

# ELKO NEW MARKET - PLANNING COMMISSION MEETING

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PC Members: Brad Smith, Nicole Kruckman, Thomas Humphrey, Melissa Hanson, Todd Priebe and Harry Anderson  
City Staff: Community Development Specialist Renee Christianson, Planner I Haley Sevensing and City Engineer Rich Revering



## AGENDA

**WEDNESDAY, JANUARY 22, 2020 @ 7:00 PM**  
COUNCIL CHAMBERS – NEW MARKET AREA HALL  
601 MAIN STREET, PO BOX 99, ELKO NEW MARKET, MN 55020

- 1. CALL TO ORDER**
- 2. PLEDGE OF ALLEGIANCE**
- 3. APPROVAL OF AGENDA**  
Consider Approval of the Agenda
- 4. APPOINTMENT OF CHAIR AND VICE-CHAIR**
- 5. PUBLIC COMMENT** (public opportunity to comment on items not listed on the agenda)
- 6. ANNOUNCEMENTS**
  - A. None
- 7. APPROVAL OF MINUTES**  
Consider Approval of the following:
  - A. December 17, 2019 Minutes
- 8. PUBLIC HEARINGS**
  - A. Consider Zoning Ordinance Amendments – Garbage/Refuse and Recreational Vehicle Parking
- 9. GENERAL BUSINESS**
  - A. Adopt Planning Commission Goals and Priorities for 2020
- 10. MISCELLANEOUS**
  - A. 2019 Planning Commission Report / Accomplishments
  - B. 2019 Building Permit Summary Report
  - C. 2020 Vacant Lot Inventory
  - D. Planning Commission Expectations - Attendance and Education Report
  - E. Tip of the Month – Open Meeting Law
  - F. Roundabout Update
  - G. Community Development Updates & Reports
  - H. Planning Commission Questions & Comments
- 11. ADJOURNMENT**

### **BOARD NOTICE:**

TO DETERMINE IF A QUORUM WILL BE PRESENT, PLEASE CONTACT ELKO NEW MARKET AREA HALL AT 952-461-2777  
IF YOU ARE UNABLE TO ATTEND

### **PUBLIC NOTICE:**

ANYONE SPEAKING TO THE BOARD SHALL STATE THEIR NAME AND ADDRESS FOR THE RECORD



601 Main Street  
Elko New Market, MN 55054  
phone: 952-461-2777 fax: 952-461-2782

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## MEMORANDUM

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**TO:** PLANNING COMMISSION  
**FROM:** RENEE CHRISTIANSON, COMMUNITY DEVELOPMENT SPECIALIST  
HALEY SEVENING, PLANNER I  
**RE:** APPOINTMENT OF CHAIR AND VICE-CHAIR  
**DATE:** JANUARY 22, 2020

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### **Background / Introduction**

The Elko New Market City Code establishes the City's Planning Commission, including composition, terms, and organizational matters. The Code states "The Commission shall select a Chairperson and Vice-Chairperson from its appointed regular members to serve for a term of one year. The Chairperson and Vice-Chairperson shall be appointed at the regular April meeting of the Commission.

Longstanding Planning Commissioner and Chairman Steve Thompson resigned from the Planning Commission in October 2018. In November 2018 the Planning Commission appointed Commissioner Smith as Chair and Commissioner Humphrey as Vice-Chair to fill the remaining term which expired on March 31, 2019. An oversight of Staff was the appointment of a Chair and Vice-Chair at the April 2019 Planning Commission meeting. Staff is recommending at this time that appointment of Chair and Vice-Chair be made to correct the oversight.

### **Attachments**

Section 2-1 of the City Code: Planning Commission  
November 27, 2018 Planning Commission meeting minutes

## Chapter 1 PLANNING COMMISSION

### 2-1-1: ESTABLISHED:

There is hereby established, pursuant to Minnesota Statutes section 462.354, as it may be amended from time to time, a Planning Commission for the City. (Ord. 2, 11-9-2006)

### 2-1-2: COMPOSITION; QUALIFICATIONS; COMPENSATION; EX OFFICIO MEMBERS:

A. Composition: The Planning Commission shall consist of five (5) regular members, all appointed by the City Council.

B. Qualifications: Regular members of the Planning Commission shall be qualified voters and residents of the City.

C. Compensation: All regular members shall serve with compensation as established by City Council resolution.

D. Ex Officio Members: The City Council may appoint a member of the New Market Township Board as an ex officio nonvoting member by resolution to serve at the will of the City Council. An appointment of an ex officio member shall be for a one year term, except as otherwise provided by the City Council. The ex officio member shall not be considered a regular member of the Planning Commission. (Ord. 135, 5-26-2016)

### 2-1-3: APPOINTMENTS AND TERMS:

A. Appointments: Appointments shall be made by the City Council for the City of Elko New Market. (Ord. 2, 11-9-2006; amd. 2011 Code)

B. Terms Of Office: Planning Commission members shall serve staggered terms of three (3) years, expiring on March 31 of each year. (Ord. 4, 11-28-2006; amd. 2011 Code)

### 2-1-4: REMOVAL FROM OFFICE:

Any member of the Planning Commission may be removed from office with or without cause by a majority vote of the entire City Council. (Ord. 2, 11-9-2006)

### 2-1-5: ORGANIZATION:

A. Officers: The commission shall select a Chairperson and Vice-Chairperson from its appointed regular members to serve for a term of one year. The Chairperson and Vice-Chairperson shall be appointed at the regular April meeting of the commission. (Ord. 164, 1-11-2018)

B. Rules Of Procedure: The Planning Commission shall adopt its own rules and procedures, with approval of the City Council.

C. Meetings: The Planning Commission may hold at least one regular meeting each month. The regular meeting date of the Planning Commission shall be established by resolution of the City Council from time to time.

D. Records: The Planning Commission shall keep a public record of its meetings. (Ord. 2, 11-9-2006)

### 2-1-6: POWERS AND DUTIES<sup>1</sup>:

The Planning Commission shall consider and make recommendations on all matters affecting zoning, subdivision and building regulations and land use development, Comprehensive Plans and other matters referred thereto by the City Council from time to time. All recommendations made by the Planning Commission shall take into consideration the established policies of the City Council on such matters. The Planning Commission shall also carry on City planning activities and recommend such plans for the regulation of future physical development of the City including land use and building construction. (Ord. 2, 11-9-2006)

Mr. Ted Oakland, 7837 260<sup>th</sup> Street East, also addressed the Commission and asked what affect the annexation would have on his property and what would be allowed on his property. Christianson reiterated earlier feedback, and City Engineer Revering noted that all new development is required to connect to City sewer and water.

5. **APPOINTMENT OF CHAIR AND VICE-CHAIR**

Christianson noted that due to the recent resignation of Chairman Thompson, the Commission must appoint a new Chair and Vice-Chair for the remainder of the appointment term, which expires on March 31, 2019. After discussion, it was moved by Humphrey and seconded by Hanson to appoint Commissioner Smith as Chairman. Motion carried: (4-0). It was then moved by Smith and seconded by Kruckman to appoint Humphrey as Vice-Chair. Motion carried: (4-0).

6. **ANNOUNCEMENTS**

**B. Introduction of Planning Commissioner Melissa Hanson**

Christianson introduced newly appointed Planning Commissioner Melissa Hanson who was recently appointed by the City Council to serve the remainder of Steve Thompson's term. Her term expires on March 31, 2021. Hanson also introduced herself, citing that she works for the Scott County Community Development Agency administering housing programs, and noting that she is passionate about affordable housing.

**C. Resignation of Planning Commissioner Heather Vetter**

Christianson advised the Commission that Commissioner Heather Vetter has resigned from the Commission effective October 24, 2018. The City Council has accepted her resignation and acknowledged her for her service to the City. The vacancy has been declared and advertised on the City's website and social media outlets.

**D. Introduction of Community Development Intern Haley Sevening**

Christianson introduced Haley Sevening who was hired as an intern and is assisting in all areas of the City government, including Community Development, Administration and Parks. Sevening is a second year graduate student at the University of Minnesota.

7. **APPROVAL OF MINUTES**

A motion was made by Humphrey and seconded by Kruckman to approve the minutes of the September 25, 2018 Planning Commission meeting as written. Motion carried: (4-0).

8. **PUBLIC HEARINGS**

**A. Draft Amendment to Zoning Ordinance – Residential Lot Size Requirements**

Christianson provided background information regarding on the proposed amendment to the Zoning Ordinance. She explained that the City currently has five residential zoning districts, and single family homes are currently allowed in the R1 and R2 districts, which are low density residential districts. The R3 district is a medium density district, the R4 is a high density district, and the R5 is a downtown high density / mixed use district. She noted that all new single family development has historically been directed to the R1 district, which

**MINUTES  
CITY OF ELKO NEW MARKET  
PLANNING COMMISSION MEETING  
DECEMBER 17, 2019  
7:00 PM**

**1. CALL TO ORDER**

Commissioner Kruckman called the meeting of the Elko New Market Planning Commission to order at 7:10 p.m.

Commission members present: Kruckman, Hanson and Priebe

Members absent and excused: Humphrey, Smith, and Ex-officio member Anderson

Staff Present: Community Development Specialist Christianson,  
Planner Sevensing

**2. PLEDGE OF ALLEGIANCE**

Commissioner Kruckman led the Planning Commission in the Pledge of Allegiance.

**3. APPROVAL OF AGENDA**

A motion was made by Hanson and seconded by Priebe to approve the agenda as submitted. Motion carried: (3-0).

**4. PUBLIC COMMENT**

There was no public comment.

**5. ANNOUNCEMENTS**

There were no announcements.

**6. APPROVAL OF MINUTES**

A. It was moved by Hanson and seconded by Kruckman to approve the minutes of the November 26, 2019 meeting with one spelling correction. Motion carried: (3-0).

**7. PUBLIC HEARINGS**

A. None

**8. GENERAL BUSINESS**

## **A. 2040 Comprehensive Land Use Plan**

Christianson introduced the agenda item, noting that at the November 26, 2019 Planning Commission meeting each individual chapter of the draft 2040 Comprehensive Plan was reviewed. She explained that staff wanted to provide a more in depth review of proposed changes to the land use chapter, transportation chapter, and parks chapters of the draft Plan.

A presentation was provided. Christianson specifically reviewed proposed changes to the land use chapter, in particular the land use changes proposed along the CSAH 2 corridor, the changes proposed near the I35/CSAH 2 interchange, and changes proposed in the downtown Elko area. In regards to the transportation chapter of the Plan, Christianson noted that a “commercial collector street” designation has been added to the Plan, and that reference to the diverging diamond interchange has been added to the Plan. Also added to the transportation section was reference to a traffic operation change requests, adoption of Level of Service C for the City’s transportation system, and guidance on when a Traffic Impact Study would be required.

Sevening reviewed the proposed changes to the Park and Trail Plan. She reviewed the various park designation, included the service areas and typical sizes for each. She reviewed the existing park service areas for Elko New Market’s existing parks. Sevening also reviewed standards for determining the amount of gross park land in the City. She noted that the City should prioritize development of neighborhood parks, community parks, and community playfield/athletic complexes. She reviewed the proposed 2040 Park and Trail Plan map and specifically reviewed proposed changes from the 2030 Park and Trail Plan map.

Following the presentation by Christianson and Sevening, and dialogue with the Planning Commission, it was moved by Kruckman and seconded by Hanson to recommend that the draft 2040 Comprehensive Plan be forwarded to the City Council for review, and that the document be distributed to adjacent jurisdictions for review and comment. Motion carried: 3-0.

## **B. Discuss Planning Commission Goals and Priorities for 2020**

Christianson introduced the agenda item and explained that at the January 2020 Planning Commission meeting the Commission would be asked to formally adopt goals and priorities for 2020. Staff provided a list of draft goals and priorities as follows:

- Continued incremental review and simplification of Zoning and Subdivision Ordinance
- Comprehensive and proactive code enforcement
- Housing affordability and diversity (Consideration of tools such as accessory dwelling units, inclusionary zoning, TIF, Tax Abatement, etc.)
- Final adoption of the 2040 Comprehensive Plan
- Final adoption of Adelman property AUAR

## **9. MISCELLANEOUS**

### **A. Resident Code Enforcement**

Staff provided the Planning Commission with a copy of a letter received from a resident expressing frustration with the lack of code enforcement in the City. Staff noted that the letter specifically calls out garbage cans and recreational vehicles, which relates to a proposed ordinance amendment that the Planning Commission is currently working on.

### **B. Tip of the Month – Conducting a Public Hearing**

Staff reviewed with the Commission basic information regarding conducting a public hearing. Specifically reinforced was the need to set the tone for the hearing, clarify the rules prior to opening the public hearing, keeping the hearing moving along, explaining the process following the public hearing, and thanking people for their input.

### **C. Community Development Updates & Reports**

A memorandum containing updates was included in the Planning Commission packet. There were no further questions or comments regarding the report.

### **D. Planning Commission Questions and Comments**

There were no Planning Commission questions or comments.

## **10. ADJOURNMENT**

It was moved by Kruckman and seconded by Hanson to adjourn the meeting at 8:18 p.m.

Submitted by:



Renee Christianson  
Community Development Specialist



601 Main Street  
Elko New Market, MN 55054  
phone: 952-461-2777 fax: 952-461-2782

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## MEMORANDUM

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**TO:** PLANNING COMMISSION  
**FROM:** HALEY SEVENING, PLANNER I  
RENEE CHRISTIANSON, COMMUNITY DEVELOPMENT SPECIALIST  
**RE:** PUBLIC HEARING FOR PROPOSED ZONING ORDINANCE AMENDMENTS –  
GARBAGE/REFUSE AND RECREATIONAL VEHICLE PARKING  
**DATE:** JANUARY 22, 2020

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### **Background / History**

On September 24, 2019, the Planning Commission began discussions related to garbage can storage and recreational vehicle parking on residential properties. Discussion on the topics was spurred by results of a City wide inventory of code violations related to garbage cans and recreational vehicles. Results of the inventory indicated that current practice does not reflect what is required by the City Code. Based on these results, Staff recommended that the code be amended to better reflect current practice and allow more flexibility in the storage of garbage cans and parking of recreational vehicles. The following amendments were recommended by Staff:

- Garbage Can Storage
  - Allow garbage cans to be stored in the side yard without screening.
  
- Recreational Vehicle Parking
  - Restrict the number of vehicles allowed to park in the driveway.
  - Allow recreational vehicles to be parked in driveways seasonally and with size limitations, and to add other types of recreational vehicles (i.e. ATVs, UTVs, golf carts, jet skis, etc.).
  - Remove the screening requirement.
  - Clarify a hard, dust free surface as concrete, bitumen, or pavers to match the Off Street Parking and Loading Requirements under section 11-9-8 (E) of the City Code.

Following discussion, the Planning Commission directed Staff to draft an ordinance amendment based of Staff's recommendation. The Commission also directed Staff to complete an inventory of properties with gravel side parking areas to establish a baseline for properties that would be grandfathered, or exempt, from parking surface requirements in the draft recreational vehicle parking ordinance. For reference, the September 24, 2019 Planning Commission Meeting Minutes are included as an attachment. Also included as attachments are results of the City wide inventory and additional research on the topics of garbage cans and recreational vehicles.

On October 29, 2019 the Planning Commission continued discussions related to garbage can storage and recreational vehicle parking on residential properties. Staff presented a draft ordinance that included the following amendments:

- Garbage Can Storage

- Distinguishes commercial, industrial, and multi-family residential properties from single family residential properties.
- Replaces wood with maintenance free material as an acceptable screening material (for commercial, industrial, and multi-family residential properties).
- Permits the storage of garbage cans on residential properties in the side or rear yard without screening.
- Exempts dumpsters and garbage cans from screening and location requirements when used for construction purposes.
- **Recreational Vehicle Parking**
  - Adds ATVs, dirt bikes, dune buggies, go-karts, golf carts, ice houses, snowmobiles, and UTVs as recreational vehicles.
  - Exempts non-motorized watercrafts from section and regulates them as exterior storage (canoes, kayaks, paddleboards).
  - Identifies three seasonal classifications (warm weather season, cold weather season, or year-round) for recreational vehicles.
    - Permits up to two (2) recreational vehicles to be parked in the driveway during periods of seasonal use.
  - Requires that all recreational vehicles be emptied of refuse, debris, junk, or other materials.
  - Limits recreational vehicles to thirty (30) feet in length.
  - Prohibits recreational vehicles from extending into or obstructing the public sidewalk or public right-of-way.
  - Allows only one recreational vehicle exceeding 24 feet to be parked on residential property
  - Removes the screening requirement.
  - Permits recreational vehicles to be parked in the rear or side yard on a surface of concrete, bitumen, or pavers entirely outside of the drainage and utility easement with a five (5) foot setback from property lines.
  - Includes exception for properties with existing gravel side parking areas.
    - Note: Staff completed an inventory for residential properties with gravel side parking areas and found that 51 properties currently have them. A list of exempt properties is included as an attachment.
  - Enumerates recreational vehicles parked on a trailer as one (1) recreational vehicle.
  - Removes nonconforming location permit.

Following presentation of the draft ordinance, the Planning Commission discussed the topics and provided feedback to Staff. A summary of the items discussed are outlined in the October 29, 2019 Planning Commission Meeting Minutes, which is included as an attachment. Two significant items to be noted are that during discussion the Planning Commission:

1. Questioned whether or not trailer tongues are included in the allowable length of recreational vehicles, and;
2. Requested that the City Attorney provide an opinion about allowing recreational vehicles to be parked within the public right-of-way.

**Staff Recommendation**

Staff discussed the above to items with the City Attorney. Both Staff and the City Attorney recommend that trailer tongues be included in the allowable length of recreational vehicles. Including all parts of the recreational vehicle in the allowable length reduces confusion for residents and makes enforcement of the ordinance more straightforward. Staff and the City Attorney also recommend that recreational vehicles not be allowed to park within public right-of-way. Recreational vehicles owned by residents should be located entirely on private property. Included as an attachment is a memo from the City Attorney outlining why recreational vehicles should not be parked within the public right-of-way.

The City Attorney also recommended that Section 11-9-8 (E) of the zoning ordinance, which regulates the surfacing of off-street parking areas, be amended to include the exemption for existing gravel side parking areas. Section 11-9-8 (E) states:

*“Surfacing: All parking spaces and driveways shall be surfaced with concrete, bitumen, or pavers in all zoning districts except in the UR district. Other materials such as decorative rock, gravel, sand, or bare soil are prohibited. This requirement also applies to open sales lots, open rental lots, and outdoor storage or display areas. All parking areas and driveways shall be maintained in a safe and proper manner. The owner shall not allow weeds or surface materials to become deteriorated.”*

The proposed amendment for Section 11-9-8 (E) is included in the draft ordinance.

Finally, Staff recommends that Section 7-2-3 (Parking Prohibitions) of the City Code be amended in association with the proposed recreational vehicle parking amendments. This section is not under the purview of the Planning Commission and will be reviewed by the City Council. However, Staff has included proposed ordinance amendments to this section for informational purposes. The proposed amendment to section 7-2-3 would allow recreational vehicles to park on the street for up to 48 hours for the purpose of loading and unloading.

### **Requested Action**

Staff has prepared the attached draft amendments as directed by the Planning Commission at the September 2019 meeting. Minor changes have been made based on City Attorney review.

At this time, the Planning Commission is being asked to hold a public hearing on the proposed ordinance amendments. If the Commission is comfortable with the proposed changes following the public hearing, a recommendation for approval should be made to the City Council.

