



City of Lake Elmo

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NOTICE OF MEETING

The City of Lake Elmo
Planning Commission will conduct a meeting on
Wednesday, October 14, 2009, at 7:00 p.m.

AGENDA

1. Pledge of Allegiance
2. Approve Agenda
3. Approve Minutes
 - a. August 10, 2009
4. Public Hearings
 - a. Wireless Communications Ordinance Update
 - b. FEMA Floodplain Maps and Ordinance Revision
5. Business Items
 - a. Review of OP Buffer Setbacks
6. City Council Updates
 - a. September 15, 2009
 - i. Revised Landscape Plan for St. Croix's Sanctuary – approved
 - ii. Storage of Boats/Trailers; Direction from Council
 - b. October 6, 2009
 - i. Zoning Text Amendment; Permitted Encroachment - approved
7. Adjourn

**City of Lake Elmo
Planning Commission Meeting
Minutes of August 10, 2009**

Chairman Van Zandt called to order the meeting of the Lake Elmo Planning Commission at 7:00 p.m. COMMISSIONERS PRESENT: Britz, Fliflet, Pearson, Van Erem, Van Zandt, Williams, and Ziertman, Absent: Anderson, Bidon, Hall, and McGinnis. STAFF PRESENT: Planning Director Klatt and Planner Matzek.

Agenda

M/S/P, Fliflet/Van Erem. Vote: 9:0.

Minutes – July 13, 2009

Commissioner Fliflet said she did not vote for the straw poll identified on page two; she did not want the process to be expedited as she wanted to ensure voices were heard. Commissioner Ziertman said she voted against the straw vote for removing the minimum size limit for the towers.

M/S/P, Ziertman/Fliflet to approve the minutes as amended. Vote: 7:0.

Public Hearing - Variance at 8618 Ironwood Trail North

Planner Matzek introduced the variance application to allow a covered porch to encroach five feet within the required thirty foot front yard setback at 8618 Ironwood Trail North. Staff recommended denial of the application based on the variance criteria.

Commissioner Fliflet asked if any of the existing homes in the neighborhood encroach into the setback.

Planner Matzek said that there may be one elsewhere in the neighborhood, but it was unconfirmed at this time.

Vernon Reichow, 8618 Ironwood Trail North

Mr. Reichow explained that the covered porch is proposed to allow room to turn a wheelchair around as he and his wife both had fathers in wheelchairs. They are proposing to have a covered porch to protect it from the elements and to make their home more accessible for when they are elderly as they would like to stay in their home.

THE CHAIRMAN OPENED THE PUBLIC AT 7:20 P.M.

Rita Conlin, 8560 Ironwood Trail North

Mrs. Conlin stated that she is in favor of the variance. She said she appreciates that they are trying to create generational type housing as Lake Elmo does not have any senior housing currently. She said it speaks to the stability of the neighborhood.

THE CHAIRMAN CLOSED THE PUBLIC HEARING AT 7:24 P.M.

Commissioner Fliflet said that she is supportive of the variance as it is towards the street and does not encroach upon neighbors and because they could have come in with a 20 foot uncovered porch that would be permitted, but this requires a variance because it has a cover.

Commissioner Pearson said he does not see a hardship. If in the future they were in a wheelchair maybe it would be a hardship at that time.

Commissioner Williams said it is their duty to uphold the code as written if a hardship is not present. The hardship must be associated with the land or the structures and not with the use.

Commissioner McGinnis asked why there was a difference between allowing covered versus uncovered porches are allowed in the code.

Planner Matzek stated that uncovered porches do not provide a visual barrier and may therefore be considered permitted as they are at ground level.

Commissioner Van Erem pointed out that there is eight feet to work with in a conforming location and would like better documentation from the applicants on why the additional five feet is necessary.

M/S/F, Fliflet/Bidon, move to recommend approval of the variance request. Vote: 4:5.

Business Items - Wireless Communication Ordinance Draft

Planning Director Klatt introduced and explained different sections of a rough draft of an ordinance to revise the existing text regulating wireless telecommunication towers.

Commissioner Williams asked why the section regarding damages was removed.

Planning Director Klatt stated that the consultant hired to assist with the development of the ordinance recommended that be removed because the towers rarely fail, it was unnecessary in the code.

Commissioner Ziertman said that under the new "Proof of Need" section, the search radius is shown at four miles, but that the consultant had suggested five miles previously.

Commissioner Williams suggested the height threshold should be specified in the section regarding location requirements.

Commissioner Fliflet said that in the Site Ranking Analysis section, number six should be more clearly worded regarding zoning districts and that although one through six appear to be a ranking system, the last three appear to be statements. She said letter "b" should have stronger wording.

Commissioner Ziertman said she is opposed to eliminating a minimum parcel area. She said she is comfortable with a five acre minimum, but that two acres is not large enough to support all the facilities and accommodate the necessary setbacks. She said she would like to see a maximum height be reduced to 150 feet in Agricultural and Business Park zoning districts.

Planning Director Klatt said that the commission should eliminate the option now of allowing towers on smaller lots if that is something they do not want to ever consider.

Commissioner Williams said he does not feel comfortable with having a zero minimum parcel size requirement in the PF zoning district; it should be kept at 2.5 acres.

Commissioner Fliflet asked that the zoning districts be listed instead of stating "residential."

Chairman Van Zandt asked that the code specify that the city should retain the qualified engineer for reviewing the application so as not to leave room for interpretation.

Commissioner Fliflet asked if language could be added to say that if a tower is proposed next to residential uses that it will be more important to review impact to neighbors.

Commissioner Williams asked if the city insurance agent could be contacted to find what they are comfortable with requiring for setbacks. He suggested adding to the Minimum Conditions requirements that the city should perform a final inspection to ensure all conditions are met before the tower becomes operational. He asked that the landscaping and screening requirements in the Tower Standards specify at what time of year the screening would be evaluated.

Planning Director Klatt suggested the evaluation would be for summer, leaf-on conditions.

A FIVE MINUTE BREAK WAS TAKEN AT 9:35 P.M.

Chairman Van Zandt said that DeMontreville Trail is being discussed to be turned back over to the city. He said that many people use that road for walking and would like to see it improved to be one-foot wider and would suggest the aprons be built with that thought.


Adjourned at 10:25 p.m.

Respectfully submitted,

Kelli Matzek
Planner

Planning Commission
Date: 9/28/09
Public Hearing - Cont.
Item: 4a

ITEM: Proposed Revisions to the Wireless Communications Ordinance

SUBMITTED BY: Kyle Klatt, Planning Director 

REVIEWED BY: Kelli Matzek, City Planner

SUMMARY AND ACTION REQUESTED:

The Planning Commission reviewed proposed revisions to the Wireless Communications Ordinance at its September 28, 2009 meeting and conducted a public hearing on the ordinance amendments at this time as well. After reviewing the document, the Commission recommended several minor changes and two rather significant ones that required the hearing process to be extended out to the next meeting. Staff has incorporated the proposed changes into the draft document, the two most significant of which include the following:

- The maximum tower height in R-1, R-2, R-3, and R-4 residential districts was increased to 150 feet. The ordinance as drafted limited this height to 75 feet.
- The maximum tower height in RE – Residential Estates districts was also increased to 150 feet. The ordinance was originally written with a 75 foot height limit in this district.

Other minor changes requested by the Commission have been tracked by highlighting them in yellow in the attached ordinance draft.

Staff has also provided the Planning Commission with an updated "clean" copy of the ordinance with all tracking and other notations removed.

ADDITIONAL INFORMATION:

The last Planning Commission packet included a detailed staff review and discussion concerning the proposed ordinance. This information will be made available upon request for any members of the Commission or public that would like to review these reports in advance of the October 14, 2009 meeting.

In order to expedite the review of this ordinance, the public hearing notice was published in the Pioneer Press as the backup paper for the City of Lake Elmo. The hearing notice did specifically reference the major changes that have been proposed.

RECOMMENDATION:

Staff is recommending that the Planning Commission recommend approval of the proposed amendments to the wireless communications ordinance.

ATTACHMENTS:

1. Wireless Communications Ordinance – Marked Version
2. Wireless Communications Ordinance – Clean Version

ORDER OF BUSINESS:

- IntroductionKyle Klatt, Planning Director
- Report by staff.....Kyle Klatt, Planning Director
- Questions from the Commission.....Chair & Commission Members
- Open the Public Hearing..... Chair
- Close the Public Hearing Chair
- Call for a motion.....Chair Facilitates
- Discussion of Commission on the motion.....Chair Facilitates
- Action by the Planning CommissionChair & Commission Members

Wireless Communications Ordinance Draft
Planning Commission Draft – 10/14/09
KEY:

Redline – New/Deleted Text

Yellow Highlight – Amendments After 9/28/09 Planning Commission Review

**WIRELESS TELECOMMUNICATION TOWER PERMIT COMMUNICATIONS
FACILITIES**

§ 150.110 PURPOSE AND INTENT.

~~—The wireless telecommunication tower permit regulations are intended to:~~

The purpose of this ordinance is to allow for and regulate the design, location, placement, construction, maintenance, and removal of Wireless Communications Towers and antennas and to:

(A) Reasonably accommodate the provision of wireless telecommunication services to the general public;

(B) Provide safety/emergency service through the use of wireless communications facilities;

~~(CB)~~ Minimize adverse visual effects of wireless telecommunication towers, antennae, or accessory equipment through careful design and siting standards;

(D) Strictly control the location and design of wireless communications facilities so that allowed facilities will not be obtrusive or visually unpleasant, and in particular, to protect residential property and neighborhoods from visually intrusive tower installations where reasonable possible.

(E) Provide clear standards governing all aspects of such facilities;

~~(CF)~~ Avoid potential damage to adjacent properties from tower failures through structural standards and setback requirements; and

~~(GD)~~ Maximize the use of existing and approved towers, structures, and/or buildings for the location of new wireless telecommunication towers in order to reduce the number of the structures needed to accommodate wireless telecommunication services.

(H) Allow new facilities only when a documented proof of need satisfactory to the City can be shown;

(1997 Code, § 1390.01) (Ord. 97-24, passed 1-21-1998)

§ 150.111 DEFINITIONS (to be moved to section 11.01 of City Code)

Antenna. A device placed outdoors on a building or structure and used to transmit and/or receive radio or electromagnetic waves, excluding: satellite dishes, ten (10) feet or shorter whip antennas one inch or less in diameter, and television antennas having a total length of not more than six feet which are located on a dwelling or other permitted building. (R)

Monopole. A freestanding, self-supporting tower that uses a single pole, does not use a lattice design and has no guy wires. (N)

Public Land. Land owned or operated by a municipality, school district, county, state, or other governmental unit. (N)

Satellite Dish or Satellite Earth Station Antenna. A round, conical, or cone-shaped device more than 18 inches in diameter and placed outdoors on the ground or on a structure and used to transmit and/or receive radio or electromagnetic waves. (N)

Wireless Communication Facility. Cables, wires, lines, wave guides, antennas, and any other equipment or facilities associated with the transmission or reception of communications located or installed on or near a tower or antenna support structure but not including a satellite earth station antenna (satellite dish) 7 feet or less in diameter. (R)

Wireless Communications Tower. A self-supporting monopole, poles, or lattice structure constructed at normal grade and extending into the air at least 20 feet and used to support wireless communications facilities. (R)

Tower Height. The vertical distance from the average grade at the base of a tower to the highest point of a tower or to the highest point of the highest wireless communications facilities on a tower, whichever is higher. (N)

Utility Pole. A structure which is owned by a governmental agency or utility company and which is used to support illumination devices or lines and other equipment carrying electricity or communications. (N)

§ 150.1124 PERMIT REQUIREMENTS.

(A) All new wireless communications facilities shall require a Conditional Use Permit in accordance with the Zoning District requirements specified in Section 150.XXX of this Chapter with the exception of those facilities that are exempt from review under this Chapter or that may be approved administratively with a Wireless Communications Permit.

(1) A public hearing for a new wireless communications facility that requires a Conditional Use Permit shall be preceded by 10-days mailed notice to the record owners of property located within 1,000 feet of the parcel on which the tower will be located.

~~No person shall install a wireless telecommunication facility or any portion thereof, at a height~~

~~greater than is allowed for structures in the underlying zoning district without first being issued a wireless telecommunication tower permit.~~

(1997 Code, § 1390.03) (Ord. 97-24, passed 1-21-1998) Penalty, see § 10.99

(B) Exemptions. The following are exempt from review under this Chapter:

- (1) Television antennas, satellite dishes one meter (39 inches) in diameter or less;
- (2) Satellite dishes used commercially and three (3) meters in diameter or less;
- (3) Receive only antennas;
- (4) Amateur radio facilities, subject to other City Code requirements;
- (5) Mobile services providing public information coverage of news events or of a temporary or emergency nature.

(C) Administrative Review. The following shall be allowed as a permitted use subject to the issuance of a Wireless Communications Permit in accordance with Section 150.XXX of this chapter:

- (1) Satellite dishes more than one meter (39 inches) in diameter;
- (2) Ground mounted antennas not exceeding the maximum height allowed for structures in the underlying zoning district;
- (3) Building mounted antennas not exceeding 25 feet above the highest part of the building to which they are attached;
- (4) Utility pole-mounted antennas not exceeding 25 feet above the highest part of the utility pole to which they are attached;
- (5) Antennas co-located on an existing wireless communications facility structure.

150.113 PROOF OF NEED

(A) As part of an application for a Conditional Use Permit or Wireless Communications Permit an applicant shall demonstrate proof of need by providing a coverage/interference analysis and capacity analysis, which indicates that the location and height of the tower or antennas as proposed is necessary to meet the frequency plus other spacing needs of the "cellular communication system" and/or to provide adequate portable radio coverage and capacity to areas which cannot be adequately served by locating the tower/or antenna at another site. For purposes of the analysis, in-building service is not deemed to be as critical as outside coverage. The proof of need for the tower or antennae must be demonstrated to the satisfaction of the City by providing the City an analysis from a qualified professional RF engineer with experience in radio

frequency analysis work, which is subject to acceptance by the City prior to commencing the work.

(B) The cost of the City's review, including an analysis of the proof of need, is the applicant's responsibility. An escrow shall be established in amount required by Council resolution for this purpose.

(C) The analysis and the material provided by the engineer shall include at least the following:

(1) **Structural Capacity Analysis.** Provide an analysis of the impact of the proposed facility on the tower's carrying capacity of at least three (3) antenna arrays required (using a typical maximum facility) under the co-location provision of this code.

(2) **Coverage/Interference.** Provide an analysis for:

(a) City property and other public property with signal strength values (expressed in dBuV) for on street level, in vehicle, and in building level with said interference analysis indicating the protection afforded for all the frequencies in use or which could be in use by the City or other public safety agencies.

(b) Private property with signal strength values (expressed in dBuV) for on street level and in building level with said analysis indicating the protection afforded property within one-half mile of the proposed facility and site.

(3) **System Capacity Analysis.** If the system coverage analysis does not show a coverage need, provide a system capacity analysis.

(4) **Radio Frequency Radiation Hazard Analysis.** The analysis must address compliance with the most current FCC Bulletin GET 65 radiation standard. A yearly report must be submitted before December 31 of each year showing the results of on-site measurements at the site. A Registered Professional Engineer must sign these measurements and report. (MOVED TO CONDITIONS AND REVISED)

(5) **Map of Existing and Proposed Facilities.** A map showing the location of all existing and any proposed facilities-towers within two ~~four~~ (24) miles of the site being considered. Telecommunications equipment and towers within this area shall be identified by type, function, ownership/users, and height. The capacity of existing towers located within two ~~four~~ (24) miles (the study area) to carry additional facilities must be provided.

(6) **Map of Existing Buildings and Structures.** A map showing the location of all existing buildings, water towers and structures over seventy-five (75) feet or more in height above the ground within two (2) miles of the site being considered. The potential and efforts undertaken to use these buildings and structures as a supporting base for an antenna or telecommunications facility purpose must be described and analyzed.

(7) **Other Information.** Any other information deemed necessary by the City in order

to demonstrate the need for a new wireless communications facility.

(8) Exception. If the request is limited to adding an antenna array on an existing tower without increasing the height of the tower support structure or otherwise permitted after an administrative review under Section 150.111, the City may waive some or all of the proof of need requirements listed above.

§ 150.114 LOCATION REQUIREMENTS AND SITE RANKING ANALYSIS

(A) Location Requirements for New Facilities. If a new wireless communications facility is needed based on the materials and studies submitted and reviewed by the City, the following preferences, listed in ranked order, shall be followed and each preference shall be analyzed to determine the most appropriate location:

(1) Use of Existing Towers. An existing tower may be used to support the proposed facility. If no existing tower has additional capacity, a determination must be made to show if and how towers in the study area can be modified to accommodate the proposed facility. The co-location requirements specified in Section 150.112 shall be used to help determine whether or not an existing tower can be used to support a proposed facility.

(2) Use of Existing Structures. An existing structure over 35 feet high may be used. Preference shall be given to existing light poles, high voltage utility towers and water towers.

(3) Use of Existing Buildings Four or More Stories in Height. Public and commercial buildings or structures four or more stories high which can more likely accommodate facilities without obstructing views or being obtrusive to scenic views shall be given preference over shorter buildings.

(4) Within an existing easement that contains utility poles over 75 feet in height or within 100 feet of said right-of-way.

(5) Public Land and Facilities. In situations in which one of the four options listed above is not feasible, land owned by the City or other public property shall have preference to private property.

(6) Private property within the City of Lake Elmo subject to the Location and Zoning requirements of this chapter and the following criteria:

(a) Less restrictive zoning districts shall be given preference over more restrictive zoning districts. For example, proposed sites in commercial or industrial districts will be given preference over sites in residential, rural residential or agricultural zoning districts.

(b) Sites with the least visual impact on residential areas and which are the most consistent with the community's rural character shall be given preference.

(8) In all cases, except for non-conforming existing towers, the location must meet the

zoning requirements.

~~_____ (9) Amateur radio towers in Agriculture and Residential Zoning Districts are not required to co-locate.~~

(B) In cases where a lower ranked alternative is proposed, the applicant shall file a written analysis demonstrating that despite diligent efforts to adhere to the established hierarchy within the potential service area, as determined by a qualified radio frequency engineer, higher ranked options are not technologically feasible. An application for a lower-ranked site shall be considered incomplete without this written documentation.

§ 150.1157 CO-LOCATION REQUIREMENTS.

~~Except as hereinafter provided~~In accordance with the location requirements and site preferential rankings found in this Chapter, antenna utilized to provide wireless telecommunication services shall be located on existing towers or structures which exceed 75-35 feet in height and which are located within 1/4 mile of the antenna the potential service area for the site being proposed by the applicant. In the event that co-location is not possible, the applicant must demonstrate that a good faith effort to co-locate on existing towers and structures was made but an agreement could not be reached.

(1997 Code, § 1390.08) (Ord. 97-24, passed 1-21-1998) Penalty, see § 10.99

~~§ 150.118 EXCEPTIONS TO CO-LOCATION REQUIREMENTS.~~

(A) Exceptions to Co-location Requirements. The City Council shall waive any or all of the co-location requirements if it is determined that:

~~_____ (A) _____~~ (1) The antennae and/or tower accessory equipment would cause the structural capacity of an existing or approved tower or building to be exceeded, as documented by a qualified and licensed professional engineer, and the existing or approved tower or building cannot be reinforced, modified, or replaced to accommodate the antennae or tower accessory equipment at a reasonable cost;

~~_____ (B) _____~~ (2) The antennae and/or tower accessory equipment would cause interference materially impacting the usability of existing antennae or tower accessory equipment as documented by a qualified radio frequency engineer and the interference cannot be prevented at a reasonable cost, or would otherwise prevent the use of existing antennae or related accessory equipment and structures;

~~_____ (C) _____~~ (3) Existing or approved towers and buildings within the applicant's search radius cannot or will not accommodate the antennae and/or tower accessory equipment at a height necessary to function reasonably as documented by a qualified radio frequency engineer; and/or

~~_____ (D) _____~~ (4) Other unforeseen reasons make it infeasible to locate the antennae and/or tower accessory equipment upon an existing or approved tower or building.

(1997 Code, § 1390.09) (Ord. 97-24, passed 1-21-1998)

§ 150.1162 PROHIBITED AREAS.

Wireless telecommunication towers shall not be allowed in the following areas:

(A) Residentially zoned parcels (R-1, R-2, R-3, R-4, and RE Zoning Districts) of less than 10-2.5 acres or Rural Residential parcels of less than 5 acres unless the wireless telecommunication tower and ground facilities accessory thereto are located within 100 feet of the right-of-way of a public utility transmission line or existing public utility power line right-of-way or other public right-of-way that contains utility poles over 75 feet in height or within 100 feet of said right-of-way;

(B) Open space easements or conservation easements; and/or

(C) Airport impact zones without consent of the F.A.A.

(D) Open Space Preservation zoning districts.

(1997 Code, § 1390.03) (Ord. 97-24, passed 1-21-1998) Penalty, see § 10.99

§ 150.1173 ~~ALLOWED TOWER SITES~~ ZONING REQUIREMENTS.

