



Planning Commission
Date: 09/23/13
Item: 4a
Public Hearing (cont.)

ITEM: Variance Request – 09.029.21.22.0025 (Hill Trail North) – Cont.

SUBMITTED BY: Nick Johnson, City Planner

REVIEWED BY: Kyle Klatt, Planning Director
Pete Ganzel, Washington County

SUMMARY AND ACTION REQUESTED:

The City of Lake Elmo has received an application from Dean and Gayle Dworak, 12325 Upper Heather Ave. N., Hugo, Minnesota, for a variance to allow for the construction of a single family home on a lot that is not considered a lot of record under the Zoning Ordinance due to its size and that it does not meet the required 20,000 square feet of area for a septic system. The Planning Commission held a Public Hearing and reviewed the request at meetings on 8/26/13 and 9/9/13, at which times the item was tabled for further consideration at a future meeting. It should also be noted that the Public Hearing has been continued to allow for additional testimony.

BACKGROUND INFORMATION:

At the meetings on 8/26/13 and 9/9/13, the Planning Commission held a Public Hearing and reviewed the variance application submitted by Dean and Gayle Dworak. In reviewing the application, Staff made the determination that while the application has merit based upon the 4 required findings for granting a variance, the applicant did not provide sufficient evidence that a subsurface sewage treatment system that met the guidelines of Washington County could be properly located on the site. For that reason, Staff recommended that the Planning Commission table the variance request to allow the applicant more time to work with a septic designer and Washington County. The Planning Commission tabled the request to provide the applicant with more time.

The applicants have submitted a new certificate of survey showing the proposed location for a primary and secondary drainfield site. In addition, the amount of proposed impervious surface has been reduced to 5,600 square feet. This amount of impervious meets the City's shoreland district requirement of a maximum of 6,000 square feet. In addition, the location of the proposed drainfield, well and home meet all of the required setbacks as specified by the Washington County Development Code, the Shoreland Ordinance, and the Zoning Code. Also, the applicants have submitted an updated septic

design to Washington County. Pete Ganzel, Washington County Environmental Specialist, reviewed the proposed septic design and found the system to be compliant with Washington County rules and regulations. Greater detail about Mr. Ganzel's analysis of the proposed septic system can be found in the attached letter (Attachment #2). Based upon these findings, the proposed septic system will be permitted by Washington County.

Over the course of the two Public hearing sessions, multiple parties have provided testimony on the proposed variance. At the meeting on 8/26/13, testimony was received from Amy and Brad Gustufson, Vickie Iverson and Bonnie Weisbrod, all of whom are nearby property owners. The comments by the aforementioned adjacent property owners provided at the 8/26/13 meeting included concern about the following topics:

- The proposed location of the septic drainfield was too close to the neighboring property;
- The ability of the applicant to site an adequate subsurface sewage treatment system on the property;
- Problems related to drainage and erosion control, particularly being that the lot is in between Olson Lake and Lake DeMontreville; and
- Alteration of the neighborhood character with a new single family home.

At the meeting on 9/9/13, the applicant, Dean Dworak, and property owner, Paul Hansen, spoke at the Public Hearing. Mr. Dworak noted that he and his designer are almost finished with an updated design of the home and septic system. They intended to submit the updated information to Washington County for consideration of a septic permit. In addition, Mr. Hansen spoke about the history of the lot, sharing that he and his wife purchased the lot as either an investment property or as a location to build a home for future retirement, down-sizing from their existing home. The Planning Commission also asked Mr. Hansen when he bought the property, as well as what zoning rules were in place at the time of purchase. Mr. Hansen did not know the exact date when he purchased the property. However, he did note that no promises were made in terms of the lot being buildable from the City. Finally, Steve Iverson, 8108 Hill Trail North, also spoke at the 9/9/13 meeting. He noted that he submitted a letter to the Planning Commission, detailing his concerns about the proposed Variance. He noted that the proposed variance is in direct conflict with the intent of the lot size ordinance, and that if the variance is approved, other requests for additional lot size variances will follow.

At the request of the Planning Commission, Staff conducted research on two primary issues:

1. The Planning Commission asked Staff to conduct an analysis of all the lots in the Hill Trail area, including information about occupancy and lot size.
2. The Planning Commission requested that Staff research what zoning standards were in place at the time when the Hansen's purchased the subject parcel.

Regarding the analysis of the lots in the Hill Trail area, Staff has provided two maps that show the parcels in the northern and southern portions of Hill Trail (Attachment #3). The maps indicate the parcel size and occupancy (occupied vs. vacant) of each parcel.

Regarding parcel size, it should be noted that there are several instances of two adjoining properties being owned by the same owner. In these cases, the parcel size is listed along the parcel boundary with the adjoining properties. In addition, when two contiguous parcels are owned by the same owner, the parcel is considered one property for the purposes of the Zoning Code. When reviewing the parcels that are included in the Hill Trail analysis, two figures are important. 1) The mean (or average) parcel size in the Hill Trail area is 0.82 acres, whereas the median parcel size is 0.71 acres; and 2) In the area analyzed, there are 28 parcels that are equal to or smaller in size than the subject parcel. The figures related to the parcel analysis can be found in Attachment #4.

Regarding the zoning standards that were in place at the time the Hansen family purchased the subject property, the City Clerk, Adam Bell, conducted research into the matter. The oldest version of the Lake Elmo City Code that the City currently has in its possession is the 1979 Code. When the 1979 Code was established, the 1.5 acre minimum lot size was then established. However, it is difficult to determine what standards were in place prior to the 1979 Code. This investigation has led to results that are inconclusive. It is more than likely that the regulations that were in place prior to the 1979 Code were carried over from the township regulations prior to the City's incorporation. As it has been established that the Hansen family purchased the property in 1978, it is clear that they did own the property prior to the 1979 Code. However, while understanding the motivations of the property owner at the time may provide helpful context, it still does not change the fact that the subject property is governed by the existing zoning regulations. As the Hansen family did not build on the lot prior to the 1979 regulations, the lot is still subject to the current provisions of the Zoning Ordinance that determine whether or not the lot is considered a buildable lot of record.

Regarding the required findings for a variance, it is important to highlight these once again for the purposes of making a recommendation. The required and proposed findings as presented by Staff include the following:

1. **Practical Difficulties.** A variance to the provision of this chapter may be granted by the Board of Adjustment upon the application by the owner of the affected property where the strict enforcement of this chapter would cause practical difficulties because of circumstances unique to the individual property under consideration and then only when it is demonstrated that such actions will be in keeping with the spirit and intent of this chapter. Definition of practical difficulties - "Practical difficulties" as used in connection with the granting of a variance, means that the property owner proposes to use the property in a reasonable manner not permitted by an official control. *The applicants have noted that the desire to build a single family home on a lot that is consistent in terms of lot area to the other properties in the neighborhood is a reasonable use not permitted by an official control. Staff determines that this criterion is met.*
2. **Unique Circumstances.** The plight of the landowner is due to circumstances unique to the property not created by the landowner. *The parcel was platted and purchased by the property owner before the current lot size requirements were established. In addition, the property is unique in that it does not meet the minimum acreage of 0.9 acres to be considered buildable, but can support a*

*permitted subsurface sewage treatment system as determined by Washington County. **Staff determines that this criterion is met.***

3. **Character of locality.** The proposed variance will not alter the essential character of the locality in which the property in question is located. *The applicant has correctly noted that the lot is similar or consistent in lot area with most of the existing lots in the neighborhood. The construction of a single family home will not alter the essential character of the neighborhood. **Staff determines that this criterion is met.***
4. **Adjacent properties and traffic.** The proposed variance will not impair an adequate supply of light and air to property adjacent to the property in question or substantially increase the congestion of the public streets or substantially diminish or impair property values within the neighborhood. *It is determined that the proposed variance will not impair an adequate supply of light and air to property adjacent to the property in question or substantially increase the congestion of the public streets or substantially diminish or impair property values within the neighborhood. **Staff determines that this criterion is met.***

Staff has determined that the Variance application does have merit.

Finally, Staff did not attach the previous application materials. Planning Commission members are encouraged to bring the application materials from the previous meeting if possible.

