



STAFF REPORT

DATE: 06/20/23

CONSENT MOTION

TO: City Council
FROM: Jenni Faulkner, Planning Consultant
AGENDA ITEM: Consider Land Exchange Agreement with Drake Motor Partners LE LLC
REVIEWED BY: Sophia Jensen, City Planner

BACKGROUND:

On May 16, 2023 the City Council approved a final plat, PUD, and Development Agreement for Drake Motor Partners LE LLC. A condition of approval was that the developer enter into a land exchange agreement to facilitate their request to exchange a small portion of city right-of-way with an equal portion of land on Lot 1 Block 1 (DQ site) adjacent to Hudson Blvd. to accommodate their proposed sign along the interstate.

ISSUE BEFORE THE CITY COUNCIL:

The City Council is being requested to approve the Land Exchange Agreement.

PROPOSAL DETAILS/ANALYSIS:

The city owned parcel to be conveyed to Drake is currently zoned and guided as right-of-way. The Drake parcel to be conveyed to the city is currently zoned and guided as Commercial. In addition, the MnDOT highway easement (dedicated as right-of-way on the final plat) along the southerly lot line of the plat is zoned and guided as Commercial.

MN statutes require that the Planning Commission review the transaction and reported its findings to the City Council as to the compliance with the Comprehensive Plan (Minnesota Statutes Section 462.356, subdivision 2). No public hearing is required. Alternatively, the City Council may, by resolution (with a 2/3 vote) dispense with the requirements of the statute when in its judgment, it finds that the proposed exchange has no relationship with the Comprehensive Plan. The remnant parcel to be conveyed to the developer is not intended for future public purposes (road, park, open space, etc.). The City would not be getting rid of land otherwise contemplated for a specific public purpose.

The developer will have to rezone the parcels and re-guide the parcels so the areas dedicated and to be conveyed as right-of-way are zoned and guided as such and then the parcel where the future sign will be located will be rezoned and guided to Commercial consistent with the adjacent Lot 1 Block 1 (DQ site). This will clean-up the maps and guided land uses going forward to be consistent with the PUD approval.

Another factor to be reviewed when disposing of public lands is if there is a business subsidy. The transaction is not considered a business subsidy under the Business Subsidy Act because the parties are exchanging land that is supposedly of equal value and the City is not giving Drake land for free or a reduced price.

The City Attorney has reviewed the land exchange and prepared the Land Exchange Agreement, and the developer has reviewed it. There are no outstanding issues. The developer intends to execute the land exchange prior to closing on Lot 1 Block 1 with Dairy Queen to facilitate a clean real estate transaction.

FISCAL IMPACT

As this request is from the developer, the Land Exchange Agreement calls for the developer to cover all costs related to the transaction.

OPTIONS

The City Council should consider the following options:

- 1) To approve the request and adopt the resolution.
- 2) To reject the request.

RECOMMENDATION:

Staff is recommending that the City Council approve the land exchange agreement as part of the consent agenda.

If removed from the consent agenda, then Staff recommends the City Council approve the request with the following motion:

“Move to adopt Resolution No. 2023-064, Approving A Land Exchange Agreement With Drake Motor Partners LE LLC”.

”

ATTACHMENTS:

- 1. Resolution 2023-64
- 2. Land Exchange Agreement
- 3. Land Exchange Exhibit (from the Development Agreement)

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

**RESOLUTION NO. 2023-064
A RESOLUTION APPROVING A LAND EXCHANGE AGREEMENT WITH DRAKE
MOTOR PARTNERS LE LLC**

WHEREAS, the City owns certain property located in the City of Lake Elmo, Minnesota, which is legally described on Exhibit A attached hereto (the “**City Parcel**”); and

WHEREAS, Drake Motor Partners LE LLC (“**Drake**”) owns certain property located in the City of Lake Elmo, Minnesota, which is legally described on Exhibit B attached hereto (the “**Drake Parcel**”); and

WHEREAS, the parties wish to exchange the parcels by conveying them to one another;
and

WHEREAS, the transaction does not constitute a business subsidy under the Business Subsidy Act; and

WHEREAS, pursuant to Minnesota Statutes Section 462.356, subdivision 2, the City Council finds that the proposed exchange has no direct relationship with the Comprehensive Plan;
and

NOW, THEREFORE, BE IT RESOLVED,

1. That the City Council hereby approves the Land Exchange Agreement in substantially the form presented to the City Council, subject to modifications that do not alter the substance of the transaction and that are approved by the Mayor and City Clerk, provided that execution of the Land Exchange Agreement by those officials shall be conclusive evidence of their approval.
2. City officials, staff, and consultants are authorized to take all actions necessary to perform the City’s obligations under the Land Exchange Agreement as a whole, including without limitation, execution of any documents to which the City is a party referenced in or attached to the Land Exchange Agreement, and of any deed or other documents necessary for the City Parcel to be conveyed by the City to Drake, as described in the Land Exchange Agreement.
3. No sign permits, or other permits, shall be issued on the parcel to be conveyed to Drake until a Comprehensive Plan Amendment and related Rezoning of the parcels is complete.

