

3800 Laverne Avenue North
Lake Elmo, MN 55042

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NOTICE OF MEETING

The City of Lake Elmo
Planning Commission will conduct a meeting on
Monday September 12, 2016 at 7:00 p.m.
AGENDA

1. Pledge of Allegiance
2. Approve Agenda
3. Approve Minutes
 - a. August 22, 2016
4. Public Hearings
 - a. **VARIANCE:** a request by Suzanne Horning for a variance from the 12-month time limit for the commencement of work associated with a lot size variance. PID# 09.029.21.11.0015 (Lot 9, Krause's Addition located at the intersection of Jamaca Avenue North and Jane Road North).
 - b. **ZONING TEXT AMENDMENT:** an amendment to Chapter 154.205, Fencing Regulations of Title XV: Land Usage, of the City of Lake Elmo's Code of Ordinances, amending the City's regulations on solid wall fences on properties less than half an acre in size.
5. Business Items
 - a. **CONDITIONAL USE PERMIT:** A request by Scott Wyckoff of Wasatch Storage Partners for a conditional use permit for a self-service storage facility and exterior storage for the property located at 9200 Hudson Boulevard N in the Commercial Zoning District, PID No. 34.029.21.33.0005.
6. Updates
 - a. City Council Updates – September 6, 2016 Meeting
 - i. Royal Golf Course at Lake Elmo Concept PUD Plan
 - ii. OP Ordinance
 - iii. Boulder Ponds LLC Zoning Map Amendment/PUD Amendment – Ordinance 08-149
 - b. Staff Updates
 - i. Upcoming Meetings:
 - September 26, 2016
 - October 10, 2016
 - c. Commission Concerns
7. Adjourn

***Note: The Public is advised that there may be a quorum of City Council Members in attendance as observers. No official action can or will be taken by the City Council at this meeting.

***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 August 22, 2016**

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

COMMISSIONERS PRESENT: Fields, Dodson, Williams, Larson, Griffin, Kreimer, and Lundquist

COMMISSIONERS ABSENT: Haggard & Dunn

STAFF PRESENT: Planning Director Wensman & Administrator Handt

Approve Agenda:

Agenda accepted as presented.

Approve Minutes: August 8, 2016

M/S/P: Dodson/Fields, move to approve the August 8, 2016 minutes as amended, **Vote: 7-0, motion carried Unanimously.**

Public Hearing – Concept PUD Plans

Wensman started his presentation for the Concept PUD Plan from HC Golf Course Development LLC for the Tartan park site which is nearly 500 acres. The residential development would surround the golf course. This would be roughly 300 residential housing units. The biggest question is should the comprehensive plan be updated in response to the unforeseen event of the sale of Tartan Park. Tartan Park was a fixture in Lake Elmo for over 50 years and was thought to remain so. It was not on the City radar as far as the Comprehensive Plan. This is not just a blanket yes or no, and it is not approving anything at this time. It is just providing feedback for the applicant.

This site is currently guided as public facility and is 8 parcels that make up 477 gross acres. A PUD is required because much of the site is in the Shoreland area and is environmentally sensitive. There are a number of considerations for reguiding this property 1) environmental considerations 2) the land is between 2 sewer districts 3) variable densities surrounding the site 4) OP & LDR are not realistic options 5) extension of sewer to properties along Lake Elmo will likely happen over time.

A decision that needs to be made is should the site be reguided and rezoned. If reguided and rezoned, there are three options to do that. 1) new land use designation

and new zoning district 2) guide for urban low density 3) guide for village urban low density.

Wensman stated that the density for Urban low density is 1.5-2.5 and LDR is 2.5-4.0 units per acre. Dodson asked if the golf course area would be split out as separate from the residential. Wensman stated that it is not, but is being considered through the PUD process. Dodson asked why OP was not an option if the golf course fails, it could be used for open space. Wensman stated that this development would not be profitable as an OP and to convert a golf course would be very expensive. Staff feels that the Village low density is the best option for the Tartan Park site. For a PUD, one or more of the 10 potential objectives needs to be met. Staff feels that there is justification related to 5 objectives. 1) protecting the environmental features 2) the preservation and enhancement of the golf course 3) Utilization of open space in golf course for storm water management, cluster of homes to limit site disturbance and extending sewer to preserve and enhance environmental features 4) facilitate the redevelopment of the golf course 5) four sided architecture. Wensman went through the PUD standards that were met by this proposal. They meet the required minimum area, the open space requirements, street layout can be met with some changes, density depends on future comp plan designation, lot design and structures. Connectivity is important and there are some options to provide connections.

In regards to the development moratorium, Royal Golf is outside the limits of the moratorium. Over 200 acres of the site is within the shoreland district. Shoreland regulations require developments to be connected to municipal sewer & water. There is an unnamed wetland on the site that is included in the cities shoreland ordinance, that is not recognized by the DNR. It should be removed from the ordinance. This development appears to comply with shoreland ordinance tiering, but the development is subject to DNR approval. At this point, not enough information has been submitted to determine if the plans conform to the Shoreland PUD rules. There are no buffer requirements for PUD's. There are buffers in the comprehensive plan for sewer areas, but this was never planned as a sewer area.

Fields asked if we had the authority to require buffers. Wensman stated that since it is a PUD, that could be negotiated.

Wensman stated that of the 205 acres for residential, roughly 33% is open space with wetlands, bluffs, open water and private open space. The concept plans have not addressed screening, entrance monuments, boulevard plantings or private open space plantings. The preliminary PUD plans will need to comply with the City's landscaping standards.

Wensman talked about parkland dedication and trails. This will need to be looked at closely to see what is feasible. Interconnectivity of streets needs to be addressed. There are issues regarding access management and proposed private streets that need

to be worked out along with a few other things. The concept plan does not address the water supply. Tartan Park is excluded from the 2030 Comp water supply plan, although water is nearby. A water service capacity and hydraulic study is needed to evaluate the ability to service Royal Golf. This new service could move up the timeframe to construct a new water tower. All improvements are at the developers expense.

The sanitary system is not addressed in the concept PUD plans. They do intend to connect the golf course and development to sanitary sewer. This development area is outside of the MUSA area and a comprehensive plan amendment would be needed. There are some issues with lift stations and concerns of the City Engineer that will need to be addressed.

Stormwater and grading are all subject to state, VBWD and City regulations. Some of the plans do not meet those regulations. Wensman went through some of those items.

Wensman went through the developments phasing plan. It is anticipated to be a 3-5 year phasing or 60 units per year. The phasing plan will need to be addressed ahead of time at the time of the preconstruction meeting.

The developer is working on an EAW that will be submitted to City and adjacent jurisdictional review prior to City Council approval of the preliminary plat.

The site contains 15.99 acres of wetland and 9.74 acres of wetland buffer. These need to be located outside of lot areas. The VBWD is responsible for administering the wetland conservation act requirement and a VBWD permit is required.

The golf course is required to have 2 entrances for emergency access, but only has 1 now. They will also need to comply with off-street parking requirements. There are a number of amenities being proposed for the golf course area which include a pool, fitness center, trails and a childrens golf course.

Other considerations for this PUD application are that signage plans should be submitted with preliminary plat, fire hydrant and streetlight locations will be required on the plans, erosion control and floodplain issues will need to be addressed.

Dodson asked if the golf course should be zoned commercial. Wensman stated that it is a private golf course open to the public. He said that the public facility zoning is appropriate. Dodson asked if this could be construed as spot zoning. Wensman stated that according to the City attorney, it is not spot zoning as it is a large enough area with lots of lots, etc.

Kreimer asked about the stormwater ponds being dedicated to the City. He said the developer indicated that they wanted to use the ponds for irrigation and such. How would that affect the dedication. Wensman stated that Inwood is doing the same thing

and there would be a whole host of approvals that would need to happen for it to move forward.

Clark Schroeder, works for Hollis Cavner, and gave a history of what got them to this place. When 3M wanted to sell, options were looked at to see if there were options to keep it a park. That did not transpire, so 3M actively marketed the property. Since purchasing the property, they have started grading to restore the golf course. They want to create a sustainable development that will help keep the golf course open.

Rick Packer, HC Golf, went through the Concept PUD Plans for the development. They are dedicated to creating a high quality and high amenity neighborhood with recreational facilities, forming a strong sense of identity. Packer stated that they have changed all of the private roads to public streets. For density, they are not including the golf course, but only the residential component. They are working on a transportation study along with the EAW. The EAW is expected to be completed Mid-August.

Build out is expected to occur within 5 years based on market demand. The golf course is expected to open in 2017. They are working on a proposed connection to 10th street with Mr. Emerson. There are no buffers required, however, they plan to be good neighbors and work with the residents. There are also mature trees that provide a screened buffer. Packer talked about city fees and trails throughout the development.

Hollis Cavner, owner, his intent was to sell off the residential portion of land to a developer. After talking to developers, he decided to do it himself, because he wants this to be a spectacular place. He is not going to give this to a national builder because he wants to have control over the finished product.

Williams asked about their response to the need for 2 entrances to the golf course. Schroeder stated that they met with the Fire Chief and Building Official and they have a couple of plans that would work. They will be working out the details for preliminary plat.

Lundquist asked if they have any intentions of improving 20th street. Schroeder stated that they have been studying that.

Larson was wondering if there were opportunities for other non-golf related activities. Schroeder stated that they would like to put in a pocket park or community park for the HOA. Packer stated that they are looking at the ballfield as a possible location.

Public Hearing opened at 8:45 pm

Ann Bueck, 2301 Legion Ave, she is happy that they are going to keep the homes and thinks that they should be able to build homes, however, they need to follow the comprehensive plan and meet the future land use plan. She says that the

comprehensive plan states that the City is committed to preserving rural character and that areas north of 10th street and outside the village area would be in the form of Open Space Development Cluster neighborhoods. Ms. Bucheck touched on other aspects of the Comprehensive Plan that she feels this development does not meet. She urges the Planning commission to require the development to choose density that is consistent with the surrounding properties.

Dan Rice, 11364 14th Street, President of the Homestead Development HOA. This development went in with 18 homes and was developed in 1997 as an open space development. He feels this development represents a substantial and dramatic departure from the current Comprehensive Plan. Businesses and Homeowners rely on the comp plan and zoning when purchasing their property. They are prepared to support residential development as long as it is designed in a way this is not detrimental to their neighborhood.

Jim Voeller, 11314 12th Street, he is very disappointed in the progress of this development. He feels there has been very little consideration for the existing neighborhoods that have been there for years. The design that was shown back in march showed a significant buffer of 125 foot buffer and a lot less houses.

Louis Speltz, 11326 14th Street, he shares the concerns raised by the previous speakers. He feels if an exception is made to the Comprehensive Plan, there never was a plan to begin with. The developer purchased the property knowing full well that all of the land was targeted for recreation, not residential property. Is rural character something we just give lip service to with no buffers to existing neighbors.

Ellen Johnson, 11050 14th Street, concerned that they do not have the EAW and traffic study that should have been done for today. She wants this to move slow enough that they are very careful with this sensitive site.

Tim Mandel, 2479 Lisbon, this area was never mandated for high density development and sewer was never intended for this area. This development looks like solid impervious. He would like to see this developed as RE or R1. He is concerned that if sewer is brought to this property, it won't stop there.

Michael Zueffel, 2055 Manning Trail, would like to reinforce that Comprehensive Plan designates this area as rural. There are 21 residents that live off of Manning Trail and there is no buffering. There is no obligation to approve this.

Michael Biebl, 12020 18th Street, agrees with prior statements. He is concerned about the buffers and statements are misleading. The access points on Manning Trail are on West Lakeland township and he doesn't believe they have been contacted yet. It will probably come out in the traffic study, but Washington County is concerned about the traffic impact with this development. He is concerned with the density. He is concerned

with how close the homes are being built. He is also concerned with how the water will flow. He is also concerned with the intersections on 20th Street. He doesn't feel that the West Lakeland residents have been kept informed regarding this project.

Shelli Wilk, 11253 14th Street, would like to echo the concerns regarding density, rural character and zoning.

Jeffrey Kluge, 11234 14th Street, concerned with the added traffic along Lake Elmo Ave.

Bob Schwartz, 12040 18th Street, West Lakeland resident, he is wondering why would they do this when it goes against zoning and comprehensive plan. This density is so out of whack with surrounding properties and the Comprehensive plan.

Tom & Pam Barnes, 1734 Manning Trail, concerned because a number of years after purchasing their home, they discovered that the property line was not where they thought it was. They came up with an easement agreement with 3M. The new plan looks like there is very little buffer other than the narrow easement that they negotiated. Their garage and home is only about 10 feet from the new homes. They want to have a decent buffer in there. They would also like to see some open space left for the wildlife on the property.

Audrey Kopp, 2040 Manning Trail N, she is concerned with the intersection. She feels it is not a safe intersection now, and with more traffic, will be much more dangerous. She is also concerned about the wildlife in the area.

There were some written statements that were submitted as well and were in the packet.

There were also additional that were submitted after the packet went out. Kreimer summarized those statements Bonnie & Glen Welch, Karen Cook, Mike Tate & Jim Burns would like to see a trail on south side of 20th street for safety. Vicky Johnston would like to see public walking paths. Judy Toft is concerned about 1 entrance and small lot sizes.

Public hearing closed at 9:41 pm.

Williams stated that the number one question to answer is if this number of houses that will require public sewer and water is an appropriate change. He feels that it is not appropriate. There is nothing distinguishing this property from others in the area. He does not feel that they should expand the sewer area north of 10th street. He supports redevelopment and housing on this property, but not at this density.

Dodson wants to understand why Williams feels that way and how would it be different.

Lundquist is thinking if developed as an open space it would be developed at about 230-240 homes. Wensman stated that this was the case. Fields has concerns about the lack of interconnectivity and access points, regardless of concerns with density. He feels that when there is no obligation to rezone the property at all, the developer should have come to the city with something in between park land and Open Space to be respectful of existing neighbors and the Comprehensive Plan.

Lundquist is concerned that on every boundry of this proposal there are significant concerns with buffers and streets not being adequate. Williams stated that if you drove into Tartan Meadows and Homestead and looked at the layout and the lots and then drove to Savona, you would see a significant difference. This proposal is similar to Savona in density and he does not feel that it is appropriate for this area. The City does not have a need to add any additional sewered development. He feels that 10th street is somewhat of the sacred border, with the exception of the Village area, for sewered development. Williams does not buy the argument that an OP development is not economically viable. Wensman stated that the DNR requires sewer in the shoreland area. There are roughly 200 acres are within the Shoreland district in this development.

Larson is wondering what it would take to increase the buffers. Some of the issues seem to relate to privacy and space. He feels there are a lot of creative tools that could be used to help with buffers.

Hollis Cavner stated that there is a huge misconception about the buffers around the surrounding property. They are transplanting trees to create a buffer and they are not taking out any trees. They are willing to build berms for the Homestead and put trees in. Unfortunately, with the shoreland buffer setbacks, they are forced to go to the perimeters of the land. The infrastructure alone on this project will be upwards of 32 million dollars and unfortunately, that does dictate how much density they need to make this work.

Larson hopes that some middle ground can be found. This development has good things and is trying to keep some of the history there. He hopes with some creativity, some middle ground can be found.

Kreimer thinks it is appropriate that this area be sewered because of the shoreland and the area that needs to be protected. He does not feel that the buffering is acceptable. He would like to see at least 100 feet of buffering. The plans do not show distances. He feels in order to preserve this golf course, sewer is necessary. Fields stated that on Olson Lake Trail, there are properties slated to be sewered. Those properties are all approximately 150 feet wide and are of a value that can afford a higher assessment. He feels that with this property there can be lower density with sewer, with homes that could afford the higher assessment.

Dodson would like to see a study of what the lowest density is that can have sewer. He is also concerned about the buffers. He doesn't like the design in the Homestead area. He is concerned about that density of homes in this area. He also doesn't like the buffer area against West Lakeland.

Griffin agrees that sewer is something that is necessary because of the lakes on this property. She is also concerned about the traffic. She would like to see the density lowered and the buffers expanded. She wants to make sure that the City is doing the right thing. She does not believe that individual septic will perk on the soils that are on this property. She wants us to work with West Lakeland on what butts up against that property.

Williams wants to give some findings. He feels the staff report is biased. It assumes that the desired outcome is sewerage in this area and he feels that is false. He does not feel that there are adequate findings in the staff report.

M/S/: Williams/Dodson, move to propose the following findings of fact:

- 1) The housing density proposed, approximately 2.2 units per acre, would require service by a municipal sewer and water.
- 2) Any form of residential development will require a comprehensive plan amendment.
- 3) The property could be developed under the city's OP or RE development standards.
- 4) The City has no need to guide for more sewerage residential development based on the Comprehensive Plan and the Metropolitan Council's population forecast for 2040.

M/S/P: Williams/Lundquist, move to amend the findings to include a 5th finding of fact to include that there are unresolved issues of buffer, access points, cul-de-sac lengths and connectivity, **Vote: 7-0, motion carried unanimously.**

/P: Original motion with 5 findings of fact, **Vote: 7-0, motion carried unanimously.**

Larson asked why the golf course and housing development were not treated as separate entities.

M/S/P: Fields/Lundquist, propose a finding that changing the zoning from a park to housing consistent with this proposal will increase the city's tax base and lessen the tax burden on the rest of Lake Elmo. **Vote: 6-1, motion carried.**

Dodson does not think this is a finding as it isn't the current situation. Williams also doesn't agree with the finding because they don't have knowledge of where that break point is for net gain. The information he has seen is that residential does not pay for itself.

M/S/P: Williams/Dodson, proposed an additional finding that any area between 10th Street and 30th Street, East of Lake elmo Ave, with existing residences is not expected to require sewer before 2040, **Vote: 7-0, motion carried unanimously.**

M/S/P: Lundquist/Williams, proposed an additional finding that the total number of houses proposed for the residential portion, exceeds by 30% the total number of houses that would be allowed if the entire property, including the golf course, was developed in OP, **Vote: 7-0, motion carried unanimously.**

M/S/P: Kreimer/Williams, proposed an additional finding that the golf course is an amenity to the City of Lake Elmo, **Vote: 7-0, motion carried unanimously.**

The Commission decided that the first question that they needed to answer is if taking action on a comprehensive plan amendment and rezoning is warranted at this time given changes that have occurred since the current plan and zoning map were last adopted.

Dodson believes that it is warranted because he feels that when the Comprehensive Plan is reviewed, this area will need to be dealt with anyway. Fields does not agree. He feels they do not need to do that at this time based on the findings and this proposal. If the proposal changes, or the findings are no longer relevant, they can do so at a later date.

Larson thinks that the golf course and residential should be separated and dealt with as separate entities. Fields does not understand why a comp plan amendment is necessary when it was privately owned before and is privately owned now. Wensman stated that it could remain as parkland. He stated that the residential and golf course are together because the 2 are inter-related as trails and some amenities for housing development are on the golf course property. They also share some shoreland and ponding and it gets really hard to separate them. Usually when there are different uses on a property owned by the same entity, a PUD is the way to address it such as Inwood with residential and Commercial.

Fields stated that he feels the key elements of this question is “at this time” and “changes that have occurred”, meaning the sale of the property and also the proposal that is before them. He would prefer to wait to recommend a comp plan amendment until there is a proposal that serves a broad public purpose. He does not feel that this proposal does that. Dodson agrees that at this time the comp plan amendment is premature until it goes to preliminary plat.

M/S/P: Williams/Lundquist, motion to not recommend approval for a comprehensive plan amendment to accommodate the current development proposal at this time, **Vote: 7-0, motion carried unanimously.**

M/S/P: Fields/Kriemer, the applicant has demonstrated that the application meets at least one of the objectives to be considered for a PUD, ***Vote: 7-0, motion carried unanimously.***

The Planning Commission gave these issues as areas of concern: The buffer areas, lower density, cul-de-sac lengths, trails, especially on 20th Street, significant improvements on 20th street, improvements at the intersections of both Manning Trail and 20th Street and Lake Elmo Ave and 20th Street, access areas (discussion with West Lakeland), demonstration from a regulatory vs. economic standpoint that non-sewered development is not viable, alignment of intersections especially on 20th street, engineering report to be followed, minimum of 100 or 150 foot buffer from property line to property line, and 2 access points for the golf course.

Public Hearing – Easement Vacation – GWSA Land Development

Wensman stated that there was a drainage and utility easement on outlots. Now those outlots are being developed into residential lots, and the easements need to be vacated in order to record the plats. New easements will go into place where appropriate on the new plat. This is really just a housekeeping matter.

