



DATE: August 7, 2019  
**REGULAR  
MOTION**

**AGENDA ITEM:** Sally Manzara Interpretive Nature Center Patio Addition  
**SUBMITTED BY:** Ben Prchal, City Planner  
**REVIEWED BY:** Ken Roberts, Planning Director

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**BACKGROUND:**

The Friends of Lake Elmo approached the City with the request to install a patio addition to the back of the Sunfish Nature Center building. The MN Land Trust has had a chance to review their request and the Trust has provided approval. The Parks Commission discussed the proposed patio at the May 20<sup>th</sup> and June 17<sup>th</sup>, 2019 meetings. Each meeting brought up new topics for discussion, and Staff has been bringing the information forward as requested. The information was intended to help aide towards a recommendation for the City Council.

**ISSUE BEFORE CITY COUNCIL:**

Would the City Council like provide approval for the Construction of the proposed Patio?

**PROPOSAL DETAILS/ANALYSIS:**

Land Trust Review:

Being that the Land Trust has some jurisdiction over the park, the Nature Center needed to run the proposal past them and receive approval. With this being the case, the Nature Center submitted their patio proposal to the Land Trust and did receive approval. The approving letter has been included as an attachment. The Land Trust believes that the improvement to the property is in line with their values and does not conflict with the conservation easement over Area 2.

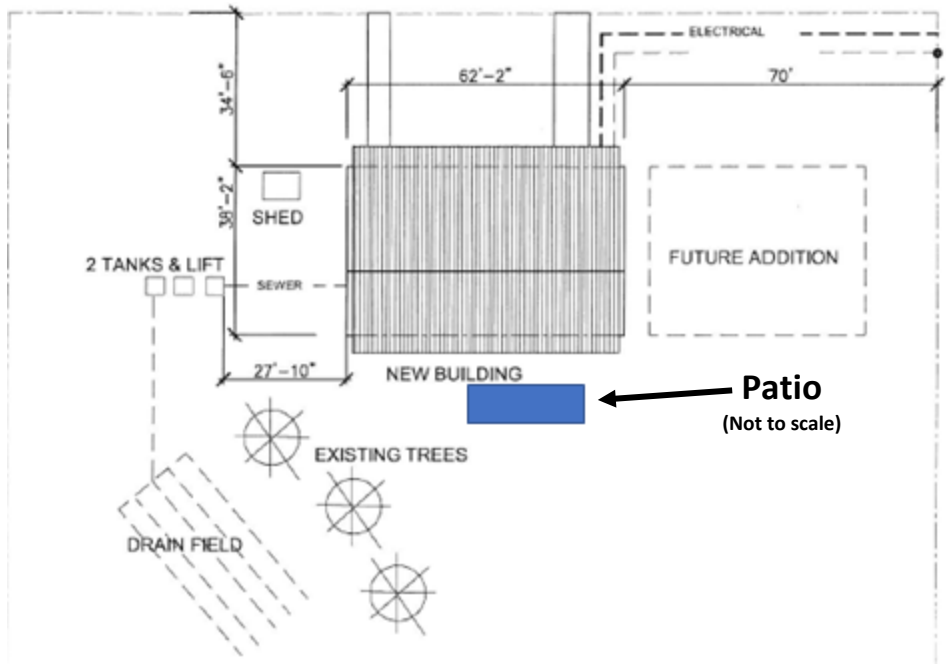
City Review:

The City Code doesn't necessarily provide specific language to indicate one way or another if a patio should or should not be allowed in the Public Facility district. But Accessory Uses and Structures are allowed so long as they are subordinate to the principal use. The portion of the park the patio would go on is part of the Nature centers leased site of one acre. It is also part of 151 acres and the percentage of impervious surface that is being applied to the property is a very small number. The proposal consists of a 15 ft. by 35 ft. patio area which measures out to 525 sqft. At the June Parks Commission meeting it was stated that the patio might be smaller than initially requested. Staff has not seen a revised size to review but would do so when the permit is comes in for review.

Regarding the setbacks, the graphic that has been provided below is accurate within a couple of feet but Staff can reasonably deduce that there is a sufficient setback for the patio. The code for the Public Facility setback is listed as 50 ft. for accessory buildings. Staff was able to reasonably figure out that the patio would be +/-160 ft. from the property line.



The next item that Staff would review is the distance to the septic tanks and drain field. Washington County requires a 5 ft. setback from sewage tanks and a 10 ft. setback from drainfields. The patio would be setback a sufficient amount from both features. The blue represents the proposed patio (not to scale).



#### **LEASE AGREEMENT:**

The City has a lease agreement established for the operation of the Nature Center and the agreement requires alterations or improvements to the site to receive written approval from the City before commencement. Staff believes this proposal does require a written approval of the City Council. The Lease agreement is attached for further review.

#### **ADDITIONAL INFORMATION:**

Staff had asked Tony to provide a written master plan as well as a site plan with the intent of depicting the vision for the site that the Nature Center leases. The write up does provide a list of what is on site but does not provide much beyond that. Staff would like to note that there were two main additions, which was the desire to bring fiber to the building for internet and add “informal” seating on the east side of the building. Tony had stated many times that the future addition, also known as the “amphitheater” is less of an amphitheater and would serve more like informal seating that would be built into the hill on the east side. For the sake of review Staff has included the documents that were provided which are a site plan, a current/proposed conditions, and a write up. Furthermore, Staff would like to point out that the site plan shows a few items that are placed on top of the drain field. The items noted on the plan are a messy play area, bird house(s), and a monarch waystation. It would be difficult for Staff to determine the impact that the noted items would have on the drain field but Washington County as well as the City enforces setbacks with the intent of preserving the integrity of the drain field. Allowing items to encroach or be placed on top of a drain field will have the ability to compact the soil, which is a concern of Staff.

#### **FISCAL IMPACT:**

Staff does not foresee a fiscal impact for the City by approving the patio. However, there is a possible impact if the Nature Center and Patio did need to be removed. Article 6 of the Lease agreement for the Nature Center outlines the escrow funds that are reserved for removal of the structure. Currently \$20,000 is being held to remove the building, if necessary. It is reasonable to conclude that additional improvements could raise the needed escrow amount. Staff estimates that the removal cost of a concrete patio would be around \$3.00 to \$4.00 per square foot. The Parks Commission did not believe an increased escrow amount would be necessary.

#### **COMMENTS AND RECOMMENDATION**

Staff as well as the Parks Commission view the patio as an improvement to the Nature Center building and an improvement to the park. The Parks Commission also recommends that the City does not increase the escrow amount for the patio. This motion passed by a vote of 3-1.