### **Attachments:**

Minutes – Planning Commission Meeting September 24, 2019

Minutes – Planning Commission Meeting October 29, 2019

Research Summary

Garbage Can Code Violations Map

Recreational Vehicle Code Violations Map

Garbage Can Storage Research Summary

Recreational Vehicle Parking Research Summary

Properties with Existing Gravel Side Parking

Types of Recreational Vehicles

Memo from City Attorney

Draft Ordinance Amendment – Garbage and Refuse, Recreational Vehicle Parking, Off-Street Parking

Draft Ordinance Amendment – Parking Prohibitions

## **A. Consider Zoning Ordinance Amendments – Garbage/Refuse and Recreational Vehicle Parking**

Planner Sevening introduced the agenda item and explained that City staff had recently conducted a citywide inventory of properties to determine the extent of compliance with Section 11-4 and 11-8 of the City code, which regulate garbage and refuse, and recreational vehicle parking. The results of the inventory, which showed significant noncompliance, were presented to the City Council on September 12<sup>th</sup>. The City Council was asked if they wanted staff to enforce the City code as currently written, or whether the code should be amended to determine if updates were needed. The City Council directed staff to bring the matter to the Planning Commission to determine if changes to the ordinance should be considered.

Sevening reviewed the current codes. In regards to garbage and refuse, she explained that the code currently requires that all garbage containers be kept within an enclosed building, or if stored outside, they shall be completely screened from view. Sevening displays examples of what the required screening could look like. On the date of the inspection, 44% of the properties in the City had violations related to storage of garbage cans. Of those, approximately 50% had garbage cans stored in front of their home and 50% had them stored on the side of their home.

In regards to the storage of recreational vehicles, Sevening explained that the current code requires that recreational vehicles be stored on a hard dust free surface, and that screening is required to the height of the recreational vehicle, or 6', whichever is less. On the date of the inspection, 16% of the properties in the City had violations related to the storage of recreational vehicles. Violations were primarily related to storing them in unpermitted locations, and without screening. She noted that the storage of recreational vehicles on properties may have a greater visual impact on neighborhoods.

Sevening explained that the City Council generally indicated that amendments to these sections should be considered. She stated that as part of the research, ten community codes were reviewed. She stated that, related to garbage can storage, nine of the ten communities allowed garbage cans to be stored outside. Half of those cities require screening of garbage containers.

All of the communities researched allow recreational vehicles to be parked in the driveway. Some permitted that seasonally, while some allowed year-round driveway parking. Some cities had size limitations, limitations on the number allowed, and most required recreational vehicles to be parked on a hard surface. Two of the cities required screening.

Sevening explained that, following completion of the citywide inventory and research of other community codes, staff had provided some preliminary recommendations for code amendments for discussion purposes. The Commission held discussion on the individual items.

Feedback from the Planning Commission regarding the storage of garbage cans was as follows:

- Kruckman stated that she does not believe the City should regulate the location of garbage cans on residential properties.
- Hanson stated that she cares about how her neighboring properties look and where garbage cans are placed. She stated it can affect the salability of a home and has visual impacts on the neighborhood.
- Humphrey stated that he is interested to know how the peer communities are regulating garbage cans, and would like to provide some consistency.
- Kruckman stated she is not in favor of requiring screening for garbage cans.
- Smith and Humphrey supported a requirement that that garbage cans be placed within an enclosed structure or if stored outside, they must be placed on the side or the rear of the home.

Following discussion regarding garbage cans, the Commission took an informal vote on the matter. It was moved by Humphrey, seconded by Hanson to recommend that the City code be amended to state that garbage cans must be placed in an enclosed structure, or in the side yard, or in the rear yard of a home, and that garbage cans will not be permitted in the front yard of a home. Motion carried: 3 – 1, with Kruckman placing the dissenting vote. Christianson noted that any change requires a formal public hearing, and action by the City Council.

Discussion was then held regarding recreational vehicle parking, as follows:

- There was discussion regarding the allowable parking surface. Christianson explained that in one section of the City code it clearly states that all driveway and parking surfaces in all residential, commercial and industrial zoning districts must be constructed with a concrete, bituminous, or paver surface. The recreational vehicle section of the code states that parking areas must be constructed with a “hard, dust-free surface”. She further explained that there was a period of time when a former consultant had opined that a gravel surface was a permissible surface for recreational vehicle parking. She explained that current City staff’s interpretation of the code is that gravel surfaces are not permitted because it contradicts the requirement that in all residential, commercial and industrial zoning districts must be constructed with a concrete, bituminous, or paver surface.
- Kruckman expressed concern about existing gravel parking spaces that may have been constructed during a previous time period. She did not want to place a financial burden on those property owners that have existing gravel surfaces by requiring them to upgrade the surface. Christianson stated that an inventory could be completed to determine how many gravel parking surfaces exist and when they were constructed. The City could include a grandfathering clause in any new ordinance to account for the existing gravel parking surfaces.

- Commissioner Humphrey commented on recreational vehicles that are allowed to be stored seasonally, and he recommended that a definition for “seasonally” be very clearly defined.
- Humphrey stated that vehicles that are over a certain size do have a visual impact on surrounding properties, and therefore, he does not believe that vehicles exceeding a certain size should be permitted in a driveway. He recommends that there be a length limit included in the ordinance.
- Commissioner Humphrey stated concern over future enforcement of the ordinance. He wanted to ensure that it would be enforced going forward.
- Hanson stated that there should be a limit on the length of a recreational vehicle parked in a driveway, and stated that the longer recreational vehicles can cause a safety issue based on impaired sightlines.
- Kruckman stated that recreational vehicles should not be allowed to encroach into the street right-of-way.
- Christianson noted that not all properties accommodate side yard parking of recreational vehicles. The majority of homes are constructed 10’ off of the side property line, and the majority of lots have a 5’ drainage and utility easement, leaving only 5’ for side yard parking.

Following discussion on the item, the Commission tentatively recommended that staff schedule a public hearing regarding amendments to the recreational vehicle section of the zoning ordinance at the October Planning Commission meeting. General items to be included in the revised ordinance include the following: restrict the number of recreational vehicles allowed to be parked on a property, restrict the size/length of recreational vehicles to be parked on a property, remove the screening requirement for recreational vehicle parking, and clarify the surfacing requirements for parking of recreational vehicles.

## 9. MISCELLANEOUS

### A. Community Development Updates

Christianson noted that a report containing Community Development updates was included in the Planning Commission Packet. Specifically reviewed was the status of the Pete’s Hill and Boulder Heights developments, and the Elko New Market Commerce Center. Commissioner Hanson asked if there were plans for a Kwik Trip in the community. Christianson stated that Kwik Trip is currently in a due diligence period on a property in the community. Christianson noted that staff is currently collected traffic data throughout the community.

### B. Planning Commission Questions and Comments

There were no further comments or questions from the Planning Commission.

1. The style of homes to be constructed on the lots, and the corresponding locations of driveways, has not yet been determined.
2. The lots in the townhome portion of the development are narrower than a typical single-family lot.

Motion carried (4-0).

## 8. GENERAL BUSINESS

### A. Consider Zoning Ordinance Amendments – Garbage/Refuse and Recreational Vehicle Parking

Planner Sevening presented the agenda item, which was a continuation from the September Planning Commission meeting. She introduced the topic noting that a citywide inventory had been conducted in August regarding the storage of garbage cans and recreational vehicles on residential lots in the City. She noted that 44% of the properties in the City had violations related to storage of garbage cans, and 16% of the properties in the City had violations related to the storage of recreational vehicles. She stated that staff had decided at that time not to enforce the ordinances as currently written because there were more than 900 homes in violation of these Codes. Alternatively, staff inquired with the City Council regarding the matter to determine if they wanted staff to enforce the ordinances as written, or if they wanted to consider an amendment to the ordinance. The City Council requested that the Planning Commission review the City Code related to these two items. At the September Planning Commission meeting there was discussion on the matter which resulted in the Planning Commission directing staff to draft a zoning ordinance amendment.

Sevening reviewed current ordinance language regarding storage of garbage containers and recreational vehicle parking. She then reviewed the proposed amendments as follows:

#### Section 11-4-1 - Storage of garbage and refuse containers:

- Distinguishes commercial, industrial, and multi-family residential properties from single family residential properties
- Replaces wood with maintenance free material as an acceptable screening material (for commercial, industrial, and multi-family residential properties)
- Single family residential properties can store garbage cans in side yard adjacent to garage, do not need to be screened from view
- Dumpsters or refuse containers used for construction purposes are exempt from location and screening requirements

#### Section 11-8-2 - Recreational Vehicle Parking:

- Adds ATVs, dirt bikes, dune buggies, go-karts, golf carts, ice houses, jet skis, snowmobiles, and UTVs as recreational vehicles
- Exempts non-motorized watercrafts from section and regulates them as exterior storage (canoes, kayaks, paddleboards)
- Identifies three seasonal classifications (warm weather season, cold weather season, or year-round) for recreational vehicles

- Permits up to 2 recreational vehicles to be parked in the driveway during periods of seasonal use
- Requires that all recreational vehicles be emptied of refuse, debris, junk, or other materials
- Limits recreational vehicles to 30 feet in length
- Prohibits recreational vehicles from extending into or obstructing the public sidewalk or public right-of-way
- Allows only one recreational vehicle exceeding 24 feet to be parked on residential property
- Removes the screening requirement for recreational vehicles
- Permits recreational vehicles to be parked in the rear or side yard on a surface of concrete, bitumen, or pavers entirely outside of the drainage and utility easement with a five (5) foot setback from property lines
- Includes exception for properties with existing gravel side parking areas
- Note: Staff completed an inventory for residential properties with gravel side parking areas and found that 51 properties currently have them.
- Enumerates recreational vehicles parked on a trailer as 1 recreational vehicle
- Removes nonconforming location permit

Regarding recreational vehicle parking, feedback and discussion was as follows:

- Commissioner Priebe asked is the tongue of a trailer would be included in the maximum allowable (30') length, or if the length requirement would apply only to the recreational vehicle (such as a boat) and not the trailer.
- Vice-Chairman Humphrey stated that any portion of the trailer should not extend into the public right-of-way.
- Commissioner Kruckman stated that she felt the tongue of trailer should be allowed within the right-of-way because a person can see over the trailer tongue and it would not obstruct a person's view.
- There was much discussion by the Planning Commission about whether there should just be a minimum setback requirement from the curb within the entire City. City staff noted that the right-of-way width on streets within the City varies greatly; there is not uniformity in boulevard widths.
- Christianson stated that the City Attorney would need to render an opinion about allowing parking of recreational vehicles, and specifically the tongue of a trailer, within the City right-of-way/boulevards. The Planning Commission requested a legal opinion on the matter.
- Humphrey expressed his desire to have an easily understood ordinance and an enforceable ordinance.
- Sevenson stated that she had completed an inventory of all properties in the City which currently have gravel side parking areas alongside their garages. These would be considered grandfathered under the draft ordinance which requires a paved or concrete surface.

Regarding the storage of garbage cans, feedback and discussion was as follows:

- Kruckman expressed concern about people having to move landscaping along sides of homes to accommodate garbage can storage.
- Priebe expressed concern about people having to do extra snow removal to place garbage cans on the side of the home.
- Priebe stated that it was not a good use of City staff time to enforce codes related to storage of garbage cans.
- Kruckman stated that she felt the City Code should regulate overflowing garbage cans but not the placement/location of garbage can storage. Christianson stated this topic (overflowing garbage cans) is currently regulated under another section of the City Code.
- Christianson reviewed the statistics regarding storage of garbage cans, stating that of the 44% who were currently not complying with City Code, approximately 50% of those already had garbage cans stored on the side of the home. Therefore, approximately 22% of the homes in the City would not be complying with the proposed draft ordinance.
- Kruckman asked what the concern was about the storage garbage cans. Christianson stated that the concern was the visual impact on the neighborhood.
- Sevening stated that City staff has received complaints regarding where people store their garbage cans, which is what prompted the discussion on the topic.
- Hansen stated that she feels the current draft ordinance is a compromise between the current ordinance, which does not allow garbage cans to be stored outside, and not regulating their placement.
- Kruckman wants to concentrate on regulating overflowing trash and not garbage can placement.
- Hansen and Humphrey stated that they support the draft ordinance as presented, which allow outside storage of garbage cans on the side of the garage but not in the front yard.
- Kruckman and Priebe stated that they do not believe that the placement of garbage cans should be regulated by the City.
- Sevening reviewed Sections 5-1-5 and 11-4-3-A of the City Code that currently state garbage must be contained within enclosed containers.

Sevening explained that a public hearing is required for the proposed zoning ordinance amendments. She also explained how the City might advertise any proposed and/or adopted amendments to the ordinance such as Facebook posts, etc.

Christianson advised the Commission that City staff needed to advance two large projects being worked on so this ordinance amendment item may not be scheduled for discussion on the next Planning Commission meeting. Vice-Chairman Humphrey suggested that the most important projects be advanced as a priority, and that these possible ordinance amendments be processed before the spring of 2020. Staff indicated that they had enough information and feedback from the Commission to schedule a public hearing in the future.

## 9. MISCELLANEOUS

### A. Community Development Updates

# Research Summary

## City Wide Inventory

On August 27 and August 29, 2019, Staff completed a code enforcement inventory related to storage of garbage cans and recreational vehicle parking across the entire City. The results of the inventory are included in the attached maps, which highlight the properties in violation of section 11-4-1 or 11-8-2.

**Garbage Can Storage.** Through the inventory, Staff found that 741 properties (44% of properties in Elko New Market) had violations related to garbage cans. All violations were for storing garbage cans outside without screening. Of the properties in violation of section 11-4-1, approximately 50% had garbage cans located on the side of the home and the other 50% had them located in front of the garage doors. Included below are two pictures showing examples of violations related to the storage of garbage cans.



**Recreational Vehicle Parking.** Compared to garbage cans, recreational vehicle parking violations were fewer in number, but have the potential to have a much greater visual impact. Through the inventory, Staff found that 274 properties (16% of properties in Elko New Market) had violations related to recreational vehicle parking. The majority of the violations were for parking recreational vehicles in a prohibited location (i.e. on the driveway) or on a prohibited surface (i.e. grass) or without proper screening (to the height of the vehicle or a height of 6', whichever is less). Although approximately 30% of the properties with a recreational vehicle present had it/them parked in a permissible location, only one provided screening in accordance with section 11-8-2. Included below are a variety of pictures showing examples of violations related to recreational vehicle parking.



It is worth noting that because the inventory was conducted the week before Labor Day weekend, there may have been an increased presence in recreational vehicles as compared to normal. However, despite the timing, Staff believes the inventory is a fairly accurate representation of recreational vehicle presence in Elko New Market.

### **Research – Area Cities**

In addition to completing the City wide inventory, Staff researched garbage can storage and recreational vehicle parking requirements in 10 other area cities: Apple Valley, Belle Plaine, Farmington, Jordan, Lakeville, Lonsdale, New Prague, Prior Lake, Savage, and Shakopee. A summary of the requirements for each city are included below. More detailed information about each city's requirements is included as attachments.

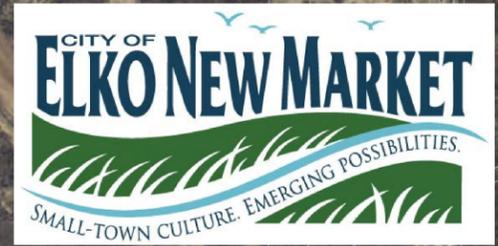
**Garbage Can Storage.** Generally, Staff found that most cities researched allow garbage cans to be stored outside in the side or rear yard. Only five of the cities researched require garbage cans to be screened from view when stored outside.

**Recreational Vehicle Parking.** Staff found that all of the cities researched allow recreational vehicles to be parked in driveways. Six of the cities allow them in the driveway year round and the remaining four allow them in the driveway seasonally, based on the type of recreational vehicle. However, some cities do have size limitations that prevent large vehicles (i.e. exceeding 34' in length) from being parked in the driveway unless granted a conditional use permit.

The majority of the cities also allowed recreational vehicles to be stored in the side or rear yard, without screening, but did require that they be parked on a hard or improved surface. The most common number of recreational vehicles that cities allow on a property is three, but some had a reduced number specific to the number of recreational vehicles allowed in the driveway.

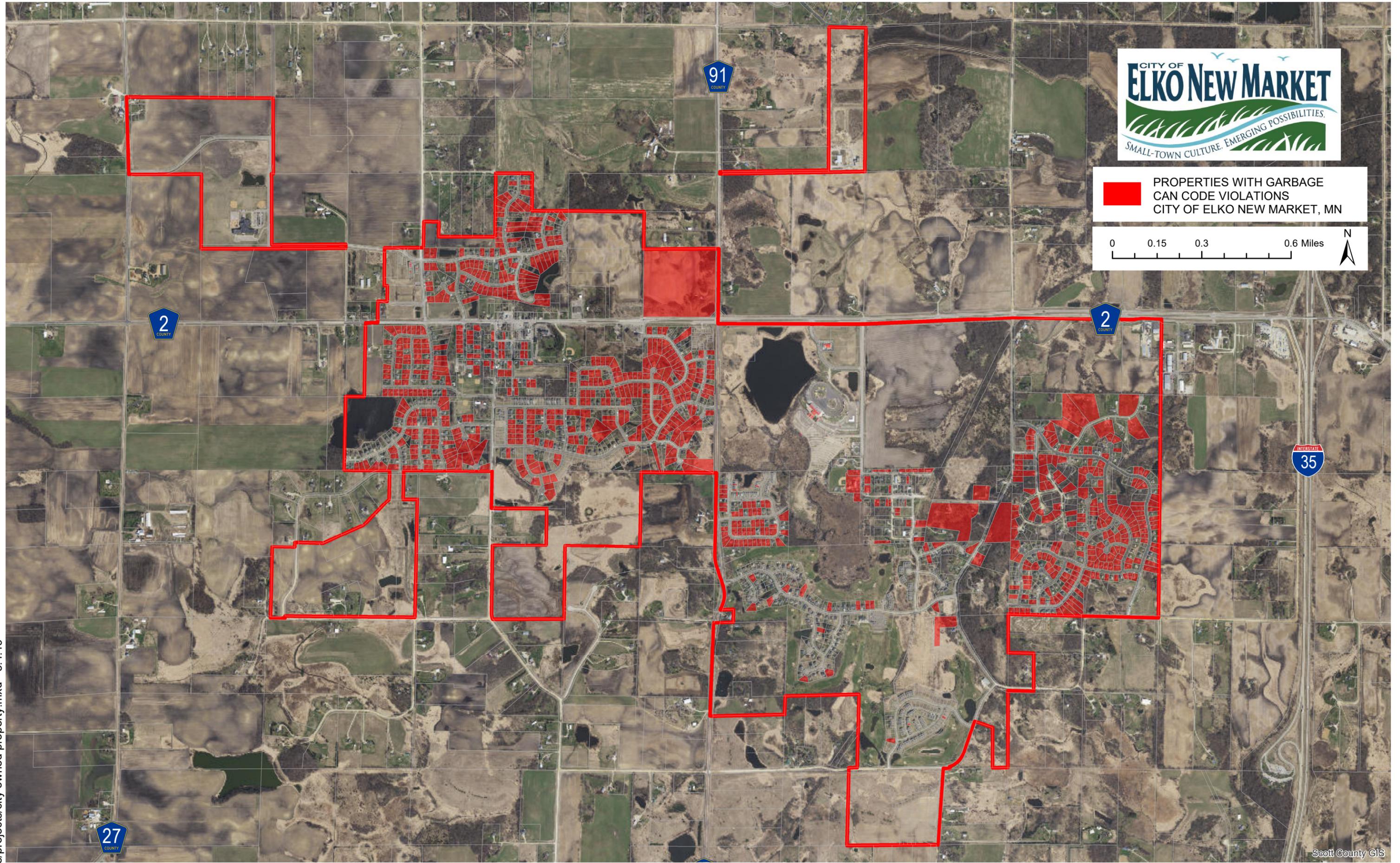
### **Research – Gravel Side Parking Areas**

Following direction from the Planning Commission, Staff completed an inventory of properties with gravel side parking areas within the City. Staff found that 51 properties have existing gravel side parking areas. A list of properties with existing gravel parking areas is included as an attachment.