RECCOMENDATION:

Staff is recommending that the Planning Commission recommend approval of the Variance request through the following motion:

“Move to recommend approval of the Variance request at 09.029.21.22.0025 (Hill Trail North) based upon the findings outlined in the Staff Memorandum.”

ATTACHMENTS:

1. Additional Application Materials
2. Letter from Pete Ganzel, Environmental Specialist, Washington County
3. Hill Trail Maps (North and South)
4. Hill Trail Parcel Analysis

ORDER OF BUSINESS:

- Introduction.....Planning Staff
- Report by Staff.....Planning Staff
- Questions from the Commission..... Chair & Commission Members
- Continue the Public HearingChair

- Discussion by the Commission..... Chair & Commission Members
- Action by the Commission..... Chair & Commission Members



City of Lake Elmo Planning Department
Variance Request

To: Planning Commission

From: Nick M. Johnson, City Planner

Meeting Date: 08/26/2013

Applicant: Dean and Gayle Dworak

Owner: Paul and Nancy Hansen

Location: 09.029.21.22.0025 (Hill Trail North)

Zoning: RS – Rural Single Family

Introductory Information

***Application
Summary:***

The City of Lake Elmo has received an application from Dean and Gayle Dworak, 12325 Upper Heather Ave. N., Hugo, Minnesota, for a variance to allow for the construction of a single family home on a lot that is not considered a lot of record under the Zoning Ordinance due to its size and that does not meet the required 20,000 square feet of area for a septic system. Per the requirements of the Rural Single Family (RS) zoning district, the minimum lot size is 1.5 acres, and there must be at least 20,000 square feet suitable for the installation of a subsurface sewage treatment system. The Zoning Ordinance allows existing lots of record to be considered buildable if the lot meets a minimum of 60% of the minimum lot size in the underlying zoning district. 60% of 1.5 acres is 0.9 acres. The subject lot is 0.63 acres according to the Washington County parcel data, making the parcel 0.27 acres less than the minimum size to be considered a lot of record.

The owners of the property, Paul and Nancy Hansen, have co-signed for the Variance request. The parties have agreed to a purchase agreement for the property contingent on the approval of a variance to construct a single family home. The applicant has provided a written statement to the City indicating the reason for the Variance request. In addition, the applicants' narrative addresses how the proposed application meets the 4 required findings to grant a Variance.

***Property
Information:***

The property (09.029.21.22.0025) is located on the east side of Hill Trail North on the peninsula between Lake DeMontreville and Olson Lake. The attached location map (Attachment #3) details the location of the property. The property has been owned by Paul and Nancy Hansen since 1979.

***Applicable
Codes:***

Section 154.402 Lot Dimensions and Building Bulk Requirements

Lot area and setback requirements shall be as specified in Table 9-2, Lot Dimension and Setback Requirements.

Table 9-2: Lot Dimension and Setback Requirements, Residential Districts

| | RT | A | RR | RS | RE |
|--|-----|-------------------|-----------------|------------------|--------------------|
| Minimum Lot Area (acres) | | | | | |
| Single Family Detached Dwelling | 20 | 40 ^{a,b} | 10 ^c | 1.5 ^d | 2.5 ^{e,i} |
| Minimum Lot Width (feet) | | | | | |
| Single Family Detached Dwelling | 300 | 300 | 300 | 125 | NA ^f |
| Maximum Principal Structure Height (feet) | | | | | |
| | 35 | 35 | 35 | 35 | 35 |
| Maximum Impervious Coverage | | | | | |
| | - | - | - | 25% | 15% |
| Minimum Principal Building Setbacks (feet) | | | | | |
| Front Yard | 30 | 200 | 30 | 30 | 100 |
| Interior Side Yard | 10 | 200 | 10 | 10 | 50 |
| Corner Side Yard ^g | 25 | 200 | 25 | 25 | 80 |
| Rear Yard | 40 | 200 | 40 | 40 | 100 |
| Minimum Accessory Building Setbacks (feet) | | | | | |
| Front Yard | 30 | 200 | 30 | 30 | 100 |
| Interior Side Yard | 10 | 200 | 10 | 10 | 15 |
| Corner Side Yard | 25 | 200 | 25 | 25 | 30 |
| Rear Yard | 40 | 200 | 40 | 10 | 15 |
| Minimum Agricultural Related Setbacks (Animal buildings, feedlots or manure storage sites) | | | | | |
| Any Property Line | 200 | 200 | 200 | - | - |
| Any Existing Well or Residential Structure | 50 | 50 | 50 | - | - |
| Any Body of Seasonal or Year-round Surface Water | 200 | 200 | 200 | - | - |

Section 154.080 Additions and Exceptions to Minimum Area, Height, and Other Requirements.

(A) Existing Lot: An existing lot is a lot or parcel of land in a residential district which was of record as a separate lot or parcel in the office of the County Recorder or registrar of titles, on or before the effective date of this section. Any such lot or parcel of land which is in a residential district may be used for single family detached dwelling purposes provided the area and width of the lot are within sixty percent (60%) of the minimum requirements of this section, provided all setback requirements of this section must be maintained; and provided it can be demonstrated safe and adequate sewage treatments systems can be installed to serve the permanent dwelling.

Section 154.404 Site Design and Development Standards

Development of land within the rural districts shall follow established standards for traffic circulation, landscape design, parking, signs and other considerations as specified in Articles 5, 6 and 7. The following standards apply to specific uses, and are organized by district.

- (A) *Single-Family Detached Dwelling, All Rural Districts.* All single-family dwellings shall be at least twenty-four (24) feet in width, at least nine hundred sixty (960) square feet in area, and be placed on a permanent foundation.
- (B) *Septic Drainfield Regulation, A, RR, and RS Districts.* All lots must have at least 20,000 square feet of land suitable for septic drainfields and area sufficient for 2 separate and distinct drainfield sites. Placement of the second required drainfield between the trenches of the first drainfield is prohibited.

Section 154.109 Variances.

(A-J) Variances. Identifies procedures and requirements for the processing and review of a variance application. Please note that this section was recently updated by the City to comply with revisions to Minnesota State Statutes.

Findings & General Site Overview

| | |
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| Site Data: | <p><i>Lot Size:</i> 0.63 acres</p> <p><i>Existing Use:</i> Single Family Detached Dwelling</p> <p><i>Existing Zoning:</i> RS – Rural Single Family</p> <p><i>Property Identification Number (PID):</i> 09.029.21.22.0025</p> |
|-------------------|--|

Application Review:

| | |
|-------------------------|--|
| Variance Review: | <p>As outlined in the narrative, the applicant is seeking to build a new single family home at 09.029.21.22.0025 (Hill Trail North). In the application, the applicant has also provided an existing survey, a proposed site plan of the proposed single family home, as well as building plans. However, it should be noted that the site plan does not provide adequate detail of the proposed septic system that will serve the property.</p> |
|-------------------------|--|