Public Hearing opened at 11:22 pm

There were no written or electronic comments received

Public Hearing closed at 11:23 pm

M/S/P: Dodson/Griffin, move to recommend approval of a request to vacate drainage and utility easements of Outlots C, G, & H as recorded on the Final Plat of Village Preserve, ***Vote: 7-0, motion carried unanimously.***

Business Item – Zoning Text Amendment Open Space Development

Wensman stated that this is the same information that was presented at the last meeting. He would like to point out something that he did not highlight at the last meeting. On page 8 of 27 in the green notes it was speaking in favor of more vague language and the reason it was changed. That was because being a PUD, everyone will probably ask for changes.

Williams likes the more specific language because these are all areas we want to monitor very carefully and calling them out specifically developers know they have to pay attention. If they ask for modifications, at least they are highlighted.

Lundquist asked if the intent of going through this code was just to clean it up. Wensman stated that the Council asked the Commission to address some issues in the

ordinance. The Commission responded and the Council wasn't quite satisfied and the whole structure was questioned. It was thought that a PUD was more appropriate tool than a CUP for this ordinance.

M/S/P: Fields/Dodson, move to recommend approval of ordinance 08-___, repealing the existing open space development regulations within chapter 150, adopting new open space planned unit development regulations in chapter 154, and reorganizing and renumbering Chapter 154 to fit the new open space regulations, **Vote: 7-0, motion carried unanimously.**

Business Item – Fence Ordinance Discussion

Wensman stated that the City Council would like the Commission to consider if a portion of the fence code that is highlighted on the copy that was handed out, should be repealed.

Dodson asked why this item came up. Wensman stated that there is an issue with a residence where this is being questioned.

Fields said that he was at the City Council meeting, but he couldn't figure out what it was they were looking for. Wensman stated that there is a specific property owner that feels that the ½ acre provision is not fair. The Council wanted the Commission to give their feedback. Dodson stated that he feels it is appropriate for **the**

M/S/P: Dodson/Lundquist, move to recommend staff to draft an ordinance and conduct a public hearing, **Vote: 7-0, motion carried unanimously.**

Ann Buchek, 2301 Legion Ave, spoke regarding the 1% rule. She wanted to point out that the state guidelines are adequate for average situations across the state, however, Lake Elmo has many un-outleted low areas and ponds which are not average. She would like the City Council to reinstate the more stringent stormwater rules that were rescinded on October 13, 2013 and calling for NO increase in runoff compared to pre-construction.

City Council Updates – August 16, 2016 Meeting

- i) Boulder Ponds rezoning – Tabled
- ii) Temporary Health Care Facilities – Passed
- iii) Pigeon Ordinance – Denied
- iv) Developer Agreements for Village Preserve 2nd and Hammes Estates – Passed with changes

Staff Updates

1. Upcoming Meetings

- a. September 12, 2016
- b. September 26, 2016

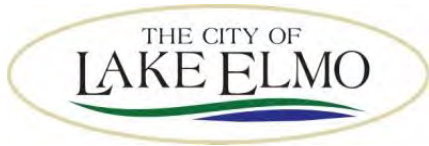
Commission Concerns

Meeting adjourned at 11:40 pm

Respectfully submitted,

Joan Ziertman
Planning Program Assistant

DRAFT



PLANNING COMMISSION
DATE: 9/12/16
AGENDA ITEM: 4A– PUBLIC HEARING
CASE # 2016-34

ITEM: Horning Lot Size Variance – Krause’s Addition, Lot 9
SUBMITTED BY: Emily Becker, City Planner
REVIEWED BY: Stephen Wensman, Planning Director

SUMMARY AND ACTION REQUESTED:

The Planning Commission is being asked to hold a public hearing and consider a request from Suzanne Horning (as Trustee of the Suzanne R.W. Horning Trust) for a variance from Section 154.017 of the Zoning Ordinance, which states that any variance granted by the City “shall expire if work does not commence within 12 months of the date of the granting of the variance.” The property has already been granted a variance from the minimum lot size requirements for the RS – Rural Single Family Zoning District in April of 2014 by Resolution 2014-22.

The conditions of the aforementioned granted variance detailed that the variance was valid for five years, but may be renewed upon review and approval by the Board of Adjustment. The applicant would like it to be valid in perpetuity, as the lot is meant to be conveyed to her children, and it is not known when construction will commence.

<i>Applicant:</i>	Suzanne Horning, 8991 Jane Road North
<i>Property Owners:</i>	Suzanne and Robert Horning Trust, 8991 Jane Road North
<i>Location:</i>	Lot 9 of Krause’s Addition to Lake Elmo. PID Number 09.029.21.11.0015
<i>Request:</i>	Variance from Sections 154.109, 154.402 and 154.080 of the Zoning Code
<i>Existing Land Use:</i>	Vacant parcel, recreation use (tennis courts) accessory to 8991 Jane Road North
<i>Existing Zoning:</i>	RS – Rural Single Family
<i>Surrounding Land Use:</i>	Single family residential
<i>Surrounding Zoning:</i>	RS – Rural Single Family
<i>Comprehensive Plan:</i>	Rural Single Family
<i>Proposed Zoning:</i>	No Change
<i>History:</i>	Krause’s Addition was platted in 1963. The home at 8991 Jane Road North (across the street and also owned by the applicant) was constructed in 1979. The City granted a lot size variance for the subject

property in 1985, but no home was ever built on the site. A permit to install a tennis court on the subject property was approved later in 1985. The City then granted another minimum lot size variance for the subject property in 2014.

Deadline for Action: Application Complete – 8/12/2016
60 Day Deadline – 10/11/2016
Extension Letter Mailed – No
120 Day Deadline – 12/10/2016

Applicable Regulations: 154.400-408 – Rural Districts
154.109 – Variances (Administration and Enforcement)
154.800 – Shoreland Overlay District

REQUEST DETAILS

Lot 9 of Krause’s Addition to Lake Elmo was granted a variance from minimum lot size requirements for the RS – Rural Single Family zoning district by Resolution 2014-22 in April of 2014. Because the applicant desires to convey the property to her children through her estate for buildable-lot purposes, a variance was also requested from the standard that work must commence within 12 months of the granting of the variance. This request was granted, but it was determined by Resolution that the variance would be valid for a period of five years but may be renewed upon review and approval by the Board of Adjustment. The reasoning was that five years was a “reasonable expectation” of a time period within which construction could commence.

The applicant does not, however, wish to sell the lot or construct a home on it in the near future. It is unknown when specifically she will convey this property to her children, and she wants to protect the property’s value for when she leaves it to her children without having to renew the variance every five years, nor does she want to have her children have to go through the process when they inherit it.

The applicant has stated that because the current variance is only valid for a five year period (until April of 2019), it would be in her best interest to sell the property now so it can be built on before the variance expires, ensuring her children will have an inheritance. She does not want to do this; she would like to keep the lot for sentimental reasons. Thus, she is requesting now that the variance be granted in perpetuity so she may at this time enjoy the lot as open space and then leave it to her children as an inheritance without having to go through the variance process yet again.

From the attached Planning Commission Staff Report dated 3/24/14:

The lot under consideration is 0.785 acres (34,195 square feet) in size and the minimum lot size within the RS – Rural Single Family Residential zoning district is 1.5 acres. As an existing lot of record, otherwise known as a lot that was platted prior to the City’s zoning regulations becoming effective, this property would be considered buildable if it met 60% of the district’s minimum lot size. The applicant would therefore need at least 0.9 acres (39,204 square feet) for this lot to be considered buildable under the current zoning regulations.

The site is currently occupied by a tennis court that was built in the mid-1980’s, and has served as an accessory use to the home located at 8991 Jane Road North. Should the variance be approved, the applicant intends to convey the lot to her children as a buildable lot, although she has not provided any specific time frame for a home to be constructed. The application materials include a septic system analysis documenting that a system compliant with Washington County septic regulations

may be constructed on the property. For the purposes of this report, the septic designer assumed that a new home would be built on the same area presently occupied by the tennis court.

In addition to the above-referenced septic report, the applicant has provided a detailed project narrative with an analysis of the required variance findings. The applicant has also provided a detailed survey of the lot showing the existing topography, drainage patterns, tree cover, and improvements that are currently situated on the property. There are no specific site development plans, and any future construction on this property will need to comply with the City's zoning and subdivision requirements (with the exception of minimum lot size should the variance be granted).

BACKGROUND

From the attached Planning Commission Staff Report dated 3/24/14 (with updates):

The lot that is the subject of the variance request is part of Krause's Addition to the City of Lake Elmo, which was platted in 1963 when this area was still part of East Oakdale Township. The attached copy of the plat shows that the lot is the same size as it was when originally subdivided. It likely would have been considered buildable up to the incorporation of the area into the City of Lake Elmo and the adoption of City zoning regulations in the late 1970's. The home at 8991 Jane Road North was constructed in 1979, and it appears that this property (Lot 7) and the subject property (Lot 9) have been under common ownership since at least this time. In June of 1985, a previous owner applied for and was granted a variance by the City to grant Lot 9 status as a buildable lot. It appears that this action was taken in response to the City's adoption of the 1.5-acre minimum lot size for single-family residential lots in this neighborhood. No home was ever constructed after the granting of the variance, and a tennis court was installed on the property later in 1985.

As noted in the application materials, the present owner acquired the property sometime in 1985. It appears that the property transfer occurred after the construction of the tennis court. Additionally, the applicant has described that City assessed the subject property as a buildable lot in 1985 for a City project. Based on this information, it does appear that the City would have considered the lot to be a buildable lot at the time the property was purchased by the applicant. The applicant has also pointed out that the property has been assessed as a buildable lot the entire time that they have owned it. This has been verified by the City Assessor, Dan Raboin. He states that a buildable lot is determined by reviewing surrounding parcels on which homes are built and comparing them to the lot being assessed.

When the City was planning for the reconstruction of Jane Road North in 2012, the Planning Department was asked to review the assessment rolls for the project and to identify vacant, buildable parcels that would need to pay an assessment. Lot 9 of Krause's Addition was not deemed buildable because it does not meet the 60% size requirement referenced above. Because the current Zoning Regulations include a one-year time limitation concerning the time frame for construction of projects subject to a variance, it is Staff's opinion that the 60% requirement does apply in this situation. The applicant had therefore submitted a variance request in order to re-classify this property as a buildable lot.

The applicant's parcel is situated at the intersection of Jamaca Avenue North and Jane Road North, and is approximately 230 feet north of Lake Jane. Other than a tennis court, there have been no other improvements constructed on the site. There is a fairly heavy amount of tree cover surrounding the tennis court around the periphery of the lot. All of the surrounding lots are occupied by single family residential homes. In general, the properties to the north and west are larger lots (1.5 acres), while the properties to the south and east are smaller lots (generally under 1 acre). In particular, there is a

cluster of homes along the northern edge of Lake Jane than are very similar in size, and sometimes smaller, than the applicant's parcel. The attached map showing acreage of surrounding properties demonstrates this.

PLANNING AND ZONING ISSUES

In reviewing the applicable codes and planning considerations that apply to the subject property, Staff would like the Planning Commission to consider the following as it reviews this request:

- **Variance Expiration.** The City Code specifies that variances are valid one year from the date a variance is issued. If construction has not taken place within one year, the variance becomes void. The applicant is requesting a variance from this standard. In order to determine if this was allowable, Staff consulted the City Attorney (see attached email with the "Buildable Lot Variance" as the Subject line). The City Attorney has stated that a variance can be granted from the one year "expiration date" requirement from when a variance is granted, as variances by their nature run with the land. The applicant would like to preserve the right to build on this property so she can pass it on to her children. Because there are no immediate plans or even a specific timeline as to when the property will be built on, it may make sense that the City waive the requirement of continual re-application for a variance unless a change is made that would rezone, re-guide, or put forth more restrictive regulations in the zoning district in which this property is located.
- **Conditions of Previously Granted Variance.**
 - 1) The driveway for the future home of the lot shall access Jane Road North. Driveway access to Jamaca Avenue North shall be prohibited. ***No plans have yet been proposed. This should remain a condition of a building permit being issued for the property.***
 - 2) The applicant shall provide a drainage easement for the portion of the lot that collects storm water runoff from the subject property and adjacent parcels prior to the issuance of a building permit for the site. The specific location of the drainage easement shall be approved by the City Engineer. ***This should be a condition of approval with a time limit placed on recording this.***
 - 3) The variance shall be valid for a period of five years, but may be renewed upon review and approval by the Board of Adjustment. ***The applicant is proposing this be changed so that the variance is valid in perpetuity. Staff does not see an issue with the variance being granted until any one of the following events occurs, whichever occurs first: the property's Planned Land Use changes in the City's Comprehensive Plan; the property is rezoned; any changes are made to the City's zoning regulations for the RS – Rural Single Family zoning district that would make the lot more non-conforming including but not limited to an increase in minimum lot size requirements; or an increase in minimum lot width requirements. It should be kept in mind that the variance being granted is for the minimum required lot size only. All other standards must be met before this lot can be built on.***
 - 4) A grading, erosion control, and storm water management plan shall be submitted in conjunction with a building permit for the property. This plan shall not exacerbate any existing drainage issues and must be designed to mitigate any additional runoff from any future construction on the site. ***This should remain a condition of a building permit being issued for the property.***

- 5) The applicant shall secure any required permits from the Valley Branch Watershed District prior to commencing any grading or construction activity on the site. ***This should remain a condition of a building permit being issued for the property.***
- 6) The applicant shall submit a letter from Washington County that an approved septic system can be located on the site prior to the issuance of a building permit for the site. ***The applicant has been asked to provide this letter, which has not yet been received. This should remain a condition of a building permit being issued for the property.***
- 7) The owner shall pay a fee comparable to the assessments levied against other homes in the neighborhood for the 2012 Jane Road North road project. The City will investigate options for reimbursing other property owners that were assessed for the 2012 project to account for the additional buildable lot. ***It has been verified with the Finance Director that this property paid this assessment. The Finance Director is looking in to whether or not neighboring properties received a reimbursement from this assessment, as it is believed that the amount was deemed too small and cumbersome to refund.***

From the attached Staff Report dated 3/24/2014 (with updates):

- **RS District Setbacks.** Any new construction on the lot will need to comply with all required setbacks for the RS District. The portion of the lot that abuts Jamaca Avenue North is considered the front property line, and is therefore subject to a slightly larger setback.
- **Driveway Access.** Although the City Code does not include any restrictions on the location of a driveway on the property, Staff is recommending that any future driveway access Jane Road North instead of Jamaca Avenue North, since the latter is the less traveled roadway in adjacent to the lot.
- **Impervious Coverage.** The RS District allows a maximum impervious coverage of 25% while the Shoreland Ordinance limits lot coverage to 15% or 6,000 square feet, whichever is greater. The tennis court currently occupies 7,395 square feet, which is 21.6% of the lot. At the time a new house is constructed on the property, the applicant will need to comply with the maximum impervious coverage allowed under the Shoreland Ordinance.
- **Shoreland District Requirements**
 - **Setbacks.** The lot is far enough away from Lake Jane that any new structure will be able to comply with structure and septic system setbacks. [8/26/2016 Update: A public hearing notice has been sent to the Minnesota Department of Natural Resources as is required by State Statute for this variance request].
 - **Minimum Lot Size Requirements.** The subject property is a non-riparian, unsewered lot located within a shoreland district of a General Development lake. Both the City and the Minnesota Department of Natural Resources (DNR) set forth a minimum lot size requirement of 40,000 square feet for such a property.

The subject lot, at 34,195 square feet, does not meet this requirement. However, M.S. 462.357 (e) provides that a nonconforming single lot of record located within a

shoreland area may be allowed as a building site without variances from lot size requirements, provided that:

- (1) all structure and septic system setback distance requirements can be met;
- (2) a Type 1 sewage treatment system consistent with Minnesota Rules, chapter 7080, can be installed or the lot is connected to a public sewer; and
- (3) the impervious surface coverage does not exceed 25 percent of the lot.

Granting the variance in perpetuity, with conditions, would not deviate from Minnesota State Statute requirements.

- **Drainage Area.** There is an existing drainage area immediately to the west and to the northwest of the applicant's lot, and it appears that a portion of the drainage area is also located on this lot. While the adjacent Sprinborn's Green Acres plat includes a drainage easement over the adjacent lots, there is currently no such easement in place on the applicant's property. Staff is recommending that the applicant be required to provide a drainage easement over the portion of the lot that collects storm water runoff as a condition of approval and prior to the issuance of any building permits
- for the property.

Planning and Engineering Staff have recently met with the applicant regarding buildability of the lot and the requirements that would be needed for a home to be constructed on this lot due to its areas of low elevation. The home will need to be built at the approximate elevation of the tennis court, at two feet above the Ordinary High Water Level. The applicant understands the work required to be done in regards to grading and drainage and understands that granting a variance from minimum lot size requirements does not necessarily mean that a building permit will be granted unless the plans comply with all other requirements. Additionally, there is currently a drainage pipe located in the rear yard that became clogged during the Jane Road street construction project. In order to provide future access to this pipe should this situation occur in the future, Staff recommends that the applicant provide a Right of Entry Agreement to the City.

- **Septic and Drainfield Areas.** The subject parcel is large enough to meet the City's minimum requirement of 20,000 square feet for a primary and secondary septic system site, depending on home design and location. The attached septic design is based on the home being located within the footprint of the tennis court.
- **Surrounding Lots.** The neighboring lots within the public hearing notification area range in size from 11,424 square feet (0.26 acres) to 83,025 square feet (1.9 acres), and of these 13 lots, the average size is 41,592 square feet (0.95 acres).

REVIEW AND ANALYSIS

An applicant must establish and demonstrate compliance with the variance criteria set forth in Lake Elmo City Code Section 154.017 before an exception or modification to city code requirements can be granted. These criteria are listed below, along with comments from Staff regarding applicability of these criteria to the applicant's request.

- 1) **Practical Difficulties.** A variance to the provision of this chapter may be granted by the Board of Adjustment upon the application by the owner of the affected property where the strict enforcement of this chapter would cause practical difficulties because of circumstances unique to the individual property under consideration and then only when it is demonstrated that such actions will be in keeping with the spirit and intent of this chapter. Definition of practical difficulties - “Practical difficulties” as used in connection with the granting of a variance, means that the property owner proposes to use the property in a reasonable manner not permitted by an official control.

***FINDINGS:** Strict enforcement of this chapter would cause practical difficulties because this lot was originally platted as, and was bought at a time during which it was, of a buildable lot size. To deem that it is now of an unbuildable lot size, and requiring that a variance be renewed every certain number of years unless construction begins, decreases the value of the property. The owner would like to leave it to her children as inheritance. She does not want to construct a home in the near future but may need to if it is required that the variance must be renewed every certain number of years, as it is not guaranteed that it will be continually granted. The Zoning Code permits properties in the Rural Single Family zoning district to be used either as single-family detached dwellings or parks and open areas. The owner is currently utilizing the lot in one way (open space/recreation) and would like to protect the right, without having to apply for a variance from the minimum lot size requirements again, to use it in the other permitted way (single-family detached dwelling). The property is separated by road right-of-way and is not adjacent to others under common ownership, so it is not practical for the owner to be expected to use it as open space indefinitely.*

The property is very close to meeting the requirements set forth in Section 154.080, which provides that any such lot or parcel of land which is in a residential district may be used for single-family detached dwelling purposes, provided the area and width of the lot are within 60% of the minimum requirements; provided all setback requirements are maintained and it can be demonstrated that safe and adequate sewage treatment systems can be installed to serve the permanent dwelling. The lot is 0.785 acre, and 60% of the minimum lot size requirement of the Rural Single Family zoning district of 1.5 acres is 0.9 acres, so the lot is only 0.115 acres less than what this Section requires. Setback requirements would be approved as the building permit application was received, and it has been determined that adequate sewage treatment systems can be installed. Also, the lot has direct access to a platted and improved street, and a house can be placed on the property in a manner consistent with surrounding homes. It should be noted that the variance request is a variance from minimum lot size requirements; all other requirements and standards will need to be met before a building permit will be issued.

- 2) **Unique Circumstances.** The plight of the landowner is due to circumstances unique to the property not created by the landowner.

***FINDINGS:** The applicant’s property is unique due to former platting of this property as a buildable lot and continued classification of the property as a buildable since the lot was subdivided, up until the City adopted new zoning regulations. The applicant purchased the property with the understanding that a house could someday be built on the property, and City records indicate that the lot was indeed buildable at the time of purchase. Other homes on neighboring smaller lots were constructed prior to the adoption of the City’s zoning regulations.*

- 3) **Character of Locality.** The proposed variance will not alter the essential character of the locality in which the property in question is located.