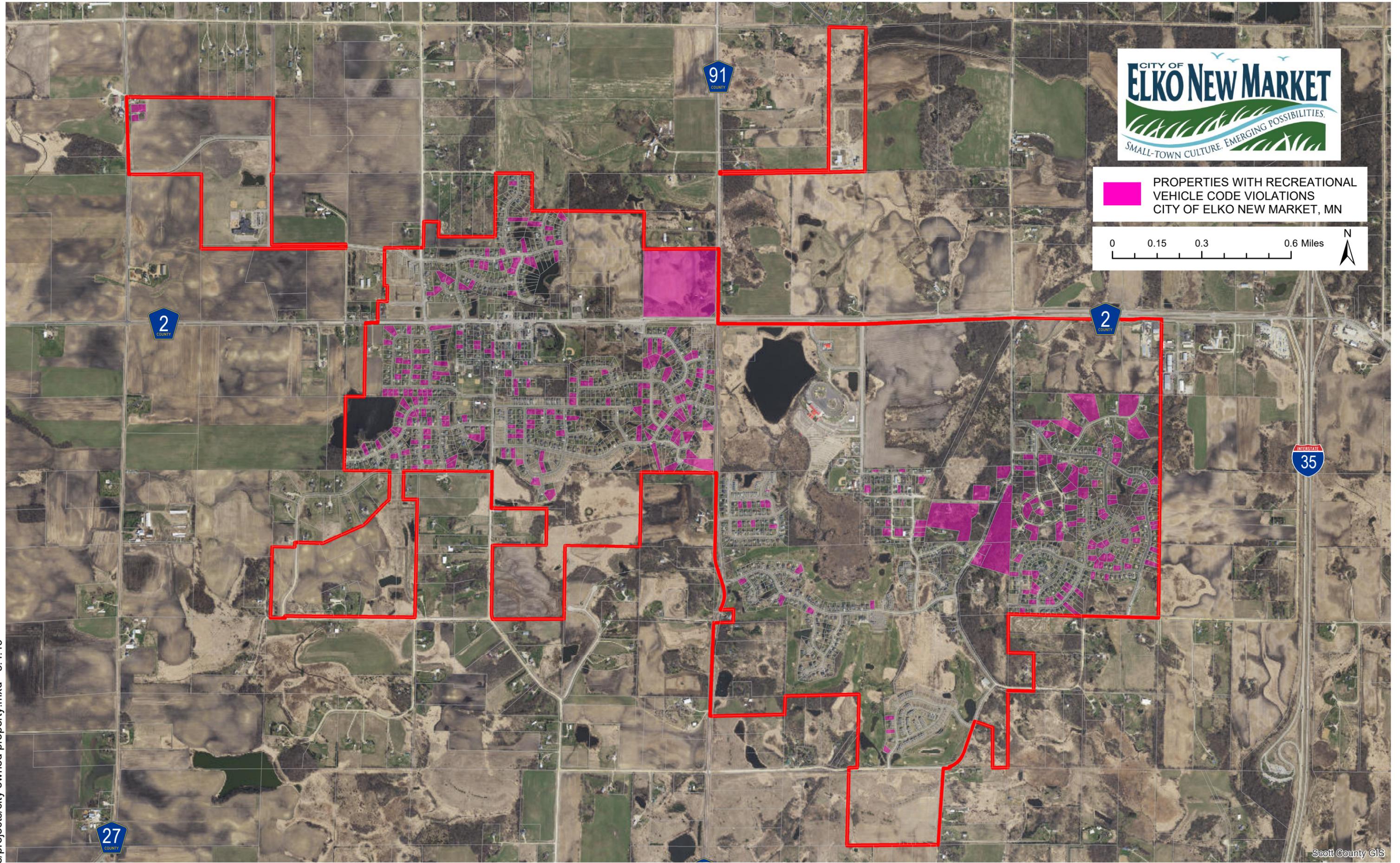
 PROPERTIES WITH GARBAGE  
CAN CODE VIOLATIONS  
CITY OF ELKO NEW MARKET, MN

0 0.15 0.3 0.6 Miles 





PROPERTIES WITH RECREATIONAL  
VEHICLE CODE VIOLATIONS  
CITY OF ELKO NEW MARKET, MN



## Garbage Can Storage Research Summary

	Allowed Outside?	Screening Required if Outside?	Requirements/Notes
<b>Elko New Market</b>	Yes	Yes	"In all districts, all waste material, debris, refuse, or garbage shall be kept in an enclosed building or properly contained in a closed container designed for such purposes. All dumpsters, garbage containers, or refuse bins that are stored outside shall be screened from view. Acceptable methods of screening include enclosures made of wood fencing material, brick or a combination thereof. Gates and doors which allow access to the refuse containers shall have a latching mechanism which keeps it closed/locked when not in use."
<b>Apple Valley</b>	Yes	Yes, in side yard, but not rear yard.	"When not placed for collection as specified in division (C) below, the containers, as relates to single-family dwellings, may be stored in the rear of the premises, may be stored in the sideyard setback if screened from the street and adjoining properties, or may be stored within any structure located on the premises. Containers stored outside shall be maintained in such a manner as not to permit entry of or harborage for animals, insects, or other vermin."
<b>Belle Plaine</b>	Yes	No	"Residential refuse and recycling containers shall be stored in rear or side yards or kept indoors. At no time shall residential refuse or recycling containers be stored in front yards."
<b>Farmington</b>	Yes	No	Farmington does not regulate the storage of garbage cans in single-family residential districts.
<b>Jordan</b>	Yes	No	Jordan does not regulate the storage of garbage cans in single-family residential districts.
<b>Lakeville</b>	Yes	No	"1. For detached single-family dwellings, waste and recycling receptacles not contained within principal structures shall be exempt from conformance with subsection B of this section, but shall comply with the following: a. Receptacles shall be located in side or rear yards, but not the side of a corner lot or rear yard of a double frontage lot abutting a public right of way. b. Receptacles shall be set back a minimum of five feet (5') from all property lines."
<b>Lonsdale</b>	No	N/A	"The following are hereby declared to be a nuisance affecting health: ...Accumulation of garbage, trash, yard waste or refuse not stored inside the dwelling unit, garage or at a point behind the front of the dwelling unit or garage, except between the hours of 6:00 p.m. the night before collection and 10:00 p.m. on the designated collection day, during which time all garbage, trash, yard waste or refuse, properly contained may be deposited at the curb;"
<b>New Prague</b>	Yes	Yes	"In all districts, all waste material, debris, refuse, or garbage shall be kept in an enclosed building or property, contained in a closed container designed for such purposes. All dumpsters, garbage containers, or refuse bins that are stored outside shall be screened from view. Acceptable methods of screening include enclosures made of wood fencing material, brick or a combination thereof."
<b>Prior Lake</b>	Yes	Yes, if visible from public view (from street/sidewalk).	"Garbage cans and other garbage and refuse containers shall be so located as to be out of the public view except on the day of the pickup."
<b>Savage</b>	Yes	Yes, if visible from public view (from street/sidewalk).	"Refuse and recycling containers shall be stored in a location as to be out of the public view except for collection. All containers shall be kept in good repair and in sanitary condition."
<b>Shakopee</b>	Yes	Yes, if visible from front curb line.	"...Receptacles shall be removed by 7:00 p.m. on the designated day of collection and shall not otherwise be stored in areas of the front yard visible from the front curb line."

## Recreational Vehicle Parking Research Summary

	Permitted in Driveway?	Seasonally Permitted in Driveway?	Permitted in Side Yard? (1')	Permitted in Side Yard? (5')	Permitted in Rear Yard?	Screening Required?	Parked on Hard Surface?	Maximum # Allowed?	Notes
<b>Elko New Market</b>		Folder tent campers and small utility trailers only.	Folder tent campers and small utility trailers only.	Yes	Yes	Yes	Yes	3	
<b>Apple Valley</b>	Yes				Yes		Yes		Lots less than 1 acre: 1 class 2 vehicle, or 2 class 1 vehicles. Lots more than one acre: 4 (at least two must be completely screened from view) Provision about campers/motor homes not being occupied.
<b>Belle Plaine</b>	Yes			Yes	Yes		Yes (includes gravel or landscape pavers)	3	Provision about campers/motor homes not being occupied.
<b>Farmington</b>	Yes			Yes	Yes		Yes		Allowed in ROW subject to street parking provisions.
<b>Jordan</b>		Yes		Yes	Yes		Yes	3	Recreational vehicles outside of seasonally allowed time may only be parked in side or rear yard on hard surface.
<b>Lakeville</b>	Yes			Yes	Yes		Yes	2	If stored in side yard, must be paved. Does not need to be paved if in rear yard.
<b>Lonsdale</b>	Yes			Yes		Yes	Yes	3	Has a table with types of recreational vehicles and their seasonal classification: warm weather, cold weather, year-round.
<b>New Prague</b>		Yes	Yes	Yes	Yes		Yes (includes gravel)		Recreational vehicle may not obstruct the public sidewalk or public right of way. Recreational vehicles exceeding 40' in length may not be parked outside unless granted a conditional use permit.
<b>Prior Lake</b>		Yes		Yes	Yes				Must be operable/licensed.
<b>Savage</b>		Yes		Yes	Yes	Yes		3, but only 2 permitted in driveway	Recreational vehicles parked outside may not exceed 34' in length unless granted a conditional use permit.
<b>Shakopee</b>	Yes			Yes				2, but only 1 permitted in driveway	

# Types of Recreational Vehicles

Golf Cart

Utility Task Vehicle

All-Terrain Vehicle



Dirt Bike

Dune Buggy

Go-Kart



Utility Trailers

Open



Enclosed



**Campers**

Fifth Wheel



Folding Tent



Travel



Truck



**Motor Homes**

Class A



Class B



Class C



## Motorized Watercrafts

### Boats



### Jet Ski



### Snowmobile



### Ice House



## MEMORANDUM

FROM: ANDREA McDOWELL POEHLER,  
CITY ATTORNEY  
SHANA CONKLIN, ASSISTANT CITY ATTORNEY

DATE: DECEMBER 4, 2019

RE: LIABILITY CONCERNS WITH RECREATIONAL VEHICLES IN RIGHT-OF-WAY

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CAMPBELL KNUTSON  
PROFESSIONAL ASSOCIATION

This Memorandum outlines issues that may arise if the City allows recreational vehicles to extend into the City's right-of-way when parked in a driveway. Cities have an obligation to maintain and properly care for its rights-of-way. A right-of-way would include, but is not limited to, a city sidewalk, a bicycle lane, streets, boulevards, and ditches.

The City should consider the following potential issues that would arise if it permits any individual to place a recreational vehicle on any right-of-way:

- 1) The City has an Obligation to Comply with the Americans with Disabilities Act (ADA).** Cities are subject to the requirements of the Americans with Disabilities Act (ADA), 28 C.F.R. § 35.151. Permitting a recreational vehicle to remain parked on a City's sidewalk presents a substantial impediment to all pedestrians, but particularly to individuals who have physical disabilities, including the visually impaired. A recreational vehicle parked on the sidewalk would impede an individual's ability to safely use the sidewalk to travel. If a pedestrian utilizes a wheelchair, walker, or another mobility device, a recreational vehicle blocking the pedestrian's path would substantially interfere with the person's ability to use the sidewalk. It may not be possible for the person to safely maneuver around the recreational vehicle.
- 2) The City Needs to Protect its Access to the Right-of-Way to Complete Road Construction, Sidewalk Repair, and Utility Projects.** Permitting a recreational vehicle to park on the City's right-of-way may intrude on the City's ability to complete road work, sidewalk repairs, or utility projects as needed. The City's ability to control or regulate the parking of the recreational vehicles would be greatly reduced. Removing recreational vehicles from the right-of-way in order to complete regular maintenance projects could cause delays and additional staff time.
- 3) Emergency Services Use the Right-of-Way.** If a recreational vehicle obstructed the right-of-way by parking on the sidewalk near a fire hydrant or other critical access point for first responders, it would impair the City's ability to adequately respond to emergency situations. First responders' response time may be delayed, and any recreational vehicles in the right-of-way may sustain damage creating potential liability for the City in the event of damage to any vehicle extending into the City's right of way.

Generally, a City is responsible for maintaining its ownership interest and management of City property and its rights of way. For example, the City has a code provision that specifically regulates use of its right of way, including requirements for work in the right of way, or obstruction of the right of way, which typically requires permitting and registrations and payment of the appropriate fees. In other cases, where a property owner encumbers City property or right of way with an improvement, the City traditionally requires an encroachment agreement approved by the City Council. A common occurrence would be a fence, private

utilities or landscaping improvements. In such cases, the encroachment agreement provides that the owner would hold the City harmless and indemnify the City for any damage or liability created as a result of the encroachment and allows the City to terminate the encroachment when determined necessary by the City. Allowing vehicles to encroach within City right of way by ordinance is not consistent with its right of way management ordinance or the protections provided under an encroachment agreement.

If the City grants the right for any recreational vehicle to extend into any City right-of-way, the City creates conflict with its existing ordinance, hinders its ability to exercise its discretion, when necessary, to protect public health, safety, and welfare of the community and may create violations of the ADA. It also would prohibit the City from imposing protective conditions on placing obstructions in a right-of-way, when appropriate.

**CITY OF ELKO NEW MARKET  
SCOTT COUNTY, MINNESOTA**

**ORDINANCE NO. XXX**

**AN ORDINANCE AMENDING CITY OF ELKO NEW MARKET  
CITY CODE TITLE 11, CHAPTER 4 CONCERNING  
GARBAGE AND REFUSE, TITLE 11, CHAPTER 2  
CONCERNING RECREATIONAL VEHICLE DEFINITIONS,  
TITLE 11, CHAPTER 8 CONCERNING RECREATIONAL VEHICLE  
PARKING, AND TITLE 11, CHAPTER 9 CONCERNING  
SURFACING AND MAINTENANCE OF OFF STREET PARKING AREAS**

THE CITY COUNCIL OF THE CITY OF ELKO NEW MARKET, MINNESOTA  
ORDAINS:

**SECTION 1.** Section 11-4-3 of the Elko New Market City Code is hereby amended in its entirety to read as follows:

- A. In all zoning districts, all waste material, debris, refuse, or garbage shall be kept in an enclosed building or properly contained in a closed container designed for such purposes.
1. For commercial, industrial, or multi-family residential properties, all dumpsters, garbage containers, or refuse bins that are stored outside shall be screened from view.
    - a. Acceptable methods of screening include enclosures made of maintenance free material, brick or a combination thereof. Gates and doors which allow access to the refuse containers shall have a self-latching mechanism which keeps it closed/locked when not in use.
  2. For single-family and two family properties, all garbage containers or refuse bins not contained within an enclosed building shall be stored in the side or rear yard adjacent to the garage, except that garbage containers or refuse bins shall not be located in the side yard of a corner lot or rear yard of a double frontage lot abutting a public right of way. At no time shall receptacles be stored in front yards.
  3. When used for the purposes of construction, all dumpsters, garbage containers, or refuse bins are exempt from the screening and location requirements of this section.
- B. The owner of vacant land shall be responsible for keeping such land free of refuse.

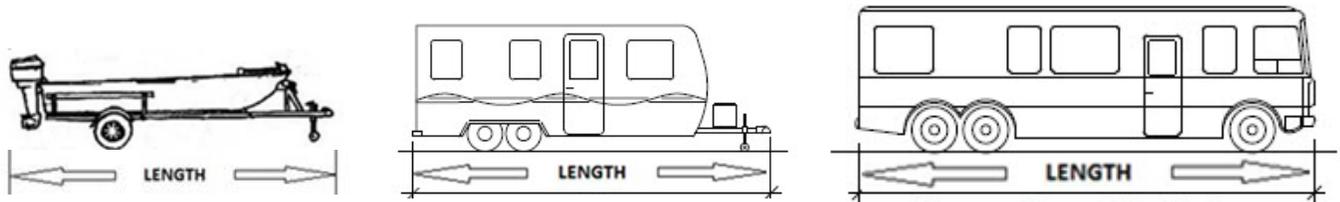
**SECTION 2.** The recreational vehicle related definitions in Section 11-2-2 of the Elko New Market City Code is hereby amended in its entirety to read as follows:

**RECREATIONAL VEHICLE:** Any motor vehicle or trailer primarily used for sport/leisure activities, travel, camping, hauling, and/or temporary lodging, including, but not limited to: all-terrain vehicles (ATV), campers, dirt bikes, dune buggies, go-karts, golf carts, ice or fish houses, motor homes, motorized watercrafts, snowmobiles, trailers, and utility task vehicles (UTV).

**SECTION 3.** Section 11-8-2 of the Elko New Market City Code is hereby amended in its entirety to read as follows:

A. Recreational Vehicle Parking: Up to three (3) licensed and operable recreational vehicles, as defined in this title, may be parked outside of an enclosed building on a residential property provided that:

1. The recreational vehicle is not parked or stored on public property or public right-of-way, including public sidewalks.
2. Only one (1) of the three recreational vehicles allowed may exceed twenty four (24) feet in length and no recreational vehicle may exceed thirty (30) feet in length. The length measurement shall include the entire length of the recreational vehicle, including the trailer and tongue of the recreational vehicle.



3. The recreational vehicles may be located on an established driveway during periods of seasonal use, provided that:

- a. The recreational vehicles comply with the following seasonal classifications. If a recreational vehicle is not specifically listed, the most similar recreational vehicle listed, as determined by the zoning administrator, shall be used to determine seasonal classification.

<b><u>Year-Round</u></b> <b>January 1 – December 31</b>	<b><u>Warm Weather Season</u></b> <b>April 1 – October 31</b>	<b><u>Cold Weather Season</u></b> <b>November 1 – March 31</b>
All-Terrain Vehicles (ATVs) Dirt Bikes Dune Buggies Go-Karts Golf Carts Trailers Utility Task Vehicles (UTVs)	Campers Motor Homes Motorized Watercrafts	Ice or Fish Houses Snowmobiles

- b. No more than two (2) recreational vehicles are parked on the driveway.

4. Except in the UR District and as otherwise provided herein, the recreational vehicles are parked in the rear or side yard on a surface of concrete, bitumen, or pavers. If a gravel side parking area was constructed on the property prior to the effective date hereof, recreational vehicles may be parked on the existing gravel surface.
  5. The recreational vehicles are located entirely outside of public easements or buffer yards and provide a five (5) foot setback from property lines. Recreational vehicles within a side yard of a corner lot abutting a public right of way must be set back ten (10) feet from the property line abutting a public right of way.
- B. Enumeration: For the purpose of this section, snowmobiles, ATVs, motorized watercrafts, and other recreational vehicles parked on a trailer shall constitute one recreational vehicle.
- C. Covering Vehicles: In the event a tarp or other material is used to cover the vehicles, the color of the tarp or material shall be an earthen tone of black, brown, gray, or green.
- D. Loading And Unloading: Recreational vehicles used for the sole purpose of loading and unloading the vehicle are exempt from subsections A1, A2, and A3 for up to three (3) days. This subsection is not meant to circumvent the intent of this section.

