

NOTICE OF MEETING

The City of Lake Elmo
Planning Commission will conduct a meeting on
Wednesday, May 29, 2013 at 7:00 p.m.

AGENDA

1. Pledge of Allegiance
2. Introduction of New Planning Commissioners
 - a. Dean Dodson – Full Voting Member
 - b. Dale Dorschner – 1st Alternate
3. Approve Agenda
4. Approve Minutes
 - a. May 13, 2013
5. Public Hearing
 - a. ZONING TEXT AMENDMENT – SIGN ORDINANCE. The Planning Commission will hold a public hearing to consider an amendment to the Lake Elmo Zoning Code pertaining to signage regulations.
 - b. ZONING TEXT AMENDMENT – ADMINISTRATION. The Planning Commission will hold a public hearing to consider a zoning text amendment pertaining to updates to the administrative section the Lake Elmo Zoning Code.
 - c. ZONING TEXT AMENDMENT – FENCE ORDINANCE. The Planning Commission will hold a public hearing to consider an amendment to the Lake Elmo Zoning Code pertaining to fencing regulations.
6. Business Items
 - a. MINOR SUBDIVISION – 3549 LAKE ELMO AVENUE. The Planning Commission is asked to consider a request by Christ Lutheran Church for a minor subdivision at 3549 Lake Elmo Avenue North.
 - b. FUTURE LAND USE DESIGNATION – RAD 2. The Planning Commission is asked to have a discussion about the use of the RAD 2 Land Use Designation in the City's Comprehensive Plan.
7. Updates
 - a. City Council Updates

- i. The City Council approved the Zoning Text Amendment related to specific development standards at the meeting on 5/21/13.
 - ii. The City Council appointed two new members to the Planning Commission:
 - 1. Mr. Dean Dodson –Full Voting Member
 - 2. Mr. Dale Dorschner – 1st Alternate
 - b. Staff Updates
 - i. Upcoming Meetings: June 10, 2013
 - c. Commission Concerns
8. Adjourn



**City of Lake Elmo
Planning Commission Meeting
Minutes of May 13, 2013**

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

COMMISSIONERS PRESENT: Williams, Haggard, Kreimer and Reeves;

COMMISSIONERS ABSENT: Larson and Morreale;

STAFF PRESENT: City Planner Johnson.

Approve Agenda

The Planning Commission accepted the agenda as presented.

Approval of Minutes: April 22, 2013

M/S/P: Kreimer/Reeves, move to accept minutes as presented, **Vote: 3-0, Motion Carried**, Haggard did not vote.

Presentation – Speak Your Peace:

Reeves spoke about Speak Your Peace, which is a campaign focused on improving civil discourse through raising awareness about the nine tools of civility (basic principles of respect). The Planning Commission is requested to affirm the resolution adopted by the City Council on April 16, 2013.

M/S/P: Reeves/Haggard, move to support and affirm resolution 2013-028 passed by the City Council on 4/13/13, **Vote: 4-0, Motion Carried**.

Public Hearing: *Zoning Text Amendment – Specific Development Standards*

Johnson began his presentation with proposed ordinance updates pertaining to specific development standards for multiple use classifications in the Lake Elmo Zoning Code.

The Planning Commission reviewed the ordinance at the 4/22/13 meeting and identified specific considerations regarding open space and noise. To address these concerns, Staff is recommending proposed language where the applicant would need to demonstrate why green space could not be allowed on site for two specific uses: congregate housing and nursing and personal care.

In regards to noise, Staff is not recommending any changes as noise is addressed in other section of City Code. In addition, Staff proposed other additions in regards to canopy standards and gas stations and drive-through businesses.

Finally, Staff is recommending to strike §154.102 and §154.109, Drive-In Business and Service Stations respectively, as they are redundant or do not reflect best practices.

Reeves asked if there was any consideration or conflict with homeowners associations regarding solar energy systems. Johnson explained that HOA covenants can be more restrictive than City code and homeowners should be aware of neighborhood covenants when choosing to move into a neighborhood.

Williams asked about the numbering of the ordinances. He stated that it seemed like the number system with 154.102 & 154.109 were out of sync. Johnson explained that as things are passed or not passed, things need to be re-slotted and the planners are always aware of that.

Williams also asked where the car repair facilities fit in. Johnson stated that this, along with other items, need to be moved to this section at a later date. Reeves felt if there were other things that also needed to be moved, car repair could be discussed at that time.

Haggard asked about the inoperable/unlicensed vehicle standard. There was a general discussion regarding the wording of that provision. The Planning Commission felt that the provisions should be made clearer for enforcement purposes. Johnson stated that the purpose is to prevent junk cars and other nuisances associated with gas stations. The Planning Commission suggested that subsection B4 read "not complying with subsection B3".

Williams opened the public hearing at 7:53 p.m.

Dean Dodson, 2915 Jonquil Trail N, asked if the aesthetic standards of the Damon Farber & Assoc. Theming Study are addressed in the Zoning Code. Johnson explained that the Theming Study relates only to public spaces, such as streetscape and community spaces. However, the document is being distributed to every developer, and they are encouraged to use theming elements when possible. As a follow up, Dodson asked how the City achieves the desired theming if it is not required. Johnson stated that some use types are more suited to the theming elements than other. In addition, the City can set the tone for by incorporating these elements in the public right-of-way and other areas. Private development often follows the established context of the area.

Williams closed the public hearing at 7:58 p.m.

Haggard asked a number of questions pertaining to noise, parking and standards related to drive-through businesses. Johnson addressed Commissioner Haggard's questions and added that the review of drive-through businesses is mostly addressed through the Conditional Use Permit process.

M/S/P: Reeves\Haggard, move to approve the specific development standards ordinance as amended. **Vote: 4-0, Motion Carried.**

Business Item: Zoning Text Amendment – Sign Ordinance

Johnson reviewed proposed changes to the City's sign code in anticipation of increased demand of signage associated with sewered growth in Lake Elmo. As new use classifications come to Lake Elmo, the current Sign Ordinance does not adequately address all of the needs for future signage.

Staff used a model ordinance from the City of Middleton, WI. This model ordinance is comprehensive and addresses a multitude of different sign types in terms of current best practices. The ordinance is easier to navigate allowing for better administration.

Johnson pointed out that overall the proposed ordinance is less restrictive than the existing ordinance. Some of the major differences include the following:

- The existing ordinance does not address signage needs for properties that have a zero lot-line or no setback.
- The current ordinance exempts signs less than 6 square feet. The new ordinance recognizes that some smaller signs do need to be regulated.
- The existing ordinance created specific sign districts for I-94 and the Village district. Staff feels that it is more appropriate to regulate signs through zoning or use classification.
- The proposed ordinance also allows for electronic variable signs which are currently not allowed in the existing ordinance. The proposed ordinance does not allow for any flashing or blinking lights however.
- The ordinance will also be located in the Zoning Code (Chapter 154) instead of in the Building Code (Chapter 151).

The Planning Commission had a good discussion and asked Johnson a multitude of questions. Johnson will conduct additional research to address these signage related questions. The Commission discussed sign location and sign projection, and asked if address signs could be attached to fences. There was also a discussion about sign illumination. Finally, the Planning Commission asked for additional images or pictures of some of these signs to serve as examples.

Williams was interested in the light source for illuminated signs in the context of the City's dark skies ordinance, requiring the light source to only shine downward. Reeves was not as concerned about the direction of the light as about the glare to passing motorists and pedestrians and adjacent properties.

Williams thought that for temporary window signs restricting to 30% of the window area was too restrictive as well as the awning size of 36 inches was too small. Johnson reminded the Commission that window signs did not require a permit, so it was important to come up with a number of some sort. The Commission felt that 48 inches may be more appropriate for awnings. Planner Johnson noted that he will complete additional research in the context of the existing awnings downtown.

The Commission acknowledged that it is difficult to come up with a signage provision that would address every scenario that could occur. If the Commission is interested in being more restrictive in the Village, they may want to explore a comprehensive downtown signage district.

Johnson noted that this signage district should not apply to Hwy-5 given the different streetscape, travel speeds and wide right-of-way.

The Commission asked for some minor changes for menu signs, real estate signs and garage sale signs.

Reeves asked where monument signs for residential subdivisions fell in the code. Planner Johnson said he will look into how they should be addressed.

The Planning Commission directed the staff to hold the public hearing May 29th, 2013.

Business Item: Zoning Text Amendment – Administration and Enforcement

Johnson reviewed the proposed revisions to the Zoning Ordinance that establish how the ordinance will be administered. The proposed changes would replace sections 154.015 through 154.021. The following components were reviewed:

- Identifying the City Staff responsible for issuing permits, enforcing code, keeping records, processing applications and performing other administrative duties related to the Ordinance.
- This ordinance describes the application and review process that now includes a unified list of application requirements for each type of permit.
- There would be a unified public hearing review process.
- The proposed ordinance describes all permits that are required under the Zoning Ordinance and is recommending a new category called "certificate of compliance".
- Staff also recommended that the Ordinance describe the design review process associated with the Lake Elmo Design Standards Manual.
- The proposed Ordinance also describes the process for addressing enforcement.

The Planning Commission had some clarifying questions regarding mailed notifications, grading permits, zoning amendments, and who fulfilled the role of zoning administrator. Johnson clarified these items.

Williams suggested that for zoning amendments initiated internally, there should be a statement that if initiated internally, all of the submission requirements would be submitted or waived by the Director of Planning.

Haggard asked about revoking a CUP. She wanted to know how hard it is to do and if it has ever happened in Lake Elmo. Johnson explained that it would have to be something pretty blatant and it would require a public hearing. It is more difficult to suspend a CUP than a license, such as a massage therapy license.

Williams asked that the provisions regarding public hearing within the Planning Commission section be made consistent with original public hearing section.

The Planning Commission directed the staff to hold a public hearing May 29th, 2013.

Business Item: Zoning Text Amendment – Fence Ordinance

Johnson reviewed proposed changes to the Fence Ordinance, including the following items:

- First, Staff is recommending that it be moved to Article 5 – General Regulations.
- The current Fence Ordinance does not have specific standards as it pertains to commercial fencing. With expected growth, now is a good time to address this deficiency.
- The current ordinance also does not allow for privacy fencing in residential zones. With higher density residential development staged to occur with the City's Comprehensive Plan, Staff anticipated that the demand for privacy fencing will increase. The proposed fence ordinance would allow for solid fences up to 6' in residential zones except in front or side (corner) yard setback areas.
- The proposed ordinance recommends eliminating references to fencing as screening as screening will be handled in the landscaping and screening section in the future.
- The proposed ordinance recommends a height allowance for commercial fences of up to 8'. For fences over 8', a CUP would be required to allow staff, the Planning Commission and the City Council to review the purpose of the fence more fully.
- The last recommendation deals with eliminating the provision of the fence ordinance dealing with shoreland districts. This is not included in the ordinances of other Cities and staff would like to conduct more research regarding the inclusion of fencing in shoreland areas.

Williams suggested that there should possibly be a table showing different fence height for different districts.

Haggard asked about electric fencing. Should that be in the code? Williams suggested that more research should be done regarding electric fencing.

Haggard asked about corner lots and setbacks. Johnson suggested that a minimum setback could be set, but that the setback may create problems in districts with minimal setbacks, such as the VMX district. Reeves pointed out that there was a traffic obstruction provision in the ordinance that may supersede the setback requirement.

Kreimer asked if the locking swimming pool covers could be substituted for the fence requirement around pools. Haggard and Reeves felt that the fence is required for safety. Johnson noted that the proposed fence ordinance would leave the provisions for fencing around swimming pools in place.

Haggard asked if there should be separate standards for commercial fences, especially in regards to maintenance. There is nothing in the code regarding required colors. She also noted that the permitted materials should be tweaked.

Williams felt that there should be a list of exemptions that would not require a permit such as garden fences and seasonal recreational fences such as hockey boards.

The Planning Commission directed the staff to hold a public hearing May 29th, 2013.

City Council Updates

The City Council approved the following items at the 5/7/13 meeting:

1. Minor Comprehensive Plan Amendment – Olson Lake Trail Sewer Project
2. Zoning Map Amendment
3. Off-Street Parking Ordinance
4. Tree Preservation Ordinance, with minor amendment.

Staff updates

Staff asked the Planning Commission to consider moving the May 28th Planning Commission meeting to Wednesday, May 29th, 2013 due to the Memorial Day holiday.

Commissioner concerns - None

Adjourned at 11:30p.m.

Respectfully submitted,

Joan Ziertman
Planning Program Assistant



Planning Commission
Date: 5/29/13
Item: 5a
Public Hearing

ITEM: Zoning Text Amendment – Sign Ordinance

SUBMITTED BY: Nick Johnson, City Planner

REVIEWED BY: Kyle Klatt, Planning Director
Dean Zuleger, City Administrator

SUMMARY AND ACTION REQUESTED:

The Planning Commission is being asked to hold a public hearing on a proposed Sign Ordinance intended to incorporate best practices pertaining to all forms of signage in Lake Elmo. The Planning Commission previously reviewed the proposed ordinance at the meeting on 5/13/13. This action is part of the ongoing effort to improve and reorganize the Lake Elmo Zoning Code.

ADDITIONAL INFORMATION:

At the meeting on 5/13/13, the Planning Commission reviewed the proposed Sign Ordinance and provided significant feedback. The review comments and questions by the Planning Commission are organized in the following chart:

Review Comment/Question	Staff Response
The Planning Commission (PC) asked for clarification of the language within the definition of Changeable Copy Signs (pg. 2) regarding the face of the sign.	Staff is comfortable with the existing language in terms of administering/enforcing changeable copy signs.
The Planning Commission discussed how the Ordinance would allow for directory signage that would pertain to an entire business district, like the Village.	Considering that such signage would more than likely be located in the public right-of-way, it is more than likely that the City would participate or endorse such signage. If that was the case, the signage could fall under the exemption of City signage on City property.
The PC suggested that there be an exception for government signage related to locational standards for signs near intersections, cross-walks and driveways in F.c.ii (pg. 7)	The exception was added to the Ordinance.
The PC asked if it would be allowed to place an address sign on a fence.	The proposed ordinance allows address signage as wall signs only. Staff is comfortable with this requirement.

The PC inquired about up-lighting as part of external illumination (pg. 8)	The Sign Illumination subsection does allow for up-lighting. However, the outdoor lighting ordinance currently does not allow for lighting that does not have a 90 degree cutoff (dark skies ord.). The proposed ordinance references the current outdoor lighting ord. (150.035). As always, the more restrictive standard applies.
Pertaining to signage for institutional uses in residential districts, the PC suggested making the allowed height consistent with the standards of a residential identification sign (G.1.b) (pg. 9).	Noted and updated.
The PC had a discussion about the appropriate sizes of on-premises and off-premises signage for agricultural sales businesses (pg. 10). In addition, the PC asked if these standards could be included in Table 5-3.	Staff is comfortable with the standards for on and off-premises signage for ag sales businesses. The off-premises signs are larger due to the high-speed road or corridors where these signs are typically found. In addition, these standards have not been included in Table 5-3 because there are different allowances for signage according to the size of the ag sales business. These standards are from the existing Sign Ordinance.
The PC asked for clarification of language pertaining to the number of traffic lanes in Table 5-3.	Staff updated the table to clarify the meaning of the standard.
Related to awning signs (pg. 14), the PC asked about the dimensional standard of how far awnings can extend from the building. In addition, the PC asked for language to be added regarding the danger of snow load.	Staff researched the existing downtown and found that there are awnings that extend as far as six feet. Anyone proposing to install an awning that large will have to meet the requirements of the building code (wind and snow load, and fire code). Staff also added language about dangers related to snow load.
The PC felt that projecting signs should not extend above the second story of a building, as opposed to the third story (pg.15).	Noted.
The PC noted that there should be more straightforward standards pertaining to the allowed size of temporary signs (pg. 16).	Staff changed the standard from a total of 9 square feet to 8 square feet (even number is easier to administer).
The PC asked why portable signs could not have a landscape orientation per the standards found in J.3.c.ii and iii. (pg. 17)	Portable signs are often found in areas of pedestrian traffic. For this reason, it makes sense to limit the width of such signs as to not cause any obstruction. Staff is comfortable with the standard in its current form.
The PC engaged in a discussion about whether balloons or streamers should be allowed to be attached as appendages to portable signs (pg. 17).	Staff feels comfortable leaving this provision in the ordinance in order to address a safety hazard or nuisance cause by the balloon or streamer. Staff would certainly use its best or reasonable judgment to determine when enforcement is prudent.
The PC asked about the "Time Limitations and Removal" standard within portable signs.	Staff recognizes that signage on a vehicle can constitute a temporary portable sign. This provision is intended to clarify that the vehicle can remain on site. The reference to 24 hour parking must be connected to a parking ordinance, and was therefore

	removed.
The PC asked about the size of construction signs (pg. 19).	Staff finds that the dimensional standard for these signs to be appropriate. These signs go beyond advertising in terms of signaling that construction is occurring on the site.
The PC wanted to ensure the menu signs may only be 15 feet from the building that the sign is advertising or serving (pg. 20)	Updated with appropriate language.
The PC asked about the size of various real estate signage for multi-unit buildings (pg. 20).	Staff is comfortable with the existing language.
Pertaining to garage sale and "open house" signs, the PC wanted to ensure that there was consistency in relation to the location of such signs in the public right-of-way.	Noted and updated.
The PC asked if there should be an exemption for subdivision identification signs similar to the exemption for real estate subdivision signs (pg. 21).	Given the greater permanence, as well as increased cost, of a typical subdivision identification sign, it makes sense to require a permit to ensure compliance with this Ordinance. In addition, dimensional standards for subdivision identification signs were added on pg. 9.

Staff has updated the proposed ordinance to reflect the many discussion items of the Planning Commission. The updates to the ordinance are highlight in red, or redlined. Once again, the proposed ordinance will be organized under Article 5 – General Regulations. Locating the Sign Ordinance in the Zoning Code is a more appropriate location than the current location under Chapter 151: Building Regulations. To reiterate, Staff is recommending the proposed ordinance because it is far better organized, easier to administer, more comprehensive in terms of signage addressed, and, finally, less restrictive in the amount of signage allowed. This action represents another step in updating the zoning code in preparation of future growth and development.

RECCOMENDATION:

Staff recommends that the Planning Commission recommend approval of the proposed sign ordinance through the following motion:

"Move to recommend approval of the proposed Sign Ordinance."

ATTACHMENTS:

1. Proposed Sign Ordinance (§154.212)

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

Article 5 - General Regulations

§154.212 Sign Regulations

§154.212 Sign Regulations

- A. *Purpose and Intent.* The purpose of this Ordinance is to provide standards to safeguard life, health, and property and to promote the public welfare by regulating the design, area, number, construction, location, and installation of all signs referred to hereunder. The City Council and Planning Commission of the City of Lake Elmo find that the visual environment has an effect on the welfare of the citizens of Lake Elmo and that careful control of signage can protect and enhance the community. To carry out this general purpose, the regulations set forth herein are intended to:
1. Protect the public from hazards that result from signs which are structurally unsafe, obscure the vision of motorists and/or compete or conflict with necessary traffic signals and warning signs.
 2. Preserve the land value of private property by assuring the compatibility of signs with nearby land uses.
 3. Foster high quality commercial and industrial development and to enhance economic development of existing businesses and industries by promoting reasonable, orderly, attractive and effective sign that meet the need for business identification, advertising and communication.
 4. Encourage creative and well-designed signs that contribute in a positive way to the community's visual environment, express local character and help develop a distinctive image in the city.
 5. Recognize that signs are a necessary form of communication and provide flexibility within the sign review and approval process to allow for unique circumstances.
 6. Provide applicants with clear and consistent rules and regulations.

- B. *Definitions.* The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

Abandoned Sign. Any sign remaining in place which for a period of ninety (90) consecutive days or more no longer advertises or identifies an ongoing business, product, service, idea, or commercial activity located on the site or has not been properly maintained in accordance with the requirements of this Ordinance.

Ancillary Sign. A wall sign separate from and subordinate in area to the principal sign, identifying generic services, goods or departments in the building, such as pharmacy, optical, auto repair, or garden center, but not including the identification of brand names.

Attention-Attracting Object. Any streamer, pinwheel, pennant, flag, propeller, inflatable sign, statuary, tethered balloon, bunting, beacon, or other artificial device, figure, shape, color, sound, light or exhibit, whether live, animated, or still, that is intended to attract attention to the use or business being conducted on the site. Attention-attracting object does not include the flag of any governmental entity.

Awning. A roof-like cover consisting of fabric, plastic or structural protective cover that projects from the wall of a building which generally serves the purpose of shielding a doorway, entrance, window, or outdoor service area from the elements or to provide decorative distinction.

Banner. A suspended sign made of a flexible material such as canvas, sailcloth, plastic, paper, or fabric of any kind, and intended to be displayed on a temporary basis. A decorative banner is a banner containing no message or logo that is displayed for the purpose of adding color or interest to the surroundings or to the building to which it is attached. A flag or canopy shall not be considered a banner.

Beacon. A stationary or revolving light that flashes or projects illumination, single color or multicolored, in any manner that is intended to attract or divert attention.

Business Opening Sign. A temporary sign displayed prior or in addition to permitted permanent signs to promote the opening of a new business, a change of name or change of ownership.

Canopy. A detachable, roof-like cover, supported from the ground or deck, floor or walls of a structure, for protection from the sun or weather.

