



PLANNING COMMISSION  
DATE: 11/25/13  
AGENDA ITEM: 5B – PUBLIC HEARING  
CASE # 2013-38

ITEM: Comprehensive Plan Amendment and Zoning Map Amendment – 10689 60<sup>th</sup> Street North

SUBMITTED BY: Nick Johnson, City Planner

REVIEWED BY: Kyle Klatt, Community Development Director  
Jack Griffin, City Engineer  
Rick Chase, Building Official  
MnDOT

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### **SUMMARY AND ACTION REQUESTED:**

The Planning Commission is being asked to hold a Public Hearing for a request to amend the Lake Elmo Comprehensive Plan and Zoning Map to change the land use designation and zoning for a property at 10690 60<sup>th</sup> Street North from Rural Residential (RR) to Commercial (C). The applicants currently operate multiple landscaping businesses on the site. Under the current zoning for the site, Rural Residential, landscaping businesses (classified under the use Trade Shop) are not a permitted use. The Comp Plan and Zoning Map Amendment requests are intended to bring the site's land use guidance under the Comp Plan and zoning under the City's Zoning Map into conformance with the existing use. Staff is recommending that the Planning Commission recommend denial of the request.

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### **GENERAL INFORMATION**

*Applicant:* Brian Meyers, John Putzier and Joe Skaar, 623 Cresthaven Drive, South St. Paul, MN 55075

*Property Owners:* Brian Meyers and John Putzier, 623 Cresthaven Drive, South St. Paul, MN 55075

*Location:* Part of Section 02 in Lake Elmo, immediately south of Trunk Highway (TH) 36 and approximately 1,300 feet west of Lake Elmo Avenue (CSAH-17). Property Identification Number (PIN): 02.029.21.11.0004.

*Request:* Application for Comprehensive Plan Amendment (Rural Area Development (RAD) to Commercial (C)) and Zoning Map Amendment (RR to C)

*Existing Land Use:* Trade Shop – Landscaping Business

*Existing Zoning:* RR – Rural Residential

*Surrounding Land Use:* North – TH 36; South and West – agricultural operation (Country Sun Farms); and South and East – Discover Crossing (Open Space Preservation (OP) Neighborhood).

*Surrounding Zoning:* RR – Rural Residential; and RR – Rural Residential with an OP Conditional Use Permit (CUP)

<i>Comprehensive Plan:</i>	Rural Area Development (RAD)
<i>Proposed Zoning:</i>	C – Commercial
<i>History:</i>	The subject property has been the site of a single family home since 1940 (according to County parcel data). In 1988, a 1,800 square foot accessory structure (pole barn) was added. Currently, the site is used as a base of operations by three landscaping businesses: Oak Meadows Landscape & Design, Northland Seasonal Outdoor Services, and Selfscapes.
<i>Deadline for Action:</i>	Application Complete – 11/8/13 60 Day Deadline for Action– 1/6/14 Extension Letter Mailed – No 120 Day Deadline – 3/7/14
<i>Applicable Regulations:</i>	Comprehensive Plan (Chapter III – Land Use) Article 9 – Rural Districts (RR): §154.400 Article 12 – Commercial Districts: §154.550

## **REQUEST DETAILS**

The City of Lake Elmo has received a request from Mr. Brian Meyers, Mr. John Putzier and Mr. Joe Skaar for a Comprehensive Plan and Zoning Map Amendment to change the future land use designation and zoning of property (10689 60<sup>th</sup> Street North) immediately south of TH-36 and west of Lake Elmo Avenue from Rural Residential (RR) to Commercial (C). This property is located within the Rural Planning Area. The property is owned by Brian Meyers and John Putzier and is presently used as a base of operations for three landscaping businesses. Under the Rural Residential zoning, trade shops (which landscaping businesses are classified as under the Zoning Code) are not a permitted use in the RR district. Trade shops are a permitted use only in the Commercial zoning district. Therefore, the applicants have requested to rezone the property to make the zoning consistent with the existing use.