~~Applicants for a wireless telecommunication tower permit shall make a reasonable effort to locate the towers and accessory ground facilities in the following areas:~~

~~(A) On an existing public utility power line support structure, within an existing public utility power line right-of-way, or within 100 feet of the right-of-way;~~

~~(B) On publicly owned property, as approved by the City Council; and/or~~

~~(C) On agriculturally or residentially zoned parcels greater than 10 acres.~~

~~(1997 Code, § 1390.04) (Ord. 97-24, passed 1-21-1998) Penalty, see § 10.99~~

(A) Wireless communications facilities that require a Conditional Use Permit, including the installation of a new tower, shall be permitted in the following zoning districts and subject to the following height restrictions provided they meet all other requirements of this ordinance:

<u>Zoning District</u>	<u>Maximum Height (in feet)</u>	<u>Minimum Parcel Area</u>
<u>A – Agriculture</u>	<u>175</u>	<u>10</u>
<u>RR – Rural Residential Zoning</u>	<u>150</u>	<u>5</u>
<u>R-1, R-2, R-3, and R-4 Residential</u>	<u>150</u>	<u>2.5</u>
<u>OP – Open Space</u>	<u>Not Allowed</u>	<u>-</u>
<u>RE – Residential Estates</u>	<u>150</u>	<u>2.5</u>

GB, LB, CB, HB – Business	150	5
BP – Business Park	175	5
PF – Public Facility	175	None

(B) Regardless of zoning district, new facilities may be allowed within an existing public utility power line right-of-way or other public right-of-way that contains utility poles over 75 feet in height or within 100 feet of said right-of-way.

(C) Public land exemption. A wireless communications facility may be located on any parcel that is owned by the City or another public entity regardless of the zoning district or size of the property.

§ 150.1184 APPLICATION AND REVIEW PROCEDURES.

(A) Wireless Communications Permit (Administrative Approval). An applicant seeking approval of a facility that can be approved administratively with a wireless communications permit shall follow all of the application requirements listed below for a Conditional Use Permit but shall be exempt from those requirements found in section 154.018 of the City Code, including the public hearing requirements. An application found to comply with the provisions of this Chapter may be approved by the Planning Director. Approval shall be in writing, identifying the specific facility approved, the location, mounting height, and other pertinent information and any conditions of approval. If the requested facility is to be located on public property, the agreement allowing the facility shall be approved by the City Council and executed prior to issuing the permit.

— Applications for a wireless telecommunication tower permit shall be submitted on forms provided by the City Planner, which shall include the following information:

(B) Conditional Use Permit. Wireless communications facilities that require a Conditional Use Permit are subject to the requirements specified in Section 154.018 of this Code in addition to all requirements of Section 150.110 of the Code.. Applications shall be submitted on forms provided by the City and shall include the following information:

(BA) A sketch-site plan drawn to scale acceptable to the City Planner and City Engineer/Planning Director which illustrates:

- (1) The parcel on which the tower and accessory ground facilities will be located;
- (2) The existing and proposed buildings and structures located and to be located on the tower parcel;
- (3) The buildings located within 100-200 feet of the perimeter of the tower parcel; and
- (4) Access easements as necessary to the tower parcel.

(B) A scaled drawing of the exterior of the proposed wireless communications facility,

clearly showing the method of fencing, coloration, materials, and camouflage techniques being used.

(C) Photo-simulated post construction renderings of the proposed wireless communications facilities, equipment enclosures, and ancillary structures as they would look after construction from locations at the periphery of the proposed site, which shall, at a minimum, include renderings from the vantage point of any adjacent roadways and ~~occupied commercial or residential structures~~ residential neighborhoods. The renderings shall also include photo-simulations of the antenna supporting structure after it has been fully developed with antenna structures (the applicant may assume for the purpose of the simulation that other antenna structures on the facility will resemble their proposed structure size and design). A minimum of two such renderings shall be provided; additional renderings may be required if the City determines that additional views should be considered.

~~— (B) A sketch drawn to scale or a photo image acceptable to the City Planner and City Engineer which illustrates the relative size of the proposed wireless telecommunication tower or existing structure on which the antenna will be located compared to structures located within 100 feet of the perimeter of the parcel on which the tower is located and which illustrates the visibility of the tower from adjoining parcels located within 100 feet of the perimeter of the parcel on which the tower is located. The City Planner may also require a visual impact demonstration including mock-ups and/or photo montages and plans for painting the tower;~~

(D) Exterior paint or finish samples of the colors to be used in the construction of the wireless communications facility.

(DE) A report from a qualified and licensed professional engineer which:

- (1) Describes the wireless telecommunication tower height and design including a cross-section and elevation;
- (2) Certifies the wireless telecommunication tower's compliance with structural and electrical standards;
- (3) Documents the height above grade for the mounting positions, which can be used for co-location and the minimum separation distances between the co-location positions; and
- (4) Describes the wireless telecommunication tower's capacity to support antennae, including an example of the number and type of antennas that can be accommodated on the wireless telecommunication tower.

(DE) In conjunction with the information required to demonstrate the proof of need for a new facility under this Chapter, the applicant shall submit a 5-year plan for wireless telecommunication facilities to be located within the city ~~shall be submitted by the applicant.~~ The city acknowledges that the plans are fluid and in all likelihood will change depending upon market demands for the service. The city will maintain an inventory of all existing and reasonably anticipated cell site installations. The applicant shall provide the following written information in each 5-year plan and the plan must be updated with each submittal for a new

wireless telecommunication tower permit as necessary:

- (1) A description of the radio frequencies to be used for each technology;
- (2) A list of all existing sites to be upgraded or replaced, and proposed cell sites within the city for these services by the applicant; and
- (3) A presentation size map of the city, which shows the 5-year plan for cell sites, or if individual properties are not known, the geographic service areas of the cell sites.

~~—(E) The cost of mailing addresses for all property owners of record located within 1,000 feet of the subject property to be complied by the city;~~

(F) An application fee in an amount prescribed from time to time by City Council resolution as necessary to reimburse the city for costs incurred to process the wireless telecommunication tower permit application along with an escrow payment as prescribed by the City Council to cover the costs associated with the City's review of the permit;

(G) Confirmation that the applicant is properly licensed by the F.C.C., or is the authorized representative of a wireless telecommunication provider properly licensed by the F.C.C.;

(H) Written authorization from the property owner describing the area which will be subject to the tower lease, ~~and acknowledging that the property owner will be responsible for removal of the wireless telecommunication tower, antennae, and tower accessory equipment which is unused or abandoned for 12 consecutive months;~~

(I) Documentation of the steps to be taken by applicant to avoid causing destructive interference to co-located previously established public safety communications facilities; and

(J) A detailed landscape plan, which indicates how tower accessory equipment will be screened.

(1997 Code, § 1390.05) (Ord. 97-24, passed 1-21-1998)

§ 150.119 EXPERT REVIEW

(A) Where due to the complexity of the methodology or analysis required to review an application for a wireless communications facility, the Planning Director may require a technical review by a third party expert. The costs of this review shall be borne by the applicant, and shall be in addition to applicable Conditional Use or Wireless Communications Permit and building permit fees. The applicant shall submit an escrow deposit that may be applied towards the cost of such technical review upon notification from the Director that a technical review is required, and shall remit any outstanding balance to the city for such review prior to issuance of a building permit. The maximum fee for such review and the required escrow deposit shall be in accordance with the fee schedule adopted by the City Council.

(B) The expert review may address any or all of the following:

- (1) The accuracy and completeness of submissions;
 - (2) The applicability of analysis techniques and methodologies;
 - (3) The validity of conclusions reached;
 - (4) Whether the proposed wireless communications facility complies with the applicable approval criteria set forth in these regulations;
 - (5) Other matters deemed by the City to be relevant to determining whether a proposed wireless communications facility complies with the provisions of these regulations.
- (C) Based on the results of the expert review, the City may require changes to the applicant's application or submittals.
- (D) The applicant shall reimburse the city within 15 working days of the date of receipt of an invoice for expenses associated with the third party expert's review of the application. Failure by the applicant to make reimbursement pursuant to this section shall abate the pending application until paid in full.

§ 150.115 PLANNING COMMISSION REVIEW.

~~— (A) Upon receipt of a completed application, the City Planner shall schedule a hearing before the Planning Commission which shall be preceded by 10 days mailed notice to the record owners of property located within 1,000 feet of the parcel on which the tower will be located.~~

~~— (B) The Planning Commission shall make recommendations to the City Council regarding the issuance of the wireless telecommunication tower permit and, in particular, in regard to the following:~~

~~— (1) Compliance of application with the city regulations and development standards; and/or~~

~~— (2) Proposed conditions, as necessary, to prevent the wireless telecommunication tower, antennae, and tower accessory equipment from becoming a nuisance to surrounding property owners.~~

~~(1997 Code, § 1390.06) (Ord. 97-24, passed 1-21-1998)~~

§ 150.12019 CONSTRUCTION PERMITS.

All wireless telecommunication towers erected, constructed, or located within the city, and all wiring therefore, shall comply with the requirements set forth in the Uniform Building Code. (1997 Code, § 1390.10) (Ord. 97-24, passed 1-21-1998) Penalty, see § 10.99

§ 150.12120 TOWER STANDARDS.

(A) Wireless telecommunication towers shall comply with the following standards unless the City Council grants a variance as necessary to reasonably accommodate the wireless telecommunication tower. Variance procedures shall be processed according to the zoning code.

(B) *Design.*

(1) To blend into the surrounding environment through the use of color and architectural treatment techniques that soften the visual impact of the wireless communication tower on the surrounding environment.

(2) To be of a monopole design unless the City Council determines that an alternative design would better blend into the surrounding environment;

(3) All proposed wireless telecommunication tower shall be designed, structurally, electrically, and in all respects, to accommodate both the applicant's antennas and comparable antennas for at least 2 additional users if the tower is over 100 feet in height or for at least 1 additional user if the tower is between 75 feet and 100 feet in height; provided that this standard may be waived or otherwise modified by the City Council as necessary to allow the applicant to construct a wireless telecommunication tower that better blends into the surrounding environment.

(4) Where possible, all proposed wireless telecommunication towers must be designed to allow for future rearrangement of antennas upon the tower and to accept antennas mounted at various heights.

(5) All facilities shall be designed to minimize the visual impact to the greatest extent feasible by means of placement, screening, landscaping with native species whenever feasible, and camouflage, and to be compatible with existing architectural element, building materials, and other site characteristics. The applicant shall use the least visible antennas possible to accomplish the coverage objectives.

(C) *Adverse effects on properties.*

(1) New wireless communications facilities shall be configured and located in a manner that shall minimize adverse effects, including visual impacts on adjacent properties. The applicant shall demonstrate that alternative locations, configurations, and facility types have been examined and shall address in narrative and graphic form the feasibility of any alternatives that may have fewer adverse effects on adjacent properties than the facility, configuration, and location proposed.

(2) The following attributes shall be considered from vantage points at adjacent properties, roadways, and occupied structures: height and location, mass and scale, materials and color, existing and proposed vegetation and intervening structures.

(3) An applicant shall demonstrate through the photo-simulation requirements under Section 150.114 that the project design employs each of these attributes in a manner that minimizes adverse effects to the greatest extent possible.

(4) All facilities that have the potential for high visibility shall be sited in such a manner as to cause the least detriment to the viewshed of adjoining properties.

(D) ~~Setbacks from lot lines.~~

(1) No communications tower shall be located in the required front, side, or rear yard setback of any parcel.

(2) No freestanding communications tower shall be located ~~be located~~ closer than 125% of the tower height from any lot lines with the following exceptions:

(a) Towers in a side or rear yard that are adjacent to parcels zoned commercial, industrial, or public facility.

~~In all zoning districts, towers may encroach into the rear or side yard setback areas, provided that the rear or side yard property line abuts a commercial or business-zoned property and the wireless telecommunication tower does not encroach upon any easements.~~

~~(a) In all residential zoning districts, wireless telecommunication towers shall be set back 1 foot for each foot of tower height plus 20 feet.~~

(3) Setbacks from buildings:

(a) In residential zoning districts, wireless communications towers shall be set back a minimum of 100% of the tower height from a residential dwelling except for dwellings on the subject property.

(b) In all other zoning districts, the minimum setback between structures as required by the building code shall be observed.

~~(b) No setbacks shall be required from commercial and industrial or agricultural buildings provided all other requirements of this code are met.~~

~~(4) Wireless telecommunication towers shall not be located between a principal structure and a public street.~~

~~(d) A required setback may be reduced or its location in relation to a public street varied, at the sole discretion of the City Council, to allow for the integration of a wireless telecommunication tower with an existing or proposed structure such as a church steeple, power line support device, or light standard.~~

(4) Use of existing light poles, high voltage poles or towers, and other existing structures are exempt from the setback requirements provided that such pole, tower, or structure

is not increased in height.

(5) Wireless Communications Towers located within an existing public utility power line right-of-way or other public right-of-way that contains utility poles over 75 feet in height or within 100 feet of said right-of-way shall be exempt from the setbacks as herein required.

(6) A required setback may be reduced or its location in relation to a public street varied upon providing the city with a licensed professional engineer's certification that the wireless telecommunication tower is designed to collapse or fail within a distance or zone shorter than the required setback distance.

(E) Height.

~~_____ (a) In all residential zoning districts, the maximum height of any wireless telecommunication tower including all antennas and other attachments, shall not exceed 1 foot for each 1 foot the tower is setback from a residential dwelling unit up to a maximum of 195 feet for parcels of 40 acres or more and 125 feet for parcels between 10 to 40 acres in size.~~

~~_____ (b) In all non-residential zoning districts, wireless telecommunication tower and antennae shall not exceed 195 feet in height above ground for a freestanding wireless telecommunication tower, and 195 feet in height above ground as measured by the lowest ground elevation adjacent to a building on which the tower/antenna is located, including all antennas and other attachments where the zoning district is adjacent to a residential zoning district. The setback from a common lot line shall be 2 feet for each 1 foot of tower height. (1997 Code, § 1390.11) (Ord. 97-24, passed 1-21-1998) Penalty, see § 10.99~~

(1) The maximum height of a wireless communications tower shall be determined based on the underlying zoning district and will be the amount specified in Section 150.114.

§ 150.121 LIGHTING.

(F) Lighting. At night, wireless telecommunication towers shall not be illuminated by artificial means, unless otherwise required by the Federal Aviation Administration (FAA).

(1) White strobe lighting shall be prohibited.

(2) The applicant shall document the need for lighting as part of a new wireless communications facility application.

(G) Landscaping and Screening. All wireless communications towers and related building facilities shall be landscaped and screened with natural vegetation to lessen the visual impact. The natural vegetation on the site shall be documented on the site plans. Suitable existing vegetation shall be retained to the maximum extent possible based on an analysis of the site. New landscaping shall be selected that includes coniferous and deciduous plants and trees that are hardy for conditions on the site without the use of augmented water.

(1) Landscaping shall include ground cover, lower story, mid-story, and upper story plants. Plant density shall be sufficient to provide 80 percent opacity year round from the ground up to a distance of 5 feet high for 60 percent or more of the site with the planting to be located based on an analysis of the site in relation to the surrounding area. Greater or lesser amounts and percentages may be required or allowed based on the City's review.

(1997 Code, § 1390.12) (Ord. 97-24, passed 1-21-1998) Penalty, see § 10.99

~~§ 150.122 SIGNS AND ADVERTISING.~~

(H) Signs and Advertising. The use of any portion of a wireless telecommunication tower for signs other than warning or equipment information sign is prohibited.

(1997 Code, § 1390.13) (Ord. 97-24, passed 1-21-1998) Penalty, see § 10.99

~~§ 150.123 INTERFERENCE WITH PUBLIC SAFETY TELECOMMUNICATION.~~

(I) Interference with public safety communication. No wireless telecommunication facility shall interfere with public safety telecommunications. All wireless telecommunication towers/antennas shall comply with F.C.C. regulations and licensing requirements.

(1997 Code, § 1390.14) (Ord. 97-24, passed 1-21-1998) Penalty, see § 10.99

~~§ 150.124 PROHIBITED SUBDIVISIONS.~~

~~Where a wireless telecommunication facility has been located on a residentially or agriculturally zoned parcel greater than 10 acres, except when the facility is located within a power line easement, or within 100 feet of the easement, the parcels shall not be further subdivided unless the resulting parcel on which the wireless telecommunication facility is located continues to be more than 10 acres in size.~~

~~(1997 Code, § 1390.15) (Ord. 97-24, passed 1-21-1998) Penalty, see § 10.99~~

~~§ 150.125 ACCESSORY UTILITY BUILDINGS.~~

(J) Accessory utility buildings. All utility buildings and structures accessory to a tower shall be architecturally designed to blend in with the surrounding environment and compatible with adjacent buildings, and shall be permitted in addition to the number of accessory buildings otherwise allowed in each zoning district.

(1997 Code, § 1390.16) (Ord. 97-24, passed 1-21-1998) Penalty, see § 10.99

~~(1) Control buildings. The control buildings shall be designed to be architecturally compatible with the adjacent buildings. The control buildings shall not be placed in required setback areas nor shall they encroach into required landscape areas.~~

(1) Ground mounted equipment. Ground mounted equipment shall not be visible from

beyond the boundaries of the site and shall be screened by a solid wall or fence and dense landscaping materials described in paragraph G above.

(2) Accessory utility buildings shall observe the minimum setback requirements for accessory buildings in the underlying zoning district as well as all other applicable zoning and building requirements for accessory buildings.

(K) Maintenance. All buildings and structures on the premises of the wireless communications facility shall observe the City's property maintenance standards of the City Code.

§ 150.126 GROUND MOUNTED EQUIPMENT.

~~—All ground mounted equipment accessory to a wireless telecommunication tower shall be enclosed in a building with brick walls and have a dark colored standing seam metal roof and be further screened with sufficient trees, as determined by the City Planner, and shrubs to substantially reduce the visual impact.~~

~~(1997 Code, § 1390.17) (Ord. 97-24, passed 1-21-1998) Penalty, see § 10.99~~

§ 150.12216 CITY COUNCIL REVIEW WIRELESS COMMUNICATIONS TOWER AGREEMENT.

~~(A) Upon receipt of Planning Commission recommendations, the City Council shall review the application. The City Council may approve the application subject to conditions, table its review until a date certain, or deny the application for a wireless telecommunication tower permit. If the application is approved by the City Council, a wireless telecommunications tower permit and a building permit shall be issued upon the execution of a wireless telecommunication tower agreement.~~

(B) The agreement shall be signed by the applicant and property owner and the terms of the agreement shall include the following:

(1) A list of the conditions of approval to the wireless telecommunication tower permit;

(2) A statement indicating that failure to comply with the conditions of approval shall result in the removal of the wireless telecommunication tower, antennae, or tower accessory equipment;

(3) A statement indicating that the expenses incurred by the city to enforce the provisions of the wireless telecommunication tower agreement shall be reimbursed by the applicant;

(4) A statement, which requires the applicant to utilize the procedures established by the F.C.C. to resolve any complaints received relating to interference allegedly caused by the wireless telecommunication tower; and

(5) A statement indicating that a wireless telecommunication tower which has not been used for ~~12-six~~ (6) consecutive months shall be deemed abandoned and may be required to be removed in the same manner and pursuant to the same procedures as for hazardous and substandard buildings in accordance with Section 150.123 below. (M.S. §§ 463.15 through 463.261, as they may be amended from time to time). To ensure compliance with this provision, the applicant must submit a performance bond or letter of credit in an amount sufficient to cover the removal or reduction costs.

(1997 Code, § 1390.07) (Ord. 97-24, passed 1-21-1998)

§ 150.123 ABANDONMENT AND REMOVAL

(A) Towers and antennae shall be removed, at the owner's expense, within six (6) months of cessation of use.

(B) An owner wishing to extend the time for removal or reactivation shall submit an application stating the reason for such extension. The Planning Director may extend the time for removal or reactivation up to 60 days showing of a good cause. If the tower or antennae is not removed in a timely fashion, the City may give notice that it will contract for removal within 30 days following written notice to the owner. Thereafter, the City may cause removal and be reimbursed for all costs associated with said removal by drawing on the funds provided with the financial guarantee at the owner's expense.

(C) Upon removal of the wireless communications facility, the site shall be returned to its natural state and topography and vegetated consistent with the natural surroundings.

§ 150.124 MINIMUM CONDITIONS

(A) General conditions on a wireless communications permit may include, but not be limited to the following:

- (1) An agreement providing for co-location and six (6) month removal of unused and/or obsolete towers shall be attached and become part of the permit.
- (2) The tower shall be set back a distance equal to the tower height from all property lines. All accessory structures shall be setback a minimum of twenty (20) feet from all side yard and rear yard property lines
- (3) Zoning Permits shall be applied for and issued before any construction is started.
- (4) Prior to application for a conditional use permit, applicant must obtain FAA approval and/or provide documentation that FAA approval is not needed.
- (5) Applicant must obtain FCC licensure and approval as required for various communications applications. ~~No interference with local television and radio reception will be allowed.~~
- (6) Applicant must submit proof of liability and Worker's compensation Insurance.
- (7) Proof that towers and their antennas have been designed by, and following completion of construction were inspected by a qualified and licensed professional

- engineer (at the applicant's expenses) to conform to applicable state structural building standards and all other applicable reviewing agencies and to conform with accepted electrical engineering methods and practices as specified in applicable provisions of the National Electrical Code.
- (8) Metal towers shall be constructed of, or treated with, corrosive resistant material.
- (9) The addition of antennas and associated equipment of an additional provider to an existing permitted tower shall be considered co-location and shall require a zoning permit and site plan approval. An amendment to a conditional use permit shall typically not be required
- (10) All towers shall be reasonably protected against unauthorized climbing. The area around the base of the tower and guy wire anchors shall be enclosed by a fence with a minimum height of six (6) feet fence with a locked gate.
- (11) All towers and their antennas shall utilize building materials, colors, textures, screening and landscaping that effectively blend the tower facilities within the surrounding natural setting and built environmentally to the greatest extent possible.
- (12) No part of any antenna or tower, nor any lines, cable, equipment, wires, or braces shall at any time extend across or over any part of the right of way, public street, highway, or sidewalk, without approval by the City through the zoning permit approval process.
- (13) All obsolete or unused towers and accompanying accessory facilities shall be removed within six (6) months of the cessation of operations at the site unless a time extension is approved by the City. After the facilities are removed, the site shall be restored to its original or an improved state which includes removal of all concrete to 6-feet below normal grade and surrounding area returned to normal grading. Electronic equipment shall not be removed in advance of removal of obsolete or unused towers. To ensure compliance, the applicant must submit a performance bond or letter of credit in an amount sufficient to cover all removal costs as determined by the City prior to the issuance of a building permit for the facility. Failure to remove the structure shall be cause for the City to remove the tower and associated equipment and assess the cost against the required bonding or letter of credit instrument.
- ~~(1) Yearly report showing compliance with RF Radiation Hazard Standard and certification of required removal bond is required to be received before December 31 of each year.~~
- (14) The City of Lake Elmo shall conduct a final inspection of the site to ensure that all requirements of the City Code and all conditions of approval attached as part of the wireless communications permit are met prior to the start of operation of the facility.
- (15) For installations of a facility in an area that could potentially be accessed by the public (including rooftop installations or other locations that would be considered public verses occupational) a yearly report must be submitted before December 31 of each year showing the results of on-site measurements at the site. A Registered Professional Engineer must sign these measurements and report. (MOVED FROM "PROOF OF NEED" SECTION)

WIRELESS COMMUNICATIONS FACILITIES

§ 150.110 PURPOSE AND INTENT.