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|---|---|
| | <p>Regarding the lot size Variance, the lot does not currently meet the minimum size requirements to be considered a buildable lot of record per the requirements of the Rural Single Family (RS) zoning district. The applicants have noted that the owners of the property have owned since 1979, before the minimum lot size zoning requirements were in place. It is quite common that many of the older platted lots in the community that are zoned RS do not meet the 1.5 acre minimum size requirement. In the application, the applicants have provided some of the sizes of the adjacent lots to the subject property. Given the sizes of the adjacent lots, the subject lot is consistent in size to many of these properties. As long as the new single family home was able to meet the requirements for impervious surface, setbacks, shoreland requirements, and site a subsurface sewage treatment system on the site, the application seems to present a reasonable request to allow variance from the minimum lot size requirements.</p> <p>Regarding the Variance requested from the minimum requirement of 20,000 square feet of area suitable for septic (§154.404), it is common that lots that are unable to meet minimum size requirements also are non-compliant with the area requirements for septic systems. In order to build a single family home on such a lot, a Variance is required from the minimum area requirements for septic systems. In the Variance application, the applicants have noted that a septic permit from Washington County is being pursued. It should be noted that the Variance request has been reviewed by Pete Ganzel, Washington County Senior Environmental Specialist. Mr. Ganzel has submitted review comments, found in Attachment #4, noting that the current area being proposed for septic is most likely would not meet the County requirements necessary for a septic system. Until the City receives indication that septic design will be accepted by Washington County and the septic permit will be issued, Staff does not recommend allowing for a variance from the septic area requirements to be granted. As it is critical to ensure that a septic system can be adequately sited on the property for a new single family home, it is not prudent to grant a variance in advance of having greater assurance that a septic design will be approved by Washington County. Allowing for more time to bring resolution to the septic design would allow the applicant to finalize the septic design with Washington County.</p> <p>It should also be noted that a letter of support for the Variance was submitted by a neighboring property owner, Mike and Ruth Schrantz, 5831 Hytrail Ave. N., Lake Elmo, MN. The letter of support is found in Attachment #5.</p> |
| <p><i>Variance Requirements:</i></p> | <p>An applicant must also establish and demonstrate compliance with the variance criteria set forth in Lake Elmo City Code Section 154.109 before an exception or modification to City Code requirements can be granted. These criteria are listed below:</p> <ol style="list-style-type: none"> 1. Practical Difficulties. A variance to the provision of this chapter may be granted by the Board of Adjustment upon the application by the owner of the affected property where the strict enforcement of this chapter would cause practical difficulties because of circumstances unique to the individual property under consideration and then only when it is demonstrated that such actions will be in |

keeping with the spirit and intent of this chapter. Definition of practical difficulties - "Practical difficulties" as used in connection with the granting of a variance, means that the property owner proposes to use the property in a reasonable manner not permitted by an official control.

2. **Unique Circumstances.** The plight of the landowner is due to circumstances unique to the property not created by the landowner.
3. **Character of locality.** The proposed variance will not alter the essential character of the locality in which the property in question is located.
4. **Adjacent properties and traffic.** The proposed variance will not impair an adequate supply of light and air to property adjacent to the property in question or substantially increase the congestion of the public streets or substantially diminish or impair property values within the neighborhood.

Given the information that has been submitted by the applicant and pending further review by the Planning Commission, Staff would offer the following suggested findings specific to the variance that have been requested by the applicant:

1. *The applicants have noted that the desire to build a single family home on a lot that is consistent in terms of lot area to the other properties in the neighborhood is a reasonable use not permitted by an official control. **Staff determines that this criterion is met.***
2. *The applicants have noted that the property was owned by the Hansen family before the zoning district requirements were established. The lot is consistent in lot area with other adjacent properties that have single family homes. The establishment of zoning is a circumstance not created by the landowner. **Staff determines that this criterion is met.***
3. *The applicant has correctly noted that the lot is similar or consistent in lot area with most of the existing lots in the neighborhood. The construction of a single family home will not alter the essential character of the neighborhood. **Staff determines that this criterion is met.***
4. *The proposed variance will not impair an adequate supply of light and air to property adjacent to the property in question or substantially increase the congestion of the public streets or substantially diminish or impair property values within the neighborhood. **Staff determines that this criterion is met.***

Conclusions: Staff finds the applicants have met the 4 necessary criteria for a Variance and demonstrated that the desire to construct a single family home represents a reasonable

use not permitted by an official control. However, until the City receives better indication that the site will be able to be served by a septic system that is permitted by Washington County, it is not advisable to grant a Variance at this time for the request. It is recommended that more time be allowed to finalize the septic design and receive indication from Washington County that the septic design will be accepted and permitted.

Conclusion:

| | |
|----------------------------------|---|
| | Dean and Gayle Dworak, 12325 Upper Heather Ave. N., Hugo, MN, have submitted a request for a variance at 09.029.21.22.0025 (Hill Trail North) to allow the construction of a single family home on a lot that does not meet the minimum lot area requirements to be considered a buildable lot of record. In addition, the request includes a variance from the requirement that each lot in the RS district have 20,000 square feet of area suitable for septic systems. |
| Staff Rec: | Staff is recommending that the Planning Commission table the Variance request by Dean and Gayle Dworak until the September 9 th meeting to allow for more time to bring resolution to the design of the septic system. In addition, given that new information is likely to be provided, it is recommended that the Planning Commission not close the Public Hearing, but continue the hearing until the September 9 th meeting. |
| Approval Motion Template: | <p>Staff is recommending that the Planning Commission table the Variance request through the following motion:</p> <p><i>“Move to table the Variance request at 09.029.21.22.0025 (Hill Trail North) for further consideration at the next available Planning Commission meeting to allow the applicant more time to submit a septic design that will meet Washington County approval.”</i></p> |

cc: Dean and Gayle Dworak
 Paul and Nancy Hansen

City of Lake Elmo

DEVELOPMENT APPLICATION FORM

Signature Page

Signature of Applicants:

Dean Dworak 8/4/13

Dean Dworak
12325 Upper Heather Ave N
Hugo, MN 55038

Gayle Dworak 8/4/13

Gayle Dworak
12325 Upper Heather Ave N
Hugo, MN 55038

Signature of Owners:

Paul Hansen 8/4/13

Paul Hansen
8024 Hill Trail N
Lake Elmo, MN 55042

Nancy Hansen 8/4

Nancy Hansen
8024 Hill Trail N
Lake Elmo, MN 55042

By signing this document, we the above signees, formally submit for approval the attached Variance Application to the City of Lake Elmo.

Fee \$ 1000

City of Lake Elmo DEVELOPMENT APPLICATION FORM

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

APPLICANT: Dean & Gayle Dworak 12325 Upper Heather Ave N, Hugo MN 55038
 (Name) (Mailing Address) (Zip)

TELEPHONES: 651-407-9881
 (Home) (Work) (Mobile) (Fax)

FEE OWNER: Paul & Nancy Hanson 8024 Hill Trail N, Lake Elmo, MN 55042
 (Name) (Mailing Address) (Zip)

TELEPHONES: 651-777-4911
 (Home) (Work) (Mobile) (Fax)

PROPERTY LOCATION (Address and Complete (Long) Legal Description): XXXX Hill Trail N, Lake Elmo
Lots 505-510 & Lots 629-634 Lanes Demontreville Country Club.
Also that portion of Demontreville Beach according to Lots 629-634
of Lanes Demontreville Country Club, Washington City, Warrandy
Local 390352

DETAILED REASON FOR REQUEST:

- 1) City of Lake Elmo Resolution 97-32 for approval to transfer real estate.
- 2) Request approval to build on 0.7 acre lot.
- 3) Install septic system to be approved by Washington City on less than 30,000 sq. feet. Lake Elmo Ordinance 08-073, Section 154.404

***VARIANCE REQUESTS:** As outlined in Section 301.060 C. of the Lake Elmo Municipal Code, the Applicant must demonstrate a hardship before a variance can be granted. The hardship related to this application is as follows:

- 1) Seek approval for Paul & Nancy Hanson to sell lot to Demontreville Country Club.
- 2) Owners have owned lot since 1974 before requirements were in place. Will need a septic permit from Washington County.

In signing this application, I hereby acknowledge that I have read and fully understand the applicable provisions of the Zoning and Subdivision Ordinances and current administrative procedures. I further acknowledge the fee explanation as outlined in the application procedures and hereby agree to pay all statements received from the City pertaining to additional application expense.

