

SUPPLEMENTAL PACKET

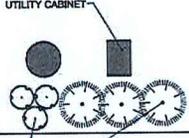


9.A.3





Drawing File: s:\01856-520\cadd\enr\01856-520-1-prc-01.dwg, Page Setup: ---, Sheet Layout: LANDSCAPE ENLARGEMENT UPPER 34TH



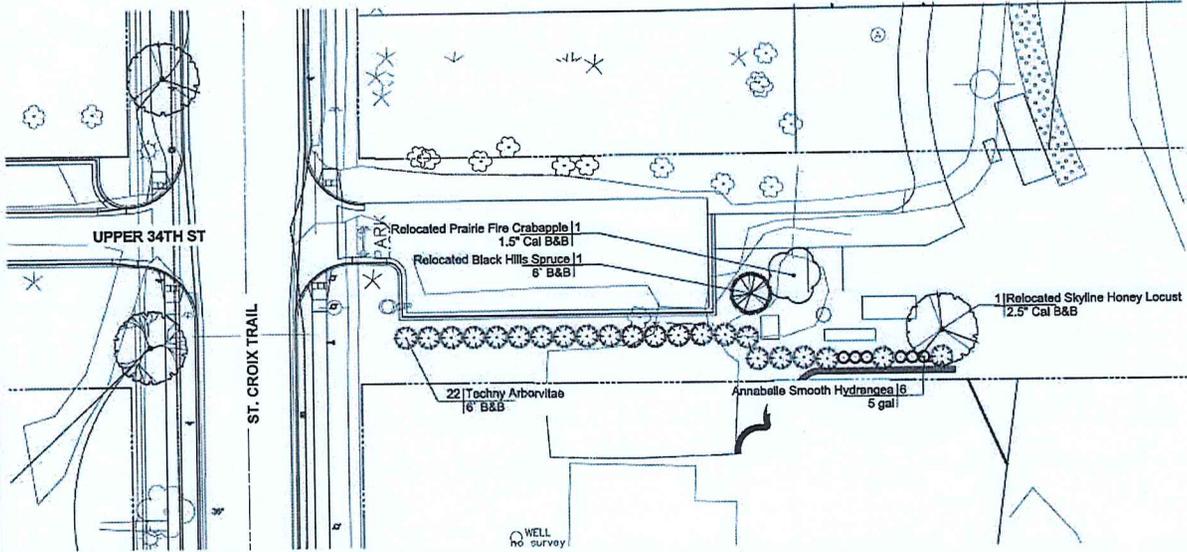
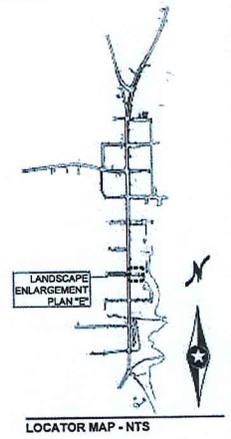
Dwarf Bush Honeysuckle | 3
5 gal
Techny Arborvitae | 3
6" B&B

PLANT SCHEDULE LIFT STATION 3

TREES	QTY	BOTANICAL NAME / COMMON NAME	CONT
	3	Thuja occidentalis 'Techny' / Techny Arborvitae	6" B&B

SHRUBS	QTY	BOTANICAL NAME / COMMON NAME	SIZE
	3	Diervilla lonicera / Dwarf Bush Honeysuckle	5 gal

LIFT STATION 3 LANDSCAPE PLAN



PLANT_SCHEDULE_LIFT_STATION_2

TREES	QTY	BOTANICAL NAME / COMMON NAME	CONT
	1	Relocated Glodstein tricanthos 'Skyline' / Skyline Honey Locust	2.5" Cal B&B
	1	Relocated Malus x 'Prairie Fire' / Prairie Fire Crabapple	1.5" Cal B&B
	1	Relocated Picea glauca densata / Black Hills Spruce	6" B&B
	21	Thuja occidentalis 'Techny' / Techny Arborvitae	6" B&B

SHRUBS	QTY	BOTANICAL NAME / COMMON NAME	SIZE
	6	Hydrangea arborescens 'Annabelle' / Annabelle Smooth Hydrangea	5 gal

