



2030 COMPREHENSIVE PLAN – APPENDIX II



City of Lake Elmo, Minnesota

MEMORANDUM OF UNDERSTANDING

Lake Elmo / Metropolitan Council

Outline of criteria to be considered in preparation of City Comprehensive Plan

The following criteria were developed as the result of discussions among representatives of the City of Lake Elmo ("City") and the Metropolitan Council ("Council"). These criteria are intended to provide guidance to the City and to the Met Council as Lake Elmo modifies its local comprehensive plan to ensure conformity with metropolitan system plans as required by state law.

1. The City of Lake Elmo will commit to 6,500 new Residential Equivalent Units ("RECs") of Regional Sewer service by the year 2030. The City will commit to a city-wide population of 24,000 by the year 2030. Performance measures for this agreement will be total population and total utilized RECs in Lake Elmo.

Note: The term "REC" shall be defined in Lake Elmo as one residential connection and/or the equivalent of 10 employees for new business operations.

2. The City will implement the population, employment, and RECs in the following manner.

Year	2000	2010	2020	2030
Population	6,863	TBD	TBD	24,000
Residential RECs	0	TBD	TBD	5,200
Employment RECs	100	TBD	TBD	1,400
Total RECs	100	TBD	TBD	6,600

3. The City will determine the types of housing and businesses to be developed and will meet or exceed an average residential density of 3 units per acre or a non-residential density of 40 employees per acre in urban (sewered) areas in the area south of 10th Street.
4. The City will plan for 1,300 new RECs (20% of 6,500) to be used for sewered employment.
5. The City will plan for Regional Sewer service to be provided in the southwest corner of Lake Elmo via the WONE Interceptor, and at Lake Elmo Avenue via the Cottage Grove Interceptor. Sewer capacity will be provided to meet the needs as specified in paragraph 2. It is anticipated at this time that design flows for the Regional Sewer service provided to the City will be made available as follows:

	RECs	MGD
To WONE Interceptor - Metro Plant (estimated construction completion: Dec. 2006)	1,825	0.50
To Cottage Grove Interceptor - Eagles Point Plant Phase I (estimated construction completion: Dec. 2007)	1,825	0.50
Phase II (estimated construction completion: Dec. 2010)	4,675	1.28
Total	8,325	2.28

6. The City of Lake Elmo will achieve a city-wide population of 24,000 by 2030. All population will be counted. Lake Elmo will use 6,600 RECs by 2030. All RECs used will be counted.
7. Should the City determine to extend Regional Sewer service to the existing Cimarron manufactured housing neighborhood (500 RECs), existing Old Village housing (up to 500 RECs), and/or new Old Village housing (up to 500 RECs), all utilized RECs shall be counted toward the expected community totals. Up to 1,000 RECs may be used in the Old Village area of Lake Elmo. It is understood that the average density of the aforementioned Old Village units shall be at least 3 units per acre.
8. The City will complete its required plan modifications by April 15, 2005 and submit its plan to adjacent communities for review by that time. This will allow time for the City to complete its local planning and review processes and submit its required plan modifications to the Council on or before June 15, 2005 and prior to the expiration of the nine-month plan modification period specified in state law.
9. The City's comprehensive plan shall be flexible enough to allow for possible limited post 2030 development, redevelopment, or environmental mitigation utilizing any Regional Sewer capacity (see paragraph 5) that may remain post 2030.
10. The signatories will present and recommend these guidelines to their respective governing bodies for consideration with the understanding that: (a) the adoption of a modified comprehensive plan ultimately is the responsibility of the full Lake Elmo City Council; and (b) the full governing body of the Metropolitan Council ultimately is responsible for reviewing the plan submitted by the City and determining whether the modified comprehensive plan conforms with metropolitan system plans.