See cover sheet
 Signature of Applicant _____ Date _____

See cover sheet
 Signature of Applicant _____ Date _____

INFORMATION FOR VARIANCE REQUEST

- a). Applicants: Dean and Gayle Dworak
Owners: Paul and Nancy Hansen
- b). Legal description : Lots 505 – 510 and 629 – 634 Lane's Demontreville Country Club.
Also portion of Demontreville Beach accruing to Lots 629 – 634 of Lane's
Demontreville Country Club, Washington County, MN
Warranty Deed Document No. 393352
Parcel Number : 09.029.21.22.0025
Size: 31,440 sq feet 0.7 acres
Currently an unimproved wooded lot
Zoned residential
- c). Variance sought for: i) Resolution 87-32 of City of Lake Elmo to transfer/sell land
ii) Build home on 0.7 acres rather than 1.5 acres
iii) City of Lake Elmo Ordinance 08-073, Article 9 requiring minimum of 20,000 square feet of land suitable for septic drainfield.
- d). i) Request approval to purchase lot to build new home.
ii&iii). Paul and Nancy Hansen have owned this lot since 1979 before these requirements were in place. A permit for an approved septic system is being pursued with Washington County. Approval of this variance request could be made contingent on obtaining the septic permit.
- e). Met with Lake Elmo city planner, Nick Johnson, for guidance. Followed variance procedure.
- f). Need to purchase land from current owners. Purchase is contingent on getting a variance. All adjacent lots already have homes so no adjacent vacant land.
- g). The lot will not be marketable if a house cannot be built on it.
- h). Granting the variance would not alter the essential character of neighborhood as one adjacent house (8108 Hill Trail N) is on 0.53 acres while the other adjacent house (8120 Hill Trail N) is on 0.76 acres. The house across the street (8123 Hill Trail N) is on 0.69 acres. The subject lot of 0.7 acres is comparable in size to all other homes in the immediate area. A new septic system of more current design would probably exceed the performance of the older neighboring systems.

LOTS 505 THRU 510 AND LOTS 629 THRU 634, PART OF VACATED BEACH,
LANE'S DEMONTREVILLE COUNTRY CLUB,
SECTION 9, TOWNSHIP 29 NORTH, RANGE 21 WEST,
CITY OF LAKE ELMO, WASHINGTON COUNTY, MINNESOTA

Proposed septic areas and well location are within the building setbacks for this lot. The wells and septic systems on adjoining lots were not located by Landmark Surveying Inc, and we can not certify their proximity to proposed features.

HOUSE FOOTPRINT PROVIDED BY:
Home Tec Designers and Builders

Orientation of the Sighting system is based on the azimuth of Lot 505 having a bearing of N23°54'18"E.

Distances are in feet and decimals of a foot.

Directions are based on National Geodetic Vertical Datum 1929 adjusted.

Conformers are on one foot intervals.

- ① Denotes a 1/2 inch inside diameter iron pipe monument, marked by a plastic cap Inscribed ALE 13775.
- ② Denotes a found monument, described as shown.

(c/s) Denotes the dimension on the recorded plat of LAKE'S DEMONSTRATION CIRCLE.

ORF Denotes ordinary high water.

X
975.7 Denotes a spot elevation.

B ③ Denotes location of soil boring.

P ④ Denotes location of percussion hole.

Found a 3/8 inch open top iron pipe monument at NW corner of Lot 495

utility pole

104.46

12" oak

18" oak

10 FOOT STRIP

950 SQ FT Possible Septic Area

12" poplar

14" oak

20" oak

20" oak

20" oak

5.5

10" oak

12" tree-dead

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PREPARED FOR :
DEAN DWORAK
12325 Upper Heather Avenue North
Hugo, MN 55038

LAKE DEMONTREVILLE

RECREATION DEVELOPMENT LAKE
MN Protected Waters 32-101
May High Water elevation = 529.3 feet
100 year flood elevation = 531.0 feet
Datum is NGVD 1928 (feet)
water surface elevation as 11-02-2012 was 527.3 feet

Q.H.W. LINE
(929.3 CONTOUR)
located 11-02-2012

An undivided one-fifth (1/5) of Lots 505, 506, 633, and 634 of Lane's Demonsterville Country Club, Washington County, according to the recorded plat thereof on file and of record in the office of the county recorder.

Warranty Deed, Document No. 374558

An undivided four-fifths (4/5) of Lots 505, 506, 633, and 634 of Lane's Demoutreville Country Club, according to the recorded plat thereof

Warranty Deed, Document No. 393352

Lots 507, 508, 509, 510, 629, and 630, 631 and 632, Lane's Demontreville Country Club.

Also:

That portion of vacated "Demonville Beach" accruing to Lots 629 thru 634 of Lane's Demonville Country Club, Washington County, according to the recorded plat thereof on file and of record in the office of the county recorder.

Official copies of this map are crimp sealed.

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

Landmark Surveying Inc.

Joel T. Anez Minnesota License No. 13775

November 13, 2012

Job Number 2013-44

Paid. 63 00

374557

THIS INDENTURE, Made this 6th day of May, 19 78,
 between Elaine J. Altstatt,
 as Personal Representative of the Estate of Harold F. Altstatt, deceased,
 part y of the first part, and Paul E. Hansen and Nancy N. Hansen, husband and
wife, as joint tenants, of the County of
Washington and State of Minnesota, parties of the
 second part.

WITNESSETH, that whereas Harold F. Altstatt a single (married) person of
 the County of Ramsey and State of Minnesota died on
November, 29, 77, and the Probate Court of Ramsey County,
Minnesota did appoint Elaine J. Altstatt Personal Representative
 of the estate, and whereas by the laws of the State of Minnesota, said Personal Representative
 (is) ~~(are)~~ empowered to make and execute a conveyance of real estate.

NOW, THEREFORE, the said part y of the first part, in consideration of the sum
 of One and other good and valuable consideration (\$1.00) DOLLARS,
 to them in hand paid by the said parties of the second part, the receipt
 whereof is hereby acknowledged, does hereby Grant, Bargain, Sell, and Convey unto the said
 parties of the second part as joint tenants and not as tenants in common, their assigns, the survivor of
 said parties, and the heirs and assigns of the survivor, Forever, all the tract _____ or parcel
_____ of land lying and being in the County of Washington
 and State of Minnesota, described as follows, to-wit:

An undivided one-fifth (1/5) interest in Lots 505, 506, 633,
 and 634 of Lane's Demontreville Country Club, Washington County,
 according to the recorded plat thereof on file and of record
 in the office of the county recorder.

TO HAVE AND TO HOLD AND SAME, Together with all the hereditaments and appurtenances
 thereunto belonging or in anywise appertaining, to the said part ies of the second part, their
 heirs and assigns, Forever.

IN TESTIMONY WHEREOF, The said part y of the first part has hereunto set her
 hand _____ the day and year first above written.

Elaine J. Altstatt
Elaine J. Altstatt
 as personal representative of the Estate of
Harold F. Altstatt
 Deceased.

I, Elaine J. Altstatt, spouse of the above named
 decedent, do hereby consent to the within conveyance.

Elaine J. Altstatt
Elaine J. Altstatt



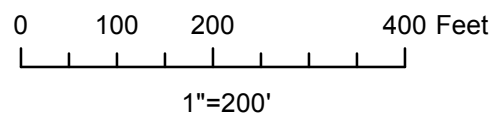
Location Map: 09.029.21.22.0025



Data Source: Washington County, MN
8-22-2013



09.029.21.22.0025





Lakeshore Property Analysis: Hill Trail Area (North)



Data Source: Washington County, MN
9-17-2013

- Homesteaded Property
- Vacant Property
- Vacant Property
(Owners Homesteaded Property in Close Proximity)

0.85 Parcel Size (Acres)
 Adjacent Properties
 included in Parcel Size
 Calculation





Lakeshore Property Analysis: Hill Trail Area (South)



Data Source: Washington County, MN
9-17-2013

| | | | |
|--|---|------|---------------------|
| | Homesteaded Property | 0.85 | Parcel Size (Acres) |
| | Vacant Property | | |
| | Vacant Property (Owners Homesteaded Property in Close Proximity) | | |



| Hill Trail Parcel Analysis | | | |
|----------------------------|------|--------------|------|
| Parcel Sizes (Acres) | | Analysis | |
| 0.2 | 0.72 | # of Parcels | 64 |
| 0.24 | 0.74 | Mean Size | 0.82 |
| 0.25 | 0.75 | Median Size | 0.71 |
| 0.28 | 0.76 | | |
| 0.32 | 0.76 | | |
| 0.33 | 0.79 | | |
| 0.34 | 0.79 | | |
| 0.38 | 0.79 | | |
| 0.38 | 0.8 | | |
| 0.4 | 0.83 | | |
| 0.4 | 0.85 | | |
| 0.41 | 0.85 | | |
| 0.41 | 0.89 | | |
| 0.45 | 0.93 | | |
| 0.46 | 0.93 | | |
| 0.47 | 0.96 | | |
| 0.48 | 1.03 | | |
| 0.48 | 1.07 | | |
| 0.5 | 1.08 | | |
| 0.51 | 1.1 | | |
| 0.53 | 1.1 | | |
| 0.54 | 1.13 | | |
| 0.57 | 1.24 | | |
| 0.61 | 1.27 | | |
| 0.62 | 1.27 | | |
| 0.63 | 1.31 | | |
| 0.63 | 1.32 | | |
| 0.63 | 1.35 | | |
| 0.64 | 1.73 | | |
| 0.67 | 1.79 | | |
| 0.68 | 2 | | |
| 0.69 | 4.4 | | |



**Department of Public
Health and Environment**

Lowell Johnson
Director

Sue Hedlund
Deputy Director

9/19/2013

Nick Johnson
City of Lake Elmo
3800 Laverne Ave
Lake Elmo, MN 55042

RE: Soil Testing, Sewage System Design, Lots 507-510 & 629-632 Lanes Demontreville Country Club.