## **BACKGROUND**

As a result of ongoing complaints related to outdoor storage of equipment and landscape materials, the property at 10689 60<sup>th</sup> Street is currently subject to the City's Code Enforcement Process. Beginning in July of 2013, the City has been working with the property owners to clean up their site due to a significant amount of debris and landscape materials. In addition, the City informed the property owners that the operation of a landscaping business on a parcel zoned Rural Residential is not permitted. To work with the property owners on cleaning up the site and ceasing the commercial activity, the City informally established deadlines to clean up landscaping materials and debris (December 2013) and cease all commercial activities on the site (April 2014). The established mitigation schedule can be reviewed in the attached Code Enforcement Letter (Attachment #8). This timeline would allow the property owners enough time to remove all of the debris and materials related to the landscaping business, as well as give the landowners the ability to use the site for snow removal activities during the winter.

As a result of the Code Enforcement agreement, the property owners have been successful in removing a substantial amount of the debris and materials. The City's Building Official, Rick Chase, has been working with the applicants on following through on the agreed-upon deadlines for debris removal. However, the issue of the illegal use of the property as a trade shop persists. In order to request the continued use of the site, the property owners met with staff to determine the correct course of action. This meeting resulted in the City communicating to the land owners that they could not continue to use the site for the existing use under the current Comprehensive Plan and zoning. Therefore, the landowners are requesting that the land use designation under the Comprehensive Plan and zoning be changed to Commercial.

Currently, three landscaping businesses use the site as a base of operations. These businesses include Oak Meadows Landscape & Design, Northland Seasonal Outdoor Services, and Selfscapes. The City is not able to pinpoint the total number of employees who use the site or the amount of traffic. In addition, it is not clear how long the property owners have been using the site for these businesses. However, this information should not have a critical bearing on the ultimate decision. The Comp Plan and Zoning Map Amendment requests should be evaluated based on the merits of changing the zoning of the subject property from Rural Residential to Commercial.

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## PLANNING AND ZONING ISSUES

Currently, the City's Comprehensive Plan does not guide any portion of the community along TH-36 for Commercial use. The subject property is in the Rural Planning Area, and is currently guided Rural Area Development. Under the purpose statement of the Comprehensive Plan, Purpose #2 states the following:

*"2. The Land Use Plan is intended to be a guide for future development which reinforces the City's commitment to preserving a rural character. By focusing required and necessary growth into targeted and logical areas based on historical and transportation system factors, the City can ensure a vast majority of the community can and will retain its agricultural feel. The plan is responsive to development patterns in neighboring communities by focusing a majority of the proposed urbanized development South of 10<sup>th</sup> Street near or adjacent to similar developments in Oakdale and Woodbury. Rural boundaries with neighboring communities are also maintained."*

With this purpose in mind, it was the goal of the City's Land Use Plan (Comprehensive Plan) to plan for growth and development in two specific areas: the I-94 Corridor and the Village. Considering this goal, planning for Commercial areas outside of the I-94 Corridor and Village conflict with the purpose of the City's Comprehensive Plan. While there are some areas of limited commercial activity in the community outside of the Village and I-94 Corridor, such as the Carriage Station and Prairie Ridge Office Parks, these areas were planned for and developed before the adoption of the City's current Comprehensive Plan. In addition, these sites were originally developed to accommodate commercial activities, with appropriate access, parking and circulation, whereas the subject property has been transitioned from a residential property to a commercial property without accounting for these important considerations related to developing commercial sites. For these reasons, it is the recommendation of Staff that amending the City's Future Land Use Map to change the future guidance of this property from Rural Area Development (RAD) to Commercial (C) would be in conflict with the intent of the City's Comprehensive Plan.

