuits and help them prevail if they find themselves in one. In evaluating the facts and developing findings for this variance request, *all* of the following statutory criteria must be satisfied, in addition to any local criteria:

- **Is the variance *in harmony with the purposes and intent of the ordinance*?**
  Considering a variance request is a balancing test that requires weighing the need of an individual property owner against the purposes of the shoreland regulations for protecting the public interest. These purposes are derived from Minnesota Shoreland Rules, which established impervious surface caps to prevent excessive runoff from constructed surfaces. Such excessive runoff causes erosion, transport of pollutants to public waters thereby degrading water quality. ***Considerations:*** *Will deviating from the required limit on this property undermine the purposes and intent of the ordinance? Why or why not? Is it possible to mitigate the consequences of additional impervious surface on-site such that additional runoff will not be produced? Would this mitigation be in harmony with the purposes and intent of the ordinance? Why or why not?*
- **Is the variance *consistent with the comprehensive plan*?**
  The local comprehensive plan establishes a framework for achieving a community's vision for the future. Most plans contain goals and policies for protecting natural resources and shorelands, as well as maps that identify areas of high risk or with high ecological value where development should be avoided. The variance request must be considered with these goals and policies in mind. Maps should be consulted to determine if the property is within any areas identified for protection. ***Considerations:*** *Which goals and policies apply? Is allowing additional impervious surface and runoff consistent with these goals and policies? Why or why not?*

- **Are there *unique circumstances* to the property not created by the landowner?**
  Unique circumstances relate to physical characteristics of the land - such as lot dimensions, steep slopes, poor soils, wetlands, and trees. These *do not* include physical limitations or personal circumstances created by the property owner that prevent compliance with the impervious surface provision, such as size of home or design preferences. Consider what distinguishes this property from other shoreland properties to justify why the applicant should be able to deviate from the provision when others must comply. ***Considerations:*** *What physical characteristics are unique to this property that prevent compliance with the requirement? Were any difficulties in meeting the impervious surface limit created by some action of the applicant? Has the applicant demonstrated no other feasible alternatives exist that would not require a variance, such as increasing the setback to reduce driveway length or reducing the lakehome's footprint?*
- ***Will the variance, if granted, alter the essential character of the locality?***
  Consider the size of the proposed structure, the extent of encroachment, and how it relates to the shoreline and hydrology of the riparian area. A large addition located close to the shoreline can detract from the natural appearance and character of the lake and its riparian areas and degrade water quality by altering topography, drainage, and vegetation in the riparian area, negatively affecting recreational, natural, and economic values. ***Considerations:*** *Does the variance provide minimal relief or a substantial deviation from the required setback? Does it affect the natural appearance of the shore from the lake? Does it affect the hydrology of the riparian area?*
- **Does the proposal put property to use in a *reasonable manner*?**
  Examine the reasons that the variance is requested and evaluate them in light of the purposes of the local shoreland ordinance and the public water resource at stake. Since the impervious surface cap is generally intended to reduce runoff to public waters, it may not be appropriate to allow large areas of constructed surfaces so close to the water. ***Considerations:*** *Has the applicant demonstrated that the proposed construction is reasonable in this location given the sensitive nature of the area and the purposes of the regulations? Why or why not?*

Note: *The last three criteria address practical difficulties. Economic considerations alone cannot create practical difficulties*

Range of Outcomes

Based on the findings, several outcomes can occur:

- If the applicant fails to prove that *all* criteria above are met, then the variance must be denied. For example, the local government could find that the building plans itself created the circumstances necessary for a variance rather than the any unique physical characteristics of the property.
- If the applicant demonstrates that *all* criteria are met, then the variance may be granted. For example, the local government could find that the construction footprint is reasonable, the circumstances are unique given the adjacent wetland, and the minor deviation in the impervious surface coverage does not alter the hydrology of the area (as determined through runoff calculations).
- If the variance is granted and the impervious surface in any way alters the hydrology of the area, then conditions may be imposed, such as to increase the structure setback from the lake by 15 feet to reduce the extent of the driveway and minimize the amount of impervious surface coverage over the limit.

Conditions on Variances

If findings support granting the variance, consideration must be given to the impacts on the public water and the riparian area and appropriate conditions to mitigate them. Conditions must be directly related and roughly proportional to the impacts created by the variance. Several examples are provided below:

- Modify construction designs (to minimize impact);
- Use permeable pavement systems for walkways, driveways, or parking areas (to reduce effective impervious surface area and infiltrate runoff);
- Direct rain gutter discharges away from the public waters and into infiltration basins (to reduce connected impervious coverage to allow additional areas for infiltration);
- Preserve and restore shoreline vegetation in a natural state (to intercept and filter runoff coming from structures and driveways); and/or
- Increase setbacks from the ordinary high water level (to provide infiltration near public waters).

More information at: www.dnr.state.mn.us/waters/watermgmt_section/shoreland/variances.html

CITY OF LAKE ELMO
WASHINGTON COUNTY
STATE OF MINNESOTA

RESOLUTION 2017-075

A RESOLUTION RESCINDING RESOLUTION 2017-067 AND APPROVING A VARIANCE FROM MINIMUM STRUCTURE SETBACK FROM ORDINARY HIGH WATER LEVEL AND MAXIMUM IMPERVIOUS SURFACE STANDARDS OF THE CITY'S SHORELAND DISTRICT

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

WHEREAS, Scott and Julie Drommerhausen, 9359 Jane Road North, Lake Elmo, MN 55042 ("Applicant"), has submitted an application to the City of Lake Elmo (the "City") for variances to allow construction of an approximately 685 square-foot addition, which will replace an existing deck, to the east of an existing home currently setback 45.4 feet from the Ordinary High Water Level (OHWL) and maximum impervious surface standards to increase the current impervious surface percentage from 26.9% to 29.7%.