*“Motion to approve the installation of a patio at the Sally Manzara Nature Center as presented with no increase in escrow”*

#### **ATTACHMENTS:**

- Vision as provided by Tony Manzara
- Land Trust Letter
- Lease Agreement

## VISION FOR NATURE CENTER SITE

There is not a "master plan" for the nature center site, nor was such a document required, but I have written a current "vision for the site that the Nature Center leases" that will try to address the issues that may concern you: (this text is also provided as a separate WORD document, attached, as you requested)

The Minnesota Land Trust approval of the land use, and the City approval of the SALLY MANZARA INTERPRETIVE NATURE CENTER DEVELOPMENT, LEASE, LICENSE AND OPERATING AGREEMENT "Lease Agreement", were based on drawings that were submitted. These show the locations of items like the building, shed, septic tanks, septic field, utility line locations, and possible future building addition area.

Any future alterations on the nature center building site (one leased acre) will take place only if they are in compliance with the Land Trust Conservation Easement, the Lease Agreement drafted by Lake Elmo City Attorney Sarah Sonsalla and approved by the Parks Commission and the City Council and signed April 21st 2017, all applicable laws and ordinances, and the policies established by the Board of Directors of the Friends of Lake Elmo's Sunfish Lake Park ("Friends").

In order to appropriately handle the issue of City of Lake Elmo input into nature center alterations, we refer to the applicable clause defining "alterations" found in Section 8 Article IV of the Lease Agreement, copied below. We interpret this clause in such a way as to make sure the City has opportunity for input into significant changes, without wasting the time of City staff, Commissions, or Council on trivial matters.

8. Alterations. With the exception of the construction of the Nature Center Building, the Friends shall not make any major alterations, improvements, or additions to the Nature Center Building Site or the Property without the prior written approval of the City. A "major alteration, improvement or addition" is any alteration, improvement, or addition to the Nature Center Building: (a) which is structural in nature; (b) which would materially change the Nature Center Building exterior appearance; (c) which would materially change or affect the electrical, mechanical, heating, ventilating and air conditioning or utilities systems or routing servicing of the Nature Center Building; or (d) which is estimated in good faith to cost in excess of \$10,000. All alterations, improvements or additions shall be performed by the Friends, at no cost or expense to the City.

On the issue of the patio request, we consulted with Council Member Justin Bloyer, who was appointed by Council to be the City's representative on the Friends Board. He suggested that we go ahead and submit the formal request, and we did.

The only item that we are considering constructing in the future which falls strictly into the category of "major alteration" is the addition shown on the site plan as a dotted rectangle to the east of the building as a future addition. Of course, no construction would take place without full City approval, building plan approval, etc. At this point there is no need or funding for such an undertaking, but building features were designed to accommodate such an addition with minimal changes to the existing building.

Since we are having difficulties with Verizon internet connectivity via wireless, we may explore other options, and it may be that we can get a donation of a run of Century Link fiber underground from the nearest existing network point. This activity would clearly require City approval in subsection (c)

It is possible that we could get a donation to plant a few shade trees southeast of the building and install some informal seating for a couple of dozen people on the slope just east of the building, to provide a comfortable space for lectures or demonstrations. This project would not fall into the definition of "major alteration" but we would submit the design to the Parks Commission for suggestions and comments.

There are a number of developments on the site that have been done, or are underway, that clearly do not or did not fit the definition of "major alteration", i.e.:

Plywood bird images placed near the shed, which resembles a birdhouse, and changed seasonally.

The Rain Garden development, being installed with help from a reimbursement grant from Valley Branch Watershed District

The upside-down-gardening hanging baskets, with different plants each year

The bird feeders hung in front of each of the windows to reduce bird injury due to window collisions

The Three Sisters garden designed and planted by Donna Clark, Elder of the White Earth Ojibwe Nation, and Carmen Johnson, Minnesota Master Gardener

Prairie Plant specimen planters, built as an Eagle Scout project by Ben Jasinski and his crew, to showcase the 29 plants that Lake Elmo used to restore the prairie

Low-slope walkway from the building's main door to the prairie, which passes the specimen planters, and will have a bench at the half-way point for the infirm.

Foundation plantings along the South side of the building, using wood mulch for moisture control, under the eave.

Gravel/fabric ground cover under the North eave where donated benches will be placed to allow visitors to enjoy the completed Rain Garden

Planting of low-mow grass on the east slope, the back-slope along the south edge of the developed area, and the pathway to the shed from the parking lot

Installation of "messy play area" near the septic field, with log step-stones, a canoe-full of sand for digging, a crawling channel, etc.

Gradual replacement of the four doomed mature ash trees with a diversity of other trees to provide shade and wildlife habitat (two planted already)

Construction and installation of a dozen birdhouses by Girl Scouts and Cub Scouts

Placement of small weather instruments on the roof, using the mast that was installed during construction, to determine wind direction and velocity for the energy exhibit

Planting of hostas around the shed for erosion control

Installation of a "bug hotel" near the propane tank

Control of the invasive sumac west of the building by cutting/mowing

Maintaining the developed area of our acre, bounded by the parking lot boulders on the North, the sumac area and septic field on the West, the prairie plant specimen planters on the East, and the City prairie access roadway on the South in neat, weed-controlled condition as much as practicable.

Constructing handicapped-access picnic tables and seating (or getting a donation of such furniture), making available on request the closed fire pit we used for roasting hotdogs at the Buckthorn Festival, and providing other patio amenities once the patio project is approved.