Changeable Copy Sign. A sign or portion thereof with characters, letters, or illustrations that can be changed or rearranged manually without altering the face or the surface of the sign and on which the message changes less than eight times a day and less than once per hour. A sign on which the only copy that changes is an electronic or mechanical indication of time or temperature shall not be considered a changeable copy sign.

Commercial Message. A message that directs attention to or acts as advertising for a business, commodity, product, service or form of entertainment or tends to encourage the occurrence of a commercial transaction related thereto.

Comprehensive Sign Plan. A complete signage plan for a building or lot that has been approved by the City.

Construction Sign. A sign identifying individuals or companies involved in design, construction, wrecking, financing, or development of a building or lot upon which the sign sits and/or identifying the future use of the building or lot upon which the sign sits.

Copy. Words, letters, numbers, figures, designs, or other symbolic representations incorporated into a sign.

Directional Sign, On-Premise. A sign without commercial message erected for the purpose of indicating the required or preferred direction of vehicular, bicycle, or pedestrian traffic on private property including, but not limited to "no parking," "entrance," "exit only," "loading only," and other similar signage.

Directional Sign, Off-Premise. Any sign without commercial message that is displayed for the purpose of informing people of or guiding people to a particular place for a specified event, including, but not limited to, an open house, garage sale, estate sale or other similar event.

Directly Illuminated Sign. Any sign designed to give any artificial light directly through any transparent or translucent material from a source of light originating within or on such sign.

Directory Sign. A sign which serves as a common or collective identification for a group of persons or businesses operating on the same lot. Such a sign commonly lists the tenants, occupants, floor plan, addresses or suite numbers of an office complex, shopping center or residential building complex.

Election Campaign Period. A period prior to a general election starting on August 1 until 10 days following the general election, or a period prior to a special election starting 13 weeks prior to the special election until 10 days following the special election.

Electronic Variable Message Sign. A changeable copy sign or portion thereof which can be electronically changed or rearranged without altering the face or the surface of the sign, not including signage or portions thereof displaying time and temperature.

Façade. Any separate face or surface of a building, including parapet walls, and roof surfaces or any part of a building which encloses or covers usable space. Where separate facades are oriented in the same direction, or where the inside angle at the intersection of two surfaces is

greater than one-hundred and thirty-five (135) degrees, they are to be considered as part of a single façade.

Flag. A device generally made of flexible material, such as cloth, paper, or plastic, and displayed from a pole, cable or rope. It may or may not include copy.

Frontage. The boundary of a lot that abuts a public street.

Garage Sale Sign. A sign advertising the sale of personal property including estate sales, yard sales or rummage sales used to dispose of personal household possessions.

Government Sign. Any sign erected by the City of Lake Elmo or any other governmental entity in the exercise of official government business and authority.

Ground Sign. Any free-standing sign that is supported by structures or supports in or upon the ground and independent of support from any building. A single sign structure having two identical or nearly identical faces back to back shall constitute a single sign. For the purposes of this definition, a ground sign is intended to refer to a primary, permanent, ground-mounted sign, not a temporary sign or sign that is ancillary to the primary sign, such as a directional sign or portable sign.

Hanging Sign. A sign that is suspended from the underside of a surface and is supported by such surface.

Indirectly Illuminated Sign. A sign that is illuminated from a source outside of the actual sign.

Inflatable Sign. A freestanding or moored sign expanded or inflated with air or another gas, like a balloon, and which may rise and float above the ground.

Legal Non-Conforming Sign. Any sign which was lawfully erected and displayed on [City Clerk to insert effective date], but which does not conform to the requirements and limitations herein, or any sign which was lawfully erected and displayed on the effective date of any amendment to this Section, but which does not conform to such amendment.

Logo. A symbol or trademark commonly used to identify a business or organization.

Memorial Sign. A sign or tablet memorializing a person, event, place or structure.

Menu Sign. A permanent changeable copy sign associated with restaurants with drive-through windows, car washes, or other businesses with drive-up services which gives a detailed list of food or services available.

Monument Sign. A ground sign having a monolithic base or support structure of any material measuring no less than one-third (1/3) of the greatest width of the sign at any point.

Noncommercial Message. A message intended to direct attention to a political, social, community or public service issue or an idea, aim viewpoint, aspiration or purpose and not intended to produce any commercial benefit or tend to encourage a commercial transaction.

Off-Premise Sign. A sign which displays any message directing attention to a business, product, service, profession, commodity, activity, event, person, institution or any other commercial message, which is generally conducted, sold, manufactured, produced, offered or occurs elsewhere than on the lot where such sign is located.

On-Premise Sign. A sign which displays any message directing attention to a business, product, service, profession, commodity, activity, event, person, institution or any other commercial message, which is generally conducted, sold, manufactured, produced, offered or occurs on the same lot as the sign.

Pennant. A tapered or dove-tailed banner or flag.

Permanent. When used in reference to a sign, means that the sign is constructed of durable materials and intended to exist for an indefinite period of time or the duration of the time that the use or occupant is located on the premises and is generally, but not necessarily, affixed to

the ground or structure. Unless the context clearly dictates otherwise, the term "permanent" in this Ordinance is not intended to mean literal permanence, but rather it is meant to distinguish such signs from more transient or temporary signage.

Pole Sign. A ground sign mounted upon a pole or pylon, or multiple poles or pylons, not meeting the definition of monument sign.

Portable Sign. A type of temporary sign that is not permanently attached to the ground or a building or not designed to be permanently attached to the ground or a building, including but not limited to, trailers or other vehicles that are used principally as a sign, posters, "sandwich boards" or other freestanding signboards, regardless of whether such signs are attached to the ground or to a building or structure.

Projecting Sign. A sign that is attached to the wall of a building and projects more than fifteen (15) inches beyond such wall.

Real Estate Sign. A real estate sign advertising only the sale, rental or lease of the premises upon which the sign is located.

Sign. Any display of lettering, logos, colors, lights, or illuminated neon tubes visible to the public from outside of a building or from a traveled way, that either conveys a message to the public, or intends to advertise, direct, invite, announce or draw attention to any event, goods, products, services, facilities, persons, property interest or business.

Street Frontage. The distance for which a lot boundary adjoins a single public street.

Temporary Sign. Any sign that is not a permanent sign.

Wall Sign. A sign that is attached to a wall of a building and is affixed parallel to the wall at a distance of not more than fifteen (15) inches from the surface of the wall.

Window Sign. Any sign located completely within an enclosed building and visible from a public way or placed upon a window. Merchandise within the premises and visible from the exterior shall not be considered a window sign under this definition.

- C. *Applicability.* The Sign Ordinance shall apply to any sign placed, erected, altered, maintained or relocated within the city that is plainly visible, although not necessarily legible, from any public right-of-way or any lot in ownership separate from the lot upon which the sign is located.
- D. *Sign Permits and Fees*
 - 1. *Permit Required.* Except as provided in this Section, it shall be unlawful for any person to place, erect, alter or relocate within the city, any sign without first obtaining a permit from the Planning Director and making payment of all fees as required by the City's Fee Schedule. This subsection shall not be interpreted to require a permit for a change of copy on a changeable copy sign, changing occupant sign panels on a directory sign, repainting, cleaning, or other normal maintenance and repair of any existing sign or its structure as long as the sign copy does not change.
 - 2. *Application for Sign Permit.* All applications for sign permits shall be filed on a form supplied by the City. Such application shall be submitted with all required information provided and shall contain or have attached thereto the following information:
 - a. Date of Application.
 - b. Name, address, telephone number, and, if available, fax and email address, of the Applicant as well as of the person, firm, corporation, or association erecting the sign.
 - c. The written consent of the owner or lessee of the premises upon which the sign is to be erected, or the sworn statement of the applicant that the applicant is authorized by the owner, lessee or other authorized occupant of the premises to erect the proposed sign.

- d. A scale drawing showing the existing and proposed location and dimensions of all buildings, structures, and signs on the subject property. For a ground sign, the drawing shall also indicate the following:
 - i. Distance of the sign from either the face of curb or sidewalk as well as its location relative to other ground signs, driveways, fire hydrants, and any other features of a site that could be obscured by the sign.
 - ii. A landscaping plan around the base of all ground signs.
 - e. The configuration of the proposed sign listing the height, width, total square footage, proposed copy, method of construction and attachment, method of illumination and description of all electrical equipment, sign materials and colors, and at least one image showing the location of the proposed sign and its relationship to either the building to which it is to be mounted or the surrounding lot if it is a ground sign.
 - f. The total area and number of all signs by type on the subject property both before and after the installation of the proposed sign.
 - g. For temporary signs, applications must be accompanied by a signed, written statement acknowledging the ordinance requirements governing the duration of time during which the sign may be displayed.
 - h. Such other information as the City may require to ensure compliance with this Sign Ordinance and any other applicable laws.
3. *Application Process and Review Procedure.* It shall be the duty of the Planning Director, upon the filing of an application for a sign permit, to examine the application for compliance with the requirements of this Section and, if deemed necessary by the Planning Director, to inspect the premises upon which the proposed sign is to be erected. If the application is complete and the proposed sign is in compliance with all the requirements of this Ordinance, and any other applicable laws, the following actions shall be taken:
- a. If the application is for a permanent sign that conforms to an approved Comprehensive Sign Plan that applies to the property upon which it is to be located, or for a permanent or temporary sign that adheres to the requirements of this Code, the Planning Director may issue a permit.
 - b. If an application for approval of a Comprehensive Sign Plan pursuant to §154.212.1 is submitted with a development application subject to Planning Commission review and City Council approval, the Planning Director shall review the application and make a recommendation to the Planning Commission prior to issuing a permit.
 - c. Except for applications for approval of a Comprehensive Sign Plan, applications shall be approved or denied within thirty (30) days of the filing of a complete application or be deemed approved unless an extension of time for review is granted, in writing by the applicant. Any decision of the Planning Director may be appealed to the Board of Adjustment and Appeals.
 - d. In the event that a permit is issued but the sign authorized by the permit is not placed, erected, altered or relocated within six (6) months after the issuance of the permit, the permit shall expire and be null and void.
 - e. *Fees.* A fee shall be charged for the permit in the amount set forth in the City's Fee Schedule.
- E. *Design Review Criteria.* Signs shall meet the following criteria:
- 1. Any signage affixed to a building shall be dimensioned and located in such a manner that it fits the building's architectural features and proportions.
 - 2. All signs shall be designed to fit the zoning and character of the surrounding area. Special consideration should be made where proposed signage is located on or adjacent to locally

identified historic structures or publicly owned recreation and conservancy areas. Signage in Planned Unit Development, or in developments seeking Comprehensive Sign Plans, shall conform to the planned or existing dominant architectural theme of the area. Signage in or abutting residential properties should be designed and located so as not to create a nuisance.

3. Signs illuminated by lights shall be positioned in such a manner that none of the light spills over onto an adjoining property or glares or shines into the eyes of motorists or pedestrians. All signs must conform to the Sign Illumination standards in §154.212.F.7 and §150.035 (Lighting, Glare Control and Exterior Lighting Standards).
4. The number of colors and materials of the sign should be kept to a minimum.
5. Landscape features shall be incorporated around the base of all permanent ground signs. Landscape plantings or other landscape materials shall not be considered as part of the allowable signage.

F. *General Sign Regulations.* This section pertains to all signs erected in the city of Lake Elmo. Additional regulations may apply based on sign type and zoning district in which the sign is to be displayed. Wherever regulations conflict anywhere within this Section or with any other applicable rule or regulation, unless expressly stated otherwise, the more restrictive provision shall control.

1. *Surface Area Calculation.* The sign surface area shall be calculated based on the area within the smallest single continuous rectilinear perimeter of not more than eight (8) straight lines encompassing all elements of the actual sign face including any writing, representation, emblems or any figure or similar character together with any material forming an integral part of the display or forming the backing surface or background on which the message or symbols are displayed, but excluding any support structure. For a sign painted on or applied to a building, the area shall be considered to include all lettering, wording and accompanying design or symbols, together with any background of a different color than the natural color, or finish material of the building. Area of signs displaying copy on two parallel, back-to-back faces not separated by more than twelve (12) inches shall be calculated with reference to a single face only.
2. *Sign Location, Placement and Setback Requirements.* Except as provided elsewhere in this Section, all signs shall be subject to the following requirements:
 - a. *Limitations Based on Building Setbacks:*
 - i. Except as provided in subparagraph (b), no part of any permanent or temporary sign shall extend over a property line.
 - ii. Where buildings are lawfully permitted to exist on the property line, a permanent sign attached to a building may project not more than six (6) feet over the abutting public sidewalk or right of way provided that the bottom of the sign components are located no less than eight (8) feet above the ground immediately beneath such sign. No sign may project over adjacent private property. Any ground sign shall be located on the premises unless it is an authorized temporary sign for which a valid permit is in effect.
 - b. *Signs on Public Property.* No sign shall be located within or across any public right-of-way, or on any public property, easement, or utility pole, except for:
 - i. A sign erected by, or required by, a government agency or temporarily erected to protect the health and safety of the general public; or
 - ii. A sign erected in conformity with subparagraph (a.ii) of this subsection.
 - c. *Safety of Motorists and Non-motorists*

- i. No sign shall be erected or maintained at any location where by reason of its position, wording, illumination, size, shape, or color it may obstruct, impair, obscure the vision of road users, or otherwise obstruct, interfere with the view of, or be confused with, any authorized traffic control sign, signal or device.
 - ii. No sign, with the exception of government signs, may be placed within 10 feet of a fire hydrant, within 15 feet of a crosswalk, or within 15 feet of the intersection of any circulation lane, driveway or alley.
 - iii. No sign exceeding a height of thirty (30) inches may be placed within the vision triangle as defined in §11.01.
 - iv. No sign or structural components shall obstruct passage on a sidewalk or walkway.
- d. *Additional Regulations Pertaining to Placement of All Signs.* Except for a sign erected by, or required by, a government agency or temporarily erected to protect the health and safety of the general public:
 - i. No sign shall be attached to a fence, tree, shrubbery, utility pole or like items on either public or private property, and no sign shall obstruct or obscure primary signs on adjacent premises.
 - ii. No sign shall extend beyond the perimeter of a permanent structure or obstruct any window, door, fire escape, ventilation shaft or other area that is required to remain unobstructed by an applicable building code.
 - iii. No sign shall be mounted upon any roof of any building or structure.
- e. *Americans with Disabilities Compliance.* Sign placement shall meet all Americans with Disabilities Act (ADA) requirements.
- 3. *Construction and Structural Requirements.* Every sign and its framework, braces, anchors and other supports shall be constructed of such material and with such workmanship as to be safe. Every sign shall be designed and constructed in conformity with the applicable provisions of the Minnesota State Building Code and shall be free of any exposed extra bracing, angle iron, guy-wire or cables. The base or support of all permanent ground signs shall be securely anchored to an appropriately designed concrete base or footing per the State Building Code.
- 4. *Load Requirements.* All signs and other advertising structures shall be designed and constructed to meet all load requirements according to all applicable regulations in the Minnesota State Building Code.
- 5. *Installation.* All signs shall be properly secured, supported and braced. No sign or any part thereof, or anchor, brace, or guy-wire shall be attached, fastened or anchored to any fire escape, fire ladder or standpipe, and no sign or any part thereof, or anchor, brace or guy-wire shall be erected or maintained which may cover or obstruct any door, doorway, or window of any building or which may hinder or prevent ingress or egress through such door, doorway or window, or which may hinder or prevent the raising or placing of ladders against such building in the event of fire. All signs or attention-attracting devices shall be free of projections that could cause injury to a pedestrian and shall be installed in such a manner to avoid obstruction of a public sidewalk or street or portion thereof.
- 6. *Maintenance.* All signs, including nonconforming signs, and sign structures shall be maintained to preserve the appearance and structural integrity substantially identical to the new condition of the sign.
- 7. *Sign Illumination.* All illuminated signs shall comply with Section 150.035 (Lighting, Glare Control and Exterior Lighting Standards) and the following requirements:
 - a. *Electrical Permit.* All signs in which electrical wiring and connections to be used shall comply with all applicable provisions of the State Electrical Code. No permit for the

erection of a sign shall be granted prior to approval and issuance of a valid electrical permit for that sign.

- b. *Voltage Displayed.* The voltage of any electrical apparatus used in conjunction with a sign shall be conspicuously noted on that apparatus. In addition, all electrical signs shall bear the label of approval of a recognized testing laboratory and be equipped with a watertight safety switch that is located where the electrical supply enters the sign.
 - c. *External Illumination.* All external lighting fixtures shall be steady, stationary, fully-shielded and directed solely onto the sign, and shall use lighting designed to minimize light spill and glare. Lighting sources shall not be directly visible or cause glare to adjacent public rights-of-way or adjacent private property.
 - d. *Internal Illumination.* Internally illuminated signs shall permit light to shine fully through only the lettering and graphic elements of the sign. The background for such lettering and graphics shall be opaque or translucent and shall transmit light at a level substantially less than that transmitted through the lettering and graphics. If the contrast between the lettering or graphic elements and background does not permit adequate legibility, a translucent white border of up to one (1) inch in width may be placed around said lettering or graphic elements.
 - e. *Brightness Limitation.* Except for daytime displays on electronic variable message signs, in no instance shall the lighting intensity of any illuminated sign exceed:
 - i. Three (3) foot candles at the front lot line and one (1) foot candle at all other lot lines, measured three (3) feet above the surface of the ground.
 - ii. Fifty (50) foot candles measured perpendicular to the face of the sign from a distance equal to the narrowest dimension of the sign.
 - f. *Glare.* All artificial illumination shall be so designed, located, shielded and directed so as to prevent the casting of glare or direct light upon adjacent public right-of-way or surrounding property.
 - g. Gooseneck and similar reflectors and lights shall be permitted on ground and wall signs provided, however, the reflectors and lights shall concentrate the illumination upon the area of the sign so as to prevent glare upon the street or adjacent property. It shall be unlawful to maintain any sign which is wholly or partially illuminated by floodlights or spotlights, unless such lights are completely concealed from view from the public right-of-way.
8. *Motion as a Component of a Sign.* No sign shall have any flashing, scintillating, moving or blinking lights or rotating beacons, whether operated by electronic or mechanical means or wind driven, nor shall any floodlight, spotlight, or beacon utilize such actions to illuminate a sign. In addition, no beam of light shall be projected through a mechanism which periodically changes the color of the light reaching the sign.
9. *Attention-Attracting Objects.* The use of any attention-attracting object, as defined in this code, shall be allowed only as a temporary sign in conjunction with a special event permit, not to exceed ten (10) days per issuance. No permit shall be granted for any premises more than four (4) times in any calendar year; or more than once in any three month period.
10. *Lots Having Multiple Street Frontages.* Businesses occupying corner lots, or multiple frontages adjacent to more than one public right-of-way, may display up to one additional ground or building-mounted sign for each additional frontage provided that such additional sign may not exceed 50% of the area allowed by the primary frontage and is oriented toward the additional frontage. For purposes of this code, the primary frontage shall be presumed to be the frontage upon which the main entrance to the building is located. The

applicant, however, may identify a different frontage as the primary frontage to maximize the effectiveness of the signage.

11. *Resemblance to Traffic Signs.* No ~~S~~sign shall contain or resemble any sign resembling in size, shape, message, or color any traffic control devices compliant with the Minnesota State Manual on Uniform Traffic Control Devices.

G. *Limitations According to the Type of Land Use.* Unless exempt under §154.212.K or as expressly provided elsewhere, no permanent or temporary signs shall be displayed except in conformity with the following regulations as they correspond to the type of land use and districts in which the sign is to be displayed.

1. Residential Uses in Residential Districts.

- a. A single sign which is limited in content to the name, address and legal home occupation of the owner or occupant of the premises, and which does not exceed two (2) square feet in area. Signs under this paragraph shall be wall signs only.
- b. A residential condominium or multi-family apartment complex may display signs identifying the name of the condominium or apartment complex if the total acreage of the lot is one (1) acre or more and the condominium or apartment includes eight (8) or more units. One (1) wall sign and one (1) ground sign per street frontage may be displayed, with a maximum of two (2) wall signs and two (2) ground signs per lot. No identification sign shall exceed twelve (12) square feet in area, and the maximum height is one (1) story or twelve (12) feet above curb level, whichever is lower. For purposes of this paragraph, the term "lot," when used in reference to a condominium means all property within a common interest community.
- c. A subdivision identification sign not exceeding thirty-two (32) square feet in sign area as approved by the City.

2. *Institutional Uses in Residential Districts.* Nonresidential uses located in residential districts, such as churches, ~~government buildings, hospitals,~~ and schools, located in residential districts may erect signs as follows:

- a. Wall and Ground Signs

- i. *Area and Number:* One (1) wall sign and one (1) ground sign per street frontage may be displayed, identifying the entity, with a maximum of two (2) wall signs and two (2) ground signs per lot. Additional wall or ground signs for wayfinding purposes may be permitted when the size of the lot, number of vehicular or pedestrian entrances, and layout of the buildings require additional signs in order to promote traffic and pedestrian safety. Signs under this paragraph, whether displayed on a wall or on the ground, shall not exceed twelve (12) square feet in area, except such signs may be increased in area by one (1) square foot for each additional foot that the sign is set back more than twelve (12) feet from a lot line. No sign under this section shall exceed thirty-two (32) square feet in area.
- ii. *Height.* No identification sign shall project higher than one story, or ~~twelve~~ twelve (12) feet above curb level, whichever is lower.