With regards to zoning, it should be noted that the purpose of the City's Zoning Map is to implement the Comprehensive Plan. As designated under the City's Zoning Map, the subject property is zoned Rural Residential (RR). Under the RR zoning, the applicants are operating a use, Trade Shop, that is

not permitted in the Rural Residential (RR) zoning district. Under the Lake Elmo Zoning Code (§154.012.B.3.q), Trade Shops are defined as the following:

*“Any lot, land, building, or structure that serves as the headquarters for contractors involved in specialized activities such as plumbing, painting, masonry, carpentry, roofing, well drilling, landscaping and the like, where tools, equipment and materials used in the business are stored. The category also includes establishments involved in specialized trades such as sheet metal, sign painting, drapers, and exterminators.”*

The only zoning district where trade shops are a permitted use is the Commercial zoning district. Given the definition, the applicants’ use of the property clearly falls under the classification of Trade Shop. Therefore, in order to legally operate a landscaping business on the site, the property would have to be zoned Commercial. It should also be noted that the surrounding properties are currently zoned Rural Residential (RR) and, in the case of Discover Crossing, Rural Residential with an Open Space Preservation (OP) Conditional Use Permit (CUP). Given the zoning of the surrounding properties, it is important to consider the potential issues related to consistency in zoning and land use compatibility if the request were to be approved. Due to these considerations, the rezoning request likely constitutes a Spot Zoning situation in the judgment of Staff. According to an article in *Issues in Land Use Law and Zoning* (Attachment #10), Spot Zoning is defined as “the process of singling out a small parcel of land for a use classification totally different from that of the surrounding area for the benefit of the owner of such property and to the detriment of other owners.” Two of the key factors in determining if a request constitutes a Spot Zoning is evaluating the request based on consistency with the community’s Comprehensive Plan and consistency with surrounding land uses. In both cases, Staff has determined that the request would be characteristic of a Spot Zoning action.

It should also be noted that the applicants have stated in their application that other similar businesses currently operate along TH-36. They are correct in that some RAD properties along TH-36 do include some limited commercial activities. However, the commercial activities on these sites were either in existence before the adoption of the Zoning Code, thereby making the uses legal non-conforming (“grandfathered”) uses, or the commercial activities have been permitted through a Conditional or Interim Use Permit. The most similar comparison for this case remains Lauseng Stone (9591 60<sup>th</sup> Street North). Before the adoption of the 1979 Zoning Code, commercial activities related to landscaping materials and an open sales lot were occurring on the property. After the adoption of the 1979 Code, the City required Lauseng Stone to apply for a Conditional Use Permit (CUP) to allow for the storage of landscape materials and an open sales lot. At this time, these activities were allowed by CUP in the agricultural zoning district. However, these activities are not currently permitted in the Rural Residential zoning district under the current Zoning Code. Therefore, the comparison between the applicant’s proposed use and other existing businesses along TH-36 is not applicable. The applicants did not establish their business at a time when these activities would have been permitted (even conditionally) in the Rural Residential zoning district.

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## **REVIEW AND ANALYSIS**

The subject property is 9.93 acres in size and is accessed by a driveway directly connected to eastbound TH-36. The site contains a single family home that serves as an office for the landscaping operation, as well as a 1,800 square-foot accessory building for the storage of equipment. The site is nearly divided in half from north to south by an approximately 90,000 square foot (nearly 2 acres) pond. The operation of the landscaping business and storage of equipment and materials primarily

occur on the north side of the pond. In addition, as noted by the applicants, the site is also underneath high-voltage power lines than run along the south side of TH-36.

Regarding adequate public facilities for a commercial use, the site does not currently have access to the City's municipal water system. However, a municipal water line connecting the Discover Crossing neighborhood to the Rockpoint Church facility from east to west is located approximately 350' to the south of the parcel boundary of the subject parcel. It could be feasible to connect the property to the municipal water system to this water line. In relation to wastewater facilities on the subject property, there is an on-site sub-surface sewage treatment system on site. To Staff's knowledge, this system has not been evaluated or inspected in terms of its ability to manage the wastewater produced by the existing landscaping business, as staff is not certain how many employees use the site. In reviewing the Comp Plan and Zoning Map Amendment requests, the City Engineer has stated that for the City to change the guidance and zoning of this property to Commercial, adequate public facilities should be provided. Adequate public facilities would include connecting to City's municipal water system and demonstrating a viable long term plan for wastewater on the site. Per the Engineer's review letter (Attachment #9), the site is not guided to be served by municipal sanitary sewer. In addition, no municipal sewer service is available in close proximity to the site. Given this condition, the long-term wastewater solution would most likely have to be accounted for on-site.