WHEREAS, notice has been published, mailed and posted pursuant to the Lake Elmo Zoning Ordinance, Section 154.109; and

WHEREAS, the Lake Elmo Planning Commission held a public hearing on said matter on June 12, 2017; and

WHEREAS, the Lake Elmo Planning Commission has submitted its report and recommendation to the City Council as part of a Staff Memorandum dated June 12, 2017; and

WHEREAS, the City Council considered said matter at its June 20, 2017 meeting and adopted Resolution 2017-067, approving the variance request, subject to the following conditions of approval:

1) The Applicant shall secure any required permits and plan approvals from the City and other applicable jurisdictions.
2) The Applicant shall direct appropriate rain gutter discharges into a rain garden (infiltration basin designed to capture and infiltrate runoff) designed by a professional engineer or landscape architect and installed under their direction. The rain garden should mitigate the increased impervious surface of the entire addition to the home (685 square feet); and

WHEREAS, the Council wishes to remove the aforementioned condition of variance approval that the Applicant shall direct appropriate rain gutter discharges into a rain garden (infiltration basin designed to capture and infiltrate runoff) designed by a professional engineer or landscape architect and installed under their direction. The rain garden should mitigate the increased impervious surface of the entire addition to the home (685 square feet);

WHEREAS, the Council now rescinds Resolution 2017-067, and this Resolution is no longer in effect; and

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

FINDINGS

1) That the procedures for obtaining said Variance are found in the Lake Elmo Zoning Ordinance, Section 154.109.

2) That all the submission requirements of said Section 154.109 have been met by the Applicant.

3) That the proposed variance includes the following components:

    a) A variance to allow for an addition to an existing single-family detached home that does not meet the minimum setback from the OHWL or maximum impervious surface requirements.

4) That the Variance will be located on property legally described as follows: Lots 9 & 10, Berschen's Shores, Washington County, Minnesota. PID# 10.029.21.24.0006.

5) That the strict enforcement of Zoning Ordinance would cause practical difficulties and that the property owner proposes to use the property in a reasonable manner not permitted by an official control. ***Specific findings: The subject property was platted prior to adjustment of the Ordinary High Water of Lake Jane and the adoption of Shoreland standards by the City, and therefore the lot is much wider than it is long. Because of the shape of the lot, the Applicant is proposing to expand the home laterally rather than further encroaching on the current setback of the Ordinary High Water Level. Additionally, the addition will not expand much more of the footprint of the principal structure, as a slightly smaller deck that will be torn down exists where the addition is being proposed. Additionally, although the City's ordinance does not treat decks as impervious, many do. If decks were considered impervious, the addition would only add 109 square feet of impervious surface, or an increase of about 0.46%.***

6) That the plight of the landowner is due to circumstances unique to the property not created by the landowner. ***Specific findings: The property is unique in that it is much wider than it is long, and the Applicant was not involved in the platting process of this property nor the adoption of the City's shoreland standards. The Applicant also was not involved in any previous variance requests for the subject property.***

7) That the proposed variance will not alter the essential character of the locality in which the property in question is located. ***Specific findings: The proposed addition is in place of an existing deck and only slightly increases the footprint of the existing principal structure, including the existing deck, by 109 square feet. Additionally, the proposed addition does not further encroach on the existing setback of the principal structure from the OHWL of***

the property and has a setback from the OHWL similar to those of adjacent principal structures.

8) That the proposed variance will not impair an adequate supply of light and air to properties adjacent to the property in question or substantially increase the congestion of the public streets or substantially diminish or impair property values within the neighborhood. ***Specific findings: The proposed addition will not further encroach on the setback of the existing structure from the OHWL and therefore will not further impair lake views of neighboring properties and will not impair an adequate supply of light and air. It also will not increase congestion of public streets or substantially diminish or impair property values within the neighborhood. Adjacent properties, including the subject property, have been granted similar variances and are setback a similar distance from the OHWL.***

CONCLUSIONS AND DECISION

Based on the foregoing, Resolution 2017-067 is rescinded and no longer in effect, and the Applicant's application for a Variance is granted, subject to the following conditions.

1) The Applicant shall secure any required permits and plan approvals from the City and other applicable jurisdictions.

Passed and duly adopted this 1st day of August 2017 by the City Council of the City of Lake Elmo, Minnesota.

_____
Mike Pearson, Mayor

ATTEST:

_____
Julie Johnson, City Clerk

Drummerhausen Variance **June 22, 2017**

Lake Elmo, MN

RAINGARDEN INSTALLATION ESTIMATE FOR ESTABLISHING ESCROW REQUIREMENTS

NO.	ITEM	UNIT	QUANTITY	UNIT COST	TOTAL
1	Design Process & Design Documents with Stormwater Calculations	Hours	10.0	100.00	$1,000.00
2	Establish Elevations, Demo Existing Soils / Haulaway / Disposal with Final Grading	Cubic YD	50.0	40.00	$2,000.00
3	Raingarden Soils at 18 inch Depth (80% Coarse Sand with 20% Compost)	Cubic YD	40.0	50.00	$2,000.00
4	Raingarden Plantings @ #1 Container Perennials	Each	300.0	20.00	$6,000.00
5	Shredded Western Red Cedar Mulch	Cubic YD	10.0	100.00	$1,000.00
	TOTAL RAINGARDEN PROJECT COSTS				**$12,000.00**
	Assumptions: Designed to mitigate approximately 685 square feet of impervious surface				

LANDSCAPE ARCHITECTURE, INC. 2350 BAYLESS PLACE ST. PAUL, MN 55114 PHONE 651.646.1020