

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

RICHARD BERGMANN, CHAD)	
BERGMANN, KEITH BERGMANN,)	
TROY BERGMANN, COUNTRY SUN)	
FARM & GREENHOUSE, INC.,)	
a Minnesota corporation, ANDREW)	
DANIELS, LYNN SMITH and)	
DAN FITZGERALD,)	
)	No.
Plaintiffs,)	
)	
v.)	
)	
CITY OF LAKE ELMO, A MUNICIPAL)	
CORPORATION, DEAN JOHNSTON,)	
STEVE DELAPP, BRETT EMMONS,)	
NICOLE PARK, and ANNE SMITH, in)	
their Official Capacities,)	
)	
Defendants.)	
)	

CIVIL RIGHTS COMPLAINT FOR DECLARATORY & INJUNCTIVE RELIEF AND
FOR NOMINAL DAMAGES

COME NOW RICHARD BERGMANN, CHAD BERGMANN, KEITH BERGMANN, TROY BERGMANN, and COUNTRY SUN FARM & GREENHOUSE, INC., a Minnesota corporation, ANDREW DANIELS, LYNN SMITH and DAN FITZGERALD, Plaintiffs, and complain against CITY OF LAKE ELMO, a municipal corporation, DEAN JOHNSTON, STEVE DELAPP, BRETT EMMONS, NICOLE PARK, & ANNE SMITH, in their Official Capacities as Members of the Lake Elmo City Council, and state as follows:

Introduction

This civil rights action seeks to vindicate the constitutional rights of small farmers engaged in the interstate purchase and sale of pumpkins and Christmas trees, and to ensure the

survival of a longstanding and thriving local market in those goods. The City forbids Lake Elmo farmers from selling any agricultural goods from their own land unless those goods are grown in Lake Elmo. Almost all of the pumpkins and all of the Christmas trees that certain Plaintiffs purchase from other Plaintiffs to sell on their Lake Elmo farm are not grown in Lake Elmo and thus may no longer be sold. The City of Lake Elmo's economic protectionism therefore threatens the Plaintiffs with loss of business, fines, and imprisonment, and threatens to destroy the market the farmers serve and which the public enjoys. This discrimination is a violation of the Commerce Clause of the United States Constitution which guarantees a national market free from local protectionism. To prevent further damage to their interests and those of Lake Elmo consumers, Plaintiffs request preliminary and permanent declaratory and injunctive relief and nominal damages against Defendant the City of Lake Elmo.

JURISDICTION AND VENUE

1. This case is brought under 28 U.S.C. § 2201 and 42 U.S.C. §§ 1983 and 1988.
2. Subject-matter jurisdiction is based on 28 U.S.C. §§ 1331 and 1343(a)(1), (3) and (4).
3. Venue is appropriate in this District under 28 U.S.C. § 1391(b) because jurisdiction is not founded solely on diversity of citizenship, all defendants reside in the same state, all of the defendants reside in this District, and a substantial part of the events giving rise to the claim occurred in this District..

THE PARTIES

4. Plaintiff Richard Bergmann owns and is an officer of Country Sun Farm & Greenhouse, Inc., a Minnesota corporation located in Lake Elmo that is also a Plaintiff in this action.

5. Plaintiffs Chad Bergmann, Keith Bergmann, and Troy Bergmann are sons of Richard Bergmann, and all are employees of Country Sun Farm & Greenhouse, Inc. (Richard, Chad, Keith, Troy and Country Sun Farm & Greenhouse, Inc. are hereinafter collectively known as the “Bergmann Plaintiffs.”)

6. The Bergmann Plaintiffs all reside in this District, and all except Troy Bergmann reside in Lake Elmo, Minnesota.

7. The Bergmann Plaintiffs individually own farmland at various sites in Wisconsin in which they grow produce that is later sold at Country Sun Farm.

8. The Bergmann Plaintiffs are engaged in interstate commerce.

9. Plaintiff Andrew Daniels owns land where he resides outside of Columbus, Nebraska, and where he runs a business known as Daniels Produce.