***FINDINGS:** The applicant’s lot is larger than several riparian lots in the surrounding neighborhood and is close to the minimum size needed to be considered buildable. All other*

surrounding lots within 1000 feet have houses on them. Therefore, constructing a house on this lot would not alter the essential character of the locality in which the property is located. It should also be noted that because the variance will expire within about two and a half years, a house would need to be built on the lot sooner than if a variance from the time requirements to build was granted. Allowing the variance to be granted in perpetuity, with the outlined conditions would allow adjacent property owners more time to enjoy the open space the lot provides.

- 4) **Adjacent Properties and Traffic.** The proposed variance will not impair an adequate supply of light and air to properties adjacent to the property in question or substantially increase the congestion of the public streets or substantially diminish or impair property values within the neighborhood.

FINDINGS. *No impacts above and beyond those considered normal for any other single-family lot in the surrounding neighborhood would be expected should the variance be granted. Granting the variance in perpetuity with conditions would protect the subject property's value for the future while allowing neighbors to enjoy the open space in the interim. Additionally, granting the variance in perpetuity with conditions will better inform future potential buyers that the lot is potentially buildable. They will not be surprised when/if a variance is granted from the minimum lot size standards in the future.*

RECOMMENDATION:

Staff recommends that the Planning Commission recommend approval of the request of Suzanne Horning, for a variance from the minimum lot size requirements in the RS – Rural Single Family Residential zoning district and from the maximum time of one year for which a variance is valid. This recommendation includes the following conditions of approval:

- 1) The driveway for the future home of the lot shall access Jane Road North. Driveway access to Jamaca Avenue North shall be prohibited.
- 2) The applicant shall provide a drainage easement for the portion of the lot that collects storm water runoff from the subject property and adjacent parcels before a building permit is issued for the site. The specific location of the drainage easement shall be approved by the City Engineer.
- 3) The variance shall be valid until any one of the following events occurs, whichever occurs first: the property's Planned Land Use changes in the City's Comprehensive Plan; the property is rezoned; any changes are made to the City's zoning regulations for the RS – Rural Single Family zoning district that would make the lot more non-conforming including but not limited to an increase in minimum lot size requirements; or an increase in minimum lot width requirements.
- 4) A grading, erosion control, and storm water management plan shall be submitted in conjunction with a building permit for the property and approved by the City Engineer.
- 5) The applicant shall secure any required permits from the Valley Branch Watershed District prior to commencing any grading or construction activity on the site.
- 6) The applicant shall submit a letter from Washington County that an approved septic system can be located on the site prior to the issuance of a building permit for the site.
- 7) The applicant shall submit a Right of Entry Agreement to the City so that it may access the property for repairs to the drainage pipe on the property if need be.

The suggestion motion for taking action on the Staff recommendation is as follows:

“Move to recommend approval of the request for a variance from the minimum lot size requirements in the RS – Rural Single Family Residential zoning district and from the maximum time of one year for which a variance is valid, subject to the conditions of approval as recommended by Staff”

ATTACHMENTS:

1. Application Form and Project Narrative
2. Email From City Attorney Regarding Variance From Time Restrictions
3. Location Map
4. 2014 Variance Application and Narrative
5. Septic System Report – Tom Trooien
6. Planning Commission Staff Report and Minutes from 2014 Variance Public Hearing
7. City Council Staff Report and Minutes from 2014 Variance
8. Resolution 2014-22

ORDER OF BUSINESS:

- IntroductionPlanning Staff
- Report by StaffPlanning Staff
- Questions from the Commission Chair & Commission Members
- Open the Public HearingChair
- Close the Public Hearing.....Chair
- Discussion by the Commission Chair & Commission Members
- Action by the Commission..... Chair & Commission Members

Date Received: 7-4
Received By: Patricia
Permit #: _____



651-747-3900
3800 Laverne Avenue North
Lake Elmo, MN 55042

LAND USE APPLICATION

- Comprehensive Plan Zoning District Amend Zoning Text Amend Variance*(see below) Zoning Appeal
- Conditional Use Permit (C.U.P.) Flood Plain C.U.P. Interim Use Permit (I.U.P.) Excavating/Grading
- Lot Line Adjustment Minor Subdivision Residential Subdivision Sketch/Concept Plan
- PUD Concept Plan PUD Preliminary Plan PUD Final Plan Wireless Communications

Applicant: SUZANNE HORNING
Address: 8991 JANE RD. N., LAKE ELMO, MN 55042
Phone #: 651-770-8991
Email Address: HAHBS.ETC@COMCAST.NET

Fee Owner: _____
Address: _____
Phone #: _____
Email Address: _____

Property Location (Address): 49XX JAMACA AVE. N.
(Complete (long) Legal Description): KRAUSE ADDITION, LOT 9, SUBDIVISION CD 37425
PID#: 09.029.21.11.0015

Detailed Reason for Request: I have owned the lot since 1984. It was platted as a buildable lot at the time I purchased it. I have always paid property taxes on an "improved" (Tennis court) buildable lot. Down the home across the street. I just want the current variance changed from 5 yrs. to in perpetuity. I have no intent to build now. I want to leave it to my children as part of my estate.

*Variance Requests: As outlined in Section 301.060 C. of the Lake Elmo Municipal Code, the applicant must demonstrate practical difficulties before a variance can be granted. The practical difficulties related to this application are as follows:

I was granted a 5 yr. variance on April 1, 2014. Resolution No. 2014-22. The lot is slightly smaller than current sigg. limits. I do not understand why the size isn't grandfathered in. The City has detailed information I submitted everything the city wanted in 2013 & 2014. Please see attached. *The City attorney has said in perpetuity is acceptable.*

In signing this application, I hereby acknowledge that I have read and fully understand the applicable provisions of the Zoning ordinance and current administrative procedures. I further acknowledge the fee explanation as outlined in the application procedures and hereby agree to pay all statements received from the City pertaining to additional application expense.

Signature of applicant: Suzanne R.W. Horning Date: 8/4/2016

Signature of fee owner: _____ Date: _____

This attachment is in regard to my request for a lot size variance which was Item 6 at the April 1, 2014, Lake Elmo City Council meeting. It is Resolution No. 2014-22.

At the meeting, I requested (through my attorney Christine Cirilli) a variance for my extra lot located across the street from my home at 8991 Jane Rd. N. My husband suffered a massive stroke in 2010. We needed to be in FL where his doctors are, so I could not appear in person.

Over the course of many months, and at an expense of over \$10,000, I was able to provide detailed records showing that I have always paid taxes on a buildable lot. My late husband, Jim Weyer, kept very detailed records. The landing on Lake Jane is named after him. When Jane Rd. N. was originally built, we paid the same assessment for the empty lot as everyone paid for their lots with homes. At the meeting, it was noted that the footprint of the tennis court looks (and is) larger than many of the surrounding homes. I have always paid my property taxes on time.

I am crushed and very saddened that the variance is only good for five years. I had NO intention of selling the lot. I only wanted to leave it to my two children as part of my estate. Obviously, if the variance is good only for five years I need to sell the lot separately now in order to assure my children will have an inheritance. I really don't want to do this. The lot means a lot to me. It was an anniversary present from my late husband.

Perhaps the most important information is that the City Attorney has said there is not a problem changing the length of the variance from five years to in perpetuity.

I bought Lot 9 Krause Addition as a buildable lot. I have always paid property taxes based on a buildable lot. I feel the size requirements for a buildable lot should be grandfathered in. I have done nothing wrong and yet I have to fight to keep what the City is trying to take away from me.

Thank you.



Suzanne Horning

(651) 770-8991

hahbsetc@comcast.net

From: [Sonsalla, Sarah J.](#)
To: [Emily Becker](#)
Cc: [Kristina Handt](#); [Sonsalla, Sarah J.](#)
Subject: RE: Buildable Lot Variance
Date: Tuesday, August 02, 2016 2:20:43 PM

Dear Emily

I reviewed this issue. The answer to your first question is that the more restrictive standards should apply (the Shoreland ordinance specifically says “when the requirements of the underlying zoning district as shown on the official zoning map are more restrictive than those set forth in the Shoreland Ordinance, the more restrictive standards shall apply” (Section 150.255 of the City Code)).

The answer to your second question is that it is possible for a variance to be granted in perpetuity. Variances by their nature run with the land, but most cities do place an expiration date on them, similar to Lake Elmo (it looks like Lake Elmo has a 12 month expiration date if the construction does not commence). That is perfectly acceptable, although the second part of Lake Elmo’s variance expiration clause is probably not legal (the variance expires if the use ceases for more than six consecutive months) because the variance runs with the land and should not be taken away for non-use. I would recommend that this provision be removed from the City’s code.

It appears that she has been granted a variance from the requirement that construction must start within one year and that she was given five years. I suppose that is acceptable since it was treated as a variance. I suppose that she could ask for another variance from the one year requirement (and that it could be for an unlimited amount of time) or alternatively, she could request that the City change its code to remove the one year requirement. I don’t know if the City would be willing to remove the one year requirement, but it is something that could be considered.

Let me know if you have any other questions.

Thanks!

Sarah

Sarah J. Sonsalla | Attorney | Kennedy & Graven, Chartered | 470 U.S. Bank Plaza | 200 South Sixth Street | Minneapolis, MN 55402 | direct: 612.337.9284 | fax: 612.337.9310 | e-mail: ssonsalla@kennedy-graven.com

From: Emily Becker [mailto:EBecker@lakeelmo.org]
Sent: Thursday, July 28, 2016 11:38 AM
To: Sonsalla, Sarah J.
Subject: Buildable Lot Variance

Good morning Sarah,

A resident is inquiring about the attached Resolution. She was granted a variance for five years to build on a lot that does not meet minimum lot size requirements (it is .7851 acres, not meeting our “buildable (without a variance) lot size requirements” of 60% of the minimum requirements (1.5

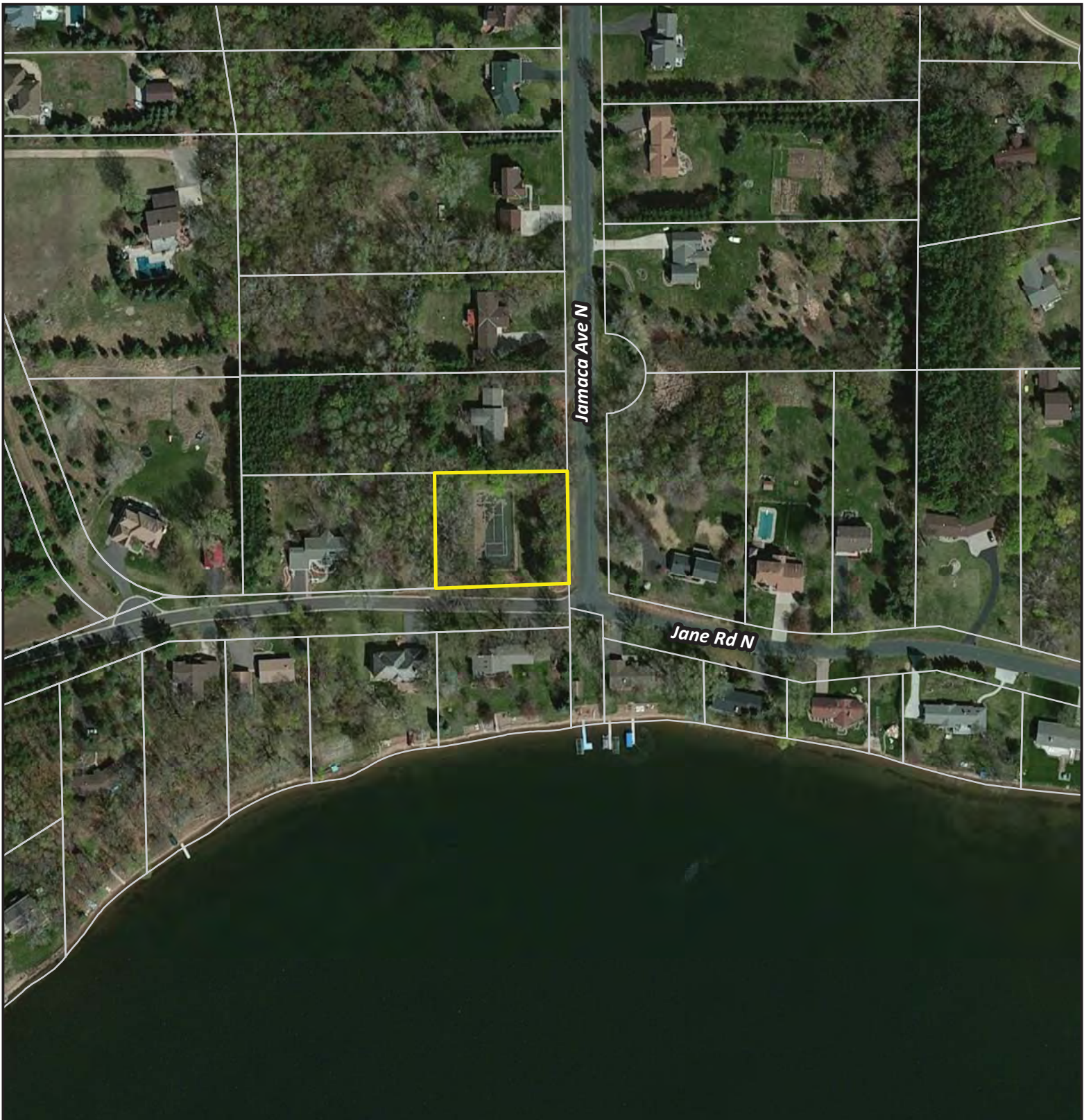
acres for this zoning district) set forth in 154.080: Additional Regulations and Modifications of the Zoning Code). There is a structure on the lot (a tennis court), which was built in the 80', and the property is on a non-riparian lot within the shoreland. A couple questions I have:

- I know there are provisions in the shoreland district that allow a structure to be built on a lot that was platted prior to the adoption of the shoreland district but that does not meet shoreland requirements in terms of lot area but can still meet setbacks, but does the more restrictive provision still apply (the provision of the zoning district that requires a lot size of 1.5 acres)?
- Is it legally possible for a variance to be granted in perpetuity? Or even 5 years? I thought construction for which the variance was granted needed to begin with a year of the variance being granted, but this variance was provided for 5 years.

I do understand that, per the Resolution, she is allowed to request a renewal, but she is really looking to be granted a variance in perpetuity, but from what I'm understanding, this is not possible. We did express that constructing a principal structure would also solve the problem, but she is not looking to build for more than ten years. Another option I provided was to re-look at our non-conforming ordinance to reconsider the 60% rule, but that was not considered a viable option.

Emily Becker
City Planner
City of Lake Elmo
651-747-3912
ebecker@lakeelmo.org





Source: Esri, DigitalGlobe, GeoEye, i-cubed, USDA, USGS, AEX, Getmapping, Aerogrid, IGN, IGP, swisstopo, and the GIS User Community

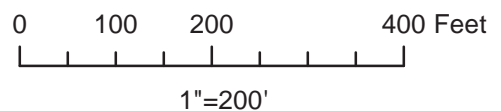
Location Map: 09.029.21.11.0015



Data Source: Washington County, MN
2-26-2014



Variance Request
09.029.21.11.0015





1.53

1.17

1.5

1.17

2.35

1.14

1.48

1.4

2.51

4.28

1.23

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3.58

1.68

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1.59

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1.5

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0.61

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3.12

0.76

1.12

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0

2.03

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0

1.55

1.55

1.55

Fee \$ _____

City of Lake Elmo DEVELOPMENT APPLICATION FORM

- Comprehensive Plan Amendment
- Variance * (See below)
- Residential Subdivision Preliminary/Final Plat
 - 01 – 10 Lots
 - 11 – 20 Lots
 - 21 Lots or More
- Zoning District Amendment
- Minor Subdivision
- Excavating & Grading Permit
- Text Amendment
- Lot Line Adjustment
- Appeal
- PUD
- Flood Plain C.U.P. Conditional Use Permit
- Residential Subdivision Sketch/Concept Plan
- Conditional Use Permit (C.U.P.)
- Site & Building Plan Review

APPLICANT: Suzanne Horning, as Trustee (see attached) 8991 Jane Road North, Lake Elmo, MN 55042
(Name) (Mailing Address) (Zip)

TELEPHONES: 239-765-8708 (Florida Phone Number)
(Home) (Work) (Mobile) (Fax)

FEE OWNER: Suzanne Horning, as Trustee (see attached) 8991 Jane Road North, Lake Elmo, MN 55042
(Name) (Mailing Address) (Zip)

TELEPHONES: 239-765-8708 (Florida Phone Number)
(Home) (Work) (Mobile) (Fax)

PROPERTY LOCATION (Address and Complete (Long) Legal Description): Krause's Addition Lot 9
Subdivision Cd 37425

DETAILED REASON FOR REQUEST: Please see attached.

***VARIANCE REQUESTS:** As outlined in Section 301.060 C. of the Lake Elmo Municipal Code, the Applicant must demonstrate a hardship before a variance can be granted. The hardship related to this application is as follows:
Please see attached.

In signing this application, I hereby acknowledge that I have read and fully understand the applicable provisions of the Zoning and Subdivision Ordinances and current administrative procedures. I further acknowledge the fee explanation as outlined in the application procedures and hereby agree to pay all statements received from the City pertaining to additional application expense.

Suzanne CW Horning 4/13/14
Signature of Applicant Date

Signature of Applicant Date



2200 IDS Center
80 South 8th Street
Minneapolis MN 55402-2157
tel 612.977.8400
fax 612.977.8650

February 3, 2014

Christie J. Cirilli
(612) 977-8926
ccirilli@briggs.com

VIA E-MAIL

Kyle Klatt
Planning Director
Lake Elmo City Hall
3800 Laverne Avenue North
Lake Elmo, MN 55042

Re: Application for Variance - Krause's Addition, Lot 9 Subdivision Cd 37425

We represent Suzanne Horning, as Trustee of the Suzanne R.W. Horning Qualified Personal Residence Trust (the "Applicant"), in connection with her application for a variance. The Applicant requests that the City grant a variance for the property legally described as Krause's Addition, Lot 9 Subdivision Cd 37425, located in the City of Lake Elmo (the "Property").

Please find attached as exhibits written statements as required by the Variance Procedure for the City of Lake Elmo. Also included with this letter is (1) the Applicant's completed and signed land use application form; (2) verification of the Applicant's ownership of the Property; (3) address labels for the certified list of property owners located within three hundred fifty (350) feet of the subject property obtained from and certified by a licensed abstractor; (4) the proposed septic design plan for the Property; and (5) copies of a certified survey depicting the Property.

We look forward to working with you in this matter.

Sincerely,

A handwritten signature in blue ink that reads "Christie J. Cirilli".

Christie J. Cirilli

CJC

cc: Sue Horning
Dan Cole

Kyle Klatt
February 3, 2014
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EXHIBIT A

(List of Current Property Owners/Applicant)

Suzanne R.W. Horning, Trustee of the Suzanne R.W. Horning Qualified Personal Residence Trust under Agreement dated December 26, 2008, by Quit Claim Deed dated December 26, 2008, filed December 31, 2008, as Document No. 3720033.

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EXHIBIT B

(List of Site Data)

1. Legal Description: Krause's Addition, Lot 9 Subdivision Cd 37425
2. Parcel Identification Number: 09.029.21.11.0015
3. Parcel Size (in acres and square feet): 0.785 acres/34,194.6 square feet
4. Existing Use of Land: Vacant parcel
5. Current Zoning: R1 One-Family Residential District

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EXHIBIT C

(Provision of Zoning Code for which Applicant seeks a variance)

The Applicant is seeking a variance under Sections 154.041 and 154.080 of the Zoning Code. Section 154.041, which applies to R-1 One-Family Residential Districts, requires a minimum buildable lot size of 1-1/2 acre per unit without sanitary sewer or 24,000 square feet per unit with sanitary sewer. Section 154.080 contains an exception to this for any "existing lot." An "existing lot" is defined as "a lot or parcel of land in a residential district which was of record as a separate lot or parcel in the office of the County Recorder or Registrar of Titles, on or before the effective date of th[e] chapter." Section 154.080 states that "[a]ny [existing] lot or parcel of land which is in a residential district may be used for single-family detached dwelling purposes, provided the area and width of the lot are within 60% of the minimum requirements of this chapter; provided, all setback requirements of this chapter must be maintained; and provided, it can be demonstrated safe and adequate sewage treatment systems can be installed to serve the permanent dwelling."

The Property at issue therefore qualifies as an exception to the general lot requirements of Section 154.041 and must instead comply with the 60% (0.90 acre) lot requirement of Section 154.080. At 0.785 acres, the Property falls just short of the buildable lot requirements for existing lots in R1 One-Family Residential Districts. As a result, the Applicant is seeking a variance to the existing lot requirement contained in Section 154.080.