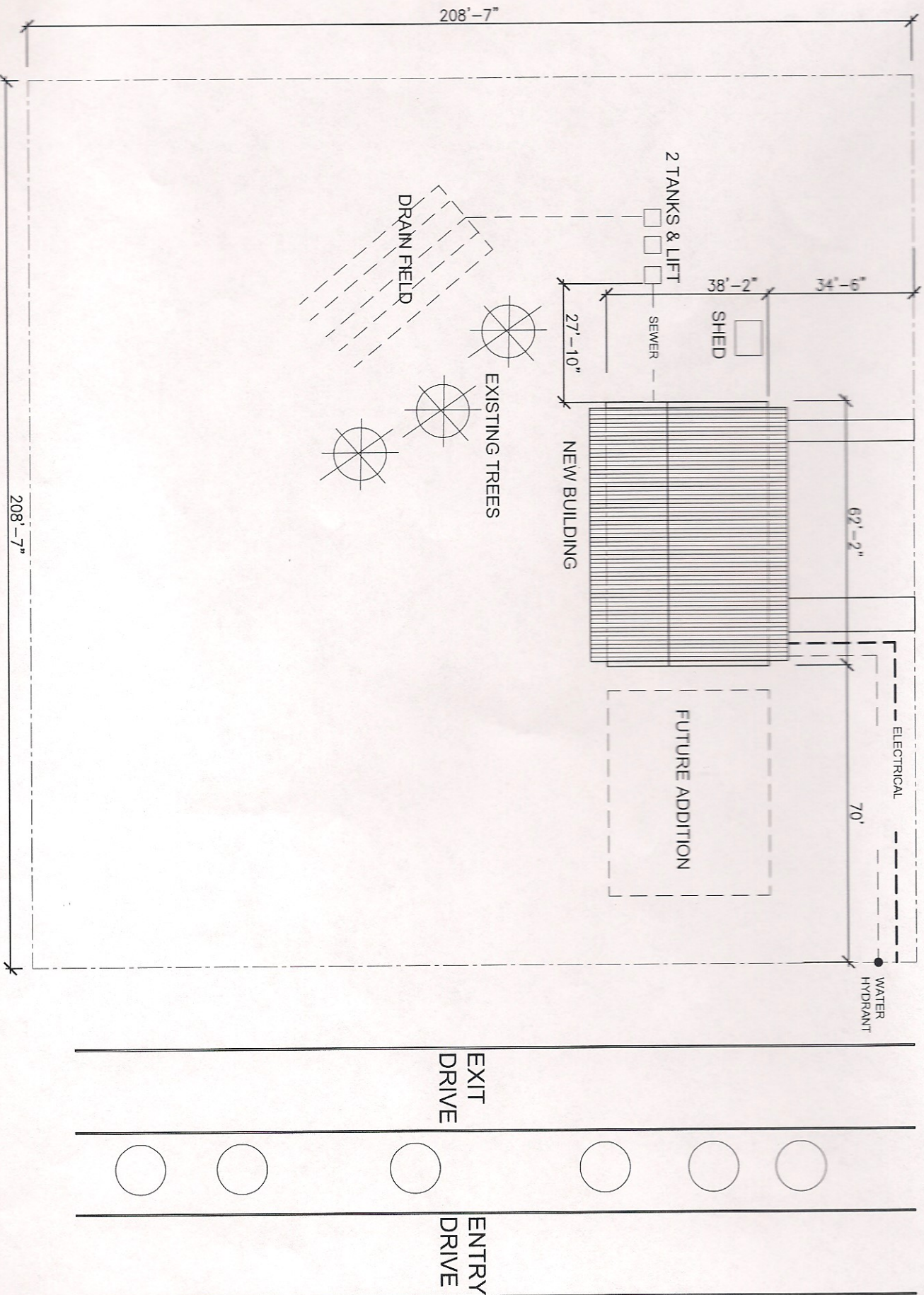
Because future activity on the nature center site depends on the interests of the volunteers who would like to teach about nature, and the availability of donations, this cannot be a complete list of everything that might be done. If we are considering doing something that even seems like it MIGHT fit the definition of major alteration we will submit it for comment or approval.

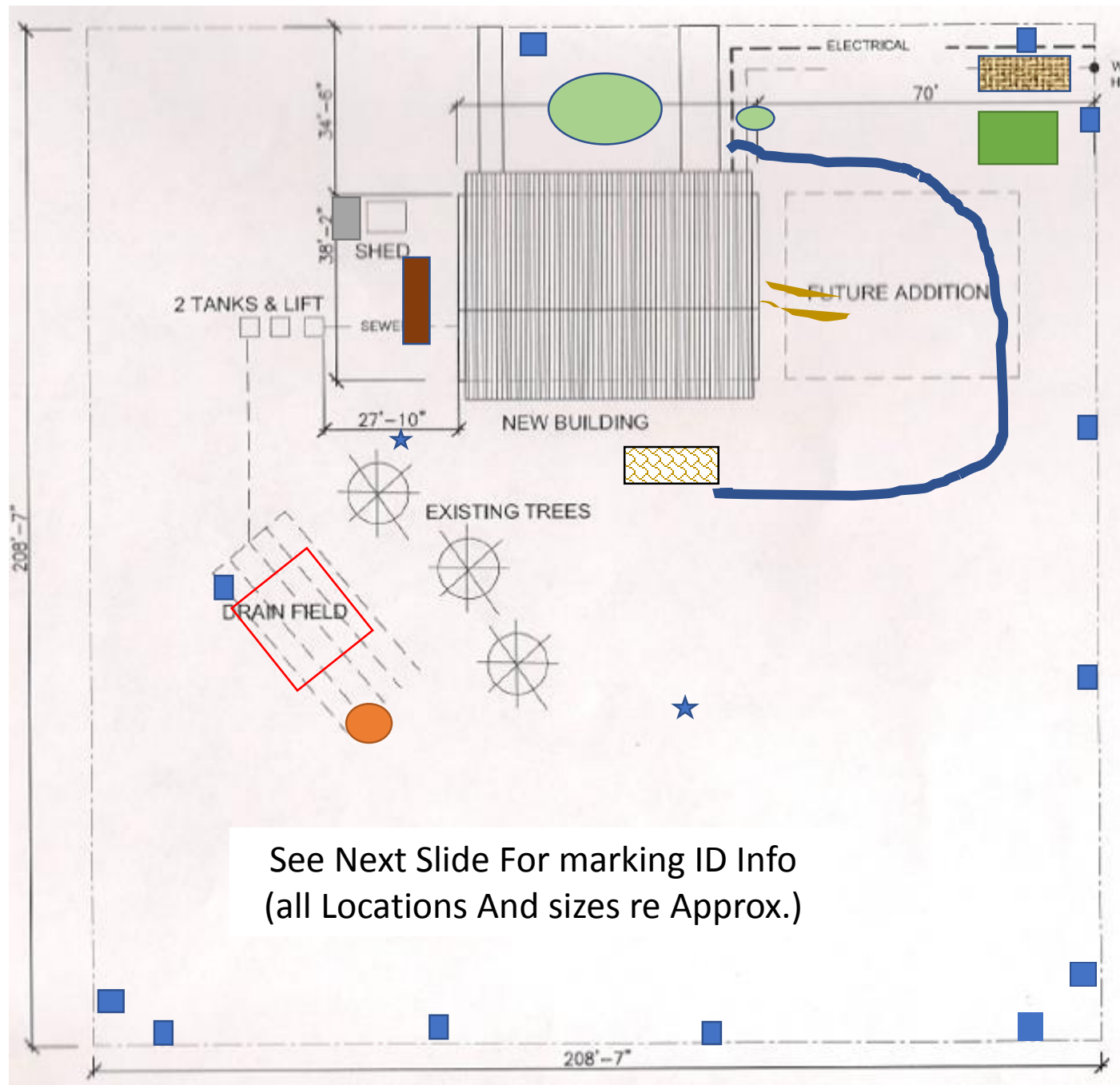
Please let me know if this response is what you were looking for, or if other information is required for your packet document.