10. Among other things, Daniels Produce grows and sells pumpkins to buyers in Nebraska and around the United States.

11. Andrew Daniels is engaged in interstate commerce.

12. Plaintiff Lynn Smith resides in Banner Elk, North Carolina. He grows and sells Christmas trees to buyers in North Carolina and around the United States.

13. Lynn Smith is engaged in interstate commerce.

14. Plaintiff Dan Fitzgerald resides in New Richmond, Wisconsin. He grows and sells Christmas trees to buyers in Wisconsin and around the United States.

15. Dan Fitzgerald is engaged in interstate commerce.

16. Defendant City of Lake Elmo is a municipal corporation governed by the laws of the State of Minnesota.

17. Defendant Dean Johnston is the Mayor of the City of Lake Elmo and as a duty of that office sits and votes on the City Council.

18. Defendants Steve DeLapp, Brett Emmons, Nicole Park, and Anne Smith are the remaining members of the Lake Elmo City Council.

19. Collectively Johnston, DeLapp, Emmons, Park, and Anne Smith are the legislative body for the City of Lake Elmo (hereinafter referred to as "City Council Defendants") and are responsible for making and enforcing the City's laws and policies.

20. The City Council Defendants are sued in their official capacities.

21. The City Council Defendants have acted under the color of state and municipal law at all times alleged herein.

FACTS

The Plaintiffs' Interstate Commercial Activities

The Bergmanns and Country Sun Farm

22. Since 1972, the Bergmann Plaintiffs have sold agricultural products both grown inside and outside of Lake Elmo from the property that is now known as Country Sun Farm.

23. In the early years, when the business was simply called "The Berry Farm," the farm included a "U-pick" operation where the public would come and pick their own berries and pumpkins, both outside and in a greenhouse. At that time, the family also directly sold many different products to customers who would come to the farm, including raspberries, apples, seed potatoes, set onions, and pumpkins. These products were grown at the Bergmanns' farm, in the surrounding communities, and in other states.

24. The Bergmann Plaintiffs have been selling pumpkins from their Lake Elmo farm since the 1970s, including, although not in every year, pumpkins grown in other states.

(Hereinafter pumpkins grown in states other than Minnesota are known as “interstate pumpkins.”)

25. In 1985 the Bergmann Plaintiffs founded Country Sun Farm on the same property, and refocused the business on its greenhouses and pumpkin sales.

26. Also, since prior to 1985 and through the present, the Bergmann Plaintiffs have grown flowers and plants in their greenhouses to sell to the public at Country Sun Farm.

27. Additionally, since 1985 the Bergmann Plaintiffs have sold, during November and December, Christmas trees at Country Sun Farm. The sale of holiday items, such as homemade wreaths, garlands, and ornaments, supplements the sale of Christmas trees.

28. Since 1985, almost all of the Christmas trees sold at Country Sun Farm were grown in states other than Minnesota. (Christmas trees grown in states other than Minnesota are hereinafter known as “interstate Christmas trees.”)

29. Further, since 1992, as a supplement to the income from their fall pumpkin sales, the Bergmanns have offered farm entertainment activities. These have included hay rides, a corn maze, a petting zoo, and a haunted house, as well as—since 2004—carnival-style concessions, such as popcorn and hot dogs.

30. The Bergmann Plaintiffs provide jobs to the local community, in addition to providing a fun place for families to visit during the fall harvest.

31. Over time it became harder for the Bergmann Plaintiffs to grow pumpkins at Country Sun Farm because the local deer population would routinely damage the crop.

32. To avoid the deer problem and keep the business operating, the Bergmann Plaintiffs turned to interstate commerce.

33. The Bergmann Plaintiffs now collectively grow pumpkins on their various individually-owned Wisconsin farmland properties and then seasonally sell them from Country Sun Farm.

34. The Bergmann Plaintiffs have sold pumpkins grown in Wisconsin from Country Sun Farm in every year since at least 2003.

