



3800 Laverne Avenue North  
Lake Elmo, MN 55042

(651) 747-3900  
[www.lakeelmo.org](http://www.lakeelmo.org)

## NOTICE OF MEETING

The City of Lake Elmo  
Planning Commission will conduct a meeting on  
**Monday June 28, 2021**  
**at 7:00 p.m.**

## AGENDA

1. Pledge of Allegiance
2. Approve Agenda
3. Approve Minutes
  - a. May 10, 2021
4. Public Hearings
  - a. Variances and Lot Division – 3100 Lake Elmo Avenue (Dorschner) **(POSTPONED – NO REPORT AND NO PUBLIC HEARING THIS EVENING)**
  - b. Zoning Code Amendment – Accessory Structures (Shoreland District)
5. New/Unfinished Business
  - a. Tree Preservation Ordinance Amendment
6. Communications/Updates
  - a. City Council Update
    - 05-18-2021 Meeting – Union Park West and Easton Village 7<sup>th</sup> Addition Final Plat Approvals
    - 06-01-2021 Meeting – Crossroads/Launch Properties Preliminary PUD/Preliminary Plat
    - 06-15-2021 Meeting – No Planning/Land Use Items
  - b. Staff Updates
  - c. Upcoming PC Meetings:
    1. July 12, 2021
    2. July 26, 2021
7. Adjourn

\*\*\*Note: Every effort will be made to accommodate person or persons that need special considerations to attend this meeting due to a health condition or disability. Please contact the Lake Elmo City Clerk if you are in need of special accommodations.



**City of Lake Elmo  
Planning Commission Meeting  
Minutes of May 10, 2021**

Commission Chair Risner called to order the meeting of the Lake Elmo Planning Commission at 7:00 p.m.

**COMMISSIONERS PRESENT:** Risner, Graen, Mueller, Steil, Weeks

**COMMISSIONERS ABSENT:** none

**STAFF PRESENT:** Planning Director Roberts

**Pledge of Allegiance** at 7:01 PM

**Approve Agenda:**

M/S/P: Graen/Mueller moved to approve the agenda. **Vote: 5-0, motion carried unanimously.**

**Approve Minutes:**

M/S/P: Steil/Weeks moved to approve the Planning Commission minutes of April 26<sup>th</sup>, 2021. **Vote: 5-0, motion carried unanimously.**

**Public Hearings:**

- a. Launch Properties/Crossroads Properties PUD Preliminary Plan for a Light Industrial Business Park (Crossroads East First Addition) – Hudson Boulevard and Lake Elmo Avenue

Director Roberts introduced and presented the staff report on the Launch Properties/Crossroads Properties PUD Preliminary Plan for a Light Industrial Business Park (Crossroads East First Addition). He explained that the City has received requests from Launch Properties (Dan Regan) and Crossroads Properties (David Johnson) for Planned Unit Development (PUD) Preliminary Plan and a Preliminary Plat related to a two-phase, 297,570 square foot light industrial development in two buildings that would be located at the intersection of Lake Elmo Avenue and Hudson Boulevard North.

Mr. Roberts explained that the Planning Commission is being asked to review the preliminary PUD plans, hold a public hearing, provide feedback and then make a recommendation to the City Council about the preliminary PUD plans.

The details concerning the two different aspects of the request are:

- A request for a PUD Preliminary Plan to allow the construction of two light industrial buildings with a net building area of 297,570 square feet. A PUD has been requested in order to allow for a zero lot line build out of what will eventually be two separate building parcels and to allow for a listing of permitted and conditional uses within the buildings and the site.

- A preliminary plat to divide the property into two lots and three outlots (for storm water management) and to allow for the necessary public street right-of-way and easement dedications.

Director Roberts noted that access for both buildings would be via a shared 30-foot-wide driveway entrance off of Hudson Boulevard North, with ancillary access provided through a driveway in the extreme southeast corner of the site. They are not proposing an access driveway on Lake Elmo Avenue. He also explained that the proposed site plan includes a 100-foot-wide landscape and buffer area along the northern portion of the site and shared storm water facilities that would be located along Hudson Boulevard North.

Mr. Roberts explained that the proposed Preliminary PUD Plan and the buildings/uses are generally consistent with the BP Comprehensive Plan land use designation and the BP Zoning designation. As part of their application, the developer provided the City with a listing of the proposed permitted uses within the PUD. Roberts noted that City staff would not support having all the listed uses as permitted uses in the PUD. There are some uses on the developer's list that the City should require approval of a CUP and there are others uses such as day care and child care centers that the City should not allow in the development.

Director Roberts stated the developer/applicant is asking the City to approve a preliminary plat as part of the PUD approval. The proposed preliminary plat would create 2 buildable lots that would each be 12.97 acres in size and would have 3 outlots for storm water management. Roberts also noted that the preliminary plat also shows right-of-way dedication for Lake Elmo Avenue. The platting process allows the City to ensure that all the necessary street right-of-way and drainage and utility easements are in place on the property.

Mr. Roberts explained that the proposed site plan shows two lots of 12.97 acres each for building sites, a 148,470 square-foot building on the west lot and a 149,100 square foot building on the eastern lot. The site plan also shows a 30-foot-wide shared access driveway to Hudson Boulevard, a total of 180 parking stalls, 48 spaces for parking semi-trucks and trailers and three outlots for storm water ponding along Hudson Boulevard. He also noted that the proposed plan shows the parking spaces setback at least 100 feet and the proposed buildings setback more than 150 feet from the northern property line of the site.

Roberts continued by explaining how the Lake Elmo Zoning Ordinance requires a minimum building setback of 150 feet from residential zones for buildings and 100 feet for parking areas (which would include maneuvering lanes and driveways) for properties zoned Business Park. The elements shown on the proposed site plan meet or exceed these minimum setback requirements. Director Roberts added that the applicant is proposing a berm and landscaping along the north property line to help mitigate the effects of the new development to the single-family homes to the north.

Mr. Roberts noted that there are two proposed designs of the buildings in the development. The Crossroads Properties building on the west lot would be 30 feet tall with a mix of office and warehouse spaces with off street parking for 398 personal vehicles and parking for 18 semi-trucks and trailers. Roberts explained that the elevations of the Crossroads building show it with an exterior with a mix of smooth face architectural and textured pattern painted precast concrete panels. The colors shown on the plans for the panels are off-white with medium gray and dark blue accent areas.

Director Roberts continued by showing the elevations of the proposed Launch Properties warehouse on the east lot. He explained that the elevations show a 38 foot tall building to allow 32 feet of clear interior space. The exterior would have a mix of smooth face architectural and textured pattern painted precast concrete panels. Roberts noted that the colors shown on the plans for the panels are off-white with light gray, medium gray and

dark blue accent areas. There would be 189 off-street parking spaces for personal vehicles and 30 parking spaces for semi-trucks and trailers on the north side of the building.

Roberts then explained that the City Engineer had reviewed the preliminary PUD plans and provided comments in a review letter to the City dated May 5, 2021. The applicant will need to address the Engineer's comments as part of the final plan submission for the site. He also noted that the Engineer's review included comments about streets and transportation, sanitary sewer, storm sewer and municipal water.

As for the municipal water system, Director Roberts reviewed the comments and concerns about this development and its possible effects on the City water system. An extremely important issue is amount of water currently available to serve this site. The City Engineer noted in his review comments that "Municipal water service is not sufficient to support fire suppression demands for the proposed development until Water Tower No. 4 is operational. The City is currently negotiating and investigating potential water tower sites. Until a water tower site is determined (by the City) to be feasible and has been acquired by the City, the schedule for having Water Tower No. 4 operational is unknown."

Roberts continued his presentation by noting that the City needs to construct a new water tower in the area generally bounded by 10<sup>th</sup> Street on the north, Manning Avenue on the east and Keats Avenue on the west. This new water tower is necessary to help provide adequate water pressure to the existing water users and for future municipal water customers in this part of Lake Elmo. Director Roberts explained that the City is currently negotiating and investigating potential water tower sites but the City has not finalized the site for a new water tower.

Director Roberts explained the steps that need to be completed before a new water tower is ready to be put online. These include finalizing the purchase of the site, the design work, advertising for construction bids, the City awarding a construction contract for the new water tower, the actual construction and final testing. The City has not yet finalized a purchase agreement for a water tower site and the City has not yet started design work for the water tower. Roberts also noted that there is no timeline as to when the construction of a new water tower could start and there is no date yet as to when a new water tower would be operational and ready for use.

Roberts then reviewed with the Planning Commission the recently adopted ordinance language that outlines when a development may be premature – that is when the City is not ready or able to serve or provide services to a development because of any one of a variety of conditions. The new ordinance states "Any plat or other subdivision of property may be denied by the City Council if it is deemed by the City Council to be premature for development pursuant to the criteria listed below" which includes the lack of adequate municipal water supply to a site.

Director Roberts stated that it is the opinion of City staff this site is premature for development. As noted by the City Engineer, Municipal water service is not sufficient to support fire suppression demands for the proposed development until Water Tower No. 4 is operational.

In summary, Director Roberts stated that the Staff recommends the Planning Commission recommend denial of the Preliminary Plat and preliminary PUD Plans for the proposed Crossroads East development based on the several conditions per Section 15309 (D) of the city code, primarily the lack of water supply.

Director Roberts also stated that if the Planning Commission wishes to recommend approval of the preliminary PUD and preliminary plat for Crossroad East development as proposed by Launch Properties and Crossroads Properties, staff would recommend that it would be subject to 30 conditions be met before final City approval.

Commissioner Risner asked why the zoning was changed from Rural Transitional to Business Park back in 2014. Director Roberts stated that at the time, changing the zoning was to align with the City's Comprehensive Plan and the developer had an approved concept plan for a business park then, but it fell thru.

Co-applicants Dan Regan & David Johnson, co-applicants of the proposal, addressed the Planning Commission detailing their history with this site and the preliminary PUD and plat. They offered to respond to any and all questions and emails.

Commissioner Weeks questioned whether the water pressure for the fire sprinkler system will be enough for this building with the city available water and asked if the co-applicants can wait for 6 -7 months until the city is further along with the water tower project

Mike Connors, with Crossroad Properties, commented that the fire suppression system would be an ESFR Fire Suppression System which is not a gravity fed system, and will have a fire pump that will get the water to the fire sprinkler system.

Commissioner Mueller questioned the security and lighting for the parking lot, and if this would affect the Vali-Hi Drive-In.

Commissioner Graen asked for clarification on the screening and buffering that will be used for this project.

Kimley Horn Project Engineer Brian Wordleman spoke about the screening plan for this project.

Commissioner Risner did a summation of the six emails sent in, all were against the proposed PUD.

M/S/P: Weeks/ Steil moved to open the public hearing. **Vote: 5-0, motion carried unanimously.**

Commissioner Risner opened the public hearing at 8:32 PM

Micah Vrieze – 11075 3<sup>rd</sup> St N – Thanked the Commission for the opportunity to speak about his concerns regarding the berm, truck parking location, lights, trash and hopes that Launch and Crossroads will be good neighbors.

Linda Anderson – 275 Lake Elmo Ave N – Spoke regarding adequate tree coverage, semi-truck breaking noise, and the traffic growth being an issue.

Justin Kirk – 11083 3<sup>rd</sup> St N – Spoke regarding having concerns with the landscaping / trees affecting the existing solar panel system energy production.

Robert Thompson - 11149 3<sup>rd</sup> St N – Agreed with the previous speakers concerns and ask that the developer please make the screen more than adequate.

M/S/P: Steil/Mueller moved to close the public hearing. **Vote: 5-0, motion carried unanimously.**

Commissioner Risner closed the public hearing at 8:41 PM.

Mike Connors, with Crossroad Properties, spoke to the audience about trash containment.

Dan Regan spoke to the audience regarding trash containment and the berm / screening design.

M/S/P: Graen/ Weeks moved to open discussion. **Vote: 5-0, motion carried unanimously**

The Commission then continued their discussion about the project amongst themselves. They had a lot of discussion about City Engineer's report, the water system needs and the need for a new water tower in the area. The understood the staff concerns about water, water supply in the area and how the development is

premature, but focused much of their discussion on the land use and zoning designations on the site and how the proposal fits the land use and zoning requirements.

Commissioner Risner closed the discussion at 9:10 PM.

M/S/P: Graen/ Mueller moved to recommended approval of the Planned Unit Development (PUD) Preliminary Plan as requested by Launch Properties and Crossroad Properties for the office warehouse/light industrial development to be located on the northeast corner of Hudson Boulevard and Lake Elmo Avenue subject to recommended conditions of approval 1-30 as listed in the staff report. **Vote: 3 Ayes -2 Nays (Steil, Risner), motion passed.**

#### **New/Unfinished Business**

- a. None

#### **Communications/Updates**

- a. City Council Update
  - 05-04-2021 Meeting – 2 setback variances, Wallace RLS, Airport Zoning Ordinance
  - 05-18-2021 Meeting – 2 final plats
- b. Staff Updates - Still looking for two Planning Commissioners.
- c. Upcoming PC Meetings:
  - 1. May 24, 2021 – Tree and Land Ordinances
  - 2. June 14, 2021.

M/S/P: Risner/Mueller moved adjourn the meeting. **Vote: 5-0, motion carried unanimously.**

Meeting adjourned at 9:19 PM.