Finally, the Applicant is seeking a variance from Section 154.017 of the Zoning Code, which mandates that any variance granted by the City "shall expire if work does not commence within 12 months of the date of granting such variance or if that use ceases for more than 6 consecutive months." Because the Applicant desires to convey the Property to her children through her estate for buildable-lot purposes, any such work performed on the Property would not commence until after the twelve (12) month period required under Section 154.017 of the Zoning Code.

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EXHIBIT D

(Written Description of Proposal)

The Applicant proposes the issuance of a variance to Section 154.080 of the Zoning Code and request that the Property, at 0.785 acres, be characterized as a buildable lot under the Zoning Code.

The Applicant further requests a variance to the requirement under Section 154.017 that work be commenced within twelve (12) months of the variance's issue date. The variance to the buildable lot size will be of no use to the Applicant without a variance to this requirement as well.

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EXHIBIT E

(Narrative of Pre-Application Discussions)

Christie Cirilli, Attorney with Briggs & Morgan, P.A. (the "Applicant's Counsel") spoke with Kyle Klatt, the Planning Director for the City of Lake Elmo (the "Planning Director"), on behalf of the Applicant. Applicant's Counsel discussed Applicant's pursuance of a variance under Section 154.017 of the Lake Elmo Zoning Code. Applicant's Counsel inquired regarding the current standard for variances applied by the City of Lake Elmo. The Planning Director confirmed that the "practical difficulties" standard, as discussed in Minnesota Statutes 462.357, had been adopted by the City and incorporated into Section 154.017 of the Lake Elmo Zoning Code.

The Planning Director stated that the Property had been characterized as a non-buildable lot since 1979, but acknowledged that the Property was improperly assessed and taxed as a buildable lot during the Applicant's ownership of the Property. Applicant's Counsel explained to the Planning Director that the Property was being assessed and taxed as a buildable lot when the Applicant purchased the Property, and as a result, the Applicant believed she was buying land with buildable lot value. Applicant's Counsel explained to the Planning Director that the Property was of little or no value to the Applicant or anyone else without characterization as a buildable lot because the Applicant was interested in transferring the Property via her estate to her children for buildable purposes. The Planning Director acknowledged the erroneous taxation of the Property, despite stating that the zoning classification of the property is separate and distinct from the taxation of the parcel – meaning that the fact that the Property was taxed as a buildable lot does not change the fact that it was characterized as unbuildable under the zoning code. The Planning Director confirmed, however, that the fact that the Applicant purchased the parcel at a buildable lot price and for buildable lot value would be considered by the Planning Commission in its decision of whether or not to grant a variance.

The Planning Director explained that he was not sure how much application of the new "practical difficulties" standard would affect the Planning Commission's analysis and issuance of variances. The Planning Commission has not had many variance applications come before it since the new standard took effect. The Planning Director informed Applicant's Counsel that, if the Planning Commission were to grant a variance for the Property, work would have to be commenced on the Property within 12 months of the date the variance was granted – otherwise, the variance would expire. Applicant's Counsel responded that this may be an issue for Applicant, and an additional variance may be requested to waive this requirement.

The Applicant also separately had conversations with the City regarding her Property. In particular, the Applicant spoke with Dean Zuleger, the City Administrator for the City of Lake

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Elmo, who informed the Applicant that he was unaware of any issues with the buildable nature of the Property. Mr. Zuleger acknowledged that other buildable lots in the area were of a similar size to the Property and that he did not see any reason why the Property should not be buildable as well. The discussions with Mr. Zuleger also revealed a prior variance that was issued for the Property in 1985. Upon following up with the Planning Director, there was not much information on file with the City regarding said variance, only that a variance was issued at that time regarding the buildable nature of the Property. This prior variance supports the current application for a variance for the Property.

The Applicant's Counsel further had discussions with Mr. Klatt regarding a variance passed by the Lake Elmo City Council on October 15, 2013, which variance was passed despite a recommendation from the Planning Commission to deny such variance. The property related to the variance request was of a considerably smaller size than the Applicant's property and was located on the shoreline. Mr. Klatt explained that the primary reason for granting the variance was that the property had room for adequate septic systems, and as a result the City Council passed the variance.

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EXHIBIT F

(Explanation of Applicant's Practical Difficulties)

Section 154.017 of the Zoning Code states that a variance shall be granted "where strict enforcement of the [Zoning Code] would cause practical difficulties because of circumstances unique to the individual property under consideration and then only when it is demonstrated that such actions will be in keeping with the spirit and intent of this chapter." Under this Section, the "practical difficulties" standard means that "the property owner proposes to use the property in a reasonable manner not permitted by an official control."

The Applicant is proposing to use the Property in a reasonable manner not permitted by an official control. At 0.785 acres, the Property has been characterized as a non-buildable lot by the Zoning Code, which has a buildable lot size requirement for existing lots of 0.90 acres. The Applicant is proposing to reclassify the Property as a buildable lot prior to her conveyance of the Property through her estate. Given that the Property's acreage constitutes roughly 87% of the buildable lot size requirement, the Property is very close to meeting the required buildable lot size under the Zoning Code. As a result, it is unlikely that any structure built on the Property (that complied with the Zoning Code's building requirements) would be notably more obstructive than structures built on lots meeting the minimum 0.90 acre requirement.

The Property is zoned for residential use and the Applicant will have no use for the Property if it is not classified as a buildable lot. The other lots surrounding the Property are not much larger than the Property and were grandfathered in under the Zoning Code, as the Property at issue should have been. The Property was a platted lot approved by the City at its current size and was intended to be buildable. Therefore, classifying the Property as a buildable lot will not alter the "spirit and intent of the chapter."

Given that the proposed use of the Property is not unreasonable and that the Property should have been previously grandfathered in under the Zoning Code, the Planning Commission should grant a variance given the particularly unusual circumstances of the Applicant, as described on Exhibit G.

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EXHIBIT G

(Explanation of Applicant's Unique Circumstances)

Section 154.017 of the Zoning Code further states that a variance shall only be granted where "[t]he plight of the landowner is due to circumstances unique to the property not created by the landowner." The Applicant at issue has particularly unusual circumstances, which are not by fault of her own.

The Applicant was not the subdivider of the surrounding development and therefore did not create the problem. At the time the Applicant purchased the Property in 1985, the Applicant believed the Property was buildable. The Property was platted and approved by the City at its current size. The surrounding lots were of a similar size and were characterized as buildable. The Applicant paid a buildable lot value for the Property and has been paying taxes, assessed by Washington County, Minnesota, on that buildable lot value for the past twenty-seven (27) years. As a result, the Applicant had good reason to believe that she owned buildable land. The Applicant's belief that the land was buildable affected her decision to purchase and retain the Property.

The Property was specifically characterized as an assessable lot on the City's assessment role on September 10, 1985, at which time the City held a meeting for approval of a special assessment by local property owners. By characterizing the Property as an assessable lot, the City was acknowledging the value the Property was receiving from City improvements and assessing a fee on the Property for those improvements. The Property does not, however, receive any value from City improvements if it is not also buildable. As a result, the City's characterization of the Property as an assessable lot suggests that the Property was intended to be buildable as well.

The Applicant had no reason to believe that her land was not buildable. Any plight of the Applicant was due to the error of other parties. As a result, the Applicant has unique circumstances that she has not created and which justify the City's grant of a variance for the Property.

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EXHIBIT H

(Essential Character of Neighborhood)

In order to obtain a variance from the City, the Applicant is required to show that the issuance of a variance would not alter the essential character of the neighborhood in which the Property is located. In other words, the Property must be consistent and not interfere with the use of the property surrounding it.

The Property is located in Krause's Addition of the City of Lake Elmo. Other lots within Krause's Addition that have houses built on them are not discernibly different in size than the Property. As previously stated, many of these lots were grandfathered in when the Zoning Code requirements changed, and the Property at issue should have been grandfathered in as well. Furthermore, the City Council recently granted a variance on October 15, 2013 for a lot of a considerably smaller size than the Applicant's property, constituting approximately 0.4 acres of land. The City Council's primary reason for granting the variance was that the property had adequate room for appropriate septic systems on the property. The Applicant's Property also has adequate room for appropriate septic systems on the property, with room for both a primary and backup drainfield location, as demonstrated by the septic design submitted in connection with the application. In addition, unlike the property at issue in the October 15, 2013 variance request, the Applicant's property is not located on the shoreline and therefore any building on the Applicant's Property won't interfere with any of the neighboring property rights associated therewith.

Springborn's Green Acres, which adjoins the Property to the North, contains two lots (Lot 2 and Lot 3) that both have less buildable area than the Property at issue, due to drainage and utility easements that bisect each lot. Lot 2 and Lot 3 are shown to each constitute 1.6 acres, but their buildable lot areas are actually only 150 feet by 170 feet due to the easements burdening each lot. Therefore, if granted a variance, the buildable lot area of the Property at issue would be greater than that of both Lot 2 and Lot 3 in Springborn's Green Acres.

Given the size of lots surrounding the Property and adequate room for appropriate septic systems on the property, the issuance of a variance for the Property would not alter the essential character of the neighborhood.

MOUND SYSTEM DESIGN

INDIVIDUAL SEWAGE TREATMENT SYSTEM

Owner's Name	SUZANNE HORNING
Job Site Address	LOT 9, KRAUSE'S ADDITION 49XX JAMACA AVE.
City or Township	LAKE ELMO
Use of Building	SFD


Design Flow Rate	750	Perc Rate	16-30	Land Slope	1	Percent
Two Required Tank Sizes	1500 Gallons	1000 Gallons	Lift Station Tank Size	1200	Gallons	
Rock Bed Width	10		Rock Bed Length	75		
Required Absorption Width	20	Feet	Depth of Clean Sand Fill at Upslope Edge of Rock Layer	Feet		
Minimum Downslope Dike Width After Accounting for the Absorption Area			13	Feet		
Minimum Upslope Dike	10	Feet	Minimum Length of Dike	95	Feet	
Any Other Special Conditions THIS DESIGN IS INTENDED TO DEMONSTRATE SUITABILITY OF LOT FOR SEPTIC PURPOSES ONLY IN ORDER TO OBTAIN A ZONING VARIANCE. ANY CHANGES OF FUTURE HOUSE OR SEPTIC LOCATION WILL REQUIRE ADDITIONAL TESTING OR SIZING TO SEPTIC SYSTEM						

COMPLETE THE PRESSURE DISTRIBUTION SYSTEM WORK SHEET ATTACHED.

This design must be accompanied by a site plan that clearly shows the location of the area tested and approved by the following (MOUND SYSTEMS SITE PLANS MUST CLEARLY SHOW THE LOCATION OF THE MOUND):

1. Use an appropriate scale and indicate direction by use of a north arrow.
2. Show ALL property boundaries, rights-of-way, easements, wetlands. If necessary, an enlarged detail of house site may also be required.
3. Show location of house, garage, driveway and all other improvements existing or proposed.
4. Show location and layout of sewage treatment mound, and back-up mound.
5. Show location of water supply (well and/or community supply line).
6. Dimension all setbacks and separation distances.

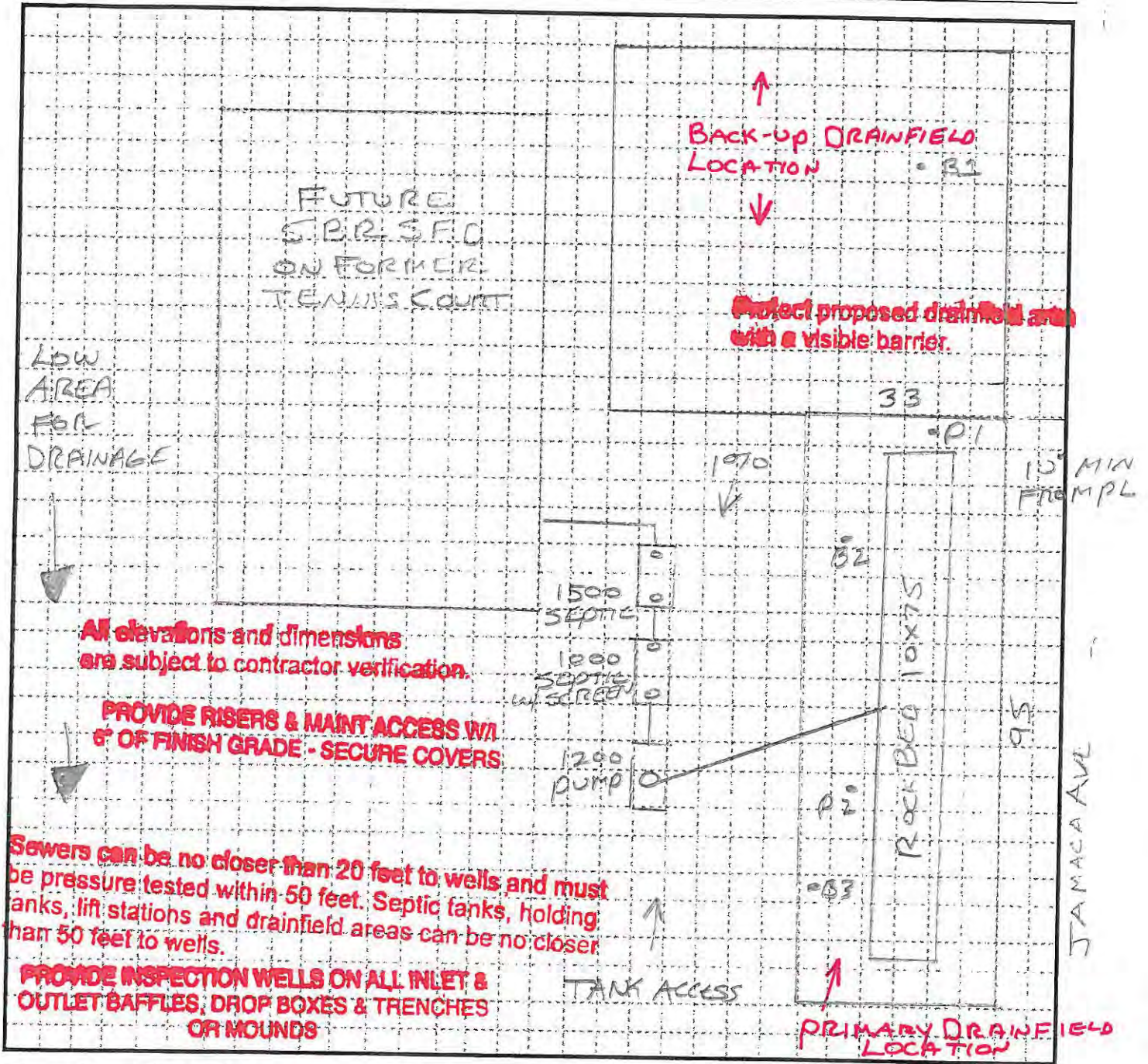
This system has been designed by a Pollution Control Agency (PCA) Certified Professional.

Designer Name	TOM TROUEN	PCA Certification #	1568
Address	12020 SQUARE LAKE TR. STILLWATER MN 55080	Phone #	612-594-4496
Signature		Date	8-11-12

Site Evaluation Map Date 8-11-12 Site Evaluator TOM TROOLEN

Legal location and directions to lot _____

Any surface signs of compaction? _____



Mapping Checklist

Map scale: 1:25

Lot dimensions: JANE ROAD

Indicate north ↑

Locate dwelling

and other improvements

Locate existing and/or proposed system,

replacement area,

unsuitable areas

Indicate easements: phone electric gas

Show slope: % direction

Indicate setbacks: building 20'

property lines 10'

water well 100'/50'

water suction pipe 50' pressure pipe 10'

streams, lakes, rivers 50'/75'/100'

Locate borings, perc tests, indicating elevation,

horizontal and vertical reference points

Is proposed location staked?

Accessible for pumping?

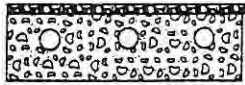
MOUND DESIGN WORKSHEET

(For Flows up to 1200 gpd)

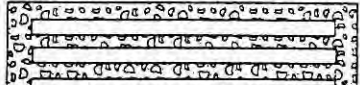
<p>A. FLOW Estimated <u>750</u> gpd or measured _____ x 1.5 = _____ gpd.</p> <p>B. SEPTIC TANK LIQUID VOLUMES <u>1500</u> gallons + 1000</p> <p>C. SOILS (refer to site evaluation)</p> <ol style="list-style-type: none"> Depth to restricting layer = <u>29</u> inches _____ feet Depth of percolation tests = <u>12</u> inches Texture <u>SILT LOAM</u> Percolation rate <u>16-30</u> mpi Land slope <u>1</u> % 	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th colspan="5">Estimated Sewage Flows in Gallons per day (gpd)</th> </tr> <tr> <th>Number of Bedrooms</th> <th>Type I</th> <th>Type II</th> <th>Type III</th> <th>Type IV</th> </tr> </thead> <tbody> <tr><td>2</td><td>300</td><td>225</td><td>180</td><td rowspan="8" style="font-size: small; text-align: center;">60% of the values in Type I, II or III columns</td></tr> <tr><td>3</td><td>450</td><td>300</td><td>218</td></tr> <tr><td>4</td><td>600</td><td>375</td><td>256</td></tr> <tr><td>5</td><td>750</td><td>450</td><td>294</td></tr> <tr><td>6</td><td>900</td><td>525</td><td>332</td></tr> <tr><td>7</td><td>1050</td><td>600</td><td>370</td></tr> <tr><td>8</td><td>1200</td><td>675</td><td>408</td></tr> </tbody> </table> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th colspan="3">Septic Tank Capacities (in gallons)</th> </tr> <tr> <th>Number of Bedrooms</th> <th>Minimum Liquid Capacity</th> <th>Liquid capacity with garbage disposal</th> </tr> </thead> <tbody> <tr><td>2 or less</td><td>750</td><td>1125</td></tr> <tr><td>3 or 4</td><td>1000</td><td>1500</td></tr> <tr><td>5 or 6</td><td>1500</td><td>2250</td></tr> <tr><td>7, 8 or 9</td><td>2000</td><td>3000</td></tr> </tbody> </table>	Estimated Sewage Flows in Gallons per day (gpd)					Number of Bedrooms	Type I	Type II	Type III	Type IV	2	300	225	180	60% of the values in Type I, II or III columns	3	450	300	218	4	600	375	256	5	750	450	294	6	900	525	332	7	1050	600	370	8	1200	675	408	Septic Tank Capacities (in gallons)			Number of Bedrooms	Minimum Liquid Capacity	Liquid capacity with garbage disposal	2 or less	750	1125	3 or 4	1000	1500	5 or 6	1500	2250	7, 8 or 9	2000	3000
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7, 8 or 9	2000	3000																																																								

D. ROCK LAYER DIMENSIONS

- Multiply flow rate by 0.83 to obtain required area of rock layer: $A \times 0.83 =$
 $\frac{750 \text{ gpd} \times 0.83 \text{ sq. ft./gpd} = 750 \text{ sq. ft.}}$
- Select width of rock layer (max 10' if <120 mpi max 5') = 10 ft.
- Length of rock layer = area ÷ width =
 $\frac{750 \text{ sq. ft.} \div 10 \text{ ft.} = 75 \text{ ft.}$



Width 10 ft
<120mpi <10'
>120mpi <5'



Length 75 ft

E. ROCK VOLUME

- Multiply rock area by rock depth to get cubic feet of rock; $750 \text{ sq. ft.} \times 1 \text{ ft.} = 750 \text{ cu. ft.}$
- Divide cu. ft. by 27 cu. ft./cu. yd. to get cubic yards;
 $\frac{750 \text{ cu. ft.} \div 27 = 28 \text{ cu. yd.}$
- Multiply cubic yards by 1.4 to get weight of rock in tons; $28 \text{ cu. yd.} \times 1.4 \text{ ton/cu. yd.} = 39 \text{ tons.}$

F. ABSORPTION WIDTH

- Percolation rate in top 12 inches of soil is 16-30 mpi
 Texture SILT LOAM
- Select allowable soil loading rate from table;
 $\frac{1.20 \text{ gpd/ft}^2}{0.60 \text{ gpd/ft}^2} = 2.00$
- Calculate adsorption width ratio by dividing rock layer loading rate of 1.20 gpd/ft² by allowable soil loading rate;
 $1.20 \text{ gpd/ft}^2 \div 0.60 \text{ gpd/ft}^2 = 2.00$
- Multiply adsorption width ratio by rock layer width to get required adsorption width;
 $10 \times 2.00 \text{ ft} = 20 \text{ ft}$