Remaining:
 3 - Honeylocust
 1 - Armstrong Maple (2)
 2 - Aut. Brilliance Serviceberry
 3 - Black Hills Spruce



LANDSCAPE ENLARGEMENT PLAN 'E'

NO.	DATE	BY	CHK	REVISIONS
1	1/25/18	JG	CA	MODIFICATIONS TO PLANTING PLAN

DESIGNED BY: CCA
 PLAN BY: JWD
 CHECKED BY: CCA
 APPROVED BY: CCA

DATE: 12/14/2017

REGISTERED LANDSCAPE ARCHITECT & GENERAL LANDSCAPE ARCHITECT

WSB

701 Jerome Avenue South, Suite 206
 Minneapolis, MN 55416
 Tel: (763) 841-4800 - Fax: (763) 841-4700
 web@wsb.com

City of Afton
 Washington County

St. Croix Trail and
 Downtown Village Improvements
 City of Afton
 Washington County, Minnesota

WASHINGTON COUNTY, MINNESOTA

LIFT STATION SCREENING
 S.A.P. 082-618-024/S.A.P 082-621-038

L13

J.C.S

**Resolution No. 2018-30
For Flood Hazard Mitigation Grant Funding
Assistance to City of Afton, Flood Hazard Mitigation Project**

BE IT RESOLVED that City of Afton, hereinafter referred to as the "Grantee" acting as legal sponsor
(LGU)
for the flood risk reduction project or phase described in the State of Minnesota Flood Hazard Mitigation Grant #3000006474, dated 10/24/2011, is hereby authorized to apply to the Department of Natural Resources for additional funding to complete this project or phase.

BE IT FURTHER RESOLVED that the Grantee has the legal authority and the institutional, administrative, and managerial capability to ensure adequate acquisition, construction, maintenance and protection of the proposed project or phase.

BE IT FURTHER RESOLVED that the Grantee hereby pledges to complete the project or phase if it exceeds the total funding provided by the Department of Natural Resources and the required local match.

BE IT FURTHER RESOLVED that upon approval of its request by the state, the Grantee will enter into an amended agreement with the State of Minnesota for the above- references project or phase, and that the Grantee certifies that it will comply with all applicable laws and regulations as stated in the amended contract agreement.

NOW, THEREFORE BE IT RESOLVED that the Afton City Administrator is hereby authorized to execute such
(Title of Authorized Official)
agreements as are necessary to implement the project or phase on behalf of the Grantee.

I CERTIFY THAT the above resolution was adopted by the City of Afton
on June 19, 2018.
(Date)

SIGNED:

(Signature)

(Title)

(Date)

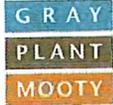
WITNESSED:

(Signature)

(Title)

(Date)

10.A.



80 SOUTH EIGHTH STREET
500 IDS CENTER
MINNEAPOLIS, MN 55402
MAIN: 612.632.3000
FAX: 612.632.4444

SAMUEL W. DIEHL
ATTORNEY
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SAMUEL.DIEHL@GPMLAW.COM

June 18, 2018

Members of the Board of Adjustments and Appeals
Members of the Planning Commission
City Administrator
City of Afton
3033 St. Croix Trail South
P.O. Box 219
Afton, MN 55001

By email: mayor@ci.afton.mn.us,
ward1@ci.afton.mn.us,
ward2@ci.afton.mn.us,
Ward3@ci.afton.mn.us,
Ward4@ci.afton.mn.us,
administrator@ci.afton.mn.us, and
jyoho@ci.afton.mn.us

Re: June 19, 2018, Hearing, Scannell Properties #107, LLC's Appeal of Decision and Notice, dated May 4, 2018, Regarding Application for Conditional Use Permit

Dear Board and Commission Members:

This law firm represents Scannell Properties #107, LLC ("Scannell") in connection with its appeal of the City of Afton (the "City") Administrator's May 4, 2018, decision and notice (the "Notice") purporting, on behalf of the City, to decline to consider Scannell's March 20, 2018, application (Scannell's "Application" or the "Application") for a conditional use permit ("CUP"). A copy of Scannell's June 1, 2018, Notice of Appeal which includes a copy of Scannell's Application as its Exhibit B is provided beginning at page 404 of the packet for the June 19, Board of Adjustments and Appeals (the "Board") Hearing. This written submission is submitted by Scannell in advance of the June 19 Hearing.