Respectfully submitted,

Diane Wendt  
Permit Technician



## STAFF REPORT

DATE: June 28, 2021

## PUBLIC HEARING

**TO:** Planning Commission  
**FROM:** Ben Prchal, City Planner  
**AGENDA ITEM:** Zoning Code Amendment - Accessory Structures – Shoreland Lots  
**REVIEWED BY:** Ken Roberts, Planning Director

---

### **BACKGROUND:**

The City Council has directed Staff to consider the standards of where accessory buildings should be placed on lake shore lots. It has been noticed that many of the recent variances are on lake lots that have difficulty contending with the required setbacks for structure. The City Code currently prohibits the placement of accessory structures in the front yard of a property. By setting a new standard or redefining what is and is not a front yard will likely help eliminate the need for some variances. Amending the code would make it more conducive for residents who have tight setbacks on shoreland lots and who also would like to install an accessory building. Staff also believes the height and possibly the size standards should be considered when accessory buildings are placed closer to the front lot line than the home.

---

### **ISSUE BEFORE THE PLANNING COMMISSION**

Would the Planning Commission like to recommend to the City Council a zoning code amendment redefining where accessory buildings can go on lake lots?

---

### **REVIEW AND ANALYSIS:**

At this point the City Code does not differentiate between a lake shore lot and a non-lake shore lot, in terms of where the front yard is. After reviewing some variances it is clear that perhaps the City Code could be amended to re-define what is and what is not a “front yard” for lake shore lots. Or perhaps change the code so the restrictions to the front lot are relaxed. Other City’s do apply setbacks differently for lake lots. It is not uncommon for the lake side to be considered the front of the lot which would mean the road side of the property is the rear. This would allow a detached accessory building to be located closer to the road than the principle structure. With the setbacks from the OHWL generally being substantially more than what is required by the zoning code it would greatly increase the options for these types of properties to place/expand their garages and accessory buildings.

City Staff is not recommending to change a large section of code to accomplish this change. Instead the proposed amendment to the code would be relatively small but it would have a large impact on the lake shore Lots. Below is a list of some of the defining language that other Cities use.

#### **City of Minnetrista:**

In Minnetrista they make a distinction for lots that abut a lake. This caveat allows lake lots to re-define what the rear yard is considered compared to what the lake yard would be.

*Yard Front “...A lakeshore lot will not be considered as having a front yard, but rather will be considered as having a lakeshore yard on one side of the building and a rear yard on the other side of the building.”*

*Yard, Lakeshore “means a yard lying between the natural ordinary high-water mark on the lakeshore and the required lakeshore setback line, for the full width of the lot.”*

*Yard, Rear “...on a lakeshore lot, the rear yard will be the yard which fronts on the street lying between the street line of the lot and the required rear yard setback line.”*

**Size and Number** – The principal structure cannot exceed 35 ft. or 3 stories and accessory buildings cannot exceed 25 ft. and 2 stories in the R-1 district and 20 ft. and 1 story in the R-2 district. The height will vary

depending on the district. Staff was unable to find a size limit on the accessory structures (*It should be noted there was a section of code indicating a limit on the size of guest homes.*). However, the code did further state that accessory structures shall not be located in any lake shore yard. This statement leads Staff to believe they are protecting the lake portion of the property in a similar way that the Lake Elmo code is protecting the road side of the property.

### **Minnetonka Beach:**

Minnetonka beach also considers the “rear” yard to be the area of the yard that abuts the roadway.

Front Lot Line “...In the case of the lake lot, it shall be the boundary abutting the ordinary high water mark.”

Based on the code that staff was able to find Minnetonka Beach does not have a limit on the number of accessory buildings that a property can have. Instead it is likely that other aspects of the code limit the number. Such as setbacks, impervious surface, etc.

Height/Size – Their code categorizes structures into two groups, a minor and major accessory building. Minor buildings cannot exceed 15 ft. in height and a major building cannot exceed a height of one-half of the height of the principal structure or one story (the greater) but never taller than the principal structure. It is further stated that the building must be subordinate in size but Staff could not find a specific figure.

### **Forest Lake:**

The Forest Lake code is relatively simple and Staff is inclined to borrow some of their code. Instead of establishing multiple definitions and adjusting setback tables their Code states:

*“Accessory structures may be placed between the principle structure and the public right-of-way on lakeshore lots meeting all required setbacks and lot coverage.”*

And

*“Accessory structures shall not be placed between the principle structure and the lakeshore, except one structure no larger than 120 sq. ft...”*

Inserting this type of statement into the Lake Elmo Zoning Code would limit the number of amendments that would need to be made to the City Code. Staff is leaning towards a Forest Lake model so additional tables do not need to be amended to accomplish the goal of the proposed Code change.

Height/Size – The Forest Lake Code does limit the height, number, and size of accessory buildings. Staff did not notice different standards for lake shore lots. Each district has a different setback and the size of the property dictates the size of the building. However, it appears they are more or less limited to one story.

### **Other Cities:**

There are of course other Cities that do not make exceptions for shoreland lots, such as Lake Elmo. It could then be expected that they also undergo similar review processes for accessory structures on lake shore lots.

### **Impacted Districts**

The main zoning district that will be impacted with the discussed code amendment will be the Rural Single Family (RS) and due to the number of the lots with this zoning that are around the lakes and because they are also smaller in nature. By code they are also allowed to be the smallest in the rural districts. An amendment to the code would greatly help with the placement of accessory buildings on the smaller lots. However, an additional aspect that should be considered is the design, height, or size of the accessory buildings. With the structures being allowed to sit in front of the home, closer to the roadway it will become more of a focal point. Staff also recommends taking this into consideration if accessory buildings are allowed to closer to the roadway.

### **Height/Size in Lake Elmo**

Although it may be common to see accessory structures closer to the front lot line on lake shore lots that does not necessarily mean the visual impact is not there. Some codes do limit the height (as noted above) of the



structures within the “front yard.” Staff does understand that owners of lake shore properties generally accumulate recreational equipment. This needs to be considered with the need for accessory structures but the City also needs to consider the aesthetics of these properties and the accessory structures. Staff would like the Commission to consider limiting accessory structures to one story or a story and a half within the front yard.

---

### **FISCAL IMPACT:**

Staff does not foresee a fiscal impact with the proposed code change.

---

### **COMMENTS/RECOMMENDATION**

Staff recommends the City make an amendment to the City Code that would consist of a notation related to the accessory building requirements in Table 9-2. This change would indicate that accessory buildings can sit closer to the front lot line/roadway than the principle structures on lake lots or in Lake Elmo’s instance “Riparian Lots.”

***LOT, RIPARIAN.*** *A separate parcel of land within a designated shoreland area having frontage along a lake or tributary stream.*

#### **Recommended Amendment:**

Notes to Rural Districts Table 9-2

j. “On properties that are identified as a Riparian Lot, accessory structures may be placed between the principle structure and the public right-of-way.”

If the Commission wants to recommend a reduction in height for accessory structures on riparian lots, the amendment should be added to Section 154.406 B. *Structure Height, Rural Districts.*

B. *Structure Height, Rural Districts.* No accessory building shall exceed the height of the principal structure, with the exception of agricultural buildings, as defined in §154.213. Building projections or features on accessory structures that are not agricultural buildings as defined in §154.213, such as chimneys, cupolas, and similar decorations are permitted in rural districts.

1. No accessory building shall exceed the height of the principal structure, with the exception of agricultural buildings, as defined in §154.213. Building projections or features on accessory structures that are not agricultural buildings as defined in §154.213, such as chimneys, cupolas, and similar decorations are permitted in rural districts.
  2. Riparian Lots, when accessory buildings are allowed between the principle structure and the public right-of-way, the accessory building shall not exceed one story in height or the height of the principle structure, whichever is less.
- 

### **OPTIONS**

- Recommend approval of the proposed amendments.
- Recommend approval of the amendment with changes.
- Recommend denial of the proposed amendments.

*“Motion to recommend approval of the proposed Code amendment that will allow the placement of accessory buildings within the front yard of properties identified as riparian lots.”*

### **ATTACHMENTS**

- Recommended Amendment
- Comparison Cities

*Top of bluff* means the point on a bluff where there is, as visually observed, a clearly identifiable break in the slope from steeper to gentler slope above. If no break in the slope is apparent, the top of the bluff will be determined to be the higher point of a 50 foot segment with an average slope exceeding 18 percent.

*Townhouse* means a single structure consisting of three or more dwelling units contiguous to each other only by the sharing of common side wall(s), each such unit having a separate primary entrance to the exterior of the building at or near grade level. Townhomes may include individual front loading garages, or shared side loading parking areas.

*Trailer house* has the same meaning as manufactured single-family dwelling.

*Use* means the purpose for which land or premises or a building thereon is designated, arranged or intended, or for which it is or may be occupied or maintained.

*Use, accessory* means a use subordinate to the principal use on a lot and exclusively used for purposes incidental to those of the principal use.

*Use, permitted* means a use which may be lawfully established in a particular district, provided it conforms with all requirements, regulations, and performance standards of such district.

*Use, principal* means the main use of land for an activity which is an allowable use of the zoning district in which the land is located.

*Variance* means a modification or variation of the provisions of this section, as applied to a specific piece of property.

*Wind Energy Conversion System (WECS)* – The equipment that converts and then stores or transfers energy from the wind into usable forms of energy. This equipment includes any base, blade, foundation, generator, nacelle, rotor, tower, transformer, vane, wire, inverter, or other component used in the system.

*Yard* means an open space on the same lot with a building or structure, which is unoccupied and unobstructed from its lowest level to the sky, except as otherwise permitted in this section.

*Yard, front* means a yard extending across the front of a lot between the side yard lines and lying between the front street line of the lot or right-of-way and the required front yard setback line, which front yard will be provided on both street frontages of corner lots and double frontage lots. A lakeshore lot will not be considered as having a front yard, but rather will be considered as having a lakeshore yard on one side of the building and a rear yard on the other side of the building.

*Yard, lakeshore* means a yard lying between the natural ordinary highwater mark on the lakeshore and the required lakeshore setback line, for the full width of the lot.

*Yard, rear* means a yard lying between the required rear yard setback line and rear line of the lot, for the full width of the lot. On a lakeshore lot, the rear yard will be the yard which fronts on the street lying between the street line of the lot and the required rear yard setback line.

*Yard, side* means a yard on the same lot with a building between the side yard setback line and the side line of the lot and extending from the front or lakeshore lot line to the rear yard.

*Zero lot line* means the reduction of side yard setback requirements to zero, permitting the placement of a structure near or adjacent to the side yard lot line. With zero lot line, no portion of the structure or accessory appurtenance shall project over the lot line.

*Zoning administrator* means the person authorized to administer and enforce this section.

*Zoning districts* means areas of the city designated for specific uses with specific requirements for use or development.

*Zoning map* means the map or maps incorporated into this section as a part thereof designating the zoning districts

### **505.03 General**

#### **Subdivision 1. Purpose and intent.**

The purpose and intent of this section is:

- (a) To promote the general public health, safety, morals, comfort and general welfare of the inhabitants of the city;
- (b) To promote the character and preserve and enhance the stability of properties and areas within the city;
- (c) To divide the city into zones or districts as to the use, location, construction, reconstruction, alteration and use of land and structures for residence, business and industrial purposes;
- (d) To provide adequate light, air, privacy and safety;

## 505.15 R-1 Residential Zoning District

### Subdivision 1. Intent

This district is intended to preserve, create and enhance areas for low density single-family dwelling development as an extension of existing residential areas and to allow low density development in areas indicated as such in the comprehensive plan where public utilities are available. In general, this district is intended to meet overall density goals of a minimum of 2 units per net acre, however, the city reserves the right to approve developments at a lower density when unique natural features exist that are not conducive to such densities. Unique circumstances include regionally significant woodlands or historic areas or environmental considerations such as steep slopes, shoreland preservation, or floodplain protection.

### Subd. 2. Lot area, depth, width, coverage, setbacks, height standards

Minimum Lot Area (sq. ft)	14,500
Density Range (units per net acre)	2 to 3
Minimum Lot Depth (ft)	120
Minimum Lot Width (ft) (measured at OHW, if applicable and building setback line)	90
Maximum Impervious Surface Coverage (%)	35
Front Yard Setback (ft)* - principal structure - detached accessory structures or other uses	35 50
Side Yard Setback (ft) - principal structure (including attached accessory structures) - detached, accessory structures > or = 1,000 sq. ft - detached, accessory structures < 1,000 sq. ft - other uses abutting residences - other uses	15 30 10 45 10
Non-Lakeshore Rear Yard Setback (ft) - principal structure - detached accessory structures or uses - other uses	25 10 40
Lakeshore Rear Yard (Streetside) Setback (ft) - principal structure - detached accessory structures or uses - other uses	35 50 50
Maximum Building Height (ft/stories)** - principal structure - accessory Structure	35/3 25/2
Maximum Driveway Width (measured at right-of-way)	24
Public Sewer Required?	Yes
Minimum Floor Area Per Dwelling (sq.ft per 2/3 bedrooms)	960/1040 above grade
See General Regulations (Section 505.05)	

- \* See general setback provisions (Section 505.05 subd. 8)
- \*\* See general height regulations (Section 505.05 subd. 5)

#### Subd 2. Permitted Uses

The following uses are permitted in this zoning district. Omission from this list or the list described in subdivision 3 means that the use is prohibited.