A review of the proposed site plan, design and soil borings indicate that there is adequate area for a primary and secondary sewage treatment system on this parcel. The areas are limited and must be protected during construction from fill, excavation and construction traffic. It appears from the preliminary grading plan that the proposed garage slab will be close to the 930' contour and that extensive fill or cut will not be required for the driveway. Excavated material from the dwelling walkout foundation must be carried out along the proposed driveway and not pushed either toward the lake or across the drainfield areas.

If you have any questions, call me at (651)430-6676.

A handwritten signature in black ink that reads "P. Ganzel".

Pete Ganzel
Senior Environmental Specialist

RE: Variance request for new construction/septic on the 8100 block of Hill Trail

Why does Lake Elmo have lot size ordinances?

To keep from over-developing.

So if this variance is even being considered, you need to take a hard look at removing the ordinance completely. This variance is in direct conflict with the ordinance – and violates the very intent of the ordinance. So if the variance is granted in this situation, it shows that the ordinance is meaningless and should simply be removed to be fair to all. If it is a valid ordinance, then the variance should be denied.

And why is there a minimum lot size for new septic systems?

To protect the soil, the aquifers, and the ground (lake) water.

If this ordinance is approved, it is completely irresponsible on the part of the city. So much effort is made to control and regulate the existing Septic systems, that to allow another one (or more) to be squeezed onto small parcels is just backwards and irresponsible.

Remember the repercussions:

- There are other “lot” owners just waiting for a variance to get passed – so they can follow suit. And the city won’t have a legal leg to stand on after they approve the first one. This decision is the beginning of a domino effect; it is not “just one parcel”.
- Approving this is IRREVERSIBLE. Choosing “no-wake zones”, or “fence height”, can be changed from year-to-year. But allowing new homes to be squeezed on to tiny lots is permanent. If you allow a house to go in – you can visualize that house still there 100 years from now. If we don’t have the foresight to protect the natural resources, then ALL future residents are stuck with our failures.
- This particular parcel is on a peninsula – the additional water run-off that a house and driveway will cause has nowhere to go but directly into one of the 2 lakes that are on either side.

This variance is not asking to stray from the ordinance; it is asking to completely ignore it.

There are many existing homes for sale on the Lake Elmo lakes – some are ready to “move in”, some just need a good remodel, and some could be torn down and the buyer could build their new house. There is NOT a lake home shortage, so that should be another reason to deny this variance.

There is a plan to develop the I-94 corridor (forced by the Met Council); please stick to that plan and protect every inch of “rural” Lake Elmo that we have left.

PLEASE DO YOUR PART TO PROTECT THE LAKES AND PROTECT THE FUTURE OF THE CITY OF LAKE ELMO BY VOTING “NO” TO THIS VARIANCE.

Signed,

Steve Iverson

8108 Hill Trail N
Lake Elmo MN 55042



WAGNER, FALCONER & JUDD, LTD.

Attorneys & Consultants Since 1932

September 20, 2013

City of Lake Elmo Planning Commission
3800 Laverne Avenue North
Lake Elmo, Minnesota 55042

Re: **Request to Deny Variance**
Applicant: Dean and Gayle Dworak
Owner: Paul and Nancy Hansen
Location: 09.029.21.22.0025 (Hill Trail North)
Zoning: RS – Rural Single Family
Intake No.: 240947 MN

Dear Sirs and Madams:

The undersigned law firm has consulted with Ms. Amy Gustafson, property owner at 8120 Hill Trail North, Lake Elmo, directly adjacent to the property upon which this variance is sought.

Ms. Gustafson has informed the undersigned that there has been misrepresentation of facts presented in the Variance Request submitted by the City Planner, Mr. Nick Johnson. Furthermore, Ms. Gustafson is concerned that the laws that govern the granting of variances in Minnesota Statute 462.357, subd. 6 are not being considered in this matter.

This purpose of this letter is to further shed light on the facts that pertain to this variance request – and to enable the Planning Commission to make an educated decision pursuant to Minnesota Law.

The Department of Natural Resources (DNR) has approval authority over city ordinances regarding shoreland and other natural areas. Therefore, the current Lake Elmo ordinance regarding minimum lot size is deemed the minimum size which protects the water quality of this natural resource by the DNR. It is imprudent for the city to effectively nullify this ordinance by granting variances such as this one.

The DNR publishes a document entitled "A Guide for Buying and Managing Shoreland." In "Section 3: Evaluating Shoreland Property for Purchase", it is made clear that it is incumbent upon the petitioners to weigh many factors in purchasing property, and to "confirm that your intended use...is compatible with the zoning ordinance." This includes **"minimum lot size, building setbacks, and sewage treatment requirements."** Under "Lot Size" the document states, "The lot should be large enough to accommodate your intended use and **comply with the local zoning requirements.** Those lots that have been created since the statewide shoreland management standards took effect are large enough for most residential uses and comply with local zoning requirements. However, there are many lots that were created prior to the shoreland rules that may be substantially smaller than the new lot size requirements. These substandard lots may still be bought and sold, but they may be **too small to accommodate a structure or a sewage treatment system.** If you are considering buying such a lot, you should carefully review your intended use and the **limitations of the property**" (boldface added) (source: <http://www.dnr.state.mn.us/shorelandmgmt/guid/evaluating.html>).

Under "Section 5: Lake and River Classifications" of the same document, a Recreational Development Lake, such as Lakes Olson and Demontreville are described as follows: **"Recreational Development Lakes** usually have between 60 and 225 acres of water per mile of shoreline, between 3 and 25 dwellings per mile of shoreline, and are more than 15 feet deep." Crowding in more homes will test the limits of this definition, as 25 dwellings per mile average 211 feet of lakeshore, far from the frontage (120 feet) this parcel has.

Statement on the "Information for Variance Request" item "g", "The lot will not be marketable if a house cannot be built on it," is false. The substandard lot that is owned by Mike and Ruth Schrantz (Parcel No. 09.029.21.22.0008) was successfully sold and purchased by them in 2004, and it has been sold one other time since we have lived here as well (1995).

Statement on the "Information for Variance Request" item "h" is also false. It states, "Granting the variance would not alter the essential character of the neighborhood as one adjacent house, (8108 Hill Trail N) is on 0.53 acres while the other adjacent house (8120 Hill Trail N) is on 0.76 acres. The house across the street (8123 Hill Trail N) is on 0.69 acres. The subject lot of 0.7 acres is comparable in size to all other homes in the immediate area. A new septic system of more current design would probably exceed the performance of the older neighboring systems." This is a misrepresentation of several facts. First, the lot in question is 0.63 acres, as stated in the "Variance Request", "Application Summary" presented at the August 26, 2013 Planning Commission meeting. Second, 8108 Hill Trail N sits on two lots totaling 0.83 acres, not 0.53 acres. Third, a minor misrepresentation, 8120 is 0.77 acres, not 0.76. Fourth, the average sized residential lot on Lake Demontreville, total acreage is 1.11 (including 5 houses across the street with lakeshore frontage lots) or 0.93 including only those homes which are on shoreland. But, actually, the fact that there are homes already on lots smaller than the minimum recommended by the DNR for preserving water quality (60% of 1.5 acres, or 0.9 acres) is really an argument to *not* further crowd the lake. Additionally, the "essential character of the neighborhood" involves more than lot size, but also how the lots are used, the type of dwelling on the lot, and the aesthetic qualities of the neighborhood. The size and design of this house does *not* fit in with current homes which are much more modest in size and plain in design. It does *not* fit in with the natural environment, as it does not allow for a natural screen of the house from the lake and neighbors by maintaining significant surrounding vegetation including large trees and wooded landscapes. These are part of the aesthetic and ecological value which help to maintain the rural feel of the neighborhood. With this structure extending to the very limits of the required setbacks (10 feet) on both neighbors' sides, there is little hope for adequate screening by vegetation which is currently the norm in the neighborhood (please see map).