- b. Temporary Signs

3. Commercial, Mixed-Use and Industrial Districts

- a. Ground Signs
- b. Directory Signs
- c. Awning and Canopy Signs
- d. Wall Signs
- e. Projecting Signs

- f. Hanging Signs
 - g. Window Signs
 - h. Directional and Informational Signs
 - i. Corporate Flags and Decorative Banners
 - j. Temporary Signs
4. *Planned Development Districts.* No permanent sign shall be displayed except a sign authorized by the City and included in the Comprehensive Sign Plan pertaining to the site. Temporary signs are permitted for commercial, institutional or industrial uses unless prohibited by the Comprehensive Sign Plan.
 5. *Conservancies and Parks.* No sign shall be permitted except those installed by direction of the Public Works Director.
 6. *Agricultural Sales Businesses.* Signage related to agricultural sales business may be erected as follows:
 - a. *On-Premises Signs, Agricultural Sales Businesses.* One (1) or more on-premises signs may be erected on a property in conjunction with an operating agricultural sales business subject to the following requirements and restrictions:
 - i. Agricultural sales businesses utilizing less than 10 acres of land specifically for the growing of agricultural crops for the business are allowed 1 on-premises sign not to exceed 32 gross square feet of advertising surface.
 - ii. Agricultural sales businesses utilizing more than 10 acres of land but less than 40 acres of land specifically for the growing of agricultural crops for the business are allowed 1 or 2 on-premises signs not to exceed 48 gross square feet of advertising surface, with no sign surface exceeding 32 square feet in size.
 - iii. Agricultural sales businesses utilizing more than 40 acres of land specifically for the growing of agricultural crops for the business are allowed 1, 2 or 3 on-premises signs not to exceed 64 gross square feet of advertising surface, with no sign surface exceeding 32 square feet in size.
 - iv. Any illuminated sign shall be consistent with §154.212.F.7 and illuminated only during those hours when business is open to the public for conducting business.
 - b. *Temporary Off-Premises Signs, Agricultural Sales Businesses.* Independent of the total allowable sign area for an individual property anywhere within the city, a temporary off-premises sign may be erected on a property in conjunction with an operating agricultural sales business subject to the following requirements and restrictions:
 - i. *Maximum Number.* Every agricultural sales business shall have no more than 2 off-premises signs at any given time to direct the public to the location of the business.
 - ii. *Time Frame of Use.* Temporary off-premises signs may be erected for 45-day time periods no more than 4 times in any given calendar year. The required temporary sign permit shall stipulate the range of dates for each of the 4 allowable time periods in any given calendar year.
 - iii. *Size and Height.* An off-site agricultural sales advertising sign shall not exceed 50 square feet in area and shall not be taller than 10 feet in height.
 - iv. *Setbacks.* Off-premises signs shall be a minimum of 25 feet from all side property lines, and a minimum of 50 feet from other off-premises advertising signs.
 - v. *Permission Required.* Applicants for off-premises signs shall acquire permission from the property owner upon whose land the sign is to be erected.

- H. *Regulations Pertaining to Specific Sign Type.* Except as expressly provided elsewhere, signs shall meet the following regulations according to sign type:

1. Wall Signs

- a. *Number.* No building occupant shall display more than one (1) wall sign per street frontage except as provided below:
 - i. One additional wall sign may be displayed on a building with no front setback provided that such sign is a flat sign that is either painted upon the building or does not extend outward more than six (6) inches.
 - ii. Up to three (3) ancillary wall signs may be displayed on buildings measuring at least 100 feet in length along the front lot line. Any ancillary sign displayed under this paragraph shall not exceed 50% of the net area or 50% of the height of the largest permitted wall sign displayed on that façade, nor shall the aggregate area of the ancillary signs exceed 50% of the net area of such wall sign.
- b. *Surface Area.* The total permitted sign surface area of all wall signs on a façade shall not exceed one (1) square foot of signage for each lineal foot of building frontage that is coterminous with the occupancy to which the sign refers, unless a different amount allocated to the building occupant is identified in an approved Comprehensive Sign Plan pursuant to §154.212.I. In addition, no individual wall sign shall exceed one hundred (100) square feet in area.
- c. *Location.* Wall signs shall be mounted parallel to building walls and only on a portion of an exterior wall that is coterminous with the occupancy to which the sign refers, unless a different location is identified in an approved Comprehensive Sign Plan pursuant to §154.212.I. No wall sign shall extend above or beyond the wall to which it is attached.
- d. *Installation Requirements.* No wall sign shall cover or interrupt significant architectural elements such as columns, column caps, friezes, door or window heads, embellishments, adornments, fenestration, or ornamental detailing on any building. All mounting brackets and other hardware used to affix a sign to a wall as well as all electrical service hardware and equipment shall be concealed by architectural elements of the building or the sign itself.

2. Ground Signs

- a. *Number.* There shall be no more than one (1) ground sign for each street on which the lot has frontage, except one additional ground sign per lot frontage may be allowed for any lot frontage over one thousand (1,000) linear feet. On lots occupied by two (2) or more occupants, or where a second ground sign is permitted, three (3) or more occupants, a directory sign shall be used in lieu of multiple ground signs. No single business or building occupant shall be allowed signage on both an individual ground sign and a ground directory sign on the same street frontage. On premises having no principal building, there shall be no more than one (1) ground sign for the premises.
- b. *Surface Area.* No ground sign shall exceed the size listed in Table 5-3.
- c. *Type of sSign.* Any permanent ground sign shall be erected as a monument sign. Pole signs are prohibited unless the pole portion of the sign is enclosed in a shroud that causes the sign to appear to have a monolithic base or support structure of any material measuring no less than one-third (1/3) of the greatest width of the sign at any point or unless the height is no greater than three (3) feet. The base of the monument sign shall not exceed the width of the widest portion of the sign face by more than twenty-five percent (25%).
- d. *Location.* Ground signs shall be placed with consideration for visibility, access, maintenance, and safety, consistent with the provisions of Section 154.212.F.2. Grounds signs shall be located beyond required setbacks a distance equal to or greater

than the height of the sign. If this is not possible, ground signs shall be located as far from required setback lines as possible. In no case shall a ground sign, as defined in this Ordinance, extend beyond a lot line of a property. A ground sign larger than 6 sq. ft. shall be located no closer than 100 feet of another ground sign or the furthest distance possible from another ground sign, whichever distance is shorter.

e. Height

- i. The height of a ground sign shall be measured from the approved grade at the base of the sign or the elevation of the street upon which the sign faces, whichever is lower, to the top of the highest attached component of the sign.
 - ii. A ground sign shall be mounted on a base not to exceed four (4) feet in height.
 - iii. Allowable height of a ground sign shall be as set forth in Table 5-3.
 - iv. No ground sign shall be taller than the principal building on the premises to which it pertains.
- f. *Landscaping.* Perennial plantings and other landscaping features shall be incorporated around the base of all ground signs.
- g. *Exempt or Special Purpose Ground Signs.* The location of and maximum height and surface area of any other exempt or special-purpose ground sign expressly authorized by another section of this ordinance, shall be as set forth in such other section.

Table 5-3 Ground Signs

Table 5-3 describes the zoning districts in which ground signs may be displayed, and the maximum height and area of the signs, as determined by the speed limit on the adjacent roadway. For ground signs on zoning lots with more than one street frontage, use the miles per hour on the street with the faster speed limit to determine the maximum height and area allowed.

Ground Signs				
Zoning District		A ^a , LDR, OP, RE, RS, RR ^a , RT ^a	MDR, HDR	BP, C, CC, GB, LC, VMX
No. of Total Traffic Lanes	Speed Limit (MPH)	Max Height/ Area (Sq. Ft.)	Max Height/ Area (Sq. Ft.)	Max Height/ Area (Sq. Ft.)
1-3	0-34	-	6'/32	10'/32
	35-44	-	6'/32	10'/50
	45+	-	6'/32	10'/72
4-5	0-34	-	6'/32	10'/40
	35-44	-	6'/32	10'/64
	45+	-	6'/32	12'/80

Notes to Table 5-3:

- a. Ground signs are only permitted in the A, RR and RT districts in conjunction with agricultural sales business.

3. Window Signs

- a. **Location:** All window signs must be located inside an exterior window unless the sign is weatherproof and does not pose a danger from falling or being blown by the wind. Lettering or graphic elements that are directly mounted on a window shall not encroach upon the frame, mullions, or other supporting features of the glass.
- b. **Permanent Signs.** When a sign is painted on or otherwise attached or applied to the window area in a permanent manner, then such sign shall be included in the total allowable wall sign area for the building and shall not exceed twenty (20) percent of the total ground-floor window area of the building, excluding the door windows. All permanent window signs which have their lettering or graphic elements directly on the glazing shall be painted, metal leafed, vinyl transferred, or in some other manner permanently applied to the interior side of the glass of an exterior building window or door. No application using a temporary adhesive shall be permitted unless the Planning Director determines the application to be reasonably safe.
- c. **Temporary Signs.** Signs advertising sales and specials shall not exceed thirty (30) percent of the total ground-floor window area of any building, excluding the door windows. Such signs must be displayed in conformance with the temporary sign regulations listed in §154.212.J.
- d. Under no circumstances shall any combination of permanent or temporary window signage cover more than fifty percent (50%) of the total ground window area of any building.

4. Changeable Copy Signs

- a. Changeable copy signs are not an additional permitted sign type, but any permitted sign type may be a changeable copy sign, provided that the total surface area of the entire sign does not exceed the maximum allowed for the type and location of sign upon which the changeable copy is displayed.
- b. **Electronic Variable Message Signs:** Any sign type may be an electronic variable message sign subject to the following regulations:
 - i. **Surface Area.** The areas of electronic variable message signs capable of displaying copy shall not exceed forty (40) square feet and shall be included within the maximum aggregate sign surface area allowed for the type and location of sign upon which the changeable copy is displayed.
 - ii. **Length of Cycle.** The electronic changeable copy or images shall not alternate, change, fade in, fade out, or otherwise change more frequently than once every ten (10) seconds. Electronic variable message signs may not display scrolling, racing, pixelating or moving characters or images, or similar actions that convey motion.
 - iii. **Color.** All copy, characters or other changeable images shall be of one (1) color only, with light copy on a dark background.
 - iv. **Brightness Adjustment.** An electronic variable message sign shall be equipped with photosensitive equipment which automatically adjusts the brightness and contrast of the sign in direct relation to the ambient outdoor illumination such that the light level does not exceed three (3) foot candles at the front lot line and one (1) foot candle at all other lot lines, measured three (3) feet above the surface of the ground.
 - v. **Maintenance.** Any electronic variable message sign shall be maintained so as to be able to display messages in a complete and legible manner.

5. *Canopy and Awning Signs.* The use of canopy and awning signs reduces the maximum area of any allowed wall sign by half. Canopy and awning signs are subject to the following provisions:
- a. *Surface Area.* The sign surface area of a canopy or awning sign shall not exceed fifteen (15) percent of the area of the vertical section of the canopies and awnings. The area of the vertical section of the canopies and awnings is calculated as the difference between the highest and lowest point on the canopy or awning multiplied by the length of the canopy or awning measured parallel to the façade upon which it is attached.
 - b. *Location*
 - i. Canopies and awnings shall be constructed and erected so that the lowest portion of the projecting frame thereof shall be not less than nine (9) feet, and the lowest portion of the descending skirt shall be not less than eight (8) feet above the level of the sidewalk or public thoroughfare.
 - ii. No portion of the canopy or awning sign shall extend above or beyond the canopy or awning upon which it is attached. However, a sign may be hung beneath a canopy parallel to the building frontage so long as it and its structural components are no less than eight (8) feet above the ground immediately beneath the sign.
 - iii. Awnings shall not project more than seventy-two (72)~~thirty-six (36)~~ inches out from the building upon which they are attached, nor extend out from the building beyond the extension of the awnings on adjoining buildings.
 - c. *Installation Requirements.* To preserve the architectural integrity of a building, no canopy or awning, and no canopy or awning sign, shall cover or interrupt significant architectural elements such as columns, column caps, friezes, door or window heads, embellishments, adornments, fenestrations or ornamental detailing.
 - d. *Illumination.* Awnings and canopies may be illuminated where the following conditions are maintained:
 - i. Both interior type strip lighting and exterior type goose neck lighting is permitted, not exceeding a maximum light level of 18 foot candles measured three (3) feet from the perpendicular to the light source.
 - ii. The bottom of any illuminated awning or canopy shall be enclosed.
 - iii. The provisions of §154.212.F.7 are satisfied.
 - e. *Materials.* Canopy and awning signs shall be made of either the material with which the canopy or awning is covered or other water proof materials affixed flush to the face of the canopy or awning, or be painted directly on the awning or canopy material with weather-resistant paint.
 - f. *Snow Load.* It is found that snow and ice that accumulates on awnings can pose a danger to pedestrians. To ensure the safety of pedestrians, snow and ice shall be removed from awnings within a reasonable time period after an event of snow and ice accumulation.
6. *Hanging Signs.* One sign up to six (6) square feet in area may be suspended above a walkway near a primary building entrance so long as it and its structural components are no less than eight (8) feet above the ground immediately beneath the sign.
7. *Projecting Signs.* A projecting sign may be displayed in lieu of a wall sign and subject to the following restrictions:
- a. *Maximum Projection.* The maximum distance a projecting sign may project is not more than twenty-four inches (24") into the right-of-way. Subject to zoning setback limitations, a projecting sign may project no more than six feet (6') from the building face.

- b. *Location.* A building may have one (1) projecting sign facing a street or on a corner of the building.
 - c. *Surface Area.* The permitted area of a projecting sign shall not exceed the square footage for the amount that would otherwise be allowed for a wall sign on the building.
 - d. *Height.* A projecting sign must vertically clear any pedestrian area by at least eight (8) feet and vehicular ways by at least fourteen (14) feet. A projecting sign may extend to the juncture of the roof with the building wall or to the top of any parapet, but no projecting sign may extend above a second third-story.
8. *Directional Signs.* On-premise directional signs may be placed on private property near driveway entrances, at building entrances, and in parking lots and loading areas where reasonably necessary. Each such sign shall be located on-premise and shall adhere to the regulations pertaining to vision triangles and other setbacks as defined in §154.212.F.2. Such signage shall be considered exempt from the total signage calculation for the premises as long as all the following standards are met:
- a. Such signage does not serve an additional advertising purpose.
 - b. There are no more than three (3) directional signs per lot, not including a maximum of one (1) directional sign allowed per driveway entrance/exit.
 - c. Surface area per sign does not exceed four (4) square feet.
 - d. Logos do not exceed two (2) square feet in area per sign.
 - e. Sign height does not exceed five (5) feet above ground elevation at base of sign.
9. *Flags and Decorative Banners.* The following regulations apply to all flags and decorative banners:
- a. A minimum clearance of eight feet (8') over pedestrian ways and fourteen (14') feet over vehicular areas.
 - b. Maximum number of flagpoles for any lot is three (3).
 - c. Maximum height of any flagpole is fifty (50) feet.
 - d. Maximum number of flags per lot is four (4).
 - e. Maximum area of any flag shall be forty (40) square feet.
 - f. Flags representing a private entity, including corporate or business flags, shall be included within the maximum sign area total for the site, as applied to the allowance for a ground sign, and shall require a sign permit.
- I. *Comprehensive Sign Plans*
- 1. *Purpose.* Multi-tenant developments such as shopping malls, due to the varying occupant's need for signage and the potential for unique architecture and placement of different occupancies as they relate to street frontages, can create challenges to the applicability of sign regulations and the fair distribution of permitted square footage for occupants. This section is intended to define how signage permitted under this code will be distributed among the different occupancies available in the development. The Comprehensive Sign Plan shall create visual harmony between the signs, building(s), and building site through unique and exceptional use of materials, design, color, and lighting, and other design elements; and shall result in signs of appropriate scale and character to the uses and building(s) on the lot as well as adjacent buildings, structures and uses.
 - 2. *Applicability.* A Comprehensive Sign Plan shall be required of an applicant for all planned developments and commercial or industrial multi-tenant developments where different occupancies will compete for permitted square footage on a single lot.

3. *Submission Requirements.* An application for Comprehensive Sign Plan approval shall be submitted to the Planning Director and shall include:
 - a. A site plan, dimensioned, showing the location of the building(s), structure(s), parking area(s), driveway(s), and landscaped areas on the lot upon which the proposed sign is to be attached or erected.
 - b. A table or tables containing:
 - i. Computation of the maximum total sign area.
 - ii. Maximum area for individual signs.
 - iii. Height and number of ground signs.
 - iv. Statement of the maximum total sign area and maximum number of signs permitted on the site by this Ordinance.
 - c. An accurate indication on the site plan of the location and orientation of each sign for which a permit is currently being requested, the anticipated location of future signs requiring a permit, and the location of all reasonably anticipated temporary signs.
 - d. A description and illustration of the following may be required:
 - i. Colors and materials to be used in sign construction.
 - ii. Style of lettering for all signs.
 - iii. Appearance/location of logos or icons.
 - iv. Location of each sign on the building(s), with building elevations if necessary.
 - v. All sign proportions.
 - vi. Types of illumination.
4. *Amendment.* A Comprehensive Sign Plan may be amended by filing a new Comprehensive Sign Plan, in conformance with the requirements of the Sign Ordinance in effect at that time, and obtaining approval of the Planning Director.

5. *Binding Effect*

- a. After approval of a Comprehensive Sign Plan, no permanent sign shall be erected, placed, painted or maintained by the property owner or any buyer, tenant, subtenant, assignee, employee, agent or other party in use of the subject property except in conformance with such plan without obtaining a sign permit and in conformance with the Comprehensive Sign Plan.
- b. If the City Council has approved a Comprehensive Sign Plan with flexible criteria, the Planning Director is authorized to approve, through the standard sign permit approval process, sign applications in conformance with the comprehensive sign plan, but only to the extent that the application is in conformance with the Comprehensive Sign Plan.
- c. The terms and conditions of an approved Comprehensive Sign Plan shall have the same force and effect and be enforced in the same manner as any other provision of this Section.

J. *Temporary Signs*

1. *General Requirements.* Temporary signs shall conform to the following standards:
 - a. *Permit Required.* No temporary sign may be displayed without a valid temporary sign permit or portable sign permit.
 - b. *Sign Type.* Temporary signs may include any sign type permitted by this Section.
 - c. *Number.* No more than two (2) temporary signs may be displayed on a lot at any time.

- d. *Surface Area.* The maximum area of all temporary signs displayed shall be a combined total of eight (8)~~nine (9)~~ square-feet if displayed for ten (10) days or longer.
 - e. *Location.* Temporary signs shall be located only upon the premises to which the special, unique, or limited activity, service product, sale, or event is to occur. No temporary sign may be placed off-premise except as otherwise provided elsewhere in this Section.
 - f. *Duration.* No temporary sign permit shall be issued to erect or maintain any temporary signage for a period exceeding twenty-one (21) days, or to be displayed three (3) days after termination of the activity, service, project, sale, or event to which the sign pertains, whichever comes first. A permit for a temporary sign or signs shall be granted no more than four (4) times in any calendar year and only once every three (3) months.
 - g. *Installation Requirements.* All temporary signs shall be constructed, anchored and supported in a manner which reasonably prevents the possibility of such signs becoming hazards to the public health and safety as determined by the Planning Director.
2. *Business Opening Signs.* Business opening signs may be displayed on lots having commercial or industrial occupancies subject to the following provisions:
 - a. *Permit Required.* A permit shall be issued before a business opening sign may be erected. The permit may not be renewed.
 - b. *Type of Sign and Location.* A business opening sign may be a wall sign, projecting sign, or ground sign. A business opening sign may be displayed in addition to, in lieu of, or affixed to a permanent sign as described above. A banner may be used as a business opening sign.
 - c. *Size.* The size of a business opening sign shall be determined by the type of sign chosen, and shall be limited to the maximum size allowed for a permanent sign of that type at that location.
 - d. *Illumination.* A business opening sign may be illuminated subject to §154.212.F.7.
 - e. *Duration.* A business opening sign may be displayed for a period not to exceed thirty (30) days from the date the business opened, changed names, or changed ownership.
3. *Portable Signs.* In addition to the general requirements pertaining to temporary signs, the following standards pertain to portable signs:
 - a. *Permit Required.* A sign permit shall be issued on an annual basis before a stationary portable sign may be erected. Such permit shall only be valid during the calendar year during which it is issued.
 - b. *Construction.* A sign shall be manufactured to a professional standard of construction, finish and graphics. A portable sign shall be free-standing, self-supported and constructed of substantial materials such as wood, metal or plastic such that the sign will reasonably withstand the elements.
 - c. *Size and Design Regulations:*
 - i. A portable sign shall not exceed six (6) square feet in surface area per side, with a maximum of two (2) signable sides or faces.
 - ii. Sign shall be no more than three (3) feet in height.
 - iii. The sign shall not exceed two (2) feet measured at the widest point of the sign face.
 - iv. No appendages to such sign and its structure are permitted, including but not limited to balloons, streamers, pennants, etc.