- a) Single family, detached dwellings (including manufactured or modular homes)
- b) Golf Courses and club houses (excepting independent and commercial mini golf courses and driving ranges)
- c) Historic sites
- d) Parks and recreational trails and paths
- e) Public utility buildings
- f) Religious or other similar assembly uses, with the approval of a site plan
- g) State licensed residential facility or housing with services establishment serving six or fewer persons, as defined and regulated by state statute
- h) State licensed day care facility serving 12 or fewer persons, as defined and regulated by state statute
- i) Group family day care facility licensed under Minnesota Rules to serve 14 or fewer children, as defined and regulated by state statute
- j) Temporary real estate offices or model homes associated with new development

#### Subd 3. Conditional Uses

- a) Accessory structures exceeding 1,000 square feet
  - b) Cemeteries or mausoleums
  - c) Guest homes have a gross floor area exceeding 1,000 square feet or square footage that is 30 percent or more of the primary residence's footprint, whichever is less
  - d) Home occupations, if required in accordance with Section 505.07 subd.10)
  - e) Libraries and museums
  - f) Recreation facilities owned in common (including, but not limited to homeowner's association, country club) unless a site plan is already required
  - g) Schools
  - h) Ground-mounted solar energy systems (must be a principal use to which the system is accessory)
- [Added 07/20/2015, Ordinance 431]

## 505.17 R-2 Residential Zoning District

### Subdivision 1. Intent

This district is intended to accommodate the low-medium and medium density land use designation for those parcels guided as such in the 2006 Comprehensive Plan Amendment, as indicated on page 2-8 of the 2030 Comprehensive Plan.

### Subd. 2. Lot area, depth, width, coverage, setbacks, height standards:

Minimum net density	2 units per acre
Maximum net density	3.5 units per acre
Minimum Lot Area (sq. ft)	11,000 square feet
Lot Depth (ft)	100 feet
Lot Width (ft) (measured at OHW and building setback line)	75 feet
Maximum Lot Coverage-all impervious (%)	35
Lakeshore Structure Setback (ft) *	75
Front Yard Setback (ft) - principal structure - detached accessory structures or other uses**	30 50
Side Yard Setback (ft) - principal structure (including attached accessory structures) - detached, accessory structures > or = 1,000 sq. ft - detached, accessory structures < 1,000 sq. ft - other uses	10 Allowed only with CUP 2010
Non-Lakeshore Rear Yard Setback (ft) - principal structure - detached accessory structures or uses - other uses	25 10 30
Lakeshore Rear Yard (Streetside) Setback (ft) - principal structure - detached accessory structures or uses	20 40
Maximum Building Height (ft/stories)*** - principal structure - accessory structure	35/3 20/1
Maximum Driveway Width (measured at right-of-way)	18
Public Sewer Required?	Yes
Minimum Floor Area Per Dwelling (sq. ft for 2/3 bedrooms)	960/1040
<b>See General Regulations for additional standards (Section 505.07)</b> * see Section 505.07 subd. 8 for information on setbacks ** see Section 505.07 subd. 9 for information on acc. structures *** see Section 505.07 subd. 5 for information on height	

(8) The required front yard of a corner lot will be unobstructed above a height of three feet in a triangular area, two sides of which are the lines running along the side street lines between the street intersection and a point 20 feet from the intersection and the third side of which is the line between the latter two points;

(9) Except in the R-2(DB) Douglas Beach single-family residence district, in determining the depth of a rear or side yard for any building where the rear or side yard opens into an alley, driveway easement or joint driveway, one-half the width of the alley, driveway easement or joint driveway, but not exceeding ten feet, may be considered as a portion of the rear or side yard subject to the following qualifications:

(i) The depth of any rear or side yard will not be reduced to less than 15 feet by the application of this exception;

(ii) If the door of any garage or building, used for storage of automobiles, trucks, boats, machinery or similar vehicles opens toward an alley, driveway easement or joint driveway, the building will not be erected or established closer to the rear or side lot line, than a distance of 25 feet;

(10) The minimum required front yard for nonconforming structures in the A-agriculture and AP-agriculture preservation zoning districts will be the front yard setback of that nonconforming structure as of the date of the adoption of this section, providing that the minimum required front yard, in such a case, will be no less than 35 feet.

(11) The minimum required front yard for a new farm building on a lot on which there already is a nonconforming farm building will be the front yard setback of the nearest nonconforming farm building on that same lot as of the date of the adoption of this section, providing that the minimum required front yard, in such a case, will be no less than 50 feet.

#### **Subd. 9. Accessory Structures and Uses**

(a) The following uses are permitted in residential and agricultural zoning districts as accessory uses, subject to the terms listed herein and subject to the regulations set forth in the residential zoning districts:

- (1) accessory structures
- (2) guest apartments
- (3) guest homes smaller than 1,000 square feet of gross floor area are allowed in the A, AP, and R-1 zoning districts
- (4) home occupations, subject to the regulations in this section
- (5) privately-owned recreational facilities on a single-family lot (including, but not limited to, pools, tennis courts, playhouses)
- (6) Building-integrated solar energy systems and solar energy systems, with the exception that solar energy systems are permitted uses in the Agricultural Preserve district. In all other residential and agricultural zoning districts, solar energy systems are a conditional use permit provided that there is a principal use to which the system is accessory.

*[Added 07/20/2015, Ordinance 431]*

(b) No accessory structure will be allowed to exist or be constructed on any lot that does not contain a principal structure to which it is accessory, unless an accessory home agreement is entered into and approved by city council.

(c) Percentage of required rear yard occupied. No accessory structure will occupy more than thirty percent of a required rear yard.

(d) Swimming Pools. Where noncommercial swimming pools are constructed as accessory structures in residence districts, a four-foot high safety fence with self-closing and self-latching gates or an automatic pool cover is required, except in the AP-agriculture preservation and A-agriculture zoning districts. The automatic pool cover shall meet the standards of F1346-91 of the American Society of Testing and Materials (ASTM), as such standards may be modified, superseded or replaced by ASTM. Fences shall be identified on the survey and submitted with the building permit application. It shall be the responsibility of the building permit applicant and property owner to submit materials ensuring compliance with the ASTM standards for an automatic pool cover prior to the issuance of a building permit. Compliance with the ASTM standards shall be shown with the building permit application for the pool. Any person violating this ordinance shall be guilty of a misdemeanor.

*[Revised 02/04/2008, Ordinance 319]*



(d) Air conditioning units and electric generators. All air conditioning units excluding window units and generators shall meet the required building setback from lot lines.

(e) Attached accessory structures. If an accessory structure is attached to the principal structure, it will be made structurally a part of the principal structure and will comply in all respects with the requirements of this section applicable to the principal structure.

(f) Detached accessory structures. **No detached accessory structure of any size shall be located in any lakeshore yard,** exceed the height of the principal structure, or be closer than ten feet to the principal structure. An exception to the lakeshore setback will be made if the structure is 120 square feet in size or less AND is used entirely for the storage of boating equipment, lawn maintenance supplies, lawn furniture, or other similar uses.

(g) Guest homes. Where permitted by this code, guest homes shall be subject to the following requirements:

(1) The lot must contain an existing conforming single-family dwelling unit.

(2) The guest home must be completely detached from the primary residence.

(3) The guest home must conform to accessory structure setbacks, lot coverage and all other requirements set forth by the city code that are applicable to primary residential dwellings in the zoning district in which the property is located.

(4) The height of the guest home must not exceed 25 feet.

(5) The roof pitch, architectural design, and exterior materials and colors of the guest home shall be consistent with the primary residence, and the appearance of the guest home shall be that of a single-family dwelling unit.

(6) The driveway to the primary residence must be used to access the guest home. No additional driveway or curb cut will be permitted.

(7) A guest home may have an attached garage. The attached garage shall count towards the total allowed square

**CHAPTER 5: USE STANDARDS***Section 5.3 Accessory Use Standards**(A) General Standards and Limitations for Accessory Uses*

---

**(3) Places of Public Assembly**

- (a)** Places of Public Assembly shall only be established on parcels—or a group of parcels under the same ownership—that exceed one (1) acre in size
- (b)** Along side lot lines, buildings shall be set back from an adjoining residential district a distance no less than double the adjoining residential side yard setback.
- (c)** Adequate off-street parking and access shall be provided as required by Section 4.7, Parking.
- (d)** Adequate off-street loading and service entrances are considered and satisfactorily provided.

**(4) Regional Trail**

- (a)** Recreational use of the Regional Trail may include pedestrian uses such as walking or running, and non-motorized devices such as bicycles, tricycles, roller blades, roller skates, small wagons, strollers, wheelchairs, and non-motorized scooters.
- (b)** Motorized vehicles, except for motorized wheel chairs or similar accessibility devices, are prohibited.

---

**5.3 Accessory Use Standards**

---

**(A) General Standards and Limitations for Accessory Uses****(1) Compliance with Ordinance Requirements**

All accessory uses and accessory structures shall conform to all applicable requirements of this Ordinance. The provisions of this Section establish additional standards and restrictions for particular accessory uses and structures.

**(2) General Standards**

All accessory uses and accessory structures shall meet the following standards:

- (a)** Directly serve the principal use or structure;
- (b)** Be customarily accessory and clearly incidental and subordinate to the principal use and structure;

## **CHAPTER 5: USE STANDARDS**

### *Section 5.3 Accessory Use Standards*

#### *(A) General Standards and Limitations for Accessory Uses*

---

- (c) Be subordinate in area, extent, and purpose to the principal use or structure;
- (d) Be owned or operated by the same person as the principal use or structure;
- (e) Be located on the same lot as the principal use or structure;
- (f) It is necessary to have an allowed Principal Use on the same lot in order to have one or more accessory uses on the lot;
- (g) Together with the principal use or structure, not violate any standards of this Ordinance;
- (h) Not be located within platted or recorded easements or over underground public utilities unless specifically allowed by this Ordinance or authorized via an encroachment agreement with the City;
- (i) An accessory building shall be considered an integral part of the principal building if it is connected to the principal building either directly or by an enclosed passageway. Such accessory buildings shall adhere to requirements for the principal building.
- (j) If a principal building is proposed to be removed with no immediate replacement, all accessory structures shall also be removed.

#### **(3) Maximum Number of Accessory Structures**

There is no maximum number of accessory structures that can be erected on a lot.

(B) Table of Permitted Accessory Uses

TABLE 5-2: PERMITTED ACCESSORY USES			
Accessory Use or Structure	Base Zoning Districts		Additional
	RI	PI	t
Accessory Dwelling Unit	P		<a href="#">5.3(D)(1)</a>
Accessory Building – minor	P		<a href="#">5.3(D)(2)</a>
Accessory Building – major	P		<a href="#">5.3(D)(3)</a>
Air Conditioning Units	P		<a href="#">5.3(D)(4)</a>
Barbeque, Permanent	P		<a href="#">5.3(D)(5)</a>
Co-located Wireless Telecommunications Antennae	C		<a href="#">3.7(E)</a>
Driveways	P		<a href="#">5.3(D)(6)</a>
Fences or Walls	P	P	<a href="#">4.</a>
Fire Pit	P		<a href="#">5.3(D)(7)</a>
Home Occupations	P		<a href="#">5.3(D)(8)</a>
Lake Accessory Uses	P		<a href="#">5.3(D)(9)</a>
Landscaping	P	P	<a href="#">5.3(D)(10)</a>
Motor Vehicles	P		<a href="#">5.3(D)(11)</a>
Parking Spaces, Off-street	P		<a href="#">4.</a>
Patio	P		na
Outdoor Storage	P		<a href="#">5.3(D)(12)</a>
Park Facility Buildings & Structures (public)	P		<a href="#">5.3(D)(13)</a>
Private Amateur Radio Antenna	C		<a href="#">5.3(D)(14)</a>
Private Receiving Antennae and Antenna Support Structures	C		<a href="#">5.3(D)(15)</a>
Recreational Equipment	P		<a href="#">5.3(D)(16)</a>
Shelters (Storm or Fallout)	P		<a href="#">5.3(D)(17)</a>
[1]: Consult <a href="#">Table 3-3</a> for additional regulations on setbacks			

**CHAPTER 5: USE STANDARDS***Section 5.3 Accessory Use Standards**(D) Additional Specific Standards for Certain Accessory Uses*

---

(l) Deed restrictions. Before issuing a building permit for a new accessory unit , the owner occupant shall record with Hennepin County, against the title of the subject property, a deed restriction running in favor of the City limiting the occupancy of the accessory unit as provided for in this ordinance.

(m) Right of Entry. Before a Building Permit is issued for an accessory unit, the Owner shall for its self, heirs and assigns enter into an agreement with the City to allow the City reasonable rights of entry for the purpose of performing inspections of the accessory unit.

(n) The Agreement shall be recorded with Hennepin County with the title of the property.

(2) **Accessory Building – minor**

(a) Minor accessory buildings do not require a building permit, but shall comply with all applicable zoning regulations.

(b) Minor accessory buildings shall be limited to a height of fifteen (15) feet.

(c) Minor accessory buildings shall be finished in a similar appearance as the principal structure.

(3) **Accessory Building – major**

(a) **Materials and Appearance**

Major accessory buildings shall be constructed to be similar to the principal building in architectural style and building materials.