There is the very real potential that allowing this variance will open the door for a domino effect of homes being built on substandard lots around the lake. Case in point, the letter from Mike and Ruth Schrantz who own a recreational lot in the neighborhood and have stated in a letter presented at the August 26th, 2013 that they "intend to file a request for variance in the near future as well" (see attachment). This is likely a precedent-setting decision which may have permanent detrimental effects on the lake. Consider that other property owners who own multiple lots may sell lots for building, or that the Jesuit Retreat Center is sold and a developer uses this decision to justify a density which will ultimately erode soil and water quality for all who use the lake.

Regarding the "Variance Request" prepared for the August 26, 2013 Planning Commission meeting:

- The "4 findings required to grant a variance request" in the Planning Commission document submitted regarding this property on 08/26/2013 are not the current statutory criteria which must be met. In fact, the criteria were updated in June of 2013, and the city is required to weigh variance requests against five criteria which are not entirely consistent with the four used in consideration of this variance petition. The four listed in the "Variance Request" were 1)

Practical difficulties, 2) Unique circumstances, 3) Character of locality and 4) Adjacent properties and traffic. The five dictated by the new Minnesota Statute, of which, "*all* of the following statutory criteria must be satisfied, in addition to any local criteria" (MN DNR Variance Guidance Series - ISC, Updated 10/10/2012) are

1. The variance is in harmony with the purposes and intent of the ordinance
2. The variance is consistent with the comprehensive plan
3. There are unique circumstances to the property not created by the landowner ("practical difficulties")
4. The variance does not alter the essential character of the locality
5. The variance proposal puts property to use in a reasonable manner.

Again, **all 5** of these criteria must be met according to current Minnesota Statutes.

- In a document published by the League of Minnesota Cities entitled "Information Memo: Land Use Variances", in addition to a "three-factor practical difficulties test", "Variances shall only be permitted when they are in harmony with the general purposes and intent of the ordinance and when the terms of the variance are consistent with the comprehensive plan." Under section "III. C. City ordinances" of this document, it states, "Some cities may have ordinance provisions that codified the old statutory language, or that have their own set of standards. For those cities, the question may be whether you have to first amend your zoning code before processing variances under the new standard. A credible argument can be made that **the statutory language pre-empts inconsistent local ordinance provisions. Under a pre-emption theory, cities could apply the new law immediately without necessarily amending their ordinance first.** In any regard, it would be best practice for cities to revisit their ordinance provisions and consider adopting language that mirrors the new statute" (boldface added).
- The three factors which are entailed by "practical difficulties" are 1) reasonableness ("the property owner proposes to use the property in a reasonable manner"), 2) uniqueness ("uniqueness generally relates to the physical characteristics of the particular piece of property, that is, to the land and not personal characteristics or preferences of the landowner. When considering the variance for a building to encroach or intrude into a setback, **the focus of this factor is whether there is anything physically unique about the particular piece of property, such as sloping topography or other natural features like wetlands or trees**") (boldface added), and 3) essential character ("the variance, if granted, will not alter the essential character of the locality. Under this factor, consider whether the resulting structure will be **out of scale, out of place, or otherwise inconsistent with the surrounding area**") (boldface added).
- "Section IV. Other considerations" of this document outlines two criteria of the criteria which must be met, in addition to the other three. First, "Harmony with other land use controls" is outlined by Minnesota Statute 462.357, subd. 6. It states, "Variances shall only be permitted when they are in harmony with the **general purposes and intent of the ordinance** and when the terms of the variance are **consistent with the comprehensive plan.**" The intent of this ordinance, according to Dan Petrik of the DNR (per my personal conversation with Dan Petrik), is to protect water quality. The size of project planned, **the amount of impervious surface exceeds the 25% maximum** in Table 9-2 of the Lake Elmo "Lot Dimension and Setback Requirements" for Residential Districts, as presented at the 8/26/13 Planning Commission meeting. Why care about impervious surfaces? In the DNR document "Shoreland & Floodplain: Variance Guidance Series: Impervious Surfaces," it states, "management of rainwater on individual lots is one of our most important tasks. Rainwater that does not infiltrate into the ground or evaporate runs downhill to lakes, wetlands, or rivers. As impervious surface coverage increases, the rate and amount of runoff and pollutants entering public waters increases. When runoff from impervious surface coverage is not addressed, pollution increases and the diversity of

aquatic life is reduced." The plans presented at the 8/26 Planning Commission meeting directly show a significant amount of drainage headed directly for Lake Demontreville. As Dan Petrick stated in *Minnesota Cities Magazine's* article "Let's Talk: city Dilemma - Granting Shoreland Variances", "Within a watershed, there are a lot of opportunities for pollution to get into our water bodies. But the reason we protect the shoreland area is that, in many ways, it's the last opportunity to protect the quality of the water body before stormwater runoff goes into it" and "but character is more about shoreland characteristics. One example is hydrology. Hydrology within the landscape of a lake or river is very different than a non-riparian area. And when you build structures or remove vegetation, you're affecting the hydrology on and below the soil in terms of how and where the water flows. If you have steep slopes or bluffs, you can have additional problems with slumping or eroding soils. So it's important to think about these real physical issues. If the project is affecting the hydrology, that may be a more important local character issue than how the structure aesthetics fit into the landscape." (<http://lmc.org/page/1/LetsTalkMayJune2013.jsp>) This is not just an argument to uphold the 25% maximum impervious surface restriction, but is an argument to prevent a greater density of any impervious surface along the lakeshore.

In addition, for a septic, the lot size must allow 4,000-6,000 square foot minimum requirement for septic stated by the Washington County Senior Environmental Specialist, Pete Ganzel, in his letter presented at the same meeting. With "only about 2,400 square feet available for the sewage treatment area", *this requirement is not met*, and can adversely affect water quality as well.

For these reasons, this criteria, to be in harmony with the purposes and intent of the ordinance, is not met.

- With regard to this variance being consistent with the comprehensive plan, Lake Elmo is currently planning to add residences to other areas of the city, but according to the map in the Land Use Plan section of the Comprehensive Plan, none of the new housing is recommended for this area. An aim often touted in local newspapers is that the city aims to preserve its open spaces and its rural character, as was stated in the September 1, 2013 Pioneer Press article on development plans in Lake Elmo. The pretentious home which is proposed, crowded into an area of much more humble homes will not only change the character of the neighborhood, but is neither in keeping with Lake Elmo's aim of preserving open spaces and maintaining a rural character nor with the current Comprehensive Plan, as published at <http://www.lakeelmo.org/planning-growing/comprehensive-plan>.
- The introduction of the Lake Elmo Land Use Plan states, "The City of Lake Elmo is a unique gem within the metropolitan region given its overall **rural character, significant natural resources** and abundance of agricultural lands. The land use plan herein represents a series of **significant steps the City is taking to preserve and protect these treasured characteristics** while simultaneously responding to its fiscal and regional responsibilities." Further, the "Land Use Plan" indicates, "Lake Elmo's land use plan is guided by its **core vision of creating and maintaining a rural community** within the Metropolitan region. The plan itself provides guidance for a desired land use pattern, mix of uses, range of densities, and site/building designs. To ultimately ensure future development adds to the overall quality and uniqueness of the community and builds upon the existing foundation that defines Lake Elmo, the plan is centered on the following **core set of principles**:
 - **The preservation of rural lands;**
 - **Promotion of open space and green corridors;**
 - **A rebirth of the historic village center;**
 - **Enhancement of the community's rural sense of place (through design standards); and**

- Establishment of a **sustainable planned growth pattern** which strikes a balance between providing municipal services and local/regional fiscal responsibility" (boldface added).