35. At times the Bergmann Plaintiffs' pumpkin crop in Wisconsin partly fails because of deer, weather or disease and the Bergmann Plaintiffs are therefore not able to grow enough pumpkins in Lake Elmo or Wisconsin to meet the public's expected demand at Country Sun Farm. In those years they purchase additional pumpkins from other growers, including Daniels Produce in Nebraska.

36. Until 2009, Defendant City of Lake Elmo repeatedly granted permits to the Bergmann Plaintiffs to operate greenhouses and a sales lot at Country Sun Farm, and did not question where the items were grown.

37. In 2010 the Bergmann Plaintiffs intend to contract with Plaintiff Lynn Smith to purchase Christmas trees.

38. In 2010, if their own pumpkin crop on their Wisconsin land turns out to be inadequate, the Bergmann Plaintiffs intend to contract with Plaintiff Andrew Daniels to purchase pumpkins.

39. The Bergmann Plaintiffs intend, in future years after 2010, to contract with Plaintiff Dan Fitzgerald when he has Christmas trees that are available for sale.

Chad Bergmann

40. In addition to his work at Country Sun Farm, and the pumpkins he sells there, Chad Bergmann would like to engage in interstate commerce by growing blueberries and sweet

corn on the family's land in Wisconsin and sell them from a seasonal wayside stand on the property of his Lake Elmo home. He already has planted blueberry bushes in Wisconsin and hopes to have blueberries ready to sell to the public by July, 2010.

Andrew Daniels

41. Andrew Daniels has on multiple occasions, including 2004 and 2008, sold pumpkins to the Bergmann Plaintiffs.

42. Andrew Daniels plans to sell pumpkins to the Bergmann Plaintiffs again in the future, including in 2010 if needed, that can then be resold from Country Sun Farm.

Lynn Smith

43. Plaintiff Lynn Smith sold Christmas trees grown from his farm in North Carolina to the Bergmann Plaintiffs in 2009 that the Bergmann Plaintiffs then sold at Country Sun Farm.

44. Lynn Smith plans to sell Christmas trees to the Bergmann Plaintiffs again in 2010 and in future years that can then be resold from Country Sun Farm.

Dan Fitzgerald

45. Plaintiff Dan Fitzgerald sold Christmas trees grown on his family's property in Wisconsin to the Bergmann Plaintiffs for the years 2005 through 2008 that the Bergmann Plaintiffs then sold from Country Sun Farm.

46. Dan Fitzgerald plans to offer to sell Christmas trees to the Bergmann Plaintiffs again in the future that can then be resold from Country Sun Farm.

The Lake-Elmo-Only Sales Policy for Lake Elmo Farms

47. In Fall 2009, the Bergmann Plaintiffs applied to the City of Lake Elmo for a permit to continue to operate greenhouses at Country Sun Farm, expand their parking lot, and

offer farm entertainment services such as hay rides, a corn maze, a petting zoo, and a haunted house, and accompanying carnival-style concessions.

48. Although the Bergmann Plaintiffs have offered activities such as hay rides since 1992, the City of Lake Elmo has only required a permit for an "Agricultural Entertainment Business" since 2008, Lake Elmo City Code § 11.01. Therefore the Bergmann Plaintiffs did not apply for such a permit until Fall, 2009.

49. In response to the permit application, the City Council Defendants unanimously voted on December 1, 2009, that the Bergmann Plaintiffs can continue to operate greenhouses, can maintain an expanded parking lot, and can offer farm entertainment services and concessions.

50. But the City Council Defendants also stated on December 1, 2009 that the City would begin enforcing a ban on farmers' sale of Christmas trees and other agricultural products not grown in Lake Elmo beginning December 31, 2009. (This policy to enforce a ban on the sale of non-Lake Elmo Christmas trees and other agricultural products not grown in Lake Elmo is hereinafter referred to as the "Lake-Elmo-Only Sales Policy.")