ADOPTED BY THE LAKE ELMO CITY COUNCIL ON THE 20TH DAY OF JUNE, 2023.

CITY OF LAKE ELMO

(Seal)
ATTEST:

Julie Johnson
City Clerk

By: _____
Charles Cadenhead
Mayor

EXHIBIT A

Legal Description of the City Parcel

That part of Parcel 33B, Minnesota Department of Transportation Right of Way Plat No. 82-43, Washington County, Minnesota, described as follows:

Commencing at the most westerly corner of Lot 1, Block 1, EBERTZ ADDITION, said Washington County; thence South 46 degrees 03 minutes 26 seconds East, plat bearing, along the southwesterly line of said Lot 1; a distance of 46.59 feet to the Point of Beginning; thence continuing South 46 degrees 03 minutes 26 seconds East, along said line, a distance of 61.42 feet to the south line of said Parcel 33B; thence South 89 degrees 54 minutes 66 seconds West, along last said line, a distance of 44.15 feet to a line bearing South 00 degrees 05 minutes 44 seconds East from the Point of Beginning; thence North 00 degrees 05 minutes 44 seconds West, a distance of 42.69 feet to the Point of Beginning.

EXHIBIT B

Legal Description of the Drake Parcel

Lot 1, Block 1, EBERTZ Addition, Washington County, Minnesota, except that part lying west of the following described line: Commencing at the most westerly corner of said Lot 1, thence South 46 degrees 03 minutes 26 seconds East, plat bearing, along the southwesterly line of said Lot 1, a distance of 46.59 feet to the Point of Beginning of the line to be described; thence North 00 degrees 05 minutes 44 seconds West, a distance of 56.76 feet to the northwesterly line of said Lot 1 and there terminating.

LAND EXCHANGE AGREEMENT

This Land Exchange Agreement (“**Agreement**”) is made this ____ day of _____, 2023, by and between the City of Lake Elmo, a Minnesota municipal corporation (the “**City**”) and Drake Motor Partners LE LLC, a Colorado limited liability company (“**Drake**”).

RECITALS

WHEREAS, the City owns certain property located in the City of Lake Elmo, Minnesota, which is legally described on Exhibit A attached hereto (the “**City Parcel**”); and

WHEREAS, Drake owns certain property located in the City of Lake Elmo, Minnesota, which is legally described on Exhibit B attached hereto (the “**Drake Parcel**”); and

WHEREAS, the City wishes to convey the City Parcel to Drake; and

WHEREAS, Drake wishes to convey the Drake Parcel to the City.

AGREEMENT

1. OFFER/ACCEPTANCE. In consideration of the mutual agreements herein contained, the City offers and agrees to convey the City Parcel to Drake. Drake offers and agrees to convey the Drake Parcel to the City. The City and Drake accepts the parcels so offered.

2. VALUE FOR STATE DEED TAX PURPOSES. For purposes of determining values for State Deed Tax, the parties agree that the value of the City Parcel is \$2,500.00 and the value of the Drake Parcel is \$2,500.00.

3. DEED/MARKETABLE TITLE: Subject to performance by Drake, the City agrees to execute and deliver a quit claim deed conveying marketable title to the City Parcel, to Drake, subject only to the following exceptions:

- A. Building and zoning laws, ordinances, state, and federal regulations.
- B. Reservation of minerals or mineral rights to the State of Minnesota, if any.
- C. Right-of-way, utility, and drainage easements that do not interfere with Drake’s intended use of the property.

Subject to performance by the City, Drake agrees to execute and deliver a limited warranty deed conveying marketable title to the Drake Parcel, to the City, subject only to the following exceptions:

- A. Building and zoning laws, ordinances, state, and federal regulations.
- B. Reservation of minerals or mineral rights to the State of Minnesota, if any.