**SECTION 4.** Section 11-9-8 (E) of the Elko New Market City Code is hereby amended as follows:

- E. Surfacing: Except in the UR District and as otherwise provided under this subparagraph E, all parking spaces and driveways shall be surfaced with concrete, bitumen, or pavers in all zoning districts except in the UR district. Other materials such as decorative rock, gravel, sand, or bare soil are prohibited. This requirement also applies to open sales lots, open rental lots, and outdoor storage or display areas. All parking areas and driveways shall be maintained in a safe and proper manner. The owner shall not allow weeds to grow through the surface or surface materials to become deteriorated. If a gravel side parking area was constructed on the property prior to the effective date hereof, the surface shall be permitted for parking. No such surface shall be expanded or enlarged.

**SECTION 5.** This ordinance shall take effect immediately upon its passage and publication.

**ADOPTED** this \_\_\_\_ day of \_\_\_\_\_, 2020 by the City Council for the City of Elko New Market.

**CITY OF ELKO NEW MARKET**

BY: \_\_\_\_\_  
Joe Julius, Mayor

**ATTEST:**

\_\_\_\_\_  
Thomas Terry, City Administrator/Clerk

**CITY OF ELKO NEW MARKET  
SCOTT COUNTY, MINNESOTA**

**ORDINANCE NO. XXX**

**AN ORDINANCE AMENDING CITY OF ELKO NEW MARKET  
CITY CODE TITLE 7, CHAPTER 2 CONCERNING PARKING PROHIBITIONS**

THE CITY COUNCIL OF THE CITY OF ELKO NEW MARKET, MINNESOTA  
ORDAINS:

**SECTION 1.** Section 7-2-3 of the Elko New Market City Code is hereby amended in its entirety to read as follows:

- A. No owner of a motor vehicle shall leave, park, or permit the same to stand on any city street or alley for more than forty eight (48) hours. Commercial and recreational vehicles, as defined in section 11-2-2 of the zoning ordinance, may not be parked on any city street or alley except as follows:
1. Recreational vehicles may be parked on any City street or alley for up to forty eight (48) hours when being used for the purposes of loading and unloading.
  2. Commercial vehicles may be parked on any City street or alley when being used for the purposes of loading, unloading, rendering a temporary service benefiting the premises or providing emergency services.
- B. No owner of a motor vehicle shall leave, park, or permit the same to stand on a street or alley between the hours of two o'clock (2:00) A.M. and seven o'clock (7:00) A.M. between November 1 and April 1 of the following year, or at any other time when the national weather service forecast accumulation is two (2) or more inches of snow, until the street or alley has been plowed. Residences without an established driveway, to include new construction, are exempt from winter parking restrictions.
- C. No owner of a motor vehicle shall leave, park, or permit the same to block access to a driveway or block access to a mailbox.

**SECTION 2.** This ordinance shall take effect immediately upon its passage and publication.

**ADOPTED** this \_\_\_\_ day of \_\_\_\_\_, 2020 by the City Council for the City of Elko New Market.

**CITY OF ELKO NEW MARKET**

BY: \_\_\_\_\_  
Joe Julius, Mayor

**ATTEST:**

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Thomas Terry, City Administrator/Clerk



601 Main Street  
Elko New Market, MN 55054  
phone: 952-461-2777 fax: 952-461-2782

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## MEMORANDUM

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**TO:** PLANNING COMMISSION  
**FROM:** HALEY SEVENING, PLANNER I  
RENEE CHRISTIANSON, COMMUNITY DEVELOPMENT SPECIALIST  
**RE:** IDENTIFY PLANNING COMMISSION GOALS AND PRIORITIES FOR 2020  
**DATE:** JANUARY 22, 2020

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### **Background / Introduction**

Staff would like to discuss with the Planning Commission goals and priorities for the new year. For the purposes of this discussion, goals are projects or activities that merit special attention and/or focused resources. Goals should be easily defined and measurable for progress and/or completion. In addition, the goals should be reasonably achievable over the next year.

### **Discussion**

The Planning Commission is being asked to identify goals/priorities for discussions in the upcoming year. These goals/priorities may simply be a conveyance of information or serve as a starting point for further Commission discussion and possible action items.

Staff have identified the following goals/priorities for consideration by the Planning Commission:

- Continued incremental review and simplification of Zoning and Subdivision Ordinance
- Comprehensive and proactive code enforcement
- Housing affordability and diversity (consideration of tools such as accessory dwelling units, inclusionary zoning, TIF, Tax Abatement, etc.)
- Final adoption of the 2040 Comprehensive Plan
- Final adoption of Adelman property AUAR
- Others??

Any other thoughts or ideas for goals/priorities should be brought forth at the meeting for discussion by the Planning Commission.

### **Requested Action**

Adopt 2020 goals and priorities.



601 Main Street  
Elko New Market, MN 55054  
phone: 952-461-2777 fax: 952-461-2782

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## MEMORANDUM

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**TO:** PLANNING COMMISSION  
**FROM:** HALEY SEVENING, PLANNER I  
RENEE CHRISTIANSON, COMMUNITY DEVELOPMENT SPECIALIST  
**RE:** A YEAR IN REVIEW  
**DATE:** JANUARY 22, 2020

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### **Background / Introduction**

As requested by the Planning Commission, Staff have prepared an overview of Planning Commission accomplishments from 2019. This overview includes adopted and discussed ordinance amendments, development projects, and other planning projects. Attached is a map that depicts the location of applicable accomplishments.

#### Adopted Ordinance Amendments

- Mobile Food Units
- Sexually Oriented Businesses
- Small Wireless Facilities
- Performance Standards for Business Zoning Districts
- Landscaping and Setback Requirements in the R4 Zoning Districts
- Area Limitations for Ground Mounted Solar in Institutional Zoning Districts

#### Ordinance Amendment Discussions

- Medical Cannabis/Marijuana (discussion only)
- Garbage Cans and Recreational Vehicles (discussion only)

#### Developments

- Chase Real Estate – Concept Plan Review
- Sylvester Meadows – Recommended Approval of Preliminary and Final Plat
- Pete’s Hill – Recommended Approval of Preliminary and Final Plat
- Dakota Acres 2<sup>nd</sup> Addition – Recommended Approval of Preliminary and Final Plat
- ENM Commerce Center – Recommended Approval of Conditional Use Permit for Accessory Drive-Through Lane
- Pete’s Hill – Recommended Approval of PUD Amendment

#### Other Planning Projects

- Adelman AUAR – Recommended that the Council Open the 30-day Comment Period

- 2040 Comprehensive Plan – Recommended that the Council send the Plan out for Public Comment

This item is being provided for informational purposes only. Staff wishes to thank the Planning Commission for their work on the above items!



Elko New Market  
Planning Commission  
Accomplishments - 2019

Reviewed and recommended approval of preliminary and final plat of Dakota Acres 2nd Addn.

Recommended approval of conditional use permit for accessory drive-through lane for Elko New Market Commerce Center.

Reviewed concept development plan for Chase Real Estate

Reviewed and recommended approval of the preliminary and final plat of Sylvester Meadows.

Reviewed AUAR and recommended that the City Council authorize 30-day comment period.

Reviewed and recommended approval of preliminary and final plat of Pete's Hill. Approved amendment to PUD.

# 2019 ANNUAL BUILDING PERMIT REPORT

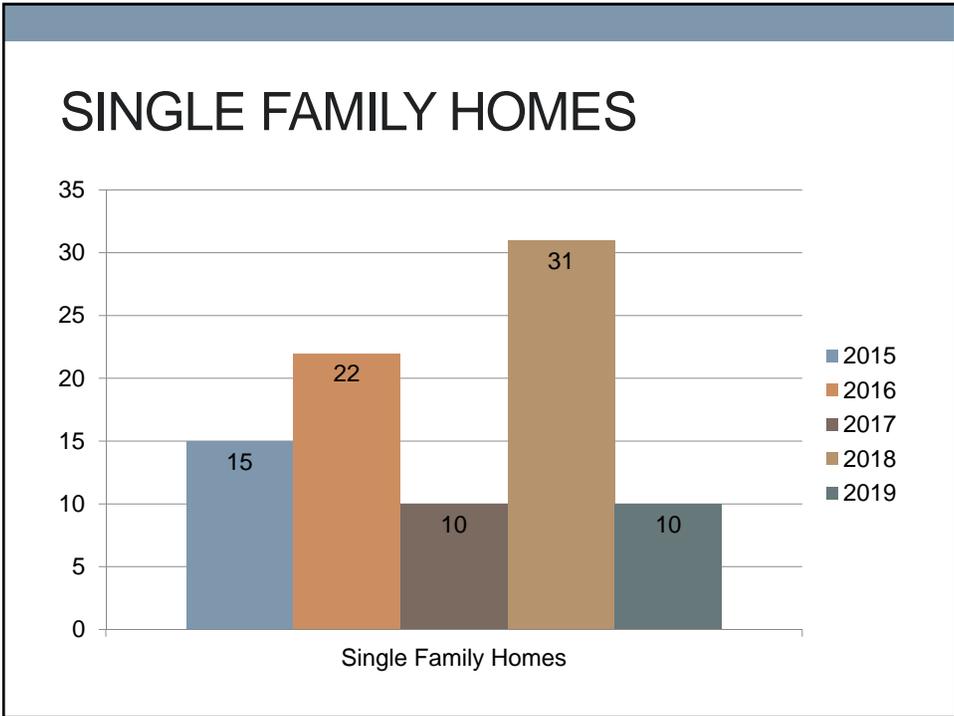
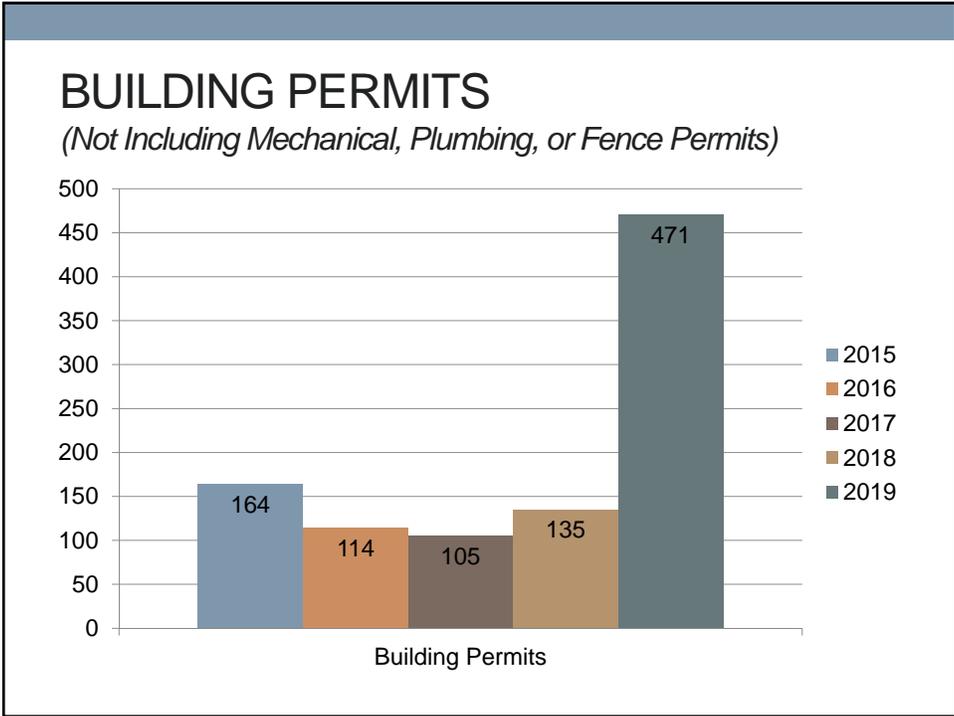
PRESENTED BY:  
 RENEE CHRISTIANSON  
 CITY OF ELKO NEW MARKET  
 COMMUNITY DEVELOPMENT SPECIALIST



## ELKO NEW MARKET BUILDING PERMIT STATISTICS

Type of Permit	2015	2016	2017	2018	2019
Building <i>(Not including Mechanical, Plumbing or Fence)</i>	164	114	105	135	471
Single Family Homes	15*	22	10	31**	10***
Commercial Development	0	0	1	5	1
Mechanical	41	64	72	85	54
Plumbing	41	57	64	79	53
Fence	23	20	15	18	17
Finish Basement	16	14	20	10	10
Deck/Porch	23	26	33	26	20
Reside/Reroof	79	31	19	18	369

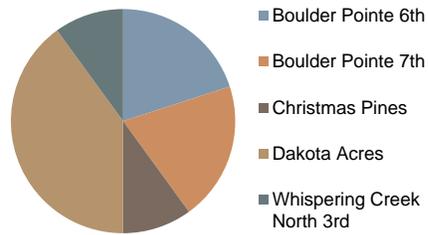
\* Includes 2 Attached Townhome Units  
 \*\* Includes 13 Attached Townhome Units  
 \*\*\* Includes 4 Attached Townhome Units & 1 Model Unit



## 2019 SINGLE FAMILY HOME PERMITS BY DEVELOPMENT (Attached & Detached)

Development / Neighborhood	Single Family Home Permits Issued
Boulder Pointe 6th	2
Boulder Pointe 7th	2
Christmas Pines	1
Dakota Acres	4
Whispering Creek North 3rd	1
<b>Total</b>	<b>10</b>

**Single Family Home Permits Issued (Attached & Detached)**



## 2019 LIST OF BUILDERS

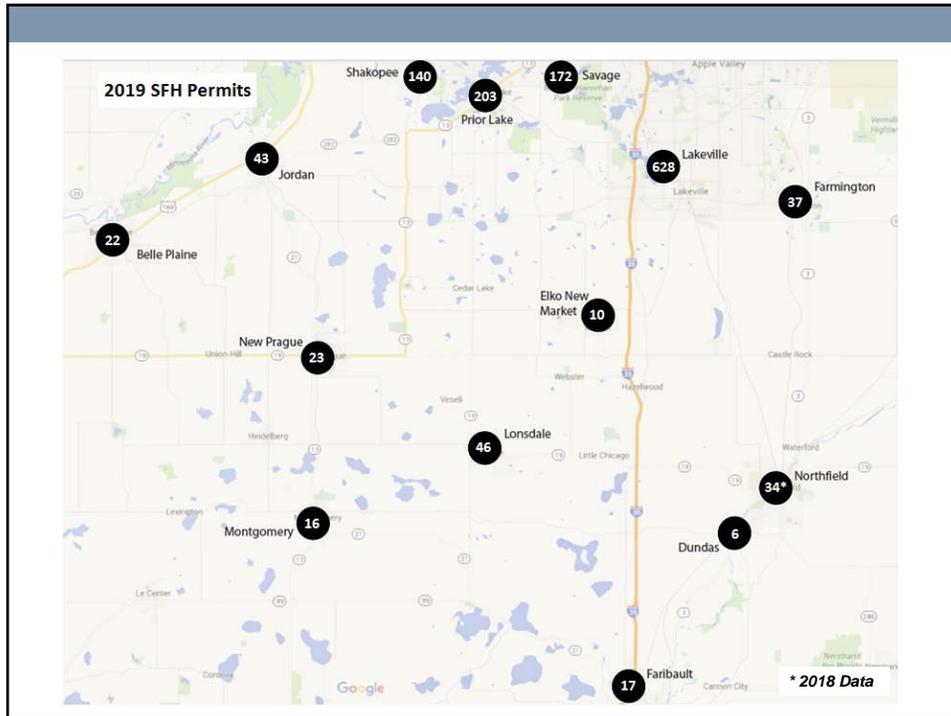
Builder	Number of Homes Built
Moderno Homes	1
Syndicated Properties, LLC	4
Robert McNearney Custom Homes	5

## ENM HOUSING STARTS – 2006 to 2019

Year	Units
2006	140
2007	49
2008	15
2009	10
2010	19 (Plus 49 Apt. Units)
2011	4
2012	27 (Includes 2 Twin Homes)
2013	40
2014	18 (Includes 2 Twin Homes)
2015	15 (Includes 2 Twin Homes)
2016	22
2017	10
2018	31 (Includes 13 Townhomes)
2019	10 (Includes 4 Townhomes & 1 Model)

## AREA CITIES SFH PERMITS

City	2015	2016	2017	2018	2019	5-Yr Total
Lakeville	420	465	531	527	628	2571
Savage	85	151	204	228	172	840
Prior Lake	122	112	83	198	203	718
Shakopee	59	50	52	119	140	420
Farmington	54	66	44	37	37	238
New Prague	21	53	84	23	23	204
Lonsdale	23	35	32	45	46	181
Jordan	16	19	25	59	43	162
Belle Plaine	24	37	28	21	22	132
Faribault	23	20	33	27	17	120
<b>Elko New Market</b>	<b>15</b>	<b>22</b>	<b>10</b>	<b>31</b>	<b>10</b>	<b>88</b>
Dundas	5	12	21	19	6	63
Montgomery	8	7	18	19	16	68



## Single Family Lot Inventory

Subdivision	Vacant Lots
Boulder Heights	53 (infrastructure nearly complete, lots buildable in 2020)
Boulder Pointe 6 <sup>th</sup> Addn	9 (all townhome lots)
Boulder Pointe 7 <sup>th</sup> Addn	15 (6 townhome lots)
Christmas Pines	19 (all townhome lots)
Dakota Acres 1 <sup>st</sup> Addn	24 (all townhome lots, lots not buildable until streets & utilities completed)
Elko	2
The Farm	6 (all townhome lots)
The Farm 2 <sup>nd</sup> Addn	3 (all townhome lots)
The Farm 3 <sup>rd</sup> Addn	10
Pete's Hill	45 (23 twinhome lots, infrastructure under construction, lots buildable in 2020)
Woodcrest	5
Unplatted	2
<b>Total</b>	<b>193 (90 townhome lots)</b>

## CONCLUSION

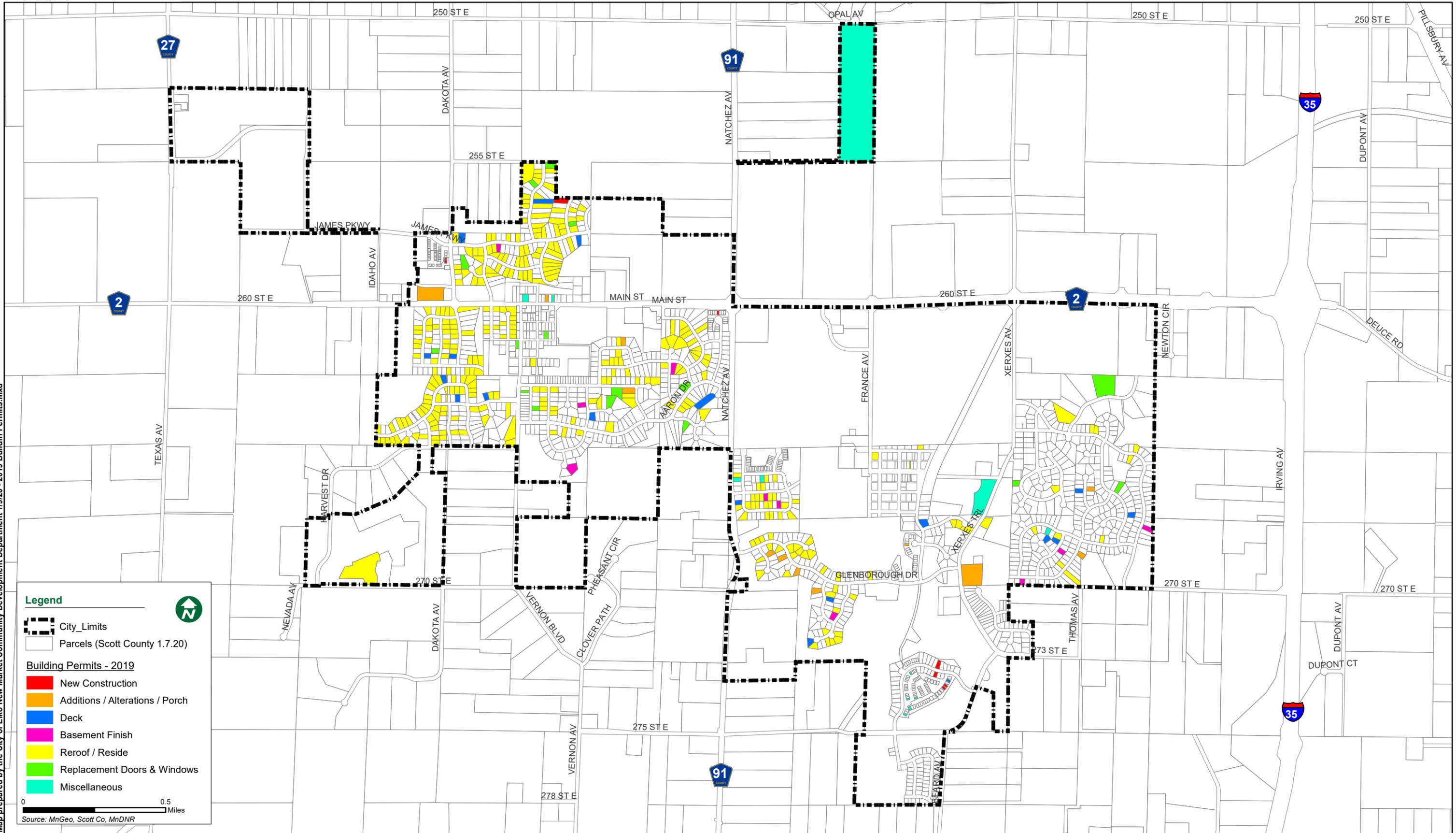
The year 2019 was a better year than 2018 for Building Permit activity. Although Single Family housing starts decreased, reroof and reside permits substantially increased due to the summer hail storm.