The purpose of this ordinance is to allow for and regulate the design, location, placement, construction, maintenance, and removal of Wireless Communications Towers and antennae and to:

(A) Reasonably accommodate the provision of wireless telecommunication services to the general public;

(B) Provide safety/emergency service through the use of wireless communications facilities;

(C) Minimize adverse visual effects of wireless telecommunication towers, antennae, or accessory equipment through careful design and siting standards;

(D) Strictly control the location and design of wireless communications facilities so that allowed facilities will not be obtrusive or visually unpleasant, and in particular, to protect residential property and neighborhoods from visually intrusive tower installations where reasonable possible.

(E) Provide clear standards governing all aspects of such facilities;

(F) Avoid potential damage to adjacent properties from tower failures through structural standards and setback requirements; and

(G) Maximize the use of existing and approved towers, structures, and/or buildings for the location of new wireless telecommunication towers in order to reduce the number of the structures needed to accommodate wireless telecommunication services.

(H) Allow new facilities only when a documented proof of need satisfactory to the City can be shown;

(1997 Code, § 1390.01) (Ord. 97-24, passed 1-21-1998)

§ 150.111 DEFINITIONS

Antenna. A device placed outdoors on a building or structure and used to transmit and/or receive radio or electromagnetic waves, excluding: satellite dishes, ten (10) feet or shorter whip antennae one inch or less in diameter, and television antennae having a total length of not more than six feet which are located on a dwelling or other permitted building.

Monopole. A freestanding, self-supporting tower that uses a single pole, does not use a lattice design and has no guy wires.

Public Land. Land owned or operated by a municipality, school district, county, state, or other governmental unit.

Satellite Dish or Satellite Earth Station Antenna. A round, conical, or cone-shaped device more than 18 inches in diameter and placed outdoors on the ground or on a structure and used to transmit and/or receive radio or electromagnetic waves.

Wireless Communication Facility. Cables, wires, lines, wave guides, antennae, and any other equipment or facilities associated with the transmission or reception of communications located or installed on or near a tower or antenna support structure but not including a satellite earth station antenna (satellite dish) 7 feet or less in diameter.

Wireless Communications Tower. A self-supporting monopole, poles, or lattice structure constructed at normal grade and extending into the air at least 20 feet and used to support wireless communications facilities.

Tower Height. The vertical distance from the average grade at the base of a tower to the highest point of a tower or to the highest point of the highest wireless communications facilities on a tower, whichever is higher.

Utility Pole. A structure which is owned by a governmental agency or utility company and which is used to support illumination devices or lines and other equipment carrying electricity or communications.

§ 150.112 PERMIT REQUIREMENTS.

(A) All new wireless communications facilities shall require a Conditional Use Permit in accordance with the Zoning District requirements specified in Section 150.XXX of this Chapter with the exception of those facilities that are exempt from review under this Chapter or that may be approved administratively with a Wireless Communications Permit.

(1) A public hearing for a new wireless communications facility that requires a Conditional Use Permit shall be preceded by 10-days mailed notice to the record owners of property located within 1,000 feet of the parcel on which the tower will be located.

(1997 Code, § 1390.03) (Ord. 97-24, passed 1-21-1998) Penalty, see § 10.99

(B) **Exemptions.** The following are exempt from review under this Chapter:

- (1) Television antennae, satellite dishes one meter (39 inches) in diameter or less;
- (2) Satellite dishes used commercially and three (3) meters in diameter or less;
- (3) Receive only antennae;

(4) Amateur radio facilities, subject to other City Code requirements;

(5) Mobile services providing public information coverage of news events or of a temporary or emergency nature.

(C) **Administrative Review.** The following shall be allowed as a permitted use subject to the issuance of a Wireless Communications Permit in accordance with Section 150.XXX of this chapter:

(1) Satellite dishes more than one meter (39 inches) in diameter;

(2) Ground mounted antennae not exceeding the maximum height allowed for structures in the underlying zoning district;

(3) Building mounted antennae not exceeding 25 feet above the highest part of the building to which they are attached;

(4) Utility pole-mounted antennae not exceeding 25 feet above the highest part of the utility pole to which they are attached;

(5) Antennae co-located on an existing wireless communications facility structure.

150.113 PROOF OF NEED

(A) As part of an application for a Conditional Use Permit or Wireless Communications Permit an applicant shall demonstrate proof of need by providing a coverage/interference analysis and capacity analysis, which indicates that the location and height of the tower or antennae as proposed is necessary to meet the frequency plus other spacing needs of the "cellular communication system" and/or to provide adequate portable radio coverage and capacity to areas which cannot be adequately served by locating the tower/or antenna at another site. The proof of need for the tower or antennae must be demonstrated to the satisfaction of the City by providing the City an analysis from a qualified professional RF engineer with experience in radio frequency analysis work, which is subject to acceptance by the City prior to commencing the work.

(B) The cost of the City's review, including an analysis of the proof of need, is the applicant's responsibility. An escrow shall be established in amount required by Council resolution for this purpose.

(C) The analysis and the material provided by the engineer shall include at least the following:

(1) **Structural Capacity Analysis.** Provide an analysis of the impact of the proposed facility on the tower's carrying capacity of at least three (3) antenna arrays required (using a typical maximum facility) under the co-location provision of this code.

(2) **Coverage/Interference.** Provide an analysis for:

(a) City property and other public property with signal strength values (expressed in dBuv) for on street level, in vehicle, and in building level with said interference analysis indicating the protection afforded for all the frequencies in use or which could be in use by the City or other public safety agencies.

(b) Private property with signal strength values (expressed in dBuv) for on street level and in building level with said analysis indicating the protection afforded property within one-half mile of the proposed facility and site.

(3) **System Capacity Analysis.** If the system coverage analysis does not show a coverage need, provide a system capacity analysis.

(4) **Radio Frequency Radiation Hazard Analysis.** The analysis must address compliance with the most current FCC Bulletin GET 65 radiation standard. *(MOVED TO CONDITIONS AND REVISED)*

(5) **Map of Existing and Proposed Facilities.** A map showing the location of all existing and any proposed towers within two (2) miles of the site being considered. Telecommunications equipment and towers within this area shall be identified by type, function, ownership/users, and height. The capacity of existing towers located within two (2) miles (the study area) to carry additional facilities must be provided.

(6) **Map of Existing Buildings and Structures.** A map showing the location of all existing buildings, water towers and structures over seventy-five (75) feet or more in height above the ground within two (2) miles of the site being considered. The potential and efforts undertaken to use these buildings and structures as a supporting base for an antenna or telecommunications facility purpose must be described and analyzed.

(7) **Other Information.** Any other information deemed necessary by the City in order to demonstrate the need for a new wireless communications facility.

(8) **Exception.** If the request is limited to adding an antenna array on an existing tower without increasing the height of the tower support structure or otherwise permitted after an administrative review under Section 150.111, the City may waive some or all of the proof of need requirements listed above.

§ 150.114 LOCATION REQUIREMENTS AND SITE RANKING ANALYSIS

(A) **Location Requirements for New Facilities.** If a new wireless communications facility is needed based on the materials and studies submitted and reviewed by the City, the following preferences, listed in ranked order, shall be followed and each preference shall be analyzed to determine the most appropriate location:

(1) **Use of Existing Towers.** An existing tower may be used to support the proposed

facility. If no existing tower has additional capacity, a determination must be made to show if and how towers in the study area can be modified to accommodate the proposed facility. The co-location requirements specified in Section 150.112 shall be used to help determine whether or not an existing tower can be used to support a proposed facility.

(2) Use of Existing Structures. An existing structure over 35 feet high may be used. Preference shall be given to existing light poles, high voltage utility towers and water towers.

(3) Use of Existing Buildings Four or More Stories in Height. Public and commercial buildings or structures four or more stories high which can more likely accommodate facilities without obstructing views or being obtrusive to scenic views shall be given preference over shorter buildings.

(4) Within an existing easement that contains utility poles over 75 feet in height or within 100 feet of said right-of-way.

(5) Public Land and Facilities. In situations in which one of the four options listed above is not feasible, land owned by the City or other public property shall have preference to private property.

(6) Private property within the City of Lake Elmo subject to the Location and Zoning requirements of this chapter and the following criteria:

(a) Less restrictive zoning districts shall be given preference over more restrictive zoning districts. For example, proposed sites in commercial or industrial districts will be given preference over sites in residential, rural residential or agricultural zoning districts.

(b) Sites with the least visual impact on residential areas and which are the most consistent with the community's rural character shall be given preference.

(B) In cases where a lower ranked alternative is proposed, the applicant shall file a written analysis demonstrating that despite diligent efforts to adhere to the established hierarchy within the potential service area, as determined by a qualified radio frequency engineer, higher ranked options are not technologically feasible. An application for a lower-ranked site shall be considered incomplete without this written documentation.

§ 150.115 CO-LOCATION REQUIREMENTS.

In accordance with the location requirements and site preferential rankings found in this Chapter, wireless communication services shall be located on existing towers or structures which exceed 35 feet in height and which are located within the potential service area for the site being proposed by the applicant. In the event that co-location is not possible, the applicant must demonstrate that a good faith effort to co-locate on existing towers and structures was made but an agreement could not be reached.

(1997 Code, § 1390.08) (Ord. 97-24, passed 1-21-1998) Penalty, see § 10.99

(A) **Exceptions to Co-location Requirements.** The City Council shall waive any or all of the co-location requirements if it is determined that:

(1) The antennae and/or tower accessory equipment would cause the structural capacity of an existing or approved tower or building to be exceeded, as documented by a qualified and licensed professional engineer, and the existing or approved tower or building cannot be reinforced, modified, or replaced to accommodate the antennae or tower accessory equipment at a reasonable cost;

(2) The antennae and/or tower accessory equipment would cause interference materially impacting the usability of existing antennae or tower accessory equipment as documented by a qualified radio frequency engineer and the interference cannot be prevented at a reasonable cost, or would otherwise prevent the use of existing antennae or related accessory equipment and structures;

(3) Existing or approved towers and buildings within the applicant's search radius cannot or will not accommodate the antennae and/or tower accessory equipment at a height necessary to function reasonably as documented by a qualified radio frequency engineer; and/or

(4) Other unforeseen reasons make it infeasible to locate the antennae and/or tower accessory equipment upon an existing or approved tower or building.
(1997 Code, § 1390.09) (Ord. 97-24, passed 1-21-1998)

§ 150.116 PROHIBITED AREAS.

Wireless telecommunication towers shall not be allowed in the following areas:

(A) Residentially zoned parcels (R-1, R-2, R-3, R-4, and RE Zoning Districts) of less than 2.5 acres or Rural Residential parcels of less than 5 acres unless the wireless telecommunication tower and ground facilities accessory thereto are located within an existing public utility power line right-of-way or other public right-of-way that contains utility poles over 75 feet in height or within 100 feet of said right-of-way;

(B) Open space easements or conservation easements; and/or

(C) Airport impact zones without consent of the F.A.A.

(D) Open Space Preservation zoning districts.

(1997 Code, § 1390.03) (Ord. 97-24, passed 1-21-1998) Penalty, see § 10.99

§ 150.117 ZONING REQUIREMENTS.

(A) Wireless communications facilities that require a Conditional Use Permit, including the installation of a new tower, shall be permitted in the following zoning districts and subject to the following height restrictions provided they meet all other requirements of this ordinance:

Zoning District	Maximum Height (in feet)	Minimum Parcel Area
A – Agriculture	175	10
RR – Rural Residential Zoning	150	5
R-1, R-2, R-3, and R-4 Residential	150	2.5
OP – Open Space	Not Allowed	-
RE – Residential Estates	150	2.5
GB, LB, CB, HB – Business	150	5
BP – Business Park	175	5
PF – Public Facility	175	None

(B) Regardless of zoning district, new facilities may be allowed within an existing public utility power line right-of-way or other public right-of-way that contains utility poles over 75 feet in height or within 100 feet of said right-of-way.

(C) **Public land exemption.** A wireless communications facility may be located on any parcel that is owned by the City or another public entity regardless of the zoning district or size of the property.

§ 150.118 APPLICATION AND REVIEW PROCEDURES.

(A) **Wireless Communications Permit (Administrative Approval).** An applicant seeking approval of a facility that can be approved administratively with a wireless communications permit shall follow all of the application requirements listed below for a Conditional Use Permit but shall be exempt from those requirements found in section 154.018 of the City Code, including the public hearing requirements. An application found to comply with the provisions of this Chapter may be approved by the Planning Director. Approval shall be in writing, identifying the specific facility approved, the location, mounting height, and other pertinent information and any conditions of approval. If the requested facility is to be located on public property, the agreement allowing the facility shall be approved by the City Council and executed prior to issuing the permit.

(B) **Conditional Use Permit.** Wireless communications facilities that require a Conditional Use Permit are subject to the requirements specified in Section 154.018 of this Code in addition to all requirements of Section 150.110 of the Code. Applications shall be submitted on forms provided by the City and shall include the following information:

(C) A site plan drawn to scale acceptable to the Planning Director which illustrates:

- (1) The parcel on which the tower and accessory ground facilities will be located;
- (2) The existing and proposed buildings and structures on the tower parcel;
- (3) The buildings located within 200 feet of the perimeter of the tower parcel; and
- (4) Access easements as necessary to the tower parcel.

(D) A scaled drawing of the exterior of the proposed wireless communications facility, clearly showing the method of fencing, coloration, materials, and camouflage techniques being used.

(E) Photo-simulated post construction renderings of the proposed wireless communications facilities, equipment enclosures, and ancillary structures as they would look after construction from locations at the periphery of the proposed site, which shall, at a minimum, include renderings from the vantage point of any adjacent roadways and residential neighborhoods. The renderings shall also include photo-simulations of the antenna supporting structure after it has been fully developed with antenna structures (the applicant may assume for the purpose of the simulation that other antenna structures on the facility will resemble their proposed structure size and design). A minimum of two such renderings shall be provided; additional renderings may be required if the City determines that additional views should be considered.

(F) Exterior paint or finish samples of the colors to be used in the construction of the wireless communications facility.

(G) A report from a qualified and licensed professional engineer which:

- (1) Describes the wireless telecommunication tower height and design including a cross-section and elevation;
- (2) Certifies the wireless telecommunication tower's compliance with structural and electrical standards;
- (3) Documents the height above grade for the mounting positions, which can be used for co-location and the minimum separation distances between the co-location positions; and
- (4) Describes the wireless telecommunication tower's capacity to support antennae, including an example of the number and type of antennae that can be accommodated on the wireless telecommunication tower.

(H) In conjunction with the information required to demonstrate the proof of need for a new facility under this Chapter, the applicant shall submit a 5-year plan for wireless telecommunication facilities to be located within the city. The city acknowledges that the plans are fluid and in all likelihood will change depending upon market demands for the service. The city will maintain an inventory of all existing and reasonably anticipated cell site installations. The applicant shall provide the following written information in each 5-year plan and the plan must be updated with each submittal for a new wireless telecommunication tower permit as

necessary:

- (1) A description of the radio frequencies to be used for each technology;
 - (2) A list of all existing sites to be upgraded or replaced, and proposed cell sites within the city for these services by the applicant; and
 - (3) A presentation size map of the city, which shows the 5-year plan for cell sites, or if individual properties are not known, the geographic service areas of the cell sites.
- (I) An application fee in an amount prescribed from time to time by City Council resolution as necessary to reimburse the city for costs incurred to process the wireless telecommunication tower permit application along with an escrow payment as prescribed by the City Council to cover the costs associated with the City's review of the permit;
- (J) Confirmation that the applicant is properly licensed by the F.C.C., or is the authorized representative of a wireless telecommunication provider properly licensed by the F.C.C.;
- (K) Written authorization from the property owner describing the area which will be subject to the tower lease.
- (L) Documentation of the steps to be taken by applicant to avoid causing destructive interference to co-located previously established public safety communications facilities; and
- (M) A detailed landscape plan, which indicates how tower accessory equipment will be screened.

(1997 Code, § 1390.05) (Ord. 97-24, passed 1-21-1998)

§ 150.119 EXPERT REVIEW

(A) Where due to the complexity of the methodology or analysis required to review an application for a wireless communications facility, the Planning Director may require a technical review by a third party expert. The costs of this review shall be borne by the applicant, and shall be in addition to applicable Conditional Use or Wireless Communications Permit and building permit fees. The applicant shall submit an escrow deposit that may be applied towards the cost of such technical review upon notification from the Director that a technical review is required, and shall remit any outstanding balance to the city for such review prior to issuance of a building permit. The maximum fee for such review and the required escrow deposit shall be in accordance with the fee schedule adopted by the City Council.

(B) The expert review may address any or all of the following:

- (1) The accuracy and completeness of submissions;
- (2) The applicability of analysis techniques and methodologies;

(3) The validity of conclusions reached;

(4) Whether the proposed wireless communications facility complies with the applicable approval criteria set forth in these regulations;

(5) Other matters deemed by the City to be relevant to determining whether a proposed wireless communications facility complies with the provisions of these regulations.

(C) Based on the results of the expert review, the City may require changes to the applicant's application or submittals.

(D) The applicant shall reimburse the city within 15 working days of the date of receipt of an invoice for expenses associated with the third party expert's review of the application. Failure by the applicant to make reimbursement pursuant to this section shall abate the pending application until paid in full.

§ 150.120 CONSTRUCTION PERMITS.

All wireless telecommunication towers erected, constructed, or located within the city, and all wiring therefore, shall comply with the requirements set forth in the Uniform Building Code. (1997 Code, § 1390.10) (Ord. 97-24, passed 1-21-1998) Penalty, see § 10.99

§ 150.121 TOWER STANDARDS.

(A) Wireless telecommunication towers shall comply with the following standards unless the City Council grants a variance as necessary to reasonably accommodate the wireless telecommunication tower. Variance procedures shall be processed according to the zoning code.

(B) *Design.*

(1) To blend into the surrounding environment through the use of color and architectural treatment techniques that soften the visual impact of the wireless communication tower on the surrounding environment.

(2) To be of a monopole design unless the City Council determines that an alternative design would better blend into the surrounding environment;

(3) All proposed wireless telecommunication tower shall be designed, structurally, electrically, and in all respects, to accommodate both the applicant's antennae and comparable antennae for at least 2 additional users if the tower is over 100 feet in height or for at least 1 additional user if the tower is between 75 feet and 100 feet in height; provided that this standard may be waived or otherwise modified by the City Council as necessary to allow the applicant to construct a wireless communication tower that better blends into the surrounding environment.

(4) Where possible, all proposed wireless telecommunication towers must be designed

to allow for future rearrangement of antennae upon the tower and to accept antennae mounted at various heights.

(5) All facilities shall be designed to minimize the visual impact to the greatest extent feasible by means of placement, screening, landscaping with native species whenever feasible, and camouflage, and to be compatible with existing architectural element, building materials, and other site characteristics. The applicant shall use the least visible antennae possible to accomplish the coverage objectives.

(C) Adverse effects on properties.

(1) New wireless communications facilities shall be configured and located in a manner that shall minimize adverse effects, including visual impacts on adjacent properties. The applicant shall demonstrate that alternative locations, configurations, and facility types have been examined and shall address in narrative and graphic form the feasibility of any alternatives that may have fewer adverse effects on adjacent properties than the facility, configuration, and location proposed.

(2) The following attributes shall be considered from vantage points at adjacent properties, roadways, and occupied structures: height and location, mass and scale, materials and color, existing and proposed vegetation and intervening structures.

(3) An applicant shall demonstrate through the photo-simulation requirements under Section 150.114 that the project design employs each of these attributes in a manner that minimizes adverse effects to the greatest extent possible.

(4) All facilities that have the potential for high visibility shall be sited in such a manner as to cause the least detriment to the view shed of adjoining properties.

(D) Setbacks.

(1) No communications tower shall be located in the required front, side, or rear yard setback of any parcel.

(2) No freestanding communications tower shall be located closer than 125% of the tower height from any lot lines with the following exceptions:

(a) Towers in a side or rear yard that are adjacent to parcels zoned commercial, industrial, or public facility.

(3) Setbacks from buildings:

(a) In residential zoning districts, wireless communications towers shall be set back a minimum of 100% of the tower height from a residential dwelling except for dwellings on the subject property.

(b) In all other zoning districts, the minimum setback between structures as

required by the building code shall be observed.

(4) Use of existing light poles, high voltage poles or towers, and other existing structures are exempt from the setback requirements provided that such pole, tower, or structure is not increased in height.

(5) Wireless Communications Towers located within an existing public utility power line right-of-way or other public right-of-way that contains utility poles over 75 feet in height or within 100 feet of said right-of-way shall be exempt from the setbacks as herein required.