(b) **Private Garages**

(i) The maximum height of a detached private garage shall not exceed one-half of the height of the principal structure, or one story, whichever is greater, but in no case taller than the principal structure.

(ii) Private garages shall only be used by the family or families residing upon the premises.

## DETACHED ACCESSORY STRUCTURE REGULATIONS

### § 153.110 DETACHED ACCESSORY STRUCTURES IN C, A, RR, SF, MXR-1, MXR-2, MXR-3, MU-1, MU-2, AND BP DISTRICTS.

Garages, storage buildings or sheds, and children's playhouses are examples of accessory structures and shall meet the following requirements.

(A) *Required permits.* A building permit is required for all accessory structures except agricultural buildings on a commercial farm, as defined in M.S. § 273.13, Subd. 23, as it may be amended from time to time, and accessory structures less than 120 square feet. A certificate of compliance is required for all agricultural buildings.

(B) *Time of construction.* No accessory structure shall be constructed on a lot prior to construction of the principal structure unless the property is a commercial farm property containing 40 acres or more, or unless the accessory structure is permitted as a conditional use on an adjacent non-riparian lot located within 100 feet of a riparian lot under common ownership which contains a principal structure. An agricultural building must be related to a commercial farming operation on the parcel that the building is located unless approved by a conditional use permit (CUP).

(C) *Location.*

(1) Detached accessory structures shall have a minimum building separation of 6 feet from the principal structure.

(2) See the zoning district setback requirements.

(3) Accessory structures located on through lots may be located between the rear of the principal structure and the public right-of-way.

(4) Accessory structures may be placed between the principal structure and the public right-of-way on lakeshore lots meeting all required setbacks and lot coverage.

(5) Accessory structures shall not be placed between the principal structure and the lakeshore, except 1 structure no larger than 120 square feet meeting all the required setbacks for the applicable district shall be permitted.

(6) Accessory structures shall be limited in height to the standards for detached accessory standards in the applicable zoning district.

(D) *Size.* The maximum allowable total or accumulated floor area of all detached accessory structures on a lot shall be as follows:

(1) Lots less than 2.5 acres: 1,500 square feet;

(2) Lots 2.5 acres to 5 acres: 2,500 square feet;

(3) Lots greater than 5 acres to 10 acres: 3,000 square feet;

(4) Lots greater than 10 acres to 20 acres: 3,500 square feet;

(5) Lots greater than 20 acres: no limit;

(6) The square footage of above grade or below grade swimming pools and 1 storage shed of not more than 120 square feet shall not be included in the calculation of maximum allowable area of accessory structures;

(7) No land shall be subdivided so as to have a larger accessory structure total or accumulated floor area than permitted by this chapter.

(E) *Number.* The maximum number of accessory structures is as follows:

(1) On parcels of 2.5 acres or less, 1 accessory structure is allowed with 1 additional single story storage shed of 120 square feet or less;

(2) On parcels greater than 2.5 acres to 20 acres, a maximum of 2 accessory structures are allowed with 1 additional single story storage shed of 120 square feet or less;

(3) On parcels greater than 20 acres, there is no limit on the number of accessory structures, provided they are agricultural buildings;

(4) No land shall be subdivided so as to exceed the total number of structures permitted by this chapter.

(F) *Height.* Accessory structures shall be limited to the permitted building height for accessory structures in the respective zoning district. The height of accessory structures permitted pursuant to §§ 153.333(H), 153.334(Q), and 153.335(R) shall not exceed 1 story.

(G) *Use of accessory structures.* In agricultural or residential districts, accessory structures are to be used for personal use or agricultural use only, and no commercial use or commercial related storage is allowed except that home occupations are permitted in an accessory structure as provided in § 153.096(L).

(H) *Accessory structures for domestic farm animals.* All domestic farm animal structures, feedlots, and manure storage sites must meet the requirements of this section and § 153.096(P).

(I) *Fish houses.* No more than 1 fish house shall be permitted on a residential lot.

(J) Temporary pole and canvas like storage structures may be used to cover and protect recreational equipment from the elements between Halloween and April 15th. No more than 1 shall be permitted on any residential property at any one time. Structures shall not exceed 200 square feet and meet all accessory structure requirements. These types of structures are not permitted for year round storage or use and must be removed from residential properties during the time period of April 15th through Halloween and stored in a permanent structure. The city shall have the authority to require the removal of this type of structure if it causes a nuisance, is viewed as excessive use of the parcel it is located on, or is being used for something other than recreational equipment storage during the allowable time period.

(K) *Residential yard accessories and/or equipment.* Recreation equipment such as play apparatus, swing sets and slides, sandboxes, poles for nets, tree houses, above or in-ground swimming pools, hot tubs, play houses exceeding 25 square feet in floor area, sheds utilized for storage of equipment, landscape water features and man-made ponds/streams and detached arbors or trellises, shall be subject to accessory structure setbacks.

(L) A detached elevated walkway or deck surrounding a pool or hot tub must meet the setback requirements for an accessory structure of the applicable zoning district. Pool or hot tub decks are not subject to the 10 foot encroachment applicable to other decks into the required rear yard.

(M) *Exterior design and color of accessory structures.*

(1) The exterior design and color of the accessory structure shall be compatible with the exterior design and color of the principal building except in AP, C, A, and RR Zoning Districts.

(2) In the RR Zoning District, pole-type accessory structures shall be allowed to the rear of the principal building. The exterior design and color of accessory structures located between the road and the principal building shall be compatible with the exterior design and color of the principal building.

(3) Pole-type accessory structures shall be allowed in AP, C, and A Zoning Districts. The color of an accessory structure located between the road and the principal building must be compatible with the color of the principal building.

(N) *Exterior walls and the like.* Every exterior wall, foundation, and roof of any accessory structure or structure shall be reasonably watertight, weather tight, and rodent proof and shall be kept in a good state of maintenance and repair. Exterior walls shall be maintained free from extensive dilapidation due to cracks, tears, or breaks of deteriorated plaster, stucco, brick, wood, and other material.

(O) *Exterior wood surfaces.* All exterior wood surfaces, other than decay resistant woods, shall be protected from the elements and from decay by painting or other protective covering or treatment. A protective surface of an accessory structure or structure shall be deemed to be out of repair if more than 25% of the exterior surface area is unpainted or paint blistered and shall be painted. If 25% or more of the exterior surface of the pointing of any brick, block, or stone wall is loose or has fallen out, the surface shall be repaired.

(Ord. 537, passed 11-8-2004; Am. Ord. 596, passed 2-8-2010; Am. Ord. 669, passed 12-4-2017; Am. Ord. 670, passed 12-4-2017)

#### **§ 153.111 ACCESSORY STRUCTURES IN MULTIPLE-FAMILY DEVELOPMENTS.**

(A) A building permit is required for any accessory structure over 120 square feet. Required trash enclosure service structures shall not be considered an accessory structure.

(B) Detached garages shall have front yard setbacks of not less than that required for principal structures and side and rear yards of not less than 10 feet. Access to detached garages shall be from the interior of the site.

(C) The location, access, materials, color, screening, and related landscaping of multiple-family detached accessory structures shall be reviewed and approved as proposed or with changes in the site plan review or Planned Unit Development (PUD) review process.

(Ord. 537, passed 11-8-2004; Am. Ord. 596, passed 2-8-2010)

#### **§ 153.112 ACCESSORY STRUCTURES IN BUSINESS AND INDUSTRIAL DISTRICTS.**

(A) *Building permit.* A building permit is required for any accessory structure over 120 square feet. Required trash enclosure service structures shall not be considered an accessory structure.

(B) *Number of structures.* One accessory structure (in addition to the required trash enclosure service structures) is allowed on a parcel in the B-2, B-3, and I Zoning Districts, provided it is used solely for storage related to the principal use of the property. An accessory structure related to a principal use requires a CUP.

(C) *Location.* The accessory structure must be placed to the rear of the principal building and conform to setback requirements and lot coverage standards for the principal building in the applicable zoning district. The purpose of these standards is to enhance the visual character of business and industrial development.

(D) *All accessory structures.* In business or industrial districts, the location, access, materials, color, screening, and related landscaping will be reviewed and approved as proposed or with changes in the site plan review or PUD review process.

(E) Accessory structures shall be limited in height to the standards for detached accessory structure standards in the applicable zoning district.

(Ord. 537, passed 11-8-2004; Am. Ord. 596, passed 2-8-2010)



## § 153.319 SINGLE-FAMILY (SF) RESIDENTIAL DISTRICT.

(A) *Purpose.* The Single-Family (SF) Residential District is intended to provide permanent areas for low density medium and large lot single-family urban development; to broaden the choice of residential living styles in the city; to establish areas for the development of single-family detached housing in areas of the city within public sewer; and to restrict encroachment of incompatible uses.

(B) *Permitted uses.* Subject to applicable provisions of this chapter, the following are permitted uses in the SF District:

- (1) Dwelling, single-family detached;
- (2) Recreation, public.

(C) *Accessory uses.* Subject to applicable provisions of this chapter, the following accessory uses in the SF District are allowed only when it is an accessory to an existing principal permitted use on the same lot. All accessory uses must meet the procedures set forth in and regulated by §§ 153.110*et seq.*

- (1) Detached accessory structures;
- (2) Day care facility, unlicensed - serving 6 or fewer persons;
- (3) Kennel, private - 3 pets or fewer;
- (4) Residential facility, licensed - serving 6 or fewer persons;
- (5) Other uses customarily associated with but subordinate to a permitted use as determined by the city;
- (6) Amateur radio antenna (subject to the amateur radio antenna standards in §153.096(II)(9)).

(D) *Certificate of compliance.* Subject to applicable provisions of this chapter, the following are uses in the SF District that require approval with a certificate of compliance as set forth in and regulated by § 153.029.

(1) *Accessory uses.*

- (a) Accessory apartment within a single-family dwelling;
- (b) Day care facility, licensed - serving 7 to 14 persons;
- (c) Home occupations;
- (d) Residential facility, licensed - serving 7 to 10 persons.
- (e) Solar energy systems, either roof or ground mounted (meeting accessory structure requirements) according to § 153.307.

(E) *Conditional uses.* Subject to applicable provisions of this chapter, the following are conditional uses in the SF District (requires a conditional use permit based upon procedures set forth in and regulated by § 153.034).

(1) *Principal uses.*

- (a) Cemetery.
- (b) Day care facility, licensed - serving more than 14 persons.
- (c) Essential services, governmental buildings and storage.
- (d) Essential services, utility substation.
- (e) Place of worship.
- (f) Recreation, commercial.
- (g) Residential facility, licensed - serving more than 10 persons.
- (h) School.
- (i) Yard waste facility.

(2) *Accessory uses.*

- (a) Bed and breakfast inn;
- (b) Columbarium - accessory to place of worship;
- (c) Accessory structure on adjacent non-riparian lot.

(3) *Similar uses.* Other uses similar to those permitted in this section as determined by the Planning Commission and City Council.

(4) New wireless support structures and small wireless facilities located within the public right-of-way and meeting the requirements of Chapter 98, and subject to the conditions found in §153.096(PP).

(F) *Interim uses.* Subject to applicable provisions of this chapter, the following are interim uses in the SF District (requires an interim use permit based upon procedures set forth in and regulated by § 153.035).

- (1) Dwelling, temporary during construction.
- (2) Dwelling, temporary care facility.
- (3) Other uses similar to those permitted in this section as determined by the Planning Commission and City Council.

(G) *Lot size, setback, and height requirements.* The following minimum requirements shall be observed in an SF District subject to additional requirements, exceptions, and modifications set forth in this chapter.

(1) *Minimum lot requirements.*

(a) *Lot area.*

1. Without sewer and water: 10 acres;
2. With sewer only: 25,000 square feet;
3. With sewer and water: 15,000 square feet.
4. With sewer and water: 7,500 square feet for a new lot of record, constructed according to affordable housing goals as stated in the Comprehensive Plan and meeting inclusionary housing requirements in § 153.308. Such lot size reduction shall not be permitted within the Shoreland Overlay Zone.

(b) *Lot width.*

1. Without sewer and water: 300 feet at the public right-of-way;
2. With sewer only: 100 feet at the required front yard setback;
3. With sewer and water: 80 feet at the required front yard setback.
4. With sewer and water: 60 feet at the required front yard setback for a new lot of record, constructed according to affordable housing goals as stated in the Comprehensive Plan and meeting inclusionary housing requirements in § 153.308. Such lot width reduction shall not be permitted within the Shoreland Overlay Zone.

(2) *Setbacks.*

(a) *Principal structure.*

1. Front yard:
  - a. Arterials, as designated in the Comprehensive Plan: 75 feet from the right-of-way line or 150 feet from the centerline of the street, whichever is greater;
  - b. Local/collector street: 30 feet from the public right-of-way;
  - c. Private street: 30 feet from the edge of road.
2. Side yard: 10 feet.
3. Side street: 25 feet.
4. Rear yard: 30 feet.

(b) *Detached accessory structure.*

1. Front yard: 30 feet and cannot be located between the principal structure and the street.
2. Side street: 25 feet and cannot be located between the principal structure and the street.
3. Side yard: 10 feet.
4. Rear yard: 10 feet.