- v. Any portion of the sign's face used for a chalk or dry-erase board shall not exceed fifty percent (50%) of the total sign face surface area.
- d. *Number.* One portable sign may be displayed per business or occupant in any commercial or industrial area or Planned Unit Development.
- e. *Location.* A portable sign is restricted to the lot of the business establishment to which a permit has been issued, except such a sign may be located in the public right-of-way in front of the premises only where no front setback is required.
- f. *Placement:* A portable sign shall:
 - i. Be placed only along sidewalks where a minimum five (5) foot wide clear sidewalk is maintained. In no event shall a portable sign be placed on any bicycle path. The placement of a portable sign shall not obstruct access to any crosswalk, mailbox, curb cut, fire hydrant, fire escape, fire door, building entrance, public parking space or any other public property, nor shall a sign obstruct the ability of persons to exit/enter vehicles parked along the curb;
 - ii. Not be attached, chained or in any manner affixed to public property including street trees, utility poles or sign posts;
 - iii. Not obstruct the clear view of any traffic signal, regulatory sign or street sign;
 - iv. Not be located closer than 10 feet to any other portable sign;
 - v. Not be located directly adjacent to a bus stop or transit vehicle, shall not obstruct sight lines of road users, nor be placed less than twenty-five (25) feet from a street intersection or fifteen (15) feet from a crosswalk;
 - vi. Not be placed in such a way as to interfere with snowplowing of the streets;
 - vii. Be maintained free of snow, be placed on solid ground at all times and shall not be placed on top of snow banks.
- g. *Illumination.* A portable sign shall not be illuminated.
- h. *Time Limitations and Removal.* A portable sign may be displayed only during business hours. Such sign must be removed and safely stored out of view during times when the business is not open to the public. Trailers or other vehicles that are not used principally as a sign may be parked on the lot when the business is not open to the public, ~~as long as they are not parked in substantially the same location for more than twenty-four (24) hours.~~
- i. *Enforcement.* Portable signs located within the public right-of-way are a privilege and not a right. The City in permitting placement of such signs in the public right of way reserves the right to require their removal at any time because of anticipated or unanticipated problems or conflicts. To the extent possible, the permittee shall be given prior notice of any time period during which, or location at which, the placement of portable signs is prohibited. Furthermore, the sign permit may be revoked by the Planning Director following notice to the permittee. The permit may be revoked if one or more conditions outlined in this section have been violated, or if the sign is determined to constitute a public nuisance not specifically outlined in this section. Following the revocation of the sign permit, no application for the same site shall be filed within one hundred eighty (180) days from the date of revocation. The permittee has a right to appeal the decision of the Planning Director within thirty (30) days of issuance of a revocation notice pursuant to §154.212.N.2.
- j. *Indemnification.* Where a temporary, portable sign is permitted in the public right-of-way, the owner, lessee or lessor of the business to which a permit has been issued and the property owner shall agree in writing to fully indemnify and hold the City harmless for any personal injury or property damage resulting from the existence or operation of

said sign, and shall furnish evidence of general liability insurance in the amount of fifty thousand dollars (\$50,000.00) with the City as additional named insured or provide other security to the satisfaction of the City Administrator.

- k. *Permit Renewal.* The permit for a portable sign must be renewed annually prior to January 1 of each year.

- K. *Signs Exempt from Permit.* Consistent with the purpose and scope of this ordinance, the City recognizes that certain temporary, necessary, or limited-purpose signs should be lawfully displayed without the need to obtain a permit and should not count as part of the specific sign area allowed to be displayed on a particular property. All signs exempt from permit requirements must, nonetheless, adhere to all other applicable sections of this ordinance and all other applicable State and Federal regulations. The City finds that the following signs may be displayed without a permit because they serve an immediate or temporary traffic safety or wayfinding function:
 - 1. *Address and Nameplates.* Address and name plates not exceeding three (3) square feet in area.
 - 2. *Athletic Field Signage.* Signs, banners, and scoreboards designed solely for view from spectator areas and displayed on interior walls, fences, or other structures located inside an enclosed athletic field at a school, park, or other public or private athletic complex. Approval of the Park Commission shall be required to display a sign, banner, or scoreboard under this paragraph at a City park.
 - 3. *Awning Signage.* Signs displayed on awnings located on commercial or industrial buildings provided that the signs are displayed on the lowest twelve inches (12") of the principal face or side panels of awnings and provided that they do not exceed six inches (6") in height.
 - 4. *City Signs on City Property.* City signs on City property not exceeding thirty-two (32) square feet in area.
 - 5. *Construction Signs.* Such signs may only be placed on the property where work is in progress, shall not be erected prior to the beginning of work for which a valid building permit has been issued, and shall be removed within ten (10) days of completion of work or the expiration of the building permit, whichever is sooner. Construction signs on parcels in residential or park uses shall not exceed thirty-two (32) square feet per street frontage. Construction sign area for commercial, industrial, multi-family, or planned development uses on parcels less than 100,000 square feet shall not exceed sixty four (64) square feet per street frontage; and on parcels greater than 100,000 square feet shall not exceed ninety six (96) square feet per street frontage. Square footage may be divided.
 - 6. *Flags.* Flags that comply with the provisions of §154.212.H.9.
 - 7. *Garage Sale and Estate Sale Signs.* Signs advertising a garage sale shall not exceed four (4) square feet in area, shall not be displayed for a period of time more than seventy-two (72) consecutive hours and may be displayed no more than twice in any one calendar year. Up to three (3) residential garage sale signs may be displayed per event, two (2) of which may be displayed off-premises, but not in the public right-of-way. Any such sign placed on private property must have the consent of the property owner on whose property such sign is displayed.
 - 8. *Government Signs, Including Traffic or Official Public Hearing Notice Signs.* Such signs are placed, authorized, or required by the City or other authorized governmental agency. The requirements for maximum area, height, setback, or other size, materials or physical specifications shall be as required by law or the authorizing agency.
 - 9. *Holiday and Temporary Decorations.* Holiday or temporary decorations when located on private property, or with the approval of the City if on public property. In addition, any sign in the nature of a decoration, identification or direction, incidentally and customarily

associated with any national or religious holiday or any civic festival, fair or similar gathering, held during a period of ten (10) days or less in any year, provided such sign shall not differ substantially from the requirements set forth in this Section. Such decorations may not contain any commercial message or logo or depict any commercial symbol or character.

10. *Home Occupation Signs.* Signs identifying only the name and occupation of the resident. Home occupation signs shall be non-illuminated, flush-mounted to a wall of the residence, and shall not exceed two (2) square feet in area.
11. *Memorial Signs.* Any non-commercial sign in the nature of a cornerstone, commemorative, or historical tablet or landmark designation plaque.
12. *Menu-Board Signs.* Menu ~~signs boards~~ up to fifty-five (55) square feet in area and six (6) feet in height, provided they are located within fifteen (15) feet of ~~the~~ commercial building ~~of which they are associated or advertise~~ and in a manner such that the copy is not readily viewable from the public right-of-way or a residential occupancy on an adjacent lot.
13. *Non-Commercial Messages.* One sign per parcel per street frontage carrying any lawful non-commercial message not exceeding twelve (12) square feet in area. Any other permitted commercial sign may be substituted for a noncommercial message but will count toward the total signage type and area for the parcel upon which it is located. Hand-held signs carrying noncommercial messages are not subject to any size limitation so long as they are held by and under the physical control of a person during all times they are on display.
14. *Parking Lot Regulation Signs.* Parking signs not exceeding nine (9) square feet and having a minimum setback of ten (10) feet.
15. *Parking Lot Directional Signs.* Signs must comply with the provisions of §154.212.H.8.
16. *Parking Lot Traffic Signs,* as required by law.
17. *Political and Election Campaign Signs.* Signs containing a political message and displayed during an election campaign period may not exceed twelve (12) square feet in area. Such signs are allowed in addition to the noncommercial message sign under subsection (14) during the election campaign period, however, after ten (10) days has passed from the election date such sign may continue to be displayed, but will count as the allowed noncommercial message sign under subsection (14). Political and election campaign signs may also substitute for any commercial message sign in the same manner. Unless substituted for another permitted sign, such signs shall not have any electrical component. Such signs shall not have a mechanical or audio auxiliary component, and shall not be attached to or placed on utility poles, trees, traffic devices, or within the public right-of-way.
18. *Real Estate Signs Advertising Residential Properties.* Signs located on premise may not be placed above the top of the lowest level of the building. All signs authorized under this subsection shall be removed within ten (10) days of the sale or rental of the residential units being advertised.
 - a. For lots containing less than four (4) dwelling units within one residential structure, one non-illuminated real estate sign up to six (6) square feet per unit may be displayed to advertise the sale or rental of the premises or any part thereof.
 - b. For lots where at least four (4) but less than sixteen (16) dwelling units are contained within one residential structure, one non-illuminated real estate sign up to twelve (12) square feet may be displayed to advertise the sale or rental of the premises or any part thereof.

- c. For lots where sixteen (16) or more dwelling units are contained within one residential structure, one non-illuminated real estate sign up to thirty-two (32) square feet may be displayed to advertise the sale or rental of the premises or any part thereof.
 - d. Up to two (2) signs directing traffic to "open houses", each sign no more than six (6) square feet in area, may be installed off property after obtaining the consent of the property owner on whose property such sign is to be displayed. ~~These signs may not be located in the public right-of-way, or they may be displayed in the public right-of-way consistent with §154.212.F.2.c. The City reserves the right to remove such signs from the right-of-way at any time.~~ These off property directional signs may be displayed only during the hours that the advertised activity is to take place, and they must be a self-supporting type sign.
19. *Real Estate Signs Advertising Single Occupant Commercial Property.* For lots less than five (5) acres, one non-illuminated real estate sign up to twelve (12) square feet in area may be displayed. For larger lots, one non-illuminated real estate sign up to thirty-two (32) square feet in area may be displayed. All signs authorized under this subsection shall be removed within ten (10) days of the sale or rental of the commercial unit being advertised.
20. *Real Estate Signs Advertising Non-Residential Grouped Development or Multi-Tenant Buildings.* For each group development or multi-tenant building containing nonresidential land uses, a maximum of two (2) signs, one per each nonresidential street frontage, may be displayed up to a maximum of thirty-two (32) square feet in area.
21. *Real Estate Subdivision Signs.* For each real estate subdivision that has been approved in accordance with the City of Lake Elmo subdivision regulations, a maximum of two (2) temporary development project identification signs may be located on some portion of the subject subdivision. Each such sign shall be not more than thirty-two (32) square feet in area. One additional similar sign shall be permitted for each one hundred (100) lots in the subdivision in excess of one hundred (100) lots. These signs may be displayed until a time at which building permits have been issued for eighty percent (80%) of the lots in the subdivision. Signs advertising sale or lease after such time shall conform to the requirements of subsection (18) of this section.
22. *Temporary Notices.* Leaflet-type notices flat-mounted to kiosks or public information boards.
23. *Utility Company Signs.* Signs that serve as an aid to public safety or that show the location of facilities such as public telephones and underground cables only to the extent necessary to accomplish those goals.
24. *Window Signs, Temporary.* Signs and displays that are of a temporary nature such as for advertising sales and specials and that do not cover more than thirty (30) percent of the total ground-floor window area of any building, excluding the door windows. Merchandise and pictures or models of products or services incorporated in a window display are not considered signs. Any sign placed on the outside of a window requires a sign permit unless the sign is weatherproof and does not pose a danger from falling or being blown by the wind.
25. *Window or Wall Signs Not Readable Off-Premises.* Window or wall signs not exceeding two (2) square feet in area with lettering not exceeding three (3) inches high designed to provide information to persons on the premises such as hours of operation, or sample restaurant menu. Where no front yard setback exists, such signs as would generally be unreadable off premises where minimum setback regulations apply shall qualify for this exemption notwithstanding that such signs are readable from the public right of way. Such signs shall not be counted toward total permitted signage.
- L. *Prohibited Signs.* The following signs are expressly prohibited in the City of Lake Elmo:
- 1. Abandoned Signs

2. *Off-Premise Signs*, except as expressly allowed under this Section.
3. Inflatable Signs
 - a. *Rationale*. Inflatable signs shall be prohibited because they are generally more distracting and hazardous to pedestrian and traffic safety, tend to have an anchoring device that is less reliable under wind pressure, and out of scale and less compatible with surrounding structures and signs.
 - b. The following inflatable devices shall not be considered a sign:
 - i. Registered hot air balloons in use and momentarily moored but not being used primarily as a sign.
 - ii. Novelty-type balloons less than two (2) feet in diameter and less than three (3) feet in any dimension tethered or moored no more than ten (10) feet above the ground.
 - iii. Inflatable holiday or other decorations displayed temporarily on private property, that do not contain any commercial message or logo or depict any commercial symbol or character, and that does not exceed fifteen (15) feet in height.
4. Signs attached to any public utility pole or structure, street tree, fence, fire hydrant, bridge, curb, sidewalk, park bench, or other location on public property except as otherwise expressly permitted under this Section.
5. Beacons, unless authorized for use by the City of Lake Elmo or any other governmental entity in the exercise of official government business and authority.
- M. *Legal Non-Conforming Signs*. Any legal non-conforming sign may continue to be displayed but may not be replaced unless it is damaged suddenly by fire, flood, explosion, earthquake, war, riot, or act of God. A legal, non-conforming sign that has deteriorated due to lack of regular maintenance to the point where it has lost fifty (50) percent or more of its replacement cost shall lose its legal non-conforming status.
- N. Variances and Appeals
 1. *Variances*. It is recognized that circumstances may exist from time to time where strict application of the size, location and type of sign standards hereinafter specified for the various zoning districts may be unreasonable or where literal enforcement of the regulations may work an unnecessary hardship on the applicant. Variations from the standards are, therefore, permitted by issuance of a variance by the City Council upon recommendation of the Planning Commission that such extenuating circumstances exist. Variances shall be considered according to the provisions of §154.017.
 2. *Appeals*. An applicant may appeal any decision of the Planning Director to the Board of Adjustment and Appeals according to the provisions of §31.10.
- O. Violations
 1. It shall be unlawful and a violation of this ordinance for any person to maintain any prohibited sign, to perform or order the performance of any act prohibited by this ordinance, or to fail to perform any act which is required by the provisions of this Section. In the case of any such violation, each twenty four (24) hour period in which such violation exists shall constitute a separate violation.
 2. Any and all signs, erected, altered, or maintained in violation of this Section, or any of the clauses and provisions of the same, or in violation of any of the laws or ordinances of the City and/or the State of Minnesota, are, and each of them is declared to be a public nuisance and subject to enforcement. Any such signs so erected, altered or maintained contrary to law shall be abated as a common nuisance by the Planning Director.

P. *Penalty.* Any person who shall fail to comply with any of the provisions of this Section shall be subject to a penalty as prescribed by §10.99 of this Code.

Q. **Enforcement**

1. If the Planning Director or Building Official finds that any sign has been erected, altered, or is being maintained in violation of this section, or is in an unsafe condition as to be a menace to the safety, health, or welfare of the public, he or she shall give written notice to the owner thereof of the person entitled to possession of the sign and the owner of the real estate upon which the sign is located. No notice shall be required for permitted temporary signs displayed in violation of time limitations prior to taking enforcement action.
2. Said letter shall notify the owner, or person entitled to possession of the sign, of the specific violation or violations and direct that alterations, repairs or removal, whichever may be applicable, be made to bring said violations in conformance with the terms and conditions of this Section.
3. In the event the person so notified fails or neglects to comply with or conform to the requirements of such notice, the Planning Director or Building Official may file an appropriate citation or complaint in an appropriate court of law or take whatever other legal action may be necessary to cause such sign to be altered or removed. If a sign is considered abandoned, the City, after notice, may remove such sign at the cost of the owner of the property upon which the sign sits. An invoice for such costs shall be sent to the property owner and, if not paid, shall be placed on the tax roll as a special charge pursuant to M.S. §429.061.

R. **Severability and Conflict**

1. *Severability.* The provisions of this ordinance are severable. If any section, subsection, sentence, clause, phrase, or portion of this ordinance is for any reason held invalid or unconstitutional, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions thereof.
2. *Conflict.* If any part of this ordinance is found to be in conflict with any other ordinance or with any other part of this ordinance, the most restrictive or highest standard shall prevail. If any part of this ordinance is explicitly prohibited by federal or state statute that part shall not be enforced.



Planning Commission
Date: 5/29/13
PUBLIC HEARING
Item: 5b

ITEM: Zoning Ordinance Update – Review of Article 3 Zoning Administration and Enforcement Draft

REQUESTED BY: Planning Department

SUBMITTED BY: Kyle Klatt, Planning Director

REVIEWED BY: Nick Johnson, City Planner
Rick Chase, Building Official

SUMMARY AND ACTION REQUESTED:

The Planning Commission is being asked to review and conduct a public hearing on a draft of Article 3 – Zoning Administration and Enforcement, which is proposed to take the place of the existing sections of the Zoning Ordinance that deal with similar provisions. The portions of the current Zoning that would be replaced are Sections 151.015 through 151.021. This ordinance has not been revised from the previous Planning Commission meeting, and Staff will instead be presenting any proposed changes to the ordinance at the meeting.

ADDITIONAL INFORMATION:

The proposed revisions deal with elements of the Zoning Ordinance that establish how the ordinance will be administered, and includes the following components:

- Identifying the City staff will be responsible for issuing permits, enforcing the code, keeping records, processing applications, and performing other administrative duties related to the ordinance.
- Describing the application and review process that now includes a unified list of application requirements that may be referenced for each type of permit rather than maintaining a separate list for each unique permit.
- Providing a unified hearing review process that also may be referenced for each type of permit that requires a public hearing.
- Identifying and describing all permits that are required under the Zoning Ordinance. Staff is recommending a new permit category called "Certificate of Compliance" to regulate uses that are not subject to review by the Planning Commission or Council but that should be reviewed for conformance with the City Code. Staff is also recommending that the Ordinance describe the design review process associated with the Lake Elmo Design Standards Manual (which is pending formal approval by the City).
- Describing the process for handling enforcement of the ordinance.

Prior to the public hearing, Staff will be bringing forward minor adjustments to the Interim Use provisions to improve the consistency of this section with the other portions of the ordinance. Additionally, Staff would like to further review the Violations and Enforcement section with the City Attorney to ensure that these provisions do not conflict with the "Penalties" section of the City Code (Section 10.99), but will not otherwise be proposing any changes to this section.

RECOMMENDATION:

Staff recommends that the Planning Commission recommend approval of the proposed amendments to Article 3 – Zoning Administration and Enforcement.

ATTACHMENTS (1):

1. Draft Article 3 – Zoning Administration and Enforcement

ARTICLE 3 ZONING ADMINISTRATION AND ENFORCEMENT

§154.100	Director of Planning
§154.101	Applications Review Process
§154.102	Public Hearing Requirements
§154.103	Permits, Certificates and Licenses
§154.104	Planning Commission
§154.105	Zoning Amendments
§154.106	Conditional Use Permits
§154.107	Interim Use Permits
§154.108	Appeals and the Board of Adjustment
§154.109	Variances
§154.110	Violations and Enforcement

§ 154.100 Director of Planning

The City Council shall appoint a Director of Planning. The Director of Planning, or his/her designated agent, shall enforce this chapter and shall perform the following duties:

- A. *Permits.* Issue zoning permits pertaining to the zoning ordinance and make and maintain records thereof;
- B. *Inspections.* Conduct inspections of buildings and use of land to determine compliance with the terms of this chapter;
- C. *Records.* Coordinate with the City Clerk to maintain permanent and current records of this chapter, including but not limited to: all maps, amendments and conditional uses, variances, appeals and applications therefore;
- D. *Applications.* Receive, file and forward all applications for appeals, variances, conditional uses or other matters to the designated official bodies;
- E. *Interpretation.* Interpret the provisions of this chapter and related provisions of the City Code, including determinations of Zoning Use Types and Classifications as specified in §154.012.
- F. *Enforcement.* Institute in the name of the City any appropriate actions or proceedings to enforce this chapter;
- G. *Work Program.* Recommend a program of work pursuant to Section §32.032 of the City Code to the Planning Commission prior to the beginning of each calendar year and at such other times as the Planning Commission may request.
- H. *Reporting.* Submit a yearly report to the Planning Commission in January of each year summarizing the activities of the Planning Department during the previous year, including information related to housing, public infrastructure, City facilities, industrial and commercial development, enforcement actions, and other such information as the Director of Planning deems relevant. This report should also include any recommended changes to the Comprehensive Plan or various land use ordinances.
- I. *Planning Commission.* Serve as an ex-officio, non-voting member of the Planning Commission.

§ 154.101 Applications and Review Process.

- A. *Application Form and Fee.* The following general provisions apply to all applications required under this chapter.
 1. *Application form.* All applications for any site plan, conditional use permit, zoning verification, variance, or for any other City approval required by this chapter, or to amend this chapter, shall be made in writing on a form provided by the city, to the Director of Planning.

- a. *Information required.* Every application shall contain the legal description of the property and a statement of the specific permit or action being sought. In addition, the Planning Department shall develop a list of other information required for each type of permit. The information list shall be attached to the application form. Nothing in this section shall be deemed to prevent the city from requesting additional information from the applicant upon which to base a decision.
 - i. *Grading.* If grading or stormwater management is proposed, grading or stormwater management plans meeting the requirements of the Lake Elmo City Code shall be submitted with the application.
 2. *Fee.* The application shall be accompanied by the required fee as established by resolution of the City Council. If a dispute arises over a specific fee imposed by the city, the amount of the fee must be deposited and held in escrow, and the person aggrieved by the fee may appeal to district court, as provided by M. S. 462.361 (judicial review), as it may be amended from time to time. The application shall proceed as if the fee had been paid, pending a decision of the court.
- B. *Application requirements.*
1. *Submission materials.* Submission materials for applications required under this chapter shall include the following specific information:
 - a. Site plan drawn to scale showing parcel and building dimensions.
 - b. Location of all buildings and their size, including square footage.
 - c. Curb cuts, driveways, access roads, parking spaces, off-street loading areas, and sidewalks.
 - d. Landscape plans meeting the requirements of Section 155.89 of Article 6 of this Zoning Ordinance.
 - e. Grading and Erosion Control Plans meeting the requirements of §150.270 through §150.284, §151.017, and §151.027 of the City Code.
 - f. Type or types of business or activity and proposed number of employees.
 - g. Proposed floor plan of any building with use indicated.
 - h. Building elevation drawings of any new construction or building renovation proposed.
 - i. The Director of Planning may require that the applicant supply proof of ownership of the property for which a permit is requested.
 - j. The Director of Planning may require traffic generation information to determine the adequacy of existing transportation infrastructure.
 - k. Such other information as may be required by the Director of Planning, Planning Commission or City Council.
 2. *Waiver of submission materials.* The Director of Planning may waive certain submission requirements for projects that will have a minimal impact on surrounding properties or in instances when said submission requirements are impractical given the nature of the proposed development.
- C. *State established time limit for final action.* The City shall comply with the time limits as established by Minnesota Statute 15.99 (time deadline for agency action), as it may be amended from time to time, with regards to taking action on any applications subject to said Statute.