51. The City Council also voted on December 1, 2009 that the Bergmann Plaintiffs, specifically, cannot sell pumpkins or Christmas trees grown outside of Lake Elmo from Country Sun Farm. The permit wherein this denial was made, at Paragraph 10, is attached as Exhibit A.

52. The City Council Defendants publicly admitted at the December 1, 2009 City Council meeting that the City had not previously enforced the City Code provisions the Lake-Elmo-Only Sales Policy is based upon.

53. The Lake-Elmo-Only Sales Policy is based upon the City Code's regulation of sales from property zoned "Agricultural" and "Rural Residential."

54. On both types of property the sale of agricultural products is allowed only through a “Wayside Stand” or an “Agricultural Sales Business.” Lake Elmo Code, § 154.33(A)(8) & (9) (Agricultural property); § 154.36(A)(3) & (4) (Rural Residential).

55. Lake Elmo Code § 11.01 defines “Wayside Stand” as:

A temporary structure or vehicle used for the seasonal retail sale of agricultural goods produced by the operator of the wayside stand on-site or on other property in Lake Elmo

56. Lake Elmo code defines § 11.01 “Agricultural Sales Business” as:

The retail sale of fresh fruits, vegetables, flowers, herbs, trees, or other agricultural, floricultural, or horticultural products produced on the premises. The operation may be indoors or outdoors, include pick-your-own opportunities, and may involve accessory sales of unprocessed foodstuffs; home processed food products such as jams, jellies, pickles, sauces; or baked goods and homemade handicrafts. The floor area devoted to the sale of accessory items shall not exceed 25% of the total floor area. No commercially packaged handicrafts or commercially processed or packaged foodstuffs shall be sold as accessory items. No activities other than the sale of goods as outlined above shall be allowed as part of the Agricultural Sales Business.

57. The Code’s definitions of “Wayside Stand” and “Agricultural Sales Business,” taken together with the Code’s regulation of Agricultural and Rural Residential property, prohibit sales of agricultural products not grown in Lake Elmo.

58. Before 2008 the Lake Elmo City Code, as interpreted by the City, did not forbid the Bergmann Plaintiffs from selling interstate pumpkins and Christmas trees from Country Sun Farm.

59. Lake Elmo is approximately 6 miles from the Minnesota-Wisconsin border.

60. Lake Elmo itself is approximately 6 miles across, from its northern border to its southern border and over 22 square miles in land area.

61. The Lake Elmo City Code's ban on the sale of non-Lake Elmo agricultural products from Agriculturally-and Rural Residentially-zoned property facially discriminates against interstate commerce.

62. Country Sun Farm is partly zoned as Agricultural and partly zoned as Rural Residential.

63. Chad Bergmann's Lake Elmo home is zoned as Rural Residential.

64. The enforcement of the Lake-Elmo-Only Sales Policy makes the sale of all interstate pumpkins and Christmas trees on Lake Elmo farm property forbidden.

65. Defendant Mayor Johnston publicly admitted at the December 1, 2009 City Council meeting that immediately enforcing the Lake-Elmo-Only Sales Policy against the Bergmann Plaintiffs and other Lake Elmo farmers would be "punitive," and therefore enforcement was stayed until December 31, 2009.

66. In reviewing the Bergmann Plaintiffs' 2009 application to the City, no agent of the City asked any of the Bergmann Plaintiffs how much of their inventory comes from outside Lake Elmo, or how much traffic to Country Sun Farm is due to the sale of pumpkins or Christmas trees from outside Lake Elmo.

67. Upon information and belief, in reviewing the Bergmann Plaintiffs' 2009 application to the City, no agent of the City made any independent investigation into the actual numbers of pumpkins or Christmas trees sold at Country Sun Farm or where they were actually grown.

68. Although the hypothetical bases for the ruling excluding sales of non-Lake Elmo pumpkins and Christmas trees from Country Sun Farm are that it would increase traffic and

decrease the rural character of the land, these bases are pretextual. The true purpose is to prevent the sale of non-Lake Elmo goods and to protect Lake Elmo produce from competition.