(3) *Building height.*

- (a) Principal structures: shall be limited to a maximum height of 35 feet or 3 stories, whichever is less.
- (b) Accessory structures: shall be limited to 1 story with a maximum sidewall height of 10 feet, measured from the floor surface to the underside of the ceiling member.

(Ord. 537, passed 11-8-2004; Am. Ord. 549, passed 5-22-2006; Am. Ord. 596, passed 2-8-2010; Am. Ord. 651, passed 3-14-2016; Am. Ord. 670, passed 12-4-2017; Am. Ord. 676, passed 7-9-2018)

<b>Minimum Principal Building Setbacks (feet)</b> <sup>h,i</sup>					
Front Yard	30	200	30	30	100
Interior Side Yard	10	200	10	10	50
Corner Side Yard <sup>g</sup>	25	200	25	25	80
Rear Yard	40	200	40	40	100
<b>Minimum Accessory Building Setbacks (feet)</b> <sup>h,i,j</sup>					
Front Yard	30	200	30	30	100
Interior Side Yard	10	200	10	10	15
Corner Side Yard	25	200	25	25	30
Rear Yard	40	200	40	10	15
<b>Minimum Agricultural Related Setbacks</b> (Animal buildings, feedlots or manure storage sites)					
Any Property Line	200	200	200	-	-
Any Existing Well or Residential Structure	50	50	50	-	-
Any Body of Seasonal or Year-round Surface Water	200	200	200	-	-

Notes to Rural Districts Table 9-2

- a. 1 dwelling unit per 40 acres applies to all non-farm dwellings. In addition to non-farm dwellings (1 per 40 acres), each farm is allowed one farm dwelling per farm.
- b. Nominal 40 acres: a 40-acre parcel not reduced by more than 10% due to road rights-of-way and survey variations.
- c. Nominal 10 acres: a 10-acre parcel not reduced by more than 10% and/or a 10-acre parcel located on a corner or abutting a street on 2 sides not reduced by more than 15% due to road rights-of-way and survey variations.
- d. The minimum lot size for lots served by public sanitary sewer shall be 24,000 square feet per residential unit.
- e. A minimum of 1.25 acres of land above the flood plain or free of any drainage easements is required.
- f. Lots must be configured to contain a circle with a diameter of 250 feet minimum; the ratio of lot length to width shall be a maximum of 3:1 – Flag lots are prohibited.
- g. Corner properties: The side façade of a corner building adjoining a public street shall maintain the front setback of the adjacent property fronting upon the same public street, or the required front yard setback, whichever is less. If no structure exists on the adjacent property, the setback shall be as shown in the table.
- h. Setback standards do not apply to solar farms. 154.915 should be referenced for these specific standards.

- i. Ground-mounted wind generators may exceed the allowable height restriction designated in all rural districts and are subject to different setback requirements as identified in section 154.308.
- j. On properties that are identified as a Riparian Lot, Accessory structures may be placed between the principle structure and the public right-of-way.

(Ord. 2012-073, passed 3-19-2013; Am. Ord. No. 08-198, passed 2-7-2018; Am. Ord. 08-199, passed 2-7-2018)

#### **§ 154.403 DIMENSIONAL REQUIREMENTS AND PRESERVATION OF OPEN SPACE.**

- A. Lot Configuration, RR District. All lots must be rectangular in shape and any 2 adjacent sites must have an aspect ratio not exceeding 4:1.

(Ord. 2012-073, passed 3-19-2013)

#### **§ 154.404 SITE DESIGN AND DEVELOPMENT STANDARDS.**

Development of land within the rural districts shall follow established standards for traffic circulation, landscape design, parking, signs and other considerations as specified in Articles 7,8 and 9. (Ord. 08-152, passed 10-01-2016) The following standards apply to specific uses, and are organized by district.

- A. *Single-Family Detached Dwelling, All Rural Districts.* All single-family dwellings shall be at least twenty-four (24) feet in width, at least nine hundred sixty (960) square feet in area, and be placed on a permanent foundation.
- B. *Septic Drainfield Regulation, A, RR, and RS Districts.* All applicants for a use or building permit in any district not served by public sanitary sewer must demonstrate that an on-site sewage treatment system (Primary and Secondary Location) as approved by Washington County can be installed in accordance with Washington County Subsurface Sewage Treatment System Regulations.
- C. *Septic Drainfield Regulation, RE District.* All applicants for a use or building permit in any district not served by public sanitary sewer must demonstrate that an on-site sewage treatment system (Primary and Secondary Location) as approved by Washington County can be installed in accordance with Washington County Subsurface Sewage Treatment System Regulations.
- D. *Secondary Dwelling, A District.* One non-farm dwelling per each 40 acres, or part of a dwelling on a prorated basis, not already containing a farm or non-farm dwelling, is permitted provided:
  - 1. The dwelling unit is located on a separate parcel of record in the office of the County Recorder and/or County Auditor, which shall be at least 1-1/2 acres in size;
  - 2. The parcel on which the dwelling unit is located must have at least 125 feet of frontage along a public street, be rectangular in shape and no dimension to be greater than 3 times the other; and

(Ord. 2012-073, passed 3-19-2013)

#### **§ 154.405 ACCESSORY USES AND STRUCTURES.**

Accessory uses are listed in the Rural District Use Table as permitted or conditional accessory uses. Accessory uses and structures in the rural districts shall comply with the following standards and all other applicable regulations of this ordinance:

- A. *Phasing*. No accessory use or structure shall be constructed or established on any lot prior to the time of construction of the principal use to which it is accessory.
- B. *Incidental to Principal Use*. The accessory use or structure shall be incidental to and customarily associated with the principal use or structure served.
- C. *Subordinate to Principal Use*. The accessory use or structure shall be subordinate in area, extent, and purpose to the principal use or structure served.
- D. *Function*. The accessory use or structure shall contribute to the comfort, convenience, or necessity of the occupants of the principal use or structure served.
- E. *Location*. The accessory use or structure shall be located on the same zoning lot as the principal use or structure.
- F. *Exemption*. Fish houses as defined in this code and located in the RS Rural Single Family District are exempt from this requirement provided the following criteria are met: must be located on a lot half acre in size or more with direct access to a water body; is 120 square feet or less; and complies with Shoreland regulations and RS Rural Single Family setback requirements. One fish house per lot may exist without a principal structure. The structure must maintain a current fish house license with the Minnesota Department of Natural Resources regardless if it is left on a water body overnight. If a current Minnesota Department of Natural Resources Fishhouse License is not obtained for the structure, the structure must be removed from the property within 60 days.

(Ord. 2012-073, passed 3-19-2013; Am. Ord. 08-138, passed 6-21-2016)

#### **§ 154.406 ACCESSORY STRUCTURES, RURAL DISTRICTS.**

- A. *Size and Number*. The maximum number and size of accessory buildings permitted in rural zoning districts are outlined in Table 9-3:

**Table 9-3: Accessory Buildings, Rural Zoning Districts**

<b>Lot Size</b>	<b>Maximum Structure Size<sup>a, c</sup> (square feet)</b>	<b>No. of Permitted Bldgs</b>
under 1 acre	1,200	1
1 – 1.99 acres	1,500	1
2 – 4.99 acres	1,750	1
5 – 9.99 acres	2,000	2

10 – 14.99 acres	2,500	2 <sup>b</sup>
15 – 19.99 acres	3,000	2 <sup>b</sup>
20 – 39.99 acres	4,000	2 <sup>b</sup>
40+ acres	Unregulated <sup>c</sup>	Unregulated <sup>c</sup>

Notes to Table 9-3

- a. Maximum structure size accounts for the total maximum area allowed for all permitted accessory structures combined.
- b. One agricultural building, as defined in §154.213, is allowed in addition to the permitted number and size of accessory structures.
- c. Agricultural buildings, as defined in §154.213, are allowed on properties over 40 acres in addition to two permitted accessory structures which total 4,000 square feet and are not classified as agricultural.

**B. *Structure Height, Rural Districts.***

1. No accessory building shall exceed the height of the principal structure, with the exception of agricultural buildings, as defined in §154.213. Building projections or features on accessory structures that are not agricultural buildings as defined in §154.213, such as chimneys, cupolas, and similar decorations are permitted in rural districts.
2. Riparian Lots, when accessory buildings are allowed between the principle structure and the public right-of-way the accessory building shall not exceed one story in height or the height of the principle structure, whichever is less.

**C. *Structure Location, Rural Districts.*** No detached garages or other accessory buildings shall be located nearer the front lot line than the principal building on that lot.

**D. *Exterior Design and Color.*** The exterior building materials, design and color of all accessory building or structures shall be similar to or compatible with the principal building, with the exception of the following accessory building or structures:

1. Detached domesticated farm animal buildings
2. Agricultural buildings
3. Pole buildings, as defined and regulated in §154.214.
4. Gazebos
5. Swimming pools
6. Other structures in which the required design is integral to the intended use, such as a greenhouse.

**E. *Attached Garages, Size.*** Attached garages must not exceed the footprint size of the principal building.

(Ord. 08-104, passed 3-18-2014; Am. Ord. 08-138, passed 6-21-2016; Am. Ord. 08-210, passed 5-15-2018) Penalty, see § 154.999



## STAFF REPORT

DATE: June 28, 2021

**Unfinished Business**

ITEM #:

**TO:** Planning Commission  
**FROM:** Ken Roberts, Planning Director  
**AGENDA ITEM:** **Lake Elmo Tree Preservation Code Amendment**  
**REVIEWED BY:** Ben Prchal, City Planner  
Sarah Harding, City Landscape Architect (Wenck and Associates)

---

### **BACKGROUND:**

City staff has been directed to prepare amendments to the City's Tree Preservation ordinance (Section 154.257) and the City's Landscape ordinance (Section 154.258). The requested changes are to clarify many of the City standards and requirements about tree preservation and landscaping for construction, new development and redevelopment projects in Lake Elmo.

In addition, there are aspects of the City tree preservation and landscape ordinances that Lake Elmo could amend to clarify processes and to meet current City standards and practices. As such, staff has included several other changes to the tree preservation ordinance as part of this review.

### **REVIEW HISTORY:**

On September 8, 2020, City staff presented information to the City Council about the City's tree preservation ordinance and tree trimming policy. After review and discussion of the existing City ordinances and practices, the City Council direct staff to prepare possible revisions for Council consideration to the City's tree preservation ordinance and the City's landscaping standards.

On October 26, 2020, the Planning Commission reviewed the first draft of the proposed amendments to the Tree Preservation and Landscape ordinances. The Commission asked staff several questions about the proposed changes and provided staff with a few comments and suggestions for changes to the draft ordinances.

On February 22, 2021, the Planning Commission held a public hearing and reviewed another set of proposed amendments to the City's Tree Preservation and Landscape Ordinances. After much discussion, the Commission tabled action on the proposed Code Amendments to the Lake Elmo Tree Preservation and Landscape ordinances to allow staff to do further research and editing of the proposed changes.

### **ISSUE BEFORE THE PLANNING COMMISSION:**

The Planning Commission is being asked to review and make a recommendation about the proposed updated code language for the Lake Elmo tree preservation ordinance.

### **REVIEW AND ANALYSIS:**

Zoning and environmental regulations (including tree preservation and landscaping ordinances) allow cities to ensure that new development or redevelopment meets the standards of the city for a safe, functional and enjoyable community. Importantly, environmental protection regulations can help the City preserve and enhance important natural resources and environmental features by regulating what changes or impacts the city will allow or not allow to the natural features on construction, new development and redevelopment sites. It is the goal of City staff to have ordinances that provide clear and reasonable development and design standards while protecting existing trees and ensuring the installation of quality landscaping in Lake Elmo.

Many of the proposed ordinance changes are to ensure the tree preservation ordinance will be consistent with the City landscape ordinance. This is important as the planting of new or replacement trees as may be required by the tree preservation ordinance become part of the landscape plan for a new development or redevelopment site. Staff also is proposing to add language in the update to the tree preservation ordinance that outlines the situations when the Lake Elmo will not require a tree preservation plan.

Since the February 22, 2021 Planning Commission meeting, City staff reviewed comments and suggestions from Commissioner Weeks and we have worked closely with the City's Landscape Architects at Wenck and Associates in developing the latest proposed tree preservation ordinance language. Their input and comments have been invaluable in the creation of the most recent proposed amendments to the Tree Preservation Ordinance. The proposed changes make the ordinance clearer and more useful for land owners, developers and City staff.

## **Background Information and Proposed Changes**

### **Tree Preservation Ordinance**

Early in the research for this request, City staff reviewed the tree preservation ordinances from several other area cities (Ramsey, Shakopee, Oakdale, Rosemount, Roseville, Maplewood, Cottage Grove, Eden Prairie, Lakeville and Forest Lake) to learn the standards those cities use for tree preservation and how those cities implement those standards. There were several parts of those ordinances that were of particular interest in the City staff review. Those include the amount of allowable tree removal that does not require tree replacement (up to 30 percent in Lake Elmo), the tree replacement standards if required including the size and number of new trees, the warranty standards for new trees (2 years minimum in Lake Elmo) and if those ordinances had language for exceptions to meeting the minimum replacement standards on a development site (Lake Elmo has such language). For reference I have attached the Code language of those sections of the other City ordinances to this staff report.