A summary of 2016, 2017, 2018 and 2019 housing starts are provided below.

Data shows an downtick in construction in 2019. With numerous new lots developed in 2019, our lot inventories have increased which will hopefully result in additional housing starts in 2020.

Housing Starts	2016	2017	2018	2019
1 <sup>st</sup> Quarter	1	2	3	1
2 <sup>nd</sup> Quarter	10	4	18	2
3 <sup>rd</sup> Quarter	4	2	8	1
4 <sup>th</sup> Quarter	7	2	2	6

Map prepared by the City of Elko New Market Community Development Department 1/19/20 - 2019 Building Permits.mxd





601 Main Street  
Elko New Market, MN 55054  
phone: 952-461-2777 fax: 952-461-2782

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## MEMORANDUM

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**TO:** MAYOR AND CITY COUNCIL, EDA, PLANNING COMMISSION  
**FROM:** RENEE CHRISTIANSON, COMMUNITY DEVELOPMENT SPECIALIST  
HALEY SEVENING, PLANNER I  
**SUBJECT:** 2020 VACANT LOT INVENTORY: RESIDENTIAL, COMMERCIAL, INDUSTRIAL  
**DATE:** JANUARY 22, 2020

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### **Background / History**

The Community Development Department has completed an inventory of all vacant lots (residential, commercial, industrial) within the city limits as of January 22, 2020. As part of the analysis only those lots that have municipal utilities available to them and are nearly building permit ready were identified. Attached to this memo are maps showing the vacant lots in each of the three categories.

**Residential Lots:** There are currently a total of **193** vacant residential lots available in the city limits. Of the total 193 lots, there are 103 lots available for single family home construction and **90** lots available for attached and detached townhome construction (part of an association). Some of the developments containing lots are currently under construction but expected to be completed in the spring of 2020. A breakdown of vacant lots by development is as follows:

- Boulder Heights – 53 lots (infrastructure nearly complete, lots will be buildable in spring 2020)
- Boulder Pointe 6<sup>th</sup> Addition – 9 lots (all 9 detached townhome lots are part of an association)
- Boulder Pointe 7<sup>th</sup> Addition – 15 lots (9 single family, and 6 detached townhome lots are part of an association)
- Christmas Pines – 19 lots (19 detached townhome lots are part of an association)
- Dakota Acres 1<sup>st</sup> Addition – 24 lots (24 attached townhome lots are part of an association)
- Elko – 2 lots
- Pete's Hill – 45 lots (22 single family, and 23 twin-home lots are part of an association) (infrastructure under construction, lots will be buildable in 2020)
- The Farm – 6 lots (6 that are part of an association)
- The Farm 2<sup>nd</sup> Addition – 3 lots (3 detached townhome lots are part of an association)
- The Farm 3<sup>rd</sup> Addition – 10 lots (10 single family)
- Woodcrest – 5 lots (2 of these vacant lots are existing homes where the property owner owns 2 adjacent lots; the home sits on one lot and the adjacent lot is vacant)
- Unplatted – 2 lots (1 of these vacant lots is an existing home where the property owner owns 2 adjacent lots; the home sits on one lot and the adjacent lot is vacant)

**Commercial Lots:** There are currently 7 vacant commercial lots available in the city limits. The total acreage of the commercial lots is 27.3 acres. It is noted that all commercial lots identified on the attached map need to be further platted into lots and blocks before being eligible for building permits. With the exception of platting, the lots are relatively close to being building permit ready. All of the identified lots have municipal utilities available to them.

**Industrial Lots:** There are currently no vacant industrial lots available within the city limits.



# **City of Elko New Market Vacant Lot Inventory**

**Residential, Commercial & Industrial Properties**

**January, 2020**

## Contacts for Vacant Residential Land

Bernie Mahowald  
612-369-5341  
Owner/developer for various lots in:  
The Farm development (multiple phases)

Luke Israelson  
KJ Walk  
952-826-9068  
Owner/developer for various lots in:  
Boulder Heights development

Bjorn Vogen  
RAV Holdings, LLC  
612-393-2123  
Owner/developer for various lots in:  
Boulder Pointe 6<sup>th</sup> & 7<sup>th</sup> Additions

Larry Gensmer  
612-968-3805  
Owner/developer for various lots in:  
Dakota Acres 1<sup>st</sup> Addition

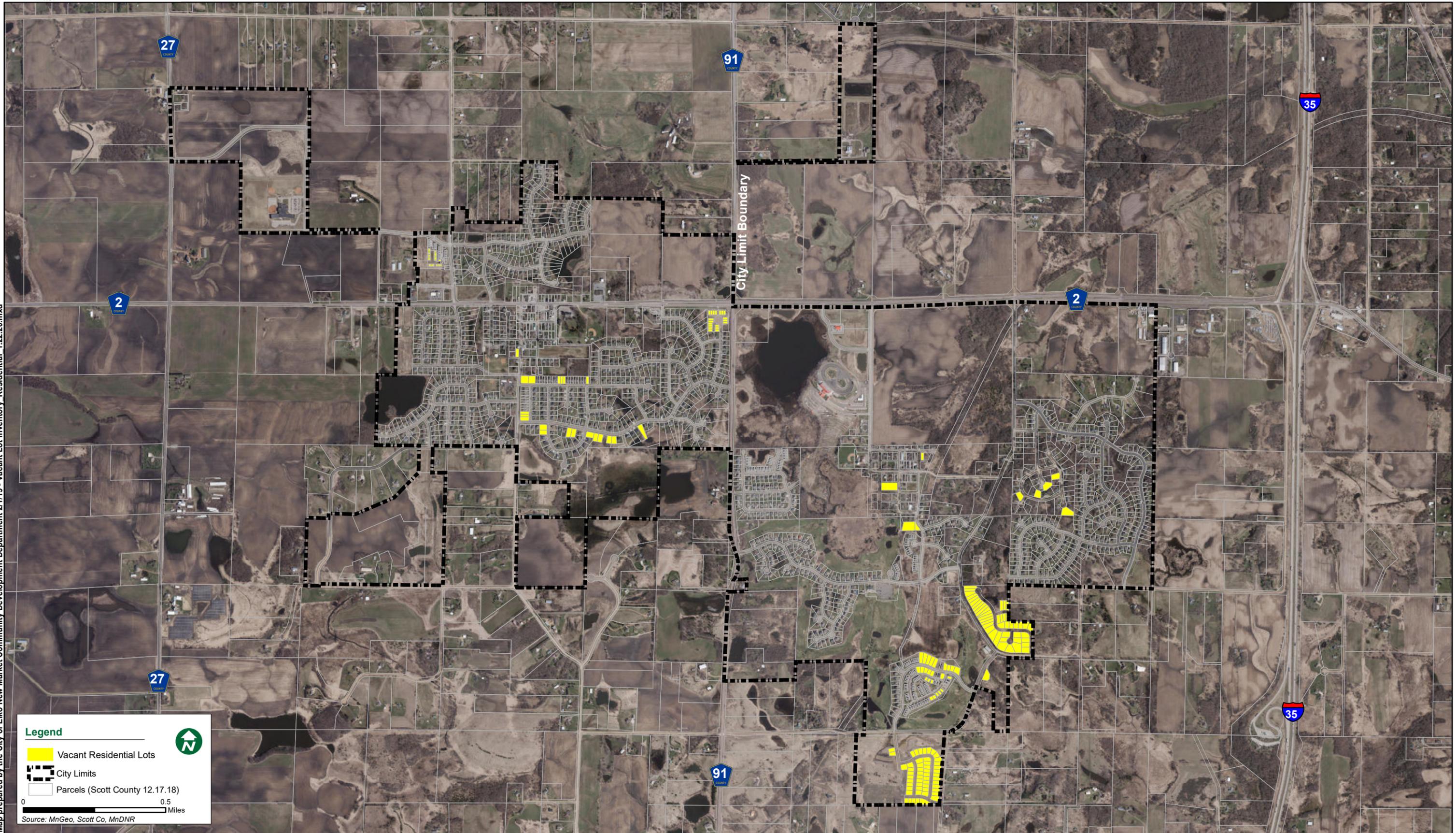
John Wichmann  
Elko 34, LLC  
612-309-4749  
Owner / developer for various lots in:  
Pete's Hill

Many local realtors are also able to help in your search as well.

## Contacts for Vacant Commercial Land

1. Dan Ringstad  
New Market Bank  
952-223-2319
2. Bart Winkler  
952-432-7101
3. Linda Zweber  
612-987-1549
4. Linda Zweber  
612-987-1549
5. Dan Ringstad  
New Market Bank  
952-233-2319
6. Northfield Hospital  
Jerry Ehn  
507-646-1515
7. Tom Ryan  
612-282-4330

Map prepared by the City of Elko New Market Community Development Department 2/1/19 - Vacant Lot Inventory Residential\_1.22.20.mxd



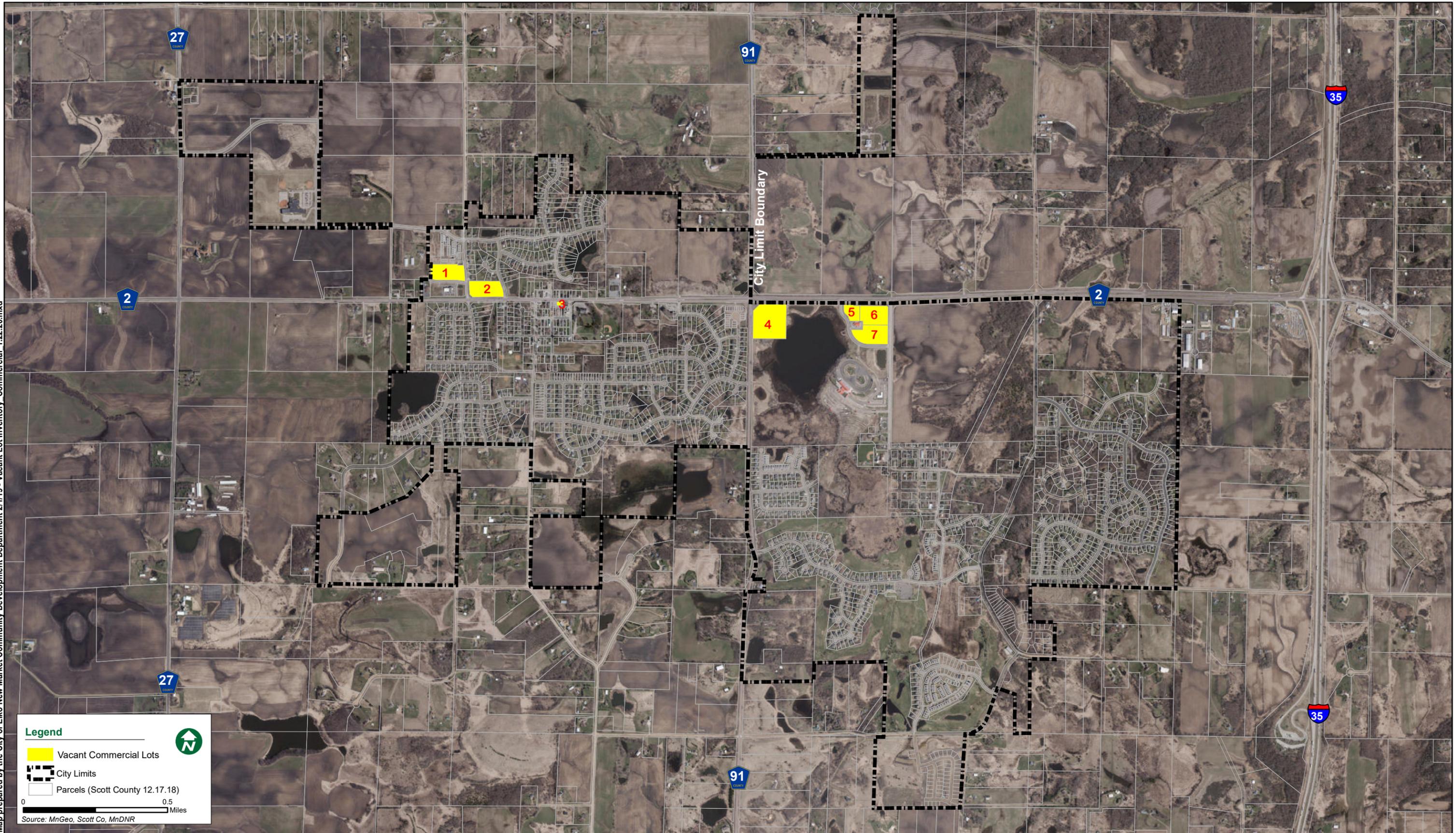
**Legend**

- Vacant Residential Lots
- City Limits
- Parcels (Scott County 12.17.18)

0 0.5 Miles

Source: MnGeo, Scott Co, MnDNR

Map prepared by the City of Elko New Market Community Development Department 2/1/19 - Vacant Lot Inventory Commercial 1.22.20.mxd



**Legend**

- Vacant Commercial Lots
- City Limits
- Parcels (Scott County 12.17.18)

0 0.5 Miles

Source: MnGeo, Scott Co, MnDNR



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## MEMORANDUM

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**TO:** PLANNING COMMISSION  
**FROM:** HALEY SEVENING, PLANNER I  
RENEE CHRISTIANSON, COMMUNITY DEVELOPMENT SPECIALIST  
**RE:** EXPECTATIONS FOR PLANNING COMMISSIONERS  
**DATE:** JANUARY 22, 2020

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### **Background / Introduction**

With the start of a new year, Staff would like to review the expectations for planning commissioners in regards to attendance, continuing education, and roles/responsibilities as a commissioner. The expectations for Planning Commissioners are as follows:

#### Attendance

- Commissioners shall attend at least 75% of the scheduled regular meetings, special meetings and workshops each year.
- Commissioners shall be prepared to attend regular Commission meetings and any additional special meetings or workshops.
- Except in cases of emergency or unexpected illness, commissioners shall notify staff of any expected absence at least 7 days prior to the scheduled regular meeting, special meeting, or workshop.

#### Continuing Education

- Must attend “The Basics” training course offered by Government Training Services (GTS) within one year of being appointed to the Planning Commission.
- Must attend “Beyond the Basics” training course offered by Government Training Services (GTS) within three years of being appointed to the Planning Commission.
- Must participate in a minimum of one training event every two years (following the first three years of service and educational requirements).

#### Roles / Responsibilities

- Come to all meetings having read the agenda packet materials.
- Participate in the discussion of the agenda items for all meetings.
- Conduct themselves in a professional manner during Planning Commission meetings. This includes:
  - Reviewing individual projects for consistency with Comprehensive Plan, Zoning Ordinance and Subdivision Ordinance.
  - Making sound planning decisions that implement City ordinances, policies and plans.

Expectations for Planning Commissioners

Page 1 of 2

January 22, 2020

- Reviewing applications and making recommendations based on the merits of the application.
- Promoting meaningful public involvement.
- Recognizing the obligation to serve the whole community and consider the interests of the entire community in reaching decisions.
- Focusing on merits of discussions, not personalities, character or motivations.
- Being able to make recommendations that are unpopular to further the public's interest.
- Promoting equality and treating all people, projects and perspectives equitably.
- Treating fellow commissioners, staff and the public with courtesy, even when there are differences of opinion.
- Maintaining consistent standards while understanding the need for compromise, thinking outside the box.
- Being impartial and not showing favoritism to developers or others.
- Avoid activities or actions that would be contrary to Professionalism as it is defined by the Community Oriented Government (COG) philosophy. For reference, the City's COG philosophy is attached.
- Avoid conflicts of interest, both legal and ethical, including:
  - Excusing oneself from decisions when financial interest of oneself or family member may be affected by their recommendation.
  - Not using information acquired during role as a Planning Commissioner for their personal advantage.

This item is being provided for informational purposes only.

### **Attachments**

Community Oriented Local Government Philosophy

# COMMUNITY ORIENTED LOCAL GOVERNMENT

- 1. Community Involvement** – The City of Elko New Market will incorporate community feedback in making participative, transparent decisions by:
  - Providing more opportunities for the public to have input on decisions that affect them.
  - Engaging the public in strategic planning initiatives, both short and long term.
  - Enabling the public to provide input on the effectiveness of public services and policies.
  - Working to develop leadership within the community.
  
- 2. Organizational Improvements** – The City of Elko New Market will strive to elevate the level of customer service and service delivery through cost effective use of personnel, structure, and information systems by:
  - Developing an organizational climate that promotes innovation, creativity, collaboration and a customer-centered focus in providing community services, programs and projects.
  - Improve public services by reducing barriers between City departments in order to provide greater accessibility, flexibility, and efficiency in the delivery of public services.
  
- 3. Problem Solving** – The City of Elko New Market will engage in the process of proactive and systematic examination of identified issues in order to evaluate effective policy decisions by:
  - Using available technology to improve the quality and accuracy of data used in decisions.
  - Provide the resources to develop and implement the most cost effective solutions.
  - Considering the long term costs and benefits in policy decisions.
  - Engaging in long-term financial planning to provide public services without undue burden on the tax payers of the city.
  