C. Right-of-way, utility, and drainage easements that do not interfere with the City's intended use of the property.

4. DOCUMENTS TO BE DELIVERED AT CLOSING. In addition to the quit claim deed required by paragraph 3 above, the City shall deliver to Drake:

- A. Standard form Affidavit of Seller.
- B. Well disclosure certificate.
- C. Such other documents as may be reasonably required by Drake's title examiner or title insurance company.
- D. A certified copy of the City Council resolution approving this Agreement.

In addition to the limited warranty deed required by paragraph 3 above, Drake shall deliver to the City:

- A. Standard form Affidavit of Seller.
- B. Well disclosure certificate.
- C. Such other documents as may be reasonably required by the City's title examiner or title insurance company.

5. MARKETABILITY OF TITLE. Within a reasonable time after approval and execution of this Agreement by both parties, the City and Drake may order a title insurance commitment for their respective new parcels at their expense. Each party shall have 10 business days after receipt of its title commitment to examine the same and to deliver written objections to title, if any, to the other party. Each party shall have 20 days after receipt of written objections to cure title defects, at the transferor's cost. In the event, that title to either parcel cannot be made marketable by the transferor by the Closing Date, then, at the option of the transferee, this Agreement shall be null and void.

6. ENVIRONMENTAL MATTERS. Each Party and its agents shall have the right to enter upon the other's property after the date of this Agreement for the purpose of inspecting the property it will acquire and conducting such environmental examination and tests as it deems necessary. Each Party agrees to indemnify the other, to the extent such indemnification is legally authorized, against any liens, claims, losses, or damage occasioned by the other Party's exercise of its right to enter and work on the property. Each Party agrees to provide the other Party with a copy of any report as a result of such examination and tests. If such environmental examination results in a finding that there are or may be pollutants or contaminants on the property, either Party may terminate this Agreement, at any time prior to the Closing Date.

7. CLOSING DATE. The closing of the exchange of the properties shall take place on a date to be mutually agreed upon by the Parties, but no later than _____, 2023. The closing shall take place at City's offices, 3880 Laverne Avenue N., Lake Elmo, Minnesota, or such other location

as mutually agreed upon by the parties.

8. CLOSING COSTS AND RELATED ITEMS. Drake will be responsible for:

- A. Recording fees of instruments required to establish marketable title in the Drake Parcel and the City Parcel;
- B. The cost of a title commitment and any associated title search and examination fees with respect to the City Parcel, if Drake elects to review title;
- C. The premium for title insurance on the City Parcel if Drake elects to purchase such insurance;
- D. Recording fee for the deeds for the City Parcel and the Drake Parcel; and
- E. State Deed Tax and conservation fee attributable to the Drake Parcel and the City Parcel;
- F. Any closing fees charged by the title company to close this transaction;
- G. Its own attorneys' fees and the City's attorneys' fees associated with closing this transaction, including, but not limited to the cost to draft this Agreement, the resolution approving this Agreement, and the deeds.

9. POSSESSION/CONDITION OF PROPERTY.

- A. **Possession.** The Parties agree to deliver possession not later than date of Closing ("Date of Possession").
- B. **Condition of Property/No Personal Property.** Each Party shall deliver possession of its respective Parcel to the other Party on the Date of Possession in the same condition as the Parcel existed on the date of this Agreement. Each Party acknowledges the parcels are vacant land and there is no personal property included in this exchange.
- C. **"AS IS, WHERE IS."** Each Party acknowledges that it has inspected or will have had the opportunity to inspect the parcel and agrees to accept the parcel "AS IS." Such conveyance shall be without representation of warranties, express or implied, either oral or written, made by the Party or any official, employee or agent of the Party with respect to the physical condition of the parcel, including but not limited to, the existence or absence of petroleum, hazardous substances, pollutants or contaminants in, on, or under, or affecting the parcel or with respect to the compliance of the parcel or its operation with any laws, ordinances, or regulations of any government or other body, except as stated above. Each Party acknowledges and agrees that the other Party has not made and does not make any representations, warranties, or covenants of any kind or character whatsoever, whether expressed or implied, with respect to warranty of income potential, operating expenses, uses, habitability, tenant ability, or suitability for any purpose, merchantability, or fitness of the parcel for a particular purpose, all of which warranties the Party hereby expressly disclaims, except as stated above. Each Party is relying entirely upon information and knowledge obtained from its own investigation, experience and knowledge obtained from its own investigation,