I. Introduction.

The Notice purports to decline to consider Scannell's Application, based on the City's interim moratorium ordinance No. 04-2017 (the "Moratorium") relating to applications for CUPs involving "exterior storage." The Notice was unfounded, improper, and based on a mistaken assumption. The Moratorium did not apply to Scannell's Application for a bus transportation terminal CUP that expressly stated the proposed use would not involve exterior storage. Under the City's Land Use Ordinance, Chapter 12 of the Afton City Code, (the "Ordinance"), parking buses at night when not in use is distinct and different from exterior storage.

If City staff or the City Council had concerns that Scannell's proposed use described in the Application might, in fact, include exterior storage, the Council could have posed questions to Scannell or even placed a condition on the CUP consistent with Scannell's representation. However, the Council did not do so and failed to act within 60 days of the Application's submission.

Even if the Moratorium did bar Scannell's requested CUP or the City's consideration of the Application, which it does not, the City arbitrarily and unlawfully enacted the Moratorium to delay or prevent a single project—a proposed real estate transaction between Scannell and Independent School District 834, Stillwater School District (the "School District"). The only industrial zoned property contemplating a modification of its use or ownership at the time the Moratorium was adopted was the subject property, which unlawfully fell victim to the City's apparent concerns regarding the School District's actions unrelated to Scannell or the subject property. The Moratorium also had an unlawful purpose in that it sought to discriminate against non-profit uses.

The City was required to render a decision on Scannell's Application within 60 days. Because the City failed to do so, the CUP sought was deemed approved, without conditions, by operation of Minnesota Statute Section 15.99, subd. 2, on May 21, 2018, and must be issued. Scannell asks that the Board require the City to promptly issue the CUP and avoid unnecessary litigation.

II. The Moratorium did not apply to Scannell's Application.

The Moratorium did not apply to Scannell's Application or prevent the Application's consideration by the Council within 60 days after its submission. The City Administrator's Notice had no basis for declaring that the City would not consider Scannell's Application. The Moratorium only prohibited "the consideration of new zoning applications, the issuance of new permits for use or any expanded new use of land currently identified on . . . Exhibit A as being industrially zoned within the city *in which exterior storage of any sort is to be used or proposed.*" (Moratorium, § B.1. (emphasis added))¹ Scannell's Application expressly stated it was for a "Bus Transportation Terminal with associated parking. *The use will have no exterior storage. All maintenance activities, and related materials storage, will be inside.*" (Application (emphasis added))² Notwithstanding Scannell's unambiguous representation in its application, the Administrator concluded that the overnight parking of buses constituted "exterior storage of buses." (Notice)

The Administrator's Notice improperly conflated or equated the terms "parking" and "exterior storage." The City's Land Use Ordinance demonstrates that "parking" and "exterior storage" are different and distinct. Even if the Ordinance were ambiguous, "zoning ordinances [are] strictly construed with any ambiguities resolved against the government and in favor of the property owner"—Scannell. *Cty. of Benton v. Kismet Investors, Inc.*, 653 N.W.2d 193, 196 (Minn. App. 2002), citing *Frank's Nursery Sales, Inc. v. City of Roseville*, 295 N.W.2d 604, 608 (Minn.

¹ A copy of the Moratorium is enclosed with the Board/Council Packet at p. 400.

² Copies of the Notice and Scannell's Application are attached to Scannell's Notice of Appeal as Exhibits A and B respectively. Scannell's Notice of Appeal and its exhibits are provided beginning at page 404 of the Board/Council Packet.

1980); *see Mohler v. City of St. Louis Park*, 643 N.W.2d 623 (Minn. App. 2002) (“An ordinance is ambiguous if it is susceptible to two or more meanings.”).³

The Ordinance defines parking and storage separately. Storage is referenced as follows:

Exterior storage (includes open storage) means the storage of goods, materials, equipment, manufactured products and similar items not fully enclosed by a building.

Open storage means storage of any material outside of a building.