- 4. Performance Measurement** – The City of Elko New Market will develop and utilize methods for measuring performance to evaluate progress and establish accountability for improving public services.
  
- 5. Professionalism** – The City of Elko New Market will provide local government that is characterized by high technical and ethical standards. The City will conduct business and present itself in a manner that that promotes public confidence. The City will endeavor to recruit, train, and develop cohesive, high quality professional staff that will excel in providing public services.

Adopted June 27, 2019



601 Main Street  
Elko New Market, MN 55054  
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## MEMORANDUM

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**TO:** PLANNING COMMISSION  
**FROM:** HALEY SEVENING, PLANNER I  
RENEE CHRISTIANSON, COMMUNITY DEVELOPMENT SPECIALIST  
**RE:** TIP OF THE MONTH – OPEN MEETING LAW  
**DATE:** JANUARY 22, 2020

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### **Background / Introduction**

Each month, Staff includes a “Tip of the Month” in the Planning Commission Packet. These tips could range from information about City Ordinance or State Statute to educational materials about planning related topics. January’s “Tip of the Month” is information about Open Meeting Law. A summary of information about Open Meeting Law is provided below. The attached League of Minnesota Cities memo provides more in depth information.

### **Open Meeting Law**

- Purpose
  - Generally requires that all meetings of public bodies be noticed and open to the public.
  - Prohibits actions from being taken in secret or without the public’s knowledge.
  - Ensures the public’s right to be informed and present their views.
- When does it apply?
  - Gatherings of a quorum (majority) or more of the members of the Planning Commission.
- Exceptions
  - Some situations allow for the closure of meetings to the public. These are as follows:
    - Labor negotiations under the Public Employment Labor Relations Act (PELRA)
    - Performance Evaluations
    - Attorney-Client Privilege
    - Purchase or Sale of Property
    - Security Reports (Security Systems/Emergency Response)
    - Misconduct Allegations
    - Certain not-Public Data (related to misconduct allegations, active law enforcement investigations, health/medical information, etc.)
- Common Issues
  - Attending other committee’s public meetings:

- Case law has established that the mere presence of elected or appointed officials at another committee's public meeting does not constitute open meeting law, unless those officials participate in meeting discussions.
- EX: If a quorum of Planning Commissioners attend a City Council meeting, open meeting law is not applicable unless the Commissioners participate in Council discussions.
- Chance or social gatherings and training and/or team-building:
  - As long as no official city business is discussed, decided, or received, a gathering of Commissioners does not constitute open meeting law (even if a quorum is present).
- Telephone, email, and social media:
  - Back-and-forth email communication among a quorum of the Commission in which official business is discussed is a violation of open meeting law.
  - One-way communication to a quorum of Commissioners, such as the emailing of packet materials, does not constitute open meeting law as long as no discussion or decision making ensues.
  - The use of social media does not violate the open meeting law as long as the social media use is limited to exchanges with all members of the general public.

## RELEVANT LINKS:

[Minn. Stat. § 645.44, subd. 5.](#)

[Minn. Stat. § 645.44, subd. 5.](#)

[Minn. Stat. § 202A.19, subd. 1.](#)  
[Minn. Stat. § 204C.03, subd. 1.](#)

[Minn. Stat. § 645.15.](#)

[Minn. Stat. § 13D.01.](#)

[Rupp v. Mayasich](#), 533 N.W.2d 893 (Minn. Ct. App. 1995). [St. Cloud Newspapers, Inc. v. Dist. 742 Community Schools](#), 332 N.W.2d 1 (Minn. 1983).

See section I. - *Types of meetings and notice requirements.* [Minn. Stat. § 13D.04, subd. 7.](#)

All cities have the option, however, of deciding whether Christopher Columbus Day and the Friday after Thanksgiving shall be holidays. If these days are not designated as holidays, public business may be conducted on them.

If a holiday falls on a Saturday, the preceding Friday is considered to be a holiday. If a holiday falls on a Sunday, the next Monday is considered to be a holiday.

In addition, city council meetings may not be held during the following times:

- After 6 p.m. on the evening of a major political party precinct caucus.
- Between 6 p.m. and 8 p.m. on a day when there is an election being held within the city's boundaries.

State law does not prohibit meetings on weekends. However, state law regulating how time is computed for the purpose of giving any required notice provides that if the last day of notice falls on either a Saturday or Sunday, that day cannot be counted.

## II. The open meeting law

### A. Purpose

The Minnesota open meeting law generally requires that all meetings of public bodies must be noticed and open to the public. This presumption of openness serves three vital purposes:

- It prohibits actions from being taken at a secret meeting where it is impossible for the interested public to become fully informed concerning decisions of public bodies or detect improper influences.
- It ensures the public's right to be informed.
- It gives the public an opportunity to present its views to the public body.

### B. Public notice

Public notice generally must be provided for meetings of a public body subject to the open meeting law. The notice requirements depend on the type of meeting. However, if a person receives actual notice of a meeting at least 24 hours before it takes place, all notice requirements under the open meeting law are satisfied, regardless of the method of receipt.

### C. Location

## RELEVANT LINKS:

*Quast v. Knutson*, 150 N.W.2d 199, 200 (Minn. 1967) (holding that a school board violated the open meeting law when it held a meeting in a room located 20 miles outside the school district). DPO 18-003.

Minn. Stat. § 13D.01, subd. 6. DPO 08-015. DPO 13-015 (noting that the open meeting law “is silent with respect to agendas; it neither requires them nor prohibits them”). DPO 18-003. DPO 18-011.

Minn. Stat. § 13D.01, subd. 6.

Minn. Stat. § 13D.01, subd. 1.

*Southern Minnesota Municipal Power Agency v. Boyne*, 578 N.W.2d 362 (Minn. 1998).

*Moberg v. Indep. Sch. Dist. No. 281*, 336 N.W.2d 510 (Minn. 1983). *St. Cloud Newspapers, Inc. v. Dist. 742 Community Schools*, 332 N.W.2d 1 (Minn. 1983).

Minn. Stat. § 412.191, subd. 1. Minn. Stat. § 645.08 (5).

The Minnesota Supreme Court has held that, to meet the statutory requirement that meetings of public bodies shall be open to the public, “it is essential that such meetings be held in a public place located within the territorial confines of the [public body] involved.”

### D. Printed Materials

At least one copy of the printed materials relating to agenda items that are provided to the council at or before a meeting must also be made available for public inspection in the meeting room while the governing body considers the subject matter.

This requirement does not apply to materials classified by law as other than public or to materials relating to the agenda items of a closed meeting.

### E. Groups governed by the open meeting law

The open meeting law applies to all governing bodies of any school district, unorganized territory, county, city, town or other public body, and to any committee, sub-committee, board, department or commission of a public body.

Thus, the law applies to meetings of all city councils, **planning commissions**, firefighter relief associations, economic development authorities, and housing redevelopment authorities, among others.

The Minnesota Supreme Court has held, however, that the governing body of a municipal power agency, created under Minn. Stat. §§ 453.51-453.62, is not subject to the open meeting law because the Minnesota Legislature granted these agencies authority to conduct their affairs as private corporations.

### F. Gatherings governed by the open meeting law

The open meeting law does not define the term “meeting.” The Minnesota Supreme Court, however, has ruled that meetings are gatherings of a quorum or more of the members of the governing body, or a quorum of a committee, subcommittee, board, department, or commission thereof, at which members discuss, decide, or receive information as a group on issues relating to the official business of that governing body.

A majority of the members of a statutory city council constitutes a quorum. A majority of the qualified members of any board or commission also constitutes a quorum. Home rule charter cities may have different quorum requirements.

## RELEVANT LINKS:

See section II.G.6. for more information about serial meetings.

[Minn. Stat. § 13D.01, subd. 3.](#)

[Minn. Stat. § 13D.05, subd. 1 \(d\).](#)

[DPO 14-005.](#)  
[DPO 13-012.](#)  
[DPO 14-014.](#)

[The Free Press v. County of Blue Earth, 677 N.W.2d 471 \(Minn. Ct. App. 2004\).](#)

[The Free Press v. County of Blue Earth, 677 N.W.2d 471 \(Minn. Ct. App. 2004\)](#) (holding that a county's statement that it was closing a meeting under the attorney-client privilege to discuss "pending litigation" did not satisfy the requirement of describing the subject to be discussed at a closed meeting).

[Minn. Stat. § 13D.05, subd. 1 \(d\).](#)

[Minn. Stat. § 13D.04, subd. 5.](#)

The open meeting law does not generally apply in situations where less than a quorum of the city council is involved. However, serial meetings in groups of less than a quorum that are held in order to avoid the requirements of the open meeting law may be found to violate the law, depending on the specific facts.

## G. Open meeting law exceptions

There are seven exceptions to the open meeting law that authorize the closure of meetings to the public. Under these exceptions some meetings may be closed, and some meetings must be closed. Before a meeting is closed under any of the exceptions, the council must state on the record the specific grounds permitting the meeting to be closed and describe the subject to be discussed.

The commissioner of the Minnesota Department of Administration has advised that a member of the public body (and not its attorney) must make the statement on the record. The open meeting law does not define the phrase "on the record," but the commissioner has advised that the phrase should be interpreted to mean a verbal statement in open session.

The commissioner has also advised that citing the specific statutory authority that permits the closed meeting is the simplest way to satisfy the requirement for stating the specific grounds permitting the meeting to be closed.

Both the commissioner and the Minnesota Court of Appeals have concluded that something more specific than a general statement is needed to satisfy the requirement of providing a description of the subject to be discussed.

All closed meetings, except those closed as permitted by the attorney-client privilege, must be electronically recorded at the expense of the public body. Unless otherwise provided by law, the recordings must be preserved for at least three years after the date of the meeting.

The same notice requirements that apply to open meetings also apply to closed meetings. For example, if a closed meeting takes place at a regular meeting, the notice requirements for a regular meeting apply. Likewise, if a closed meeting takes place as a special meeting, the notice requirements for a special meeting apply.

**RELEVANT LINKS:**

[Minn. Stat. § 13D.03.](#)  
[DPO 13-012.](#)

[Minn. Stat. § 13D.03.](#)  
[Minn. Stat. § 13D.01, subd. 3.](#)

[DPO 05-027.](#)  
[DPO 00-037.](#)

[Minn. Stat. § 13D.03, subd. 3.](#)

[Minn. Stat. § 13D.05, subd. 3\(a\).](#)

[Minn. Stat. § 13D.05, subd. 3\(a\).](#)  
[Minn. Stat. § 13D.01, subd. 3.](#)

## **1. Meetings that may be closed**

The public body may choose to close certain meetings. The following types of meetings may be closed:

### **a. Labor negotiations under PELRA**

A meeting to consider strategies for labor negotiations, including negotiation strategies or development or discussion of labor-negotiation proposals, may be closed. However, the actual negotiations must be done at an open meeting if a quorum of the council is present.

#### **The following procedure must be used to close a meeting under this exception:**

- The council must decide to close the meeting by a majority vote at a public meeting and must announce the time and place of the closed meeting.
- Before closing the meeting, the council must state on the record the specific grounds permitting the meeting to be closed and describe the subject to be discussed.
- A written record of all people present at the closed meeting must be available to the public after the closed meeting.
- The meeting must be tape-recorded.
- The recording must be kept for two years after the contract is signed.
- The recording becomes public after all labor agreements are signed by the city council for the current budget period.

If an action claiming that other public business was transacted at the closed meeting is brought during the time the tape is not public, the court will review the recording privately. If the court finds no violation of the open meeting law, the action will be dismissed and the recording will be preserved in court records until it becomes available to the public. If the court determines there may have been a violation, the entire recording may be introduced at the trial. However, the court may issue appropriate protective orders requested by either party.

### **b. Performance evaluations**

A public body may close a meeting to evaluate the performance of an individual who is subject to its authority.

#### **The following procedure must be used to close a meeting under this exception:**

## RELEVANT LINKS:

DPO 05-013 (advising that a government entity could close a meeting under this exception to discuss its contract with an independent contractor when that contractor is an individual human being).

DPO 14-007, DPO 15-002, and DPO 16-002 (discussing what type of summary is sufficient).

Minn. Stat. § 13D.05, subd. 3(b).

*Brainerd Daily Dispatch, LLC v. Dehen*, 693 N.W.2d 435 (Minn. Ct. App. 2005).

*Prior Lake American v. Mader*, 642 N.W.2d 729 (Minn. 2002). DPO 16-003. DPO 17-003.

*Northwest Publications, Inc. v. City of St. Paul*, 435 N.W.2d 64 (Minn. Ct. App. 1989). *Minneapolis Star & Tribune v. Housing and Redevelopment Authority in and for the City of Minneapolis*, 251 N.W.2d 620 (Minn. 1976).

Minn. Stat. § 13D.01, subd. 3.

See *The Free Press v. County of Blue Earth*, 677 N.W.2d 471 (Minn. Ct. App. 2004) (holding that a general statement that a meeting was being closed under the attorney-client privilege to discuss “pending litigation” did not satisfy the requirement of describing the subject to be discussed).

- The public body must identify the individual to be evaluated prior to closing the meeting.
- The meeting must be open at the request of the individual who is the subject of the meeting; so some advance notice to the individual is needed to allow the individual to make a decision.
- Before closing the meeting, the council must state on the record the specific grounds permitting the meeting to be closed and describe the subject to be discussed.
- The meeting must be electronically recorded, and the recording must be preserved for at least three years after the meeting.
- At the next open meeting, the public body must summarize its conclusions regarding the evaluation. The council should be careful not to release private or confidential data in its summary.

### c. Attorney-client privilege

Meetings between the governing body and its attorney to discuss active, threatened, or pending litigation may be closed when the balancing of the purposes served by the attorney-client privilege against those served by the open meeting law dictates the need for absolute confidentiality. The need for absolute confidentiality should relate to litigation strategy, and will usually arise only after a substantive decision on the underlying matter has been made.

This privilege may not be abused to suppress public observations of the decision-making process, and does not include situations where the council will be receiving general legal opinions and advice on the strengths and weaknesses of a proposed action that may give rise to future litigation.

#### The following procedure must be used to close a meeting under this exception:

- Before closing the meeting, the council must state on the record the specific grounds permitting the meeting to be closed and describe the subject to be discussed.
- The council should also describe how a balancing of the purposes of the attorney-client privilege against the purposes of the open meeting law demonstrates the need for absolute confidentiality.
- The council must actually communicate with its attorney at the meeting.

### d. Purchase or sale of property

A public body may close a meeting to:

## RELEVANT LINKS:

[Minn. Stat. § 13D.05, subd. 3\(c\).](#)  
[Vik v. Wild Rice Watershed Dist.](#), No. A09-1841 (Minn. Ct. App. 2010) (unpublished opinion).

[Minn. Stat. § 13D.05, subd. 3\(c\).](#)

[DPO 14-014.](#)

DPO 08-001 (advising that a public body cannot authorize the release of a tape of a closed meeting under this exception until all property discussed at the meeting has been purchased or sold or the public body has abandoned the purchase or sale).

[Minn. Stat. § 13D.05, subd. 3\(d\).](#)

[Minn. Stat. § 13D.05, subd. 3\(d\).](#)

- Determine the asking price for real or personal property to be sold by the public body.
- Review confidential or nonpublic appraisal data.
- Develop or consider offers or counteroffers for the purchase or sale of real or personal property.

### **The following procedure must be used to close a meeting under this exception:**

- Before closing the meeting, the council must state on the record the specific grounds for closing the meeting, describe the subject to be discussed, and identify the particular property that is the subject of the meeting.
- The meeting must be tape-recorded and the property must be identified on the tape. The recording must be preserved for eight years, and must be made available to the public after all property discussed at the meeting has been purchased or sold or after the public body has abandoned the purchase or sale.
- A list of councilmembers and all other persons present at the closed meeting must be made available to the public after the closed meeting.
- The actual purchase or sale of the property must be approved at an open meeting, and the purchase or sale price is public data.

## **e. Security reports**

A meeting may be closed to receive security briefings and reports, to discuss issues related to security systems, to discuss emergency-response procedures and to discuss security deficiencies in or recommendations regarding public services, infrastructure, and facilities—if disclosure of the information would pose a danger to public safety or compromise security procedures or responses. Financial issues related to security matters must be discussed, and all related financial decisions must be made at an open meeting.

### **The following procedure must be used to close a meeting under this exception:**

- Before closing the meeting, the council must state on the record the specific grounds for closing the meeting and describe the subject to be discussed.
- When describing the subject to be discussed, the council must refer to the facilities, systems, procedures, services or infrastructure to be considered during the closed meeting.
- The closed meeting must be tape-recorded, and the recording must be preserved for at least four years.

## **2. Meetings that must be closed**

**RELEVANT LINKS:**

[Minn. Stat. § 13D.05, subd. 2\(b\).](#)  
[Minn. Stat. § 13.43, subd. 2\(4\).](#)  
[DPO 03-020.](#)

[DPO 14-004.](#)

[DPO 10-001.](#)  
[Minn. Stat. § 13.43.](#)

[Minn. Stat. § 13D.01, subd. 3.](#)  
[Minn. Stat. § 13D.05, subd. 1.](#)

Note: There is a special provision dealing with allegations of law enforcement personnel misconduct; see [Minn. Stat. § 13D.05, subd. 2\(a\)](#) and section II.G.2.b.- *Certain not-public data*.

There are some meetings that the open meeting law requires to be closed. The following meetings must be closed:

**a. Misconduct allegations**

A public body must close a meeting for preliminary consideration of allegations or charges against an individual subject to the public body’s authority.

The commissioner of the Minnesota Department of Administration has advised that a city could not close a meeting under this exception to consider allegations of misconduct against a job applicant who had been extended a conditional offer of employment. (The job applicant was not a city employee). The commissioner reasoned that the city council had no authority to discipline the job applicant or to direct his actions in any way; therefore, he was not “an individual subject to its authority.”

The commissioner has also advised that a tape recording of a closed meeting for preliminary consideration of misconduct allegations is private personnel data under Minn. Stat. § 13.43, subd. 4, and is accessible to the subject of the data but not to the public. The commissioner noted that at some point in time, some or all of the data on the tape may become public under Minn. Stat. § 13.43, subd. 2.

For example, if the employee is disciplined and there is a final disposition, certain personnel data becomes public.

**The following procedure must be used to close a meeting under this exception:**

- Before closing the meeting, the council must state on the record the specific grounds for closing the meeting and describe the subject to be discussed.
- The meeting must be open at the request of the individual who is the subject of the meeting. Thus, the individual should be given advance notice of the existence and nature of the charges against him or her, so that the individual can make a decision.
- The meeting must be electronically recorded, and the recording must be preserved for at least three years after the meeting.
- If the public body decides that discipline of any nature may be warranted regarding the specific charges, further meetings must be open.

**b. Certain not-public data**

The general rule is that meetings cannot be closed to discuss data that are not public under the Minnesota Government Data Practices Act. A meeting must be closed, however, if the following not-public data is discussed:

## RELEVANT LINKS:

[Minn. Stat. § 13D.05, subd. 2\(a\).](#)

[Minn. Stat. § 13.32.](#)  
[Minn. Stat. § 13.3805, subd. 1.](#)  
[Minn. Stat. § 13.384.](#)  
[Minn. Stat. § 13.46, subds. 2, 7.](#)  
[Minn. Stat. §§ 144.291-144.298.](#)

[Minn. Stat. § 13D.01, subd. 3.](#)  
[Minn. Stat. § 13D.05, subd.1.](#)

[Minn. Stat. § 13D.05, subds. 1\(a\), 2\(a\).](#) See section II.G.b.-*Certain not-public data.*

[Minn. Stat. § 13D.05, subd. 2\(a\).](#)  
[Minn. Stat. § 13.03, subd. 11.](#)

[Minn. Stat. § 13D.05, subd. 1\(b\).](#)

[Minn. Stat. § 13D.05, subd. 1\(c\).](#)

- Data that would identify alleged victims or reporters of criminal sexual conduct, domestic abuse, or maltreatment of minors or vulnerable adults.
- Internal affairs data relating to allegations of law enforcement personnel misconduct or active law enforcement investigative data.
- Educational data, health data, medical data, welfare data or mental health data that are not-public data.
- Certain medical records.