This home would not preserve rural, wooded natural lands, promote open space or green corridors, or enhance this neighborhood's rural sense of place. The home owners of this lake are not in pursuit of the atmosphere of Lake Minnetonka, where lake cruisers go by gushing over the homes on the lake. Rather, the homeowners continue to desire a lake which cherishes the ecosystem we all are able to enjoy because we work to preserve it. This house would fundamentally change this character of this neighborhood.

- "Existing Land Use. An examination of Lake Elmo in 2012 clearly shows a community with a rich history of agricultural use, open space development, and preservation of significant park lands. Lake Elmo Regional Park and Sunfish Lake Park, covering 2,165 and 284 acres **respectively** (correction made in boldface - from "respectfully"), are at the heart of the community and provide **significant natural and recreational opportunities not generally available in the metropolitan area. Single family homes on lots measured in acreages rather than square feet dominate the residential housing stock throughout the community, and the City's 30+ open space cluster/rural neighborhoods established Lake Elmo as a local, regional and national leader in this type of development"** (boldface added). Lakes Demontreville, Olson and Jane are also part of that legacy of providing **natural** and recreational opportunities, and part of maintaining that **natural** environment is not increasing the density of homes on the lakes, particularly when doing so will have a detrimental effect on water quality and the natural environment through runoff, additional septic, reduced vegetation and increased impervious surfaces.

The map in the city's Comprehensive Plan designates the Tri-Lakes Area as "rural single family". In the Land Use Plan, under "Preservation of Rural Character", the document states, "One of the main benefits of the official land use plan is that the long range planning objective to **retain a permanent rural identity** is achieved. Under the memorandum of understanding with the Metropolitan Council, a vast majority of the **City will be allowed to maintain its rural character and existing land uses. Furthermore, concentrating urbanization adjacent to I-94 and within the Old Village will result in clear boundaries between the urban and rural portions of the community. Beyond that, the City's desire to protect its sensitive park lands is also achieved.** Both Lake Elmo Regional Park and Sunfish Lake Park will continue to be surrounded by agricultural lands and will not be impacted by encroaching urbanization."

In the Introduction to the Housing Plan of the Comprehensive Plan, the plan states, "In order to build off of Lake Elmo's treasured asset of open space, it is critical to incorporate strategies for providing housing that maintain and protect the city's natural resources. These natural resources greatly contribute to the character and vibrancy of Lake Elmo and must be accordingly preserved. For this reason, Lake Elmo's future housing needs will be provided for in the I-94 Corridor and Old Village planning districts. This plan will maintain existing open space in the rural planning district of Lake Elmo, as well as incorporate open space into the new housing development in the Old Village and I-94 Corridor." All of this is in conflict with the petition application.

Further in the document published by the League of Minnesota Cities entitled "Information Memo: Land Use Variances", under "B. Economic Factors," "Sometimes landowners insist that they deserve a variance because they have already incurred substantial costs or **argue that they will not receive expected revenue without the variance. State statute specifically notes that economic considerations alone cannot create practical difficulties.**" This nullifies Mr.

Hansen's argument, "the plight of the landowner", that the lot would not be saleable unless a home could be built on, which has already been states is false in the first place, given that another similar small recreational lot has successfully been sold twice within the last 15 years.

The staff determined that the outdated 4 criterion were met, but this finding is unfounded.

1. The home would crowd the area and does not conform to the average approximate 1.0 acre lot size around Lake Demontreville. It would affect the lake hydrology with excessive impervious surface, runoff and pollutants headed directly into Lake Demontreville. It would also not fit in with the modest, plain homes which are situated within wooded lots. Instead, this home would remove at least 50% of the existing vegetation including mature trees and screen-providing foliage.

2. Thought the lot size restrictions may have changed, this cannot alone satisfy this requirement, as stated previously, in the document published by the League of Minnesota Cities entitled "Information Memo: Land Use Variances", under "B. Economic Factors," "Sometimes landowners insist that they deserve a variance because they have already incurred substantial costs or argue that they will not receive expected revenue without the variance. State statute specifically notes that economic considerations alone cannot create practical difficulties."

3. The applicant has misrepresented information. Where his lot size is 0.63, not 0.7, and the lots on either side are both larger than the applicant stated. In fact, they are 0.83 to the south and 0.77 to the north. Further, the average sized lot on Lake Demontreville is around 1 acre. Despite averages, the ordinance is put in place for a reason - to protect water quality - and needs to be honored. Otherwise it will become a slippery slope making it harder to deny other variance requests, as they will use this as precedent-setting action and the lake will quickly become more overcrowded, the ecology of the lakeshore environment will suffer, and the hydrology of the lake will become unhealthy.

Another further misrepresentation by the petitioner is that the setback from the ordinary high water mark for 8120 Hill Trail North is 83 feet, when documentation proves that it is 90 feet, not 83 feet. This misrepresentation makes the petitioner's house closer to the shoreland than is required, and does not respect the original 100 foot setback requirement advocated by the DNR.

4. The proposed 36-foot high structure certainly will impair the supply of light and air the properties adjacent currently enjoy, and in the case of the house to its south, will nearly completely shade the home for a significant part of the day. In addition, Ms. Gustafson requests a study to be completed to discover how the value of other homes will be affected with another home crowded in between.

Other Lot Sizes on Lake Demontreville:

| Address | Min. Total Acreage |
|-----------------------|--------------------|
| 8554 Hidden Bay Trail | 0.67 |
| 8548 Hidden Bay Trail | 1.01 |
| 8510 Hidden Bay Trail | 1.04 |
| 8498 Hidden Bay Trail | 0.97 |
| 8450 Hidden Bay Trail | 0.71 |
| 8416 Hidden Bay Trail | 0.94 |
| 8382 Hidden Bay Trail | 0.85 |
| 8344 Hidden Bay Trail | 0.84 |
| 8320 Hidden Bay Trail | 0.77 |
| 8294 Hidden Bay Trail | 0.88 |
| 8292 Hidden Bay Trail | 1.34 |
| 8290 Hidden Bay Ct. | 0.75 |

| | |
|--|---------------------|
| 8286 Hidden Bay Ct. | 0.88 |
| 8200 Hill Trail N. | 0.85 |
| 8190 Hill Trail N. | 0.4 |
| 8186 Hill Trail N. | 0.48 |
| 8180 Hill Trail N. | 1.27 |
| 8179 Hill Trail N. | 1.35 |
| 8164 Hill Trail N. | 0.93 |
| 8160 Hill Trail N. | 0.85 |
| 8148 Hill Trail N. | 0.8 |
| 8130 Hill Trail N. | 0.38 |
| 8120 Hill Trail N. | 0.77 |
| 8108 Hill Trail N. | 0.83 |
| 8098 Hill Trail N. | 0.75 |
| 8084 Hill Trail N. | 0.48 |
| 8076 Hill Trail N. | 0.5 |
| 8066 Hill Trail N. | 0.76 |
| 8056 Hill Trail N. | 0.32 |
| 8048 Hill Trail N. | 0.51 |
| 8038 Hill Trail N. | 0.64 |
| 8032 Hill Trail N. | 0.8 |
| 8028 Hill Trail N. | 1.07 |
| 8024 Hill Trail N. | 0.77 |
| 8018 Hill Trail N. | 0.89 |
| 8012 Hill Trail N. | 0.93 |
| 8000 Hill Trail N. | 1.1 |
| 7982 Hill Trail N. | 1.08 |
| 7978 Hill Trail N. | 0.79 |
| 7972 Hill Trail N. | 0.45 |
| 7962 Hill Trail N. | 1.03 |
| 7934 Hill Trail N. | 0.57 |
| 7920 Hill Trail N. | 1.32 |
| 7821 Demontreville Trail N. | 1.73 |
| 7980 Demontreville Trail N. | 1.64 |
| 8010 Demontreville Trail N.* | 1.82 |
| 8080 Demontreville Trail N.* | 3.95 |
| 8100 Demontreville Trail N.* | 1.92 |
| 8110 Demontreville Trail N.* | 2.88 |
| 8120 Demontreville Trail N.* | 3.05 |
| *home lot is across st. from lake frontage | |
| AVERAGE MIN. ACREAGE | 1.11* / 0.93 |

Of 50 lakeshore residences, only 8 have 0.63 acres or less.