Have a great day,  
Tony Manzara, 651-769-7001



EXISTING PARKING LOT





## Explanation of markings on previous slide:

Brown rectangle – approximate final location of septic tanks

Grey rectangle – approximate final location of shed

Blue stars- first newly planted trees to replace doomed ash trees

Green rectangle – Three Sisters Garden

Blue curve – low-slope path, with 29 prairie plant specimen planters

Blue squares – birdhouses made by Girl Scouts – approximate locations

Red square outline – messy play area

Orange circle – Monarch Waystation

Light green ovals – Rain Garden

Tan weave-textured rectangle – buckthorn croquet court

Gold arcs – future informal seating

Black rectangle with brown shingle pattern – proposed patio





MINNESOTA LAND TRUST

April 15, 2019

Kristina Handt, City Administrator  
City of Lake Elmo  
3800 Laverne Avenue North  
Lake Elmo, MN 55042

Re: Sunfish Lake Park (City of Lake Elmo)  
Washington County  
Our Project File ID #: 2009-387  
Patio plan for Sally Manzara Interpretive Nature Center

Dear Ms. Handt:

The Minnesota Land Trust has reviewed the plan submitted by Tony Manzara to construct a new stamped concrete patio measuring 15 feet by 35 feet, to be located on the south side of the existing Sally Manzara Interpretive Nature Center building at Sunfish Lake Park. The plan for the patio is described in an exchange of emails between the City, the Land Trust, and Mr. Manzara.

Both the nature center and the proposed patio are in "Area 2," as described in Section 3.5 of the conservation easement protecting Sunfish Lake Park held by the Land Trust.

The proposed patio is consistent with the conservation easement and by this letter, the land trust hereby approves the plan to construct the patio.

Thanks very much.

Sincerely,

  
Kris Larson  
Executive Director

cc: Ben Prchal, City Planner  
Tony Manzara

**SALLY MANZARA INTERPRETIVE NATURE CENTER  
DEVELOPMENT, LEASE, LICENSE AND OPERATING AGREEMENT**

This Development, Lease, License and Operating Agreement (this "Agreement") is entered into effective as of this 21<sup>st</sup> day of April, 2017 (the "Effective Date") by and between the City of Lake Elmo, a Minnesota municipal corporation (the "City") and the Friends of Lake Elmo's Sunfish Lake Park, a Minnesota non-profit corporation (the "Friends").

**RECITALS**

**WITNESSETH:**

**WHEREAS**, the City is the owner of Sunfish Lake Park, which is legally described on the attached Exhibit A (the "Property"); and

**WHEREAS**, the Property consist of approximately 284 acres of woodlands, wetlands and prairie wildlife habitats and trails for cross country skiing and hiking; and

**WHEREAS**, the Friends would like to construct and operate an interpretive nature center building on a portion of the Property for the use and benefit of the Lake Elmo community in accordance with the preliminary plans attached hereto as Exhibit B (the "Nature Center Building"); and

**WHEREAS**, the Property is subject to a conservation easement held by the Minnesota Land Trust (the "Land Trust") that limits the amount of development that may occur on the Property; and

**WHEREAS**, the City has received confirmation from the Land Trust that use of the Property for a nature center does not conflict with the terms of the Land Trust's conservation easement over the Property; and

**WHEREAS**, the City is willing to lease a portion of the Property to the Friends in order to allow it to construct, maintain and operate the Nature Center Building; and

**WHEREAS**, the Friends would also like to use the existing facilities of the Property in conjunction with its operation of the Nature Center Building; and

**WHEREAS**, the City is willing to grant a license to the Friends that will allow the Friends to use the existing facilities on the Property in conjunction with the Friends' operation of the Nature Center Building; and

**NOW, THEREFORE**, in consideration of the premises and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

**ARTICLE I**  
**LEASE OF PROPERTY AND CONSTRUCTION OF THE NATURE CENTER**  
**BUILDING**

1. Lease of the Building Site and Approval of Nature Center Building Plans. The City hereby leases the portion of the Property that is depicted and described on the attached Exhibit C to the Friends (the "Building Site"). The Friends shall be responsible for constructing the Nature Center Building on the Building Site at its expense. The Friends shall also be responsible for bringing electric and water service to the Nature Center Building including any acquisition costs associated with easements for any utility easements that are needed. The Friends shall also be responsible for the cost of installing a septic or other approved waste treatment system to serve the Nature Center Building. Prior to commencing construction of the Nature Center Building or any other improvements on the Building Site, the Friends must receive any and all approvals, and building permits required by the City and any other governmental agency, including, but not limited to, approval by the Land Trust and by the City Council of the final plans and specifications for the Nature Center Building (the "Approved Plans"). The Friends shall pay for the building permit for the Nature Center Building and the costs of all other approvals and permits that are needed.

2. Construction of the Building. The Friends shall construct and install the Nature Center Building in accordance with the Approved Plans with a contractor acceptable to the Friends and the City. The Friends shall construct the Nature Center Building at its sole cost and expense, in a good and workmanlike manner, and in accordance with all applicable laws, codes, ordinances, and regulations. Any significant changes in the Approved Plans must be submitted to the Land Trust and the City for approval. Other than the Nature Center Building, the Friends shall make no other alterations or improvements to the Property without the prior written consent of the City. Prior to issuance of a certificate of occupancy for the Nature Center Building, the Friends shall clean up and remove all construction debris and trash from the Building Site and the Property. For purposes of this Agreement, Anthony P. Manzara (familiarily known as "Tony") shall be the Friends' representative with respect to the Nature Center Building construction or any other work to be performed on behalf of the Friends on the Property. The Nature Center Building must be completed no later than three years from the date of this Agreement.

3. Escrow. In order to ensure that the Nature Center Building is completed, the Friends must deposit funds equal to the total of the selected contractors' bids for the construction of the Nature Center Building according to the Approved Plans into an escrow account held by the City at the time of building permit issuance. After each contractor's invoice for a progress payment or final payment is received, the Friends will submit to the City a request for release of that amount, and the City will release the money to the Friends within 30 calendar days of the date of the Friends' request. Upon issuance of the certificate of occupancy for the Nature Center Building by the City's Building Department, any residual funds in said escrow account over \$20,000 will be released to the Friends. If the account balance does not exceed \$20,000 at this point, the Friends must replenish it to this level for the purposes described in Article VI, paragraph 1 of this Agreement.

In the event that the Nature Center Building is not complete within three years from the date of this Agreement, the City shall provide the Friends with written notice of the outstanding items to be completed. If the items are not completed within 60 days of the date of the notice, the City may either complete the items and reimburse itself for the costs associated with the completion from the escrow account or demolish the Nature Center Building and reimburse itself for the costs associated with the demolition from the escrow account.