On behalf of the City of Lake Elmo:



Dean A. Johnston, Mayor

Date: 2005-01-27

On behalf of the Metropolitan Council:



Peter Bell, Chair

Date: 1/27/05

1/27/2005 3:02 PM

METROPOLITAN COUNCIL

Mears Park Centre · 230 East Fifth Street · Saint Paul, Minnesota 55101

RESOLUTION NO. 2005-20

GRANTING THE CITY OF LAKE ELMO'S REQUEST TO EXTEND THE TIME WITHIN WHICH THE CITY MUST ADOPT A LOCAL COMPREHENSIVE PLAN WITH REQUIRED MODIFICATIONS AND ATTACHING REASONABLE REQUIREMENTS AND CONDITIONS TO THE EXTENSION

WHEREAS, in February 1997 the Metropolitan Council submitted to the City of Lake Elmo a system statement that advised the City of the Metropolitan Council's recently adopted policy planning documents and metropolitan system plans and identified population projections and other planning elements the City should incorporate into its plan as the City fulfilled its decennial review obligations under section 473.864 of the Metropolitan Land Planning Act; and

WHEREAS, Minnesota Statutes section 473.864, subdivision 2 required all metropolitan-area cities to review and, if necessary, amend their entire comprehensive plans, fiscal devices and official controls by December 31, 1998 to ensure local plans conformed with metropolitan system plans and ensure fiscal devices and official controls did not conflict with local comprehensive plans or permit activities that conflict with metropolitan system plans; and

WHEREAS, the City's comprehensive plan update was submitted to the Metropolitan Council on August 24, 2001 and its proposed plan update was deemed complete for Metropolitan Council review purposes in February 2002; and

WHEREAS, at its September 11, 2002 regular meeting the Metropolitan Council found that the City's proposed plan update may substantially depart from and may have a substantial impact on metropolitan system plans; and

WHEREAS, pursuant to Minnesota Statutes section 473.866, the City requested a contested case hearing on the Metropolitan Council's September 11, 2002 decision; and

WHEREAS, on March 13, 2003 the administrative law judge concluded the Metropolitan Council has the statutory authority to require modifications to local comprehensive plans that substantially depart from or have a substantial impact on metropolitan system plans and recommended the Metropolitan Council require the City of Lake Elmo to modify its comprehensive plan; and

WHEREAS, on April 9, 2003, the governing body of the Metropolitan Council adopted Resolution No. 2003-10 and made its "final decision" with respect to modifications the Metropolitan Council deemed necessary to ensure the City's proposed plan update did not have a substantial impact on or contain a substantial departure from metropolitan system plans; and

WHEREAS, the City appealed the Metropolitan Council's "final decision" to the Minnesota Court of Appeals and ultimately the Minnesota Supreme Court; and

WHEREAS, on August 5, 2004 the Minnesota Supreme Court concluded the Metropolitan Council has the statutory authority to require modifications to the City's proposed plan update and affirmed the Metropolitan Council's "final decision," and judgment was entered September 30, 2004; and

WHEREAS, Minnesota Statutes section 473.864, subdivision 1 requires local governmental units to adopt comprehensive plans with required modifications within nine months following a final decision, order, or judgment made pursuant to Minnesota Statutes section 473.866; and

WHEREAS, the Metropolitan Council preferred to engage the City in negotiating an amicable resolution of the issues, rather than strictly imposing the modifications in Resolution No. 2003-10 as authorized by the Supreme Court's order; and

WHEREAS, representatives of the City and the Metropolitan Council subsequently met to discuss how the City might modify its proposed plan update to accommodate local and regional issues that were the subject of Metropolitan Council Resolution No. 2003-10 and the Supreme Court's decision; and

WHEREAS, on January 27, 2005 the Mayor of Lake Elmo and the Chair of the Metropolitan Council signed a Memorandum of Understanding, subsequently ratified by their respective governing bodies, that outlined certain criteria for guiding the City and the Metropolitan Council as the City modified its proposed plan update to ensure conformity with metropolitan system plans; and

WHEREAS, Paragraph 8 of the Memorandum of Understanding required the City to complete its plan update modifications by April 15, 2005, submit its plan update to adjacent communities by April 15, 2005, and submit its plan update with required modifications to the Metropolitan Council on or before June 15, 2005 and prior to June 30 when the statutory nine-month plan modification period expired; and