(6) A required setback may be reduced or its location in relation to a public street varied upon providing the city with a licensed professional engineer's certification that the wireless telecommunication tower is designed to collapse or fail within a distance or zone shorter than the required setback distance.

(E) *Height.*

(1) The maximum height of a wireless communications tower shall be determined based on the underlying zoning district and will be the amount specified in Section 150.114.

(F) *Lighting.* At night, wireless telecommunication towers shall not be illuminated by artificial means, unless otherwise required by the Federal Aviation Administration (FAA).

(1) White strobe lighting shall be prohibited.

(2) The applicant shall document the need for lighting as part of a new wireless communications facility application.

(G) *Landscaping and Screening.* All wireless communications towers and related building facilities shall be landscaped and screened with natural vegetation to lessen the visual impact. The natural vegetation on the site shall be documented on the site plans. Suitable existing vegetation shall be retained to the maximum extent possible based on an analysis of the site. New landscaping shall be selected that includes coniferous and deciduous plants and trees that are hardy for conditions on the site without the use of augmented water.

(1) Landscaping shall include ground cover, lower story, mid-story, and upper story plants. Plant density shall be sufficient to provide 80 percent opacity year round from the ground up to a distance of 5 feet high for 60 percent or more of the site with the planting to be located based on an analysis of the site in relation to the surrounding area. Greater or lesser amounts and percentages may be required or allowed based on the City's review.

(1997 Code, § 1390.12) (Ord. 97-24, passed 1-21-1998) Penalty, see § 10.99

(H) *Signs and Advertising.* The use of any portion of a wireless telecommunication tower for signs other than warning or equipment information sign is prohibited.

(1997 Code, § 1390.13) (Ord. 97-24, passed 1-21-1998) Penalty, see § 10.99

(I) *Interference with public safety communication.* No wireless telecommunication facility shall interfere with public safety telecommunications. All wireless telecommunication towers/antennae shall comply with F.C.C. regulations and licensing requirements. (1997 Code, § 1390.14) (Ord. 97-24, passed 1-21-1998) Penalty, see § 10.99

(J) *Accessory utility buildings.* All utility buildings and structures accessory to a tower shall be architecturally designed to blend in with the surrounding environment and compatible with adjacent buildings, and shall be permitted in addition to the number of accessory buildings otherwise allowed in each zoning district.

(1997 Code, § 1390.16) (Ord. 97-24, passed 1-21-1998) Penalty, see § 10.99

(1) Ground mounted equipment. Ground mounted equipment shall not be visible from beyond the boundaries of the site and shall be screened by a solid wall or fence and dense landscaping materials described in paragraph G above.

(2) Accessory utility buildings shall observe the minimum setback requirements for accessory buildings in the underlying zoning district as well as all other applicable zoning and building requirements for accessory buildings.

(K) *Maintenance.* All buildings and structures on the premises of the wireless communications facility shall observe the City's property maintenance standards of the City Code.

§ 150.122 WIRELESS COMMUNICATIONS TOWER AGREEMENT.

(A) If the application is approved by the City, a wireless communications permit and a building permit shall be issued upon the execution of a wireless communication tower agreement.

(B) The agreement shall be signed by the applicant and property owner and the terms of the agreement shall include the following:

(1) A list of the conditions of approval to the wireless telecommunication tower permit;

(2) A statement indicating that failure to comply with the conditions of approval shall result in the removal of the wireless telecommunication tower, antennae, or tower accessory equipment;

(3) A statement indicating that the expenses incurred by the city to enforce the provisions of the wireless telecommunication tower agreement shall be reimbursed by the applicant;

(4) A statement, which requires the applicant to utilize the procedures established by the F.C.C. to resolve any complaints received relating to interference allegedly caused by the wireless telecommunication tower; and

(5) A statement indicating that a wireless telecommunication tower which has not been used for six (6) consecutive months shall be deemed abandoned and may be required to be removed in accordance with Section 150.123 below. To ensure compliance with this provision, the applicant must submit a performance bond or letter of credit in an amount sufficient to cover the removal or reduction costs.

(1997 Code, § 1390.07) (Ord. 97-24, passed 1-21-1998)

§ 150.123 ABANDONMENT AND REMOVAL

(A) Towers and antennae shall be removed within six (6) months of cessation of use.

(B) An owner wishing to extend the time for removal or reactivation shall submit an application stating the reason for such extension. The Planning Director may extend the time for removal or reactivation up to 60 days showing of a good cause. If the tower or antennae is not removed in a timely fashion, the City may give notice that it will contract for removal within 30 days following written notice to the owner. Thereafter, the City may cause removal and be reimbursed for all costs associated with said removal by drawing on the funds provided with the financial guarantee.

(C) Upon removal of the wireless communications facility, the site shall be returned to its natural state and topography and vegetated consistent with the natural surroundings.

§ 150.124 MINIMUM CONDITIONS

(A) General conditions on a wireless communications permit may include, but not be limited to the following:

- (1) An agreement providing for co-location and six (6) month removal of unused and/or obsolete towers shall be attached and become part of the permit.
- (2) The tower shall be set back a distance equal to the tower height from all property lines. All accessory structures shall be setback a minimum of twenty (20) feet from all side yard and rear yard property lines
- (3) Zoning Permits shall be applied for and issued before any construction is started.
- (4) Prior to application for a conditional use permit, applicant must obtain FAA approval and/or provide documentation that FAA approval is not needed.
- (5) Applicant must obtain FCC licensure and approval as required for various

communications applications.

- (6) Applicant must submit proof of liability and Worker's compensation Insurance.
- (7) Proof that towers and their antennae have been designed by, and following completion of construction were inspected by a qualified and licensed professional engineer (at the applicant's expenses) to conform to applicable state structural building standards and all other applicable reviewing agencies and to conform with accepted electrical engineering methods and practices as specified in applicable provisions of the National Electrical Code.
- (8) Metal towers shall be constructed of, or treated with, corrosive resistant material.
- (9) The addition of antennae and associated equipment of an additional provider to an existing permitted tower shall be considered co-location and shall require a zoning permit and site plan approval. An amendment to a conditional use permit shall typically not be required.
- (10) All towers shall be reasonably protected against unauthorized climbing. The area around the base of the tower and guy wire anchors shall be enclosed by a fence with a minimum height of six (6) feet fence with a locked gate.
- (11) All towers and their antennae shall utilize building materials, colors, textures, screening and landscaping that effectively blend the tower facilities within the surrounding natural setting and built environmentally to the greatest extent possible.
- (12) No part of any antenna or tower, nor any lines, cable, equipment, wires, or braces shall at any time extend across or over any part of the right of way, public street, highway, or sidewalk, without approval by the City through the zoning permit approval process.
- (13) All obsolete or unused towers and accompanying accessory facilities shall be removed within six (6) months of the cessation of operations at the site unless a time extension is approved by the City. After the facilities are removed, the site shall be restored to its original or an improved state which includes removal of all concrete to 6-feet below normal grade and surrounding area returned to normal grading. Electronic equipment shall not be removed in advance of removal of obsolete or unused towers. To ensure compliance, the applicant must submit a performance bond or letter of credit in an amount sufficient to cover all removal costs as determined by the City prior to the issuance of a building permit for the facility. Failure to remove the structure shall be cause for the City to remove the tower and associated equipment and assess the cost against the required bonding or letter of credit instrument.
- (14) The City of Lake Elmo shall conduct a final inspection of the site to ensure that all requirements of the City Code and all conditions of approval attached as part of the

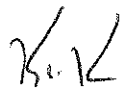
wireless communications permit are met prior to the start of operation of the facility.

- (15) For installations of a facility in an area that could potentially be accessed by the public (including rooftop installations or other locations that would be considered public verses occupational) a yearly report must be submitted before December 31 of each year showing the results of on-site measurements at the site. A Registered Professional Engineer must sign these measurements and report.

Planning Commission
Date: 10/14/09
Public Hearing
Item: 4b

ITEM: Update to the Lake Elmo Floodplain Management Ordinance

REQUESTED BY: Planning Department

SUBMITTED BY: Kyle Klatt, Director of Planning 

REVIEWED BY: Bruce Messelt, City Administrator
Kelli Matzek, City Planner

SUMMARY AND ACTION REQUESTED:

The City of Lake Elmo has received notification that final flood elevations have been determined for the community based on the revised Flood Insurance Study (FIS) and Flood Insurance Rate Map (FIRM) that were previously provided to the City in late 2007. With this notification, the City now has a limited amount of time (6 months) to update its Floodplain Management Ordinance to incorporate these new maps into the ordinance and to make other updates as mandated under the National Flood Insurance Program. The Planning Commission reviewed the draft maps in early 2008, and is now being asked to conduct a public hearing on the proposed Ordinance Revisions, which will incorporate the revised maps.

After reviewing materials provided by the Minnesota Department of Natural Resources to help the City of Lake Elmo prepare the required amendments to the Floodplain Management Ordinance, staff will be seeking some direction from the Commission regarding the preparation of the ordinance. In particular, the City has historically adopted a Flood Ordinance that is more restrictive than the model used by other communities. With the updated maps, the City is now mandated to incorporate specific revisions into its ordinance in order to have the ordinance accepted by the Federal Emergency Management Agency (FEMA). Staff's original intent was to add the mandatory language to the City's existing ordinance, leaving all other provisions alone. However, after further reviewing required changes and the existing ordinance, staff is recommending that the City start with the DNR's model ordinance and work any City standards back into this document.

Due to the length of time that will be involved with identifying the differences between the City's existing ordinance and the proposed model ordinance, and final draft of the Floodplain Management Ordinance is not yet ready for review by the Planning Commission. Instead, staff would like to take time at the next meeting to review the proposed map revisions with the Commission and to seek guidance on the use of the model ordinance as a starting point for the ordinance update project.

Since a public hearing has been scheduled for the October 14, 2009 meeting, Staff recommends that the Commission listen to any questions or comments from the public after reviewing the map changes, and then continue this hearing to the November 9, 2009 meeting.

ADDITIONAL INFORMATION:

- Since the revised flood maps cover the entire City, it is not possible to provide the Planning Commission with a map large enough to depict the City on a discernable scale. Staff will present the attached floodplain comparison map (which contains both the 1979 and proposed

2008 data) at a scale that can be more easily read during the meeting on October 14th. Please note that on this map, the red areas represent the updated information, while the blue areas represent the current (1979) data).

- Other information that has previously been provided by the DNR to explain the FEMA map update process is again attached for review by the Planning Commission, including a summary of the map update process and a flowchart depicting the process and timeline.
- The model ordinance that staff would be using as a template for the update process is attached for consideration by the Planning Commission. By the next meeting, staff intends to revise this document by noting which of the language is mandatory and which language in the existing code is not found in the model ordinance. Please note that there are provisions in this model ordinance that are optional and the Planning Commission will need to decide whether or not to include them in the City's final ordinance.
- Staff has not copied the existing ordinance, which can be found in Chapter 152 of the City Code under the Land Usage Title.
- As noted in a previous report to the Planning Commission, the updated maps do alter the current flood area boundaries in the City, but do so in a manner that more accurately reflects the conditions around each mapped water body. As noted by staff in its February 25, 2008 report to the Commission:

Looking at the community as a whole, there will be approximately 360 more properties included in a flood zone than under the existing flood maps for Lake Elmo. On the other hand, the updated maps will, overall, reduce the number of homes in flood zones by approximately 18. The total number of properties affected in one way or another is around 375, with over 40 individual homes impacted by the changes as well.

STAFF RECOMMENDATION:

The Planning Commission is not being asked to take any specific action at this time.

Staff is recommending that the Commission provide direction to staff regarding the use of DNR model ordinance as the template for updating the Floodplain Management Ordinance and that the Commission continue the public hearing regarding the revised Floodplain Management Ordinance to its November 9, 2009 meeting.

ORDER OF BUSINESS:

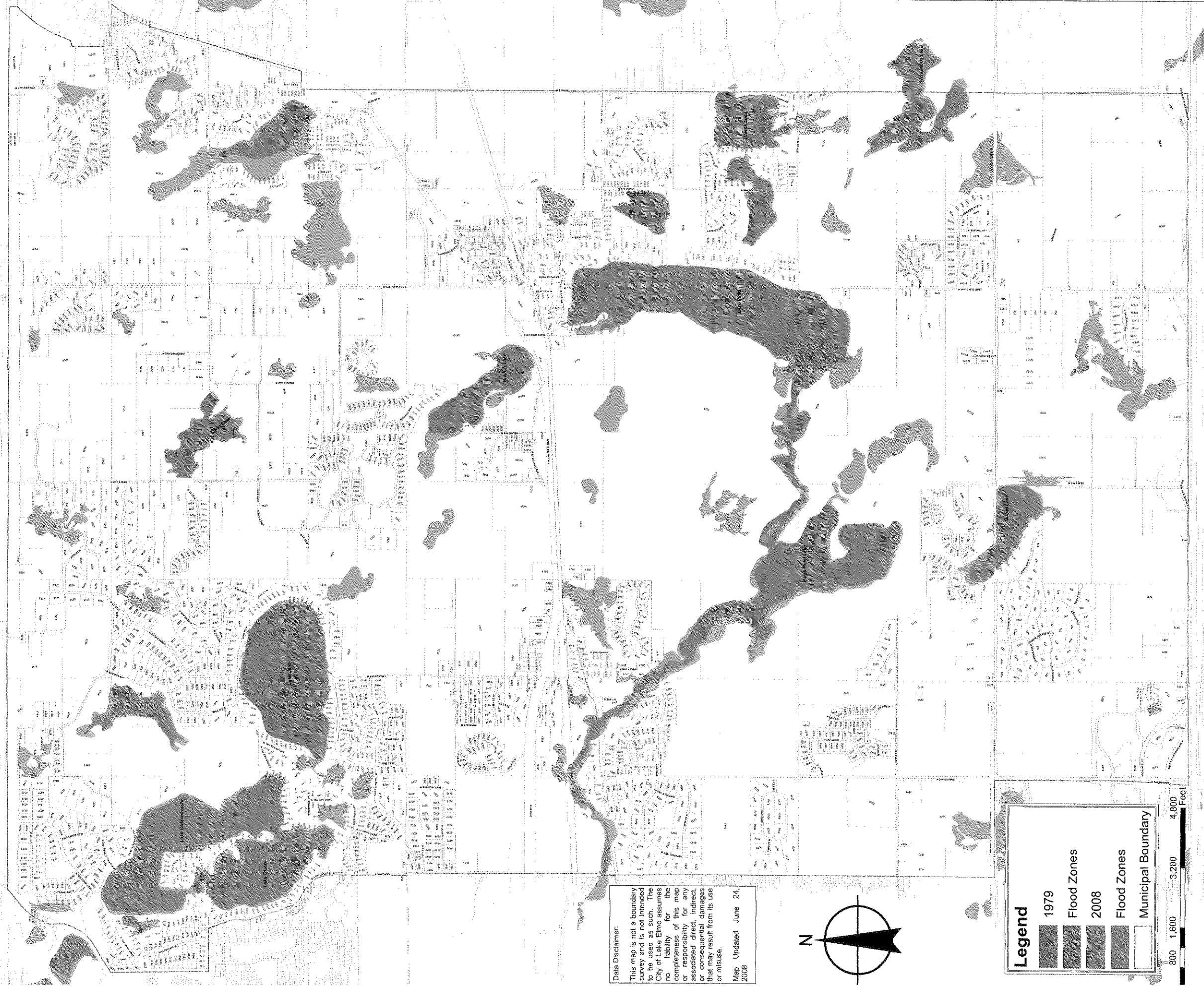
- Introduction Kyle Klatt, Planning Director
- Report by staff Kyle Klatt, Planning Director
- Questions from the Commission Chair & Commission Members
- Open the Public Hearing Chair
- Close the Public Hearing Chair
- Call for a motion Chair Facilitates
- Discussion of Commission on the motion Chair Facilitates
- Action by the Planning Commission Chair & Commission Members

ATTACHMENTS:

1. Letter of notification of final flood elevation determination from FEMA
2. Flood Area Map (existing in blue, proposed in red)

3. DNR materials:
 - Map Update Process
 - FEMA Map Update Process and Timeline
4. Model DNR Floodplain Management Ordinance

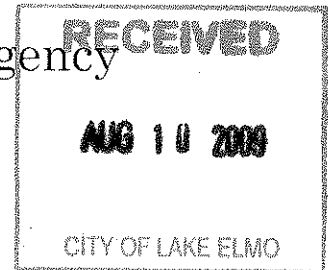
CITY OF LAKE ELMO FLOODPLAIN COMPARISON MAP





Federal Emergency Management Agency

Washington, D.C. 20472



CERTIFIED MAIL
RETURN RECEIPT REQUESTED

IN REPLY REFER TO:
19P

August 3, 2009

The Honorable Dean Johnston
Mayor, City of Lake Elmo
3800 Laverne Avenue North
Lake Elmo, MN 55042

Community: City of Lake Elmo,
Washington County,
Minnesota
Community No.: 270505
Map Panels Affected: See FIRM Index

Dear Mayor Johnston:

This is to formally notify you of the final flood elevation determination for the City of Lake Elmo, Washington County, Minnesota, in compliance with Title 44, Chapter I, Part 67, Section 67.11, Code of Federal Regulations (CFR). This section requires that notice of final flood elevations shall be sent to the Chief Executive Officer of the community, all individual appellants, and the state coordinating agency, and shall be published in the *Federal Register*.

On July 2, 1979, the Federal Emergency Management Agency (FEMA) issued a Flood Insurance Rate Map (FIRM) that identified the Special Flood Hazard Areas (SFHAs), the areas subject to inundation by the base (1- percent-annual-chance) flood, in your community. Recently, FEMA completed a re-evaluation of flood hazards in your community. On November 30, 2007, FEMA provided you with Preliminary copies of the Flood Insurance Study (FIS) and FIRM that identify the existing flood hazards in your community, including Base Flood Elevations (BFEs). The proposed BFEs for your community were published in the *St. Paul Pioneer Press* on April 16, 2008, and April 23, 2008, and in the *Federal Register* at Part 67, Volume 73, No. 65, Pages 18248 through 18250, on April 3, 2008.

The statutory 90-day appeal period, which was initiated on the second newspaper publication date cited above, has ended. FEMA did not receive any appeals of the proposed BFEs during that time. Accordingly, the BFEs for your community are considered final. The final rule for BFEs will be published in the *Federal Register* as soon as possible. The FIS and FIRM for your community will become effective on February 3, 2010. Before the effective date, FEMA will send you final printed copies of the FIS and FIRM.

Because the FIS establishing the BFEs for your community has been completed, certain additional requirements must be met under Section 1361 of the National Flood Insurance Act of 1968, as amended, within 6 months from the date of this letter. Prior to February 3, 2010, your community is required, as a condition of continued eligibility in the National Flood Insurance Program (NFIP), to adopt or show evidence of adoption of floodplain management regulations that meet the standards of Paragraph 60.3(d) of the NFIP regulations (44 CFR 59, etc.) by the effective date of the FIRM. These standards are the minimum requirements and do not supersede any State or local requirements of a more stringent nature.

It must be emphasized that all of the standards specified in Paragraph 60.3(d) of the NFIP regulations must be enacted in a legally enforceable document. This includes adoption of the current effective FIS and

FIRM to which the regulations apply and other modifications made by this map revision. Some of the standards should already have been enacted by your community in order to establish initial eligibility in the NFIP. Your community can meet any additional requirements by taking one of the following actions:

1. Amending existing regulations to incorporate any additional requirements of Paragraph 60.3(d);
2. Adopting all of the standards of Paragraph 60.3(d) into one new, comprehensive set of regulations;
or
3. Showing evidence that regulations have previously been adopted that meet or exceed the minimum requirements of Paragraph 60.3(d).

Communities that fail to enact the necessary floodplain management regulations will be suspended from participation in the NFIP and subject to the prohibitions contained in Section 202(a) of the Flood Disaster Protection Act of 1973 (Public Law 93-234) as amended.

In addition to your community using the FIS to manage development in the floodplain, FEMA will use the FIS to establish appropriate flood insurance rates. On the effective date of the revised FIRM, actuarial rates for flood insurance will be charged for all new structures and substantial improvements to existing structures located in the identified SFHAs. These rates may be higher if structures are not built in compliance with the floodplain management standards of the NFIP. The actuarial flood insurance rates increase as the lowest elevations (including basement) of new structures decrease in relation to the BFEs established for your community. This is an important consideration for new construction because building at a higher elevation can greatly reduce the cost of flood insurance.

To assist your community in maintaining the FIRM, we have enclosed a Summary of Map Actions (SOMA) to document previous Letter of Map Change (LOMC) actions (i.e., Letters of Map Amendment (LOMA), Letters of Map Revision (LOMR)) that will be superseded when the revised FIRM panels referenced above become effective. Information on LOMCs is presented in the following four categories: (1) LOMCs for which results have been included on the revised FIRM panels; (2) LOMCs for which results could not be shown on the revised FIRM panels because of scale limitations or because the LOMC issued had determined that the lots or structures involved were outside the SFHA as shown on the FIRM; (3) LOMCs for which results have not been included on the revised FIRM panels because the flood hazard information on which the original determinations were based are being superseded by new flood hazard information; and (4) LOMCs issued for multiple lots or structures where the determination for one or more of the lots or structures cannot be revalidated through an administrative process like the LOMCs in Category 2 above. LOMCs in Category 2 will be revalidated through a single letter that reaffirms the validity of a previously issued LOMC; the letter will be sent to your community shortly before the effective date of the revised FIRM and will become effective 1 day after the revised FIRM becomes effective. For the LOMCs listed in Category 4, we will review the data previously submitted for the LOMA or LOMR request and issue a new determination for the affected properties after the revised FIRM becomes effective.