## **ARTICLE II NATURE CENTER OPERATIONS**

### **1. Friends' Responsibilities.**

- a. The Friends shall manage and operate the Nature Center Building as an interpretive nature center in accordance with its mission statement which is attached to this Agreement as Exhibit D. The Friends shall prepare a five-year maintenance and management plan for the Nature Center that shall be provided to the City at the time the budget and financial disclosures set forth in Article III of this Agreement are provided. The Friends will maintain the Nature Center Building in a structurally sound, safe, clean, and attractive manner, and in accordance with applicable regulations, as a condition of the lease. If such maintenance is not done, the City may give the Friends 90 days' notice to correct the problem, unless seasonal conditions require a longer correction time.
- b. The Friends must make available to the public a variety of programs at the Nature Center Building for the education and enjoyment of people of all ages. The Friends may determine the type, frequency, and content of all of its programs.
- c. The Friends shall be responsible for hiring employees and contractors and recruiting volunteers to administer and support its programs at the Nature Center Building and to maintain the Nature Center Building. The Friends shall be responsible for compensating its employees and contractors and paying for any employee benefits.
- d. The Friends shall include one member that is appointed by the City Council as a voting member on its Board of Directors. The City Council is responsible for selecting the person who is to serve on the Friends' Board of Directors.
- e. In conducting its operations, the Friends shall abide by the terms of the Land Trust conservation easement that applies to the Property and all state and federal laws and regulations and City ordinances. The Friends may recommend to the City Council the adoption of rules and regulations, as shall be deemed appropriate, prescribing the use of the Nature Center Building, the Property and the conduct of persons upon the premises. Rules and regulations pertaining to the Nature Center Building and the Property which have been adopted by resolution of the City Council shall have the force of law. All duly adopted rules

and regulations governing the use of the Nature Center Building and the Property shall be conspicuously posted by the Friends on the premises.

2. City's Responsibilities.

- a. The Nature Center Building shall be officially named the "Sally Manzara Interpretive Nature Center" and the City shall refer to it as such, unless the name is changed in accordance with the provisions of Article VI, paragraph 1 of this Agreement.
- b. The City will promote the Friends' activities and events at the Nature Center Building and the Property through publishing articles in the City publications and placing these activities and events on the City event calendar and web site.
- c. The City will cooperate with the Friends with respect to any approvals by other government agencies or other entities needed by the Friends in order to operate a Nature Center on the Property. The City will also cooperate with the Friends with respect to the Friends' applications for grant funding for the Nature Center. With respect to both activities, the Friends shall be responsible for preparing any application that needs to be submitted and the City will assist by signing the application, if necessary and providing any supporting information that it may have available.

### **ARTICLE III FINANCIAL**

1. Budget. The Friends agree to operate the Nature Center Building within a balanced budget plan. The Friends shall take all actions necessary to assure that its annual operating expenditures do not exceed annual operating revenues. The Friends must provide the City with financial status reports as required by the City. By December 31st of each year and consistent with the City's budget cycle, the Friends must provide the City with any revised budget projections detailing any actions required to assure a balanced budget. The Friends shall submit an annual operating budget to the City by September 30th for the upcoming fiscal year.

2. Financial Disclosures. The Friends agree to provide the City with a detailed disclosure of its financial resources in conjunction with its financial status reports on an annual basis and a fully audited statement by an independent certified public accountant every third year, unless the Friends' annual revenues exceed \$100,000 in which case, a fully audited statement shall be provided to the City each year the revenues exceed \$100,000. The City also has the right to request that the Friends provide additional audits of the Friends' investments, receivables and payables so as to allow the City to verify the accuracy of the Friends' financial status reports. Such additional audits will be at the sole cost of the City. The City shall have the right to examine the Friends' books and financial records at any time upon making a written request.

3. Tax Exempt Status. The Friends covenant and agree that the Nature Center Building is, and shall remain for the duration of this Agreement, exempt from all ad valorem and other real



estate taxes. The Friends shall indemnify and defend the City from and against any and all liability, including, without limitation, attorneys' fees and expenses, in the event of any loss by the Nature Center Building of its tax exempt status in the year of termination of this Agreement and year after termination.

#### **ARTICLE IV**

##### **LEASE OF NATURE CENTER BUILDING SITE AND LICENSE TO USE PROPERTY**

1. Lease of Nature Center Building Site. The City hereby exclusively leases the Nature Center Building Site to the Friends. Monthly rent shall be \$1.00 and shall be payable on the first day of each month or in advance.

2. License to Use Property. The City hereby grants the Friends a non-exclusive license to use the remainder of the Property for nature center activities, including, but not limited to, self-guided or naturalist-guided nature walks, cross-country skiing, hiking and sledding. With the City's permission, the Friends may place features or equipment on the Property that are related to the use of the Property as a nature center. Any cameras placed in the park for programming purposes by the Friends must be approved by City staff and consistent with any camera protocol procedure or policy adopted by the City.

3. Use of the Nature Center Building Site and the Property. The Friends shall use the Nature Center Building Site and the Property for nature center uses and for no other uses whatsoever. The Friends agree that throughout the term of this Agreement, it shall not use the Nature Center Building Site or the Property for the storage, handling, transportation or disposal of any Hazardous Substances. "Hazardous Substances" for purposes of this Agreement shall be interpreted broadly to include, but not be limited to, any material or substance that is defined, regulated or classified under any Environmental Law or other applicable federal, state or local laws and the regulations promulgated thereunder as: (i) a "hazardous substance" pursuant to section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601(14), the Federal Water Pollution Control Act, 33 U.S.C. §1321(14), as now or hereafter amended; (ii) a "hazardous waste" pursuant to Section 1004 or Section 3001 of the Resource Conservation and Recovery Act, 42 U.S.C. §§6903(5), 6921, as now or hereafter amended; (iii) toxic pollutant under section 307(a)(1) of the Federal Water Pollution Control Act, 33 U.S.C. §1317(a)(1) as now or hereafter amended; (iv) a "hazardous air pollutant" under Section 112 of the Clean Air Act, 42 U.S.C. §7412(a)(6), as now or hereafter amended; (v) a "hazardous material" under the Hazardous Materials Transportation Uniform Safety Act of 1990, 49 U.S.C. §5102(2), as now or hereafter amended; (vi) toxic or hazardous pursuant to regulations promulgated now or hereafter under the aforementioned laws or any state or local counterpart to any of the aforementioned laws; or (vii) presenting a risk to human health or the environment under other applicable federal, state or local laws, ordinances or regulations, as now or as may be passed or promulgated in the future. "Hazardous Substances" shall also mean any substance that after release into the environment or upon exposure, ingestion, inhalation or assimilation, either directly from the environment or directly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavior abnormalities, cancer or genetic abnormalities and specifically includes, but is not limited to, asbestos, polychlorinated biphenyls ("PCBs"), radioactive materials, including radon and naturally occurring radio nuclides, natural

gas, natural gas liquids, liquefied natural gas, synthetic gas, oil, petroleum and petroleum-based derivatives and urea formaldehyde. However, this paragraph will not be interpreted as forbidding the proper storage by the Friends of reasonable amounts of hazardous substances commonly used in the operation of a nature center, such as fuels (e.g. gasoline, diesel fuel or propane), equipment and vehicle maintenance fluids (e.g. anti-freezes, lubricants, engine cleaners), materials used for coating structures or furniture (e.g. paints, varnishes), and materials used for craft work or specimen preservation (e.g. epoxies, urethanes, acrylic monomers, or formalin). The storage and disposal of these substances must be in compliance with all local, state and federal regulations and requirements and any licenses or permits must be obtained, if required.