### **Ordinance Review**

City staff reviewed the tree preservation ordinances from the above listed cities to determine if the standards in the Lake Elmo Tree Preservation Ordinance were in keeping with the standards used by other cities in the Twin Cities area. In a very short summary, staff found the Lake Elmo tree preservation standards and practices were similar to those in the other cities reviewed by staff. The following is a summary of our findings:

**Allowable Tree Removal Standards** (how many trees or percentage of trees may be removed without replacement)

Lake Elmo – 30 percent

Other reviewed cities - 25 percent to up to 60 percent (primarily in commercial and industrial districts).

### **Sample Tree Replacement Standards**

Lake Elmo – common species replaced with ¼ diameter inches removed, coniferous or evergreens replaced at ½ of diameter inches removed (based on height), hardwood deciduous species replaced with ½ diameter inches removed.

The other cities staff reviewed had a variety of replacement standards including using diameter inches removed as Lake Elmo does to requiring a certain of trees be planted based on the size and types removed (Oakdale and Forest Lake).



## **Warranty Requirements or Standards for replacement trees**

Lake Elmo – two years from the date of project closure.

Other reviewed cities – 5 cities require a one year warranty and two cities (Shakopee and Roseville) require a two year warranty.

## **Exceptions and Reduced Mitigation for Exceptions**

Lake Elmo – The current tree preservation ordinance has language about exceptions to the standards and the possibility of the City allowing reduced mitigation or tree replacement standards for a development. In such a case, the existing code now allows the City to require a payment from the developer to the City, to implement woodland management practices or planting of replacement trees on City property or a combinations of these options.

City staff is aware of only one situation where City required payment from a developer for replacement trees that could not fit on a site. The City negotiated an agreement with the developers of Royal Golf in 2018 to pay \$500 per replacement tree that could not reasonably fit on their site. For 969 trees, the total required payment from the developer was to be \$484,500. (Please see below for more information about this).

Other reviewed cities: 7 cities allow the developer to pay the City a fee (either per tree or per caliper inch), 6 cities allow tree planting elsewhere (on City-owned property or on property in the city owned by the developer) and 2 cities allow for a combination of these mitigation methods.

As for the fees they charge, I have attached a table showing each of the 7 cities and their tree replacement fee with an example if a developer had to pay for 100 replacement trees or 100 replacement diameter inches in that City. The Lake Elmo City Council reviewed this fee during their Workshop meeting on February 9 and directed city staff to add a \$300 tree replacement fee to the City fee schedule.

## **Proposed Ordinance Amendments**

The latest proposed changes to the Lake Elmo tree preservation ordinance (dated June 28, 2021) include adding definitions and adding language that clarifies when the city will require a tree preservation plan and when the city will not require a tree preservation plan. Staff is not proposing any changes to the type or size of trees that are used for determining the amount of tree replacement or those a developer may remove or the amount of allowable tree removal on a new development or redevelopment site.

For clarity in tracking the proposed changes to the ordinance, I have highlighted some sections in **yellow** (the first set of proposed changes) and other sections in **green** (the most recent proposed changes). All proposed new language is underlined and all the language proposed for removal is shown with ~~strike through~~.

Staff also is proposing to delete some of the language in Section E 2, Reduced Mitigation for Exceptions. It is important to note that this section of the Code allows the City to approve exceptions to the tree preservation standards. The Code now includes several options the City may approve if the City wishes to grant the request of the developer to have an exception to the City tree preservation standards. One of the relief or mitigation methods currently in the Code allows the City to require a developer or property owner to pay a fee to the City if they are unable or unwilling to meet all the tree preservation and/or replacement standards.

It was the understanding of Staff that the City Council did not want to keep the language in the code about the payment of park dedication fees or the use of woodland management as possible conditions for approving exceptions to the tree preservation standards. As such, staff is proposing to delete this part of the Code.

A recent example of the City using this provision of the City Code is the Royal Golf development. In 2018, the City received a request from the developer of Royal Golf to reduce the number of trees they would need to plant on their site. The following paragraphs are excerpts from the 2018 City staff report:

The Royal Golf Club at Lake Elmo Preliminary Landscape Plans included the need for 3800 trees within the entire Royal Golf Club at Lake Elmo Preliminary Plat per Tree Preservation and Landscape requirements. The original number of trees that were required to be planted within the development was approximately 4600, but because the area is heavily wooded and because the language within the tree preservation ordinance requires a minimum of five trees to be planted for every one acre of land that is developed or disturbed, the City made some concessions, and an agreement was made to require that 3800 trees be planted within the development. The Developer and City have been working on coming to an agreement for trees required within the development, as both the Developer and City believe that the required number of trees within the development would cause tree overcrowding.

The Council discussed this request at the January 9, 2018 workshop and directed Staff to draft an amendment to the Royal Golf Club at Lake Elmo (development agreement) which will reduce the number of trees required to be planted within the development from 3800 to 2912 (the 888 to be planted within single family lots subtracted from the agreed-upon number of trees to be planted within the development). There was consensus that simply not requiring warranty on these trees would leave the City with no way to enforce the requirement that these trees be planted. This direction was given to Staff under the understanding the developer would be paying park dedication fees totaling \$484,500 (\$500 per 2.5 caliper inch tree X 969 trees to be reduced).

This is a large and extreme example of how the City may apply this provision of the City Code. There are probably few, if any, other development sites in Lake Elmo where a developer or property owner would not be able or willing to preserve the minimum number of trees on the site and/or be able to plant the minimum number of replacement trees on the property. It is staff's expectation that developers want to preserve trees on a site as their removal is an expense and by preserving as many trees as reasonably possible they are adding value to the property and preserving the natural amenity that are the trees.

### **FISCAL IMPACT:**

Staff does not foresee a negative fiscal impact with the proposed changes to the tree preservation and landscape ordinances.

### **OPTIONS:**

The Planning Commission may:

- Recommend approval of the proposed changes to the tree preservation ordinance.
- Recommend approval of the proposed changes to the tree preservation ordinance with changes to the proposed language.
- Recommend denial of the proposed changes to the tree preservation ordinance.

### **RECOMMENDATION:**

Staff is recommending approval of the proposed changes to the Lake Elmo Tree Preservation ordinance.

*“Motion to recommend approval of the Tree Preservation Ordinance amendments as proposed by City staff.”*

### **ATTACHMENTS**

- Tree Preservation Ordinance Language Examples from other cities
- Lake Elmo Tree Preservation Ordinance (Section 154.257) dated June 28, 2021 with proposed changes

## Tree Preservation Ordinance language examples from Other Cities

### Examples of Allowable Tree Removal Standards

**Ramsey** - within residential developments, must keep at least 40 percent of the existing significant tree DBH (allows for up to 60 percent removal)

for business and employment development, must keep at least 30 percent of the existing significant tree DBH (allows for up to 70 percent removal)

**Shakopee** – for residential subdivisions, allow for up to 30 percent of the DBH to be removed without replacement (must keep 70 percent).

For commercial/industrial sites, up to 60 percent of the DBH may be removed without replacement (must keep 40 percent).

For a redevelopment lot, up to 30 percent of the DBH is allowed to be removed without replacement (must keep 70 percent).

**Oakdale** – Development plans should remove no more than 25 percent of the total number of significant trees from a site (without any replacement required).

**Rosemount** – 25 percent of the existing caliper inches of trees can be removed during development without obligation of replacement. Any removal beyond 25 percent will require replacement.

**Roseville** – Allowable Tree removal – up to 15 percent of the total DBH inches of all Heritage trees, up to 35 percent of the total DBH-inches of all significant trees and up to 35 percent of the total DBH inches of all common trees may be removed without tree replacement or restitution.

**Cottage Grove** – Allowable maximum percentage of DBH inches that may be removed without mitigation

Residential site with less than 10 units per acre – 35 percent

Residential site with more than 10 units per acre and Business/Commercial – 50 percent

Industrial sites – 60 percent

**Hugo** – None listed

**Forest Lake** – maximum percentage of woodland or significant DBH inches that may be removed without obligation for reforestation or restitution by land use or zoning:

Agriculture – 25 percent

Rural residential – 30 percent

Suburban residential (all types) – 50 percent

All other zoning districts – 60 percent

### **Sample Tree Replacement Standards**

**Ramsey** – For every one significant tree inch that is removed in excess of the removal threshold, the developer shall plant 1.25 inches (diameter) of new trees OR provide the city with \$125 in restitution.

**Shakopee** – not clear – uses credits for trees planted as part of the City’s Landscaping requirements. If the number of replacement trees cannot be met on the site they require a cash payment to the City of \$400 per replacement tree or replacement trees may be planted in City owned or managed land or replacement trees may be planted on other property owned by the Applicant within the City.

**Oakdale** – Table in Section 22-06 (page 7)

<u>Size of damaged or removed tree</u>	<u>Number of replacement trees</u>
Coniferous -12’ to 24’ feet high	2
Coniferous – 24 feet or taller	4
Hardwood decid – 8”- 20 inch dia.	2
Hardwood decid. – greater than 20 inch dia.	4
Softwood deciduous 12-24 inch dia.	2
Softwood deciduous greater than 24 inch dia.	4

Required size for replacement trees – deciduous - not less than 2.5 inch diameter, coniferous – not less than 8 feet in height.

Note: the ordinance also says that if the site cannot accommodate the required replacement trees, those remaining to be planted shall be located on other property owned by the developer/builder located in the City or on property owned by the City. The city shall determine the location of the placement of trees on City property.

### **Rosemount – Tree replacement formula**

Replacement of removed or disturbed trees in excess of the percentage allowed shall be according to the following guidelines;

For development that exceeds the percentage of allowable removal of significant trees, all significant tree shall be replaced at the ration of one-half (0.5) caliper inch per one (1) caliper inch removed.

For each Heritage tree removed by the developer, all heritage trees shall be replaced at the ration of one (1) caliper inch per one (1) caliper inch removed.

#### **Roseville –**

For deciduous trees, one caliper inch of replacement tree is required for every one DBH inch of required replacement.

For coniferous trees, a replacement tree 6-8 feet in height = 1 inch of required DBH replacement inches, for replacement trees 8-12 feet tall = 2 inches of required DBH replacement inches and for replacement trees 12 feet tall or greater = 3 inches of DBH replacement inches.

#### **Cottage Grove – Mitigation and Tree Replacement Schedule**

Mitigation – for any site where the allowed tree removal (in inches) exceeds the permitted threshold, the applicant shall mitigate the tree loss in one of the following ways:

Planting replacement trees on the development site according to the tree replacement plan;

Planting replacement trees on City property;

Paying the City a cash mitigation fee based on the diameter inches of required tree replacement. The cash fee in lieu of the required replacement inches shall be in accordance with the city's fee schedule.

#### **Tree Replacement Schedule –**

- a. Quantity: qualifying tree inches removed beyond the permitted thresholds shall be replaced at a rate of 50 percent - or one (1) replacement caliper inch for every two (2) removed diameter inches.
- b. Size: Deciduous trees planted in mitigation of excessive tree loss shall have a minimum caliper of 2.5 inches and coniferous trees shall be a minimum of 6 feet tall. One new conifer tree at least six feet tall shall be credited as contributing two (2) caliper inches of the total replacement inches.
- c. Ornamental trees are not acceptable as replacement trees.

## **Forest Lake (very similar to Oakdale standards)**

<u>Size of damaged or removed tree</u>	<u>Number of replacement trees</u>
Coniferous -12' to 24' feet high	2
Coniferous – 24 feet or taller	4
Hardwood decid – 8”- 20 inch dia.	2
Hardwood decid. – greater than 20 inch dia.	4
Softwood deciduous 12-24 inch dia.	2
Softwood deciduous greater than 24 inch dia.	4
Required size for replacement trees – deciduous - not less than 2.5 inch diameter, coniferous – not less than 6 feet in height.	

## **Warranty Requirements or Standards (for replacement trees)**

### **Shakopee –**

For commercial/industrial sites and residential developers – 2 years

For builders of individual residential lots – 1 year

### **Oakdale –**

One year after the date that the last replacement tree was planted. Any tree removed shall be replaced with a new healthy tree of the same size and species in place of the removed tree within eight months of the removal. Requires a security of 125 percent of the estimated cost to furnish and plant the replacement trees.

### **Rosemount -**

One year from the date the improvements were completed. Requires a security of 110 percent of the value of the trees (and landscaping).

### **Roseville –**

Minimum Two year guarantee with a financial guarantee for at least 125 percent of the cost to furnish and plant replacement trees. The City shall maintain the security for at least 2 years after the date the last replacement tree was planted.

### **Cottage Grove –**

Warranty – Replacement trees - at least one year after the date of project closure. If not alive or healthy in that first year, must be removed and replaced by the applicant with a new, healthy tree meeting the same minimum size requirements. The City requires a cash escrow or an irrevocable letter of credit (a financial guarantee) of 150 percent of all the landscaping (including replacement trees).

### **Eden Prairie –**

Warranty - Replacement trees that are not alive or healthy one year after the date the last replacement tree has been planted shall be removed and a new healthy tree of the same size and species shall be planted in its place. The City requires a financial security in the amount of 150 percent of the estimated cost to furnish and plant replacement trees.

### **Forest Lake –**

Warranty – Replacement trees that are not alive or healthy one year after the date of project closure shall be removed and a new healthy tree of the same size and species shall be planted in its place within 8 months of removal. The City requires a letter of credit or a cash escrow in an amount equal to at least 125 percent of the approved landscaping costs (including the cost of replacement trees).