experience, or personal inspection of the Parcel. Each Party expressly assumes, at closing, all environmental and other liabilities with respect to the parcel and releases and indemnifies the other Party from same, whether such liability is imposed by statute or derived from common law including, but not limited to, liabilities arising under the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”), the Hazardous and Solid Waste Amendments Act, the Resource Conservation and Recovery Act (“RCRA”), the federal Water Pollution Control Act, the Safe Drinking Water Act, the Toxic Substances Act, the Superfund Amendments and Reauthorization Act, the Toxic Substances Control Act, and the Hazardous Materials Transportation Act, all as amended, and all other comparable federal, state or local environmental conservation or protection laws, rules or regulations. The foregoing assumption and release shall survive Closing. All statements of fact or disclosures, if any, made in this Agreement or in connection with this Agreement, do not constitute warranties or representations of any nature. The foregoing provision shall survive Closing and shall not be deemed merged into any instrument of conveyance delivered at Closing.

10. DISCLOSURE; INDIVIDUAL SEWAGE TREATMENT SYSTEM. Each Party certifies to the other that it does not know of any individual sewage treatment systems on the parcel it will transfer.

11. WELL DISCLOSURE. Each Party certifies to the other Party that it does not know of any wells on the parcel it will transfer.

12. SELLER'S WARRANTIES. Each Party warrants that there have been no labor or materials furnished to the parcel it will transfer for which payment has not been made. Each Party warrants that there are no present violations of any restrictions relating to the use or improvement of its respective parcel. These warranties shall survive the closing of this transaction.

13. RELOCATION BENEFITS. Each Party represents and asserts to the other that the transactions set forth in this Agreement will not cause the Party to be a displaced person within the meaning of Minnesota Statutes, Section 117.50, Subd. 3, and that it is therefore not entitled to any relocation assistance, services, payments or benefits under Minnesota Statutes, Section 117.52.

14. BROKER COMMISSIONS. Each Party represents and warrants to other that there is no broker involved in this transaction with whom the Party has negotiated or to whom the Party has agreed to pay a broker commission.

15. NO MERGER OF REPRESENTATIONS, WARRANTIES. All representations and warranties contained in this Agreement shall not be merged into any instruments or conveyance delivered at Closing, and the parties shall be bound accordingly.

16. ENTIRE AGREEMENT; AMENDMENTS. This Agreement executed herewith constitutes the entire agreement between the Parties and no other agreement prior to this Agreement shall be effective except as expressly set forth or incorporated herein. Any purported amendment

shall not be effective unless it shall be set forth in writing and executed by both Parties or their respective successors or assigns.

17. BINDING EFFECT; ASSIGNMENT. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns. The Parties shall not assign their rights and interest hereunder without notice to the other Party.

18. NOTICE. Any notice, demand, request, or other communication which may or shall be given or served by the parties shall be deemed to have been given or served on the date the same is deposited in the United States Mail, registered or certified, postage prepaid and addressed as follows:

a. If to the City: City of Lake Elmo
3880 Laverne Avenue N
Lake Elmo, MN 55042
Attn: Kristina Handt, City Administrator

with a copy to: Sarah J. Sonsalla
Kennedy & Graven, Chartered
Fifth Street Towers
150 South Fifth Street, Suite 700
Minneapolis, MN 55402

b. If to Drake: Drake Motor Partners LE, LLC
496 S. Broadway
Denver, CO 80209
Attn: Jon Hauser

19. SPECIFIC PERFORMANCE. This Agreement may be specifically enforced by the parties, provided that any action for specific enforcement is brought within six months after the date of the alleged breach. This paragraph is not intended to create an exclusive remedy for breach of this agreement; the parties reserve all other remedies available at law or in equity.

20. COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which shall constitute one and the same instrument.

21. RECITALS. The Recitals set forth in the preamble to this Agreement and the Exhibits attached to this Agreement are incorporated into this Agreement as if fully set forth herein.

IN WITNESS WHEREOF, the parties have executed this agreement as of the above date.