4. City Use of Nature Center Building. The Friends shall provide the City with free use of the Nature Center Building Site for public purposes, provided that the City's use does not conflict with a previously scheduled Friends' program. At City expense, the City agrees to repair any damage to the Nature Center Building, its furnishings, exhibits, or utilities, and clean up any detritus left behind by any such City-organized use of the Nature Center Building.

5. City's Repair and Maintenance Responsibilities. The City agrees to maintain in good condition and repair and replace, if necessary, at its expense and without reimbursement or contribution by the Friends, the following facilities on the Property: (a) the access road; (b) the parking lot; and (c) all cross country skiing and hiking trails. The City will also plow the access road and the parking lot on the Property on a regular basis. All repairs and maintenance by the City will occur with reasonable promptness and without unreasonable interference with, or disturbance of, the use and enjoyment of the Nature Center Building Site by the Friends and its invitees.

6. The Friends' Repair and Maintenance Responsibilities. The Friends agree to maintain in good condition and repair and replace, if necessary, at its expense and without reimbursement or contribution by the City, the Nature Center Building and the Nature Center Building Site and all other improvements installed by the Friends on the Property, including, but not limited to, any landscaping, personal property, furnishings, fixtures and equipment including, but not limited to the following: (a) restrooms; (b) signs; (c) kiosks; (d) decks/porches/patios; and (e) water fountains.

7. Covenant of Title and Quiet Enjoyment. The City represents and warrants that: (a) it has the full right, power, and authority to lease the Nature Center Building Site to the Friends; (b) that with the exception of the easement held by the Land Trust, no restrictive covenant, easement, lease, sublease, or other written agreement restricts, prohibits, or otherwise affects the City's rights set forth in this Agreement, including, without limitation, construction, permitted use or ingress and egress to and from the Nature Center Building Site; and (c) the Friends upon performance of the covenants hereunder, shall and may peaceably and quietly have, hold and enjoy the Nature Center Building Site during the term of this Agreement. Additionally, the City will take no action that will interfere with the Friends' intended use of the Nature Center Building Site or ingress or egress to the Nature Center Building Site.

8. Alterations. With the exception of the construction of the Nature Center Building, the Friends shall not make any major alterations, improvements, or additions to the Nature Center Building Site or the Property without the prior written approval of the City. A “major alteration, improvement or addition” is any alteration, improvement, or addition to the Nature Center Building: (a) which is structural in nature; (b) which would materially change the Nature Center Building exterior appearance; (c) which would materially change or affect the electrical, mechanical, heating, ventilating and air conditioning or utilities systems or routing servicing of the Nature Center Building; or (d) which is estimated in good faith to cost in excess of \$10,000. All alterations, improvements or additions shall be performed by the Friends, at no cost or expense to the City.

9. Sub-Letting. The Friends shall not sublet any portion of the Nature Center Building Site.

10. Utilities and Services. The Friends shall be responsible for paying all charges for all utilities for the Nature Center Building Site, including, but not limited to, water, septic system, electricity, natural gas or propane, telephone, Internet, cable/satellite television and garbage and refuse removal. The Property is currently not served by the City’s sanitary sewer system. In the event that sanitary sewer service becomes available, the Friends understand that the Nature Center Building will be required to connect. The City and the Friends will determine at that time how the assessment and the connection charges should be allocated between them.

11. Surrender. Upon termination of this Agreement, the Friends shall remove all debris and personal property of, or created by the Friends.

## **ARTICLE V INSURANCE AND LIABILITY**

1. Indemnification. The Friends shall hold the City and the Land Trust harmless from and indemnify and defend the City and the Land Trust against any claim or liability arising in any manner from the Friends’ use, improvement, and occupancy of the Nature Center Building Site and the Property, or relating to the death or bodily injury to any person or damage to any personal property present on or located in the Nature Center Building or on the Nature Center Building Site and Property at the Friends’ invitation or sufferance.

2. Personal Property. The Friends shall be responsible for any personal property that it keeps at the Nature Center Building Site and the Property. The Friends agree to hold the City harmless from any and all loss or damage to its personal property, except in the case of loss or damage incurred during the City’s use of the Nature Center Building or the Property.

3. Insurance.

- a. Insurance to be Maintained by the Friends. The Friends shall be responsible for obtaining and maintaining public liability insurance providing coverage against claims for bodily injury, death and personal property damage occurring at the Nature Center Building Site and the Property as a result of its operation of the Nature Center Building. Coverage shall be maintained at a minimum of

\$1,500,000 each occurrence. The Friends shall also maintain property damage insurance for the Nature Center Building. The Friends shall name the City as an additional insured. A certificate of insurance shall be provided to the City on an annual basis. Such policy or policies shall provide that 30 days written notice must be given to the City prior to cancellation thereof. The Friends shall furnish evidence satisfactory to the City at the time this Agreement is executed that such coverage is in full force and effect. The Friends shall also maintain workers' compensation insurance for its employees.

- b. Insurance to be Maintained by the City. The City shall be responsible for obtaining and maintaining property and general liability insurance for the Property, with the exception of the Nature Center Building.
- c. Subrogation. The Friends and the City release each other from any and all liability which they might have against the other or any one claiming through or under them by way of subrogation or otherwise, resulting from the occurrence of any accidents or casualty or loss covered by insurance being carried by the damaged party at the time of such occurrence.

4. Waiver. Nothing in this Agreement shall be deemed to be a waiver by the City or its elected officials of any limitations on or immunities from liability set forth in Minnesota Statutes, Chapter 466 or to which the City or its officials, employees, agents and representatives are otherwise entitled.

5. Independent Contractor Status. All services provided by the Friends and its officers, employees, volunteers and agents pursuant to this Agreement shall be provided by such persons as an employee of the Friends, volunteer of the Friends or as an independent contractor and not as an employee or volunteer of the City for any purpose. The Friends shall be responsible for the following with respect to its employees, including, but not limited to: (a) income tax withholding; (b) workers' compensation; (c) unemployment compensation; (d) FICA taxes; and (e) benefits.

## **ARTICLE VI GENERAL PROVISIONS**

1. Termination. In the event that the Friends are in breach of any of the terms of this Agreement, the City shall provide the Friends with written notice of the breach and provide the Friends with at least 60 days of the date of the notice to cure the breach. In the event that the Friends do not cure the breach, the City may cure the breach and reimburse itself for its costs to cure the breach from the escrow account. In the event that the City opts to cure the breach and reimburses itself for its costs from the escrow account, the Friends shall replenish the escrow account so that the balance is at least \$20,000.