The FIRM and FIS report for your community have been prepared in our countywide format, which means that flood hazard information for all jurisdictions within Washington County has been combined into one FIRM and FIS report. When the FIS and FIRM are printed and distributed, your community will receive only those panels that present flood hazard information for your community. We will provide complete sets of the FIRM panels to county officials, where they will be available for review by your community.

The FIRM panels have been computer-generated. Once the FIRM and FIS report are printed and distributed, the digital files containing the flood hazard data for the entire county can be provided to your community for use in a computer mapping system. These files can be used in conjunction with other thematic data for floodplain management purposes, insurance purchase and rating requirements, and many other planning applications. Copies of the digital files or paper copies of the FIRM panels may be obtained by calling our Map Service Center, toll free, at 1-800-358-9616. In addition, your community may be eligible for additional credits under our Community Rating System if you implement your activities using digital mapping files.

If your community is encountering difficulties in enacting the necessary floodplain management measures to continue participation in the NFIP, we urge you to contact the Director, Federal Insurance and Mitigation Division of FEMA in Chicago, Illinois, at (312) 408-5529 for assistance. If you have any questions concerning mapping issues in general or the enclosed SOMA, please contact our Map Assistance Center, toll free, at 1-877-FEMA MAP (1-877-336-2627). Additional information and resources your community may find helpful regarding the NFIP and floodplain management, such as *The National Flood Insurance Program Code of Federal Regulations*, *Answers to Questions About the National Flood Insurance Program*, *Frequently Asked Questions Regarding the Effects that Revised Flood Hazards have on Existing Structure*, *Use of Flood Insurance Study (FIS) Data as Available Data*, and *National Flood Insurance Program Elevation Certificate and Instructions*, can be found on our website at <http://www.floodmaps.fema.gov/lfd>. Paper copies of these documents may also be obtained by calling our Map Assistance Center.

Sincerely,



William R. Blanton Jr., CFM, Chief
Engineering Management Branch
Mitigation Directorate

Enclosure:

Final Summary of Map Actions

cc: Community Map Repository
Sharon Lumby, City Clerk, City of Lake Elmo

FINAL SUMMARY OF MAP ACTIONS

Community: LAKE ELMO, CITY OF

Community No: 270505

To assist your community in maintaining the Flood Insurance Rate Map (FIRM), we have summarized below the previously issued Letter of Map Change (LOMC) actions (i.e., Letters of Map Revision (LOMRs) and Letters of Map Amendment (LOMAs)) that will be affected when the revised FIRM becomes effective on February 3, 2010.

1. LOMCs Incorporated

The modifications effected by the LOMCs listed below will be reflected on the revised FIRM. In addition, these LOMCs will remain in effect until the revised FIRM becomes effective.

LOMC	Case No.	Date Issued	Project Identifier	Old Panel	New Panel
			NO CASES RECORDED		

2. LOMCs Not Incorporated

The modifications effected by the LOMCs listed below will not be reflected on the revised FIRM panels because of scale limitations or because the LOMC issued had determined that the lot(s) or structure(s) involved were outside the Special Flood Hazard Area, as shown on the FIRM. These LOMCs will remain in effect until the revised FIRM becomes effective. These LOMCs will be revalidated free of charge 1 day after the revised FIRM becomes effective through a single revalidation letter that reaffirms the validity of the previous LOMCs.

LOMC	Case No.	Date Issued	Project Identifier	Old Panel	New Panel
LOMA	01-05-1994A	05/09/2001	BLOCK 1, LOT 5, DEMONTREVILLE HIGHLANDS 5TH ADDITION; 7760 53RD STREET NORTH	2705050010B	27163C0240E
LOMA	03-05-4712A	08/22/2003	DEMONTREVILLE HIGHLANDS 5TH ADDITION, BLOCK 1, LOT 2; 7761 - 53RD STREET NORTH	2705050010B	27163C0240E
LOMA	07-05-0248A	10/26/2006	BEAU-HAVEN, LOT 4 AND EAGLE POINT CREEK ESTATES, OUTLOT D -- 8404 STILLWATER BLVD NORTH (MN)	2705050010B	27163C0331E
LOMA	08-05-2723A	04/10/2008	LOTS 217-221, LANE'S DEMONTREVILLE COUNTRY CLUB -- 7934 HILL TRAIL NORTH	2705050010B	27163C0240E

3. LOMCs Superseded

The modifications effected by the LOMCs listed below have not been reflected on the Final revised FIRM panels because they are being superseded by new detailed flood hazard information or the information available was not sufficient to make a determination. The reason each is being superseded is noted below. These LOMCs will no longer be in effect when the revised FIRM becomes effective.

LOMC	Case No.	Date Issued	Project Identifier	Reason Determination Will be Superseded
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FINAL SUMMARY OF MAP ACTIONS

Community: LAKE ELMO, CITY OF

Community No: 270505

LOMC	Case No.	Date Issued	Project Identifier	Reason Determination Will be Superseded
			NO CASES RECORDED	

1. Insufficient information available to make a determination.
2. Lowest Adjacent Grade and Lowest Finished Floor are below the proposed Base Flood Elevation.
3. Lowest Ground Elevation is below the proposed Base Flood Elevation.
4. Revised hydrologic and hydraulic analyses.
5. Revised topographic information.

4. LOMCs To Be Redetermined

The LOMCs in Category 2 above will be revalidated through a single revalidation letter that reaffirms the validity of the determination in the previously issued LOMC. For LOMCs issued for multiple lots or structures where the determination for one or more of the lots or structures has changed, the LOMC cannot be revalidated through this administrative process. Therefore, we will review the data previously submitted for the LOMC requests listed below and issue a new determination for the affected properties after the effective date of the revised FIRM.

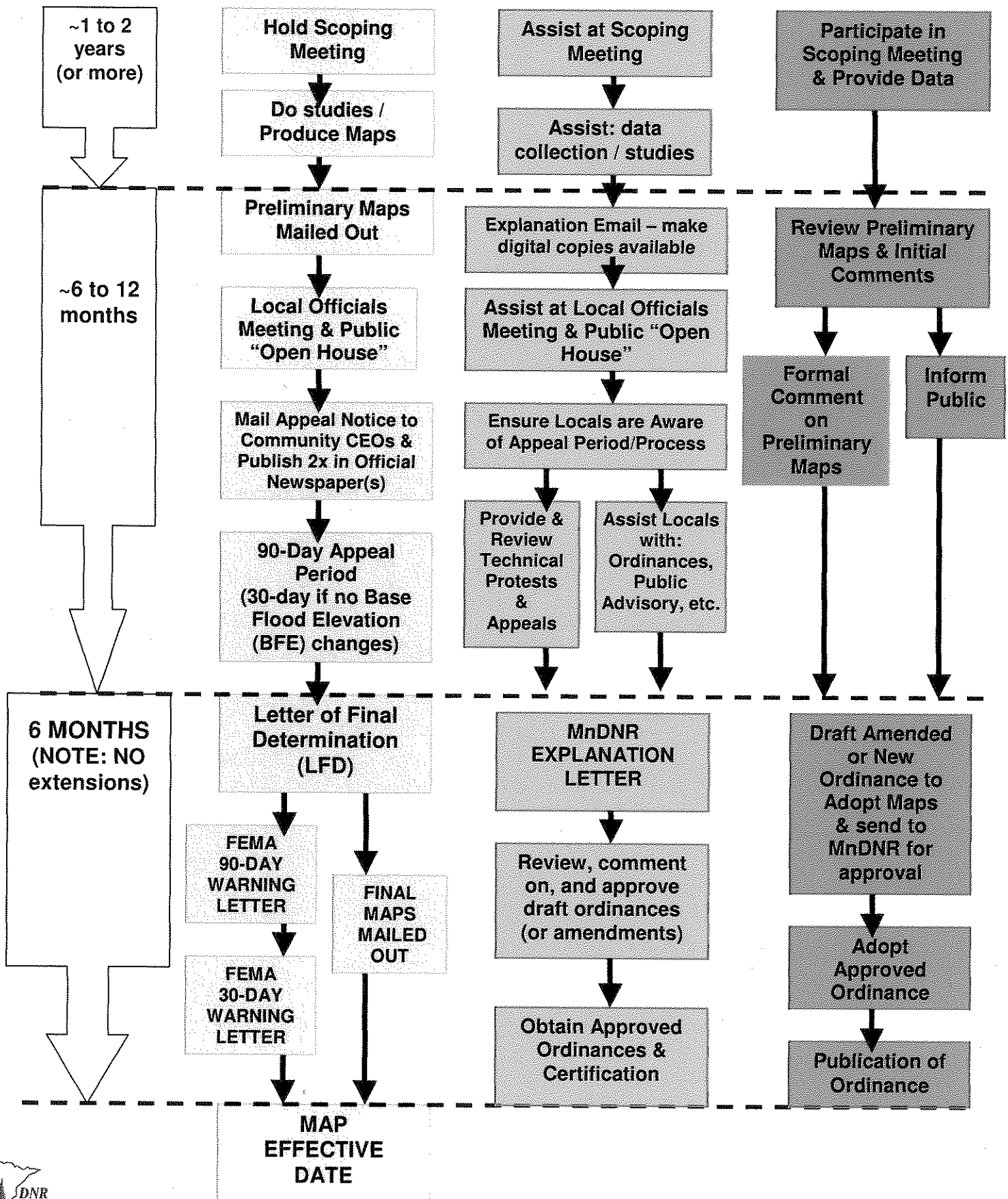
LOMC	Case No.	Date Issued	Project Identifier	Old Panel	New Panel
			NO CASES RECORDED		

FEMA Map Update Process and Timeline

FEMA

State

Local



Map Update Process

Pre-Scoping

FEMA will send a letter to those communities that will be funded for Flood Map Modernization in a current fiscal year. This letter kicks off the modernization process with what are known as *Pre-scoping Activities*. The purpose of these activities is to research and accumulate resources that will contribute to the map update project. Such activities include digital base map inventories, mapping needs assessments, and Letters of Map Change collection.

The digital base map inventories involve obtaining the best available base map materials, such as corporate limits, roads, aerial photography, stream centerlines, and topographic data. DNR Waters will perform an in-house mapping needs assessment by compiling needs from community files (Community Assistance Visit Reports, correspondence, effective flood map panels) and an approximate (unnumbered) A-Zone analysis.

The FEMA Study Contractor will also use this time to compile all approved Letters of Map Change (LOMCs), including Letters of Map Amendment, Letters of Map Revision Based on Fill, and Letters of Map Revision. These LOMCs will be addressed during *Map Production*, but an accurate list is necessary so all are addressed in the project.

Scoping Meeting

The next stage of this process is called the *Scoping Meeting*. This meeting presents an opportunity for all interested parties to gather, finalize the scope of project and confirm project task assignments. The scope of project formally identifies where new flood studies will be conducted, their type, and their limits. Invited to this meeting are representatives from FEMA, DNR Waters, the FEMA Study Contractor, and communities throughout the county being updated.

Mapping needs play an integral role in the *Scoping Meeting* as well. Because funding is limited for this map update, new flood studies will be few. However, the meeting provides an excellent opportunity for federal, state, and private entities to collect local mapping needs. Such needs will be documented and provided as impetus for future flood study funding.

Map Production

Following the conclusion of the *Scoping Meeting*, entities involved in the map update begin their partnership roles in *Map Production*. This step of the update process involves the completion of all tasks identified and assigned during the *Scoping Meeting*. For instance, the paper flood maps will be digitally scanned and geo-registered during this phase. This is also the time when the newly created digital flood layers will be fine tuned to fit the best available topographic data. If any flood studies are performed, this would be the phase for their completion and incorporation into the new maps.

Letters of Map Change (LOMCs) will also be addressed during this phase. Each FEMA-approved map change will be handled in one of four ways: 1) incorporation into the new maps; 2) revalidation; 3) superseded; or 4) case-by-case review. Letters of Map Revision (LOMRs) (not those based on fill, or LOMR-Fs) will be incorporated into the new flood maps. Large-scale LOMR-Fs and Letters of Map Amendment (LOMAs) may be incorporated into the new maps depending on their size. However, most LOMAs and LOMR-Fs will be revalidated since they are too small in scale to be represented on the maps. If a new study has been performed on a watercourse near any LOMCs, the LOMCs may be superseded or may need case-by-case review.

Digital maps created during this phase will be reviewed by FEMA so as to ensure that they meet the *Guidelines and Specifications for Flood Hazard Mapping Partners*. For further information about these guidelines, click here (http://www.fema.gov/plan/prevent/fhm/dl_cgs.shtml).



Sample MN Floodplain Management Ordinance
Three Districts - One-Map Format

October 1, 2005

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SAMPLE FLOOD PLAIN MANAGEMENT ORDINANCE THREE DISTRICT - ONE-MAP FORMAT¹

¹*A Flood Insurance Rate Map has been published for the community and the Regulatory Floodway boundary is shown on this map. A separate Flood Boundary and Floodway Map has not been published.*

SECTION 1.0 STATUTORY AUTHORIZATION, FINDINGS OF FACT AND PURPOSE

1.1 Statutory Authorization: The legislature of the State of Minnesota has, in Minnesota Statutes Chapter 103F and (Zoning Enabling Statute) delegated the responsibility to local government units to adopt regulations designed to minimize flood losses. Therefore, the (governing body) of (local unit), Minnesota does ordain as follows:

1.2 Findings of Fact:

- 1.21 The flood hazard areas of (local unit), Minnesota, are subject to periodic inundation which results in potential loss of life, loss of property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures or flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.
- 1.22 Methods Used to Analyze Flood Hazards. This Ordinance is based upon a reasonable method of analyzing flood hazards which is consistent with the standards established by the Minnesota Department of Natural Resources.
- 1.23 National Flood Insurance Program Compliance. This Ordinance is adopted to comply with the rules and regulations of the National Flood Insurance Program codified as 44 Code of Federal Regulations Parts 59 -78, as amended, so as to maintain the community's eligibility in the National Flood Insurance Program.

1.3 Statement of Purpose: It is the purpose of this Ordinance to promote the public health, safety, and general welfare and to minimize those losses described in Section 1.21 by provisions contained herein.

SECTION 2.0 GENERAL PROVISIONS

2.1 Lands to Which Ordinance Applies: This Ordinance shall apply to all lands within the jurisdiction of (local unit) shown on the Official Zoning Map and/or the attachments thereto as being located within the boundaries of the Floodway, Flood Fringe, or General Flood Plain Districts.

2.2 Establishment of Official Zoning Map: The Official Zoning Map together with all materials attached thereto is hereby adopted by reference and declared to be a part of this Ordinance. The attached material shall include the Flood Insurance Study for the (local unit) prepared by the Federal Emergency Management Agency dated _____, and the Flood Insurance Rate Map dated _____ therein. The Official Zoning Map shall be on file in the Office of the (City Clerk/County Auditor) and the (Zoning Administrator).

(Note: For future annexation of floodplain lands, it is a requirement of the National Flood Insurance Program that a community legally apply the provisions of its floodplain ordinance to the annexed land on the date of annexation (see Section 2.9 that follows). The flood insurance rate map panels adopted into

Section 2.2 above must be inclusive enough so that they encompass all of the unincorporated area of the county that may be annexed into the city into the foreseeable future. This may mean that a city will need to adopt flood insurance rate map panels in addition to those flood map panels that contain the current corporate boundaries of the city.)

2.3 Regulatory Flood Protection Elevation: The regulatory flood protection elevation shall be an elevation no lower than one foot above the elevation of the regional flood plus any increases in flood elevation caused by encroachments on the flood plain that result from designation of a floodway.

2.4 Interpretation:

- 2.41 In their interpretation and application, the provisions of this Ordinance shall be held to be minimum requirements and shall be liberally construed in favor of the Governing Body and shall not be deemed a limitation or repeal of any other powers granted by state statutes.
- 2.42 The boundaries of the zoning districts shall be determined by scaling distances on the Official Zoning Map. Where interpretation is needed as to the exact location of the boundaries of the district as shown on the Official Zoning Map, as for example where there appears to be a conflict between a mapped boundary and actual field conditions and there is a formal appeal of the decision of the Zoning Administrator, the Board of Adjustment shall make the necessary interpretation. All decisions will be based on elevations on the regional (100-year) flood profile, the ground elevations that existed on the site at the time the Community adopted its initial floodplain ordinance or on the date of the first National Flood Insurance Program map showing the area within the 100-year floodplain if earlier, and other available technical data. Persons contesting the location of the district boundaries shall be given a reasonable opportunity to present their case to the Board of Adjustment and to submit technical evidence.

2.5 Abrogation and Greater Restrictions: It is not intended by this Ordinance to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this Ordinance imposes greater restrictions, the provisions of this Ordinance shall prevail. All other ordinances inconsistent with this Ordinance are hereby repealed to the extent of the inconsistency only.

2.6 Warning and Disclaimer of Liability: This Ordinance does not imply that areas outside the flood plain districts or land uses permitted within such districts will be free from flooding or flood damages. This Ordinance shall not create liability on the part of (name of local unit) or any officer or employee thereof for any flood damages that result from reliance on this Ordinance or any administrative decision lawfully made thereunder.

2.7 Severability: If any section, clause, provision, or portion of this Ordinance is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this Ordinance shall not be affected thereby.

2.8 Definitions: Unless specifically defined below, words or phrases used in this Ordinance shall be interpreted so as to give them the same meaning as they have in common usage and so as to give this Ordinance its most reasonable application.

2.811 Accessory Use or Structure - a use or structure on the same lot with, and of a nature customarily incidental and subordinate to, the principal use or structure.

2.812 Basement - means any area of a structure, including crawl spaces, having its floor or base subgrade (below ground level) on all four sides, regardless of the depth of excavation below ground level.

- 2.813 Conditional Use - means a specific type of structure or land use listed in the official control that may be allowed but only after an in-depth review procedure and with appropriate conditions or restrictions as provided in the official zoning controls or building codes and upon a finding that:
- (a) Certain conditions as detailed in the zoning ordinance exist.
 - (b) The structure and/or land use conform to the comprehensive land use plan if one exists and are compatible with the existing neighborhood.
- 2.814 Equal Degree of Encroachment - a method of determining the location of floodway boundaries so that flood plain lands on both sides of a stream are capable of conveying a proportionate share of flood flows.
- 2.815 Flood - a temporary increase in the flow or stage of a stream or in the stage of a wetland or lake that results in the inundation of normally dry areas.
- 2.816 Flood Frequency - the frequency for which it is expected that a specific flood stage or discharge may be equaled or exceeded.
- 2.817 Flood Fringe - that portion of the flood plain outside of the floodway. Flood fringe is synonymous with the term "floodway fringe" used in the Flood Insurance Study for (local unit).
- 2.818 Flood Plain - the beds proper and the areas adjoining a wetland, lake or watercourse which have been or hereafter may be covered by the regional flood.
- 2.819 Flood Proofing - a combination of structural provisions, changes, or adjustments to properties and structures subject to flooding, primarily for the reduction or elimination of flood damages.
- 2.820 Floodway - the bed of a wetland or lake and the channel of a watercourse and those portions of the adjoining flood plain which are reasonably required to carry or store the regional flood discharge.
- 2.821 Lowest Floor - the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, used solely for parking of vehicles, building access, or storage in an area other than a basement area, is not considered a building's lowest floor.
- 2.822 Manufactured Home - a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term "manufactured home" does not include the term "recreational vehicle."
- 2.823 Obstruction - any dam, wall, wharf, embankment, levee, dike, pile, abutment, projection, excavation, channel modification, culvert, building, wire, fence, stockpile, refuse, fill, structure, or matter in, along, across, or projecting into any channel, watercourse, or regulatory flood plain which may impede, retard, or change the direction of the flow of water, either in itself or by catching or collecting debris carried by such water.
- 2.824 Principal Use or Structure - means all uses or structures that are not accessory uses or structures.
- 2.825 Reach - a hydraulic engineering term to describe a longitudinal segment of a stream or river influenced by a natural or man-made obstruction. In an urban area, the segment of a stream or river between two consecutive bridge crossings would most typically constitute a reach.

2.826 Recreational Vehicle - a vehicle that is built on a single chassis, is 400 square feet or less when measured at the largest horizontal projection, is designed to be self-propelled or permanently towable by a light duty truck, and is designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use. For the purposes of this Ordinance, the term recreational vehicle shall be synonymous with the term travel trailer/travel vehicle.

2.827 Regional Flood - a flood which is representative of large floods known to have occurred generally in Minnesota and reasonably characteristic of what can be expected to occur on an average frequency in the magnitude of the 100-year recurrence interval. Regional flood is synonymous with the term "base flood" used in a flood insurance study.

2.828 Regulatory Flood Protection Elevation - The regulatory flood protection elevation shall be an elevation no lower than one foot above the elevation of the regional flood plus any increases in flood elevation caused by encroachments on the flood plain that result from designation of a floodway.

2.829 Structure - anything constructed or erected on the ground or attached to the ground or on-site utilities, including, but not limited to, buildings, factories, sheds, detached garages, cabins, manufactured homes, recreational vehicles not meeting the exemption criteria specified in Section 9.31 of this Ordinance and other similar items.

2.830 Substantial Damage - means damage of any origin sustained by a structure where the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

2.831 Substantial Improvement - within any consecutive 365-day period, any reconstruction, rehabilitation (including normal maintenance and repair), repair after damage, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the "start of construction" of the improvement. This term includes structures that have incurred "substantial damage," regardless of the actual repair work performed. The term does not, however, include either:

- (a) Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions.
- (b) Any alteration of an "historic structure," provided that the alteration will not preclude the structure's continued designation as an "historic structure." For the purpose of this Ordinance, "historic structure" shall be as defined in 44 Code of Federal Regulations, Part 59.1.