Absorption Width Sizing Table			
Percolation Rate in Minutes per Inch (MPI)	Soil Texture	Gallons per day per square foot	Ratio of Absorption width to Rock Layer Width
Faster than 0.1	Coarse Sand	1.20	1.00
0.1 to 5	Sand	1.20	1.00
0.1 to 5	Fine Sand	0.60	2.00
6 to 15	Sandy Loam	0.79	1.52
16 to 30	Loam	0.60	2.00
31 to 45	Silt Loam	0.50	2.40
46 to 60	Clay Loam	0.45	2.67
60 to 120	Clay	0.24	5.00
Slower than 120	Clay	0.20	6.00

G. MOUND SLOPE WIDTH & LENGTH
(landslope 1% or more)

1. Subtract rock layer width from absorption width to obtain minimum downslope width
 $20 \text{ ft} - 10 \text{ ft} = 10 \text{ feet}$

2. Calculate minimum mound size

a. Determine depth of clean sand fill at upslope edge of rock layer:

Separation 3' - $2 \text{ ft} = 1 \text{ feet}$

b. Add depth of clean sand for separation (2a) at upslope edge, depth of rock layer (1 foot) to depth of cover (1 foot) to find the mound height at the upslope edge of rock layer;

$1 \text{ ft} + 1 \text{ ft} + 1 \text{ ft} = 3 \text{ feet}$

c. Enter table with landslope and upslope ratio. Select berm multiplier of 3.85

d. Multiply berm multiplier by upslope mound height to find upslope width:

$3 \times 3.85 = 12 \text{ feet}$

e. Multiply rock layer width by landslope to determine drop in elevation;

$10 \times 1\% \div 100 = .1 \text{ feet}$

f. Add depth of clean sand for slope difference (2e) at downslope rock edge, to the mound height at the upslope edge of rock layer (2b) to find the downslope mound height;

$3 \text{ ft} + .1 \text{ ft} = 3.1 \text{ feet}$

g. Enter table with landslope and downslope ratio. Select downslope multiplier of 4.17

h. Multiply downslope multiplier by downslope mound height to get downslope width:

$3.1 \times 4.17 = 13 \text{ feet}$

i. Compare the values of step G.1 10 and Step G.2h 13

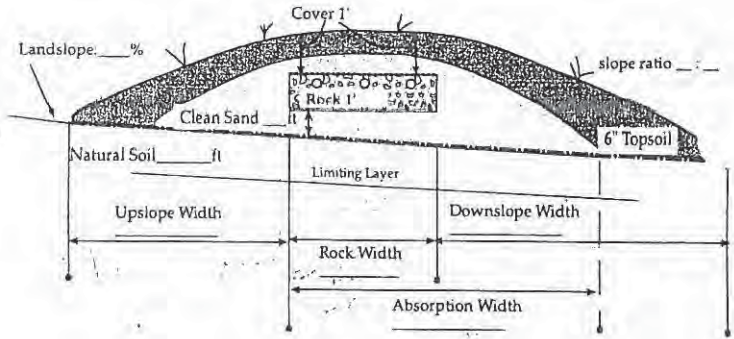
Select the greater of the two values as the downslope width: 13 feet

j. Total mound width is the sum of upslope (G.2d) width plus rock layer width (D.2) plus downslope width(G.2i);

$10 \text{ ft} + 10 \text{ ft} + 13 \text{ ft} = 33 \text{ feet}$

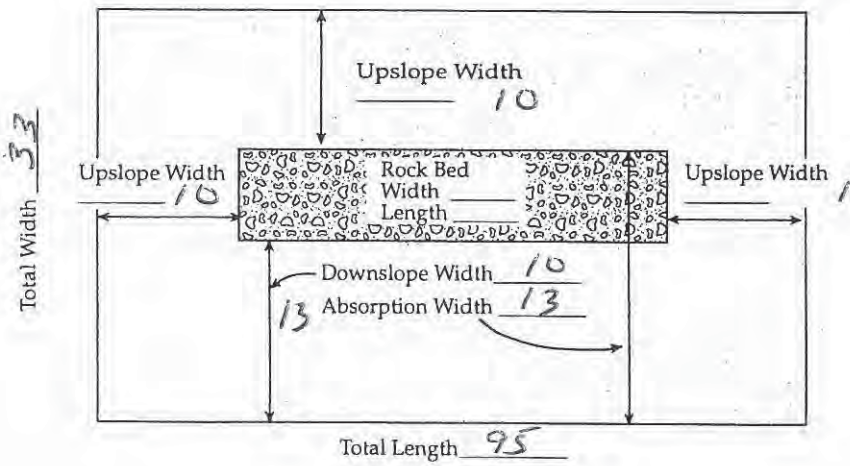
k. Total mound length is the sum of upslope width (G.2d) plus rock layer length (D.3) plus upslope width (G.2d);

$10 \text{ ft} + 10 \text{ ft} + 75 \text{ ft} = 95 \text{ feet}$



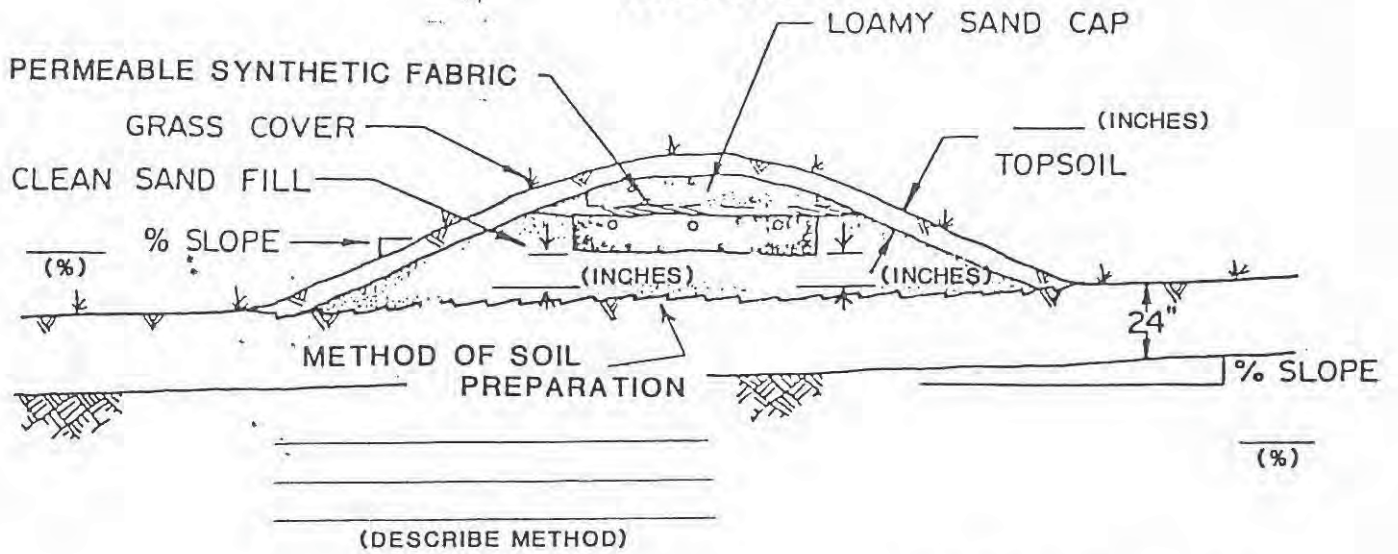
SLOPE MULTIPLIER TABLE

Land Slope, in %	UPSLOPE multipliers for various slope ratios						DOWNSLOPE multipliers for various slope ratios				
	3:1	4:1	5:1	6:1	7:1	8:1	3:1	4:1	5:1	6:1	7:1
0	3.0	4.0	5.0	6.0	7.0	8.0	3.0	4.0	5.0	6.0	7.0
1	2.91	3.85	4.76	5.66	6.54	7.41	3.09	4.17	5.26	6.38	7.53
2	2.83	3.70	4.54	5.36	6.14	6.90	3.19	4.35	5.56	6.82	8.14
3	2.75	3.57	4.35	5.08	5.79	6.45	3.30	4.54	5.88	7.32	8.86
4	2.68	3.45	4.17	4.84	5.46	6.06	3.41	4.76	6.25	7.89	9.72
5	2.61	3.33	4.00	4.62	5.19	5.71	3.53	5.00	6.67	8.57	10.77
6	2.54	3.23	3.85	4.41	4.93	5.41	3.66	5.26	7.14	9.38	12.07
7	2.48	3.12	3.70	4.23	4.70	5.13	3.80	5.56	7.69	10.34	13.73
8	2.42	3.03	3.57	4.05	4.49	4.88	3.95	5.88	8.33	11.54	15.91
9	2.36	2.94	3.45	3.90	4.30	4.65	4.11	6.25	9.09	13.04	18.92
10	2.31	2.86	3.33	3.75	4.12	4.44	4.29	6.67	10.00	15.00	23.2
11	2.26	2.78	3.23	3.61	3.95	4.26	4.48	7.14	11.11	17.65	30.
12	2.21	2.70	3.12	3.49	3.80	4.08	4.69	7.69	12.50	21.43	43.75

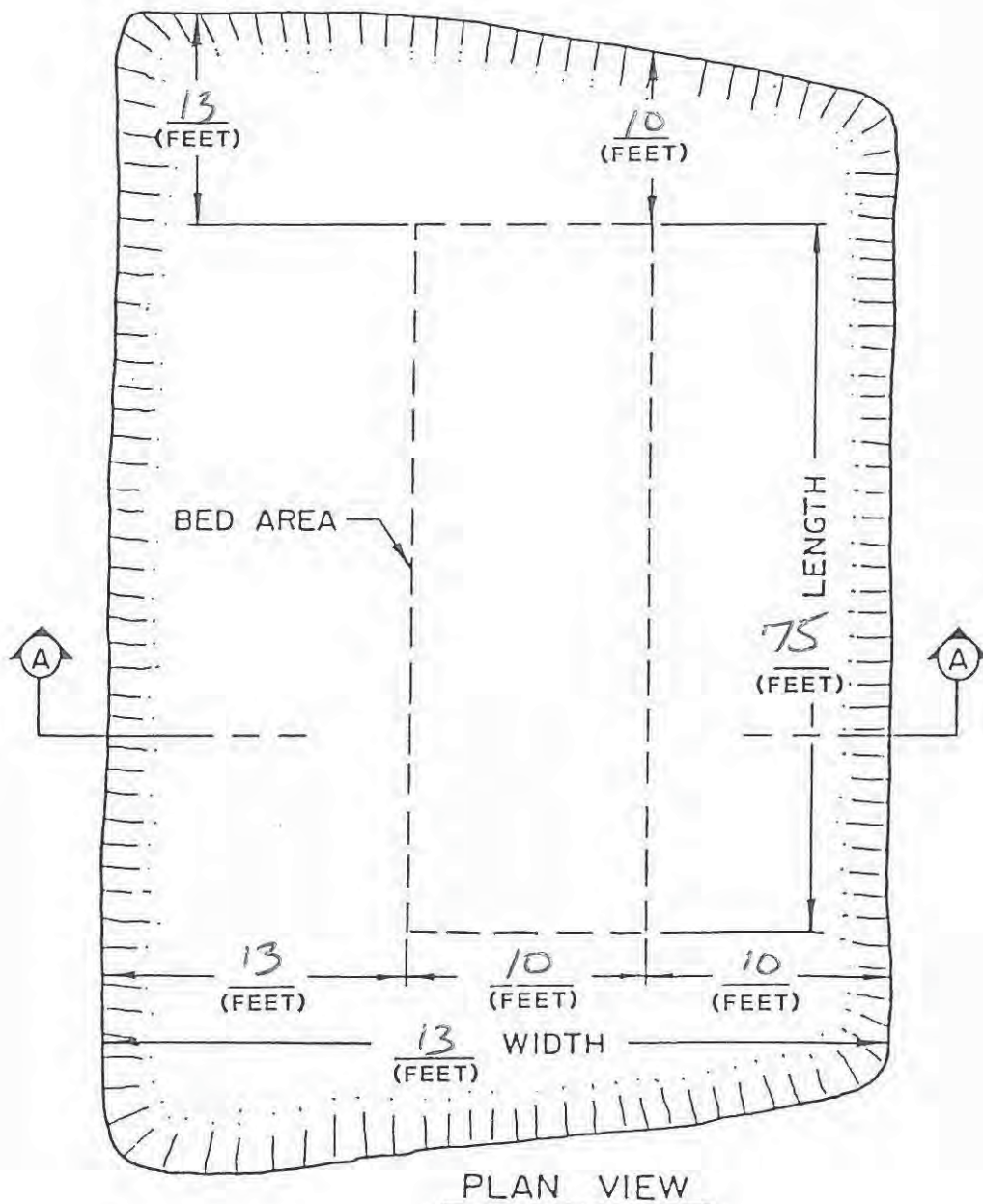


Final Dimensions:
33 x 95

MOUND



CROSS SECTION A-A



Test hole location P1 Hole # _____

TIME	INTERVAL (MINUTES)	WATER DEPTH	WATER DROP (fraction)	WATER DROP (decimal)	PERC RATE CALCULATION
<u>12:45</u> <u>1:15</u>	START 30	<u>8</u> <u>6 1/4</u>	<u>1 3/4</u>	<u>1.75</u>	$\frac{30}{\text{TIME}} \div \frac{\text{DROP}}{\text{(Decimal)}} = \frac{\text{PERC}}{\text{PERC}}$ A
<u>1:15</u> <u>1:45</u>	REFILL 30	<u>8</u> <u>6 3/4</u>	<u>1 3/4</u>	<u>1.81</u>	$\frac{30}{\text{TIME}} \div \frac{\text{DROP}}{\text{(Decimal)}} = \frac{\text{PERC}}{\text{PERC}}$ B
<u>1:45</u> <u>2:15</u>	REFILL 30	<u>8</u> <u>6 3/8</u>	<u>1 5/8</u>	<u>1.63</u>	$\frac{30}{\text{TIME}} \div \frac{\text{DROP}}{\text{(Decimal)}} = \frac{\text{PERC}}{\text{PERC}}$ C
---	REFILL	---	---	---	$\frac{\text{TIME}}{\text{TIME}} \div \frac{\text{DROP}}{\text{(Decimal)}} = \frac{\text{PERC}}{\text{PERC}}$ D
---	REFILL	---	---	---	$\frac{\text{TIME}}{\text{TIME}} \div \frac{\text{DROP}}{\text{(Decimal)}} = \frac{\text{PERC}}{\text{PERC}}$ E
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---	REFILL	---	---	---	$\frac{\text{TIME}}{\text{TIME}} \div \frac{\text{DROP}}{\text{(Decimal)}} = \frac{\text{PERC}}{\text{PERC}}$ H

- conversion
- 1/16 = .06
 - 1/8 = .13
 - 3/16 = .19
 - 1/4 = .25
 - 5/16 = .31
 - 3/8 = .38
 - 7/16 = .44
 - 1/2 = .5
 - 9/16 = .56
 - 5/8 = .63
 - 11/16 = .69
 - 3/4 = .75
 - 13/16 = .81
 - 7/8 = .88
 - 15/16 = .94

P2

TIME	INTERVAL (MINUTES)	WATER DEPTH	WATER DROP (fraction)	WATER DROP (decimal)	PERC RATE CALCULATION
<u>12:50</u> <u>1:20</u>	START 30	<u>8</u> <u>6 1/8</u>	<u>1 7/8</u>	<u>1.88</u>	$\frac{30}{\text{TIME}} \div \frac{\text{DROP}}{\text{(Decimal)}} = \frac{\text{PERC}}{\text{PERC}}$ A
<u>1:20</u> <u>1:50</u>	REFILL 30	<u>8</u> <u>6 1/4</u>	<u>1 3/4</u>	<u>1.75</u>	$\frac{30}{\text{TIME}} \div \frac{\text{DROP}}{\text{(Decimal)}} = \frac{\text{PERC}}{\text{PERC}}$ B
<u>1:50</u> <u>2:20</u>	REFILL 30	<u>8</u> <u>6 1/2</u>	<u>1 1/2</u>	<u>1.5</u>	$\frac{30}{\text{TIME}} \div \frac{\text{DROP}}{\text{(Decimal)}} = \frac{\text{PERC}}{\text{PERC}}$ C
---	REFILL	---	---	---	$\frac{\text{TIME}}{\text{TIME}} \div \frac{\text{DROP}}{\text{(Decimal)}} = \frac{\text{PERC}}{\text{PERC}}$ D
---	REFILL	---	---	---	$\frac{\text{TIME}}{\text{TIME}} \div \frac{\text{DROP}}{\text{(Decimal)}} = \frac{\text{PERC}}{\text{PERC}}$ E
---	REFILL	---	---	---	$\frac{\text{TIME}}{\text{TIME}} \div \frac{\text{DROP}}{\text{(Decimal)}} = \frac{\text{PERC}}{\text{PERC}}$ F
---	REFILL	---	---	---	$\frac{\text{TIME}}{\text{TIME}} \div \frac{\text{DROP}}{\text{(Decimal)}} = \frac{\text{PERC}}{\text{PERC}}$ G
---	REFILL	---	---	---	$\frac{\text{TIME}}{\text{TIME}} \div \frac{\text{DROP}}{\text{(Decimal)}} = \frac{\text{PERC}}{\text{PERC}}$ H

- conversion:
- 1/16 = .06
 - 1/8 = .13
 - 3/16 = .19
 - 1/4 = .25
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 - 3/8 = .38
 - 7/16 = .44
 - 1/2 = .5
 - 9/16 = .56
 - 5/8 = .63
 - 11/16 = .69
 - 3/4 = .75
 - 13/16 = .81
 - 7/8 = .88

Date: 8-11-12

Project Location: 49XX JAMACA AVE LAKE ELMO, MN 55042

Client: _____ Borings made by: TOM TROOEN

Address: _____ Lic. # 1568

Boring method: Auger Pit Probe Other _____

Color classification system: Munsell Other _____

Boring Number B1
 Surface Elevation _____
 Soil type at system depth: _____

Boring Number B2
 Surface Elevation _____
 Soil type at system depth: _____

Depth (Feet)	Texture	Color
7"	LOAMY TOPSOIL	10YR 3/2
1-	FINE SILT LOAM	10YR 4/6
2-		
3-		
43"		
4-	SANDY SILT LOAM	7.5YR 5/6
5-		
6-		
60"		
7-		

Depth (Feet)	Texture	Color
6"	LOAMY TOPSOIL	10YR 3/2
1-	FINE SILT LOAM	10YR 4/6
2-		
3-		
38"		
46"	SANDY SILT LOAM	7.5YR 5/6
4-		
5-		
6-		
7-		

Slope: 1 %
 End of boring at 6 feet.

Standing water table: yes no
 Present at _____ feet of depth,
 _____ hours after boring.

Mottled soil: MOTTLES @ 52"
 Observed at _____ feet of depth.
 Not present in boring hole _____.

Observations and comments:

Slope: 1 %
 End of boring at 46" feet.

Standing water table: yes no
 Present at _____ feet of depth,
 _____ hours after boring.

Mottled soil: MOTTLES @ 40"
 Observed at _____ feet of depth.
 Not present in boring hole _____.

Observations and comments:

Soil Boring Log

Date: _____

Project Location:

Client: _____ Borings made by: _____
 Address: _____

City _____ State _____ Zip _____ Lic. # _____

Boring method: Auger _____ Pit _____ Probe _____ Other _____ Color classification system: Munsell _____ Other _____

Boring Number B3
 Surface Elevation _____
 Soil type at system depth: _____

Boring Number _____
 Surface Elevation _____
 Soil type at system depth: _____

Depth (Feet)	Texture	Color	Depth (Feet)	Texture	Color
--	LOAM/TOPSOIL	10YR 3/2	--		
1--	FINE SILT LOAM	10YR 5/6	1--		
--			--		
2--			2--		
--	SANDY SILT LOAM	7.5YR 4/6	--		
3--			3--		
--			--		
4--			4--		
--			--		
5--			5--		
--			--		
6--			6--		
--			--		
7--			7--		

Slope: 1 %
 End of boring at 38" ~~feet.~~

Standing water table: yes no
 Present at _____ feet of depth,
 _____ hours after boring.

Mottled soil: MOTTLES @ 29"
 Observed at _____ feet of depth.
 Not present in boring hole _____
 Observations and comments:

Slope: _____ %
 End of boring at _____ feet.

Standing water table: yes no
 Present at _____ feet of depth,
 _____ hours after boring.