If the breach is a material breach, the City may terminate this Agreement and at its option either use the escrow fund to demolish the Nature Center Building, or choose to keep and use the Nature Center Building. In the latter case, the Friends shall surrender the Nature Center Building

and Nature Center Building Site to the City upon payment of the Appraised Value of the Nature Center Building. The “Appraised Value” shall be determined as follows:

The City shall select and pay for a licensed appraiser to provide an appraisal of the Nature Center Building and the value of the Nature Center Building as determined by the appraiser shall be the “Appraised Value.” If the Friends are not in agreement with the amount of the Appraised Value as determined by the City’s appraiser, the Friends may obtain an appraisal at the Friends’ expense. In that event, the Appraised Value of the Nature Center Building shall be determined by averaging the appraised value amounts set forth in the City appraisal and the Friends’ appraisal.

Upon payment of the “Appraised Value” by the City, the Nature Center Building shall become the property of the City.

In the event that the Friends are unable to continue the operation and maintenance of the Nature Center Building, the Friends may terminate this Agreement. The Friends shall provide the City with written notice of the termination at least 60 days prior to the effective date of termination. The Friends may choose to donate the Nature Center Building to the City, provided that the City is willing to accept it or remove it. If the City will not accept the Nature Center Building, the Friends must remove it. In the event that the Friends remove the Nature Center Building, the Friends must remove all debris and restore the Property to its original condition.

2. Building Name. If the Friends donate the Nature Center Building to the City, the City may change the name of the building if the City converts the building to another use. If the Nature Center Building continues to be used as a nature center by the City, it shall continue to be known and referred to as the “Sally Manzara Interpretive Nature Center.”

3. Entire Agreement and Amendment. This Agreement constitutes the entire agreement between the City and the Friends and there are no other agreements, either oral or written, between the parties. No subsequent alteration, amendment, change or addition to this Agreement shall be binding upon the City or the Friends unless reduced to writing and executed in the same form and manner in which this Agreement is executed.

4. Data Practices Compliance. Data provided to the Friends under this Agreement shall be administered in accordance with Minnesota Statutes Chapter 13 and all data on individuals shall be maintained in accordance with statutory guidelines.

5. Severability. The provisions of this Agreement are expressly severable, and the unenforceability of any provision or provisions hereof shall not affect or impair the enforceability of any other provision or provisions.

6. Notices. Except as otherwise expressly provided in this Agreement, any notice, demand, or other communication under this Agreement by either party to the other shall be sufficiently given or delivered if it is dispatched by United States Mail or delivered personally to:



- (a) The Friends of Lake Elmo's Sunfish Lake Park  
5050 Kirkwood Avenue North  
Lake Elmo, MN 55042  
Attn: Anthony P. Manzara
- (b) City of Lake Elmo  
3800 Laverne Avenue North  
Lake Elmo, MN 55042  
Attn: City Administrator

or to such other address as either party may notify the other of pursuant to this paragraph.


7. Recitals. The Recitals set forth in the preamble to this Agreement are incorporated into the Agreement by reference.

8. Assignment. The Friends may not assign its interests and responsibilities under this Agreement to any other party without obtaining the prior written consent of the City.

9. Choice of Law. This Agreement shall be interpreted in accordance with the laws of the State of Minnesota. Any dispute arising out of this Agreement will be venued in Washington County, Minnesota.

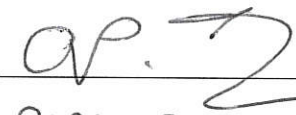
**IN WITNESS WHEREOF**, the City and the Friends have executed this Agreement the day and year first above written.

**CITY OF LAKE ELMO**

By:   
Mike Pearson  
Its: Mayor

By:   
Julie Johnson  
Its: City Clerk

**FRIENDS OF LAKE ELMO'S SUNFISH LAKE PARK**

By:   
Its: PRESIDENT

**EXHIBIT A**  
**Legal Description of the Property**

Exhibit A

Legal Description of the Protected Property

The Northwest Quarter of the Northwest Quarter (NW 1/4 of NW 1/4) of Section Fourteen (14), Township Twenty-nine (29), Range Twenty-one (21), and the West Thirty-three (33) feet of the Southwest Quarter of the Northwest Quarter (SW 1/4 of NW 1/4) of Section Fourteen (14), Township Twenty-nine (29), Range Twenty-one (21), Washington County, Minnesota.

AND

That part of the Northeast quarter of the Northwest quarter of Section 15, Township 29, Range 21, Washington County, Minnesota, described as commencing at the Northeast corner of said Northeast quarter of Northwest quarter; thence South 0° 51' 45" East, assumed bearing, along the East line thereof, 501.27 feet to the South line of the North 30 acres of said Northwest quarter and to the actual point of beginning of the land to be hereinafter described; thence South 89° 01' 54" West along said South line of North 30 acres 800 feet; thence South 0° 51' 45" East 734.30 feet; thence North 89° 01' 54" East 800 feet to the East line of said Northeast quarter of the Northwest quarter; thence North 0° 51' 45" West along said East line 734.30 feet to the actual point of beginning.

AND

The Northwest quarter of the Northeast quarter, the Northeast quarter of the Northeast quarter, the Southwest quarter of the Northeast quarter, the North three-quarters of the Southeast quarter of the Northeast quarter and that part of the East 87 feet lying South of the North three-quarters of the Southeast quarter of the Northeast quarter all in Section 15, Township 29, Range 21.

AND

The east 87 feet of that part of the Southeast quarter of Section 15, Township 29, Range 21, lying Northerly of the Northerly right of way line of State Highway #212, subject to the right of way Stillwater Lane (formerly State Highway #212).

AND

The Southwest Quarter of the Northeast Quarter of the Northwest Quarter (SW 1/4 of NE 1/4 of NW 1/4) of Section Fourteen (14), Township Twenty-nine (29) North, Range Twenty-one (21) West, Washington County, Minnesota.

AND

The North Three (3) rods of the Northwest Quarter of the Southeast Quarter of the Northwest Quarter (NW 1/4 of SE 1/4 of NW 1/4) of Section Fourteen (14), Township Twenty-nine (29), Range Twenty-one (21), Washington County, Minnesota.

AND

The South Forty (40) acres of Government Lot Five (5), Section Ten (10) and the Southeast Quarter of the Southwest Quarter (SE  $\frac{1}{4}$  of SW  $\frac{1}{4}$ ) of Section Ten (10). AND the North Thirty (30) acres of the North one-half of the Northwest Quarter (N  $\frac{1}{2}$  of NW  $\frac{1}{4}$ ) of Section Fifteen (15), all in Township Twenty-nine (29) North of Range Twenty-one (21) West, containing 110 acres more or less.