2.832 Variance - means a modification of a specific permitted development standard required in an official control including this Ordinance to allow an alternative development standard not stated as acceptable in the official control, but only as applied to a particular property for the purpose of alleviating a hardship, practical difficulty or unique circumstance as defined and elaborated upon in a community's respective planning and zoning enabling legislation.

2.9 Annexations: The Flood Insurance Rate Map panels adopted by reference into Section 2.2 above may include floodplain areas that lie outside of the corporate boundaries of the (local unit) at the time of adoption of this ordinance. If any of these floodplain land areas are annexed into the (local unit) after the date of adoption of this ordinance, the newly annexed floodplain lands

shall be subject to the provisions of this ordinance immediately upon the date of annexation into the
(local unit).

SECTION 3.0 ESTABLISHMENT OF ZONING DISTRICTS

3.1 Districts:

- 3.11 Floodway District. The Floodway District shall include those areas designated as floodway on the Flood Insurance Rate Map adopted in Section 2.2.
- 3.12 Flood Fringe District. The Flood Fringe District shall include those areas designated as floodway fringe. The Flood Fringe District shall include those areas shown on the Flood Insurance Rate Map as adopted in Section 2.2 as being within Zones AE, A0, or AH but being located outside of the floodway.
- 3.13 General Flood Plain District. The General Flood Plain District shall include those areas designated as Zone A or Zones AE, A0, or AH without a floodway on the Flood Insurance Rate Map adopted in Section 2.2.

3.2 Compliance: No new structure or land shall hereafter be used and no structure shall be constructed, located, extended, converted, or structurally altered without full compliance with the terms of this Ordinance and other applicable regulations which apply to uses within the jurisdiction of this Ordinance. Within the Floodway, Flood Fringe and General Flood Plain Districts, all uses not listed as permitted uses or conditional uses in Sections 4.0, 5.0 and 6.0 that follow, respectively, shall be prohibited. In addition, a caution is provided here that:

- 3.21 New manufactured homes, replacement manufactured homes and certain travel trailers and travel vehicles are subject to the general provisions of this Ordinance and specifically Section 9.0.
- 3.22 Modifications, additions, structural alterations, normal maintenance and repair, or repair after damage to existing nonconforming structures and nonconforming uses of structures or land are regulated by the general provisions of this Ordinance and specifically Section 11.0.
- 3.23 As-built elevations for elevated or flood proofed structures must be certified by ground surveys and flood proofing techniques must be designed and certified by a registered professional engineer or architect as specified in the general provisions of this Ordinance and specifically as stated in Section 10.0 of this Ordinance.

SECTION 4.0 FLOODWAY DISTRICT (FW)

4.1 Permitted Uses:

- 4.11 General farming, pasture, grazing, outdoor plant nurseries, horticulture, truck farming, forestry, sod farming, and wild crop harvesting.
- 4.12 Industrial-commercial loading areas, parking areas, and airport landing strips.

4.13 Private and public golf courses, tennis courts, driving ranges, archery ranges, picnic grounds, boat launching ramps, swimming areas, parks, wildlife and nature preserves, game farms, fish hatcheries, shooting preserves, target ranges, trap and skeet ranges, hunting and fishing areas, and single or multiple purpose recreational trails.

4.14 Residential lawns, gardens, parking areas, and play areas.

4.2 Standards for Floodway Permitted Uses:

4.21 The use shall have a low flood damage potential.

4.22 The use shall be permissible in the underlying zoning district if one exists.

4.23 The use shall not obstruct flood flows or increase flood elevations and shall not involve structures, fill, obstructions, excavations or storage of materials or equipment.

4.3 Conditional Uses:

4.31 Structures accessory to the uses listed in 4.1 above and the uses listed in 4.32 - 4.38 below.

4.32 Extraction and storage of sand, gravel, and other materials.

4.33 Marinas, boat rentals, docks, piers, wharves, and water control structures.

4.34 Railroads, streets, bridges, utility transmission lines, and pipelines.

4.35 Storage yards for equipment, machinery, or materials.

4.36 Placement of fill or construction of fences.

4.37 Recreational vehicles either on individual lots of record or in existing or new subdivisions or commercial or condominium type campgrounds, subject to the exemptions and provisions of Section 9.3 of this Ordinance.

4.38 Structural works for flood control such as levees, dikes and floodwalls constructed to any height where the intent is to protect individual structures and levees or dikes where the intent is to protect agricultural crops for a frequency flood event equal to or less than the 10-year frequency flood event.

4.4 Standards for Floodway Conditional Uses:

4.41 All Uses. No structure (temporary or permanent), fill (including fill for roads and levees), deposit, obstruction, storage of materials or equipment, or other uses may be allowed as a conditional use that will cause any increase in the stage of the 100-year or regional flood or cause an increase in flood damages in the reach or reaches affected.

4.42 All floodway conditional uses shall be subject to the procedures and standards contained in Section 10.4 of this Ordinance.

4.43 The conditional use shall be permissible in the underlying zoning district if one exists.

4.44 Fill:

- (a) Fill, dredge spoil, and all other similar materials deposited or stored in the flood plain shall be protected from erosion by vegetative cover, mulching, riprap or other acceptable method.
- (b) Dredge spoil sites and sand and gravel operations shall not be allowed in the floodway unless a long-term site development plan is submitted which includes an erosion/sedimentation prevention element to the plan.
- (c) As an alternative, and consistent with Subsection (b) immediately above, dredge spoil disposal and sand and gravel operations may allow temporary, on-site storage of fill or other materials which would have caused an increase to the stage of the 100-year or regional flood but only after the Governing Body has received an appropriate plan which assures the removal of the materials from the floodway based upon the flood warning time available. The conditional use permit must be title registered with the property in the Office of the County Recorder.

4.45 Accessory Structures:

- (a) Accessory structures shall not be designed for human habitation.
- (b) Accessory structures, if permitted, shall be constructed and placed on the building site so as to offer the minimum obstruction to the flow of flood waters:
 - (1) Whenever possible, structures shall be constructed with the longitudinal axis parallel to the direction of flood flow; and
 - (2) So far as practicable, structures shall be placed approximately on the same flood flow lines as those of adjoining structures.
- (c) Accessory structures shall be elevated on fill or structurally dry flood proofed in accordance with the FP-1 or FP-2 flood proofing classifications in the State Building Code. As an alternative, an accessory structure may be flood proofed to the FP-3 or FP-4 flood proofing classification in the State Building Code provided the accessory structure constitutes a minimal investment, does not exceed 500 square feet in size at its largest projection, and for a detached garage, the detached garage must be used solely for parking of vehicles and limited storage. All flood proofed accessory structures must meet the following additional standards:
 - (1) The structure must be adequately anchored to prevent flotation, collapse or lateral movement of the structure and shall be designed to equalize hydrostatic flood forces on exterior walls;
 - (2) Any mechanical and utility equipment in a structure must be elevated to or above the regulatory flood protection elevation or properly flood proofed; and
 - (3) To allow for the equalization of hydrostatic pressure, there must be a minimum of two "automatic" openings in the outside walls of the structure having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding. There must be openings on at least two sides of the structure and the bottom of all openings must be no higher than one foot above the lowest adjacent grade to the structure. Using human intervention to open a garage door prior to flooding will not satisfy this requirement for automatic openings.

4.46 Storage of Materials and Equipment:

- (a) The storage or processing of materials that are, in time of flooding, flammable, explosive, or potentially injurious to human, animal, or plant life is prohibited.
- (b) Storage of other materials or equipment may be allowed if readily removable from the area within the time available after a flood warning and in accordance with a plan approved by the Governing Body.

4.47 Structural works for flood control that will change the course, current or cross section of protected wetlands or public waters shall be subject to the provisions of Minnesota Statute, Chapter 103G.

Community-wide structural works for flood control intended to remove areas from the regulatory flood plain shall not be allowed in the floodway.

- 4.48 A levee, dike or floodwall constructed in the floodway shall not cause an increase to the 100-year or regional flood and the technical analysis must assume equal conveyance or storage loss on both sides of a stream.

SECTION 5.0 FLOOD FRINGE DISTRICT (FF)

5.1 Permitted Uses: Permitted uses shall be those uses of land or structures listed as permitted uses in the underlying zoning use district(s). If no pre-existing, underlying zoning use districts exist, then any residential or non residential structure or use of a structure or land shall be a permitted use in the Flood Fringe District provided such use does not constitute a public nuisance. All permitted uses shall comply with the standards for Flood Fringe District "Permitted Uses" listed in Section 5.2 and the "Standards for all Flood Fringe Uses" listed in Section 5.5.

5.2 Standards for Flood Fringe Permitted Uses:

- 5.21 All structures, including accessory structures, must be elevated on fill so that the lowest floor including basement floor is at or above the regulatory flood protection elevation. The finished fill elevation for structures shall be no lower than one (1) foot below the regulatory flood protection elevation and the fill shall extend at such elevation at least fifteen (15) feet beyond the outside limits of the structure erected thereon.
- 5.22 As an alternative to elevation on fill, accessory structures that constitute a minimal investment and that do not exceed 500 square feet at its largest projection may be internally flood proofed in accordance with Section 4.45 (c).
- 5.23 The cumulative placement of fill where at any one time in excess of one-thousand (1,000) cubic yards of fill is located on the parcel shall be allowable only as a conditional use, unless said fill is specifically intended to elevate a structure in accordance with Section 5.21 of this ordinance.

(Note: This is an optional provision. If a community wishes to delete this provision, please leave the numbering the same and insert the replacement wording "This section reserved for future use.")

- 5.24 The storage of any materials or equipment shall be elevated on fill to the regulatory flood protection elevation.
- 5.25 The provisions of Section 5.5 of this Ordinance shall apply.

5.3 Conditional Uses: Any structure that is not elevated on fill or flood proofed in accordance with Section 5.21 - 5.22 and or any use of land that does not comply with the standards in Section 5.23 - 5.24 shall only be allowable as a conditional use. An application for a conditional use shall be subject to the standards and criteria and evaluation procedures specified in Sections 5.4-5.5 and 10.4 of this Ordinance.

5.4 Standards for Flood Fringe Conditional Uses:

- 5.41 Alternative elevation methods other than the use of fill may be utilized to elevate a structure's lowest floor above the regulatory flood protection elevation. These alternative methods may

include the use of stilts, pilings, parallel walls, etc., or above-grade, enclosed areas such as crawl spaces or tuck under garages. The base or floor of an enclosed area shall be considered above-grade and not a structure's basement or lowest floor if: 1) the enclosed area is above-grade on at least one side of the structure; 2) it is designed to internally flood and is constructed with flood resistant materials; and 3) it is used solely for parking of vehicles, building access or storage. The above-noted alternative elevation methods are subject to the following additional standards:

- (a) Design and Certification - The structure's design and as-built condition must be certified by a registered professional engineer or architect as being in compliance with the general design standards of the State Building Code and, specifically, that all electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities must be at or above the regulatory flood protection elevation or be designed to prevent flood water from entering or accumulating within these components during times of flooding.
- (b) Specific Standards for Above-grade, Enclosed Areas - Above-grade, fully enclosed areas such as crawl spaces or tuck under garages must be designed to internally flood and the design plans must stipulate:
 - (1) A minimum area of openings in the walls where internal flooding is to be used as a flood proofing technique. There shall be a minimum of two openings on at least two sides of the structure and the bottom of all openings shall be no higher than one-foot above grade. The automatic openings shall have a minimum net area of not less than one square inch for every square foot of enclosed area subject to flooding unless a registered professional engineer or architect certifies that a smaller net area would suffice. The automatic openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of flood waters without any form of human intervention; and
 - (2) That the enclosed area will be designed of flood resistant materials in accordance with the FP-3 or FP-4 classifications in the State Building Code and shall be used solely for building access, parking of vehicles or storage.

5.42 Basements, as defined by Section 2.812 of this Ordinance, shall be subject to the following:

- (a) Residential basement construction shall not be allowed below the regulatory flood protection elevation.
- (b) Non-residential basements may be allowed below the regulatory flood protection elevation provided the basement is structurally dry flood proofed in accordance with Section 5.43 of this Ordinance.

5.43 All areas of non residential structures including basements to be placed below the regulatory flood protection elevation shall be flood proofed in accordance with the structurally dry flood proofing classifications in the State Building Code. Structurally dry flood proofing must meet the FP-1 or FP-2 flood proofing classification in the State Building Code and this shall require making the structure watertight with the walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy. Structures flood proofed to the FP-3 or FP-4 classification shall not be permitted.

5.44 When at any one time more than 1,000 cubic yards of fill or other similar material is located on a parcel for such activities as on-site storage, landscaping, sand and gravel operations, landfills, roads, dredge spoil disposal or construction of flood control works, an erosion/sedimentation control plan must be submitted unless the community is enforcing a state approved shoreland management ordinance. In the absence of a state approved shoreland ordinance, the plan must clearly specify methods to be used to stabilize the fill on site for a flood event at a minimum of the 100-year or regional flood event. The plan must be prepared and certified by a registered

professional engineer or other qualified individual acceptable to the Governing Body. The plan may incorporate alternative procedures for removal of the material from the flood plain if adequate flood warning time exists.

(Note: This is an optional provision. If a community wishes to delete this provision, please leave the numbering the same and insert the replacement wording "This section reserved for future use.")

5.45 Storage of Materials and Equipment:

- (a) The storage or processing of materials that are, in time of flooding, flammable, explosive, or potentially injurious to human, animal, or plant life is prohibited.
- (b) Storage of other materials or equipment may be allowed if readily removable from the area within the time available after a flood warning and in accordance with a plan approved by the Governing Body.

5.46 The provisions of Section 5.5 of this Ordinance shall also apply.

5.5 Standards for All Flood Fringe Uses:

- 5.51 All new principal structures must have vehicular access at or above an elevation not more than two (2) feet below the regulatory flood protection elevation. If a variance to this requirement is granted, the Board of Adjustment must specify limitations on the period of use or occupancy of the structure for times of flooding and only after determining that adequate flood warning time and local flood emergency response procedures exist.

(Note: This is an optional provision. If a community wishes to delete this provision, please leave the numbering the same and insert the replacement wording "This section reserved for future use.")

- 5.52 Commercial Uses - accessory land uses, such as yards, railroad tracks, and parking lots may be at elevations lower than the regulatory flood protection elevation. However, a permit for such facilities to be used by the employees or the general public shall not be granted in the absence of a flood warning system that provides adequate time for evacuation if the area would be inundated to a depth and velocity such that when multiplying the depth (in feet) times velocity (in feet per second) the product number exceeds four (4) upon occurrence of the regional flood.

- 5.53 Manufacturing and Industrial Uses - measures shall be taken to minimize interference with normal plant operations especially along streams having protracted flood durations. Certain accessory land uses such as yards and parking lots may be at lower elevations subject to requirements set out in Section 5.52 above. In considering permit applications, due consideration shall be given to needs of an industry whose business requires that it be located in flood plain areas.

- 5.54 Fill shall be properly compacted and the slopes shall be properly protected by the use of riprap, vegetative cover or other acceptable method. The Federal Emergency Management Agency (FEMA) has established criteria for removing the special flood hazard area designation for certain structures properly elevated on fill above the 100-year flood elevation - FEMA's requirements incorporate specific fill compaction and side slope protection standards for multi-structure or multi-lot developments. These standards should be investigated prior to the initiation of site preparation if a change of special flood hazard area designation will be requested.

- 5.55 Flood plain developments shall not adversely affect the hydraulic capacity of the channel and adjoining flood plain of any tributary watercourse or drainage system where a floodway or other encroachment limit has not been specified on the Official Zoning Map.
- 5.56 Standards for recreational vehicles are contained in Section 9.3.
- 5.57 All manufactured homes must be securely anchored to an adequately anchored foundation system that resists flotation, collapse and lateral movement. Methods of anchoring may include, but are not to be limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable state or local anchoring requirements for resisting wind forces.

SECTION 6.0 GENERAL FLOOD PLAIN DISTRICT

6.1 Permissible Uses:

- 6.11 The uses listed in Section 4.1 of this Ordinance shall be permitted uses.
- 6.12 All other uses shall be subject to the floodway/flood fringe evaluation criteria pursuant to Section 6.2 below. Section 4.0 shall apply if the proposed use is in the Floodway District and Section 5.0 shall apply if the proposed use is in the Flood Fringe District.

6.2 Procedures for Floodway and Flood Fringe Determinations Within the General Flood Plain District.

- 6.21 Upon receipt of an application for a permit or other approval within the General Flood Plain District, the applicant shall be required to furnish such of the following information as is deemed necessary by the Zoning Administrator for the determination of the regulatory flood protection elevation and whether the proposed use is within the Floodway or Flood Fringe District.
- (a) A typical valley cross-section(s) showing the channel of the stream, elevation of land areas adjoining each side of the channel, cross-sectional areas to be occupied by the proposed development, and high water information.
 - (b) Plan (surface view) showing elevations or contours of the ground, pertinent structure, fill, or storage elevations, the size, location, and spatial arrangement of all proposed and existing structures on the site, and the location and elevations of streets.
 - (c) Photographs showing existing land uses, vegetation upstream and downstream, and soil types.
 - (d) Profile showing the slope of the bottom of the channel or flow line of the stream for at least 500 feet in either direction from the proposed development.
- 6.22 The applicant shall be responsible to submit one copy of the above information to a designated engineer or other expert person or agency for technical assistance in determining whether the proposed use is in the Floodway or Flood Fringe District and to determine the regulatory flood protection elevation. Procedures consistent with Minnesota Regulations 1983, Parts 6120.5000 - 6120.6200 and 44 Code of Federal Regulations Part 65 shall be followed in this expert evaluation. The designated engineer or expert is strongly encouraged to discuss the proposed technical evaluation methodology with the respective Department of Natural Resources' Area Hydrologist prior to commencing the analysis. The designated engineer or expert shall:
- (a) Estimate the peak discharge of the regional flood.
 - (b) Calculate the water surface profile of the regional flood based upon a hydraulic analysis of the stream channel and overbank areas.

- (c) Compute the floodway necessary to convey or store the regional flood without increasing flood stages more than 0.5 foot. A lesser stage increase than .5' shall be required if, as a result of the additional stage increase, increased flood damages would result. An equal degree of encroachment on both sides of the stream within the reach shall be assumed in computing floodway boundaries. For the mapped lake and wetland basins within the City of Lake Elmo as shown on the Flood Insurance Rate Map Panels adopted in Section 2.2 of this Ordinance, the floodway shall be that area of the floodplain below the Ordinary High Water Level, as defined in Minnesota Statute, Section 103G.0005, subd. 14, provided that: 1) compensating flood water storage is provided below the 100-year flood elevation; or 2) a determination is made that any resultant increase in stage to the 100-year flood level due to loss of flood water storage below the 100-year flood level meets the criteria for acceptable stage increase spelled out in this paragraph.

- 6.23 The Zoning Administrator shall present the technical evaluation and findings of the designated engineer or expert to the Governing Body. The Governing Body must formally accept the technical evaluation and the recommended Floodway and/or Flood Fringe District boundary or deny the permit application. The Governing Body, prior to official action, may submit the application and all supporting data and analyses to the Federal Emergency Management Agency, the Department of Natural Resources or the Planning Commission for review and comment. Once the Floodway and Flood Fringe District Boundaries have been determined, the Governing Body shall refer the matter back to the Zoning Administrator who shall process the permit application consistent with the applicable provisions of Section 4.0 and 5.0 of this Ordinance.

SECTION 7.0 SUBDIVISIONS²

²**Note: This Section is not intended as a substitute for a comprehensive city or county subdivision ordinance. It can, however, be used as an interim control until the comprehensive subdivision ordinance can be amended to include necessary flood plain management provisions.**

7.1 Review Criteria: No land shall be subdivided which is unsuitable for the reason of flooding, inadequate drainage, water supply or sewage treatment facilities. All lots within the flood plain districts shall be able to contain a building site outside of the Floodway District at or above the regulatory flood protection elevation. All subdivisions shall have water and sewage treatment facilities that comply with the provisions of this Ordinance and have road access both to the subdivision and to the individual building sites no lower than two feet below the regulatory flood protection elevation. For all subdivisions in the flood plain, the Floodway and Flood Fringe District boundaries, the regulatory flood protection elevation and the required elevation of all access roads shall be clearly labeled on all required subdivision drawings and platting documents.

7.2 Floodway/Flood Fringe Determinations in the General Flood Plain District: In the General Flood Plain District, applicants shall provide the information required in Section 6.2 of this Ordinance to determine the 100-year flood elevation, the Floodway and Flood Fringe District boundaries and the regulatory flood protection elevation for the subdivision site.

7.3 Removal of Special Flood Hazard Area Designation: The Federal Emergency Management Agency (FEMA) has established criteria for removing the special flood hazard area designation for certain structures properly elevated on fill above the 100-year flood elevation. FEMA's requirements incorporate specific fill compaction and side slope protection standards for multi-structure or multi-lot developments. These

standards should be investigated prior to the initiation of site preparation if a change of special flood hazard area designation will be requested.

SECTION 8.0 PUBLIC UTILITIES, RAILROADS, ROADS, AND BRIDGES

8.1 Public Utilities. All public utilities and facilities such as gas, electrical, sewer, and water supply systems to be located in the flood plain shall be flood proofed in accordance with the State Building Code or elevated to above the regulatory flood protection elevation.

8.2 Public Transportation Facilities. Railroad tracks, roads, and bridges to be located within the flood plain shall comply with Sections 4.0 and 5.0 of this Ordinance. Elevation to the regulatory flood protection elevation shall be provided where failure or interruption of these transportation facilities would result in danger to the public health or safety or where such facilities are essential to the orderly functioning of the area. Minor or auxiliary roads or railroads may be constructed at a lower elevation where failure or interruption of transportation services would not endanger the public health or safety.