### **The following procedure must be used to close a meeting under this exception:**

- The council must state on the record the specific grounds for closing the meeting and describe the subject to be discussed.
- The meeting must be electronically recorded, and the recording must be preserved for at least three years after the meeting.

## **H. Common issues**

This section provides an overview of some of the common issues cities face while attempting to comply with the open meeting law.

### **1. Data practices**

Generally, meetings may not be closed to discuss data that is not public under the Minnesota Government Data Practices Act (MGDPA). However, the public body must close any part of a meeting at which certain types of not-public data are discussed.

If not-public data is discussed at an open meeting when the meeting is required to be closed, it is a violation of the open meeting law. Discussions of some types of not-public data may also be a violation of the MGDPA.

However, not-public data may generally be discussed at an open meeting without liability or penalty if both of the following criteria are met:

- The disclosure relates to a matter within the scope of the public body's authority.
- The disclosure is necessary to conduct the business or agenda item before the public body.

Data that is discussed at an open meeting retains its original classification under the MGDPA. However, a record of the meeting is public, regardless of the form. It is suggested that not-public data that is discussed at an open meeting not be specifically detailed in the minutes.

### **2. Interviews**

## RELEVANT LINKS:

[Channel 10, Inc. v. Indep. Sch. Dist. No. 709](#), 298 Minn. 306, 215 N.W.2d 814 (Minn. 1974).

See section II.H.6. - *Serial meetings*.

[Mankato Free Press v. City of North Mankato](#), No. C1-96-100036 (Fifth Jud. Dist. 1996).

[Mankato Free Press v. City of North Mankato](#), 563 N.W.2d 291 (Minn. Ct. App. 1997).  
[Mankato Free Press v. City of North Mankato](#), No. C9-98-677 (Minn. Ct. App. Dec. 15, 1998) (unpublished decision).

[A.G. Op. 63-A-5 \(June 13, 1957\)](#). See also Minn. Stat. § 13D.01, subd. 1(b) (4).

[St. Cloud Newspapers, Inc. v. Dist. 742 Community Schools](#), 332 N.W.2d 1 (Minn. 1983).

The Minnesota Supreme Court has held that a school board must interview prospective employees in open sessions.

The Supreme Court concluded that the absence of a statutory exception to the open meeting law for interviews indicated that the legislature had decided that such sessions should not be closed. The reasoning would seem to apply to a city council's interview of prospective officers and employees as well, if a quorum is present.

In 1996, a district court found that it was not a violation of the open meeting law for candidates to be serially interviewed by members of a city council in one-on-one closed interviews. In this case, five city councilmembers were present in the same building but each was conducting separate interviews in five different rooms. Because there was no quorum present in any of the rooms, the court found there was no meeting. The decision, however, was appealed.

In 1997, the Minnesota Court of Appeals reversed the district court's decision and remanded the case back to the district court for a factual determination on whether the city used the one-on-one interview process in order to avoid the requirements of the open meeting law.

On remand, the district court found that the private interviews were not conducted for the purpose of avoiding public hearings. The case was again appealed. In an unpublished decision, the court of appeals affirmed the district court's decision.

The conclusion that can be drawn from this decision appears to be that if serial meetings involving less than a quorum of a public body are held for the purpose of avoiding the requirements of the open meeting law, it will constitute a violation of the law. Cities that are considering holding private interviews with job applicants should first consult their city attorney.

### 3. Executive sessions

The attorney general has advised that executive sessions of a city council must be open to the public.

### 4. Informational meetings and committees

The Minnesota Supreme Court has held that informational seminars about school-board business, which the entire board attends, must be noticed and open to the public. As a result, it appears that any scheduled gathering of a quorum of a city council where it receives information about city business must be properly noticed and open to the public, regardless of whether the council takes or contemplates taking action at that gathering.

**RELEVANT LINKS:**

In addition, many city councils create committees to make recommendations regarding a specific issue. Commonly, such a committee will be responsible for researching the issue and submitting a recommendation to the council for its approval. These committees are usually advisory, and the council is still responsible for making the final decision.

This type of committee may be subject to the open meeting law. Some factors that may be relevant in deciding whether a committee is subject to the open meeting law include: how the committee was created and who are its members; whether the committee is performing an ongoing function, or instead, is performing a one-time function; whether the committee receives public funds or uses public facilities or staff; and what duties and powers have been granted to the committee.

DPO [05-014](#).

For example, the commissioner of the Minnesota Department of Administration has advised that “standing” committees of a city hospital board that were responsible for management liaison, collection of information, and formulation of issues and recommendations for the board were committees subject to the open meeting law. The advisory opinion noted that the standing committees were performing tasks that relate to the ongoing operation of the hospital district and were not performing a one-time or “*ad hoc*” function.

DPO [07-025](#).

In contrast, the commissioner has advised that a city’s Free Speech Working Group was not a committee that was subject to the open meeting law. This group consisted of members, including city officials, that the city council had appointed to develop and review strategies for addressing free-speech concerns relating to a political convention that was going to be held in the city. The commissioner reasoned that the group was not a committee subject to the open meeting law because it did not have any decision-making authority.

A.G. Op. 63a-5 (Aug. 28, 1996).

City councils also routinely appoint individual councilmembers to act as liaisons between the council and particular groups. These types of groups may be considered a committee that is subject to the open meeting law.

[Sovereign v. Dunn](#), 498 N.W.2d 62 (Minn. Ct. App. 1993). See also [Minnesota Daily v. Univ. of Minnesota](#), 432 N.W.2d 189 (Minn. Ct. App. 1988) and [Zahavy v. Univ. of Minnesota](#), 544 N.W.2d 32 (Minn. Ct. App. 1996).

The Minnesota Court of Appeals considered a situation where the mayor and one other member of a city council attended a series of mediation sessions regarding an annexation dispute that were not open to the public. The court of appeals held that the open meeting law did not apply to these meetings, concluding “that a gathering of public officials is not a ‘committee, subcommittee, board, department or commission’ subject to the open meeting law unless the group is capable of exercising decision-making powers of the governing body.”

## RELEVANT LINKS:

[Sovereign v. Dunn](#), 498 N.W.2d 62 (Minn. Ct. App. 1993).

[Thuma v. Kroschel](#), 506 N.W.2d 14 (Minn. Ct. App. 1993).

[A.G. Op. 63a-5 \(Aug. 28, 1996\)](#). DPO 16-005.

[St. Cloud Newspapers, Inc. v. District 742 Cmty. Sch.](#), 332 N.W.2d 1 (Minn. 1983).  
[Moberg v. Indep. Sch. Dist. No. 281](#), 336 N.W.2d 510 (Minn. 1983). DPO 18-003.

[Hubbard Broadcasting, Inc. v. City of Afton](#), 323 N.W.2d 757 (Minn. 1982).

[Moberg v. Indep. Sch. Dist. No. 281](#), 336 N.W.2d 510 (Minn. 1983). See also DPO 10-011 and DPO 06-017.

The court of appeals also noted that the capacity to act on behalf of the governing body is presumed where members of the group comprise a quorum of the body and could also arise where there has been a delegation of power from the governing body to the group.

In addition, a separate notice for a special meeting of the city council may also be required if a quorum of the council will be present at a committee meeting and will participate in the discussion.

For example, when a quorum of a city council attended a meeting of the city's **planning commission**, the Minnesota Court of Appeals ruled that there was a violation of the open meeting law, not because of the councilmembers' attendance at the meeting, but because the councilmembers conducted public business in conjunction with that meeting.

Based on that decision, the attorney general has advised that mere attendance by additional councilmembers at a meeting of a council committee held in compliance with the open meeting law would not constitute a special city council meeting requiring separate notice. The attorney general warned, however, that the additional councilmembers should not participate in committee discussions or deliberations, absent a separate notice of a special city council meeting.

## 5. Chance or social gatherings

Chance or social gathering of city councilmembers will not be considered a meeting subject to the open meeting law as long as there is not a quorum present, or, if a quorum is present, as long as the quorum does not discuss, decide, or receive information about official city business.

The Minnesota Supreme Court has held that a conversation between two councilmembers over lunch regarding an application for a special-use permit did not violate the open meeting law because a quorum was not present.

## 6. Serial meetings

The Minnesota Supreme Court has noted that meetings of less than a quorum of the public body held serially to avoid public hearings or to fashion agreement on an issue may violate the open meeting law depending on the circumstances.

## RELEVANT LINKS:

[Mankato Free Press v. City of North Mankato](#), 563 N.W.2d 291 (Minn. Ct. App. 1997).

[Mankato Free Press v. City of North Mankato](#), No. C9-98-677 (Minn. Ct. App. Dec. 15, 1998) (unpublished decision).

Compare [St. Cloud Newspapers, Inc. v. Dist. 742 Community Schools](#), 332 N.W.2d 1 (Minn. 1983) and [A.G. Op. 63a-5](#) (Feb. 5, 1975).

[A.G. Op. 63a-5](#) (Feb. 5, 1975).

DPO 16-006.

A Minnesota Court of Appeals' decision also indicates that serial meetings could violate the open meeting law. The Minnesota Court of Appeals considered a situation where individual councilmembers conducted separate, serial interviews of candidates for a city position in one-on-one closed interviews. Although the district court found that no meetings had occurred because there was never a quorum of the council present, the court of appeals remanded the decision back to the district court for a determination of whether the councilmembers had used this interview process for the purpose of avoiding the requirements of the open meeting law.

On remand, the district court found that the private interviews were not conducted for the purpose of avoiding the requirements of the open meeting law. This decision was also appealed, and the court of appeals, in an unpublished decision, agreed with the district court's decision.

A city that wants to hold private interviews with applicants for city employment should first consult with its city attorney.

## 7. Training sessions

Whether the participation of a quorum or more of councilmembers in a training program should be considered a meeting under the open meeting law would likely depend on whether the program includes a discussion of general training information or a discussion of specific matters relating to an individual city.

The attorney general has advised that a city council's participation in a non-public training program devoted to developing skills at effective communication was not a meeting subject to the open meeting law.

However, the opinion also stated that if there were to be any discussions of specific city business by the attending members, such as where councilmembers exchange views on the city's policy in granting liquor licenses, such discussions would likely violate the open meeting law.

The commissioner of the Department of Administration has likewise advised that a school board's participation in a non-public team-building session to "improve trust, relationships, communications, and collaborative problem solving among Board members," was not a meeting subject to the open meeting law if the members are not "gathering to discuss, decide, or receive information as a group relating to 'the official business' of the governing body."

However, the opinion also advised that if there were to be any discussions of specific official business by the attending members, either outside or during training sessions, it could be a violation of the open meeting law.

## 8. Telephone, email, and social media

**RELEVANT LINKS:**

[Moberg v. Indep. Sch. Dist. No. 281](#), 336 N.W.2d 510 (Minn. 1983).

DPO [09-020](#).

[O'Keefe v. Carter](#), No. A12-0811 (Minn. Ct. App. Dec. 31, 2012) (unpublished decision). But see DPO [17-005](#).

[Minn. Stat. § 480A.08, subd. 3](#).

[Minn. Stat. § 13D.065](#).

It is possible that communication through telephone calls, email, or other technology could violate the open meeting law. The Minnesota Supreme Court has indicated that communication through letters and telephone calls could violate the open meeting law under certain circumstances.

The commissioner of the Minnesota Department of Administration has advised that back-and-forth email communication among a quorum of a public body in which official business was discussed violated the open meeting law. However, the opinion also advised that “one-way communication between the chair and members of a public body is permissible, such as when the chair or a staff sends meeting materials via email to all board members, as long as no discussion or decision-making ensues.”

In contrast, the Minnesota Court of Appeals, in an unpublished decision, has concluded that email communications are not subject to the open meeting law because they are written communications and are not a “meeting” for purposes of the open meeting law.

The decision also concluded that even if the email messages were subject to the open meeting law, the substance of the emails in question did not contain the type of discussion that would be required for a prohibited “meeting” to have occurred. The decision noted that the substance of the email messages was not important and controversial; instead, it related to a relatively straightforward operational matter. The decision also noted that the town board members did not appear to make any decisions in their email messages.

Because this decision is unpublished, it is not binding on other courts. In addition, the outcome of this decision might have been different if the substance of the emails had related to something other than operational matters, for example, if the emails were attempting to build agreement on a particular issue that was going to be presented to the town board at a future meeting.

In 2014, the open meeting law was amended to provide that “the use of social media by members of a public body does not violate the open meeting law as long as the social media use is limited to exchanges with all members of the general public.” Email is not considered a type of social media under the new law.

The open meeting law does not define the term “social media,” but this term is generally understood to mean forms of electronic communication, including websites for social networking like Facebook, LinkedIn, and MySpace as well as blogs and microblogs like Twitter through which users create online communities to share information, ideas, and other content.

## RELEVANT LINKS:

[Moberg v. Indep. Sch. Dist. No. 281](#), 336 N.W.2d 510 (Minn. 1983). See Section II. H.6. - *Serial meetings*. See DPO 17-005.

[Minn. Stat. § 13.02, subd. 7.](#)

It is important to remember that the use of social media by city councilmembers could result in other claims, in addition to open meeting law claims, such as claims of defamation or of bias in decision making.

As a result, councilmembers should make sure that any comments they make on social media are factually correct, and they should not make any comments demonstrating bias on issues that will come before the council in the future for a quasi-judicial decision, such as the consideration of whether to grant an application for a conditional use permit.

It is also important to remember that serial discussions between less than a quorum of a public body that is subject to the open meeting law could violate the open meeting law under certain circumstances.

Therefore, city councils and other groups to which the open meeting law applies should take a conservative approach and avoid using letters, telephone conversations, email, and other such technology if the following circumstances exist:

- A quorum of the council will be contacted regarding the same matter.
- City business is being discussed.

Another thing councilmembers should be careful about is which email account they use to receive emails relating to city business because such emails would likely be considered government data that are subject to a public-records request under the Minnesota Government Data Practices Act (MGDPA). The best option would be for each councilmember to have an individual email account that the city provides and city staff manage.

However, this is not always possible for cities due to budget, size, or logistics.

If councilmembers don't have a city email account, there are some things to think about before using a personal email account for city business. First, preferably only the councilmember should have access to the personal email account. Using a shared account with other family members could lead to information being inadvertently deleted. Also, since city emails are government data, city officials may have to separate personal emails from city emails when responding to a public-records request.

Second, if the account a city councilmember wants to use for city business is tied to a private employer, that private employer may have a policy that restricts this kind of use.

## RELEVANT LINKS:

See Handbook, [Records Management](#), for more information about records management.

Minn. Stat. § 13.072, subd. 1(b).  
See DPO for an index of advisory opinions by topic.

See [Requesting an Open Meeting Law Advisory Opinion from DPO](#).

Minn. Stat. § 8.07.

See [index of Attorney General Advisory opinions from 1993 to present](#).

*Star Tribune Co. v. Univ. of Minnesota Bd. of Regents*, 683 N.W.2d 274, 289 (Minn. 2004).

Minn. Stat. § 13D.06, subd. 2. *O'Keefe v. Carter*, No. A12-0811 (Minn. Ct. App. Dec. 31, 2012) (unpublished decision). Minn. Stat. § 541.07 (2).

Even if a private employer allows this type of use, it is important to be aware that, in the event of a public-records request under the MGDPA or a discovery request in litigation, the private employer may be compelled to have a search done of a councilmember's email communication on the private employer's equipment or to restore files from a backup or archive.

What may work best is to use a free, third-party email service, such as gmail or Hotmail, for your city account and to avoid using that email account for any personal email or for anything that may constitute an official record of city business since such records must be retained in accordance with the state records-retention requirements.

## I. Advisory opinions

### 1. Department of Administration

The commissioner of the Minnesota Department of Administration has authority to issue non-binding advisory opinions on certain issues related to the open meeting law.

A court or other tribunal must give deference to an advisory opinion. A \$200 fee is required. The Data Practices Office (DPO) of the Department of Administration handles these requests.

A public body subject to the open meeting law can request an advisory opinion from the commissioner. In addition, a person who disagrees with the manner in which members of a governing body perform their duties under the open meeting law can also request an advisory opinion.

### 2. Minnesota Attorney General

The Minnesota Attorney General is authorized to issue written advisory opinions to city attorneys on "questions of public importance."

The Attorney General has issued several advisory opinions on the open meeting law.

Opinions of the Attorney General are not binding on the courts but are entitled to careful consideration when they are of long standing.

## J. Penalties

An action to enforce the open meeting law may be brought by any person in any court of competent jurisdiction where the administrative office of the governing body is located. In an unpublished decision, the court of appeals concluded that this broad grant of jurisdiction authorized a member of a town board to bring an action against his own town board for alleged violations of the open meeting law.

## RELEVANT LINKS:

[Minn. Stat. § 13D.06, subds. 1, 4.](#)

[Minn. Stat. § 13D.06, subd. 4.](#) See LMC information memo, [LMCIT Liability Coverage Guide](#), Section III-M, Open meeting law and bankruptcy lawsuits, for information about insurance coverage for lawsuits under the open meeting law.

[Minn. Stat. 13D.06, subd. 4.](#)

[Minn. Stat. § 13D.06, subd. 4 \(d\).](#) *Coalwell v. Murray*, No. C6-95-2436 (Minn. Ct. App. Aug. 6, 1996) (unpublished opinion). *Elseth v. Hille*, No. A12-1496 (Minn. Ct. App. May 13, 2013) (unpublished opinion).

[Minn. Stat. § 13D.06, subd. 3.](#) *Claude v. Collins*, 518 N.W.2d 836 (Minn. 1994). *Brown v. Cannon Falls Township*, 723 N.W.2d 31 (Minn. Ct. App. 2006). *Funk v. O'Connor*, 916 N.W.2d 319 (Minn. 2018).

[Minn. Stat. § 13D.06, subd. 3 \(b\) and \(c\).](#)

This same decision also concluded that a two-year statute of limitations applies to lawsuits under the open meeting law.

A councilmember who intentionally violates the open meeting law can be subject to personal liability in the form of a civil penalty of up to \$300. The city may not pay this penalty. A court may take into account a councilmember's time and experience in office to determine the amount of the penalty.

In addition, a court may award reasonable costs, disbursements, and attorney fees of up to \$13,000 to the person who brought the violation to court. The court may award costs and attorney fees to a city only if the action is found to be frivolous and without merit. A city may pay for any costs, disbursements, and attorney fees awarded.

If a plaintiff prevails in a lawsuit under the open meeting law, an award of reasonable attorney fees is mandatory if the court determines the public body was the subject of a prior written advisory opinion from the commissioner of the Department of Administration, and the court finds that the opinion is directly related to the lawsuit and that the public body did not act in conformity with the opinion.

A court is required to give deference to the advisory opinion in a lawsuit brought to determine whether the open meeting law was violated.

No monetary penalties or attorney fees may be awarded against a member of a public body unless the court finds there was intent to violate the open meeting law.