Storage site means any tract or parcel of land, including any constructed storage platform, tank, or other artificial or natural area or containment facility where manure is stored or kept and which is so located that the escape or movement of the manure or a solution thereof from the storage site into the underlying ground might result in pollution of any waters

Ordinance § 12-55. “Parking space,” in turn, is defined as:

Parking space means a suitably surfaced and permanently maintained area on privately owned property either within or outside of a building of sufficient size.

Id. Consistent with the definitions’ distinctions, “parking” and “exterior storage” are addressed separately, in different sections of the Ordinance—section 12-194 for exterior storage, and section 12-196 for parking. The only reference to parking in the primary provision regarding exterior storage in the Ordinance (Section 12-194) is to make clear that “off-street parking of licensed passenger automobiles, pick-up trucks, recreational vehicles, boats and unoccupied trailers” is excluded from its regulations. Buses and commercial vehicles are not referenced in Section 12-194. In contrast, Section 12-196, the primary provision of the Ordinance related to parking, discusses parking of “commercial vehicles” in multiple sections.

The distinction between storage and parking is also clearly shown by the numerous Ordinance provisions listing “exterior storage” or “storage” consecutively and distinctly from “parking.” *See, e.g., id.* §§ 12-134 (referring to “[e]xterior sales and storage” and various forms of “storage” as distinct from “[o]ff-street parking”); 12-143.E.4. (referring to an adjacent industrial use and its “structure, parking or storage”); 12-191.B (referring to an adjacent industrial use and its “structure, parking or storage”); 12-192.B (requiring landscaped yards “be kept clear of all structures, exterior storage and off-street parking.”); 12-1008 (referring to “parking of vehicles,

³ The City’s ordinance amendment under consideration at the same July 19 City Council meeting at which the Board Hearing will occur admits that “clarification” is needed for parking to be considered exterior storage under the Ordinance.

building access or storage.”). Likewise, a similar distinction is made clear in other areas of the Ordinance, including Section 12-191 which provides different screening requirements for parking lots and exterior storage. *Compare* Ordinance § 12-191.B (requiring screening “where a . . . parking lot or industry is across the street from a residential zoning district, but not on the side of a business or industry considered to be the front.”) *with id.* § 12-191.C (“All exterior storage shall be screened except materials and equipment currently being used for construction on the premises and exterior storage on farms, except those required to do so on an individual basis by action of the City Council.”). The fact that a use may involve parking without exterior storage is perhaps most clearly shown in Section 12-194 of the Ordinance which regulates “parking.” That section allows issuance of a CUP involving “[o]ff-street parking facilities” under certain circumstances so long as the use has “no exterior storage . . .” Ordinance § 12-194.A.4. If parking were equivalent to storage, this section would make no sense.

Treating parking and exterior storage as the separate concepts they are under the ordinances, it is clear Scannell’s Application involved *parking*, and not *exterior storage*, of buses. Scannell sought a CUP for a bus transportation terminal. While the definition of “Transportation Terminal” refers to storage, it does so with the assumption that a truck transportation terminal may naturally involve freight storage. *See id.* § 12-55. This is why the reference to storage is connected to freight, and not the vehicles themselves. *See id.* § 12-55 (“*Transportation terminal* means truck, taxi, air, train, bus, and mass transit terminal and storage area, **including minor freight (solid and liquid) terminal . . .**” (emphasis added)). Parking is not referenced in the definition of Transportation Terminal. This is because Section 12-196 of the Ordinance requires accessory off-street parking spaces for industrial properties.⁴ *See id.* § 12-196(B), (F). “Accessory use” refers to a “use related or subordinate to the principal use of the same land.” *Id.* § 12-55. Here, accessory off-street parking includes the parking of buses onsite, given such parking directly relates to the principal proposed use of the land (*i.e.*, a bus transportation terminal).

Under the Ordinance, *parking* is clearly and consistently treated as separate and distinct from *exterior storage*. Even if the issue were ambiguous, the ambiguity must be construed in favor of Scannell. The City’s consideration of Scannell’s Application was not barred by the Moratorium and a CUP must now be issued.

III. If the City was concerned regarding Scannell’s representation regarding exterior storage it could have asked questions or approved the CUP with a condition.