8.3 On-site Sewage Treatment and Water Supply Systems: Where public utilities are not provided: 1) On-site water supply systems must be designed to minimize or eliminate infiltration of flood waters into the systems; and 2) New or replacement on-site sewage treatment systems must be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters and they shall not be subject to impairment or contamination during times of flooding. Any sewage treatment system designed in accordance with the State's current statewide standards for on-site sewage treatment systems shall be determined to be in compliance with this Section.

SECTION 9.0 MANUFACTURED HOMES AND MANUFACTURED HOME PARKS AND PLACEMENT OF RECREATIONAL VEHICLES.

9.1 New manufactured home parks and expansions to existing manufactured home parks shall be subject to the provisions placed on subdivisions by Section 7.0 of this Ordinance.

9.2 The placement of new or replacement manufactured homes in existing manufactured home parks or on individual lots of record that are located in flood plain districts will be treated as a new structure and may be placed only if elevated in compliance with Section 5.0 of this Ordinance. If vehicular road access for pre-existing manufactured home parks is not provided in accordance with Section 5.51, then replacement manufactured homes will not be allowed until the property owner(s) develops a flood warning emergency plan acceptable to the Governing Body.

9.21 All manufactured homes must be securely anchored to an adequately anchored foundation system that resists flotation, collapse and lateral movement. Methods of anchoring may include, but are not to be limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable state or local anchoring requirements for resisting wind forces.

9.3 Recreational vehicles that do not meet the exemption criteria specified in Section 9.31 below shall be subject to the provisions of this Ordinance and as specifically spelled out in Sections 9.33-9.34 below.

9.31 Exemption - Recreational vehicles are exempt from the provisions of this Ordinance if they are placed in any of the areas listed in Section 9.32 below and further they meet the following criteria:

- (a) Have current licenses required for highway use.

- (b) Are highway ready meaning on wheels or the internal jacking system, are attached to the site only by quick disconnect type utilities commonly used in campgrounds and recreational vehicle parks and the recreational vehicle has no permanent structural type additions attached to it.
 - (c) The recreational vehicle and associated use must be permissible in any pre-existing, underlying zoning use district.
- 9.32 Areas Exempted For Placement of Recreational Vehicles:
- (a) Individual lots or parcels of record.
 - (b) Existing commercial recreational vehicle parks or campgrounds.
 - (c) Existing condominium type associations.
- 9.33 Recreational vehicles exempted in Section 9.31 lose this exemption when development occurs on the parcel exceeding \$500 for a structural addition to the recreational vehicle or exceeding \$500 for an accessory structure such as a garage or storage building. The recreational vehicle and all additions and accessory structures will then be treated as a new structure and shall be subject to the elevation/flood proofing requirements and the use of land restrictions specified in Sections 4.0 and 5.0 of this Ordinance. There shall be no development or improvement on the parcel or attachment to the recreational vehicle that hinders the removal of the recreational vehicle to a flood free location should flooding occur.
- 9.34 New commercial recreational vehicle parks or campgrounds and new residential type subdivisions and condominium associations and the expansion of any existing similar use exceeding five (5) units or dwelling sites shall be subject to the following:
- (a) Any new or replacement recreational vehicle will be allowed in the Floodway or Flood Fringe Districts provided said recreational vehicle and its contents are placed on fill above the regulatory flood protection elevation and proper elevated road access to the site exists in accordance with Section 5.51 of this Ordinance. No fill placed in the floodway to meet the requirements of this Section shall increase flood stages of the 100-year or regional flood.
 - (b) All new or replacement recreational vehicles not meeting the criteria of (a) above may, as an alternative, be allowed as a conditional use if in accordance with the following provisions and the provisions of 10.4 of the Ordinance. The applicant must submit an emergency plan for the safe evacuation of all vehicles and people during the 100 year flood. Said plan shall be prepared by a registered engineer or other qualified individual, shall demonstrate that adequate time and personnel exist to carry out the evacuation, and shall demonstrate the provisions of Section 9.31 (a) and (b) of this Ordinance will be met. All attendant sewage and water facilities for new or replacement recreational vehicles must be protected or constructed so as to not be impaired or contaminated during times of flooding in accordance with Section 8.3 of this Ordinance.

SECTION 10.0 ADMINISTRATION

10.1 Zoning Administrator: A Zoning Administrator or other official designated by the Governing Body shall administer and enforce this Ordinance. If the Zoning Administrator finds a violation of the provisions of this Ordinance the Zoning Administrator shall notify the person responsible for such violation in accordance with the procedures stated in Section 12.0 of the Ordinance.

10.2 Permit Requirements:

- 10.21 Permit Required. A Permit issued by the Zoning Administrator in conformity with the provisions of this Ordinance shall be secured prior to the erection, addition, modification, rehabilitation (including normal maintenance and repair), or alteration of any building, structure, or portion thereof; prior to the use or change of use of a building, structure, or land; prior to the construction of a dam, fence, or on-site septic system; prior to the change or extension of a nonconforming use; prior to the repair of a structure that has been damaged by flood, fire, tornado, or any other source; and prior to the placement of fill, excavation of materials, or the storage of materials or equipment within the flood plain.
- 10.22 Application for Permit. Application for a permit shall be made in duplicate to the Zoning Administrator on forms furnished by the Zoning Administrator and shall include the following where applicable: plans in duplicate drawn to scale, showing the nature, location, dimensions, and elevations of the lot; existing or proposed structures, fill, or storage of materials; and the location of the foregoing in relation to the stream channel.
- 10.23 State and Federal Permits. Prior to granting a permit or processing an application for a conditional use permit or variance, the Zoning Administrator shall determine that the applicant has obtained all necessary state and federal permits.
- 10.24 Certificate of Zoning Compliance for a New, Altered, or Nonconforming Use. It shall be unlawful to use, occupy, or permit the use or occupancy of any building or premises or part thereof hereafter created, erected, changed, converted, altered, or enlarged in its use or structure until a certificate of zoning compliance shall have been issued by the Zoning Administrator stating that the use of the building or land conforms to the requirements of this Ordinance.
- 10.25 Construction and Use to be as Provided on Applications, Plans, Permits, Variances and Certificates of Zoning Compliance. Permits, conditional use permits, or certificates of zoning compliance issued on the basis of approved plans and applications authorize only the use, arrangement, and construction set forth in such approved plans and applications, and no other use, arrangement, or construction. Any use, arrangement, or construction at variance with that authorized shall be deemed a violation of this Ordinance, and punishable as provided by Section 12.0 of this Ordinance.
- 10.26 Certification. The applicant shall be required to submit certification by a registered professional engineer, registered architect, or registered land surveyor that the finished fill and building elevations were accomplished in compliance with the provisions of this Ordinance. Flood proofing measures shall be certified by a registered professional engineer or registered architect.
- 10.27 Record of First Floor Elevation. The Zoning Administrator shall maintain a record of the elevation of the lowest floor (including basement) of all new structures and alterations or additions to existing structures in the flood plain. The Zoning Administrator shall also maintain a record of the elevation to which structures or alterations and additions to structures are flood proofed.
- 10.28 Notifications for Watercourse Alterations. The Zoning Administrator shall notify, in riverine situations, adjacent communities and the Commissioner of the Department of Natural Resources prior to the community authorizing any alteration or relocation of a watercourse. If the applicant has applied for a permit to work in the beds of public waters pursuant to Minnesota Statute, Chapter 103G, this shall suffice as adequate notice to the Commissioner of Natural Resources. A copy of said notification shall also be submitted to the Chicago Regional Office of the Federal Emergency Management Agency (FEMA).

- 10.29 Notification to FEMA When Physical Changes Increase or Decrease the 100-year Flood Elevation. As soon as is practicable, but not later than six (6) months after the date such supporting information becomes available, the Zoning Administrator shall notify the Chicago Regional Office of FEMA of the changes by submitting a copy of said technical or scientific data.

10.3 Board of Adjustment:

- 10.31 Rules. The Board of Adjustment shall adopt rules for the conduct of business and may exercise all of the powers conferred on such Boards by State law.

- 10.32 Administrative Review. The Board of Adjustment shall hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement or administration of this Ordinance.

- 10.33 Variances. The Board of Adjustment may authorize upon appeal in specific cases such relief or variance from the terms of this Ordinance as will not be contrary to the public interest and only for those circumstances such as hardship, practical difficulties or circumstances unique to the property under consideration, as provided for in the respective enabling legislation for planning and zoning for cities or counties as appropriate. In the granting of such variance, the Board of Adjustment shall clearly identify in writing the specific conditions that existed consistent with the criteria specified in this Ordinance, any other zoning regulations in the Community, and in the respective enabling legislation that justified the granting of the variance. No variance shall have the effect of allowing in any district uses prohibited in that district, permit a lower degree of flood protection than the regulatory flood protection elevation for the particular area, or permit standards lower than those required by state law. The following additional variance criteria of the Federal Emergency Management Agency must be satisfied:

- (a) Variances shall not be issued by a community within any designated regulatory floodway if any increase in flood levels during the base flood discharge would result.
- (b) Variances shall only be issued by a community upon (i) a showing of good and sufficient cause, (ii) a determination that failure to grant the variance would result in exceptional hardship to the applicant, and (iii) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
- (c) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

- 10.34 Hearings. Upon filing with the Board of Adjustment of an appeal from a decision of the Zoning Administrator, or an application for a variance, the Board of Adjustment shall fix a reasonable time for a hearing and give due notice to the parties in interest as specified by law. The Board of Adjustment shall submit by mail to the Commissioner of Natural Resources a copy of the application for proposed variances sufficiently in advance so that the Commissioner will receive at least ten days notice of the hearing.

- 10.35 Decisions. The Board of Adjustment shall arrive at a decision on such appeal or variance within _____ days. In passing upon an appeal, the Board of Adjustment may, so long as such action is in conformity with the provisions of this Ordinance, reverse or affirm, wholly or in part, or modify the order, requirement, decision or determination of the Zoning Administrator or other public official. It shall make its decision in writing setting forth the findings of fact and the reasons for its decisions. In granting a variance the Board of Adjustment may prescribe

appropriate conditions and safeguards such as those specified in Section 10.46, which are in conformity with the purposes of this Ordinance. Violations of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this Ordinance punishable under Section 12.0. A copy of all decisions granting variances shall be forwarded by mail to the Commissioner of Natural Resources within ten (10) days of such action.

10.36 Appeals. Appeals from any decision of the Board of Adjustment may be made, and as specified in this community's official controls and also by Minnesota Statutes.

10.37 Flood Insurance Notice and Record Keeping. The Zoning Administrator shall notify the applicant for a variance that: 1) The issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage and 2) Such construction below the 100-year or regional flood level increases risks to life and property. Such notification shall be maintained with a record of all variance actions. A community shall maintain a record of all variance actions, including justification for their issuance, and report such variances issued in its annual or biennial report submitted to the Administrator of the National Flood Insurance Program.

10.4 Conditional Uses. The (Governing Body/Planning Comm./Bd. of Adjust.) shall hear and decide applications for conditional uses permissible under this Ordinance. Applications shall be submitted to the Zoning Administrator who shall forward the application to (Designated Body) for consideration.

10.41 Hearings. Upon filing with the (Designated Body) an application for a conditional use permit, the (Designated Body) shall submit by mail to the Commissioner of Natural Resources a copy of the application for proposed conditional use sufficiently in advance so that the Commissioner will receive at least ten days notice of the hearing.

10.42 Decisions. The (Designated Body) shall arrive at a decision on a conditional use within _____ days. In granting a conditional use permit the (Designated Body) shall prescribe appropriate conditions and safeguards, in addition to those specified in Section 10.46, which are in conformity with the purposes of this Ordinance. Violations of such conditions and safeguards, when made a part of the terms under which the conditional use permit is granted, shall be deemed a violation of this Ordinance punishable under Section 12.0. A copy of all decisions granting conditional use permits shall be forwarded by mail to the Commissioner of Natural Resources within ten (10) days of such action.

10.43 Procedures to be followed by the (Designated Body) in Passing on Conditional Use Permit Applications Within all Flood Plain Districts.

- (a) Require the applicant to furnish such of the following information and additional information as deemed necessary by the (Designated Body) for determining the suitability of the particular site for the proposed use:
 - (1) Plans in triplicate drawn to scale showing the nature, location, dimensions, and elevation of the lot, existing or proposed structures, fill, storage of materials, flood proofing measures, and the relationship of the above to the location of the stream channel; and
 - (2) Specifications for building construction and materials, flood proofing, filling, dredging, grading, channel improvement, storage of materials, water supply and sanitary facilities.
- (b) Transmit one copy of the information described in subsection (a) to a designated engineer or other expert person or agency for technical assistance, where necessary, in evaluating the proposed project in relation to flood heights and velocities, the seriousness of flood damage to the use, the adequacy of the plans for protection, and other technical matters.

- (c) Based upon the technical evaluation of the designated engineer or expert, the (Designated Body) shall determine the specific flood hazard at the site and evaluate the suitability of the proposed use in relation to the flood hazard.

10.44 Factors Upon Which the Decision of the (Designated Body) Shall Be Based. In passing upon conditional use applications, the (Designated Body) shall consider all relevant factors specified in other sections of this Ordinance, and:

- (a) The danger to life and property due to increased flood heights or velocities caused by encroachments.
- (b) The danger that materials may be swept onto other lands or downstream to the injury of others or they may block bridges, culverts or other hydraulic structures.
- (c) The proposed water supply and sanitation systems and the ability of these systems to prevent disease, contamination, and unsanitary conditions.
- (d) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner.
- (e) The importance of the services provided by the proposed facility to the community.
- (f) The requirements of the facility for a waterfront location.
- (g) The availability of alternative locations not subject to flooding for the proposed use.
- (h) The compatibility of the proposed use with existing development and development anticipated in the foreseeable future.
- (i) The relationship of the proposed use to the comprehensive plan and flood plain management program for the area.
- (j) The safety of access to the property in times of flood for ordinary and emergency vehicles.
- (k) The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters expected at the site.
- (l) Such other factors which are relevant to the purposes of this Ordinance.

10.45 Time for Acting on Application. The (Designated Body) shall act on an application in the manner described above within _____ days from receiving the application, except that where additional information is required pursuant to 10.43 of this Ordinance. The (Designated Body) shall render a written decision within _____ days from the receipt of such additional information.

10.46 Conditions Attached to Conditional Use Permits. Upon consideration of the factors listed above and the purpose of this Ordinance, the (Designated Body) shall attach such conditions to the granting of conditional use permits as it deems necessary to fulfill the purposes of this Ordinance. Such conditions may include, but are not limited to, the following:

- (a) Modification of waste treatment and water supply facilities.
- (b) Limitations on period of use, occupancy, and operation.
- (c) Imposition of operational controls, sureties, and deed restrictions.
- (d) Requirements for construction of channel modifications, compensatory storage, dikes, levees, and other protective measures.
- (e) Flood proofing measures, in accordance with the State Building Code and this Ordinance. The applicant shall submit a plan or document certified by a registered professional engineer or architect that the flood proofing measures are consistent with the regulatory flood protection elevation and associated flood factors for the particular area.

SECTION 11.0 NONCONFORMING USES

11.1 A structure or the use of a structure or premises which was lawful before the passage or amendment of this Ordinance but which is not in conformity with the provisions of this Ordinance may be continued subject to the following conditions. Historic structures, as defined in Section 2.831(b) of this Ordinance, shall be subject to the provisions of Sections 11.11 – 11.15 of this Ordinance.

11.11 No such use shall be expanded, changed, enlarged, or altered in a way that increases its nonconformity.

11.12 Any structural alteration or addition to a nonconforming structure or nonconforming use which would result in increasing the flood damage potential of that structure or use shall be protected to the Regulatory Flood Protection Elevation in accordance with any of the elevation on fill or flood proofing techniques (i.e., FP-1 thru FP-4 floodproofing classifications) allowable in the State Building Code, except as further restricted in 11.13 and 11.16 below.

11.13 The cost of all structural alterations or additions to any nonconforming structure over the life of the structure shall not exceed 50 percent of the market value of the structure unless the conditions of this Section are satisfied. The cost of all structural alterations and additions must include all costs such as construction materials and a reasonable cost placed on all manpower or labor. If the cost of all previous and proposed alterations and additions exceeds 50 percent of the market value of the structure, then the structure must meet the standards of Section 4.0 or 5.0 of this Ordinance for new structures depending upon whether the structure is in the Floodway or Flood Fringe District, respectively.

(Note: This cumulative tracking over time provision of this section is optional. If a community wishes to delete this cumulative tracking provision, please contact the respective DNR Waters' area hydrologist for replacement wording.)

11.14 If any nonconforming use is discontinued for 12 consecutive months, any future use of the building premises shall conform to this Ordinance. The Assessor shall notify the Zoning Administrator in writing of instances of nonconforming uses that have been discontinued for a period of 12 months.

11.15 If any nonconforming use or structure is substantially damaged, as defined in Section 2.830 of this Ordinance, it shall not be reconstructed except in conformity with the provisions of this Ordinance. The applicable provisions for establishing new uses or new structures in Sections 4.0, 5.0 or 6.0 will apply depending upon whether the use or structure is in the Floodway, Flood Fringe or General Flood Plain District, respectively.

11.16 If a substantial improvement occurs, as defined in Section 2.831 of this Ordinance, from any combination of a building addition to the outside dimensions of the existing building or a rehabilitation, reconstruction, alteration, or other improvement to the inside dimensions of an existing nonconforming building, then the building addition and the existing nonconforming building must meet the requirements of Section 4.0 or 5.0 of this Ordinance for new structures, depending upon whether the structure is in the Floodway or Flood Fringe District, respectively.

SECTION 12.0 PENALTIES FOR VIOLATION

12.1 Violation of the provisions of this Ordinance or failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with grants of variances or conditional uses) shall constitute a misdemeanor and shall be punishable as defined by law.

12.2 Nothing herein contained shall prevent the (local unit) from taking such other lawful action as is necessary to prevent or remedy any violation. Such actions may include but are not limited to:

- 12.21 In responding to a suspected Ordinance violation, the Zoning Administrator and Local Government may utilize the full array of enforcement actions available to it including but not limited to prosecution and fines, injunctions, after-the-fact permits, orders for corrective measures or a request to the National Flood Insurance Program for denial of flood insurance availability to the guilty party. The Community must act in good faith to enforce these official controls and to correct Ordinance violations to the extent possible so as not to jeopardize its eligibility in the National Flood Insurance Program.
- 12.22 When an Ordinance violation is either discovered by or brought to the attention of the Zoning Administrator, the Zoning Administrator shall immediately investigate the situation and document the nature and extent of the violation of the official control. As soon as is reasonably possible, this information will be submitted to the appropriate Department of Natural Resources' and Federal Emergency Management Agency Regional Office along with the Community's plan of action to correct the violation to the degree possible.
- 12.23 The Zoning Administrator shall notify the suspected party of the requirements of this Ordinance and all other official controls and the nature and extent of the suspected violation of these controls. If the structure and/or use is under construction or development, the Zoning Administrator may order the construction or development immediately halted until a proper permit or approval is granted by the Community. If the construction or development is already completed, then the Zoning Administrator may either: (1) issue an order identifying the corrective actions that must be made within a specified time period to bring the use or structure into compliance with the official controls; or (2) notify the responsible party to apply for an after-the-fact permit/development approval within a specified period of time not to exceed 30-days.
- 12.24 If the responsible party does not appropriately respond to the Zoning Administrator within the specified period of time, each additional day that lapses shall constitute an additional violation of this Ordinance and shall be prosecuted accordingly. The Zoning Administrator shall also upon the lapse of the specified response period notify the landowner to restore the land to the condition which existed prior to the violation of this Ordinance.

SECTION 13.0 AMENDMENTS

The flood plain designation on the Official Zoning Map shall not be removed from flood plain areas unless it can be shown that the designation is in error or that the area has been filled to or above the elevation of the regulatory flood protection elevation and is contiguous to lands outside the flood plain. Special exceptions to this rule may be permitted by the Commissioner of Natural Resources if he determines that, through other measures, lands are adequately protected for the intended use.

All amendments to this Ordinance, including amendments to the Official Zoning Map, must be submitted to and approved by the Commissioner of Natural Resources prior to adoption. Changes in the Official Zoning Map must meet the Federal Emergency Management Agency's (FEMA) Technical Conditions and Criteria and must receive prior FEMA approval before adoption. The Commissioner of Natural Resources must be given 10-days written notice of all hearings to consider an amendment to this Ordinance and said notice shall include a draft of the Ordinance amendment or technical study under consideration.

EFFECTIVE DATE: This Ordinance shall be in full force and effect from and after its passage and approval and publication, as required by law and/or charter.

Adopted by the _____ Board/City Council
(Community Name)

This _____ of _____,
(Day) (Month) (Year)

Attest: _____, County Board Chairperson/Mayor
(Name of Elected Official)

Attest: _____, County Administrator/City Clerk
(Name of Community Official)

Stamp With Community Seal:

Planning Commission
Date: 10/14/09
Item: 5a

ITEM: Addressing Buffer Setbacks in Open Space Preservation (OP) Developments (Cont.)

SUBMITTED BY: Kelli Matzek, Planner

REVIEWED BY: Kyle Klatt, Planning Director

Summary of Recommendations Resulting from September 14th & 28th meetings:

	Recommended Buffer Setbacks in OP Developments			
	North Edge	South Edge	West Edge	East Edge
St. Croix's Sanctuary	200	50	50	100
Discover Crossing	200	100	50	100
Whistling Valley I	0	200	0	0
Whistling Valley II	50	100	85	50

ACTION REQUESTED: The Planning Commission is being asked to review recommended buffer setbacks for additional OP developments and to provide a recommendation.