§ 154.102 Public Hearing Requirements

This section contains requirements for public hearings held by the Planning Commission, Board of Adjustment or City Council under this Ordinance.

- A. *Notification of general public.* The Director of Planning shall set the date for a public hearing and shall have notices of such hearing published in the legal newspaper at least once, and not less than ten days prior to the hearing.
- B. *Notification of surrounding property owners.* For any application for which a public hearing is required, the Director of Planning shall notify all property owners within the affected zone and within three hundred and fifty feet (350') of the outer boundaries of the property in question.
 - 1. Failure of any property owner to receive such notification shall not invalidate the proceedings.
 - 2. The City Council may waive the mailed notice requirements for a city-wide amendment to the zoning ordinance initiated by the Planning Commission or City Council.
- C. *Hearing Procedures*
 - 1. Public Hearings conducted by the Planning Commission, City Council, and Board of Adjustment.
 - a. The Director of Planning or his/her representative shall summarize the application and any associated information.
 - b. The applicant shall be allowed to summarize the request and call any witnesses to support his/her request.
 - c. The public shall be allowed to make statements concerning the request subject to reasonable limits that may be set by the body conducting the hearing.
 - d. The Planning Commission, City Council and Board of Adjustment may establish other procedures as needed to ensure due process for those parties involved with the hearing.
 - 2. *Appeal Hearings.* The Board of Adjustment shall hold a hearing and make a decision on any appeal submitted in accordance with §154.108 of this Article. The Board of Adjustment shall establish rules for due process during appeal hearings and any party to the appeal may appear at the hearing in person or by agent or attorney. At a minimum, the following hearing procedure will be followed:
 - a. Appellant shall present a case and may call any witnesses necessary in support thereof;
 - b. Respondent may ask questions of appellant's witnesses;
 - c. Respondent may call witnesses;
 - d. Appellant may ask questions of respondent's witnesses;
 - e. Respondent may summarize his or her position;
 - f. Appellant may summarize his or her position;
 - g. Generally, the Minnesota District Court Rules of Civil Procedure shall apply for the conduct of the hearing.

§ 154.103 Permits, Certificates and Licenses

- A. *Building permits.*
 - 1. *Compliance.* A building permit is required for the construction or structural alteration of a building or any part thereof. Other construction activity may require a permit in accordance with the Minnesota State Building Code. Demolition, wrecking or removal of any structure shall require a demolition or moving permit. No building permit shall be issued for any construction, enlargement, alteration or repair, demolition or moving of any building or structure on any lot or parcel until all requirements of the Minnesota State

Building Code as adopted by the City of Lake Elmo pursuant to Chapter 151, Title XV of the City Code have been fully met.

2. *Concurrent applications.* If the proposed development requires a zoning amendment, variance or conditional use permit, or other permit required under this Article, the applicant shall secure all required permits prior to the issuance of a building permit for said development.
 3. *Administrative review of permits for existing platted lots.* If the proposed development does not involve a zoning amendment, variance or conditional use permit, and proposes a use, structure or expansion of an existing structure on an existing platted lot, the Director of Planning may review the application and authorize the Building Official to approve or to deny the permit.
 4. *Expiration.* Any building permit issued by the city shall expire and by limitation be null and void if a certificate of occupancy and final completion has not been issued within the following applicable period of time after the date of permit issuance:
 - a. Single-family residential dwellings, including new construction, remodeling or additions: 12 months;
 - b. Multi-family and nonresidential construction: 12 months unless a longer time is specified by the City Council at the time the original permit is issued;
 - c. *Extension.* The Building Official may grant an extension prior to the expiration of any building permits in accordance with the Minnesota State Building Code. An expired building permit may be reissued once, by the Building Official, for one-half the original permit fee. Thereafter, if the permitted work is not completed within the applicable time period, a new permit may be issued only upon such conditions as the City Council by resolution may prescribe, including financial guarantees to guarantee completion by a specified date.
 - d. *Time limitations for exterior work.* All exterior work shall be completed as follows:
 - i. All disturbed and exposed ground shall be covered with landscaping in accordance with §150.070 through §150.078 of the City Code.
 - ii. All exterior construction, including siding, roofing, doors, windows and finish shall be completed and present a finished appearance within 6 months of the start of construction. Tar paper, unfinished plywood, fiberboard insulation, foam insulation, brown coat or scratch coat of stucco, plastic sheeting and other similar materials not designed to be an exterior finish shall not be considered an acceptable exterior finish;
 - iii. Failure to complete exterior work as required herein shall result in suspension of the existing permit until a reinstatement fee equal to 100% of the original building permit has been made. Reinstatement of a building permit does not extend the original term of the permit. The reinstatement fee shall also be paid prior to re-issuance of any subsequent permit for exterior work that was not completed under a prior permit that expired.
- B. *Certificate of zoning compliance.* A certificate of zoning compliance is a zoning permit that is intended as a means of administratively reviewing a new use, change in use, or structural change that does not require a building permit.
1. *When required.* A certificate of zoning compliance is required for the following activities:
 - a. A new use classification within an existing building or structure;
 - b. A change of use classification within an existing building or structure;
 - c. Addition, removal or change in parking or other on-site improvements;
 - d. Small accessory structures that do not require a building permit;

- e. Home occupations;
 - f. Swimming pools;
 - g. Antennas, including amateur radio antennas and wireless communications facilities that meet the criteria for administrative review in §150.111(C);
 - h. Fences less than six feet in height;
 - i. Driveways that are not authorized as part of an approved building permit;
 - j. Stormwater management activities and structures not otherwise permitted as part of a development application;
 - k. Other situations requiring additional review or interpretation, as specified elsewhere in this Ordinance.
2. *Expiration of a certificate of zoning compliance.* Where a certificate of zoning compliance use has been established and is discontinued for any reason for a period of one (1) year or longer, the certificate of zoning compliance shall become null and void.
- C. *Certificate of Occupancy.* No vacant land shall be occupied or used and no buildings hereafter erected, altered or moved shall be occupied until a certificate of occupancy has been issued by the Building Official. Such certificate shall show that the building or premises or part thereof and the use thereof are in conformity with the Minnesota State Building Code and the provisions of this chapter. Such certificate shall be issued only when the building or premises and the use thereof conform to all the requirements of the City Code.
- D. *Sign permit.* A sign permit shall be authorized for a sign that conforms to the sign regulations in §154.212. An application, on a form provided by the Director of Planning, shall be submitted with the required fee by the owner of the proposed sign. The Director of Planning shall issue a sign permit if all of the regulations in §154.212 are met.
- E. *Special Event Permit.* A special event permit may be issued for certain events for activities or events not otherwise permitted under the Zoning Ordinance in accordance with §110.070 of the City Code.
- F. *Grading permit.* A permit shall be required for all non-agricultural project(s) or activities that will result in the movement of more than fifty (50) cubic yards of earth or the disturbance of more than one-half acre of land, and for construction of a building or structure on steep slopes, as specified in Article 6, Section 155.84. The Director of Planning may issue a grading permit only if the grading plan meets the requirements of the Lake City Grading and Stormwater Management Handbook.
- G. *Review of Design or Demolition.* For certain development activity as specified in the *Lake Elmo Design Standards Manual*, design review is required as part of the approval process for a permit or certificate under this Ordinance. All projects subject to design review shall be reviewed for conformance with the *Lake Elmo Design Standards Manual*. Demolition review is also required prior to the demolition of structures in the VMX District as provided for in Article 11. A separate process for design review or demolition review is not established.
- 1. *Review authority.* Design review or demolition review shall be the responsibility of the individual or body authorizing the permit or certificate and shall be incorporated in the established review of the applicable permit or certificate. For those applications under this Ordinance that require review by the Planning Commission, the Planning Commission shall consider the standards in the *Lake Elmo Design Standards Manual* as part of its recommendation to the City Council.
 - 2. *Review by professional.* The authorizing body may request review by a design professional of the proposed design or demolition. The cost of review by such design professional shall be charged to the applicant, and shall not exceed \$1,000 unless otherwise agreed to by the applicant.

3. *Development Activity Defined.* Development Activity includes remodeling, altering, or repairing a structure in any manner that will change the exterior appearance of said structure. Development activity also includes the construction of new parking lots and installation of signage.
 - a. *Exempt Activities.* The following shall activities shall be exempt from review under this Section:
 - i. Ordinary repairs and maintenance that will not change the exterior appearance of a structure;
 - ii. Removal of existing signage without replacement unless said signs are an integral part of the building;
 - iii. Emergency repairs ordered by the Director of Planning in order to protect public health and safety;
 - iv. Exterior alteration, addition, or repair of a structure used as a single-family residence.
 - v. Temporary signage, installed in accordance with §154.212 of this Ordinance, or during which time an application for permanent signage is pending under this Ordinance;
 - vi. Maintenance of existing signage advertising an on-site business;
 - vii. Alterations only to the interior of a structure.
4. *Demolition Review.* The Planning Commission shall review any application for the demolition of structure within the VMX Village Mixed Use District in accordance with the standards of §154.506. No demolition permits shall be issued in the VMX District until this review has been completed.

§ 154.104 Planning Commission

The Planning Commission shall provide assistance to the City Council in the administration of this chapter. The recommendations of the Planning Commission shall be advisory in nature. Specifically, the Planning Commission shall review, hold public hearings and make recommendations to the City Council on all applications for zoning amendments, variances, and conditional use permits using the criteria of this Article. The Planning Commission shall be formed and operate in conformance with Chapter 32 of the City Code and specifically with Sections 32.025 through 30.042.

§ 154.105 Zoning Amendments

- A. *Criteria for granting zoning amendments.* The City Council may adopt amendments to the zoning ordinance and zoning map in relation to land uses within a particular district or to the location of a district line. Such amendments shall be used as a means to reflect changes in the goals and policies of the city as reflected in the Comprehensive Plan.
- B. *Types of amendments.*
 1. *Rezoning.* A change in the boundary of a zoning district or a change from one district to another on the Official Zoning Map, referred to as a rezoning.
 2. *Text amendment.* A change in the text for specific zoning district regulations or any other provision of this Chapter.
- C. *Initiation of proceedings.* Proceedings for a text amendment or a rezoning may be initiated by one of the following three methods:
 1. By petition of an owner or owners of property that is proposed to be rezoned or for which a text amendment for a change in a district regulation is proposed;
 2. By recommendation of the Planning Commission;

3. By action of the City Council.
- D. *Application requirements for zoning amendments initiated by petition.* A petition for a Zoning Amendment shall be submitted to the Director of Planning on such form as required by §154.101 of this Article and accompanied by the following information:
1. Conceptual site plan drawn to scale showing all affected parcels and a general concept for any proposed development of said parcels.
 2. General location of all buildings and their approximate dimensions and square footage.
 3. Approximate location of all curb cuts, driveways, access roads, parking areas, off-street loading areas, and sidewalks.
 4. Conceptual landscape plan indicating general planting areas for trees, shrubs, and lawns.
 5. Conceptual grading, erosion control, and storm water management plan.
 6. Conceptual sewer and water utility plan for the development.
 7. Narrative indicating the types of uses or businesses that are contemplated for the development, number of employees, parking and traffic impacts, and other pertinent information about the proposed development.
 8. The Director of Planning may require the applicant to supply proof of ownership of the property for which the amendment is requested that illustrates legal or equitable interest in the property.
- E. *Hearing requirements.* The Planning Commission shall hold a public hearing on each complete application for a Zoning Amendment as provided in §154.102 of this Article. After the close of such hearing, the Planning Commission shall consider findings and shall submit the same together with its recommendation to the City Council.
- F. *Effect of denial of application.* No application of a property owner for an amendment to the text of this chapter or the zoning map shall be considered by the Planning Commission within the one year period following a denial of such request, except the Planning Commission may permit a new application, if in the opinion of the Planning Commission, new evidence or a change of circumstances warrant it.
- G. *Relationship to Comprehensive Plan.* Any rezoning shall be consistent with the current City of Lake Elmo Comprehensive Land Use Plan. If the rezoning is not consistent with the current Comprehensive Plan, an amendment to the Comprehensive Plan must be requested and approved prior to or concurrent with the rezoning request.
- H. *Coordination with adjoining communities.* Any zoning district change on land adjacent to or across a public right-of-way from an adjoining community shall be referred to the Planning Commission and the adjacent community or county for review and comment prior to action by the City Council granting or denying the zoning district classification change. A period of at least ten (10) days shall be provided for receipt of comments. Such comments shall be considered as advisory only.

§ 154.106 Conditional Use Permits

- A. *Required findings.* Conditional use means a land use or development as defined by ordinance that would not be appropriate generally but may be allowed with appropriate restrictions as provided by official controls only upon a finding that all of the following provisions are met:
1. The proposed use will not be detrimental to or endanger the public health, safety, comfort, convenience or general welfare of the neighborhood or the city.
 2. The use or development conforms to the City of Lake Elmo Comprehensive Plan.
 3. The use or development is compatible with the existing neighborhood.

4. The proposed use meets all specific development standards for such use listed in Article 7 of this Chapter.
 5. If the proposed use is in a flood plain management or shoreland area, the proposed use meets all the specific standards for such use listed in Chapter 150, §150.250 through 150.257 (Shoreland Regulations) and Chapter 152 (Flood Plain Management).
 6. The proposed use will be designed, constructed, operated and maintained so as to be compatible in appearance with the existing or intended character of the general vicinity and will not change the essential character of that area.
 7. The proposed use will not be hazardous or disturbing to existing or future neighboring uses.
 8. The proposed use will be served adequately by essential public facilities and services, including streets, police and fire protection, drainage structures, refuse disposal, water and sewer systems and schools or will be served adequately by such facilities and services provided by the persons or agencies responsible for the establishment of the proposed use.
 9. The proposed use will not create excessive additional requirements at public cost for public facilities and services and will not be detrimental to the economic welfare of the community.
 10. The proposed use will not involve uses, activities, processes, materials, equipment and conditions of operation that will be detrimental to any persons, property or the general welfare because of excessive production of traffic, noise, smoke, fumes, glare or odors.
 11. Vehicular approaches to the property, where present, will not create traffic congestion or interfere with traffic on surrounding public thoroughfares.
 12. The proposed use will not result in the destruction, loss or damage of a natural, scenic or historic feature of major importance.
- B. *Application Requirements.* Conditional Use Permit applications shall be submitted to the Director of Planning on such form and accompanied by such information as required by §154.101.A of this Article and with the submission materials listed in §154.101.B of this Article.
- C. *Public hearing required.* The Planning Commission shall hold a public hearing on each complete application for a conditional use permit as provided in §154.102 of this Article. After the close of the hearing on a proposed conditional use permit, the City Planning Commission shall consider findings and shall submit the same together with its recommendation to the City Council.
- D. *Final decision by City Council.* The City Council shall make the final decision on a conditional use permit after a public hearing by the Planning Commission. The City Council may approve, approve with conditions or deny the application.
- E. *Conditions.* In reviewing applications for conditional use permits, the Planning Commission and Council may attach whatever reasonable conditions they deem necessary to mitigate anticipated adverse impacts associated with these uses, to protect the value of property within the district and to achieve the goals and objectives of the Comprehensive Plan. In determining such conditions, special consideration shall be given to protecting immediately adjacent properties from objectionable views, noise, traffic and other negative characteristics associated with such uses.
1. The conditions shall include all specific development standards for such use listed in Article 7 of this Chapter.
 2. If the proposed use is in a flood plain management or shoreland area, the conditions shall include specific standards for such use listed in Chapter 151 (Floodplain Management) and Chapter 152 (Shoreland Management).
 3. In addition, conditions may include, but are not limited to, the following:

- a. Controlling the number, area, bulk, height and location of such uses;
 - b. Regulating ingress and egress to the property and the proposed structures thereon with particular references to vehicle and pedestrian safety and convenience, traffic flow and control and access in case of fire or other catastrophe;
 - c. Regulating off-street parking and loading areas where required;
 - d. Controlling the location, availability and compatibility of utilities;
 - e. Requiring berming, fencing, screening, landscaping or other means to protect nearby property; and
 - f. Requiring other conditions to create compatibility of appearance with surrounding uses.
- F. *Findings for denial.* If the Planning Commission recommends denial of a conditional use permit or the Council orders such denial, it shall include in its recommendation or determination findings as to the specific ways in which the proposed use does not comply with one or more specific findings required by this chapter.
- G. *Permittee.* A conditional use permit shall be issued for a particular use and not for a particular person, except in the case of a permit granted for the uses of land reclamation, mining or soil or mineral processing. In such cases, a permit shall be issued to the particular person making application for such permit and such permit shall not be transferred or assigned for use by another without the written consent of the city. However, such consent by the city shall not be unreasonably withheld.
- H. *Periodic review.* A periodic review of the use may be attached as a condition of approval of a conditional use permit.
- I. *Term of permit.* Unless otherwise stipulated, the term shall be the life of the use.
- J. *Revocation.* Failure to comply with any condition set forth in a conditional use permit, or any other violation of this chapter, shall be a misdemeanor and shall also constitute sufficient cause for the termination of the conditional use permit by the City Council following a public hearing conducted in accordance with §155.102 of this Article.
- K. *Expiration.* If substantial construction has not taken place within 12 months of the date on which the conditional use permit was granted, the permit is void except that, on application, the Council, after receiving recommendation from the Planning Commission, may extend the permit for such additional period as it deems appropriate. If the conditional use is discontinued for six months, the conditional use permit shall become void. This provision shall apply to conditional use permits issued prior to the effective date of this chapter, but the six-month period shall not be deemed to commence until the effective date of this chapter.

§ 154.107 Interim Use Permits

- A. *Purpose and intent.* The purpose and intent of allowing interim uses are:
- 1. To allow a use for a limited period of time that reasonably utilizes the property where such use is not consistent with the future land map in the Comprehensive Plan; and
 - 2. To allow a use that is presently acceptable, but that with anticipated development or redevelopment or other significant change, will not be acceptable in the future or will be replaced by a permitted or conditional use allowed within the respective district.
- B. *General standards.* An interim use permit may be granted only if the City Council finds as follows:
- 1. The use is allowed as an interim use in the respective zoning district and conforms to standard zoning regulations.