EXCEPT:

All that part of the South 40 acres of Government Lot 5, Section 10, and the Southeast Quarter of the Southwest Quarter of Section 10, and the North 30 acres of the North One-Half of the Northwest Quarter of Section 15, all in Township 29 North, Range 21 West, Washington County, Minnesota, described as follows:

Beginning at the northwest corner of said Section 15, thence South 00 degrees, 18 minutes, 30 seconds West, bearings are based on the Washington County Coordinate System NAD83, along the west line of said Section 15, a distance of 501.27 feet to the south line of said North 30 acres of the North One-Half of the Northwest Quarter of Section 15, thence North 89 degrees, 51 minutes, 00 seconds East, along said south line, a distance of 1808.59 feet, thence North 00 degrees, 02 minutes, 32 seconds West and parallel with the east line of said Northwest Quarter of Section 15, a distance of 501.26 feet to the north line of said Section 15, thence South 89 degrees, 51 minutes, 00 seconds West, along said north line a distance of 105.52 feet, thence North 00 degrees, 53 minutes, 21 seconds West and parallel with the west line of said Section 10, a distance of 650.00 feet, thence South 89 degrees, 51 minutes, 00 seconds West and parallel with the south line of said Section 10, a distance of 200.00 feet, thence North 00 degrees, 53 minutes, 21 seconds West and parallel with the west line of said Section 10, a distance of 656.24 feet, to a point on the north line of said Southeast Quarter of the Southwest Quarter of Section 10, thence South 89 degrees, 45 minutes, 24 seconds West, along said north line, a distance of 193.17 feet to the northwest corner of said Southeast Quarter of the Southwest Quarter, thence North 00 degrees, 42 minutes, 39 seconds West, along the east line of said Government Lot 5, a distance of 29.52 feet to the northeast corner of said South 40 acres of Government Lot 5, thence South 89 degrees, 51 minutes, 00 seconds West, along the north line of said South 40 of Government Lot 5, a distance of 706.92 feet, thence South 00 degrees, 53 minutes, 21 seconds East and parallel with the west line of said Section 10, a distance of 200.00 feet, thence South 50 degrees, 54 minutes, 08 seconds West, a distance of 127.25 feet, thence South 89 degrees, 51 minutes, 00 seconds West and parallel with the north line of said South 40 acres of Government Lot 5, a distance of 500.00 feet to the west line of said Section 10, thence South 00 degrees, 53 minutes, 21 seconds East along the west line of said Section 10, a distance of 1055.45 feet to the point of beginning, containing 65.9 acres, more or less.

AND ALSO EXCEPT:

All that part of the South 40 acres of Government Lot 5, Section 10, Township 29 North, Range 21 West, Washington County, Minnesota, described as follows:

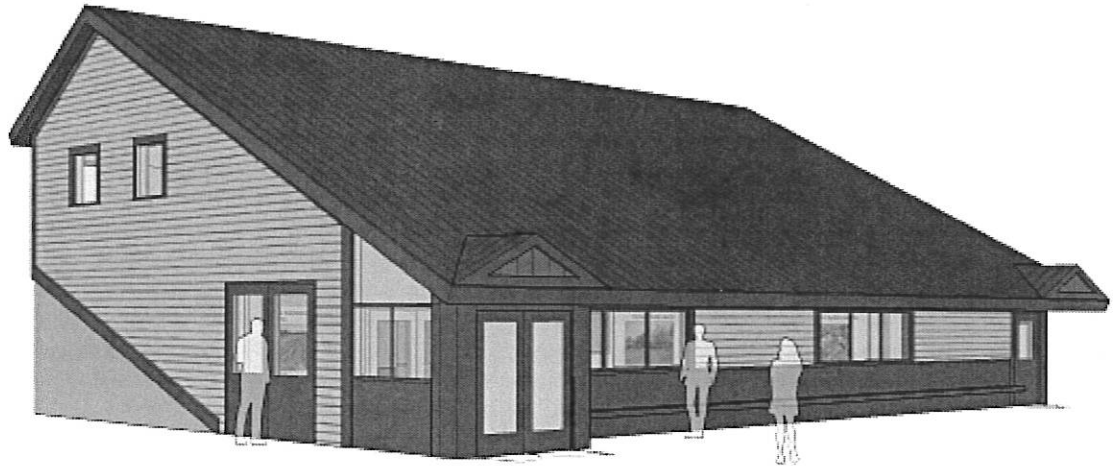
Commencing at the southwest corner of said Section 10, thence North 00 degrees, 53 minutes, 21 seconds West along the west line of said Section 10, a distance of 1055.45 feet to the point of beginning, thence continuing North 00 degrees, 53 minutes, 21 seconds West along the west line of said Section 10, a distance of 280.00 feet to the northwest corner of said South 40 acres of Government Lot 5, thence North 89 degrees, 51 minutes, 00 seconds East along the north line of said South 40 acres of Government Lot 5, a distance of 600.00 feet, thence South 00 degrees, 53 minutes, 21 seconds East and parallel with the west line of said Section 10, a distance of 200.00 feet, thence South 50 degrees, 54 minutes, 08 seconds West, a distance of 127.25 feet, thence South 89 degrees, 51 minutes, 00 seconds West and parallel with the north line of said South 40 acres of Government Lot 5, a distance of 500.00 feet to the point of beginning, containing 3.8 acres, more or less.



## EXHIBIT B

### Preliminary Plans for the Nature Center

The image reproduced here represents a more complete preliminary plan contained in the accompanying document "Roger Tomten SUNFISH NATURE CENTER 040117 update"



1 NORTH EAST PERSPECTIVE  
8 NO SCALE

TOMTEN  
ENVIRONMENTAL  
DESIGN  
ROGER TOMTEN  
481.401.1178  
2000 1ST AVE. S.  
LAKE ELMO, MN 55440

PRELIMINARY DESIGN FOR THE:  
**SALLY MANZARA INTERPRETIVE NATURE CENTER**  
SUNFISH LAKE PARK, LAKE ELMO, MINNESOTA

DATE:  
3 APRIL 2011  
TOMTEN 481.401.1178

SHEET  
**8**  
OF 8

## **EXHIBIT C**

### **Description of Nature Center Building Site**

The Nature Center Building Site is defined as one acre (a square plot approximately 207 feet on a side) oriented with the edges north-south and east-west, with its eastern side centered on the existing fire hydrant which is located just west of the Sunfish Lake Park south entrance drive just before it turns into the parking lot, and its northern side centered on the southernmost of the boulders which form the southern boundary of the existing parking lot.

## **EXHIBIT D**

### **Mission Statement**

The Sally Manzara Interpretive Nature Center –

- Stands as a symbol of the Stewardship of our community for its natural surroundings and heritage
- Serves as a focus of community activities related to outdoor life
- Provides a place where people of all ages can learn about the unique natural history and ongoing ecology of Sunfish Lake Park
- Teaches general environmental awareness via specific local examples
- Honors the agricultural heritage of Lake Elmo