Thank you for your attention to this letter, and the crucial details it puts forth. This is a significant decision, in which the reasons to deny the variance clearly outweigh the reasons to grant it, when applied to Minnesota Law.

Sincerely,

WAGNER, FALCONER & JUDD, LTD.

A handwritten signature in cursive script, reading "Lauren T. Skildum". The signature is written in dark ink and extends horizontally across the page.

Lauren T. Skildum
Attorney at Law

cc: Ms. Amy Gustafson

Nick Johnson

From: Gordy Grundeen <gordyg@teksolr.com>
Sent: Monday, September 23, 2013 11:14 AM
To: Nick Johnson
Subject: 09-23-13-planning commission

Dear Planning Commission:

We oppose any variance that changes lot sizes in our neighborhood. The reason is our water supply, namely, groundwater. The recently released Washington County Groundwater Plan for 2014-2024 shows that our water supply is shrinking and becoming polluted. Creating higher density neighborhoods only exacerbates and strains our groundwater supplies.

As pointed out in this Groundwater plan, it takes money \$\$\$\$ to manage these plans. That means raising taxes - my taxes. No way.

Gordy Grundeen
8270 Hidden Bay Trail
Lake Elmo MN, 55042
651-770-1056
gordyg@teksolr.com



Draft Planning Commission Minutes, 9-23-13
Excerpt from Public Hearing Item 4a

Public Hearing: *Variance – 09.029.21.22.0025 (Hill Trail North)*

Johnson presented the updated information submitted by the applicant, including an updated site plan and a proposed septic system design. The septic system does comply with Washington County regulations concerning subsurface sewage treatment systems. Johnson reviewed the updated site plan and noted that impervious surface coverage had been reduced from the previous plan. Moving on, Johnson noted that staff had performed an analysis at the request of the Planning Commission of the size and location of lots within the Hill Trail North area. He briefly discussed the City zoning regulations concerning substandard lots and situations in which a property owner owns several lots next to each other. Johnson reviewed comments and letters received and noted that staff is recommending approval of the variance with two conditions of approval.

Dorschner asked when the homes south of the applicant's site were constructed. Johnson replied that staff does not have this information on hand, but he did note that they had to have been built prior to the 1979 Code adoption, or received a variance.

Nancy Hanson, 8024 Hill Trail N., noted that her family has been maintaining and improving the lot for many years. They decided not to build a home of their own on the lot due to their age.

Paul Hanson, 8024 Hill Trail N., noted that he and his wife currently own the property. He noted that they have been taking care of the lot and that it would be a very nice lot for a new home.

Gale Dworak, 12325 Upper Heather Ave., noted that she and her husband are the applicants and are asking the Planning Commission to take action based on meeting the Code requirements.

Dean Dworak, 12325 Upper Heather Ave., stated that 11 of the 14 people notified for this variance offered no objection. He believes that the people objecting to the variance are doing so in part because they have enjoyed a vacant lot next to their home for many years. The staff states that all of the requirements are met.

Brad Gustafson, 8120 Hill Trail N., reviewed the variance requirements and feels that the variance is in direct conflict with the intent of the Ordinance and does not meet the required findings for a variance.

Kevin Clemmons, 7920 Hill Trail N., stated that he lives on Lake DeMontreville. He shared his concern that people should make sure that the aquifer can support a new home, and possibly more in the future.

Bonnie Weisbrod, 8111 Hill Trail N., lives across from this property. The City has dealt with variances in the past for other lots in the area and previous requests were denied. She stated that this is not a buildable lot and expressed concern regarding runoff from the street to her lot.

Dick Nelson, 8123 Hill Trail N., lives across the street and built his home in 1973. The City has criteria concerning what is considered a buildable lot; the City should follow those rules.

Vickie Iverson, 8108 Hill Trail N., stated that her main concern is that the lake will turn into a White Bear Lake and that the aquifer is going to be drained. We need to take care of the lake and she doesn't want all of the small lots to be built on.

Williams noted receipt of two written comments; one letter from an attorney representing the Gustufson family, and another from Mr. Gordy Grundeen. Both letters indicated opposition to the variance request.

Williams closed the Public Hearing at 7:39 p.m.

Dodson asked questions about the aquifer and capacity in case another well is drilled. Zuleger replied that Lake Elmo area aquifers have been studied as part of the City's water plan. He noted that the City has been assured that the aquifer intended to be used for the municipal water system has substantial capacity. Dodson also asked if the DNR commented on the population density for this area. Johnson stated that the DNR looks at adherence to the shoreland ordinance. They look at the amount of impervious surface, grading, erosion control and drainage. Based on what has been proposed, the DNR has not offered any objection to the Variance request.

Haggard how does new development affect the County ground water plan. Zuleger stated that the plan primarily deals with quantity.

Dorschner was wondering if the City has considered the domino effect. How many more variances can be sustained? Klatt stated that in the mid 1980's, the City passed a restriction that before any of the lots in this area can be sold, the sale must be reviewed & stamped by the City. This was done to ensure that these smaller lots can't be split off by an owner and considered buildable. It should also be noted that the variance standards are more lenient now with the practical difficulties test as opposed to the undue hardship test.

Kreimer asked if the concern regarding runoff is enough to require a rain garden. Johnson stated that the proposed home is under the amount of impervious surface allowed, therefore, a rain garden is not required.

Williams is concerned about the loss of the City's rural character and thinks we should maybe consider raising lot size requirements rather than lowering it. He suggested looking at average lot size to determine whether or not to build on a piece of property.

Dodson is concerned with private property aspect of the rules and regulations. He does not think that the proposed home will change the density of the area. In addition, he felt that Tri-Lakes area should not be considered a rural area.

Haggard has concerns about aquifer, runoff to lake, etc. You can't just look at one home, but need to look at the whole area and the future potential for more homes. She noted that the Ordinance is in place to protect aquifer and is concerned about damaging the lakes.

The Planning Commission had a general discussion about the aquifers.

Zuleger noted that this summer there were discussions regarding bringing sewer to this area when it would be feasible. There have been petitions in the past to try and serve the peninsula with sewer. Dorschner stated that sewer would be a game changer, but there is no guarantee that it will happen.

Morreale is concerned about the aquifer. One house may not seem like a big deal, but if it opens the door to additional homes, it may add greater pressure. He feels that it is an important consideration.

Haggard stated that she recommends denial based on water quality concerns – that the request may negatively impact the essential character of the neighborhood.

Dorschner feels that lot was purchased with knowledge that it was unbuildable and they are now asking for a variance. In his opinion, the variance request does not meet the test for a unique circumstance.

Haggard feels that property at present is not buildable. Williams feels that the difficulty is of the future property owner's making.

Dodson stated that he doesn't see any data to deny the variance based on water quality. Kreimer agrees and also notes that all the lots in the area are of similar size.

Williams would like to add a finding that the proposed variance is not consistent with the Comprehensive Plan. The Comprehensive Plan does not call for small lots in the area and calls for this area to have on-site systems with private services. The Comp plan also calls for the area to be rural which does not mean small lots. Haggard accepted the amendment.

Recommend denial based on 3 findings – There is not unique circumstances, the degradation of the aquifer and water quality would alter the essential character of the neighborhood, and the variance is contra to the comprehensive plan.

M/S/P: Haggard/Morreale, move to deny Variance request at 09.029.21.22.0025 (Hill Trail N) based on three findings: ***Vote: 5-2, Motion Carried***, with Dodson and Kreimer voting no.