RECOMMENDATION:

At this time, staff is asking the Planning Commission to review the research and recommendations provided by staff and to provide feedback on the proposed reduced buffer setbacks.

ATTACHMENTS (2):

1. Staff recommendation table
2. OP Development Maps

Existing OP Development	Existing Buffer Setback (200 Ft unless otherwise noted)	What we think was approved, but was not officially approved by the Council	Proposed Buffer Setback	Reasoning behind Recommendation:	Notes:
Whistling Valley III (RR)	Res. Says CC allows a reduction in 100 ft buffer setback from E	100 ft from N, W, and S	0 foot setback; all edges	<p>Staff is recommending a 0 foot setback from all edges of the development as the lots are clustered toward the center of the parcel. However, the development was given a 4/5 exception to minimum size parcel needed to be developed as an OP, thereby reducing the amount of space available to buffer the platted lots. The property to the North, West, and Most of the South are eligible for OP development based on lot size. The setback from the W, S, and E could be left at 100 feet as it would no longer impact the residential lots. This development stubs to the North to create a connection for future development of that parcel, which could provide additional buffering, if necessary at that time.</p> <p>Eastern Edge - The property to the East is Whistling Valley I.</p>	Unclear in Resolution

Existing OP Development	Existing Buffer Setback (200 Ft unless otherwise noted)	What we think was approved, but was not officially approved by the Council	Proposed Buffer Setback	Reasoning behind Recommendation:	Notes:
Farms of Lake Elmo (RR)	100 ft from W, S, and E; 200 ft from N		50 Ft from S and E; 200 Ft from N and 100 Ft from West	<p>Southern Edge - Although the City Council already reduced this buffer setback to 100 feet at the time of the development, if the intention is to eliminate non-conformities; the setback would need to be reduced to 50 feet and even then it is close for the Southwest corner lot</p> <p>Northern Edge - this setback only applies to a few properties and that is due to a neighbor's parcel that is landlocked inside the borders of this development (an unusual situation); a 200 foot setback could be retained without maintaining any non-conformities or eliminating the ability to build a home, but would reduce the buildability of a few rear yards</p> <p>Western Edge - A 100 foot setback would not encumber a lot to make it unbuildable, but would reduce the area for a conforming accessory structure; a 50 foot buffer exists in the form of an outlet to provide a physical barrier from the adjacent properties</p> <p>Eastern Edge - a 50 foot setback would eliminate the non-conformities with regards to the home, but not the existing accessory structure in the Southeast corner of the development (pool); while staff would support a 0 foot setback from this edge of the development as it abuts the Regional Park Reserve, the 50 foot was suggested as a previous City Council had established a 100 foot setback</p>	(CC minutes 4-5-05)

Existing OP Development	Existing Buffer Setback (200 Ft unless otherwise noted)	What we think was approved, but was not officially approved by the Council	Proposed Buffer Setback	Reasoning behind Recommendation:	Notes:
Prairie Hamlet (OP)	200 Ft; all edges		<p>Northern Edge - Whether the setback is 200 feet or 0 feet; the entire area is covered by conservation easements in an outlet and would not have future private structures built on that property, which abuts State Highway 36</p> <p>Western Edge - Although a 100 foot setback could be established without excluding much private land from accessory structure construction; the actual implementation of this would be difficult due to the curve in the and W; 200 Ft from development; it would provide minimal buffer N; and 100 Ft from E setback functionality</p> <p>Southern Edge - in order to eliminate existing non-conformities, a 50 foot setback would suffice while providing minimal back yard area for a permitted accessory structure</p> <p>Eastern Edge - Whether the setback is reduced to 100 feet or 0 feet, the setback would not (or negligibly) encroach on private property and the non-conformities would be eliminated</p>	<p>Northern Edge - Whether the setback is 200 feet or 0 feet; the entire area is covered by conservation easements in an outlet and would not have future private structures built on that property, which abuts State Highway 36</p> <p>Western Edge - Although a 100 foot setback could be established without excluding much private land from accessory structure construction; the actual implementation of this would be difficult due to the curve in the and W; 200 Ft from development; it would provide minimal buffer N; and 100 Ft from E setback functionality</p> <p>Southern Edge - in order to eliminate existing non-conformities, a 50 foot setback would suffice while providing minimal back yard area for a permitted accessory structure</p> <p>Eastern Edge - Whether the setback is reduced to 100 feet or 0 feet, the setback would not (or negligibly) encroach on private property and the non-conformities would be eliminated</p>	
A staff recommendation of 0 feet is often because there is a significant break between the lot and a neighboring lot (large open space area protected by conservation easement, roadway, etc.) and the area is likely already precluded from development					

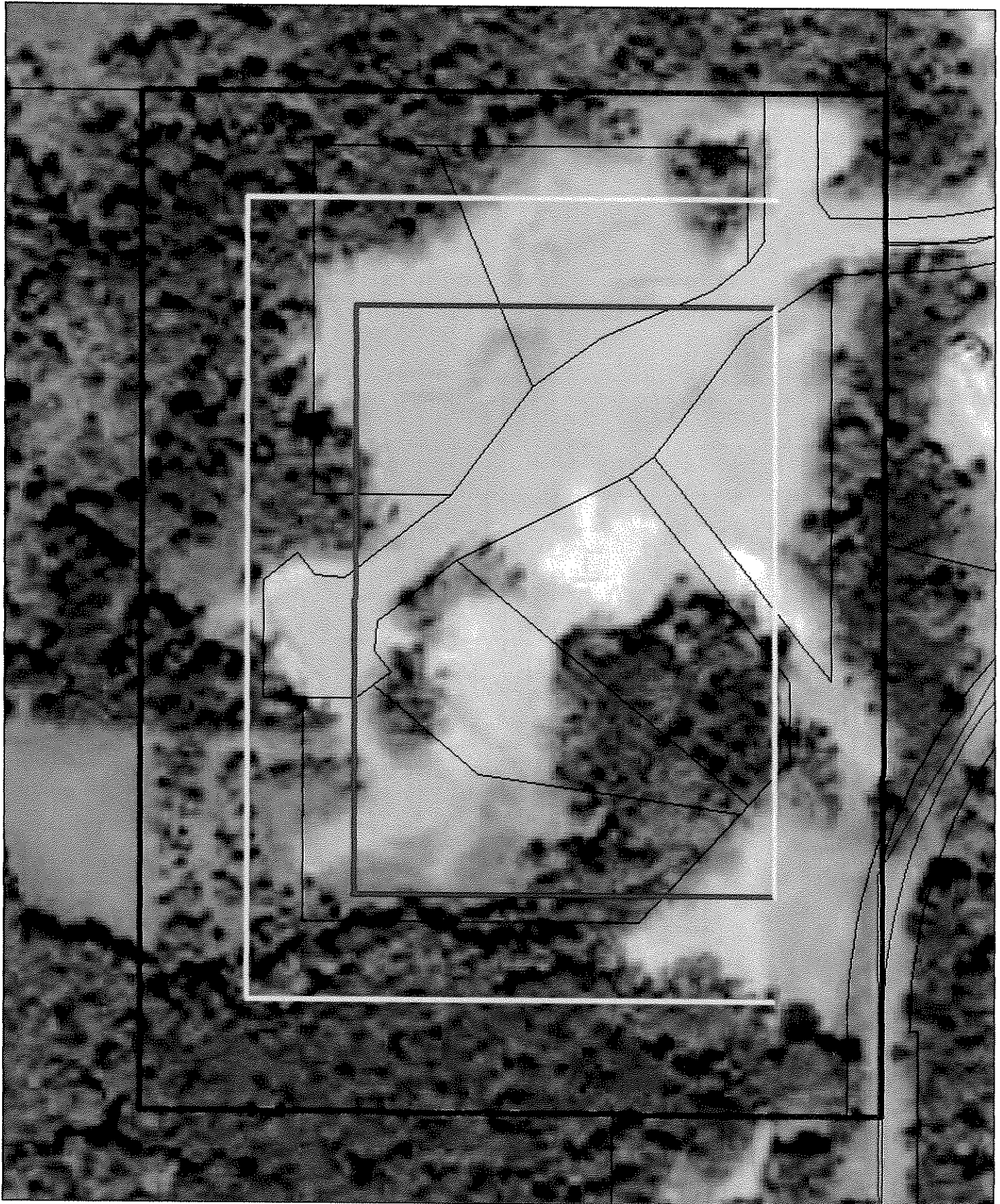
Existing OP Development	Existing Buffer Setback (200 Ft unless otherwise noted)	What we think was approved, but was not officially approved by the Council	Proposed Buffer Setback	Reasoning behind Recommendation:	Notes:
Fields of St. Croix (RR)		100 ft from ag land (staff report)	0 from South; 200 Ft from W; 50 Ft from N; 100 Ft from E	<p>Northern Edge - There are two developed lots affected by the buffer setback along the north side of the property. Both properties about 50th Street North and on the other side of the road is an outlot from another OP development. A 50 foot buffer setback would be minimal as it is measured from the center of the road, but given the adjacent property (road, outlot), staff finds that minimal buffering is necessary.</p>	
				<p>Western Edge - A majority of the property along the western edge of the development are dedicated outlots. By keeping the 200 foot setback, only one lot would be minimally affected and it is in a largely wooded area.</p>	
				<p>Southern Edge - Because there is a thin log platted adjacent to the southern edge of the development, staff is recommending a zero foot setback to ensure the existing home is no longer non-conforming.</p>	
				<p>Eastern Edge - Staff is recommending a 100 foot setback from the eastern edge as this would only affect one residential property. Reducing it from 200 feet makes the home conforming again. A 100 foot setback would be duplicative of a front yard setback and would have minimal impacts to the existing property owner.</p>	

Existing OP Development	Existing Buffer Setback (200 Ft unless otherwise noted)	What we think was approved, but was not officially approved by the Council	Proposed Buffer Setback	Reasoning behind Recommendation:	Notes:
Fields of St. Croix 2nd Addn (OP)			No buffer setback from "exception" parcels (internal to subdivision). 0 Ft from N and E; 200 ftom S and W	<p>Northern Edge - Staff is recommending a 0 ft setback as there are two home sites platted with homes built into a 50 foot setback. Those two homes are adjacent to Tana Ridge Park in an OP development.</p> <p>Western Edge - Staff is recommending maintaining a 200 foot buffer setback as it would have minimal, if any, impact on any residential home site.</p> <p>Southern Edge - Staff is recommending maintaining a 200 foot buffer setback as it would have no impact any any residential home site.</p> <p>Eastern Edge - Staff is recommending a zero foot setback as there are two single family homes and two townhomes built within a 50 foot setback from the eastern edge of the development.</p> <p>Exception Lots - The platted development did not include two existing residential homes that were located internally to the development. Two home sites were added later to the development from the exception property to the north and therefore the homes are built close to that property owner. Because that property owner subdivided with the intention of creating two home sites at that location, staff is recommending a 0 foot buffer setback from the exception parcels.</p>	

Existing OP Development	Existing Buffer Setback (200 Ft unless otherwise noted)	What we think was approved, but was not officially approved by the Council	Proposed Buffer Setback	Reasoning behind Recommendation:	Notes:
The Homestead (OP)		0 Ft; Staff report stated "No buffer zone is necessary since the agricultural use will be a tree farm."	200 Ft from W; 50 Ft from N, E, and S	Northern Edge - Staff is recommending a 50 foot setback from the North because the properties are adjacent to Tartan Park baseball fields. An additional structure in the rear yard would have minimal to no impact on the spectators utilizing the fields.	
				Western Edge - staff is recommending a 200 foot buffer setback as it would not affect any residential home sites.	
				Southern Edge - Staff is recommending a 50 foot buffer setback from the South as the properties to the South are zoned R-1 and although slightly larger, are similar in size.	
				Eastern Edge - Staff is recommending a 50 foot setback to make the existing homes conforming.	

Existing OP Development	Existing Buffer Setback (200 Ft unless otherwise noted)	What we think was approved, but was not officially approved by the Council	Proposed Buffer Setback	Reasoning behind Recommendation: Notes:
				<p>Northern Edge - Staff is recommending 100 ft as the property is adjacent largely to parcels undevelopable by OP standards, but maintaining a 200 ft setback renders the lots unbuildable</p> <p>Western Edge - Staff is recommending a 200 foot buffer setback as it would affect only one property and would not preclude other building on the site.</p> <p>Southern Edge - Staff is recommending a 50 foot buffer setback as it is adjacent to Sunfish Lake Park, which will not be developed. The full 200 foot setback renders the lots unbuildable. A 100 foot buffer setback could also be considered.</p>
Tapestry at Charlotte's Grove (RR)	200 Ft from W; 200 Ft from Exception Parcels	200 Ft from N, 200 Ft in NE corner; 100 Ft from E and S	100 Setback from Exception Parcels; 100 Ft setback from N; 50 Ft setback from E and S	<p>Eastern Edge - Staff is recommending a 50 foot setback as it is adjacent to another OP development for a majority of the length of the development which also has a small outlot adjacent to the development. A 200 foot setback renders a few lots unbuildable and a 100 foot setback would create difficulties in building a residential lot on one of the sites. This would also create a little more buildable area for the SE corner lot which would have a buffer setback from the South as well.</p>
				<p>Exception Parcels - The City Council approved by 4/5 vote to allow a road to be built within a 200 foot buffer setback from the exception parcels. However, staff is recommending a 100 foot setback as the parcel to the Southeast already has challenges for building due to the large pond/wetland on the site.</p>

Whistling Valley III; Buffer Setback



100 Foot Buffer Setback

200 Foot Buffer Setback

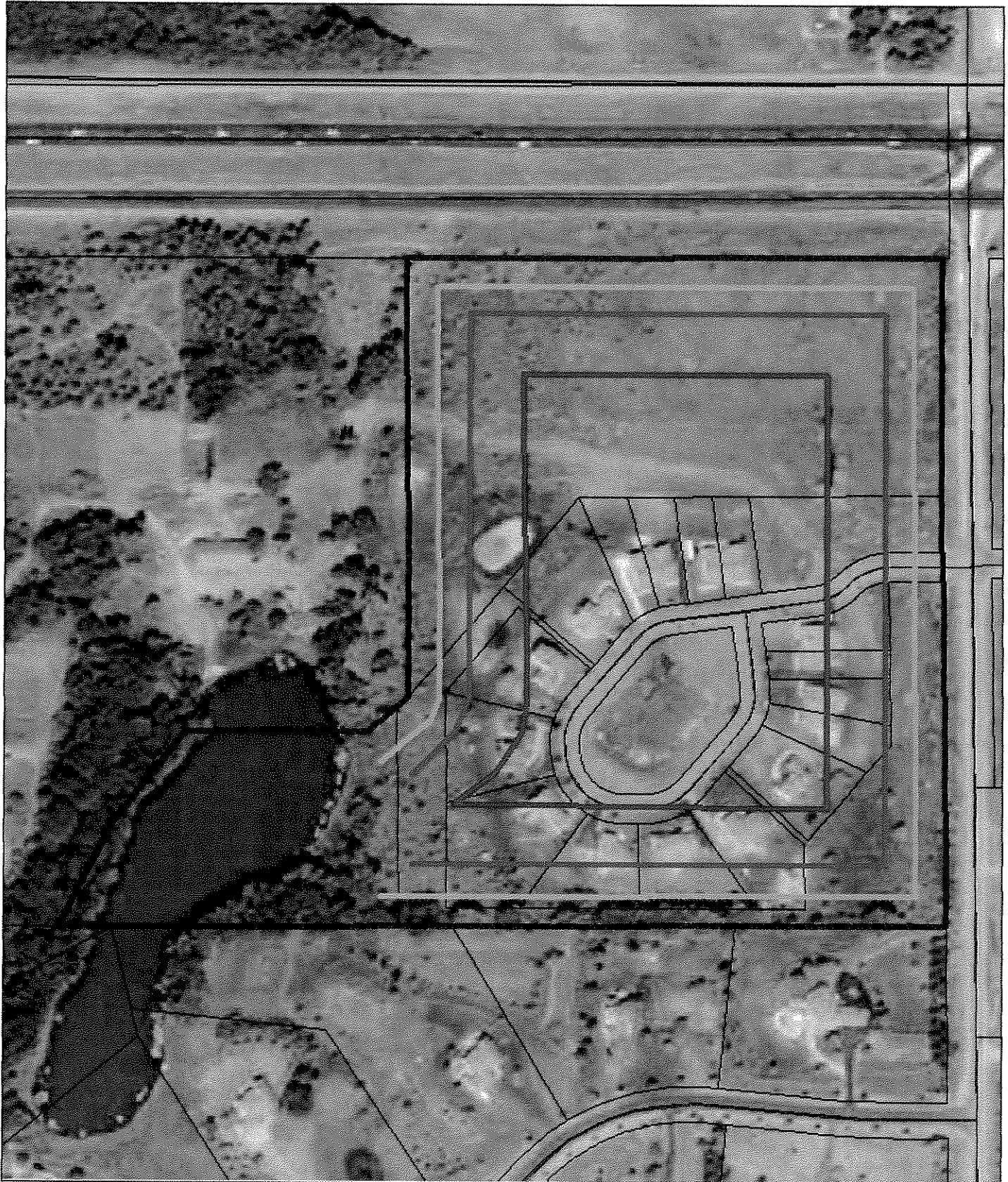
Farms of Lake Elmo; Buffer Setback






200 Foot Setback
100 Foot Setback

50 Foot Setback

Prairie Hamlet



-  50 Foot Setback
-  100 Foot Setback
-  200 Foot Setback

Fields of St. Croix I; Buffer Setback



50 Foot Buffer Setback 100 Foot Buffer Setback 200 Foot Buffer Setback

Fields II, Little Bluestem; Buffer Setback



50 Foot Buffer Setback



100 Foot Buffer Setback



200 Foot Buffer Setback

Homestead; Buffer Setback



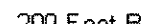
50 Foot Buffer Setback



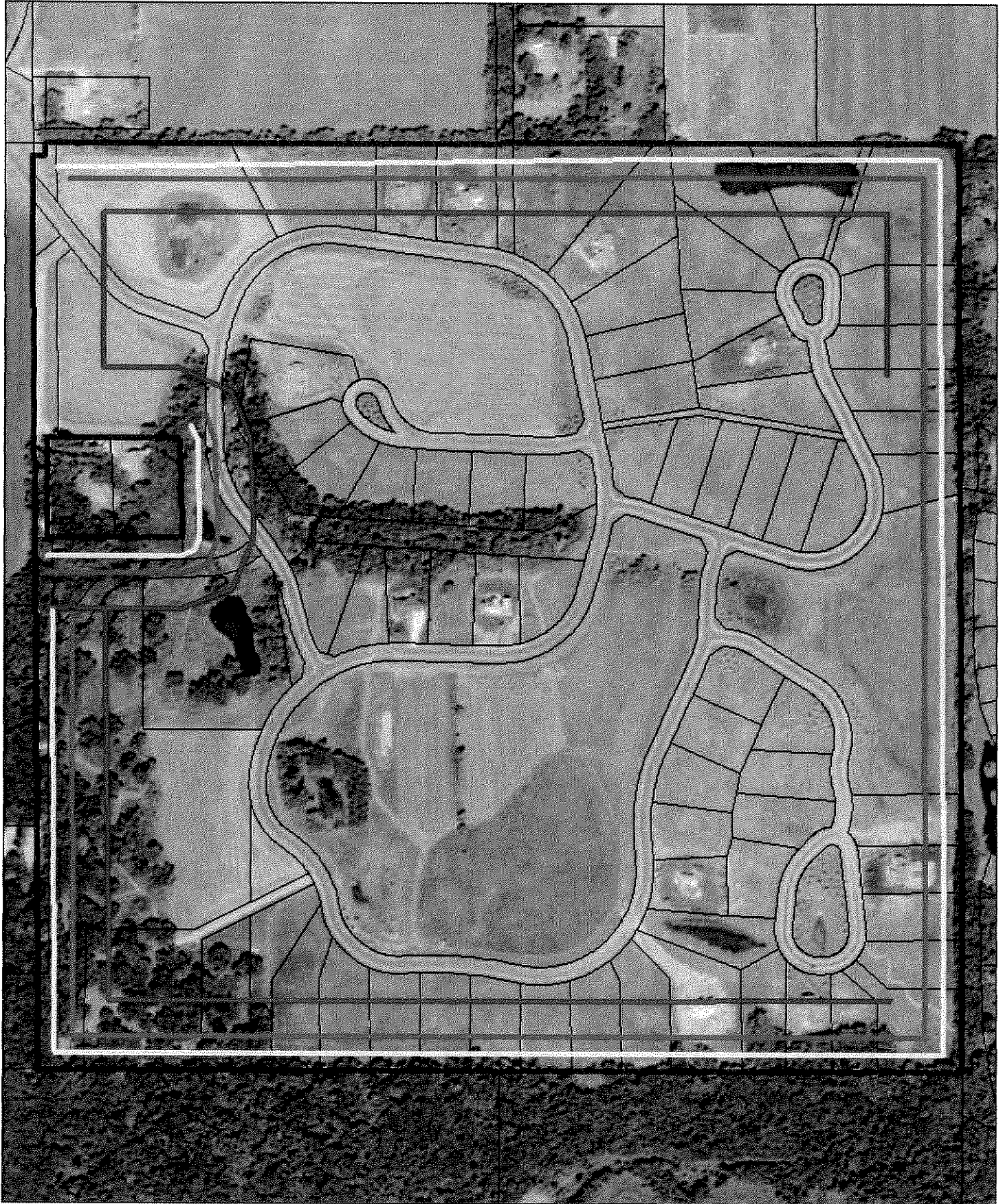
100 Foot Buffer Setback



200 Foot Buffer Setback



Tapestry at Charlotte's Grove; Buffer Setback



50 Foot Buffer Setback



100 Foot Buffer Setback



200 Foot Buffer Setback