In addition to water and wastewater services, access is another critical component of demonstrating adequate public facilities. Given that the site is accessed via a direct driveway on TH-36, Staff does not find that there is adequate and safe access to the site for a Commercial use. The City Engineer notes that expanded access, i.e. rezoning to Commercial, should not be allowed due to safety concerns and access management considerations. If the City were to approve the amendment requests, the City Engineer recommends that an alternative access to the site must be provided. The City Engineer also notes that the City has been working with MnDOT and Washington County on extensive transportation planning efforts related to TH-36. These efforts have always included the elimination of existing driveway accesses, as opposed to expansion of existing access points. In addition to the City Engineer's review comments, Tod Sherman, MnDOT Planning Supervisor, notes that TH-36 is a principal arterial, emphasizing mobility as opposed to private property access. In addition, Mr. Sherman recommends minimizing the amount of traffic utilizing adjacent private driveways on TH-36. Rezoning the property to Commercial would not be minimizing the amount of traffic, but rather expanding the amount of traffic. MnDOT's review comments can be found in Attachment #10. Based upon the review of the City Engineer and MnDOT, Staff does not feel that there is adequate access to the site if used for Commercial purposes. It is Staff's determination that the lack of a safe access to the site is another factor demonstrating a lack of adequate public facilities to serve a property zoned Commercial. Overall, a lack of adequate public facilities for a Commercial use reinforces Staff's recommendation to recommend denial of the Comp Plan and Zoning Map Amendment requests.

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## **DRAFT FINDINGS**

Given that the request is not compatible with the City's Comprehensive Plan or the surrounding land uses, Staff is not supportive of the proposed amendments. In addition, Staff has determined that the applicant has not demonstrated that adequate public facilities are present to serve a Commercial use on the site. Staff is recommending denial of the requested amendments to the City's Comprehensive Plan and Zoning Map based on the following findings:

1. That the proposed Comprehensive Plan Amendment is not consistent with the intent and purpose the City’s Land Use Plan, which encourages growth and development in the I-94 Corridor and Village Planning Areas while maintaining rural character in the Rural Planning Area.
2. That rezoning the property to Commercial would represent a Spot Zoning action due to inconsistency with the City’s Comprehensive Plan and incompatible surrounding land uses.
3. That the applicant has not demonstrated that adequate public facilities exist on the site to serve a future Commercial land use. More specifically, that direct driveway access onto TH-36 represents a hazard to public safety and poor access management, and is not consistent with the State, County and City’s planning efforts for the corridor to date.

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**RECCOMENDATION:**

Staff recommends that the Planning Commission recommend denial of the request to amend the Lake Elmo Comprehensive Plan and Lake Elmo Zoning Map by changing the future land use designation and zoning of property at 10689 60<sup>th</sup> Street North from Rural Area Density (RAD) to the Commercial (C) land use category and the zoning from the Rural Residential (RR) to Commercial (C). Suggested motion:

*“Move to recommend denial of the request to amend the Lake Elmo Comprehensive Plan and Lake Elmo Zoning Map at 10689 60<sup>th</sup> Street North based upon the findings outlined in the Staff Report”*

**ATTACHMENTS:**

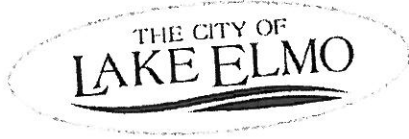
1. Land Use Application
2. Location Map
3. Site Aerial
4. Future Land Use Map (Map 3-3 from Comprehensive Plan)
5. Proposed Comprehensive Plan Amendment: RAD to C
6. Urban and Rural Areas (Map 3-1 from Comprehensive Plan)
7. Lake Elmo Zoning Map
8. Code Enforcement Letter/Agreement
9. City Engineer Review Letter
10. MnDOT Review Letter
11. “Understanding Spot Zoning”, *Daniel Shapiro, Esq.*