CITY OF LAKE ELMO

By: _____
Charles Cadenhead
Its: Mayor

By: _____
Julie Johnson
Its: City Clerk

DRAKE MOTOR PARTNERS LE, LLC

By: Drake Developments LLC, Manager

By: Drake Real Estate Services, Inc., Manager

By: _____
Jon Hauser
Its: General Manager

EXHIBIT A

LEGAL DESCRIPTION OF THE "CITY PARCEL"

That part of Parcel 33B, Minnesota Department of Transportation Right of Way Plat No. 82-43, Washington County, Minnesota, described as follows:

Commencing at the most westerly corner of Lot 1, Block 1, EBERTZ ADDITION, said Washington County; thence South 46 degrees 03 minutes 26 seconds East, plat bearing, along the southwesterly line of said Lot 1; a distance of 46.59 feet to the Point of Beginning; thence continuing South 46 degrees 03 minutes 26 seconds East, along said line, a distance of 61.42 feet to the south line of said Parcel 33B; thence South 89 degrees 54 minutes 66 seconds West, along last said line, a distance of 44.15 feet to a line bearing South 00 degrees 05 minutes 44 seconds East from the Point of Beginning; thence North 00 degrees 05 minutes 44 seconds West, a distance of 42.69 feet to the Point of Beginning.

EXHIBIT B

LEGAL DESCRIPTION OF THE “DRAKE PARCEL”

Lot 1, Block 1, EBERTZ Addition, Washington County, Minnesota, except that part lying west of the following described line: Commencing at the most westerly corner of said Lot 1, thence South 46 degrees 03 minutes 26 seconds East, plat bearing, along the southwesterly line of said Lot 1, a distance of 46.59 feet to the Point of Beginning of the line to be described; thence North 00 degrees 05 minutes 44 seconds West, a distance of 56.76 feet to the northwesterly line of said Lot 1 and there terminating.

EXHIBIT D TO DEVELOPMENT AGREEMENT

Land to be Exchanged Between the City and the Developer

EXISTING DESCRIPTIONS:

Dairy Queen
Lot 1, Block1, EBERTZ ADDITION, Washington County, Minnesota.

City of Lake Elmo
Parcel 33B, Minnesota Department of Transportation Right of Way Plat No. 82-43, Washington County, Minnesota.

PROPOSED DESCRIPTIONS:

Proposed Dairy Queen
Lot 1, Block1, EBERTZ ADDITION, Washington County, Minnesota, Except that part lying west of the following described line: Commencing at the most westerly corner of said Lot 1, thence South 46 degrees 03 minutes 26 seconds East, plat bearing, along the southwesterly line of said Lot 1, a distance of 46.59 feet to the Point of Beginning of the line to be described; thence North 00 degrees 05 minutes 44 seconds West, a distance of 56.76 feet to the northwesterly line of said Lot 1 and there terminating.

And
That part of Parcel 33B, Minnesota Department of Transportation Right of Way Plat No. 82-43, Washington County, Minnesota, described as follows: Commencing at the most westerly corner of Lot 1, Block 1, EBERTZ ADDITION, said Washington County; thence South 46 degrees 03 minutes 26 seconds East, plat bearing, along the southwesterly line of said Lot 1, a distance of 46.59 feet to the Point of Beginning; thence continuing South 46 degrees 03 minutes 26 seconds East, along last said line, a distance of 61.42 feet to the south line of said Parcel 33B; thence South 89 degrees 54 minutes 66 seconds West, along last said line, a distance of 44.15 feet to a line bearing South 00 degrees 05 minutes 44 seconds East from the Point of Beginning; thence North 00 degrees 05 minutes 44 seconds West, a distance of 42.69 feet to the Point of Beginning.

Proposed Lake Elmo
Parcel 33B, Minnesota Department of Transportation Right of Way Plat No. 82-43, Washington County, Minnesota, Except that part described as follows: Commencing at the most westerly corner of Lot 1, Block 1, EBERTZ ADDITION, said Washington County; thence South 46 degrees 03 minutes 26 seconds East, plat bearing, along the southwesterly line of said Lot 1, a distance of 46.59 feet to the Point of Beginning; thence continuing South 46 degrees 03 minutes 26 seconds East, along last said line, a distance of 61.42 feet to the south line of said Parcel 33B; thence South 89 degrees 54 minutes 66 seconds West, along last said line, a distance of 44.15 feet to a line bearing South 00 degrees 05 minutes 44 seconds East from the Point of Beginning; thence North 00 degrees 05 minutes 44 seconds West, a distance of 42.69 feet to the Point of Beginning.

And
That part of Lot 1, Block 1, EBERTZ ADDITION, Washington County, Minnesota, lying west of the following described line: Commencing at the most westerly corner of said Lot 1, thence South 46 degrees 03 minutes 26 seconds East, plat bearing, along the southwesterly line of said Lot 1, a distance of 46.59 feet to the Point of Beginning of the line to be described; thence North 00 degrees 05 minutes 44 seconds West, a distance of 56.76 feet to the northwesterly line of said Lot 1 and there terminating.