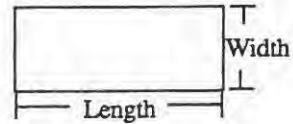
Mottled soil:
 Observed at _____ feet of depth.
 Not present in boring hole _____
 Observations and comments:

Sizing of Pump Station

1. Determine Surface Area

Rectangle = Area = L x W

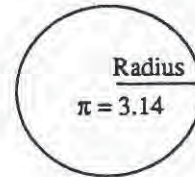
5 x 10 = 50 square feet



Circle = Area = $\pi \times (\text{Radius})^2$

3.14 x _____ x _____ = _____ square feet

Other = Get Surface Area from Manufacturer
_____ square feet



2. Calculate Gallons Per Inch

There are 7.5 gallons per cubic foot of volume, therefore you must multiply the area times the conversion factor and divide by 12 inches per foot to calculate gallons per inch

Area x 7.5 + 12

50 x 7.5 + 12 = 31 gallons/inch

3. Calculate Gallons to Cover Pump (with 2 inches of water covering pump)

(Height (in) + 2 inches) x gallons/inch

(10 + 2) x 31 = 370 gallons

Estimated Sewage Flow in Gallons per Day (gpd)				
Number of Bedrooms	Type I	Type II	Type III	Type IV
2	300	225	180	60% of the volume in the other column
3	450	300	218	
4	600	375	256	
5	750	450	294	
6	900	525	332	
7	1050	600	370	
8	1200	675	408	

4. Calculate Total Pumpout Volume

A. To maximize pump life select sump size for 4 to 5 pump operations per day.

750 gpd x 2 = 1500 gallons per dose

B. Calculate drainback

a. Determine total pipe length, 50 feet.

b. Determine liquid volume of pipe, 10 gallons per 100 feet. (see page F-13)

c. Multiply length by volume: Drainback quantity =

50 feet x 10 gallons + 100 ft. = 5 gallons.

C. Total pump out volume equals dose volume + drainback

1500 gallons per dose + 5 gallons = 1505 Total gallons

Pipe diameter (inches)	Gallons per 100 feet
1	4.49
1.25	7.77
1.5	10.58
2	17.43
2.5	24.87
3	38.4
4	66.1

5. Calculate Volume for Alarm (typically 2 to 3 inches)

Depth (in) x gallons/inch =

31 x 2 = 62 gallons

6. Calculate Reserve Capacity (75% the daily flow)

Daily flow (see page D-7) x .75 =

750 x .75 = 560 gallons

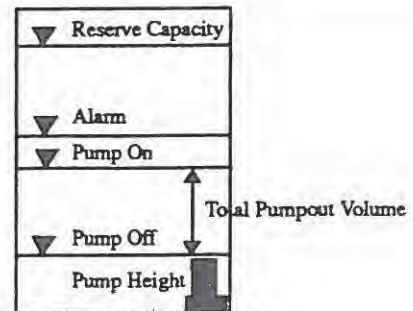
7. Calculate total gallons

gallons over pump + gallons pumpout + gallons alarm + gallons reserve

3 + 4 + 5 + 6

370 + 155 + 62 + 560 = 1147 gallons

USE AT 1200 GALLON PUMPTANK



8. Total Depth (Total gallon divided by gallon per inch)

Total Gallon + gallon/inch

_____ + _____ = _____ inches

9. Float Separation Distance (equal total pumpout volume)

Total pumpout volume + gallons/inch

155 + 31 = 5 inches

PUMP SELECTION PROCEDURE

A. Determine pump capacity: gravity distribution

- Minimum required discharge is 10 gpm
- Maximum suggested discharge is 45 gpm

pressure distribution

see pressure design worksheet

Selected pump capacity: 30 gpm

Perforation Discharges in gpm				
head (feet)	perforation diameter (inches)			
	1/8*	3/16	7/32	1/4
1.0 ^a	0.18	0.42	0.56	0.74
2.0 ^b	0.26	0.59	0.80	1.04
5.0	0.41	0.94	1.26	1.65

^a Use 1.0 foot for single-family homes.
^b Use 2.0 feet for anything else.
 * Potential for plugging

B. Determine head requirements:

- Elevation difference between pump and point of discharge.

8 ± feet

- Special head requirement:

If pumping to a pressure distribution system, five feet for pressure required at manifold. If gravity system, zero. 5 feet

- Friction loss

a. Enter friction loss table with gpm and pipe diameter. Read friction loss in feet per 100 feet from table.

F.L. = 1.55 ft./100 ft of pipe

b. Determine total pipe length from pump to discharge point. Estimate by adding 25 percent to pipe length for fitting loss. Equivalent pipe length times 1.25 = total pipe length

50 x 1.25 = 62.5 feet

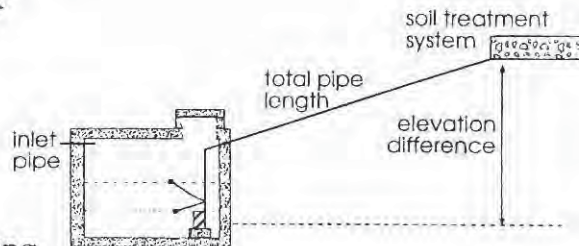
c. Calculate total friction loss by multiplying friction loss in ft/100 ft by equivalent pipe length.

Total friction loss = 62.5 x 1.55 ÷ 100 = 1 feet

- Total head required is the sum of elevation difference, special head requirements, and total friction loss.

8 + 5 + 1 (1) (2) (3c)

Total head: 14 feet



flow rate gpm	Friction Loss in Plastic Pipe Per 100 feet		
	nominal pipe diameter		
	1.5"	2"	3"
20	2.47	0.73	0.11
25	3.73	1.11	0.16
30	5.23	1.55	0.23
35	6.96	2.06	0.30
40	8.91	2.64	0.39
45	11.07	3.28	0.48
50	13.46	3.99	0.58
55		4.76	0.70
60		5.60	0.82
65		6.48	0.95
70		7.44	1.09

C. Pump selection

- A pump must be selected to deliver at least 30 gpm (Step A) with at least 14 feet of total head (Step B).

Table III Minimum Setback Distances (Feet)

Feature	Sewage Tank	Soil Treatment Area
Water Supply Well less than 50 feet deep and not encountering at least ten feet of impervious material.	50	100
Any other water supply well or buried water suction pipe	50	50
Buried pipe distributing water under pressure	10	10
Occupied buildings and buildings with basements or crawl spaces	10	20
Non-occupied structures	5	10
Property lines	10*	10*
Above ground swimming pools	10	10
In ground swimming pools	10	10
The Ordinary High Water Mark of:		
Natural Environment Lakes and Streams	150*	150*
Recreation Development Lakes and Streams	75*	75*
General Development Lakes and Streams	75*	75*
All unclassified waters	75*	75*
St. Croix River Rural Districts	150*	150*
St. Croix River Urban Districts	100*	100*
Blufflines:		
St. Croix River Blufflines	40*	40*
Shoreland Blufflines	20*	20*



PLANNING COMMISSION
DATE: 3/24/14
AGENDA ITEM: 4B – PUBLIC HEARING
CASE # 2014-08

ITEM: Horning Lot Size Variance – Krause’s Addition, Lot 9
SUBMITTED BY: Kyle Klatt, Community Development Director
REVIEWED BY: Nick Johnson, City Planner

SUMMARY AND ACTION REQUESTED:

The Planning Commission is being asked to consider a request from Suzanne Horning (as Trustee of the Suzanne R.W. Horning Trust) for a variance that would classify Lot 9 of Krause’s Addition to Lake Elmo as a buildable lot. The lot currently does not meet the City’s minimum lot size for a lot of record in a RS – Rural Single Family Residential Zoning District. The applicant has also requested a variance from Section 154.017 of the Zoning Ordinance, which states that any variance granted by the City “shall expire if work does not commence within 12 months of the date of the granting of the variance. The applicant has asked that the 12-month time limit be waived for this request.

GENERAL INFORMATION

Applicant: Briggs and Morgan (Christine Cirilli), 2200 IDS Center, 80 South 8th Street, Minneapolis, MN acting on behalf of:
Suzanne Horning (Trustee), 8991 Jane Road North

Property Owners: Suzanne and Robert Horning Trust, 8991 Jane Road North

Location: Lot 9 of Krause’s Addition to Lake Elmo. PID Number 09.029.21.11.0015

Request: Variance – Lot Size and Time Limit for Completion

Existing Land Use: Vacant parcel, prior recreation use (tennis courts) accessory to 8991 Jane Road North

Existing Zoning: RS – Rural Single Family

Surrounding Land Use: Single family residential

Surrounding Zoning: RS – Rural Single Family

Comprehensive Plan: Rural Single Family

Proposed Zoning: No Change

History: Krause’s Addition was platted in 1963. The home at 8991 Jane Road North (across the street and also owned by the applicant) was constructed in 1979. The City granted a lot size variance for the subject property in 1985, but no home was ever

built on the site. A permit to install a tennis court on the subject property was approved later in 1985.

Deadline for Action: Application Complete – 2/3/14
 60 Day Deadline – 4/3/14
 Extension Letter Mailed – No
 120 Day Deadline – 6/3/14

Applicable Regulations: 154.450 – RS – Rural Single Family Residential Zoning District
 154.109 – Variances (Administration and Enforcement)
 150.250 – Shoreland Overlay District

REQUEST DETAILS

The City of Lake Elmo has received a request from Briggs and Morgan, PA acting on behalf of Suzanne Horning, for a variance from the minimum lot size requirements in the RS – Rural Single Family Residential zoning district. The application also includes a request for the City to waive the one-year deadline for completion of the work proposed under the variance. In this case, the applicant has requested that the variance be granted without a deadline so that a home could be built on the lot at an unspecified time in the future. The applicant is therefore not proposing to construct any buildings on the property, and is instead seeking a variance to classify the lot as a buildable parcel in advance of any specific building plans for the property.

The lot under consideration is 0.785 acres (34,195 square feet) in size and the minimum lot size within the RS – Rural Single Family Residential zoning district is 1.5 acres. As an existing lot of record, otherwise known as a lot that was platted prior to the City's zoning regulations becoming effective, this property would be considered buildable if it met 60% of the district's minimum lot size. The applicant would therefore need at least 0.9 acres (39,204 square feet) for this lot to be considered buildable under the current zoning regulations.

The site is currently occupied by a tennis court that was built in the mid-1980's, and has served as an accessory use to the home located at 8991 Jane Road North. Should the variance be approved, the applicant intends to convey the lot to her children as a buildable lot, although she has not provided any specific time frame for a home to be constructed. The application materials include a septic system analysis documenting that a system compliant with Washington County septic regulations may be constructed on the property. For the purposes of this report, the septic designer assumed that a new home would be built on the same area presently occupied by the tennis court.

In addition to the above-referenced septic report, the applicant has provided a detailed project narrative with an analysis of the required variance findings. The applicant has also provided a detailed survey of the lot showing the existing topography, drainage patterns, tree cover, and improvements that are currently situated on the property. There are no specific site development plans, and any future construction on this property will need to comply with the City's zoning and subdivision requirements (with the exception of minimum lot size should the variance be granted).

BACKGROUND

The lot that is the subject of the variance request is part of Krause's Addition to the City of Lake Elmo, which was platted in 1963 when this area was still part of East Oakdale Township. The attached copy of the plat shows that the lot is the same size as it was when originally subdivided. It

likely would have been considered buildable up to the incorporation of the area into the City of Lake Elmo and the adoption of City zoning regulations in the late 1970's. The home at 8991 Jane Road North was constructed in 1979, and it appears that this property (Lot 7) and the subject property (Lot 9) have been under common ownership since at least this time. In June of 1985, a previous owner applied for and was granted a variance by the City to grant Lot 9 status as a buildable lot. It appears that this action was taken in response to the City's adoption of the 1.5-acre minimum lot size for single-family residential lots in this neighborhood. No home was ever constructed after the granting of the variance, and a tennis court was installed on the property later in 1985.

As noted in the application materials, the present owner acquired the property sometime in 1985. It appears that the property transfer occurred after the construction of the tennis court. Additionally, the applicant has described that City assessed the subject property as a buildable lot in 1985 for a City project. Based on this information, it does appear that the City would have considered the lot to be a buildable lot at the time the property was purchased by the applicant. The applicant has also pointed out that the property has been assessed as a buildable lot the entire time that they have owned it.

When the City was planning for the reconstruction of Jane Road North in 2012, the Planning Department was asked to review the assessment rolls for the project and to identify vacant, buildable parcels that would need to pay an assessment. Lot 9 of Krause's Addition was not deemed buildable because it does not meet the 60% size requirement referenced above. Because the current Zoning Regulations include a one-year time limitation concerning the time frame for construction of projects subject to a variance, it is Staff's opinion that the 60% requirement does apply in this situation. The applicant has therefore submitted a variance request in order to re-classify this property as a buildable lot.

The applicant's parcel is situated at the intersection of Jamaca Avenue North and Jane Road North, and is approximately 230 feet north of Lake Jane. Other than a tennis court, there have been no other improvements constructed on the site. There is a fairly heavy amount of tree cover surrounding the tennis court around the periphery of the lot. All of the surrounding lots are occupied by single family residential homes. In general, the properties to the north and west are larger lots (1.5 acres), while the properties to the south and east are smaller lots (generally under 1 acre). In particular, there is a cluster of homes along the northern edge of Lake Jane that are very similar in size, and sometimes smaller, than the applicant's parcel.

PLANNING AND ZONING ISSUES

In reviewing the applicable codes that apply to the subject property, Staff would like the Planning Commission to consider the following as it reviews this request:

- **RS District Setbacks.** Any new construction on the lot will need to comply with all required setbacks for the RS District. The portion of the lot that abuts Jamaca Avenue North is considered the front property line, and is therefore subject to a slightly larger setback.
- **Driveway Access.** Although the City Code does not include any restrictions on the location of a driveway on the property, Staff is recommending that any future driveway access Jane Road North instead of Jamaca Avenue North, since the latter is the less traveled roadway in adjacent to the lot.

- **Impervious Coverage.** The RS District allows a maximum impervious coverage of 25% while the Shoreland Ordinance limits lot coverage to 15% or 6,000 square feet, whichever is greater. The tennis court currently occupies 7,395 square feet, which is 21.6% of the lot. At the time a new house is constructed on the property, the applicant will need to comply with the maximum impervious coverage allowed under the Shoreland Ordinance.
- **Shoreland Setbacks.** The lot is far enough away from Lake Jane that any new structure will be able to comply with structure and septic system setbacks.
- **Drainage Area.** There is an existing drainage area immediately to the west and to the northwest of the applicant's lot, and it appears that a portion of the drainage area is also located on this lot. While the adjacent Sprinborn's Green Acres plat includes a drainage easement over the adjacent lots, there is currently no such easement in place on the applicant's property. Staff is recommending that the applicant be required to provide a drainage easement over the portion of the lot that collects storm water runoff as a condition of approval and prior to the issuance of any building permits for the property.
- **Septic and Drainfield Areas.** The subject parcel is large enough to meet the City's minimum requirement of 20,000 square feet for a primary and secondary septic system site.
- **Surrounding Lots.** The neighboring lots within the public hearing notification area range in size from 11,424 square feet (0.26 acres) to 83,025 square feet (1.9 acres), and of these 13 lots, the average size is 41,592 square feet (0.95 acres).
- **Variance Expiration.** The City Code specifies that variances are valid one year from the date a variance is issued. If construction has not taken place within one year, the variance becomes void. While the applicant has requested a full waiver of this requirement, Staff is recommending that the City maintain a specific deadline for construction of a home on the parcel. Staff is suggesting five years as a reasonable expectation.

REVIEW AND ANALYSIS

An applicant must establish and demonstrate compliance with the variance criteria set forth in Lake Elmo City Code Section 154.017 before an exception or modification to city code requirements can be granted. These criteria are listed below, along with comments from Staff regarding applicability of these criteria to the applicant's request.

- 1) **Practical Difficulties.** A variance to the provision of this chapter may be granted by the Board of Adjustment upon the application by the owner of the affected property where the strict enforcement of this chapter would cause practical difficulties because of circumstances unique to the individual property under consideration and then only when it is demonstrated that such actions will be in keeping with the spirit and intent of this chapter. Definition of practical difficulties - "Practical difficulties" as used in connection with the granting of a variance, means that the property owner proposes to use the property in a reasonable manner not permitted by an official control.

Under this standard, the City would need to find that the classification of the subject parcel as a buildable lot is a reasonable use of the property not otherwise permitted under the zoning ordinance. In this instance, the property was originally platted as a buildable lot and there is evidence in the

City's records that the current owner purchased the property with the understanding that it was a buildable lot. Additionally, the lot is consistent in size with other parcels platted at the same time and that have subsequently been built upon. The property has direct access to a platted and improved street, and a house can be placed on the property in manner consistent with the surrounding homes. Concerning the time extension associated with the variance request, Staff is recommending that a 5-year deadline is a reasonable expectation for construction of a new home. Proposed findings related to this criterion are as follows:

FINDINGS: *That the proposed use is reasonable because the lot was platted as a buildable parcel and all other parcels of similar size have had houses constructed on them since the subdivision was approved. The property is very close to meeting the required 0.9 acre minimum lot size requirement, and construction of a home on this lot will not be any more obstructive than structures built on lots meeting the 0.9 acre requirement. The applicant also purchased the lot at the time it was a buildable parcel, and the continued use of the property for a tennis court is not reasonable given the separation of this parcel by road right-of-way from any others under common ownership. The applicant has demonstrated the ability to install a compliant septic system on the property. A five year deadline for construction of a home on the property is a reasonable period of time for this work to be completed.*

- 2) **Unique Circumstances.** The plight of the landowner is due to circumstances unique to the property not created by the landowner.

In order to demonstrate compliance with this standard, the Planning Commission would need to identify those aspects of the applicant's property that would not pertain to other properties within the same zoning classification. In this case, the lot was platted as a buildable lot within an older subdivision. Other properties in the area were platted at a later date and under a different set of regulations. The property owner also purchased the lot as a buildable lot, and the site has been assessed as such for the past 25 years. Again, Staff is suggesting some findings that could be considered by the Planning Commission as follows:

FINDINGS: *That the applicant's property is unique due to former platting of this property as a buildable lot and continued classification of the property as buildable since the lot was subdivided. The applicant purchased the property with the understanding that a house could someday be built on the property, and City records indicate that the lot was indeed buildable at the time of purchase. Other homes on neighboring smaller lots were constructed prior to the adoption of the City's zoning regulations.*

- 3) **Character of Locality.** The proposed variance will not alter the essential character of the locality in which the property in question is located.

A formal set of findings related to this standard is suggested as follows:

FINDINGS: *The applicant's lot is larger than many of the lots in the surrounding neighborhood and is close to the minimum size needed to be considered buildable. The lot is of sufficient size to allow the installation of a compliant septic system and to allow the placement of a home on the parcel consistent with neighboring structures.*

- 4) **Adjacent Properties and Traffic.** The proposed variance will not impair an adequate supply of light and air to property adjacent to the property in question or substantially increase the congestion of the public streets or substantially diminish or impair property values within the neighborhood.

Propose findings for this criterion are as follows:

FINDINGS. *No impacts above and beyond those considered normal for any other single-family lot in the surrounding neighborhood would be expected should the variance be granted.*

Please note that the applicant has also provided a set of findings as part of the attached narrative and supporting documentation included with the application.

Considering the potential findings of fact as suggested in the preceding section, Staff is recommending approval of the variance request based on the findings noted in items 1-4 above and with conditions of approval related to the drainage area on the site, the location of the driveway access, and the time limit for the expiration of the variance.

DRAFT FINDINGS

Please refer to the comments in the previous section. Staff will be reviewing these findings with the Commission at its meeting.

RECCOMENDATION:

Staff recommends that the Planning Commission recommend approval of the request from Briggs and Morgan, PA acting on behalf of Suzanne Horning, for a variance from the minimum lot size requirements in the RS – Rural Single Family Residential zoning district and from the maximum time of one year for which a variance is valid. This recommendation includes the following conditions of approval:

- 1) The driveway for the future home of the lot shall access Jane Road North. Driveway access to Jamaca Avenue North shall be prohibited.
- 2) The applicant shall provide a drainage easement for the portion of the lot that collects storm water runoff from the subject property and adjacent parcels prior to the issuance of a building permit for the site. The specific location of the drainage easement shall be approved by the City Engineer.
- 3) The variance shall be valid for a period of five years, but may be renewed upon review and approval by the Board of Adjustment.
- 4) A grading, erosion control, and storm water management plan shall be submitted in conjunction with a building permit for the property.
- 5) The applicant shall secure any required permits from the Valley Branch Watershed District prior to commencing any grading or construction activity on the site.