**ORDER OF BUSINESS:**

- Introduction ..... City Planner
- Report by Staff ..... City Planner
- Questions from the Commission ..... Chair & Commission Members
- Open the Public Hearing .....Chair

- Close the Public Hearing.....Chair
- Discussion by the Commission ..... Chair & Commission Members
- Action by the Commission..... Chair & Commission Members

Date Received: \_\_\_\_\_  
Received By: \_\_\_\_\_  
Permit #: \_\_\_\_\_



651-747-3900  
3800 Laverne Avenue North  
Lake Elmo, MN 55042

# LAND USE APPLICATION

- Comprehensive Plan  Zoning District Amend  Zoning Text Amend  Variance\*(see below)  Zoning Appeal  
 Conditional Use Permit (C.U.P.)  Flood Plain C.U.P.  Interim Use Permit (I.U.P.)  Excavating/Grading

- Lot Line Adjustment  Minor Subdivision

Applicant: Brian Meyers, John Putzier, Joe Skaar  
Address: 623 Cresthaven Drive South St. Paul, MN 55075  
Phone # 651-246-0950  
Email Address: brian@oakmeadowslandscape.com

Fee Owner: Brian Meyers, John Putzier, Joe Skaar  
Address: 623 Cresthaven Drive South St. Paul, MN 55075  
Phone # 651-246-0950  
Email Address: brian@oakmeadowslandscape.com

Property Location (Address and Complete (long) Legal Description): 10689 60TH ST N LAKE ELMO, MN 55042  
PT W1/2-NE1/4 DESC AS FOLL: BEG AT INTERSECT OF ELY LINE SD W1/2-NE1/4 WITH SLY RAW LINE MN TRK HWY 36 AS LOCATED TRAVELED & MONUMENTED THN  
SLY ALG SD ELY LINE 760FT THN WLY PAR WITH SD SLY RAW LI NE 569 35FT  
THN NLY PAR WITH SD ELY LINE 760FT ML TO SD SLY RAW THN ELY ALG SD SLY RAW LINE 569.35FT ML TO PT OF BEG SUBJ TO NSP CO EASEMENT DESC IN BK 291 DEEDS PG 213 SECTION 02 TOWNSHIP 029 RANGE 021

Detailed Reason for Request: To be compliant with land use located in Lake Elmo and continue using for local business.  
Our property is located along Highway 36 under power lines making it an undesirable location for residential homes. Other similar businesses operating  
similar services operate along Highway 36. Our property is also unique in that it is divided by a pond and we primary use the north side.