WHEREAS, the City did not meet the April 15 and June 15 deadlines stated in the Memorandum of Understanding and did not adopt a plan update with required modifications by the statutory June 30, 2005 deadline; and

WHEREAS, Minnesota Statutes section 473.869 authorizes local governmental units to request that the Metropolitan Council extend the time for fulfilling the requirements of Minnesota Statutes sections 462.355, subdivision 4, 473.175, and 473.851 to 473.871; and

WHEREAS, local governmental units requesting an extension under Minnesota Statutes section 473.869 must describe the activities previously undertaken by the local unit in fulfillment of the pertinent planning statutes and explain the reasons necessitating and justifying an extension request; and

WHEREAS, on June 27, 2005 the Lake Elmo City Council approved Resolution No. 2005-067 which describes activities the City has undertaken to prepare a modified plan update pursuant to the January 27, 2005 Memorandum of Understanding and states that it was not possible for the City to complete its amended comprehensive plan update with required modifications within the statutory nine-month period; and

WHEREAS, the City states in Resolution No. 2005-067 that it requests the Metropolitan Council to grant the City an extension from June 30, 2005 to August 31, 2005 for submittal of its proposed plan

update to adjacent governmental units and school districts, and an extension from June 30, 2005 to September 30, 2005 for submittal of its updated comprehensive plan to the Metropolitan Council; and

WHEREAS, pursuant to Minnesota Statutes section 473.869 the Metropolitan Council may “in its discretion” grant by resolution a request for extension upon a finding of “exceptional circumstances or undue hardship” and “may attach reasonable requirements or conditions to the extension”; and

WHEREAS, it is appropriate and necessary to attach certain conditions and requirements to this time extension to ensure the Memorandum of Understanding is successfully implemented over time and ensure costly regional infrastructure is used effectively and efficiently; and

WHEREAS, Minnesota Statutes section 473.175, subdivision 3 authorizes the Metropolitan Council to commence civil proceedings by appropriate legal action in district court to enforce the provisions of the Metropolitan Land Planning Act if a local government does not adopt a plan with modifications required pursuant to Minnesota Statutes section 473.866 within nine months following a final decision, order, or judgment made pursuant to section 473.866; and

WHEREAS, further delay in adopting a plan update with required modifications will cause additional inconveniences and costs, unnecessary expenditures of scarce public resources, and uncertainty for residents of the City and the Metropolitan Council’s planning processes for its regional systems; and

WHEREAS, it will cost the Metropolitan Council additional time, resources and money if the City does not adopt a plan update with required modifications within a reasonable period of time and the Metropolitan Council must commence civil proceedings in the district court to enforce the provisions of the Metropolitan Land Planning Act and the September 30, 2005 judgment in the Minnesota Supreme Court’s August 2005 decision.

NOW THEREFORE, BE IT RESOLVED:

1. Pursuant to Minnesota Statutes section 473.869, the Metropolitan Council finds there are exceptional circumstances and undue hardship in this case for the following reasons:
 - (a) Since the 1976 passage of the Metropolitan Land Planning Act, the Lake Elmo matter is the first time a local governmental unit and the Metropolitan Council were not able to resolve their differences over comprehensive planning matters through discussion and negotiation. Both the City and the Metropolitan Council have found it necessary to devote extra time, resources and effort to this unique planning process.
 - (b) The plan modifications required of the City represent, in some cases, significant changes from historical land use patterns and planning practices within the City.
 - (c) Making significant changes to historical land use patterns and long-standing planning practices sometimes can be politically difficult and time-consuming.
 - (d) Following the November 2004 city elections, three new members were elected to the Lake Elmo City Council and a new mayor was elected.
2. Pursuant to Minnesota Statutes section 473.869, the Metropolitan Council finds that it is appropriate to grant the City’s request for an extension of the time within which the City must

adopt a plan update in accordance with the Metropolitan Land Planning Act and the Minnesota Supreme Court's decision, and consistent with the January 27, 2005 Memorandum of Understanding. Subject to the conditions set forth below, the City's request for an extension is granted as follows:

- (a) The City must complete its plan update as soon as possible and must submit the proposed plan update to adjacent governmental units and affected school districts no later than August 31, 2005; and
 - (b) The City must submit a plan update with required modifications to the Metropolitan Council for review no later than September 30, 2005.
 - (c) Within thirty (30) days after the Metropolitan Council takes action on the City's plan update the City must finally adopt its plan update with modifications (if any) required by the Metropolitan Council to ensure the plan update is consistent with the Memorandum of Understanding, the requirements and conditions of this time extension, and metropolitan system plans.
3. Pursuant to Minnesota Statutes section 473.869, the following reasonable requirements and conditions are attached to the extension:
- (a) The City's plan update will not be "complete" for Metropolitan Council review purposes until all adjacent governmental units and affected school districts have either provided comments to the City or failed to provide any responses or comments to the City within sixty (60) days after the City submitted the plan to the adjacent governmental unit or affected school district.
 - (b) The City's plan update must be consistent with the January 27, 2005 Memorandum of Understanding for those items addressed in the Memorandum of Understanding. For those matters that are not expressly addressed in the Memorandum of Understanding, the plan update must be consistent with the Metropolitan Land Planning Act and metropolitan system plans. The Metropolitan Council did not waive any regional land use policies in its regional policy documents or metropolitan system plans regarding land use planning, and the City must comply with and prepare a plan update consistent with the metropolitan system plans.
 - (c) Pursuant to Minnesota Statutes section 473.865, subdivision 3, within nine (9) months after the adoption of its modified plan update the City must amend all official controls that conflict with its comprehensive plan to ensure City zoning ordinances, subdivision controls, site plan regulations and other official controls and fiscal devices do not conflict with the City's comprehensive plan or permit any activity in conflict with metropolitan system plans. Pursuant to Minnesota Statutes section 473.865, subdivision 1, the City must submit copies of the official controls to the Metropolitan Council within thirty (30) days following adoption.
 - (d) The City will actively participate in the Metropolitan Council's plat monitoring program.
 - (e) If the City does not prepare and submit by September 30, 2005 a plan update consistent with the Memorandum of Understanding and the requirements and conditions attached to this time extension and if the Metropolitan Council commences an enforcement action pursuant to Minnesota Statutes section 473.175, subdivision 3 or other law, the City will pay the

Metropolitan Council's costs and expenses, including reasonable attorney fees, and will not contest a judicial action by the Metropolitan Council to compel compliance.

- (f) This time extension does not constitute a waiver of the Metropolitan Council's right to commence civil proceedings under Minnesota Statutes section 473.175. If the City does not prepare and adopt a plan update with required modifications according to the time schedule stated in this extension, the Metropolitan Council may consider the Memorandum of Understanding terminated and may seek to compel compliance with the original plan modifications that were the subject of the Minnesota Supreme Court's August 5, 2004 decision and September 30, 2004 judgment.
- (g) The City must stage its sewer development consistent with Metropolitan Council policy requiring local governmental units to hook up to the regional wastewater disposal system within two (2) years after regional wastewater service is made available.
- (h) The Metropolitan Council's commitments in the Memorandum of Understanding to make regional sewer service available to the City via the WONE Interceptor (December 2006) and the Cottage Grove Interceptor (Phase I; December 2007) were based on the assumption that the City would submit its proposed plan update by June 15, 2005. Accordingly, the schedules for providing regional sewer service stated in the Memorandum of Understanding will be adjusted as follows to reflect the time extension requested by the City: the Metropolitan Council will plan to have regional sewer service available through the WONE Interceptor within eighteen (18) months after the date the City finally adopts an updated plan consistent with the Memorandum of Understanding and the conditions and requirements of this extension; and will plan to have regional sewer service available through the Cottage Grove Interceptor (Phase I) within thirty (30) months after the date the City finally adopts an updated plan consistent with the Memorandum of Understanding and the conditions and requirements of this extension.
- (i) The City's updated plan will provide that when the Count of Population and Household data from the 2010 U.S. Census are available, and every five years thereafter through 2030, the Metropolitan Council will determine whether the population, household and residential equivalent unit (REC) levels in the City meet the City's commitments under the Memorandum of Understanding and reflected in the City's adopted comprehensive plan. Those population, household and REC levels are summarized in the following growth staging table and must be incorporated as part of the City's updated plan submitted to the Metropolitan Council for review by September 30, 2005, as well as the revised or updated plan the City will submit to the Metropolitan Council in connection with the upcoming decennial review under Minnesota Statutes section 473.864:

	Households	Population	RECs*
2010	3,619	9,952	515 (all residential)
2015	5,114	14,064	1,930 (1,650 residential, 280 employment)
2020	6,324	18,403	3,120 (2,500 residential, 620 employment)
2025	7,524	21,895	4,310 (3,350 residential, 960 employment)
2030	8,727	24,000	5,500 (4,200 residential, 1,300 employment)

* Not counting Cimarron, existing Village, existing Eagles Point

The City's updated plan shall state and expressly provide actions required to implement and complete the growth staging specified in the preceding growth staging table shall be implemented automatically without the need for comprehensive plan amendments.

For years ending in "0" the determination of households and population will be based on U.S. Census data; for years ending in "5" this determination will be based on official estimates by the Metropolitan Council. If the City's growth falls short of its population commitments, the Metropolitan Council will notify the City regarding the level of the shortfall and the additional housing units needed to make up the shortfall.

The City's updated plan will clearly specify the remedial actions, approved by the Metropolitan Council, that will be triggered if the City fails to meet its committed growth in population or RECs. The plan shall provide that these remedies, once triggered, shall be self-executing without the need for further City Council action other than appropriate and necessary revisions to official controls. Remedies shall include, but are not limited to, the following:

- (i) Automatic adjustment of the growth staging table to reflect the growth of households, population, and RECs needed to meet the population commitments the City agreed to under the Memorandum of Understanding. The adjusted growth staging table, upon approval of the Metropolitan Council, shall be deemed to be immediately incorporated in the City's comprehensive plan. This remedy includes appropriate and timely modification of official controls, e.g., zoning and subdivision ordinances which are consistent with the comprehensive plan, in accordance with state law, to implement the comprehensive plan.
- (ii) If the City does not meet its population commitment in 2010, its household commitments for 2015, 2020, 2025, and 2030 shall each be adjusted upward by an amount equal to the difference between the committed population and the actual population in 2010, multiplied by 0.5. This process shall be repeated in 2015, 2020, 2025, and 2030. Housing units added under this provision shall be added at an average density of at least 3 units per acre.
- (iii) If the City does not meet its REC commitments in 2010, it shall pay to the Metropolitan Council a "wastewater inefficiency fee" (WIF) to help pay the operation, maintenance, and capital costs of underutilized regional wastewater infrastructure and the costs of providing regional sewer service for development elsewhere in the region that would have occurred within the City. A determination will be made on the number of deficient RECs by subtracting actual RECs from the committed RECs identified in the adopted comprehensive plan. A WIF shall be paid for every deficient REC and will be due on the dates specified below:

Time Frame	WIF per Each Deficient REC	Payment Date
2007-2010	\$2,600	January 31, 2011
2010-2015	\$4,200	January 31, 2016
2015-2020	\$5,200	January 31, 2021
2020-2025	\$5,500	January 31, 2026
2025-2030	\$5,700	January 31, 2031

If the City achieves the committed number of RECs after a WIF is assessed to the City, a service availability charge (SAC) credit will be granted for each deficient REC for which a WIF was assessed. The SAC credit will be granted at the end of each five-year staging period.