The suggestion motion for taking action on the Staff recommendation is as follows:

“Move to recommend approval of the request for a variance from the minimum lot size requirements in the RS – Rural Single Family Residential zoning district and from the maximum time of one year for which a variance is valid, subject to the conditions of approval as recommended by Staff”

ATTACHMENTS:

1. Application Form
2. Application and Project Narrative

Larson asked if people from the greater Lake Elmo community can sign up for programming. Johnson again deferred to the applicants.

Brian Larson, representing Family Means, addressed the Planning Commission regarding the discrepancy of parking. He noted that when using the City's new required dimension of 9x18, they were able to site 108 parking stalls.

Tom Yuska, the Family Means program director, talked about how most of the participants traveled to the site. He noted that Lake Elmo Elementary does route a bus in front of the existing clubhouse. Yuska also shared that other participants are welcome beyond the Cimarron Park population, but that the program is focused on this population.

Larson asked if the center planned on providing before school care. Yuska noted that they do not have the capacity to provide before-school care.

Dodson asked how many students could be served by the facility. The program director noted that they likely serve 50-70 kids per day. Dodson asked what would happen to the building if the

Public Hearing opened at 7:26pm.

No one spoke.

The City received no written comments.

Public Hearing closed at 7:27pm

Williams stated he supports the request.

M/S/P: Larson/Kreimer, move to recommend approval of the Conditional Use Permit Amendment submitted by Family Means to allow for the construction of a 4,000 square-foot youth center based upon the request meeting the City's 12 required findings for a CUP, **Vote: 5-0, motion carried unanimously.**

2014-08

Public Hearing: Variance - 09.029.21.11.0015 (Lot 9, Krause's Addition at Jamaca and Jane Road)

Klatt started his presentation by explaining the request for a lot size variance. The code requires the lot size to be 0.9 acres and the subject property is 0.785 acres, 0.12 acres short of the minimum. The applicant has also requested a variance from the 12-month time limit for the commencement of work associated with the lot size variance. The applicant does not plan to build on the lot within a one-year period of time.

Klatt continued by providing background information about the parcel, starting with the location. The parcel is on the northwest corner of the intersection of Jane Road North and Jamaca Avenue North. The parcel is just north of Lake Jane. He moved on to present the site plan, describing the topography of the lot. Klatt noted that the northwest portion of the lot collects drainage, and that if the Variance were granted, the City should require that a drainage easement be provided where the water collects.

Klatt then described the general area, specifically noting the parcel sizes of the surrounding properties. He noted that the properties that are located close to Lake Jane are all smaller or similar in size as the subject property. The properties to the north of the subject parcel were platted at a later date.

In terms of history, he noted that the subject property was granted a variance in 1985. The applicants purchased the property at this time, when the lot was likely considered buildable. However, variances are typically valid for a one year period of time. It should be noted that according to current zoning rules, the lot is not considered buildable. In terms of additional info, Klatt described two road reconstruction projects, one in the 80s and one in 2012. In the 80s, the lot was assessed as buildable. In 2012, staff determined that the lot was not buildable.

Klatt discussed the required findings related to a variance. He noted that Staff has provided draft findings in the Staff Report. Klatt noted that the lot is able to site a septic system that will meet Washington County approval.

To wrap up, Klatt noted that Staff is recommending approval of the variance with 5 conditions of approval:

1. Staff is recommending that the driveway for the future home be located on Jane Rd. N.
2. The applicant must provide drainage easements on the site.
3. Staff is recommending that the Variance be valid for 5 years, as opposed to the indefinite approval that the applicant is requesting.
4. The variance is conditioned upon the approval of a future building plans.
5. The future building plans must meet the approval of Valley Branch Watershed District.

Haggard asked why there is a one year valid time period for variances. She also asked if the site will be able to be built upon with the condition that the driveway must be on Jane Rd. Klatt noted that the one year time period is standard because if the variance were open ended, there could be a lot of changes of City policy in the long interim period between when the variance is granted. Also, the site can change over the years.

Regarding the second questions, Klatt noted that the septic design that was submitted to the City included a septic system on the eastern side of the site. Staff is confident that a home can be built with the driveway access condition.

Dodson asked what the risks might be related to the Valley Branch Watershed District approval. Klatt noted that the risks are not great, that meeting VBWD standards are a common part of the process. Staff is recommending the condition so that the applicants are aware that a VBWD permit is likely.

Dodson asked about the northwest corner of the lot, where water pools at this time. Klatt noted that the City does not have topographic information of the surrounding properties. However, when the building permit is submitted, staff would work to ensure that the existing drainage condition is not exacerbated by the construction of the home.

Kreimer asked if the property was assessed in 2012. Klatt noted that it was not.

Williams asked if the septic system has been approved by Washington County. Klatt noted that the system has yet to be approved. Staff did send the variance and proposed system to Washington County for review. The County did not respond, which they typically would if they had concerns.

Following up on Kreimer's earlier question, Klatt noted that if the variance were granted, the City may wish to revisit the 2012 assessment. Haggard noted that the assessment should be triggered as soon as the variance would be granted.

Larson asked about the impacts to adjacent properties. He asked if constructing the home would be an improvement to the drainage situation. Klatt stated that without a plan to review, it is difficult to be sure. However, there will be an overall decrease in impervious surface.

Christine Cirilli, representing the Horning Family, provided some background information on the request. She noted that the applicants have been paying taxes and assessments for the lot from 1985 to 2012 as a buildable lot. The status change to non-buildable in 2012 was a surprise to the applicants. The representative of the family noted that the applicants understand that they have to comply with all of the other zoning and building requirements. They intend to build a home that is consistent with the character of the neighborhood.

Public Hearing opened at 8:06pm.

Greg Zeipelt, 4940 Jamaca Ave. N., noted that his property is directly north of the subject property. He noted that he was not aware of the plans to possibly build a home on the property. He shared that he is lived in the neighborhood for 16 years. When his

family purchased their home, their realtor researched the subject property and determined that the subject property was not a buildable lot. He continued by talking about the drainage issue. He noted that since the road project in 2012, the drainage has gotten worse in the northwest corner of the site.

Bill and Valerie Brass, 8930 Jane Road North, stated that they live to the immediate west of the subject property. She noted that she is concerned about the precedent of allowing variances for additional homes in the neighborhood. She also noted that all of the smaller parcels in the area are on the lake, not to the north of Jane Road. She finished up by stating her concern about the drainage issue. Bill added that they built their house in 1980, and the subject parcel was always the low spot in the area. He agreed that the drainage issue has gotten worse since the road project in 2012. Williams asked a question...the applicants answered

Jason Brash, 9030 Jane Road North, noted that he just moved to Lake Elmo. He noted that they moved here for the open space and large lots. He suggested that it stay that way.

Public Hearing closed at 8:18pm.

Williams asked if staff were aware of the drainage issues. Klatt noted that the City Engineer was aware that PW staff had visited the site. However, the Engineer did not note that any future action was pending.

Dodson noted that he is concerned about the drainage. However, he noted that the property owner does need to be considered. He feels that the property owner has a right to sell their property. It is clear that they have been paying taxes on the property as a buildable lot. Dodson noted that he is in favor of the variance and the 5-year timeframe.

Larson noted that due to the drainage problem, it is not yet determined if a home can be built on that site. It should be the responsibility of the City to ensure that the land can drain properly to serve all of the properties. Williams asked if condition #2 in the staff report would address his concern.

Kreimer noted that he does have some concerns related to the lack of a building plan.

Haggard wanted to clarify that this requested action is not a lot split. Klatt confirmed this fact.

Haggard also noted that she is concerned with the drainage. She would like the ultimate drainage situation to be improved. In addition, she does have concern about runoff to the lake. Also, she added that she would not like to see additional variances in

the future. Klatt noted that any future variance would have to go through the Planning Commission and Council, and staff is not anticipating any future requested variances.

Williams noted that in general he supports granting the variance. However, he would like to offer additional or different findings. Williams noted two proposed changes to the findings. He also recommended two additional conditions:

Condition #6: The applicant will submit a letter from Washington County that an approved septic system can be located on the site at the time of building permit.

Condition #7: The owner shall pay an assessment comparable to other properties in the area related to the Jane Road reconstruction project.

Williams asked if everyone was agreeable to these changes. Everyone agreed.

Larson asked if some additional information should be added to better address the drainage concern. Klatt suggested that some additional language could be added to state that the post home construction conditions not be worse than the existing condition related to the drainage area on the northwest corner of the site. Williams stated that the overall impervious coverage will be reduced. Klatt noted that is correct, but it is hard to note what the future condition will be without a plan. Williams asked if it would be helpful to add to condition #2. Klatt suggested adding language to condition #4 to state that the post-construction condition will not exacerbate the existing drainage situation.

Haggard asked if everyone was agreeable to the five year timeframe. Everyone agreed that the five-year timeframe is reasonable.

Larson asked about the ability to request an extension. Larson wanted it noted in the minutes that the request to extend the time period beyond 5 years should be legitimate and warranted.

M/S/P: Dodson/Williams, move to approve the variance from the minimum lot area requirements for 5 years for 09.029.21.11.0015 based upon the findings of fact as amended by the Planning Commission with the conditions as amended by the Planning Commission, **Vote: 5-0, motion carried unanimously.**

Haggard asked if the City is setting any precedent with the five-year timeframe. Klatt noted that each variance must be considered by its own merit.

Public Hearing: *Zoning Map Amendment and PUD Concept Plan – Launch Properties (PID: 09.029.21.11.0015 - Lake Elmo Avenue and Hudson Boulevard)*



MAYOR & COUNCIL
COMMUNICATION

DATE: 4/1/14
REGULAR
ITEM #6
RESOLUTION NO. 2014-021

AGENDA ITEM: Horning Lot Size Variance – Lot 9 of Krause’s Addition

SUBMITTED BY: Kyle Klatt, Community Development Director

THROUGH: Dean Zuleger, City Administrator

REVIEWED BY: Planning Commission
Nick Johnson, City Planner

SUGGESTED ORDER OF BUSINESS:

- Introduction of ItemCommunity Development Director
- Report/Presentation.....Community Development Director
- Questions from Council to Staff..... Mayor Facilitates
- Call for Motion Mayor & City Council
- Discussion Mayor & City Council
- Action on Motion..... Mayor Facilitates

POLICY RECCOMENDER: The Planning Commission considered an application for a lot size variance at its March 24, 2014 meeting. The Commission is recommending approval with the draft findings and conditions of approval as specified in Resolution 2014-021.

FISCAL IMPACT: N/A – if the parcel were considered a buildable lot, the City would have collected an assessment for the subject lot as part of a recent road project. The Planning Commission is recommending that the applicant pay a fee in lieu of this dedication at the time a building permit is issued for the site.

SUMMARY AND ACTION REQUESTED: The City Council is being asked to consider a request from Suzanne Horning (as Trustee of the Suzanne R.W. Horning Trust) for a variance that would classify Lot 9 of Krause’s Addition to Lake Elmo as a buildable lot. The lot currently does not meet the City’s minimum lot size for a lot of record in a RS – Rural Single Family Residential Zoning District. The applicant has also requested a variance from Section 154.017 of the Zoning

Ordinance, which states that any variance granted by the City “shall expire if work does not commence within 12 months of the date of the granting of the variance. The applicant has asked that the 12-month time limit be waived for this request.

The suggested motions to adopt the Planning Commission recommendation is as follows:

“Move to adopt Resolution No. 2014-21 approving a Variance from the minimum lot size requirements in a RS District and the maximum time for which a variance is valid.”

LEGISLATIVE HISTORY/PLANNING COMMISSION REPORT: The attached staff report to the Planning Commission provides an overview of the request and the draft findings that have since been slightly modified by the Planning Commission. The Commission conducted a public hearing concerning the variance at its March 24, 2014 meeting and received the following comments from neighboring property owners:

- Christine Cirilly, representing the applicant, stated that the applicant has been paying property taxes on the property as a building lot since 1985. She noted that the applicant intends to build a home that is consistent with the character of the neighborhood.
- Greg Zeipelt, 4940 Jamaca Avenue North, stated that, prior to purchasing his house immediately to the north of the applicants lot, he had been informed this lot was not buildable. He discussed the existing drainage in the neighborhood, and pointed out that drainage has gotten worse since the 2012 road project.
- Bill and Valerie Brass, 8930 Jane Road North, expressed concern about setting a precedence for allowing building on other substandard lots in the neighborhood. They also expressed concern about drainage in the area, and noted that the eastern portion of their lot collects water that drains from the subject property.
- Jason Brash, 9030 Jane Road North, explained that he recently moved to Lake Elmo and chose it for the open space and large lots. He encouraged the Planning Commission to keep it this way.

The Planning Commission generally discussed the drainage around the site; Staff responded that the City Engineer has been out to look at this area, but ultimately found that the water is draining to a low area in the neighborhood that has been previously designated as a ponding area. The Commission recommended the addition of two conditions of approval and asked that an existing condition be modified to require that any future construction on the site not exacerbate the existing drainage situation in the neighborhood.

The Planning Commission adopted a motion to recommend approval of the variance request with the findings and conditions as noted in the attached Resolution 2014-021. This resolution includes the conditions as revised and recommended by the Planning Commission. The motion passed unanimously.

BACKGROUND INFORMATION (SWOT):

- | | |
|----------------------|--|
| Strengths | <ul style="list-style-type: none">• The Planning Commission found that the applicant met the City's four variance criteria.• The variance will allow the applicant to build on a lot that has previously been considered buildable by the City. |
| Weaknesses | <ul style="list-style-type: none">• The City will need to track this variance to ensure the five-year deadline is met. |
| Opportunities | <ul style="list-style-type: none">• The variance will allow the current and past tax assessment for the property to match the classification as a buildable lot. |
| Threats | <ul style="list-style-type: none">• The neighbors in attendance at the public hearing expressed concern over the existing drainage situation on the lot and the loss of open space in the neighborhood. |

RECOMMENDATION: The Planning Commission is recommending that the City Council approve the request from Suzanne Horning (as Trustee of the Suzanne R.W. Horning Trust) for a variance that would classify Lot 9 of Krause's Addition to Lake Elmo as a buildable lot and to allow the variance to remain valid for longer than one year subject to conditions. The suggested motion to adopt the Planning Commission recommendation is as follows:

"Move to adopt Resolution No. 2014-21 approving a Variance from the minimum lot size requirements in a RS District and the maximum time for which a variance is valid."

ATTACHMENTS:

1. Resolution No. 2014-021
2. Planning Commission Staff Report – 3/24/14
3. Application and Project Narrative
4. Existing Site Conditions/Survey
5. Location Map
6. Krause's Addition Plat
7. Septic System Report – Tom Trooien

2. Approve Payment of Disbursements and Payroll
3. ~~2014 Seal Coat Project – Approve Plans and Specifications and Authorize Ad for Bids; **RES. NO. 2014-20**~~
4. ~~Family Means CUP; **RES. NO. 2014-21**~~
5. Site Plan Review Ordinance; **ORD. 08-105**

Council Member Smith pulled Item 3 for discussion. Council Member Bloyer pulled Item 4 for discussion.

MOTION: Council Member Reeves moved **TO APPROVE THE CONSENT AGENDA AS AMENDED.** Council Member Nelson seconded the motion. **MOTION PASSED 5-0.**

ITEM 3: 2014 SEAL COAT PROJECT – APPROVE PLANS AND SPECIFICATIONS AND AUTHORIZE AD FOR BIDS

Council Member Smith asked how the Seal Coat Project is going to be paid for. It was only budgeted for \$160,000. Where does the additional \$53,000 come from? Mayor Pearson noted that the Council agreed to spend more on roads. City Administrator Zuleger stated that due to the harsh winter conditions and further re-inspection of the road conditions, additional funds are needed. Council consensus is that if there is an item that is over what was budgeted, it should be noted so that Council is aware.

City Administrator Zuleger suggested that the item go back to the Finance Committee and be brought back to Council on 4/15/14. Ms. Smith thanked the Finance Director and finance committee for catching these items. Mr. Zuleger noted that the staff policy is that if department is over annual budget, the item must be brought to the Finance Committee.

MOTION: Council Member Nelson moved **TO POSTPONE ITEM UNTIL APRIL 15 SO THE FINANCE COMMITTEE CAN REVIEW.** Council Member Smith seconded the motion. **MOTION PASSED 5-0.**

ITEM 4: FAMILY MEANS CUP

City Administrator Zuleger and Community Development Director Klatt explained the CUP application. Family Means has outgrown its current space. The proposal would allow an additional 4,000 sq. ft. addition to its current space. Parking will continue to be adequate. Planning Commission unanimously recommended approval.

MOTION: Council Member Bloyer moved **TO ADOPT RESOLUTION NO. 2014-21, APPROVING THE CONDITIONAL USE PERMIT AMENDMENT REQUEST BY FAMILY MEANS TO ALLOW FOR THE CONSTRUCTION OF A COMMUNITY CENTER IN THE CIMARRON MANUFACTURED HOME PARK.** Council Member Smith seconded the motion.

The Council was very supportive of Family Means and its work in the community.

MOTION PASSED 5-0.

REGULAR AGENDA

ITEM 6: HORNING LOT SIZE VARIANCE; RES. NO. 2014-22

Council Member Bloyer recused himself from discussing this item. **Council Member Bloyer left the room at 7:40PM. Council Member Bloyer returned at 7:47PM.**

Community Development Director Klatt provided an overview of the variance application. Reported concerns regarding drainage were noted. Staff recommends that easements for the drainage and ponding areas be reserved for the City. It was pointed out that in 1985 a previous variance was granted but has since expired. Staff believes that the application meets the City's variance criteria. The Planning Commission recommends approval with 7 conditions as identified in the resolution.

**LAKE ELMO CITY COUNCIL MINUTES
APRIL 1, 2014**

Council Member Smith asked what the amount was for the recent road assessment. Mr. Klatt said that the engineer said it was \$2,900. Funds would go into the road fund. Ms. Smith asked how property taxes have been assessed as a buildable lot but the City does not consider it buildable. Mr. Klatt explained that the county's tax determination is different than the City zoning determination of what is buildable. It was explained that the assessment fee is to be paid at time of building permit.

Council Member Reeves asked about whether the grading should be required to "be improved" instead of "not exacerbate." Mr. Klatt stated that any reviewed building will in fact be an improvement. Ms. Smith noted that the footprint of the tennis court looks larger than many of the surrounding homes.

Christine Cirilli, attorney for applicant, spoke on behalf of Suzanne Horning. She reiterated that when the owner purchased the lot, it was buildable, but that she recently learned in 2012 that the variance had expired. Applicant has thought that it was a buildable lot the entire time. Ms. Smith asked if there was a plan to sell or build within the year. Ms. Cirilli stated that the owner would like her estate to have flexibility in time to build or sell.

Mayor Pearson asked that the record reflect that it is not the Cities responsibility to track the variance. Council Member Nelson asked if the conditions could terminate the variance if the property is transferred. Mr. Klatt reiterated that the applicant may want to sell the lot to another party who wants to build. Mr. Reeves asked what happens when it expires. Mr. Klatt stated that the applicant can re-apply at that time for an extension or another variance.

Mayor Pearson noted that some of the conditions seem superfluous and redundant. It was agreed that several conditions would have to be met anyhow. Mayor Pearson asked about the driveway. Mr. Klatt stated that it is to keep the access on the road with less traffic. It was explained that that the property would have only been assessed on the road section that the driveway would have been on despite it being a corner lot.

MOTION: Council Member Smith moved TO ADOPT RESOLUTION NO. 2014-22, APPROVING A VARIANCE FROM THE MINIMUM LOT SIZE REQUIREMENTS IN A RS DISTRICT AND THE MAXIMUM TIME FOR WHICH A VARIANCE IS VALID. Council Member Reeves seconded the motion.

Council Member Nelson thinks it appropriate that the road fee be paid back to the other residents. Additionally, the fee should be paid up front, not at the time of building permit. Finance Director Bendel stated that if the fee is assessed, it can be assessed to the property taxes. Also, the refunds could be credited to the other properties as an assessment payment.

Council Member Reeves asked about if permit expires, how would the assessment be addressed? Mr. Reeves is concerned about assessing now if something changes. The possibility of status changes to assessed properties was discussed.

MOTION: Council Member Nelson moved TO AMEND THE MOTION THAT IF FOUND TO BE PERMISSIBLE, THE ROAD ASSESSMENT FEE BE RETURNED TO OTHER RESIDENTS OTHERWISE TO THE CITY, AND THE FEE IS ASSESSED IMMEDIATELY. Council Member Smith seconded the motion.

When the fee should be assessed was further discussed.

MOTION PASSED 3-1-1 (Reeves – Nay, Bloyer abstaining).

ORIGINAL MOTION PASSED 4-0-1 (Bloyer abstaining).