69. Preventing the Bergmann Plaintiffs from selling interstate pumpkins and Christmas trees will reduce the competition faced by other Lake Elmo farms that sell pumpkins or Christmas trees grown in Lake Elmo.

The Lake Elmo Market in Interstate Pumpkins and Christmas Trees

70. Farms such as Country Sun Farm depend on business from consumers in urban and suburban areas who visit farms in order to experience agricultural activities such as hayrides and corn mazes, as well as to purchase seasonal products like pumpkins and Christmas trees from a farm.

71. Due to differences in the buying experience, selling pumpkins and Christmas trees directly to the public from a farm are distinct markets from sale of these items at a traditional grocery store.

72. In 2009 all Christmas trees sold in Lake Elmo were sold from farms and almost all pumpkins sold in Lake Elmo were sold from farms.

73. On information and belief, in 2009 the majority of pumpkins and the majority of Christmas trees sold in Lake Elmo were interstate pumpkins and interstate Christmas trees.

74. Enforcement of the Lake-Elmo-Only Sales Policy completely eliminates Lake Elmo's market in interstate pumpkins and interstate Christmas trees.

HARM TO PLAINTIFFS

75. Under the City Code and the Lake-Elmo-Only Sales Policy, the sale of interstate pumpkins or Christmas trees from a Lake Elmo farm is a misdemeanor subject to a fine and/or incarceration. Lake Elmo Code, § 10.99, § 154.999.

76. Between 2005 and 2009, inclusively, between 15% and 23% of Country Sun Farm & Greenhouse, Inc.'s gross income has been from interstate pumpkin and interstate Christmas tree sales.

77. Farm entertainment activities and concessions that supplement and depend on the pumpkin sales have additionally comprised between 5% and 9% of gross income.

78. The Bergmann Plaintiffs will be financially harmed if they are no longer able to sell interstate pumpkins and Christmas trees from Country Sun Farm, as between 20% and 32% of Country Sun Farm & Greenhouse, Inc.'s gross expected income will disappear.

79. Plaintiffs Andrew Daniels, Dan Fitzgerald, and Lynn Smith will be harmed if the Bergmann Plaintiffs are no longer able purchase their respective interstate pumpkins and Christmas trees to sell at Country Sun Farm.

80. Chad Bergmann will be harmed if he is unable to sell sweet corn and blueberries grown on the family's land in Wisconsin from a wayside stand at his Lake Elmo home.

81. Consumers in Lake Elmo and surrounding communities will be harmed if they are no longer able to purchase interstate pumpkins and Christmas trees from Lake Elmo farms.

82. The thriving Lake Elmo market for interstate pumpkins and Christmas trees will be harmed, and likely eliminated, if interstate pumpkins and Christmas trees can no longer be sold from Lake Elmo farms.

83. Lake Elmo farms that only sell pumpkins or Christmas trees grown in Lake Elmo will benefit from the Lake-Elmo-Only Sales Policy as it will suppress their competition.

84. It is highly unlikely that as many interstate pumpkins and Christmas trees will be sold in Lake Elmo with the Lake-Elmo-Only Sales Policy in effect than were sold before the policy was implemented.

85. It is highly unlikely that Andrew Daniels, Dan Fitzgerald, or Lynn Smith will be able to sell as many, or even any, pumpkins or Christmas trees to Lake Elmo buyers if the Lake-Elmo-Only Sales Policy continues to be enforced.

86. In Lynn Smith's business, his contracts for purchase of Christmas trees generally are completed when the season's crop of trees are readied for market in June or July. A contract is generally agreed to before approximately July 31 and a 25% deposit is paid with the balance paid when the trees are delivered in late fall.

87. If the Bergmann Plaintiffs are not able to contract to purchase Christmas trees from Lynn Smith by approximately July 31, 2010 then he may have to find other customers for 2010 sales and he may not have inventory available to sell to the Bergmanns later in 2010.