### **Exception Standards (when and how to allow reduced mitigation for tree replacement)**

#### **Ramsey –**

If a development exceeds the removal threshold specified in the ordinance, the developer shall replant areas within the site, pay restitution or some combination thereof.

For every one significant tree inch removed in excess of the removal threshold, the developer shall replant 1.25 inches (diameter) of new trees or provide the City with \$125 in restitution.

#### **Shakopee –**

If the number of replacement trees cannot be met on site, the following is required:

A cash payment of \$400 per replacement tree shall be provide to the City for the planting of trees that are as close as possible to the project site; or



Trees may be planted on City owned or managed land as approved by the Director;  
or

Replacement Trees may be planted on other properties owned by the Applicant in the City.

#### **Oakdale –**

If the site cannot accommodate the required replacement trees, those remaining to be planted shall be located on other property owned by the developer/builder located within the city or on property owned by the City. The city shall determine the location of the placement of the trees on City property.

#### **Rosemount –**

Fee-in-Lieu of tree Replacement or Replacement Trees Planted in Public Areas: the City recognizes there may be instances where the total amount of tree replacement required cannot occur on site or that there are some land uses that are not compatible with trees. In those instances, the City may, at its option, accept a fee-in-lieu of tree replacement OR allow the planting of replacement trees in public areas. Tree replacement is encouraged to happen on site as much as possible and fee-in-lieu of tree replacement should only be used when replacement cannot occur on site. The fee-in-lieu of tree replacement will be determined annually by the City Council through the fee schedule.

#### **Roseville –**

Replacement tree Locations. Required replacement shall be planted on the site being developed unless doing so is deemed to be impractical (i.e. due to a lack of space), inappropriate (available planting areas are not ideal for new plantings or would do little to enhance the site) or counterproductive to a property's intent (i.e. would entail too much screening for a retail business) as determined by the City Forester. When such a determination is made, the applicant shall comply with the replacement requirements in one of three ways in the following manner:

- a. As directed by the city, required replacement trees may be located on private property within 1000 feet of the subject development site with the consent of the property owners, on public improvement project sites that are not greater than 1000 feet from the development site, or on other public and private lands that are not greater than 1000 feet from the development site if such lands are deemed to be available, with priority given to locations near the affected area; OR
- b. The City may accept a cash-in-lieu tree replacement payment in accordance with the required fee listed in the city fee schedule; OR
- c. The City may approve a combination of tree replacement in accordance with A above and a payment consistent with b above to fulfill this requirement.

## **Maplewood –**

After putting as many trees as feasible on the site, if the tree replacement requirement is still not met, the Community Development Director can approve tree replacement steps as outlined in the tree standards document for the project before the issuance of a grading or building permit.

## **Cottage Grove –**

### **Mitigation**

- a. For any development or site in which the number of qualifying inches removed exceeds the permitted removal threshold, the applicant shall mitigate the tree loss in one of the following ways:
  1. Planting replacement trees in appropriate areas within the development in accordance with the tree replacement schedule; OR
  2. Planting replacement trees on City property; Or
  3. Paying the City a cash mitigation fee, based on the diameter inches of required replacement in accordance with the tree replacement schedule. The cash fee in-lieu-of required replacement inches shall be in accordance with the City's fee schedule.

## **Eden Prairie –**

Payment. Alternatively, if the Permittee demonstrates to the satisfaction of the City Manager, that it is not practical or reasonable to plant all or some of the required replacement trees on the Land, the Permittee may request approval to make cash payment to the city to be used for planting of trees on land within the city. Cash payments shall be calculated as set forth in the adopted fee schedule.

## **Forest Lake –**

### **Mitigation Procedures.**

Trees or woodlands removed beyond the permitted thresholds as described in this Ordinance shall be mitigated by the applicant through either of the following methods as determined by the City:

- a. Replace the trees or woodlands in accordance with the tree replacement provisions outlined in this Ordinance: OR
- b. Pay to the city the sum per caliper inch calculated from the total amount of caliper inches of the required replacement trees in accordance with the tree provisions in this Ordinance. The fee per caliper inch shall be set forth in the City fee schedule.

## **Lake Elmo Tree ordinance language - proposed amendments – June 28, 2021**

(With proposed additions underlined and deletions shown with ~~striketrough~~). Note: First set of proposed changes and additions highlighted in yellow. Second set of additions and changes shown in green. (with Wenck comments in red)

### **§ 154.250. PURPOSE.**

The purpose of this section is to provide regulations of general applicability for property throughout the City that are intended to protect or enhance natural resources and processes, and minimize conflicts among land uses.

(Ord. 08-077, passed 5-07-2013)

### **§ 154.257 TREE PRESERVATION.**

- A. Purpose. Within the City of Lake Elmo, trees and woodlands are considered a valuable asset to the community. The City places a priority on protecting this asset and finds that it is in the best interest to regulate the development and alteration of wooded areas within the community. All builders, developers and subdividers shall comply with all the provisions in the Zoning Code which address the preservation of existing significant trees. All builders, developers and subdividers are encouraged to preserve all healthy trees of significant value even if the trees do not meet the size requirements to be considered significant trees.
- B. Definitions. The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

Applicant: Any person or entity submitting an application to the City for approval of a land use permit including preliminary plat, final plat, conditional use permit, planned unit development, variance or grading permit.

Builder: Any person or entity to which the City issues a building permit.

Building Permit: A Permit issued pursuant to Minnesota Statutes Chapter 326, the state Building Code.

Common Tree. Includes Ash, Aspen, Basswood, Catalpa, Elm, Hackberry, Locust, Poplar, Silver Maple, Willow and any other tree not defined as a hardwood deciduous tree or a coniferous/evergreen tree.

Coniferous/Evergreen Tree. A wood plant, which, at maturity, having foliage on the outermost portion of the branches year-round. Tamaracks are included as a coniferous tree species.

Construction Area: Any area in which construction activity has or is occurring.

Construction activity. Any disturbance to the land that results in the movement of earth, the alteration in the topography or existing soil cover (both vegetative and non-vegetative) that may result in accelerated stormwater runoff, leading to soil erosion and movement of sediment into surface waters or drainage systems. Examples of construction

activity may include clearing, grading, filling, excavating, building construction and landscaping.

*Construction damage.* Any action such as filling, scraping, trenching, or compacting the soil around trees or wounding trees in such a manner that it may result in the eventual death of the tree.

Critical Root Zone (CRZ). An imaginary circle surrounding the tree trunk with a radius distance of one (1) foot per one (1) inch of tree diameter. E.g. a twenty-inch diameter has a critical root zone with a radius of twenty (20) feet.

Deciduous Hardwood Tree. A tree that loses its foliage or leaves annually such as ~~includes~~ Birch, Cherry, Hickory, Ironwood, Hard Maples, Oak and Walnut.

Developer. Any person or entity that undertakes to improve a parcel of land, by platting for the purposes of establishing three (3) or more dwelling units, grading, installing utilities or constructing any building thereon. For purposes of these guidelines, a developer does not include a builder as defined herein.

Development. Any activity for which the City requires approval of a preliminary plat, final plat, building permit, demolition permit, conditional use permit, planned unit development, variance or grading permit.

Development Plan. A common plan for Development or sale of property where multiple separate and distinct construction activities or land alteration activities, including new development or redevelopment, may be taking place at different times, or different schedules, but under one (1) proposed plan. One (1) Development Plan is broadly defined to include design, permit application, advertisement or physical demarcation indicating that land-disturbing activities may occur.

Diameter Breast Height (DBH). The diameter of trees at breast height, measured 4 ½ feet (54 inches) above the ground.

Drip Line. The farthest distance away from the trunk of a tree that rain or dew will fall directly to the ground from the leaves or the branches of the tree.

Healthy Tree. A healthy tree has: (Preferred by Wenck)

1. A live top (live crown) that is greater than one-third (1/3) the total tree height.
2. Dead branches that make up less than fifteen percent (15 %) of the total crown.
3. Less than fifteen percent (15%) of the tree crown with missing branches.
4. Consistent growth of foliage throughout the live portion of the crown.
5. A tree trunk with no open wounds that are greater than one-third (1/3) the diameter of the tree, with no wounds in contact with the ground and no wounds that have soft, punky wood or other indication of decay.

New Development. All sites with Construction Activity or Development that is not defined as Redevelopment.

Nuisance Tree. (1) Any living or standing tree or part thereof infected to any degree with a shade tree disease (See ~~Shade~~ Tree Disease Below) or shade tree pest; (2) Any logs,

stumps, branches, firewood or other part of dead or dying tree(s) infected with a shade tree disease or shade tree pest unless properly treated; and (3) Any standing dead trees or limbs which may threaten human health or property. Also included are noxious or invasive trees such as Amur Maple, Japanese Barberry, Russian Olive, Siberian Elm, buckthorn, box elder, and cottonwood.

Ornamental Tree. A small tree, usually less than thirty (30) feet in height at maturity, often planted for ornamental characteristics such as flowers or attractive bark.

Property Owner. The owner of a buildable property or parcel who is proposing a development, redevelopment or land altering activity or is constructing or expanding a dwelling or a business on that property or parcel.

Redevelopment. A site with construction activity that creates new or replaces existing impervious surface, buildings or structures on a parcel that is fully or partially occupied by buildings, structures and/or other impervious surfaces.

Shade Tree Disease. Dutch elm disease (Ophiostoma ulmi or Ophiostoma novo-ulmi), oak wilt (Ceratocystis fagacearum), or any other tree disease of epidemic nature.

Shade Tree Pest. Emerald Ash Borer (Agrilus plannipenis), European elm bark beetle (Scolytus multistriatus), Native elm bark beetle (Hylurgopinus rufipes) or any other Shade tree pest with potential to cause widespread damage.

Significant Tree. A healthy tree measuring a minimum of six (6) inches in diameter for hardwood deciduous trees, 19 ft. in height or eight (8) inches in diameter for coniferous/evergreen trees, or twelve (12) inches in diameter for common trees, as defined herein.

Site. A parcel or area of land within which Construction Activity, Development, or Redevelopment occurs or is to occur.

Specimen Tree. A healthy, deciduous hardwood tree measuring equal to or greater than thirty (30) inches in diameter breast height or a healthy coniferous/evergreen tree measuring equal to or greater than twenty-five (25) feet in height.

Tree Preservation Plan. A plan prepared by a certified landscape architect or forester indicating all of the significant trees in the proposed development or property. The Tree Preservation Plan includes a proposed site plan, a proposed grading plan including all custom graded lots, a tree inventory that includes the size, species, and location of all significant trees proposed to be saved and removed on the area of development, and the measures proposed to protect the significant and specimen trees that are to be saved. The Applicant and/or Developer shall have the tree preservation plan superimposed on the proposed development grading plan.

Woodland Evaluation Report. A report prepared by a certified landscape architect, forester, or land surveyor indicating the general location, condition, and species of significant trees on a parcel planned for future development or grading activity. The report must demonstrate that there will be no impact to existing significant trees as part of the development or grading activity. Finally, the report must include the measures proposed to protect significant trees on the site.

## C. Tree Preservation Standards for Developing Properties

### 1. Applicability.

- a. A Tree Preservation Plan, or suitable alternatives as determined by the City, shall be submitted and approved by the City for the following activities:

- i. New Development or redevelopment in Any Zoning District. A Tree Preservation Plan shall be required as part of any new development, site redevelopment, or subdivision application.
- ii. Any grading or excavation project that result in the movement of greater than 400 cubic yards of material per acre of site per §151.017.
- iii. If the applicant is able to demonstrate that the proposed development, redevelopment, construction activity or major grading activity includes no impact to the significant trees on the site, then the applicant may be exempt from the requirement to submit a Tree Preservation Plan. It is the responsibility of the applicant to demonstrate that there are no impacts to significant trees through a Woodland Evaluation Report or some other form of tree survey or study.

The tree preservation plan shall reflect the designer's and the developer's best effort to determine the most feasible and practical layout of lots, buildings, parking lots, driveways, streets, storage, storm water management facilities and other physical features, so the fewest Significant and Specimen trees are destroyed or damaged.

- b. A Tree Preservation Plan is not required for the following activities:

- i. This section does not apply to the issuance of a development approval for a single-family residence on an existing platted lot of record.
- ii. This section does not apply to the harvesting of trees. For purposes of this section, "harvesting" means cutting or clearing trees for purposes relating to forestry operations, as defined in §154.012. "Harvesting" does not include the clearing of land for purposes of development, even where the trees are sold for purposes of creating lumber for related purposes.

iii. Reserved.

iv. This section also does not apply to the following:

Additions to single-family homes, general home improvements and the construction of accessory buildings (garages, sheds) on residential properties.

Home gardens or an individuals' home landscaping, installation, repairs and/or maintenance work.

Tree removal related to public improvement projects or repairs to existing streets, roadways, sewers, parks, storm water facilities and utility/infrastructure.

Emergency removal of trees to protect the public health and safety and/or to alleviate immediate dangers to life, limb, property or natural resources.

Tree removal related to public improvement projects to restore or enhance woodlands, savannas or prairies.

Removal of dead or dying trees, unless those trees were planted as part of tree replacement in which case the property owner shall replace such trees based on the City-approved plan for the property.

Removal of nonnative trees that the City deems as nuisance or as invasive species.