ITEM 7: LAUNCH PROPERTIES CUP CONCEPT PLAN AND ZONING MAP AMENDMENT; RES. NO. 2014-23, ORD. 08-106

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

RESOLUTION 2014-022

*A RESOLUTION APPROVING A VARIANCE FROM THE MINIMUM LOT SIZE
REQUIREMENT IN A RS DISTRICT AND FROM THE MAXIMUM TIME FOR WHICH A
VARIANCE IS VALID*

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

WHEREAS, Suzanne Horning (as Trustee), 8991 Jane Road North, (the "Applicant") has submitted an application to the City of Lake Elmo (the "City") for a variance from the minimum lot size requirements in the RS – Rural Single Family Residential zoning district and to waive the one-year deadline for completion of the work proposed under the variance; and

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

WHEREAS, the Lake Elmo Planning Commission held a public hearing on said matter on March 24, 2014; and

WHEREAS, the Lake Elmo Planning Commission has submitted its report and recommendation to the City Council as part of a Staff Memorandum dated April 1, 2014; and

WHEREAS, the City Council considered said matter at its April 1, 2014 meeting.

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

FINDINGS

- 1) That the procedures for obtaining said Variance are found in the Lake Elmo Zoning Ordinance, Section 154.109.
- 2) That all the submission requirements of said Section 154.109 have been met by the Applicant.
- 3) That the proposed variance includes the following components:

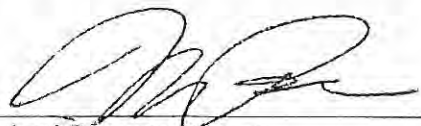
- a) A variance from the minimum lot size requirements in the RS – Rural Single Family Residential zoning district. The subject lot is 0.785 acres in size and the minimum required size to be buildable is 0.9 acres.
 - b) A variance to waive the one-year deadline for completion of the work proposed under the variance.
- 4) That the Variance will be located on property legally described as follows: Lot 9 of Krause’s Addition to the City of Lake Elmo, Washington County, Minnesota. PID 09.029.21.11.0015.
 - 5) That the strict enforcement of Zoning Ordinance would cause practical difficulties and that the property owner proposes to use the property in a reasonable manner not permitted by an official control. *Specific findings: That the proposed use is reasonable because the lot was platted as a buildable parcel and all other parcels of similar size have had houses constructed on them since the subdivision was approved. The property is very close to meeting the required 0.9 acre minimum lot size requirement, and construction of a home on this lot will not be any more obstructive than structures built on lots meeting the 0.9 acre requirement. The applicant also purchased the lot at the time it was a buildable parcel. The applicant has demonstrated the ability to install a complaint septic system on the property. A five year deadline for construction of a home on the property is a reasonable period of time for this work to be completed.*
 - 6) That the plight of the landowner is due to circumstances unique to the property not created by the landowner. *Specific findings: That the applicant’s property is unique due to former platting of this property as a buildable lot and continued classification of the property as buildable since the lot was subdivided. The applicant purchased the property with the understanding that a house could someday be built on the property, and City records indicate that the lot was indeed buildable at the time of purchase. Other homes on neighboring smaller lots were constructed prior to the adoption of the City’s zoning regulations.*
 - 7) That the proposed variance will not alter the essential character of the locality in which the property in question is located. *Specific findings: The applicant’s lot is larger than several of the lots in the surrounding neighborhood and is close to the minimum size needed to be considered buildable. The lot is of sufficient size to allow the installation of a compliant septic system and to allow the placement of a home on the parcel consistent with neighboring structures.*
 - 8) That the proposed variance will not impair an adequate supply of light and air to property adjacent to the property in question or substantially increase the congestion of the public streets or substantially diminish or impair property values within the neighborhood. *Specific findings: No impacts above and beyond those considered normal for any other single-family lot in the surrounding neighborhood would be expected should the variance be granted.*

CONCLUSIONS AND DECISION

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

- 1) The driveway for the future home of the lot shall access Jane Road North. Driveway access to Jamaca Avenue North shall be prohibited.
- 2) The applicant shall provide a drainage easement for the portion of the lot that collects storm water runoff from the subject property and adjacent parcels prior to the issuance of a building permit for the site. The specific location of the drainage easement shall be approved by the City Engineer.
- 3) The variance shall be valid for a period of five years, but may be renewed upon review and approval by the Board of Adjustment.
- 4) A grading, erosion control, and storm water management plan shall be submitted in conjunction with a building permit for the property. This plan shall not exacerbate any existing drainage issues and must be designed to mitigate any additional runoff from any future construction on the site.
- 5) The applicant shall secure any required permits from the Valley Branch Watershed District prior to commencing any grading or construction activity on the site.
- 6) The applicant shall submit a letter from Washington County that an approved septic system can be located on the site prior to the issuance of a building permit for the site.
- 7) The owner shall pay a fee comparable to the assessments levied against other homes in the neighborhood for the 2012 Jane Road North road project. The City will investigate options for reimbursing other property owners that were assessed for the 2012 project to account for the additional buildable lot.

Passed and duly adopted this 1st day of April 2014 by the City Council of the City of Lake Elmo, Minnesota.



Michael Pearson, Mayor

ATTEST:



Adam Bell, City Clerk



PLANNING COMMISSION
DATE: 9/12/2016
AGENDA ITEM: 4B – PUBLIC HEARING
CASE # 2016-39

ITEM: Removing the Prohibition of Solid Wall Fences Over Four Feet in Height on Any Lot Under ½ Acre

SUBMITTED BY: Emily Becker, City Planner

REVIEWED BY: Stephen Wensman, Planning Director

SUMMARY AND ACTION REQUESTED:

On August 16, 2016, City Council directed Staff to bring to the Planning Commission for discussion a text amendment to the City's fencing regulations that would remove the restriction of solid wall fences over four feet in height on properties under half an acre.

On August 22, 2016, the Planning Commission discussed the removal of this restriction and directed Staff to put the item on the Public Hearing Agenda for tonight's Planning Commission meeting.

As such, the Planning Commission is asked to hold a public hearing and consider recommending approval of an ordinance amendment to fencing regulations that prohibit, with exceptions, solid wall fences over four feet in height on any lot under ½ acre.

REQUEST DETAILS:

Section 154.205: Fencing Regulations (E) (3) (below) prohibits solid wall fences over four feet in height on lots under ½ and acre, except under certain circumstances:

Residential Fence Design Requirements. Solid wall fences over four (4) feet in height shall be prohibited on any lot under ½ acre (21,780 square feet) in size. Any portion of a fence over four (4) feet on such lots shall be at least 75% open to light and air, except under one of the following circumstances:

- a. When a residential property abuts a district or use of a higher classification, and specifically, when an A, RR, RS, RE, or LDR district abuts any other district or a single family residential use abuts a multi-family residential use or a non-residential use.
- b. When a property is a through lot and abuts a street that is a higher functional classification than the street abutting the front yard of the property.
- c. For screening of outdoor living space subject to the following criteria:
 - i. The area enclosed by outdoor extended living area fencing shall not exceed an enclosed area of 500 square feet.
 - ii. A fence utilized to enclose and outdoor living area shall be extended to a point not more than 6 inches from the principal structure at 1 fence termination point.
 - iii. A fence utilized to enclose an outdoor extended living area shall not extend into side yard of a lot beyond the existing building line of the existing principal structure, nor shall such fences be located in any side or front street yard.

- d. For screening or privacy purposes when the lineal measurement of the fence does not exceed one-fourth ($\frac{1}{4}$) of the linear distance of the perimeter of a lot. Such fences may only be installed with the written consent of the adjacent property owner.
- e. Under other circumstances when a solid fence is warranted due to safety, health, animal containment or similar purposes subject to review and approval by the City Council and with the written consent of the adjacent property owner.

A brief history of the adoption of this regulation is provided below.

- 5/13/2013: Fence regulations are discussed at the Planning Commission meeting. Regulations at that time prohibited privacy fencing, and the proposed ordinance amendment allowed for solid fences up to six feet in height except in front and side (corner) yard setbacks. Anticipated higher density residential development was cited as the reason for the recommendation of allowing privacy fencing, as the demand for this type of fencing would likely increase.
- 5/23/2013: Public Hearing is held on the ordinance. There is discussion over whether or not the air and openness requirement for those portions of a fence over 4 feet in height is appropriate, but the final version of the amendment does not include the provision.
- 6/4/2013: The fence ordinance amendment is brought to Council. There is concern about allowing a six foot solid wall fence in small yards. A discussion about the ordinance at a workshop is requested.
- 6/11/2013: Item is brought to Council Work Session. Concern is again expressed about solid wall fences being put up on smaller lots. There was discussion about prohibiting such fences on lots of $\frac{1}{2}$ acre or less, and there is concern that this could be seen as discrimination against those property owners of such lots.
- 6/18/2013: Fence ordinance amendment is on the agenda but tabled until the next meeting when all members are expected to be present.
- 7/2/2013: The fence ordinance amendment, along with an alternative version of the proposed amendment, is discussed. The alternative version prohibited solid wall fences over four feet on lot $\frac{1}{2}$ acre in size. There was a significant amount of discussion over whether or not to strike the $\frac{1}{2}$ acre lot size provision. The matter was tabled to a later council meeting.
- 7/16/2013: The ordinance amendment, provided above, is adopted.

PLANNING AND ZONING ISSUES/REVIEW AND ANALYSIS:

Regulation in Other Cities. An attached list names cities that, according to research performed by previous Staff, allow privacy fences six feet in height. Staff has recently verified that such fences are still allowed in these cities.

Permitted Encroachment Restrictions. Section 154.081: Permitted Encroachments on Required Yards, requires that fences in side and rear yards need to be 30% open to air and light. Even if the

prohibition of solid wall fences over four feet in height on lots under ½ an acre is removed, fences would still need to adhere to this requirement unless this requirement is also removed.

Lot Size. Smaller lot sizes usually increase the need for privacy since houses are spaced closer together. Therefore, one could argue that it makes more sense to allow privacy fencing on smaller lots as opposed to larger lots.

Screening. Privacy fences provide screening from nuisances. While there are certain nuisances that can be enforced through City Code, the enforcement process can be lengthy and not always effective. Additionally, what some property owners may consider a nuisance may not be covered in the Nuisance Ordinance. A four-foot high fence does not block views from a neighboring property. When lots are small, it is much more difficult to ignore what one considers a nuisance on a neighboring property.

Open Space Preservation. Staff understands that the underlying reason for placing a height restriction on solid wall fences for smaller lots is to be in keeping with the City’s goal of open space preservation. As such, Staff has prepared two different options for ordinance amendments. These options are explained below:

Option #1

- Eliminates the prohibition of solid wall fences on lots under half an acre altogether.
- This option would allow solid wall/privacy fences up to six feet height on any residential property, provided all other standards are met.
- This option also eliminates the requirement of Subd. B of Section 154.081: Permitted Encroachments on Required Yards, which mandates that fences located in side or rear yard setbacks be 30% open. The Planning Commission may wish to keep this provision, which would require that any solid wall fence that is constructed on any property be within side and rear yard setbacks. It should be noted that the requirement that fences that are located in front and side (corner) yard setbacks be at least 50% open to air and light still would apply.

Option #2

- Modifies Subp. d. by eliminating the requirement that an adjacent property owner give permission to erect a fence on one-fourth of the linear distance of the perimeter of the lot. Privacy fences are so named because they provide concealment and sanctuary, and it should be considered that neighbors do not always get along. Whether or not a certain type of fence can be erected should not be decided by an adjacent property owner. It should be kept in mind that permission from an adjacent property owner would still be required if a fence is erected on a shared property line. This provision makes sense, as the installation and maintenance of the fence would require access of the adjacent property; also, property lines can be disputed.
- Exempts fences that do not exceed one-fourth of the linear distance of the perimeter of a lot from the 30% openness requirement of Section 154.081 (B) for fences within side and rear yard setbacks. This allows a property owner to adequately screen a certain portion of their property. All other provisions for fences would apply; for instance, such fences could not be placed in the front or side (corner) yard setback.
- Additionally, exception “e,” which allows fences that are erected “under other circumstances when a solid fence is warranted due to safety, health animal containment, or similar purposes subject to review and approval by the City Council and with the written consent of the adjacent property owner,” is eliminated, as this exception is

objective, and allowing an adjacent property owner or the Council to determine this may be considered discriminatory.

RECOMMENDATION:

Staff recommends that the Planning Commission recommend approval of Ord. 08- Option #2 attached. The recommendation of the recommended ordinance revision may be made through the following motion:

“Move to recommend approval of Ord. 08- (Option #2), which amends Sec. 154.205: Fencing Regulations; Subd. (E) (3), by repealing language of Subp. d that requires permission from an adjacent property owner to erect a solid wall fence up to six feet in height for screening or privacy purposes when the lineal measurement of the fence does not exceed one-fourth of the linear distance of the perimeter of the lot on a lot under half an acre; and which repeals Subp. e..

ATTACHMENTS:

- **Ord. 08- Option #1**
- **Ord. 08- Option #2**
- **Fence Code Research – Other cities that allow 6’ solid fences**

ORDER OF BUSINESS:

- IntroductionPlanning Staff
- Report by StaffPlanning Staff
- Questions from the Commission Chair & Commission Members
- Open the Public HearingChair
- Close the Public Hearing.....Chair
- Discussion by the Commission Chair & Commission Members
- Action by the Commission..... Chair & Commission Members

CITY OF LAKE ELMO
COUNTY OF WASHINGTON
STATE OF MINNESOTA

ORDINANCE NO. 08-

AN ORDINANCE AMENDING THE LAKE ELMO CITY CODE OF ORDINANCES BY
REPEALING THE PROHIBITION OF SOLID WALL FENCES IN THE LAKE ELMO ZONING
CODE.

SECTION 1. The City Council of the City of Lake Elmo hereby amends Title XV:
Land Usage; Chapter 154: Zoning Code; Section 154.205: Fencing Regulations, by
repealing Subd. (E) (3): Residential Fence Design Requirements:

E. Fence Height and Design

1. *Fences within Front and Side (Corner) Yards.* Any fence within a front or side (corner) yard setback may not exceed forty-two (42) inches in height and must be 50% open to air and light.
2. *Residential and Mixed-Use Districts.* No fence or wall shall exceed six feet (6') in height, and shall be subject to the design requirements of §154.205.E.3.

~~3. *Residential Fence Design Requirements.* Solid wall fences over four (4) feet in height shall be prohibited on any lot under ½ acre (21,780 square feet) in size. Any portion of a fence over four (4) feet on such lots shall be at least 75% open to light and air, except under one of the following circumstances:~~

- ~~a. When a residential property abuts a district or use of a higher classification, and specifically, when an A, RR, RS, RE, or LDR district abuts any other district or a single family residential use abuts a multi-family residential use or a non-residential use.~~
- ~~b. When a property is a through lot and abuts a street that is a higher functional classification than the street abutting the front yard of the property.~~
- ~~c. For screening of outdoor living space subject to the following criteria:
 - ~~i. The area enclosed by outdoor extended living area fencing shall not exceed an enclosed area of 500 square feet.~~
 - ~~ii. A fence utilized to enclose an outdoor extended living area shall be extended to a point not more than 6 inches from the principal structure at 1 fence termination point.~~
 - ~~iii. A fence utilized to enclose an outdoor extended living area shall not extend into side yard of a lot beyond the existing building line of the existing principal structure, nor shall such fences be located in any side or front street yard.~~~~
- ~~d. For screening or privacy purposes when the lineal measurement of the fence does not exceed one-fourth (¼) of the linear distance of the perimeter of a lot.~~

~~Such fences may only be installed with the written consent of the adjacent property owner.~~

~~e. Under other circumstances when a solid fence is warranted due to safety, health, animal containment or a similar purposes subject to review and approval by the City Council and with the written consent of the adjacent property owner.~~

~~3. 4. Commercial and Industrial Districts.~~ No fence or wall shall exceed eight feet (8') in height. Fences that exceed eight feet (8') in height require a conditional use permit.

SECTION 2. The City Council of the City of Lake Elmo hereby amends Title XV: Land Usage; Chapter 154: Zoning Code; Section 154.081: Permitted Encroachments on Required Yards, Subd. (B), by repealing the following:

(B) *Side and rear yards.* Fences ~~30% open~~; walls and hedges 6 feet in height or less; bays not to exceed a depth of 3 feet or containing an area of more than 30 square feet; fire escapes not to exceed a width of 3 feet.

SECTION 3. Effective Date. This ordinance shall become effective immediately upon adoption and publication in the official newspaper of the City of Lake Elmo.

SECTION 4. Adoption Date. This Ordinance 08-___ was adopted on this ___ day of ___ 2016, by a vote of ___ Ayes and ___ Nays.

LAKE ELMO CITY COUNCIL

Mike Pearson, Mayor

ATTEST:

Julie Johnson, City Clerk

This Ordinance 08-___ was published on the ___ day of _____, 2016.

CITY OF LAKE ELMO
COUNTY OF WASHINGTON
STATE OF MINNESOTA

ORDINANCE NO. 08-

AN ORDINANCE AMENDING THE LAKE ELMO CITY CODE OF ORDINANCES BY
REPEALING THE PROHIBITION OF SOLID WALL FENCES IN THE LAKE ELMO ZONING
CODE.

SECTION 1. The City Council of the City of Lake Elmo hereby amends Title XV:
Land Usage; Chapter 154: Zoning Code; Section 154.205: Fencing Regulations;
Subd. (E) (3): Residential Design Requirements, by amending the following:

E. Fence Height and Design

1. *Fences within Front and Side (Corner) Yards.* Any fence within a front or side (corner) yard setback may not exceed forty-two (42) inches in height and must be 50% open to air and light.
2. *Residential and Mixed-Use Districts.* No fence or wall shall exceed six feet (6') in height, and shall be subject to the design requirements of §154.205.E.3.
3. *Residential Fence Design Requirements.* Solid wall fences over four (4) feet in height shall be prohibited on any lot under ½ acre (21,780 square feet) in size. Any portion of a fence over four (4) feet on such lots shall be at least 75% open to light and air, except under one of the following circumstances:
 - a. When a residential property abuts a district or use of a higher classification, and specifically, when an A, RR, RS, RE, or LDR district abuts any other district or a single family residential use abuts a multi-family residential use or a non-residential use.
 - b. When a property is a through lot and abuts a street that is a higher functional classification than the street abutting the front yard of the property.
 - c. For screening of outdoor living space subject to the following criteria:
 - i. The area enclosed by outdoor extended living area fencing shall not exceed an enclosed area of 500 square feet.
 - ii. A fence utilized to enclose an outdoor extended living area shall be extended to a point not more than 6 inches from the principal structure at 1 fence termination point.
 - iii. A fence utilized to enclose an outdoor extended living area shall not extend into side yard of a lot beyond the existing building line of the existing principal structure, nor shall such fences be located in any side or front street yard.
 - d. For screening or privacy purposes when the lineal measurement of the fence does not exceed one-fourth (¼) of the linear distance of the perimeter of a lot

~~and is located in the side or rear yard. Such fences are exempt from the 30% openness requirement for fences within side and rear yard setbacks of Section 154.081 (B) but must adhere to all other provisions of this chapter. Such fences may only be installed with the written consent of the adjacent property owner.~~

- e. ~~Under other circumstances when a solid fence is warranted due to safety, health, animal containment, or a similar purposes subject to review and approval by the City Council and with the written consent of the adjacent property owner.~~
- 4. *Commercial and Industrial Districts.* No fence or wall shall exceed eight feet (8') in height. Fences that exceed eight feet (8') in height require a conditional use permit.

SECTION 2. Effective Date. This ordinance shall become effective immediately upon adoption and publication in the official newspaper of the City of Lake Elmo.

SECTION 3. Adoption Date. This Ordinance 08-_____ was adopted on this ____th day of _____, 2016, by a vote of ___ Ayes and ___ Nays.

LAKE ELMO CITY COUNCIL

Mike Pearson, Mayor

ATTEST:

Julie Johnson, City Clerk

This Ordinance 08-_____ was published on the ____ day of _____, 2016.

Fence Ordinance Research

City	Allows 6' Solid Fence?
Anoka	Yes
Apple Valley	Yes
Blaine	Yes
Bloomington	Yes
Brooklyn Center	Yes
Burnsville	Yes
Cottage Grove	Yes
Eagan	Yes
Eden Prairie	Yes
Edina	Yes
Forrest Lake	Yes
Golden Valley	Yes
Inver Grove Heights	Yes
Maple Grove	Yes
Minneapolis	Yes
Oakdale	Yes
Rosemount	Yes
Richfield	Yes
Stillwater	Yes
South St. Paul	Yes
St. Louis Park	Yes
St. Paul	Yes
Wayzata	Yes
West St. Paul	Yes
Woodbury	Yes