If a person is found to have intentionally violated this chapter in three or more separate, sequential actions, the person must be removed from office and may not serve in any other capacity with that public body for a period of time equal to the term of office the person was serving.

If a court finds a separate, third violation that is unrelated to the previous violations, it must declare the position vacant and notify the appointing authority or clerk of the governing body.

As soon as practicable, the appointing authority or governing body shall fill the position as in the case of any other vacancy.

## RELEVANT LINKS:

[\*Quast v. Knutson\*](#), 276 Minn. 340, 150 N.W.2d 199 (Minn. 1967).

[\*Sullivan v. Credit River Township\*](#), 217 N.W.2d 502 (Minn. 1974). [\*In re D & A Truck Line, Inc.\*](#), 524 N.W.2d 1 (Minn. Ct. App. 1994). [\*Lac Qui Parle-Yellow Bank Watershed Dist. v. Wollschlager\*](#), No. C6-96-1023 (Minn. Ct. App. Nov. 12, 1996) (unpublished opinion). DPO 11-004.

The open meeting law does not address whether actions taken at an improper meeting would be invalid. The Minnesota Supreme Court once held that an attempted school district consolidation was fatally defective when the initiating resolution was adopted at a meeting that was not open to the public.

However, in more recent decisions, Minnesota courts have refused to invalidate actions taken at improperly closed meetings. The Minnesota Supreme Court has noted that the open meeting law does not provide for such a remedy because the open meeting law “does not specify that actions taken at a meeting which is not public shall be invalid.”

## III. Meeting procedures

### A. Agendas

The city clerk generally prepares an agenda for council meetings. The agenda is then given to councilmembers and other interested individuals such as department heads and citizens.

The agenda establishes the order in which the matters will be addressed during the meeting.

Many city councils have found the following order of business convenient:

- Call to order.
- Roll call.
- Approval of minutes from previous meeting.
- Consent agenda.
- Petitions, requests, and complaints.
- Reports of officers, boards, and committees.
- Reports from staff and administrative officers.
- Ordinances and resolutions.
- Presentation of claims.
- Unfinished business.
- New business.
- Miscellaneous announcements.
- Adjournment.



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## MEMORANDUM

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**TO:** PLANNING COMMISSION  
**FROM:** RENEE CHRISTIANSON, COMMUNITY DEVELOPMENT SPECIALIST  
HALEY SEVENING, PLANNER I  
**RE:** ROUNDABOUT UPDATE  
**DATE:** JANUARY 22, 2020

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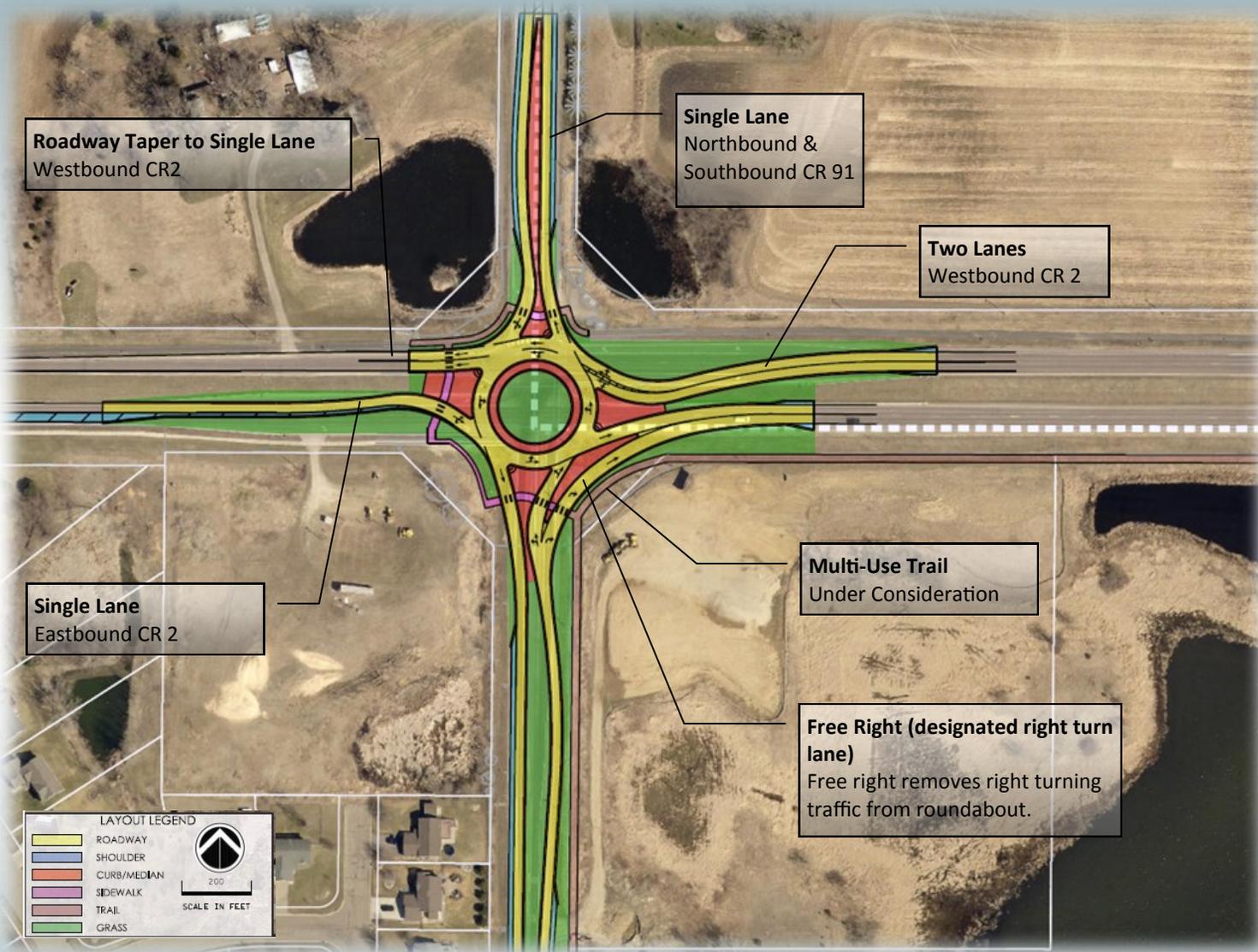
The roundabout project currently planned for the intersections of CSAH 2 & CSAH 91 is on schedule to be constructed in 2020. Final construction plans are complete and bidding documents are currently being prepared. The project will be advertised for bidding beginning on February 5<sup>th</sup>, 2020. Bids will be due and opened on Tuesday, March 3<sup>rd</sup>, 2020. Should the bids be generally consistent with the engineer's estimate for the project, bids are expected to be accepted and approved by the Elko New Market City Council on March 12<sup>th</sup>, 2020 and by the Scott County Board of Commissioners on March 17<sup>th</sup>, 2020. Pending successful award of the project, construction of the roundabout is expected to begin as soon as weather permits in the spring of 2020. Below are some facts about the project:

- Scott County secured a federal safety grant in the amount of \$1,792,800 for the roundabout project.
- Scott County is contributing \$178,000 towards construction of the multi-use trails
- The remaining costs, estimated at approximately \$1.2 million, will be paid by the City of Elko New Market.
- The intersection will be closed to traffic during construction of the roundabout.
- The intersection is expected to be closed for approximately 10 – 12 weeks.
- Trails along CSAH 2 & 91 are currently planned to be constructed with the project.
- Decorative lighting along CSAH 2, from the roundabout to the downtown area, may be included in the project, depending on overall project costs.
- The roundabout can be expanded to accommodate increased traffic in the future.
- Traffic traveling northbound on CSAH 91 to eastbound on CSAH 2 will not need to enter the intersection; a “free-right” turning lane will be included.

# ROUNDBABOUT AT CSAH 2 & 91

## PROJECT UPDATE

December, 2019



### PURPOSE:

The purpose of this project is to address safety concerns, reduce existing traffic delays, and plan for future growth at the CR 91 (Natchez Ave) & CR 2 (Main St) intersection.

### PROJECT BENEFITS:

- ◆ Traffic calming (reduced speeds)
- ◆ Eliminate risk of right-angle and head on crashes
- ◆ Increase mobility for peak conditions and future growth

### SCHEDULE:

- Concept Plans** ⇒ Completed June, 2018
- Final Design** ⇒ December, 2019
- Construction** ⇒ Summer 2020

### FUNDING:

- ◆ The base level design is estimated at **\$2.6 million**.
- ◆ Scott County / City secured a Highway Safety Improvement (HSIP) **grant of \$1.8 million**.
- ◆ Based on public input received, and information presented to the City Council, the following additional items are **under consideration** to be included in the project. Preliminary cost estimates are based on current concept plans:
  - ◇ Trails along the east side of CR 91 and south side of CR 2—\$302,000
  - ◇ Decorative / Acorn style lighting west of the roundabout and into downtown—\$318,000

### NEXT STEPS:

Project bidding is proposed January—March, 2020. The project will be constructed during the summer of 2020, with the intersection being fully closed during construction .

## HOW CAN I STAY INFORMED?

**Bolton & Menk**  
 Rich Revering, City Engineer  
 952-890-0509  
 richard.revering@bolton-menk.com

**City of Elko New Market**  
 Renee Christianson,  
 Community Development  
 952-461-2777  
 rchristianson@ci.enm.mn.us

Visit the City's webpage for project updates, background information, and for upcoming open house details, or contact the below City representatives. <https://www.ci.enm.mn.us>



### Current Volumes

Dominant AM movement: eastbound right-turn from CH 91  
Dominant PM movement: westbound thru traffic from CSAH 2



### Projected Volumes

Dominant AM movement: eastbound right-turn from CH 91  
Dominant PM movement: southbound left-turn from CSAH 2



### Safety First!

- High speed intersection
- Traffic levels increasing
- Long history of crashes
  - Six recorded crashes for last three-year period
  - Four injury crashes

### Roundabouts solve these problems!

- Almost 90% reduction in injury crashes
- Increased safety benefits over existing traffic control and traffic signals

# Trail Connections

CSAH 2 & CH 91 Roundabout



## Cost Estimates

CSAH 2 Trail

CH 91 Trail

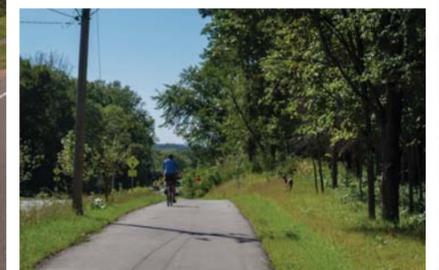
Total Estimated Cost \$301,410

**Note:** The County has included \$178,000 towards the trail improvements in their Transportation Improvement Plan

What will the trails look like?



Extension to existing trail south of Aaron Drive



Trail Examples

### Lighting Layout



 **Continuous Lighting**

 **Downtown Lighting**

 **Roundabout Lighting**

The proposed decorative lighting would extend from the roundabout along Main Street (CSAH 2) through the downtown.

- This lighting type is a continuation of lighting identified in **Downtown Improvement Committee** lighting plan (conduit for lighting is already installed in the downtown area).
- Light poles will include banner arm and flagpole attachments. These can be switched out seasonally or as desired.
- Light poles along Main St will create a sense of rhythm and continuation of streetscape elements to draw visitors into downtown from the roundabout. **Decorative lighting is also anticipated to contribute to traffic calming and creating a sense of place.**

**Estimated Cost:**

\$196,475 - CSAH 2 Continuous Lighting (between roundabout and Downtown)

\$121,950 - Downtown Lighting

**Total Estimated Cost: \$318,425**

**What else was considered?**

A continuation of the functional lighting (similar to that shown at the roundabout) as well as more decorative lighting styles were explored in the concept development. The acorn lighting style (left) was determined to achieve the best balance between cost and aesthetic character.

This is considered a safety feature and is included in the base cost of the roundabout.

**Estimated Cost: \$80,000 (included in base roundabout project cost)**





601 Main Street  
Elko New Market, MN 55054  
phone: 952-461-2777 fax: 952-461-2782

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## MEMORANDUM

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**TO:** CITY COUNCIL, PLANNING COMMISSION, EDA & CHAMBER OF COMMERCE  
**FROM:** RENEE CHRISTIANSON, COMMUNITY DEVELOPMENT SPECIALIST  
**SUBJECT:** COMMUNITY DEVELOPMENT UPDATES  
**DATE:** JANUARY 8, 2020

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### **Background / History**

The purpose of this memo is to provide updates regarding miscellaneous projects and activities being worked on by Community Development staff. Below is a summary of projects that are currently being worked on, inquiries received, and miscellaneous information:

**Christmas Pines** – There are a few items left to complete in this residential subdivision including landscaping, street signs, and installing a second/final layer of pavement. The development is eligible for two building permits at this time. The City has issued a building permit for one home in the development which is intended to be a spring Parade of Homes model.

**Boulder Heights** – Streets have now been paved in this 53 lot residential subdivision. There are still items left to be completed, including paving of 275<sup>th</sup> Street from CSAH 91 and Oxford Lane. The City will not be plowing the streets in this development over the 2019/2020 winter months. The City anticipates the development will be complete and fully ready for building permits in the spring of 2020.

**Dakota Acres / Global Properties** – The City Council approved the plat of Dakota Acres 2<sup>nd</sup> Addition, as proposed by Global Properties. The plat contains one 3.1 acre lot, and a 68-unit apartment development is currently planned on this lot. The first phase would consist of one 28-unit building and the second phase would contain one 40-unit building. The property is zoned High Density Residential and apartments are a permitted use. Below is a rendering of a proposed building. The plat has not yet been filed with the County Recorder's Office.



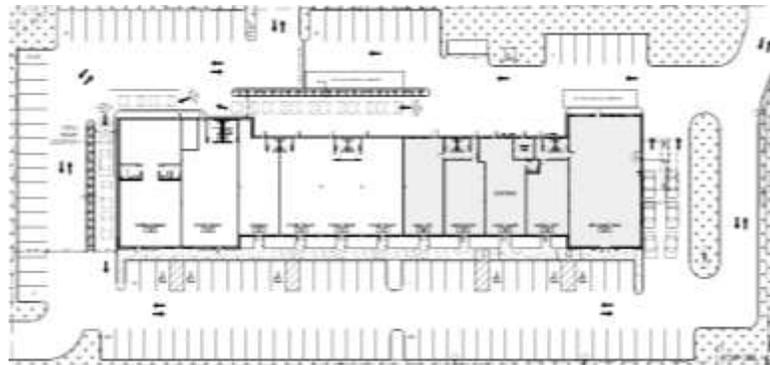
**Dakota Acres 1<sup>st</sup> Addition / Syndicated Properties** – This plat, which contains 28 attached townhome units, has been recorded with Scott County. The City has issued a building permit for one 4-unit townhome building within this development, which is now under construction. Construction of the private street in the development, and additional townhome units, is planned for the spring of 2020. An additional 24 townhome units are planned in 2020.



**Adelmann Property** – City staff has been working with the Adelmann family and their consultants in the preparation of an AUAR (environmental study) for their 242.5 acres located on the west side of the I-35 / CSAH 2 interchange. As part of the AUAR and preparation for development, several studies are being completed, including a wetland delineation, traffic impact study, tree inventory, Phase I ESA, and geotechnical work. The City Council received a presentation on the AUAR on December 19, 2019, and are expected to authorize a required 30-day comment period in late January, 2020. Staff is also working with the Adelmann family regarding the possible extension of municipal utilities to the property.



**Elko New Market Commerce Center** – Construction is underway on Phase II of the Elko New Market Commerce Center. The building permit has been issued on the “shell” building only. Finishing of the individual unit (interiors) will require separate building permits. Building completion is expected in the spring of 2020. The building cannot be occupied until the parking lot improvements are complete.



**Degross Property** – City staff is working with a developer regarding possible development of the Degross property located between France & Xerxes Avenues, on the south side of CSAH 2. A wetland delineation has been completed and the City has approved the wetland boundaries for the site. The developer has indicated that concept plans have been completed but they have not yet been submitted to the City for review.



**Pete's Hill** – Construction on this 45 lot residential development has ceased for the season.

**Business Leads** – Community Development staff are working on the following business leads (no official development applications have been received.)

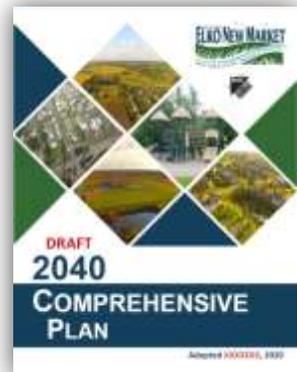
- **Convenience Store** - City staff is currently working on a convenience store that is interested in locating in the community. The business has completed a draft site design, and is working through some covenants that apply to the property before submitting any information to the City.
- **Grocery Store** – City staff is currently working with a grocery store chain that is interested in locating in the community. The business is currently evaluating various sites and the financial feasibility of locating in Elko New Market. City staff has provided tax estimates to the business.

**Building Permits** – The City issued a building permit for one housing unit in December, 2019.

**Ordinance Updates** –

- **Recreational Vehicle Storage** – The Planning Commission is currently reviewing, and considering amendments to the City Code regarding the parking of recreational vehicles (boats, campers, fish houses, etc.) on residential properties within the City. A public hearing on the proposed ordinance amendments is scheduled for January 22, 2020.
- **Garbage and Refuse** – The Planning Commission is currently reviewing, and considering amendments to the City Code regarding the storage of garbage receptacles in residential zoning districts. The current ordinance requires that all garbage receptacles be stored within an enclosed building or fully screened from view. A public hearing on the proposed ordinance amendments is scheduled for January 22, 2020.

**2040 Comprehensive Plan** – City staff has been working on the draft 2040 Comprehensive Plan. The Planning Commission received an overview of the draft 2040 Comprehensive Plan on November 26, 2019 and December 17, 2019. The City Council will receive an overview of the draft on January 9, 2020, and is expected to approve the draft Plan for review by adjacent jurisdictions. Adoption of the final plan is anticipated in 2020.



**Infrastructure Extension to I35/CSAH 2 Interchange Area**

City staff has been in discussion with Scott County and Scott County Community Development Agency staff, and property owners, regarding the possible extension of municipal utilities to the interchange area. If constructed, the utility extensions would open up property that is guided to commercial/industrial development.



**Roundabout Project** – City staff, Scott County, and Bolton & Menk, the City’s engineering firm, have been working on the roundabout project. Construction plans are complete and the project is scheduled to be released for bidding on February 5, 2020. Bid opening is currently scheduled for March 6, 2020. Pending favorable bids, the project is expected to be approved for construction in 2020. The intersection will be closed during construction of the roundabout. Scott County received a \$1.8 million safety grant to construct the roundabout.





Active Projects and/or Discussion  
January 8, 2020

Dakota Acres 1st Addition:  
28 townhome units.  
Approved by City.

Dakota Acres 2nd Addn:  
68-unit apartment development.  
Approved by City.

Addition to existing  
Elko New Market Retail Center  
under construction.

Christmas Pines:  
Residential subdivision containing  
20 detached townhome units.  
Construction mostly complete.

Proposed Roundabout:  
Construction proposed in 2020.  
Design complete; project to be bid  
in February/March 2020.

Degross Property:  
Wetland application approved.  
Concept development plans  
being prepared.

Adelmann Property:  
Environmental study in process.

Pete's Hill:  
Residential subdivision containing  
45 residential lots.  
Under construction.

Boulder Heights:  
Residential subdivision containing  
53 single family residential lots.  
Construction nearing completion.