88. In Andrew Daniels' business, contracts for purchase of pumpkins are generally entered into in August or early September for that September and October's pumpkin sales.

89. If the Bergmann Plaintiffs are not able to contract to purchase pumpkins from Andrew Daniels by approximately September 15, 2010 then he may have to find other customers for 2010 sales and he may not have inventory available to sell to the Bergmanns later in 2010.

90. Even if the City of Lake Elmo amends its ordinances to allow for interstate pumpkins and Christmas trees to be sold from Lake Elmo farms, the Bergmann Plaintiffs have already been injured as of the filing of this Complaint through uncertainty in knowing whether they can or should contract with the other Plaintiffs for the purchase of pumpkins or Christmas trees.

91. Similarly, the other Plaintiffs have already been injured through uncertainty in knowing whether they can contract with the Bergmann Plaintiffs, whether they can risk

contracting with the Bergmann Plaintiffs, and whether to take steps to find new customers outside of Lake Elmo because the Lake Elmo market may be closed to them.

92. Even if the City of Lake Elmo amends its ordinances to allow for interstate pumpkins and Christmas trees to be sold from Lake Elmo farms, the Bergmann Plaintiffs have already been injured as of the filing of this Complaint through uncertainty in knowing whether they will be able to sell their pumpkins grown in Wisconsin at retail prices from Country Sun Farm, or whether they will have to sell them to wholesalers at lower prices.

CONSTITUTIONAL VIOLATION

Count 1: Dormant Commerce Clause

93. The allegations contained in paragraphs 1- 92 are incorporated by reference as if fully set forth herein.

94. Article I, Section 8, Clause 3 of the United States Constitution is known as the Commerce Clause. The Clause grants to Congress the power “to regulate Commerce . . . among the several States.” It is not only a positive grant of power to Congress but also a negative constraint on states’ ability to restrict trade, which is known as the “dormant” Commerce Clause.

95. Through the Lake-Elmo-Only Sales Policy, the City of Lake Elmo and the City Council Defendants have used and are using their legislative and enforcement powers to restrict and terminate the thriving interstate market in pumpkins and Christmas trees in Lake Elmo.

96. The Lake Elmo-Only-Sales Policy and the Code provisions on which it is based discriminates facially, in purpose, and in effect, against interstate commerce by requiring that sales of pumpkins and Christmas trees from farms may only be made if the products are grown in Lake Elmo or on-site. In so doing they do not serve a legitimate local purpose that could not be served as well by available nondiscriminatory means.

97. The Lake Elmo-Only-Sales Policy and the Code provisions on which it is based place a burden on interstate commerce that is clearly excessive in relation to the putative local benefits.

98. Defendants are violating Plaintiffs' clearly-established rights. Absent a declaration of Plaintiffs' constitutional rights, Defendants will continue to violate Plaintiffs' rights.

99. Unless the Lake-Elmo-Only Sales Policy and the Code provisions on which it is based are declared unconstitutional and Defendants' employees, agents, representatives and successors are enjoined from enforcing the Lake-Elmo-Only Sales Policy, Plaintiffs are in imminent danger of suffering, have suffered and/or will continue to suffer irreparable harm.

100. For reasons including but not limited to those stated in this Complaint, the Plaintiffs have no other adequate legal or other remedy by which to prevent or minimize the continuing irreparable harm to their constitutional rights.

PRAYER FOR RELIEF

Wherefore, Plaintiffs respectfully request relief as follows:

1. Enter a judgment declaring that Defendants' policy of forbidding the sales of interstate pumpkins and Christmas trees from Lake Elmo farms violates Article I, Section 8, Clause 3 of the United States Constitution and that Plaintiffs have the constitutional right to engage in interstate commerce.

2. Temporarily, preliminarily and permanently restrain and enjoin Defendants and their employees, agents, representatives and successors from preventing the Bergmann Plaintiffs from selling interstate pumpkins and Christmas trees from the site of Country Sun Farm.