2. The use will not adversely impact nearby properties through nuisance, noise, traffic, dust, or unsightliness and will not otherwise adversely impact the health, safety, and welfare of the community.
 3. The use will not adversely impact implementation of the Comprehensive Plan.
 4. The date or event that will terminate the use is identified with certainty.
 5. The user agrees to all conditions that the City Council deems appropriate for permission of the use. This may include the requirement of appropriate financial surety such as a letter of credit or other security acceptable to the city to cover the cost of removing the interim use and any interim structures not currently existing on the site, upon the expiration of the interim use permit.
 6. There are no delinquent property taxes, special assessments, interest, or city utility fees due upon the subject parcel.
 7. The date or event terminating the interim use shall be set by the City Council at the time of approval.
- C. *Recordkeeping.* The Zoning Administrator shall maintain a record of all applications and all interim use permits issued, including information on the use, location, conditions imposed by the community, time limits, review dates, and such other information as may be appropriate.
- D. *Application.* Applications for an interim use permit shall be made by the fee owner or authorized representative of the fee owner of the property upon which the interim use is proposed. All applications shall include the following:
1. A completed application form signed by the fee owner of the property or by the fee owner's authorized representative;
 2. Application fee;
 3. Proof of ownership consisting of an abstract of title or registered property certificate on which the interim use is requested;
 4. Plans for the proposed use showing all information deemed necessary by the Administrator to ensure the community can determine whether the proposed use and/or improvements will meet all applicable standards. Such information may include but shall not be limited to the following:
 - a. Site plan drawn to scale showing parcel and existing topography;
 - b. Location of all buildings and their size, including square footage;
 - c. Curb cuts, driveways, access roads, parking spaces, off-street loading areas, and sidewalks;
 - d. Landscaping and screening plans, including species and size of trees and shrubs proposed;
 - e. Finished grading and drainage plan sufficient to drain and dispose of all surface water accumulated (see § 150.277 to determine if a Storm Water Management Plan and/or an Erosion and Sediment Control Plan is required);
 - f. Type of business or activity and proposed number of employees;
 - g. Proposed floor plan and elevations of any building with use indicated;
 - h. Sanitary sewer and water plan with estimated flow rates;
 - i. Soil type and soil limitations for the intended use. If severe soil limitations for the intended use are noted, a plan or statement indicating the soil conservation practice or practices to be used to overcome the limitation shall be made part of the application; and

5. A certified list of property owners located within 350 feet of the subject property obtained from and certified by a licensed abstractor.
 6. A letter from the applicant explaining the proposal and stating the date or event that will terminate the use;
 7. A signed consent agreement, subject to review and approval by the City Council documenting:
 - a. That the applicant, owner, operator, tenant and/or user has no entitlement to future reapproval of the interim use permit;
 - b. That the interim use will not impose additional costs on the public if it is necessary for the public to fully or partially take the property in the future; and
 - c. That the applicant, owner, operator, tenant and/or user will abide by conditions of approval that the City Council attaches to the interim use permit.
 8. Any other information that may be reasonably required by the city to evaluate the application.
- E. *Planning Commission review and public hearing.* The Zoning Administrator shall refer completed applications to the Planning Commission for consideration and a public hearing at the next available regular meeting as determined by staff. Prior to the meeting, the Zoning Administrator shall complete the following.
1. Distribute the application to appropriate city departments and commenting agencies to receive feedback;
 2. Publish notice of the purpose, time and place of the public hearing in the official newspaper of the community, and mail notices to all property owners located within a minimum of 350 feet of the property described in the application, at least 10 days prior to the date of the hearing. A copy of the notice and a list of the owners and addresses to which the notice was sent shall be attested to by the responsible person and shall be made a part of the records of the proceedings. Failure to give mailed notice to individual property owners or defects in the notice shall not invalidate the proceedings, provided a bone fide attempt to comply with the provisions of this section has been made.
 3. Prepare a staff report analyzing the request under city code requirements for consideration by the Planning Commission.
 4. After considering the application, the staff report, testimony from the applicant and the public and any other relevant information; the Planning Commission shall recommend approval, approval with conditions, or denial. The recommendation of the Planning Commission shall be forwarded to the City Council as soon as practical, and in a manner which allows the City Council time to make a final determination on the request within the state mandated timelines for reviewing land use applications.
- F. *City Council action.* After considering the application, recommendation of the Planning Commission, any staff reports, testimony from the public hearing and any other relevant information; the City Council shall take action on the application through approval, approval with conditions, or denial. Should the City Council approve the application, the City Council shall make findings on conformance to the IUP general standards, specify the term of the interim use permit, the event(s), circumstances or conditions that shall cause termination, and any conditions of approval.
- G. *Termination.* An interim use shall terminate on the happening of any of the following events, whichever occurs first:
1. The date or event stated in the permit;
 2. Upon violation of conditions under which the permit was issued;

3. Upon change in the city's zoning regulations which renders the use nonconforming; or
 4. The redevelopment of the use and property upon which it is located to a permitted or conditional use as allowed within the respective zoning district.
- H. *Suspension and revocation.* The City Council may suspend or revoke an interim use permit upon finding that the activities allowed under the permit adversely affect the public health, safety, or welfare in ways not anticipated during approval of the permit. A suspension or revocation of an interim use permit shall be preceded by written notice to the permittee and a hearing. The notice shall provide at least 10 days notice of the time and place of the hearing and shall state the nature of the violations. The notice shall be mailed to the permittee at the most recent address listed on the application. The hearing of a contested case may, at the City Council's option, be before the City Council or in accordance with M.S. §§ 14.57 to 14.60, but informal disposition of a contested case by stipulation, pursuant to M.S. § 14.59, may provide an adequate basis for imposition of sanctions.
- I. *Amendments.* All requested amendments to an existing interim use permit shall be processed in the same manner as a new application.
- J. *Renewal.* The following process may be used to renew an active interim use permit that is set to expire. Terminated or suspended interim use permits cannot be renewed unless the City Administrator has received and approved a 1-time 30-day extension to continue processing the renewal application.
1. *Application.* Application requirements for renewal of an existing interim use permit be the same as for a new application.
 2. *Review.* Upon receiving a completed application for an interim use permit renewal, the Zoning Administrator shall send notice of the requested renewal to all property owners within 350 feet of the parcel(s) containing the interim use. If any objections are raised within 10 days of the mailed notice, the application shall be processed in the manner of a new application. If no objections are raised, the Zoning Administrator shall prepare a resolution of approval outlining the conditions and stipulations of the renewal for consideration by the City Council. Council—at its discretion—may approve or deny the request with findings. Denial of a renewal request does not constitute termination of the existing interim use permit.

§ 154.108 Appeals and the Board of Adjustment

The Board of Adjustment is hereby established pursuant to this chapter and Minnesota law. The Board of Adjustment (which is the City Council in accordance with §31.10 of the City Code) shall have those powers and authority as provided by Minnesota law and as hereinafter provided for. The Board of Adjustment shall be formed and operate in conformance with Chapter 31 of this Code and specifically with §31.10.

A. Powers of the Board of Adjustment.

1. *Review of administrative decisions.* The Board of Adjustment shall act upon all questions as they may arise in the administration of this chapter, including the interpretation of zoning maps, and it shall hear and decide appeals from and review any order, requirement, decision or determination made by such an administrative official charged with enforcing this chapter. Such appeal may be made by any person, firm or corporation aggrieved by an officer, department, board or bureau of the city.
2. *Variances.* The Board of Adjustment shall also have the power to grant variances to the provisions of this chapter under certain conditions. The conditions for the issuance of a variance are as indicated in §154.109 of this Article. No use variances (uses different than those allowed in the district) shall be issued by the Board of Adjustment.

B. Procedures for appeals.

1. *Filing of appeals.* All appeals to the Board of Adjustment shall be in writing and filed with the office of the City Clerk within 14 calendar days of the date of mailing of the notice of the order, requirement, decision or determination from which the appeal is made.
2. *Hearings.* The Board of Adjustment shall conduct a hearing regarding all appeals in accordance with §154.102.C.2 of this Article.
3. *Notice.* Written notice of the hearing shall be provided to the parties to the hearing and mailed not less than 14 days prior to the hearing.
4. *Orders.* The Board shall, within a reasonable time, make its order deciding the matter and shall serve a copy of such order upon the appellant or petitioner by mail. The Board of Adjustment may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination as in its opinion ought to be made. The reasons for the decision of the Board of Adjustment shall be stated in the order. A majority vote of the Board of Adjustment shall be necessary to reverse any decisions of an administrative office of the city or to decide in favor of the applicant.

§ 154.109 Variances

- A. *In general.* The Board of Adjustment shall have the power to grant variances to the provisions of this chapter under the following procedures and standards.
 1. A request for a variance from the literal provisions of this chapter may be granted in instances where their strict enforcement 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. All requests for variances shall be reviewed in accordance with the required findings listed in §154.109.F.
- B. *Use variances prohibited.* A variance shall not be granted for any use that is not a listed permitted or conditional use under this chapter for property in the zone where the property is located.
- C. *Application Requirements.* Variance applications shall be submitted to the Director of Planning on such form and accompanied by such information as required by §154.101.A of this Article and with the submission materials listed in §154.101.B of this Article.
- D. *Hearing requirements.* The Planning Commission shall hold a public hearing on each complete application for a variance as provided in §154.102 of this Article. After the close of the hearing on a proposed variance, the City Planning Commission shall consider findings and shall submit the same together with its recommendation to the Board of Adjustment.
- E. *Board of Adjustment action.* The Board of Adjustment shall receive the recommendation of the Planning Commission and shall take final action on the variance request. All findings and decisions of the Board of Adjustments concerning variances shall be final.
- F. *Required findings.* Any action taken by the Board of Adjustment to approve or deny a variance request shall include the following findings:
 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.
 - a. *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.

2. *Unique circumstances.* The problem for the landowner/applicant which the proposed variance is intended to correct must be due to circumstances that are unique to the property in question and that were not created by the land owner/applicant.
 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. *Definition of locality.* For purposes of this subsection, "locality" shall be defined as all that property within 350 feet of the property proposed for the variance; however, in all events, it shall include all parcels abutting the affected parcel, including those immediately across a public street, alley or other public property.
 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.
- G. *Conditions.* The Planning Commission may recommend and the Board of Adjustment may impose such restrictions and conditions upon the property that is the subject of the variance as may be necessary to comply with the standards established by this chapter or to reduce or minimize the effect of such variance upon other properties in the neighborhood and to better carry out the intent of the variance.
- H. *Effect of denial.* No application by a property owner for a variance shall be submitted to the Board of Adjustment within a six (6) month period following a denial of such a request unless, in the opinion of the Board, new evidence of change in circumstances warrant it.
- I. *Expiration.* A variance shall be deemed to authorize only one particular use and shall expire if work does not commence within twelve (12) months of the date of granting such variance or if that use ceases for more than six (6) consecutive months.
- J. *Revocation.* The Board of Adjustment may revoke a variance if any conditions established by the Board as part of granting the variance request are violated.

§ 154.110 Violations and Enforcement

- A. *Enforcing officer.* It shall be the duty of the Director of Planning to cause the provisions of this chapter to be properly enforced.
- B. *Violations.*
1. *Violations.* Any person who shall violate or refuse to comply with any of the provisions of this Chapter shall be subject to the provisions of this Section.
 2. *Separate offenses.* Each day that the violation is permitted to exist shall constitute a separate offense.
- C. *Investigation and administrative enforcement.*
1. *Investigation of violation.* The Director of Planning shall investigate alleged violations of this Chapter. Investigation of a violation may require accessing the property where the violation is alleged to have occurred. The Director of Planning shall notify the landowner of the need for investigation and make a reasonable attempt to gain permission from the landowner for access to the property and structures for investigative purposes. If the landowner is not responsive, the Director of Planning may, upon probable cause of a violation, enter upon the property, but not enter any structures, for the sole purpose of investigation. If access to the property is specifically denied by the landowner, the Director of Planning shall obtain a judicial order prior to entering upon the property. Entering a structure for investigative purposes shall occur only upon permission of the landowner or issuance of a judicial order.
 2. *Administrative enforcement.*

- a. *Notice of violation.* Whenever in the judgment of the Director of Planning a determination is made upon investigation that a particular permit holder has not complied with this Chapter, the Director of Planning shall issue written notice of violation to the owner of record and require him or her to complete the work.
 - b. *Cease and desist order.* Upon investigation, if the Director of Planning has probable cause to believe a violation of this Chapter has occurred and that immediate stoppage of work is necessary to minimize harm caused by such violation, the Director of Planning may issue a cease and desist order to halt the progress of any property modification. When any work has been stopped by a cease and desist order, it shall not be resumed until the reason for the work stoppage has been completely satisfied and the cease and desist order lifted.
- 3. *Service of notice.* Service of a cease and desist order shall be in person by city law enforcement. Service of a notice of violation shall be in person or by mail. If the premises are not occupied by the owner of record and the address of the owner of record is unknown, service on the owner of record may be had by posting a copy of the notice on the premises.
- 4. *Code violation citation.* If a violation is not remedied within fifteen (15) days of the date of issuance of the notice of violation, the city official issuing the notice shall issue a code violation citation to the notified owner of record.
- D. *Correction by City and recovery of cost.* Upon issuance of a code violation citation the Director of Planning may cause work to be completed at the expense of the city to correct the violation. The city shall recover such expense as an administrative fee, either by civil action against the person or persons served or to certify the same to the County Auditor for collection in the manner as taxes and special assessments are certified and collected.
- E. *Civil and criminal enforcement.* Any violations of the provisions of this Chapter or failure to comply with any of its requirements by a landowner or their agent shall constitute a misdemeanor and shall be punishable as defined by Minnesota State Statutes 394.37. The provisions of this Ordinance may be enforced through criminal prosecution, civil remedy, or both. Utilization of a civil remedy shall not prevent a criminal prosecution for the same violation. A criminal prosecution for a violation shall not be a bar to a civil remedy.
- F. *Injunctive relief allowed.* The city may sue for injunctive relief on any violation, including restoration of the premises to its existing condition prior to the violation.
- G. *Administrative fee for enforcement.* The Director of Planning shall charge an administrative fee, as set by resolution of the City Council, to compensate for time spent involving the investigation and prosecution of violations, and including any expenses incurred during the investigation.
- H. *After the fact applications and fees.* Any person making application for a permit after the commencement of work requiring a permit, shall be charged an additional administrative fee. In the event the application for a permit is denied or the action permitted does not include all or part of the work commenced prior to approval of said permit, the Director of Planning shall require correction and/or restoration of the concerned property to its original state, including removal of structures or improvements.



Planning Commission
Date: 5/29/13
Item: 5c

ITEM: Zoning Text Amendment – Fence Ordinance

SUBMITTED BY: Nick Johnson, City Planner

REVIEWED BY: Kyle Klatt, Planning Director

SUMMARY AND ACTION REQUESTED:

The Planning Commission is being asked to hold a public hearing on proposed amendments to the City's Fence Ordinance. The proposed ordinance was previously reviewed by the Planning Commission at the meeting on 5/13/13. The amendment of the Fence Ordinance is part of the ongoing effort to improve and reorganize the Lake Elmo Zoning Code.

ADDITIONAL INFORMATION:

At the meeting on 5/13/13, the Planning Commission reviewed the proposed Fence Ordinance and provided the following feedback:

- The Planning Commission and Staff discussed the need for permits for temporary fencing. Overall consensus was reached that temporary fencing that is in compliance with the provisions of the Fence Ordinance would not require a permit.
- The Planning Commission inquired about the use of electric or barbed wire fencing. Based upon research of multiple fence ordinances, Staff is recommending that these fencing types should not be allowed in platted areas, or residential and commercial areas. This prohibition would not apply to properties zoned Agricultural or Rural Residential. If the Planning Commission wishes to explore electric fencing for temporary fences use for gardening, Staff can provide language that could address this allowance.
- The Planning Commission had a further discussion pertaining to fence materials for commercial properties. Some fence ordinances in the metro have special provisions related to materials for fencing in commercial districts. Staff has suggested that all of the materials allowed in residential districts be allowed with the exception of wood fencing. However, there is an allowance for split-rail decorative fencing.
- There was discussion about the provision of the existing Fence Ordinance requiring that all fencing above 42" be 75% open to air and light. This is the most unique feature of the City's current ordinance in terms of comparisons to other ordinances of surrounding communities. While the "air and light" provision is consistent with the open space character of Lake Elmo, the provisions does significantly limit the type of fencing allowed in the community. Staff does not take a position on what type of fencing is superior, but does anticipate that demand for solid fencing is likely to

increase with more sewered growth in the future. The important consideration related to this provision is that fence height and openness is limited in front and side (corner) yards for safety purposes in the proposed ordinance. The Planning Commission will have to weigh the different policy consideration related to this provision.

- Finally, Staff suggested that additional research be conducted about the requirements related to fencing in shoreland districts in the existing ordinance. The current ordinance does not allow any fencing within the 100' setback from Ordinary High Water (OHW) mark. With this provision in place, many properties that are non-conforming, in that they do not meet the shoreland setback, would not be allowed to have any rear-yard fencing. After researching other ordinances, it does not appear necessary to have additional requirements pertaining to fencing in the shoreland district. For that reason, Staff did not include these provisions in the proposed ordinance.

Staff has addressed many of these comments and questions with an updated draft of the proposed ordinance, found in attachment #1. The changes from the previous draft are highlighted in redlines. Once again, the proposed ordinance is slotted in Article 5 – General Regulations, as part of the new organization structure Staff is implementing.

RECOMMENDATION:

Staff recommends that the Planning Commission recommend approval of the proposed fence ordinance through the following motion:

“Move to recommend approval of the proposed Fence Ordinance.”

ATTACHMENTS:

1. Proposed Fence Ordinance (§154.205)

ORDER OF BUSINESS:

- Introduction.....Planning Staff
- Report by Staff.....Planning 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

Article 5 - General Regulations

§154.205 Fencing Regulations

§154.205 Fencing Regulations

- A. *Purpose.* The purpose of this Ordinance is to provide for the regulation of fences in the city of Lake Elmo and to prevent fences from being erected that would be a hazard to the public, an unreasonable interference with the uses and enjoyment of neighboring property or are incompatible with existing uses and other zoning restrictions.
- B. *Definitions.* The following words, terms and phrases, when used in this Section, shall have the meaning ascribed to them in this subsection, except where the context clearly indicates a different meaning:

Permanent Fence. Fences that are installed in a fixed or enduring manner that are not intended for a seasonal or temporary purpose.

Temporary Fence. Fences that are installed and removed on a seasonal basis, such as snow fences, garden fences and seasonal recreational fences, such as hockey boards.

C. *Permit Required*

1. *Permanent Fence.* No permanent fence shall be erected without first obtaining a fence permit. Application shall be made to the Planning Director. The fee shall be established by the City's Fee Schedule. The Planning Director is authorized to issue a fence permit if the application indicates that the fence will be in compliance with this Ordinance. The Board of Adjustment and Appeals shall hear and decide appeals when it is alleged that the Planning Director was in error. The appeals shall follow the procedure outlined in §31.01.
2. *Temporary Fence.* Temporary fencing that complies with subsection (F) and all other applicable provisions of this Ordinance shall be exempt from permit requirements.

D. *General Requirements.* All fences erected in the city of Lake Elmo are subject to the following requirements:

1. *Maintenance.* All fences shall be properly maintained with respect to appearance and safety. Fences that remain in a state of disrepair for an extended period of time shall constitute a nuisance per §96.03.
2. *Face of Fence.* The finished side of any fence or wall must face abutting property or street rights of way.
3. *Fence Materials.*
 - a. *Residential Districts.* Permitted fence materials in residential districts shall be limited to brick, stone, wood, wrought iron, vinyl, composite material, chain-link and, in cases of temporary fencing only, materials that are consistent with temporary fencing as regulated under subsection (F).
 - b. *Commercial and Mixed-Use Districts.* Permitted fence materials in commercial and mixed-use districts shall be limited to brick, stone, wrought iron, decorative metal, vinyl, and high quality vinyl coated chain-link. Wood fencing may only be utilized as split-rail type decorative fencing.
4. *Traffic Obstruction.* No fence or wall shall obstruct a motorist's or a pedestrian's safe view from the driveway or street.
5. *Easement Encroachment.* Where allowed by this Ordinance and other applicable sections, a fence may be constructed up to 1 foot off a property line unless an easement is present, or it is determined a fence would obstruct a drainage area. An easement encroachment agreement, along with a fence permit, allows a fence to be constructed within a City

easement after it has been reviewed and approved by the City Council and the applicable fee has been received.

6. *Swimming Pools.* All swimming pools shall be enclosed with required fencing per §151.085.
- E. Fence Height
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.
 3. *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.
- F. Temporary Fences
1. *Height and Performance.* Temporary fences shall comply with the fence height standards of subsection (E). Temporary fences shall be at least 40% open to air and light. If unable to be at least 40% open to air and light, temporary fences shall not exceed forty-two inches (42") in height.
 2. *Duration and Limitation*
 - a. No snow fence or posts shall be installed prior to November 1, and must be removed prior to April 15.
 - b. Seasonal recreational fencing intended for winter sports, such as hockey or broomball shall not be installed prior to November 1, and must be removed prior to April 15.
 3. *Location.* Snow fences shall be set back at least 50 feet from any south or east property line, or such additional distance as may be required to prevent the accumulation of snow on public streets or adjoining property, as determined by the Public Works Director.
- G. *Prohibited Fencing. Barbed wire and electric fencing are prohibited in platted areas.*
- H. *Agricultural Exemption.* Fences constructed on parcels in excess of 5 acres for the keeping of horses; and fences constructed on parcels in excess of 10 acres for the keeping of other livestock, as defined by § 11.01, are specifically exempted from the provisions of this Section. Any such agricultural fencing shall be at least 75% open to air and light.



Planning Commission
Date: 5/29/13
BUSINESS ITEM
Item: 6a

ITEM: Christ Lutheran Church Minor Subdivision – 3549 Lake Elmo Avenue

SUBMITTED BY: Kyle Klatt, Planning Director

REVIEWED BY: Nick Johnson, City Planner

SUMMARY AND ACTION REQUESTED:

The Planning Commission is being asked to consider a request from Christ Lutheran Church, 11194 36th Street North, for a Minor Subdivision to split off a portion of the parking lot associated with the former Lake Elmo Bank property at 3549 Lake Elmo Avenue North. The split is intended to allow the church to retain ownership of the majority of the parking lot on this site while selling the building to another party along with a small portion of the parking area next to the building. The City has previously granted a variance to allow the split, which was necessary because the parcels to be created are smaller than the minimum lot size allowed in a GB General Business District.

BACKGROUND INFORMATION:

Christ Lutheran Church acquired the former Lake Elmo Bank property sometime after the bank relocated along State Highway 5, and has previously leased out office space within the building while using the parking lot for people attending church events. This arrangement has worked out fairly well over the past several years because the peak parking demand associated with the office use falls outside of the church's peak parking periods on nights and weekends. The St. Croix Sensory business was in the building for several years, but has since relocated recently leaving the building vacant.

The applicant has found a potential buyer for the property, but this buyer has indicated that they will not need all of the parking on the site for their business. As a result, the Church would like to retain ownership of a majority of the parking lot, which would allow them to continue using it as accessory parking for the Church. The Church recently undertook a renovation of the parking lot at 3549 Lake Elmo Avenue North by resurfacing the entire lot and adding a new storm water infiltration feature in the middle of the property. The proposed lot split would keep the rain garden areas under the control of the Church.

A minor subdivision, which is defined as "a division of land which results in no more than 4 parcels", must be reviewed by the Planning Commission with final approval by the City Council. There is no public hearing required for this type of request.

ADDITIONAL INFORMATION:

The parcels to be created by the minor subdivision would be 0.42 acres (identified as Tract A on the attached survey including the building plus the smaller parking area) and 0.27 acres (identified as Tract B including parking and a rain garden). The minimum lot size within the City's GB district is 1.5 acres; however, the variance previously granted by the City will allow the minor subdivision to move forward. In fact, the Planning Commission must consider the lot sizes noted above as compliant with the Zoning Ordinance because of the variance approval. In all other aspects of the request, the applicant meets the City's review and submittal requirements. Staff

BUSINESS ITEM 6a – ACTION ITEM

has attached Resolution No. 2013-07, approving the lot size variance, for consideration by the Commission.