Scannell’s Application made clear that it requested a CUP for a “Bus Transportation Terminal with associated parking. ***The use will have no exterior storage. All maintenance activities, and related materials storage, will be inside.***” (Application (emphasis added)) If the City had

⁴ The property at issue here identified in Scannell’s application is zoned Industrial I-1B.

concerns regarding the meaning of this language or what the use would involve, it could have posed questions regarding Scannell's proposed use. It did not do so and wrongly assumed the CUP involved exterior storage. And regardless of whether the City made any inquiries regarding the meaning of Scannell's representation, the City could have simply placed a condition memorializing the representation on the CUP. However, the City elected not to do so before the CUP was granted as a matter of law. (*See infra*, § V.)

IV. The City's Moratorium was arbitrary and discriminatory.

Setting aside the fact that the Moratorium did not apply to Scannell's application, the Moratorium was arbitrarily—albeit ineffectively—enacted to delay or prevent a single project—a proposed real estate transaction between Scannell and the School District. While a municipality is authorized to take steps to protect its planning process, it “may not arbitrarily enact an interim moratorium ordinance to delay or prevent a single project.” *Med. Svcs., Inc. v. City of Savage*, 487 N.W.2d 263, 267 (Minn. App. 1992). That is precisely the case here. Scannell understands that the only project or sale under consideration in the City's industrial zone at the time the Moratorium was enacted was the proposed sale of Scannell's property to the School District. City officials and the City attorney were upset with the School District as a result of matters unrelated to Scannell and the subject property. The City already allowed storage of materials at a number of industrial sites in the City's industrial zone. (*See* Exhibit 1 (satellite photos showing existing materials storage and parking in the City's Industrial zoning district).) In addition, through the Moratorium the City unlawfully discriminated against non-profit uses in violation of the Minnesota constitution. (July 24, 2017, City Council Action Memo (stating the Moratorium is an “opportunity to obtain uses . . . that provide significant tax base.”).) For these reasons, the City's Moratorium was ineffective to prevent consideration of the Application even if it did apply, which it did not.

V. The City's failure to timely deny Scannell's Application requires that the City issue the requested CUP.

The City must issue the CUP requested in Scannell's Application as a matter of law for two independent and equally sufficient reasons: (1) because the City's Moratorium did not apply to Scannell's Application; and (2) because the Moratorium was invalid as arbitrary and discriminatory even if had applied. The City did not inform Scannell in writing of any deficiencies in its Application within 15 business days. *See* Minn. Stat. § 15.99, subd. 3. Regardless, Minnesota Statute Section 15.99, subd. 2 required the City to “approve or deny” Scannell's Application “within 60 days” because the Application constitutes “a written request relating to zoning.” Failure of the City “to deny [Scannell's] request within 60 days [was] approval of the request.” Minn. Stat. § 15.99, subd. 2; *see also Moreno v. City of Minneapolis*, 676 N.W.2d 1, 5 (Minn. Ct. App. 2004) (“When the city fails to adhere to the time limit, the result must be that the application was statutorily approved as a matter of law.”). Approval is not

City of Afton
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discretionary, rather, “[w]hen a city has failed to satisfy [the statute’s] clear requirements, the remedy *shall* be granted.” *Id.* (emphasis added), citing *N. States Power Co. v. City of Mendota Heights*, 646 N.W.2d 919, 925 (Minn. App. 2002), review denied (Minn. Sept. 25, 2002). Here, Scannell submitted its Application on March 20, 2018. By law, the City had to approve or deny that application by May 21, 2018.⁵ To date, it has done neither. As such, under Minnesota Statute § 15.99, subd. 2(a), the City’s “[f]ailure . . . to deny [the] request within 60 days is approval” The City must now issue the CUP.

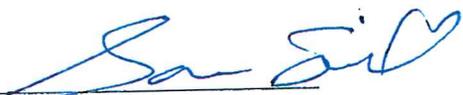
* * *

I will attend the City Council’s meeting tomorrow, June 19, 2018, on Scannell’s behalf. Should you have any questions or wish to discuss this matter further in advance of the meeting, please feel free to contact me at 612-632-3095.

Sincerely,

GRAY, PLANT, MOOTY,
MOOTY & BENNETT, P.A.