3. Temporarily, preliminarily and permanently restrain and enjoin Defendants and their employees, agents, representatives and successors from interfering, directly or indirectly, with the Bergmann Plaintiffs' purchase of pumpkins or Christmas trees from Andrew Daniels, Dan Fitzgerald, or Lynn Smith, their employees, agents, representatives or successors, or businesses or entities controlled by them.

4. Temporarily, preliminarily and permanently restrain and enjoin Defendants and their employees, agents, representatives and successors from preventing Chad Bergmann from selling, from a wayside stand at his Lake Elmo home, agricultural goods he grows on the family's land in Wisconsin.

5. Award nominal damages of \$1.00 in favor of Plaintiffs and against the City of Lake Elmo.

6. Award attorneys' fees and costs pursuant to 42 U.S.C. § 1988; and

7. Award such other further legal and equitable relief as the Court deems just, equitable and proper.

Dated: May 18, 2010

Respectfully submitted,

/s/ Anthony B. Sanders
Anthony B. Sanders (MN Bar No. 0387307)
Jason A. Adkins (MN Bar No. 0387145)
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STATE OF MINNESOTA
COUNTY OF WASHINGTON
CITY OF LAKE ELMO

Resolution No. 2009-047

**A RESOLUTION APPROVING A CONDITIONAL USE PERMIT FOR AN
AGRICULTURAL ENTERTAINMENT BUSINESS ON 65 ACRES FOR COUNTRY
SUN FARM AND GREENHOUSE**

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

WHEREAS, Richard and Eileen Bergmann on behalf of Country Sun Farm and Greenhouse (the "Applicants"), 11211 60th Street North, have submitted an application to the City of Lake Elmo (the "City") for an Agricultural Entertainment Business Conditional Use Permit for the entire 67 acres, to clarify existing uses on the site, and to build an overflow parking lot; a copy of which is on file at city hall;

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

WHEREAS, the Lake Elmo Planning Commission held a public hearing on said matter on November 23, 2009; and

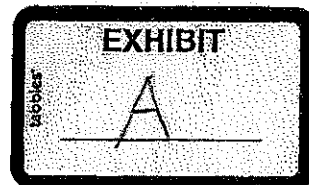
WHEREAS, the Lake Elmo Planning Commission has submitted its report and recommendation to the City Council as part of a Staff Memorandum dated December 1, 2009; and

WHEREAS, the City Council considered said matter at its December 1, 2009, meeting.

NOW, THEREFORE, based on the testimony elicited and information received, the Board of Adjustment makes the following findings:

FINDINGS

- 1) That the procedures for obtaining said Conditional Use Permit are found in the Lake Elmo Zoning Ordinance, Section 154.018.



- 2) That all the submission requirements of said Section 154.018 have been met by the Applicant.
- 3) That the proposed Conditional Use Permit for an Agricultural Entertainment Business would include the construction of a 39,900 square foot parking lot.
- 4) That the proposed Conditional Use Permit for an Agricultural Entertainment Business would encompass 65 acres (this does not include the approximately two acres of the parcel that falls to the south and east of 11459 60th Street).
- 5) The proposed Conditional Use Permit for an Agricultural Entertainment Business would supplant all previous CUP permits for this property and permit the following uses:
 - a. Corn Maze
 - b. Hay Ride
 - c. Petting Zoo / Farm
 - d. Haunted house
 - e. Seasonal Sales of related Christmas decorations (such as wreaths or other agricultural-type creations)
 - f. Children Activities and Games with an Agricultural component
- 6) That the proposed Agricultural Entertainment Business Conditional Use Permit meets the review criteria for Conditional Use Permits (Section 154.018) and the review criteria for Agricultural Entertainment Businesses (Section 154.033).
 - a. In 2008, the City of Lake Elmo approved Ordinance 08-006 which defined Agricultural Entertainment Business and identified the use as conditionally permitted in the Agricultural and Rural Residential zoning districts.
 - c. The addition of the overflow parking area would take advantage of existing disrupted areas as a result of work done by Northern Natural Gas.
 - d. The CUP for an Agricultural Entertainment Business at this time does not permit the increase of intensity of the uses, but instead clarifies the permissible uses on the site for staff and the property owners.
 - e. The conditions outlined in both Section 154.018 for Conditional Use Permits and Section 154.033 for Agricultural Entertainment Businesses are met.
 - f. The proposed overflow parking areas (both improved and grass) would reduce or eliminate the parking that may take place on State Highway 36 by visitors to the site.
- 7) That the following uses on the site are identified as a permitted use in the Agricultural or Rural Residential Zoning Districts:
 - a. Growing of field crops
 - b. Housing and Care of Livestock
 - c. Growing of Flowers