The Church has indicated that it is seeking the minor subdivision in order to facilitate the future sale of the former bank building while retaining ownership of a majority of the parking lot on this site. As part of its variance approval, the applicant is required to provide a shared parking easement over the entire parking area that would be reciprocal for both parcels. This means that the future building tenant would be able to use the Church's parking area on "Tract B" and the Church would be able to use the parking in front of the building on "Tract A". This is essentially how the parking area has been used in the past when the Church leased the building to the St. Croix Sensory business.

A shared parking easement has since been drafted by the Church and is attached to this memorandum for review by the Commission. Although the easement as drafted does give the Church full usage of the parking areas during church events, this language should not be problematic for an office user since the Church's peak parking demands occur on weekends and weekday evenings.

The variance approval also requires that the applicant provide a drainage easement over the infiltration area since this area collects storm water from both of the parcels to be created by the minor subdivision. This easement is also attached for consideration by the Planning Commission.

Because both easements are not necessary until the minor subdivision is recorded with the County, Staff is recommending that the recording of the easements be included as a condition of approval. This will allow the Church to record the easements either at the same time or immediately after the property transaction has occurred.

RECOMMENDATION:

Staff is recommending that the Planning Commission recommend approval of the Minor Subdivision request by Christ Lutheran Church to split the parcel of land at 3549 Lake Elmo Avenue North into two new lots in accordance with the attached survey, provided the following conditions are met:

- 1) The Applicant shall execute and record a shared parking easement in a form acceptable the City Attorney prior to the transfer of either "Tract A" or "Tract B" to another party. This easement shall allow any future tenants of the building on Tract A to use the parking lot on Tract B during time periods when this lot is not used by the Applicant. The agreement shall be drafted to be reciprocal regarding the use of the parking stalls that will be retained by the future owners of Tract A.
- 2) The Applicant shall execute and record a drainage and utility easement across the storm water infiltration area in a form acceptable the City Attorney prior to the transfer of either "Tract A" or "Tract B" to another party.

ORDER OF BUSINESS:

- IntroductionPlanning Director
- Report by staffPlanning Director
- Questions from the Commission Chair & Commission Members
- Applicant CommentsChair facilitates
- Questions of the Applicant Chair & Commission Members
- Public CommentsChair
- Call for a motion Chair Facilitates

- Discussion of Commission on the motion Chair Facilitates
- Action by the Planning Commission..... Chair & Commission Members

ATTACHMENTS:

1. Application Form
2. Application Narrative
3. Location Map
4. Certificate of Survey for Minor Subdivision
5. Proposed Drainage and Utility Easement
6. Proposed Shared Parking Easement
7. Resolution No. 2013-07 (Approving Lot Size Variance)

City of Lake Elmo
DEVELOPMENT APPLICATION FORM

Fee \$ _____

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

APPLICANT: Christ Lutheran Church P.O. Box 310 Lake Elmo, MN 55042
(Name) (Mailing Address) (Zip)

TELEPHONES: 651-777-2881
(Home) (Work) (Mobile) (Fax)

FEE OWNER: Same as above
(Name) (Mailing Address) (Zip)

TELEPHONES: " "
(Home) (Work) (Mobile) (Fax)

PROPERTY LOCATION (Address and Complete (Long) Legal Description): _____

3549 Lake Elmo Ave N., Lake Elmo
Lots 29 and 30, County Auditors Plat No. 8

DETAILED REASON FOR REQUEST: See attached letter

*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:

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.

Jan Kelly
Signature of Applicant

4/23/13
Date

Signature of Applicant Date



11194 36th Street North * Lake Elmo, MN 55042
Phone: 651/777-2881 * Fax: 651/748-0145
Mailing: P.O. Box 310, Lake Elmo, MN 55042

April 23, 2013

Mr. Kyle Klatt
City of Lake Elmo Planner
3800 Laverne Avenue North
Lake Elmo, MN 55042

RE: Lot Line Adjustment, 3549 Lake Elmo Avenue North

Dear Mr. Klatt:

As has been discussed in meetings, phone conversations and by e-mail, Christ Lutheran Church (CLC) of Lake Elmo currently owns the property at 3549 Lake Elmo Avenue. The property currently consists of two parcels, Parcel 1: a 4,684 square foot single story building and associated 12 stall parking lot and access lanes; and Parcel 2: a 26 stall parking lot and rain garden area. CLC currently utilizes Parcel 1 for church office, meeting, and storage space, and Parcel 2 for weekend and event parking. The current legal description of the property is:

- Parcel 1: The South 40 feet of Lot 29 and all of Lot 30, County Auditor's Plat No. 8, as surveyed and platted and now on file in the Office of the Registrar of Titles of Washington County, Minnesota, being in the Village of Lake Elmo, Minnesota. Registered Property Certificate of Title No. 58428.
- Parcel 2: Lot 29 except the south 40 feet thereof, County Auditor's Plat No. 8, Washington County, Minnesota.
- The Parcel ID No. is 130-29-21-23-0053.

The entire property is currently zoned General Business and has been for sale or lease since being vacated by our previous tenant in August 2011. CLC was granted tax exempt status for the property by Washington County in August 2012.

In November 2012 CLC requested a variance to City Ordinance 154.051 regarding lot width and minimum acreage of commercially zoned properties in the Old Village area of Lake Elmo for the two parcels. At its February 5, 2013 regular meeting, the Lake Elmo City Council approved the variance request.

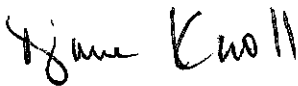
CLC is at this time requesting a lot line adjustment for the property as shown on the attached updated survey by Ulteig Engineers. The proposed new legal description is:

- Tract A: The South 46.00 feet of Lot 29 and all of Lot 30, COUNTY AUDITOR'S PLAT NO. 8, Washington County, Minnesota. Contains 18,155 Sq. Ft., or 0.42 Acres, more or less.
- Tract B: That part of Lot 29 lying north of the South 46.00 feet thereof, COUNTY AUDITOR'S PLAT NO. 8, Washington County, Minnesota. Contains 11,760 Sq. Ft, or 0.27 acres, more or less.

By adjusting the property line along the proposed boundary, CLC is retaining full ownership and maintenance responsibility of the rain garden installed at the property in 2011. As recommended by the City Council, CLC is willing to provide an easement to allow a potential buyer of Tract A (and future owners) the right to discharge storm water to the rain garden, and a mutual easement for the use of the Tract B parking lot by the owner of Tract A during normal business hours as needed and the use of the Tract A parking lot by CLC during weekends, evenings and special events. This is consistent with the current use of the parking lots, which are often used as a convenience parking lot by area residents and visitors. CLC is working on the proposed easement language and will forward it to the city when it is drafted.

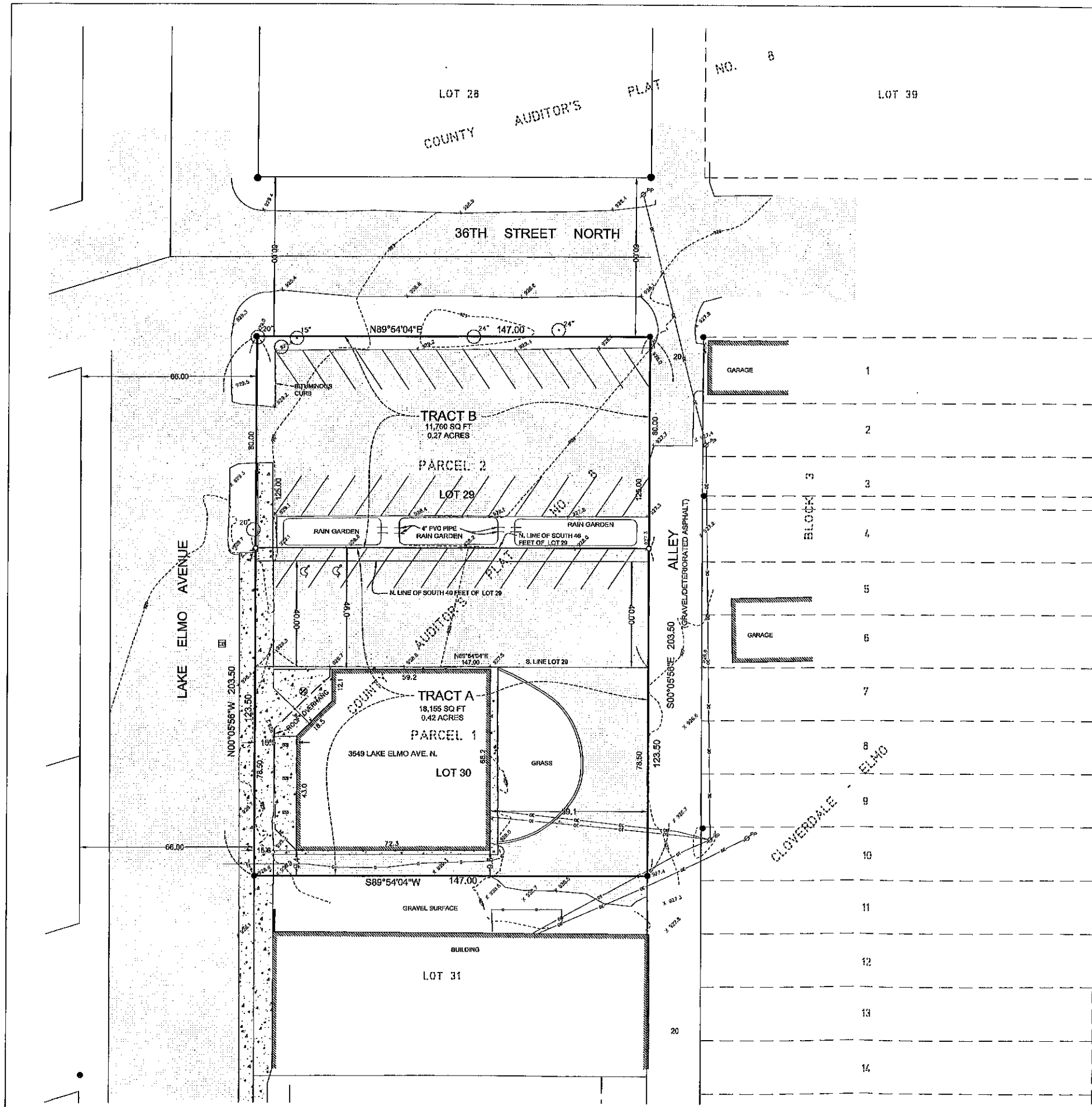
CLC is looking forward to working with the City of Lake Elmo to complete the process of adjusting the lot lines on the 3549 Lake Elmo Avenue property to facilitate the potential sale of the commercial building (Tract A) and return it to the tax rolls. Please find attached the completed Development Application Form, updated survey, and application fee. If you have any questions please contact Jim Kelly at 651-201-4910 or Tim Beres at 612-940-8891.

Sincerely,



Diane Knoll
Congregation President
Christ Lutheran Church



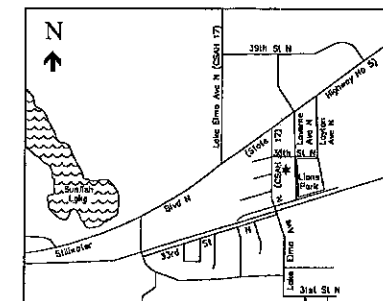


Parcel ID Number: 130-29-21-23-0053
The property is zoned (GB) General Business under the applicable zoning regulations, and that the current setbacks from property lines are:
Building:
Front = 10 feet
Side = 20 feet
Side Corner = 50 feet
Rear = 50 feet
Height = 35 feet

LEGAL DESCRIPTIONS:
Parcel 1:
The South 40 feet of Lot 29 and all of Lot 30, County Auditor's Plat No. 8, as surveyed and plotted and now on file in the Office of the Registrar of Titles of Washington County, Minnesota, being in the Village of Lake Elmo, Minnesota.
Parcel 2:
Lot 29 except the South 40 feet thereof, County Auditor's Plat No. 8, Washington County, Minnesota.
Abstract property.

PROPOSED LEGAL DESCRIPTIONS:
TRACT A:
The South 46.00 feet of Lot 29 and all of Lot 30, COUNTY AUDITOR'S PLAT NO. 8, Washington County, Minnesota.
Contains 16,155 Sq. Ft. or 0.42 Acres, more or less.
TRACT B:
That part of Lot 29 lying north of the South 46.00 feet thereof, COUNTY AUDITOR'S PLAT NO. 8, Washington County, Minnesota.
Contains 11,760 Sq. Ft. or 0.27 Acres, more or less.

- LEGEND
- IRON MONUMENT FOUND
 - REBAR SET W/PLASTIC CAP #40035
 - ▢ CATCH BASIN
 - PP POWER POLE
 - △ SIGN
 - ⊗ FLAG POLE
 - 15" ○ DECIDUOUS TREE W/ TRUNK DIAMETER
 - OVERHEAD TELEPHONE
 - OVERHEAD ELECTRIC
 - UNDERGROUND GAS
 - WOOD FENCE
 - ▨ BITUMINOUS SURFACE
 - ▨ CONCRETE SURFACE



VICINITY MAP - NOT TO SCALE
LAKE ELMO, MINNESOTA
* = SITE LOCATION

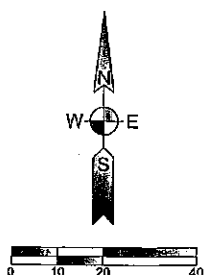
I hereby certify that this survey, plan, or report was prepared by me or under my direct supervision and that I am a duly Licensed Land Surveyor under the laws of the State of Minnesota.

Michael E. Cannon
Lic. No. 40035

Date: 11-20-12

Christ Lutheran Church
PO Box 310
Lake Elmo, MN 55042-031

Revision	Date	Description	By



Bearings are based on Washington County Coordinate System, NAD 83, 1996 Adjustment.



4265 Lexington Ave. N., St. Paul, Minnesota 55126
Phone: 651.415.3800 Fax: 651.415.2001
Bismarck - Cedar Rapids - Denver - Detroit Lakes
Fargo - Sioux Falls - St. Paul - Williston
Web: www.ulteig.com
Drawn By: MEC
Checked By: MEC
Approved By: MEC

Certificate of Survey
3549 Lake Elmo Ave. N.
Lake Elmo, MN 55042

Project Number: 12.02058
Date: 11-20-12
Sheets: 1 of 1

V1

EASEMENT

THIS INSTRUMENT is made by Christ Lutheran Church, Grantor, in favor of _____, a Minnesota corporation, Grantee.

Recitals

A. Grantors are the fee owners of the following described property in Washington County, Minnesota (the "Property"):

That part of Lot 29 lying north of the South 46.00 feet thereof, County Auditors Plat No. 8, Washington County, Minnesota

B. Grantors desire to grant to the Grantee easements, according to the terms and conditions contained herein.

Terms of Easements

1. Grant of Easements. For good and valuable consideration, receipt of which is acknowledged by Grantors, Grantors grant and convey to the Grantee the following easements:

A perpetual easement for drainage and utility purposes over, under, across and upon that part of Washington County, Minnesota, which is described as follows:

The south 12.00 feet of that part of Lot 29 lying north of the South 46.00 feet thereof, County Auditors Plat No. 8, Washington County, Minnesota

According to the plat thereof on file in the office of the County Recorder in and for Washington County, Minnesota.

2. Scope of Easement. The perpetual easements granted herein include the right of the Grantor, its contractors, agents, and employees to enter upon the aforesaid easement tracts at all reasonable times for the purposes of locating, constructing, reconstructing, operating, maintaining, inspecting, altering and repairing within the described easement tracts public drainage and utilities over, across, through and under the lands described together with the right to excavate and refill ditches and/or trenches for the location of said public utilities and drainage.

The easements granted herein also include the right to cut, trim, or remove from the easement areas trees, shrubs, or other vegetation as in the Grantor's judgment unreasonably interfere with the easements or facilities of the Grantor, its successors or assigns.

3. Warranty of Title. The Grantors warrant they are the owners of the Property and have the right, title and capacity to convey the easements herein to the Grantee.

4. Environmental Matters. The Grantee shall not be responsible for any costs, expenses, damages, demands, obligations, including penalties and reasonable attorney's fees, or losses resulting from any claims, actions, suits or proceedings based upon a release or threat of release

of any hazardous substances, pollutants, or contaminants which may have existed on, or which relate to, the easement areas or Property prior to the date of this instrument.

5. Binding Effect. The terms and conditions of this instrument shall run with the land and be binding on the Grantors, their heirs, personal representatives, successors and assigns.

STATED DEED TAX DUE HEREON: NONE

Dated this ____ day of _____, 2013.

STATE OF MINNESOTA)
) SS.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2013, by _____, Grantor.

Notary Public

NOTARY STAMP OR SEAL

P.I.D. #130-29-21-23-0053
3549 Lake Elmo Avenue N.
Lake Elmo, Minnesota 55042

ACCESS, RECIPROCAL CROSS EASEMENT AND PARKING EASEMENT AGREEMENT

This ACCESS, RECIPROCAL CROSS EASEMENT AND PARKING EASEMENT AGREEMENT ("Agreement") is made and entered into this _____ day of _____, 201____, by and between CHRIST LUTHERAN CHURCH, a Minnesota tax-exempt organization ("CLC") and _____, a Minnesota _____ ("_____").

RECITALS

A. CLC is owner of that certain tract of land situated in the City of Lake Elmo, County of Washington, State of Minnesota, which tract is identified as that part of Lot 29 lying north of the South 46.00 feet thereof, County Auditors Plat No. 8 on Exhibit A attached hereto and made a part hereof ("Tract B").

B. _____ is the owner of that certain tract of land situated in the City of Lake Elmo, County of Washington, State of Minnesota, which tract of land is identified as the South 46.00 feet of Lot 29 and all of Lot 30, County Auditors Plat No. 8 on Exhibit A attached hereto and made a part hereof ("Tract A"), adjacent and to the south of Tract B. Tract A and Tract B are collectively referred to herein as the "Site," and individually as a "Tract" or respectively as "Tracts".

C. CLC owns and operates Tract B as a parking lot and rain garden and has current curb cut access to Lake Elmo Avenue and the city alley on the east side of the Tract.

D. _____ owns and operates Tract A as an ongoing business and has current curb cut access to Lake Elmo Avenue and the city alley on the east side of the Tract.

E. The parties hereto want to provide a reciprocal parking and related access easement in, over, upon, across and through those areas set forth on Exhibits A hereto.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby expressly acknowledged, the parties hereby covenant and agree as follows:

1. Vehicular and Pedestrian Cross Access Easements. CLC and _____ hereby each grant to the other a nonexclusive easement in the parking and sidewalk areas of Tract A and Tract B for pedestrian and vehicular traffic, without payment of any fees, over, upon, across and between each Tract and the public streets and alleys now or hereafter abutting or located on any portion of the Site, limited, however, to those portions of each Tract which are improved by either CLC or _____ from time to time for pedestrian walkways and vehicular access ways, respectively, and made available by each of them for general use by them and their permittees in conformity with this Agreement and in the areas delineated for parking and pedestrian use on Exhibit A hereto.

2. Parking Easement. CLC and _____ grant to each other a nonexclusive easement in and to the parking areas identified on Exhibit A hereto for access to and use for vehicular parking purposes by each other and their respective permittees, without payment of any fee or charge. Such parking easement shall consist of no more than CLC and _____ parking spaces and such pedestrian, vehicular and access easements identified on Exhibit A as is necessary for the full utilization of each of the parking easements. Furthermore, _____ nonexclusive easement in and to the parking area of CLC shall be limited to those days and times that the parking lot of _____ is unavailable or full and the parking area of CLC is both available and sufficient free parking spaces remain at CLC to accommodate _____ and/or its permittees. CLC's nonexclusive easement in and to the parking area of _____ shall be limited to those days and times that the parking lot of CLC is unavailable or full and the parking area of _____ is both available and sufficient free parking spaces remain at _____ to accommodate CLC and/or its

permittees. CLC's parking area shall be "unavailable" every Sunday morning commencing at 7:00 a.m. to 1:00 p.m. and every Wednesday evening commencing at 5:00 p.m. to 9 p.m. evening in the months of February, March and April. Additionally, CLC's parking area shall be "unavailable" the morning of Ash Wednesday, Good Friday and Christmas during the calendar year, or for other special events such as weddings or funerals with a 2 day notice. CLC will transmit to ____ on or around January 1 of every year while this agreement is in effect a schedule of all times and dates that its parking area will be unavailable due to holidays. ____ will transmit to CLC on or about January 1 of every year while this agreement is in effect a schedule of all times and dates that its parking area will be unavailable.

3. Unimpeded Access. The parties hereto agree that no barricade or other divider will be constructed between Tract A and Tract B to prohibit or discourage the free and uninterrupted flow of vehicular or pedestrian traffic for parking in the areas specifically designated for such purposes on Exhibit A hereto.

4. Easements Appurtenant. Each and all of the easements and rights granted or created herein are appurtenant to the affected portions of the Sites and none of the easements and rights may be transferred, assigned or encumbered except as an appurtenance thereto. For the purposes of such easements and rights, the particular areas of the Site which are burdened by such easements and rights shall constitute the servient estate. The easements contained in this Agreement are made for the direct, mutual and reciprocal benefit of the parties hereto create mutual equitable servitudes upon each respective Tract in favor of the other Tract, constitute covenants running with the land and, except as otherwise provided, shall bind every person or entity having any fee, leasehold or other interest in any portion of the Site at any time or from time to time.