By


Samuel W. Diehl
Attorney

cc: City Attorney, Frederic W. Knaak (by email)

Enclosure

GP:4844-3805-3738 v3

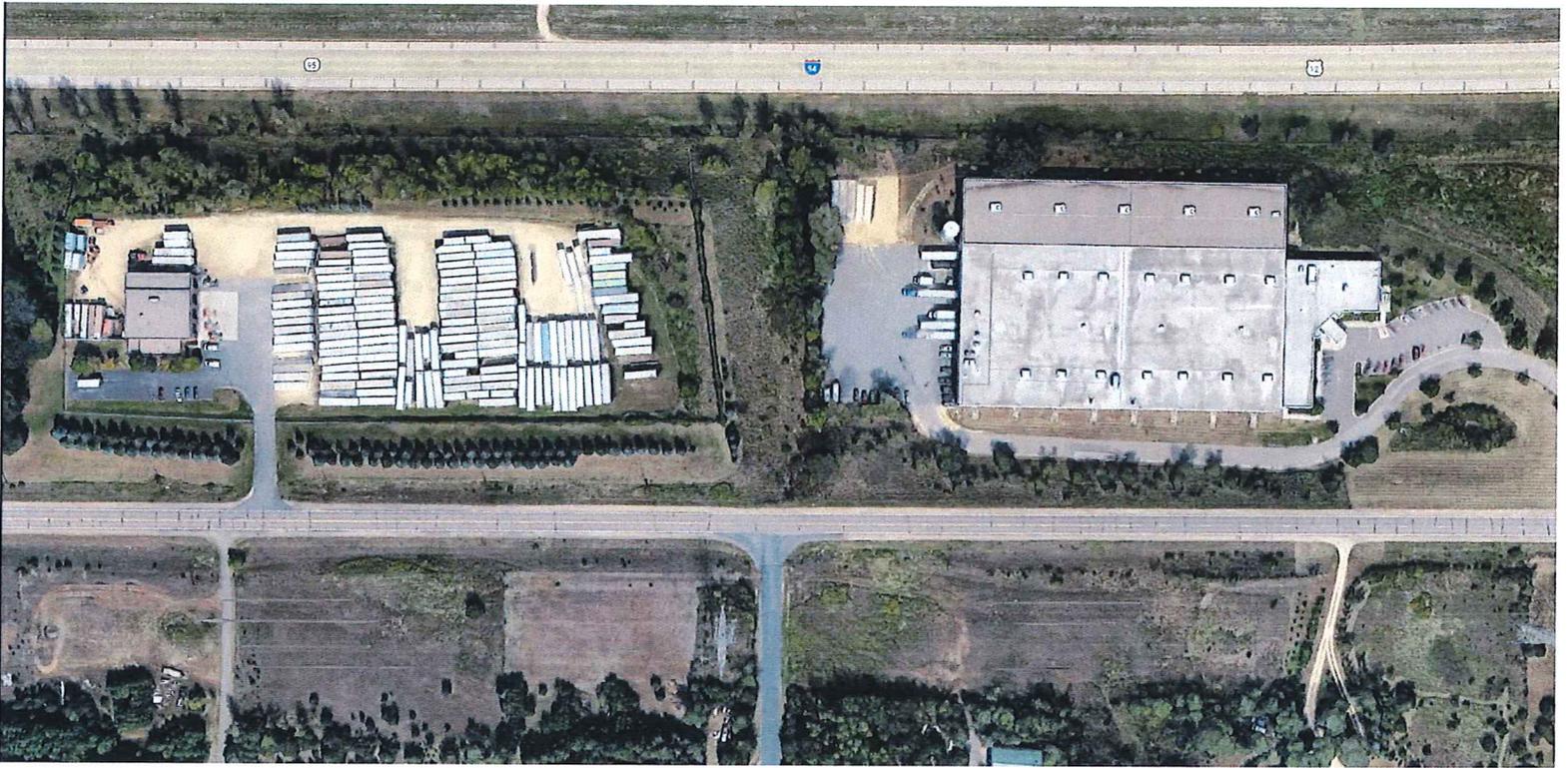
⁵ Although 60 days from the submission date was May 19, 2018, given that date was a Saturday, the deadline was extended to the next business day, May 21, 2018. See Minn. R. Civ. Proc. 6.01.