2. Tree Preservation Plan. All applicants and/or developers shall submit a tree preservation plan prepared by a certified forester or landscape architect in accordance with the provisions of this section. During the review of an application for a building permit, grading permit, site plan approval, planned unit development, conditional use permit or Preliminary Plat, the City will review the project and tree preservation plans will be reviewed according to the best available layout to preserve significant trees and that the developer and/or the efforts of the subdivider used the best possible design to mitigate and minimize construction damage to significant trees.
3. Tree Preservation Plan Requirements. The Tree Preservation Plan shall be a separate plan sheet(s) that includes the following information:
  - a. The name(s), certification(s), telephone number(s) and address(es) of the person(s) responsible for tree preservation during the course of the development project.
  - b. Tree Inventory. The Tree Preservation Plan must include a Tree Inventory through one of the following methods:
    - i. Tree Inventory Individual. An individual inventory including an identification system linked to metal field tags located four and one-half (4.5) feet from grade on all significant trees must be identified on a plan sheet in both graphic and tabular form.
    - ii. Tree Inventory Sampling. In cases of sites with large tracts of significant trees, the City may approve the use of a sampling inventory for all or portions of a site as an alternative to an individual inventory. The sampling inventory must include the methodology for sampling, identification ribbon around the perimeter of the sampling areas, and metal field tags located four and one-half (4.5) feet from grade on all significant trees in the sampling area. Within the sampling area, the quantity, size, species, health and location of all significant trees must be identified on a plan sheet in both graphic and tabular form. Based on sampling, total estimates and locations of healthy significant trees shall be provided.

- iii. Tree Inventory Combination. With the approval of the City, sites that include both large tracts of significant trees and areas of individual significant trees may utilize a combination of the individual and sampling inventory methods.
- c. Trees that were planted as part of a commercial business such as a tree farm or nursery do not need to be inventoried on an individual tree basis. A general description of the trees and an outer boundary of the planted area must be provided. The burden of proof shall be on the applicant to provide evidence to support the finding that the trees were planted as part of a commercial business.
- d. A listing of healthy significant trees inventoried in subsection (b) above. Dead, diseased, nuisance or dying trees do not need to be included in the totals.
- e. A listing of the healthy significant trees removed, identified by the metal field tag or some other form of identification used in the tree inventory in subsection (b) above.
- f. A listing of the healthy significant trees to remain, identified by the metal field tag or some other form of identification used in the tree inventory in subsection (b) above.
- g. Outer boundary of all contiguous wooded areas, with a general description of trees not meeting the significant tree size threshold.
- h. Locations of the proposed buildings, structures, or impervious surfaces.
- i. Delineation of all areas to be graded and the limits of land alteration and disturbance.
- j. Identification of all significant trees proposed to be removed within the construction area. These significant trees should be identified in both graphic and tabular form.
- k. Measures to protect significant and specimen trees and the City standard tree protection detail.
- l. Size, species, number and location of all replacement trees proposed to be planted on the property in accordance with the Mitigation Plan, if necessary.
- m. Signature of the person(s) preparing the plan.
- 4. Implementation. All new construction areas, development and redevelopment sites shall be staked, as depicted in the approved Tree Preservation Plan, and the required tree protection fencing shall be installed around the critical root zone before land disturbance is to commence. The City has the right to inspect the site at any time for compliance with the plan. No encroachment, land disturbance, trenching, filling, compaction, or change in soil chemistry shall occur within the fenced areas protecting the critical root zone of the trees to be saved.
- 5. Allowable Tree Removal. Up to thirty (30) percent of the diameter inches of significant trees on any parcel of land being developed, redeveloped, graded or



proposed for construction activity may be removed without replacement requirements. Replacement according to the Tree Replacement Schedule is required when removal exceeds more than thirty (30) percent of the total significant tree diameter inches. The following types of trees do not need to be included as part of the tally of tree removals:

- a. Dead, diseased, nuisance or dying trees;
- b. Trees that are transplanted from the site to another appropriate area within the city;
- c. Trees that were planted as part of a commercial business, such as a tree farm or nursery (subject to verification by the City); or
- d. Trees that were planted by the current property owner. In making such a determination, the City shall consider consistency of the age of the trees, any patterns in the location of trees, historical aerial photography and evidence of intentional planting such as invoices, formal planting plans or cost sharing agreements.

6. Mitigation Plan.

- a. In any new development, redevelopment, new construction area or grading project where the allowable tree removal is exceeded, the applicant shall mitigate the tree loss by planting replacement trees in appropriate areas within the development in accordance with the Tree Replacement Schedule.
- b. The form of mitigation to be provided by the applicant shall be determined by the City.
- c. The planting of trees for mitigation on residential projects shall be in addition to any other landscape requirements of the City. **Lucius: I don't think this section is too onerous as is. It has only been an issue for Royal Golf who decided where and how to build their project. This section protects the heavily forested areas and the overall City tree density from being overly diminished. And it ensures there are more than just boulevard and outlot trees in the development. I could see an outcome where there are no trees on individual lots, unless homeowners plant them after the fact. It's up to City Council and Planning Commission to think about how they want the City's neighborhoods (and developments) to look like.**
- d. All trees, with the exception of ornamental trees, planted as landscaping on commercial or mixed-use projects may be counted towards tree replacement requirements. **Lucius: I also agree with this section as is. These types of projects have more impervious and less green space for trees. So to require mitigation trees in addition to other landscape trees would be too difficult.**

7. Tree Replacement Calculations. Thirty (30) percent of the total diameter inches of significant trees on the site of new construction, new development or redevelopment may be removed without replacement. **Any percentage over 30 The applicant or developer shall plant all required replacement trees shall be replaced on the site of the proposed development or redevelopment or in the**

**construction area.** The following calculation procedure must be used to determine tree replacement requirements:

- a. Tally the total number of diameter inches of all significant trees on the site.
  - b. A calculation must be provided which breaks out the number of inches removed for hardwood, evergreen/deciduous, and common trees. The 30% removal figure applies to each category individually and trees are replaced according to the Tree Replacement Schedule in subsection 8.
8. Tree Replacement Schedule. Tree removals over the allowable tree removal limit on the parcel or site of new construction, new development, grading or redevelopment shall be replaced according to the following schedule:
- a. Common tree species shall be replaced with new trees at a rate of one-fourth (1/4) the diameter inches removed.
  - b. Coniferous/evergreen tree species shall be replaced with new coniferous or evergreen trees at a rate of one-half (1/2) the diameter inches removed. Since coniferous species are often sold by height rather than diameter inch, the following conversion formula can be used:  
$$\text{Height of Replacement Coniferous Tree} / 2 = \text{Diameter Inches of Credit}$$
  - c. Hardwood deciduous tree species shall be replaced with new hardwood deciduous trees at a rate of (1/2) the diameter inches removed.
  - d. Replacement Tree Size. Replacement trees must meet the minimum sizes listed in Section 154.258 B (Table 6-1). ~~be a minimum of one (1) inch in diameter.~~
9. Species Requirement. The City must approve all species used for tree replacement. **Ornamental trees are not acceptable for use as replacement trees.** (Lucius: This prevents oak trees from be replaced by crab apple trees. I think it makes sense.) Where ten or more replacement trees are required, not more than thirty (30) percent of the replacement trees shall be of the same species of tree. The planting of Native species are encouraged, and hardiness and salt tolerance of the plants should be considered where applicable.
10. Warranty Requirement. Any replacement tree which is not alive or healthy, as determined by the City, or which subsequently dies **due to construction activity** within two (2) years after the date **of the initial landscape inspection and acceptance or the** of project closure shall be removed by the applicant and replaced with a new healthy tree meeting the same minimum size requirement within eight (8) months of removal.
11. Protective Measures. The Tree Preservation Plan shall identify and require the following measures to be utilized to protect significant trees planned for preservation:
- a. **Before any grading or construction activity, the developer, property owner or contractor shall install** ~~Installation of~~ snow fencing or polyethylene laminate safety netting placed at the drip line or at the perimeter of the critical root

zone, whichever is greater, of significant trees, specimen trees and significant woodlands to be preserved. No grade change, construction activity, parking, or storage of materials shall occur within this fenced in area.

- ~~b. Identification of any oak trees requiring pruning between April 15 and July 1. Any oak trees so pruned shall be required to have any cut areas sealed with an appropriate nontoxic tree wound sealant.~~
- b. Oak trees cannot be wounded, trimmed, pruned or damaged in any way (roots, bark, branches, etc.) between the dates of March 15 and October 31. Any oak trees so pruned or trimmed shall be required to have any cut areas sealed with an appropriate nontoxic tree wound sealant.
- c. Prevention of change in soil chemistry due to concrete washout and leakage or spillage of toxic materials, such as fuels or paints.
- d. Removal of any nuisance or dead trees located in areas to be preserved.
- e. Installation of erosion control methods.

12. Additional protective measures. The City encourages Applicants and Developers to use the following tree protection measures to protect the root zones and to prevent damage to Significant and specimen trees they intend to preserve:

- a. Installation of retaining walls or tree wells to preserve trees.
- b. Placement of utilities in common trenches outside of the Drip Line of Significant and specimen trees, or use of tunneled installation.
- c. Use of tree root aeration, fertilization, and/or irrigation systems.

13. Compliance with the Tree Preservation Plan. The applicant and/or developer shall implement the Tree Preservation Plan prior to and during any grading or construction activities. The tree protection measures shall remain in place until all grading, land disturbance and construction activity is terminated or until a request to remove the tree protection measures is made to, and approved by, the City.

- a. No significant trees shall be removed until a tree preservation plan is approved and except in accordance with the approved Tree Preservation Plan.
- b. If an applicant, developer or contractor removes or damages Significant tree(s) intended to be preserved to the point that City staff believes the tree will not survive, the applicant or developer shall remit to the City a cash mitigation, calculated per Diameter inch of the removed/damaged tree in the amount set forth in the City fee schedule.
- c. The City shall have the right to inspect the development, redevelopment and/or building site in order to determine compliance with the approved Tree Preservation Plan. The City shall determine whether the Tree Preservation Plan has been met.
- d. Instances where (a) significant tree(s) is (are) removed due to new development, redevelopment, new construction activity or grading or were disturbed, which was not noted on the landscaping or tree removal plan will

result in a one to one replacement penalty regardless if it is over the 30% allowance.

D. Tree protection standards for non-developing properties.

(1) Existing developed commercial, industrial and mixed use properties.

(a) Trees that are removed in a commercial, industrial or mixed use development must be replaced in accordance with the original Landscaping plan, unless the property owner or developer has obtained City approval for an alternative Landscaping scheme. If the original Landscaping plan is not available, trees identified by appropriate aerial photo will be assumed to be part of the original landscape plan.

(b) Trees that are removed that were part of a designated tree preservation area must be replaced in accordance with the tree replacement requirements outlined in Sections 154.257 C 7 and C8. The thirty (30) percent allowable tree removal limit does not apply in these situations.

E. Financial Security. In cases where mitigation or tree replacement is required, the City may require that a financial security, in a form acceptable to the City, be provided as part of a development agreement, site work agreement or applicable permit to ensure compliance and performance of the Mitigation Plan. The financial security will be released to the applicant upon verification by the City that the Mitigation Plan was followed, and that all replacement trees are planted and are healthy. in a reasonable state of health. The financial security may be used to replace any replacement trees that have become damaged, are not healthy or are diseased after planting.

F. Exceptions

1. *Exception Standards.* Notwithstanding the City's desire to accomplish tree preservation and protection goals, there may be instances where these goals are in conflict with other City objectives. These conflicts will most likely occur on small, heavily-wooded parcels. The City recognizes there may be instances where it is not practical or reasonable to have an applicant or developer plant the total amount of required tree replacement on the site of a development or redevelopment. The City encourages applicants and developers to have the required tree replacement occur on the site of the development or redevelopment as much as possible. The City should only approve the use of fee-in-lieu of tree replacement or other mitigation methods when all the required tree replacement cannot practically or reasonably occur on the project site. (Wenck Note: This should be in both the Tree Preservation and Landscape Ordinances.)

Applicants and/or Developers may ask the City to approve ~~for exceptions~~ to the City tree preservation and replacement standards through the variance process as indicated in 154.109. The City Council may grant exceptions ~~may be granted~~ if all of the following conditions exist:

a. It is not feasible to combine the subject parcel with adjacent parcels that could use the parcel as required green space;

- b. Strict adherence to the Tree Preservation Ordinance would prevent reasonable development that is consistent with the Comprehensive Plan and desirable to the City on the parcel; and
  - c. The exception requested is the minimum needed to accomplish the desired development or redevelopment.
2. *Reduced Mitigation for Exceptions.* If the City approves an exception to the tree preservation standards ~~is granted~~, relief from the requirements of the ordinance may take the form of reduced mitigation requirements, greater allowable tree removal, higher thresholds for determining significant trees, or any combination of the above. The City Council will determine which form of relief best balances the objectives of the City and tree preservation.

~~The City Council may require payment to the City of mitigation of park dedication fees; the implementation of woodland management practices by the developer; or the planting of replacement trees on City property by the developer under direction of the Public Works Director; or a combination of these methods as a condition of the City approving relief or an exception from the tree preservation and planting requirements. variance approval.~~

(Ord. 08-077, passed 5-07-2013)