- 8) That the following uses on the site are identified as an Agricultural Sales Business or a Wayside stand, both of which are allowed/permitted within the Agricultural or Rural Residential Zoning District:
 - a. Seasonal Sales of fresh flower and plant material [if the products are produced on the premises or can meet the definition of "wayside stand"]
 - b. Seasonal Sale of pumpkins [if the products are produced on the premises or can meet the definition of "wayside stand"]
 - c. Seasonal Sale of Christmas trees [if the products are produced on the premises or can meet the definition of "wayside stand"]

- 9) That the following use on the site is identified as incidental to the property and is permitted in all zoning districts.
 - a. Halloween / Holiday decorations

- 10) That the following uses on the site are not allowed/permitted, nor conditionally permitted on the site:
 - a. Children Activities and Games without an Agricultural component
 - b. Seasonal Sales of fresh flower and plant material [if the products are NOT produced on the premises and can NOT meet the definition of "wayside stand"]
 - c. Seasonal Sale of pumpkins [if the products are NOT produced on the premises and can NOT meet the definition of "wayside stand"]
 - d. Seasonal Sale of Christmas trees [if the products are NOT produced on the premises and can NOT meet the definition of "wayside stand"]

CONCLUSIONS AND DECISION

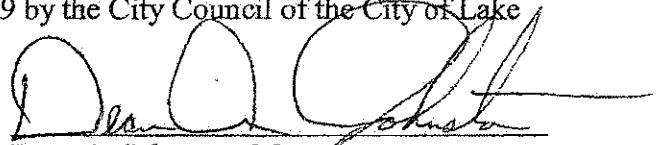
Based on the foregoing, the Applicants' application for a Conditional Use Permit is granted, provided the following conditions are met:

- 1) The Applicants must obtain any required permits from the Valley Branch Watershed District and the Minnesota Department of Transportation.
- 2) The designated parking area shall be 30 feet from all property lines.
- 3) Trash containers must be located inside or screened in an acceptable manner.
- 4) The property owners may allow the discharge of firearms during times and dates that the business is not open to the public. This would allow the property owners to continue utilizing their land for private hunting purposes. The discharge of weapons must be in conformance with Lake Elmo City Code requirements.
- 5) The property owner shall give the city permission to conduct inspections of the property in order to investigate complaints or to provide necessary updates to the city files or City Council.
- 6) No additional structures or facilities related to the operation of agricultural entertainment activities shall be installed or utilized without written approval of the City.
- 7) Prior to the commencement of any further agricultural entertainment activities on the land approved hereunder, the applicant shall furnish a detailed sketch depicting the placement

of structures and activities for review and approval by the City for conformity with the approval.

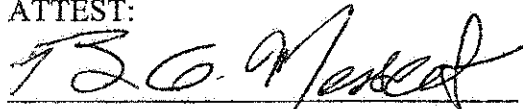
- 8) No activity that is not authorized or permissible on the existing lands shall be expanded or relocated onto the additional land approved for an agricultural entertainment use hereunder.
- 9) If dust complaints are received from the improved parking lot being proposed, the property owner shall implement an acceptable dust abatement technique.

Passed and duly adopted this 1st day of December 2009 by the City Council of the City of Lake Elmo, Minnesota.



Dean A. Johnston, Mayor

ATTEST:



Bruce Messelt, City Administrator