EXHIBIT 1



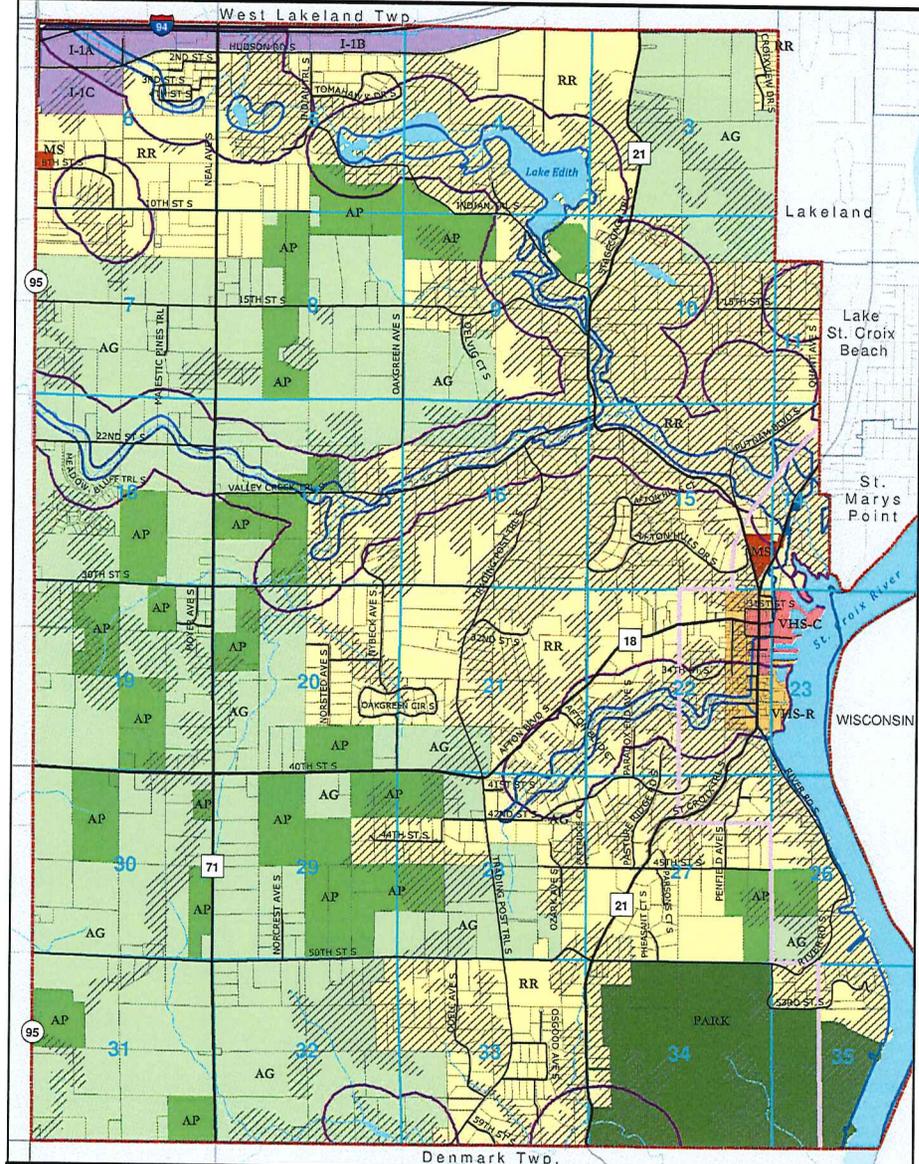






Zoning Map

MAP 11



Zoning Districts	State Park	City of Afton	Streams	0	0.5	1	Miles	
Agriculture	Marina Services	Parcel Boundaries	Lakes & Rivers					
Ag Preserve	Conservancy Overlay	Section Lines						
Village Historic Site- Commercial	St. Croix River Bluffland	Major Road						
Industrial	Floodplain Overlay (100 Year)	Local Road						
Village Historic Site- Residential	Shoreland Management Areas							
Rural Residential								

Map prepared October 2010 1000 Friends of Minnesota TRC Data Sources: City of Afton, Metropolitan Council, MN DNR, MN DOT, Washington County

Afton

COMMUNITY GROWTH
LAKELAND