In addition, the City's updated plan shall provide that all residential land within its 2030 Metropolitan Urban Service Area (MUSA) is guided at two alternative density ranges. The first density range shall be of the City's choosing, provided that: the minimum density is at least three units per acre, consistent with density standards in the metropolitan system plans; and, the totality of residential areas intended for sewer development will accommodate at least 4,200 new residential RECs. The second density range shall be equal to the first range plus at least three additional units per acre. The first density range will be established until April 30, 2011. The Metropolitan Council will notify the City by February 15, 2011 regarding the status of the City's REC commitment as of December 31, 2010. If the City achieves its commitment for residential RECs as of December 31, 2010, the first density range automatically will be reestablished in the City's comprehensive plan until April 30, 2016. If the City does not achieve its commitment for residential RECs as of December 31, 2010, the City may designate one acre for each REC the City is short, to be guided at the second alternative density range. If the City does not act to designate acres to be reguided at the second density range by April 30, 2011, the second density range automatically will be established for all of the residential land in the 2010-2015 staging area of the 2030 MUSA. The same process will be repeated for 2015, 2020 and 2025, and remedial action as described will be taken by April 30 of 2016, 2021 and 2026.

- (j) The City must comply with the decennial review provisions of Minnesota Statutes section 473.864, subdivision 2 and, after receiving a system statement from the Metropolitan Council, must review and, as necessary, update its local comprehensive plan no later than December 31, 2008. The plan update that is the subject of this extension is not the decennial plan review and update the City must complete by December 31, 2008 pursuant to Minnesota Statutes section 473.864, subdivision 2.
- (k) The City must plan for a total citywide population of 24,000 as outlined in the Memorandum of Understanding and land use planning to accommodate that total population must be timely and consistent with density standards and other provisions of the metropolitan system plans. The City may exercise its judgment about where and how the 24,000 population will be accommodated within the City consistent with the Memorandum of Understanding but the City's plan update must reflect the City's obligation to produce and maintain an average residential density of at least three (3) dwelling units per acre in all sewer areas of the City.
- (l) The City must timely submit to the Metropolitan Council, as required by Minnesota Statutes section 473.513, copies of applications for permits to alter or improve the City's local sewer system as well as design data and location maps of the projects.
- (m) The City must cooperatively work with the Metropolitan Council and adjacent governmental units to plan for and implement regional sewer service to support sewer development within the City.
- (n) Conditions beyond the control of the City, such as a severe reduction in housing construction in the region's Developing Communities, due to a protracted downturn in the economy or a

long-term recession, may adversely affect the City's ability to meet its population, household and REC commitments. Accordingly, if the City has been unable to meet its population, household, and REC commitments because of adverse economic conditions, the City may petition the Metropolitan Council for a modification of the growth staging components of the plan and the conditions and requirements of this time extension if, after the end of a five-year staging period, the following circumstance is verified: the City's production of population, households and RECs, as a percentage of the population, household and REC commitments stated in the growth staging table, equals or exceeds the region's Developing Communities' production of population, households and RECs as a percentage of the region's Developing Communities' forecasted population, households and RECs. If the City's right to petition is triggered and the City petitions the Metropolitan Council for modifications, the Metropolitan Council will not unreasonably deny the petition.

4. This time extension is subject to the City's acceptance and compliance with all the requirements and conditions stated in Paragraph 3. It is the Metropolitan Council's expectation that the City's plan update submitted to the Metropolitan Council for review will reflect these conditions and requirements.
5. Metropolitan Council staff will provide to the City appropriate and reasonable technical and advisory assistance to help the City complete its plan update modifications and review processes by August 31, 2005 and submit a modified plan update to the Metropolitan Council on or before September 30, 2005.
6. The Metropolitan Council will work with the City in an effort to resolve these important planning and metropolitan system issues in a cooperative and collaborative manner.

Adopted this 27th day of July, 2005.

Peter Bell, Chair

Pat Curtiss, Recording Secretary

LAKEELMOEXTENSIONRESOLUTION

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On behalf of the City of Lake Elmo:

On behalf of the Metropolitan Council:

Dean A. Johnston, Mayor

Peter Bell, Chair

Date: _____

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