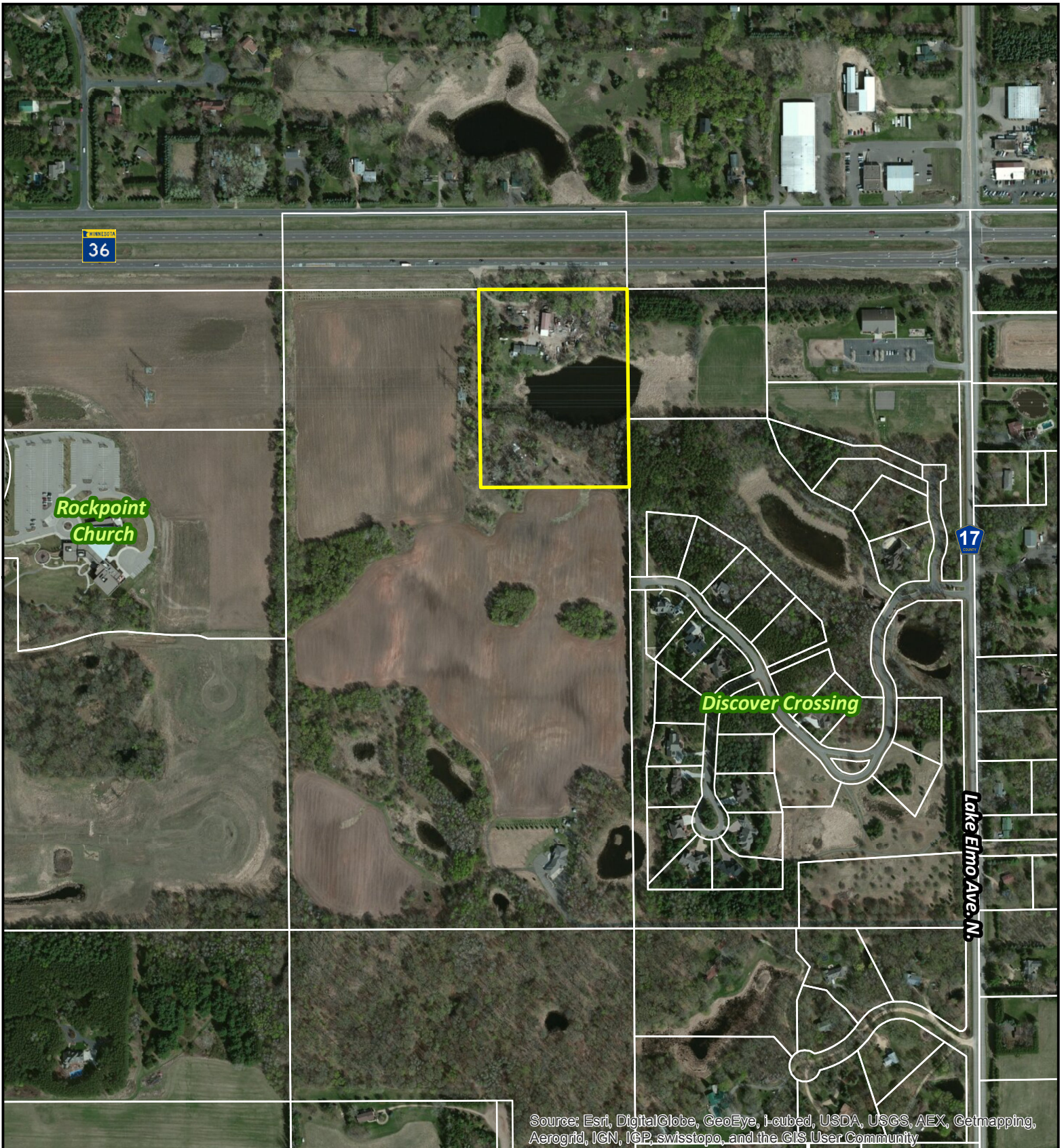
\*Variance Requests: As outlined in Section 301.060 C. of the Lake Elmo Municipal Code, the applicant must demonstrate practical difficulties before a variance can be granted. The practical difficulties related to this application are as follows:

In signing this application, I hereby acknowledge that I have read and fully understand the applicable provisions of the Zoning ordinance 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.

Signature of applicant: [Signature] Date: 10/22/13  
[Signature] Date: 10/22/13

**City Use Only**  
Planning: Zoning District: \_\_\_\_\_ Date: \_\_\_\_\_  
Reviewed by: \_\_\_\_\_  
Subject to the following conditions: \_\_\_\_\_  
Engineering: Reviewed by: \_\_\_\_\_ Date: \_\_\_\_\_  
Subject to the following conditions: \_\_\_\_\_





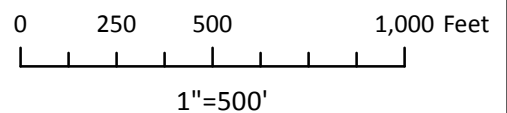
## Location Map: 10689 60th Street N.



Data Source: Washington County, MN  
11-20-2013




10689 60th Street N.