5. Construction and Maintenance. Each of the parties hereto agree to improve the Parking Easement Areas and the Cross Easement Area located on Tract A or Tract B at such time as similar type improvements are made to the other parts of Tract A or Tract B. The parties shall maintain that portion of the easement areas which are situated on their respective Tract in good condition and repair.

6. Mutual Indemnification. Each party with regard to its respective Tract shall comply with all applicable laws, rules, regulations and requirements of all public authorities and shall indemnify, defend and hold the other party harmless from and against all claims, demands, losses, damages, liabilities and expenses and all suits, actions and judgments (including, but not limited to, costs and reasonable attorneys' fees) arising out of or in any way related to the failure to such party to maintain its portion of the Site in a safe and proper condition or occurring as a result of their own negligence or the negligence of their agents, heirs, successors or assigns. Each party hereby agrees to maintain customary levels of property and liability insurance covering their respective Tracts and to give each other prompt and timely notice of any claim made or suit or action commenced which in any way could result in indemnification hereunder.

7. Duration. The easements, covenants, restrictions and other provisions of this Agreement shall be of perpetual duration. This Agreement may be terminated, extended or amended only by the recording of an appropriate document in the Office of the Clerk and Recorder for Washington County, Minnesota which document must be executed by holders of recorded interests within the entire Sites affected thereby as of the date of such document.

8. Not a Public Dedication. Nothing contained in this Agreement shall or shall be deemed to constitute a gift or dedication of any portion of the Sites to the general public or for the benefit of the general public or for any public purpose whatsoever, it being the intention of the parties that this Agreement will be strictly limited to and for the purposes expressed herein.

9. Recording. Fully executed counterparts of this Agreement shall be recorded in the Office of the Clerk and Recorder for Washington County, Minnesota.

10. Successors. The rights and obligations contained herein shall run with the title to the land within Tract A and Tract B and shall bind and inure to the benefit of the respective owners

of Tract A and Tract B and their respective heirs, successors and assigns.

11. Severability. In the event that any of the terms or conditions of this Agreement shall be deemed invalid, illegal or unenforceable in any respect, the validity of the remainder of this Agreement shall in no way be effected and shall remain in the full force and effect to the fullest extent permitted by law.

12. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original and together which shall be deemed one and the same instrument.

13. Notice. All notices and other communications required or permitted to be given hereunder shall be in writing and shall be mailed by certified or registered mail, postage prepaid, hand delivered, or sent by a nationally recognized courier for overnight delivery addressed as follows (unless notice of a change of address is given pursuant hereto).

14. Governing Law. This Agreement shall be governed by and interpreted under the laws of the State of Minnesota.

STATED DEED TAX DUE HEREON: NONE

Dated this ____ day of ____, 2013.

CLC:

Diane Knoll
Congregation President

Owner

STATE OF MINNESOTA)
COUNTY OF _____) SS.

The foregoing instrument was acknowledged before me this ____ day of ____, 2013, by _____, Grantor.

Notary Public

NOTARY STAMP OR SEAL

P.I.D. #130-29-21-23-0053
3549 Lake Elmo Avenue N.
Lake Elmo, Minnesota 55042

Exhibit A

MUSKIE COUNTY 2017-2018 BUDGET

MUSKIE COUNTY 2017-2018 BUDGET SUMMARY

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

RESOLUTION NO. 2013-07

***A RESOLUTION APPROVING A VARIANCE TO ALLOW CHRIST LUTHERAN
CHURCH TO SPLIT AN EXISTING LOT INTO TWO SEPARATE PARCELS THAT DO
NOT MEET MINIMUM LOT SIZE AND WIDTH REQUIREMENTS***

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

WHEREAS, Christ Lutheran Church, 11194 36th Street North (the "Applicant") has submitted an application to the City of Lake Elmo (the "City") for a variance to split the lot at 3549 Lake Elmo Avenue North into two separate parcels that do not meet the minimum area and lot width requirements of the GB – General Business zoning district; and

WHEREAS, notice has been published, mailed and posted pursuant to the Lake Elmo Zoning Ordinance, Section 154.017; and

WHEREAS, the Lake Elmo Planning Commission held a public hearing on said matter on January 14, 2013; and

WHEREAS, the Lake Elmo Planning Commission has submitted its report and recommendation to the City Council as part of a Staff Memorandum dated February 5, 2013; and

WHEREAS, the City Council considered said matter at its February 5, 2013 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 154.017.
- 2) That all the submission requirements of said Section 154.017 have been met by the Applicant.
- 3) That the proposed variance is to split the existing lot at 3549 Lake Elmo Avenue North into two separate parcels that do not meet the minimum area and lot width requirements of the GB – General Business zoning district. The proposed parcels would be 0.42 acres

and 0.27 acres in size, which is under the minimum lot size requirement of 1.5 acres. The proposed parcels would also be 80 and 123.5 feet in length, which is shorter than the minimum requirement of 150 feet.

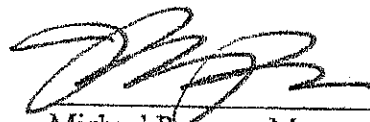
- 4) That the Variance will be located on property legally described as follows: Lots 39 and 40, County Auditor's Plat No. 8, as surveyed and platted and now on file in the Office of the Registrar of Titles of Washington County, Minnesota, being in the Village of Lake Elmo, Minnesota. More commonly known as 3549 Lake Elmo Avenue North.
- 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 potential buyer of the former Lake Elmo Bank building has stated that they do not have a need for all of the parking provided on the site. Between the former bank building and the Christ Lutheran Church facility there is an expected amount of parking that will be using this property that will not change due to a change in ownership over a portion of the site.*
- 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 the large amount of parking that exceeds most other off-street parking lots in the downtown village area of Lake Elmo. The Zoning Ordinance does allow for waivers of parking requirements in the GB - General Business District and any future users would need to request such a waiver under if their parking needs exceeded the amount available.*
- 7) That the proposed variance will not alter the essential character of the locality in which the property in question is located. *Specific findings: That the proposed lot split will not change the current use of the site for offices and parking. Any potential impacts associated with a lack of parking for the office uses could be mitigated with a shared parking arrangement that allowed any potential building tenants to use the parking area outside of peak Church usage periods.*
- 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 business use in the surrounding area would be expected should the variance be granted.*

CONCLUSIONS AND DECISION

Based on the foregoing, the Applicant's application for a Variance is granted, provided the following conditions are met:

1. The Applicant shall execute a shared-parking arrangement with the future owners of the former Lake Elmo Bank Building that will allow any future tenants of this building to use the parking lot to be retained by the Applicant during time periods when the parking lot is not used by the Applicant. The agreement shall be drafted to be reciprocal regarding the use of the parking stalls that will be retained by the future owners of the former Lake Elmo Bank Building.
2. The applicant shall provide for a drainage easement across the storm water infiltration area that collects storm water runoff from both of the parcels to be created by the lot split.

Passed and duly adopted this 5th day of February 2013 by the City Council of the City of Lake Elmo, Minnesota.



Michael Pearson, Mayor

ATTEST:



Adam Bell, City Clerk



Planning Commission
Date: 5/29/13
Business Item
Item: 6b

ITEM: Discussion of Rural Agricultural Density (RAD and RAD-ALT) Guidance in the Comprehensive Plan

REQUESTED BY: Planning Department

SUBMITTED BY: Kyle Klatt, Planning Director

REVIEWED BY: Nick Johnson, City Planner

SUMMARY AND ACTION REQUESTED:

The Planning Commission is being asked to review and discuss the portions of the recently adopted Comprehensive Plan pertaining to areas in the City that are guided for Rural Agricultural Density (RAD). In particular, the City Council has directed the Commission to review the areas that are guided for alternative RAD densities (formerly RAD2 designations in the previous Comprehensive Plan) in light of the recent expiration of concept plans for a proposed development on the site of the Friedrich Farm at 9434 Stillwater Boulevard North.

At this time, Staff is not recommending that the Planning Commission make any changes to the Comprehensive Plan, but has put together the brief report below in order to help guide discussion on this topic. Should the Commission wish to make any changes to the City's Plan, Staff has also suggested a range of actions/direction that the Planning Commission should consider.

BACKGROUND/ADDITIONAL INFORMATION:

For roughly two decades, the City of Lake Elmo has guided land outside any existing platted lots for a land use classified as Rural Agricultural Development (RAD). This future land use designation allows the continued use of land for agricultural and rural residential purposes, but also allows for the development of land that is consistent with the City's Open Space Preservation Ordinance. The allowed residential densities in these areas have changed slightly over these two decades, but at present, the RAD designation allows up to 0.45 units per acre (or 18 residential lots per 40 acres).

As part of the City's agreement with the Metropolitan Council to accommodate its share of the regional population growth forecasts, Lake Elmo has agreed to designate portions of the City for urban development at higher densities and to serve these areas with regional sewer services. As part of this compromise, the City was able to keep undeveloped areas outside of the future sewer areas (the Village and I-94 Planning Areas) under the previous land use guidance of RAD. Furthermore, all areas that were not previously platted or that are outside of the urban service areas will continue to be guided for rural development in accordance with the general RAD classification.

One of the issues that arose from the agreement with the Met Council; however, is that the City was given an overall population and household target for the year 2030, and was granted some discretion on how to allocate these units across the entire City. So although a large portion of these future units were sent into the sewer areas, there were still a significant number of residential units that were allocated to the rural development areas. After reviewing the maximum

development potential within the City's rural areas (using the 0.40 units per acre maximum in place at the time), the City determined that it would either need to allocate more units into the sewer development areas or find an alternate way to accommodate more growth within the rural areas. The resulting action by the City to address this problem was to increase the RAD density to 0.45 units per acre and to create a RAD-2 classification that allows up to two units per acre in areas guided accordingly. The City then identified two sites with 142 acres that, along with the bump in the previous RAD density, allowed the household and population targets to be met.

When the City updated its Comprehensive Plan for the I-94 Corridor, the entire land use plan (outside of the Village Planning Area) was updated as well. The current plan kept all of the previous land use categories within the rural areas, but provided a somewhat modified description for each and renamed the RAD-2 classification to RAD – Alternative Densities in order to better reflect the purpose for this land use category. The RAD categories are now described as follows:

RURAL AREA DEVELOPMENT – This category represents the large areas of rural residential development within the City. Common uses found in these areas include working farms, alternative agricultural uses as defined by City Code, and rural single family detached residences. Development in these areas requires 10+ acres, or a conditional use permit to authorize a cluster development meeting the City's Open Space Preservation regulations. Densities are allowed up to 0.45 dwelling units per buildable acre when planned as part of an Open Space Preservation development. No new areas of rural area development are being established by the official land use plan. [Corresponding Zoning District(s): A, RR, OP]

RURAL AREA DEVELOPMENT – ALTERNATE DENSITY – This land use category represents a subset of land guided for Rural Area Development and provides for an increase in the densities allowed through an Open Space Preservation development of up to 2.0 dwelling units per buildable acre. Further increases in the base density may be allowed through a Planned Unit Development through incentives for density bonuses that are permitted as part of a PUD and that maintain the open space character of a development. In addition to single-family residences and townhouses, multi-family housing for seniors is permitted in this district. [Corresponding Zoning District(s): A, RR, OP-2]

All other rural development categories (including Residential Estates and Rural Single Family areas) were carried forward from the previous version of the Comprehensive Plan.

CURRENT ISSUES:

Prior to adoption of the revised Comprehensive Plan, the City received a request to change the future land use designation of 9434 Stillwater Boulevard North from RAD to RAD-2 in conjunction with a proposed Senior Living/Farm School project on the site of the Friedrich family farmstead. This request was approved by the City Council and added a third area to the RAD-2 future land use category. As part of this approval, the Planning Commission and Council adopted findings noting that recently approved subdivisions in the City's rural areas were approved at a density below the unit levels anticipated in the Comprehensive Plan and that the density increase would be offset by reductions previously approved and acknowledged by the City.

Upon approval of the Comprehensive Plan amendment for this site, the City approved a second OP – Open Space Preservation zoning district in order to accommodate development within the RAD-2 areas and also approved a concept plan for a 49-unit senior living project for the property at 9434 Stillwater Boulevard North. The City's zoning ordinance specifies that an applicant must submit preliminary plans for a development within a year of concept plan approval in order for these plans to remain valid; however, the applicant, after two extension requests were granted by the City, did not submit preliminary plans in accordance with this deadline. The project is no longer valid as previously approved by the City, and future development on the site will need to restart at the concept plan stage.

Please note that the Council resolution approving the Comprehensive Plan amendment did note that the approval was contingent upon Council approval of final plans for the site. Under State law, this contingency does not mean that the property will automatically revert back to the previous land use category. Any change to the Comprehensive Plan must go through the formal review process (including a public hearing with the Planning Commission and review by the Met Council), and cannot proceed without the authorization of the Council. Given the cost, time and effort associated with such a plan amendment, Staff will not proceed with any further modifications of the Comprehensive Plan without direction from the City Council.

Staff would also like to note the following about the Friedrich RAD-2 site:

- The RAD-2 designation (now called RAD-ALT) was kept for the property as part of the 2013 future land use updates.
- The property owner has expressed their preference to keep the current land use designation and does not want to see any changes made to their property.
- Any new development proposal for the site would need to start at the concept plan stage and comply with all associated application and review requirements.

As part of its review of the Friedrich development plans, the Council did discuss the potential to allow density transfers within RAD areas as one way to accommodate additional density on some sites while retaining the overall housing and population targets for the City. Staff has not done any additional research into a potential density transfer program since the initial Council discussion, and has instead been focused on other Comprehensive Plan and Zoning Ordinance amendment projects to date.

Staff has previously done some analysis as recently as 2010 to examine development patterns throughout the City and to gauge whether or not the City is on track with its household and population targets. At that time, Staff projected that the City would need an additional 1,259 rural households to meet its targets, and that there were 3,386 developable acres of land guided RAD to accommodate this growth. Although a rough calculation would indicate that there is adequate acreage to accommodate the 1,259 units in these RAD areas, Staff pointed out that much of the land that is guided RAD is in parcels of 20 acres or less, and therefore not eligible for open space development (which requires 40 acres as a minimum). Staff looked at three growth strategies from conservative to aggressive for these areas that would allow OP development on parcels down to 10 acres in size and found that a moderate approach would be in the best interest of the City. This means that the City will need to find ways to accommodate additional growth within rural areas either by increasing densities across the board, applying the RAD-ALT designation to additional properties, or by reducing the minimum OP development size requirement down to 20 acres.

STAFF REPORT/OPTIONS:

Because the Council has only given general direction to the Planning Commission, Staff will be discussing City's RAD areas with Commission at its meeting, and will be seeking any direction from the Commission as a result of this discussion. Given the complexity of the terms, issues and history associated with the RAD and RAD-ALT use designations, Staff will spend time at the next Planning Commission meeting reviewing this memorandum and taking questions from the Commission.

At this point, given the numerous planning and zoning issues in front of the Planning Commission, Staff is not recommending any changes to the Comprehensive Plan to re-designate any RAD or RAD-ALT areas to a different land use category. This recommendation is also partially based on the fact that the City will be receiving a revised regional forecasts from the Met Council fairly soon. The Met Council has agreed to continue working with the City at refining the population, household, and sewer unit mandates that are part of its agreement with the City, and furthermore, this work will incorporate changes to the regional forecasts and could lead to revised population targets and a revised time frame for compliance with those targets. Any

revisions will likely have impacts to the City's rural development areas which will need additional review and discussion in the near future.

Should the Commission wish to address the City's RAD and RAD-ALT areas, Staff would recommend the following as potential direction from the Commission:

- No change – see Staff recommendation above.
- Amend the Comprehensive Plan to change the Friedrich RAD-ALT site back to the RAD classification.
- Amend the Comprehensive Plan to change all RAD-ALT sites back to RAD with or without a corresponding increase in density somewhere else in the Comprehensive Plan.
- Change all RAD densities to 0.5 units per acre (20 homes per 40 acres) and either eliminate or keel the RAD-ALT densities of 2.0 units per acre.
- Allow OP development on parcels smaller than 40 acres consistent with the moderate growth strategy previously offered by Staff.
- Direct all RAD-ALT densities to urban sewer districts and revert these areas back to the RAD designation.
- Any other direction as deemed prudent by the Planning Commission.

Staff will be able to further discuss any of the above options or alternative actions with the Commission at the meeting.

RECOMMENDATION:

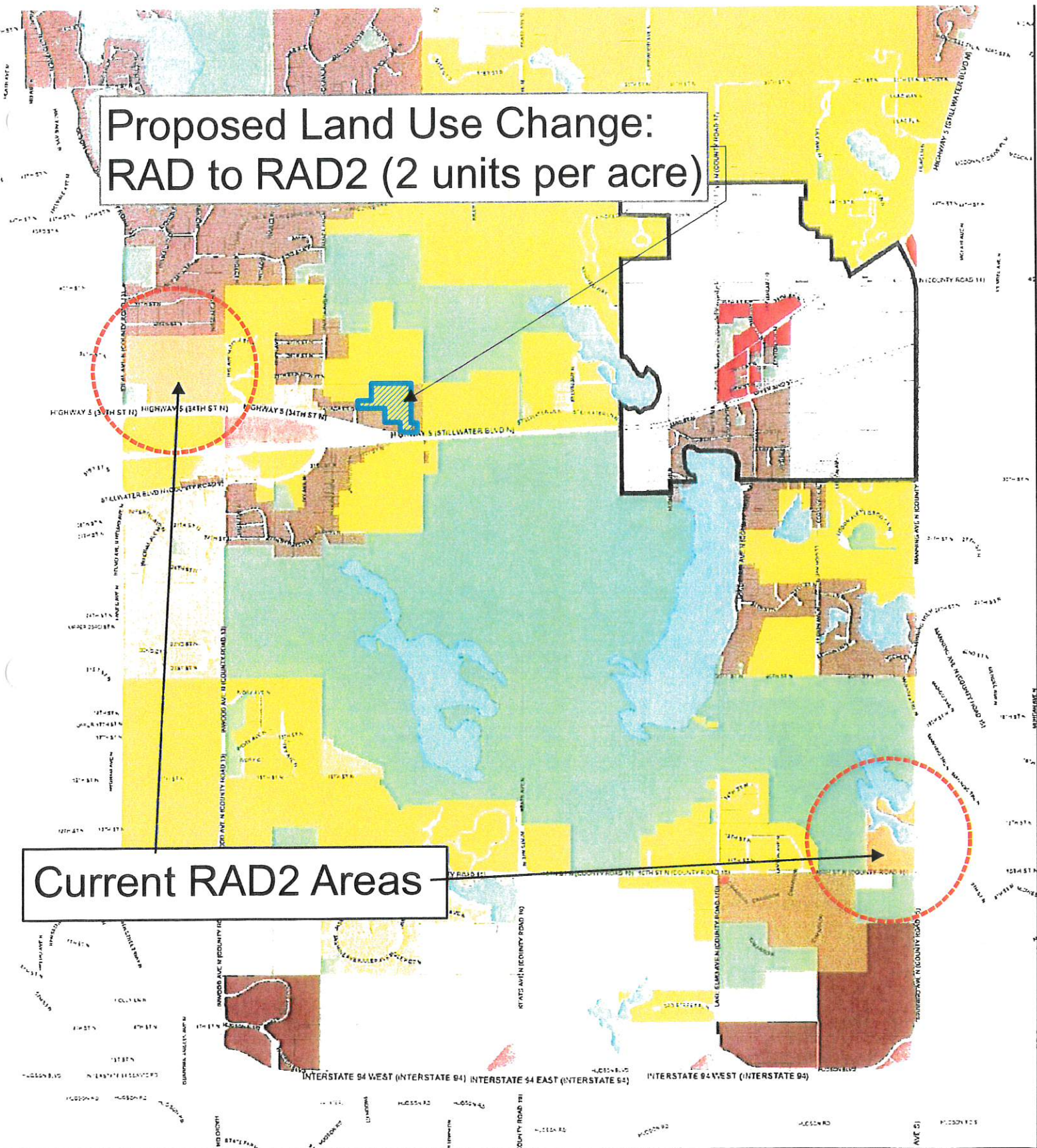
Staff recommends that the Planning Commission discuss the City's RAD and RAD-ALT development areas and to provide any direction concerning these areas for consideration by the City Council.

ATTACHMENTS (1):

1. Lake Elmo Existing and Proposed RAD-2 Area (from Previous Comprehensive Plan Amendment)

Proposed Land Use Change: RAD to RAD2 (2 units per acre)

Current RAD2 Areas



FUTURE LAND USE

Elmo Comprehensive Plan 2005 - 2030

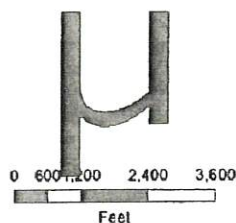
Limitation of Liability

This document is not a legally recorded map or survey and is not intended to be used as one. This map is a compilation of records and information from various state, county, and city offices, and other sources.

Map Date: January 31, 2006

Created By: TKDA

EN-SHARE ARCH-TECH PLANNERS



Land Use

C	RED
BP - 40 Employees/Acre	NC
PF	ROW
RAD - 0.45 DU/Acre	WAT
RAD - 2 DU/Acre	VR
URD - Cimarron	
SRD - 3.5 DU/Acre	
LB Future sewer - 40 Employees/Acre	
LB Non-sewer	