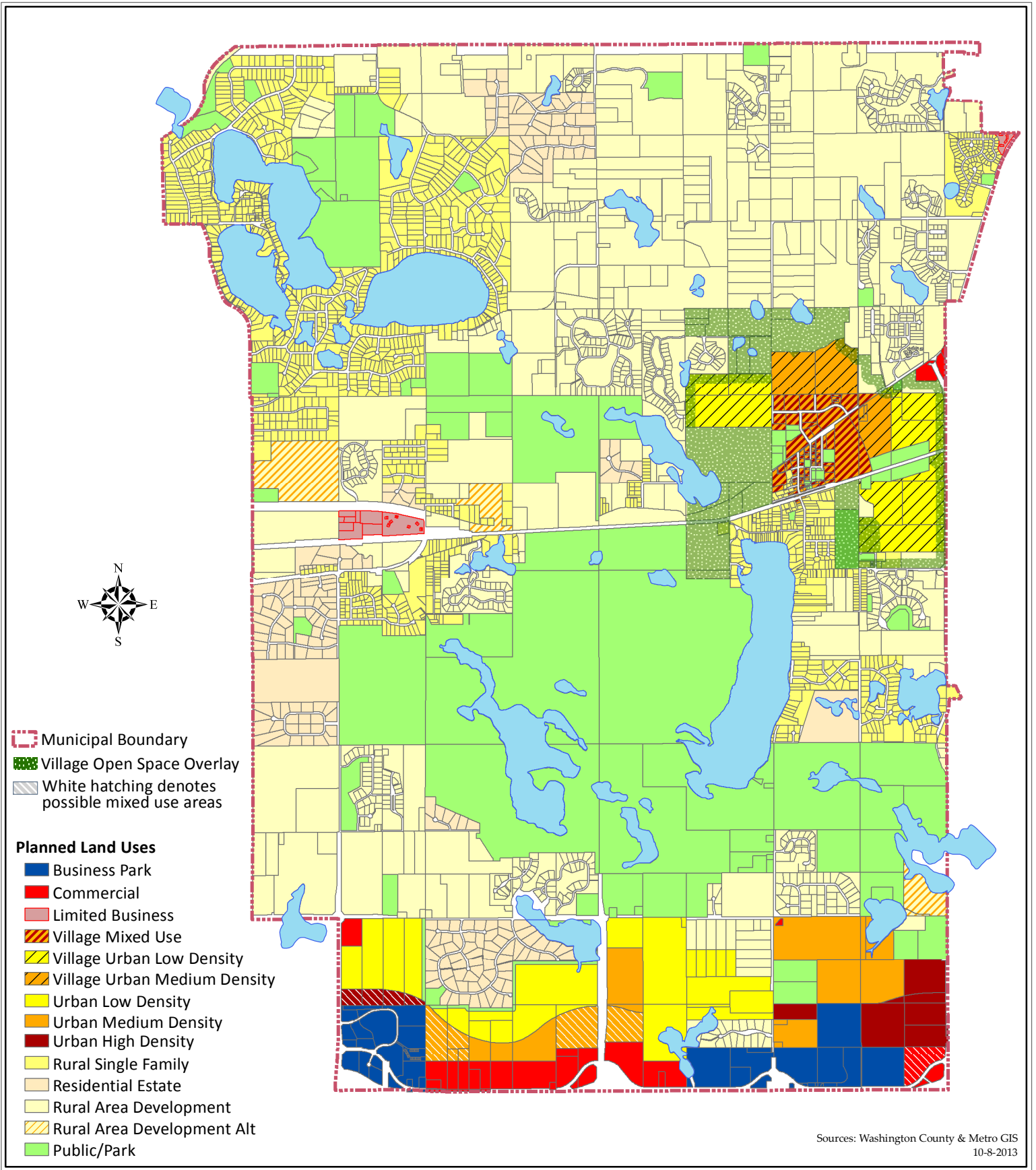
**Site Aerial**  
**10689 60th St.**

 10689 60th Street N.

0 50 100 200 Feet

1"=100'



Source: Esri, DigitalGlobe, GeoEye, i-cubed, USDA, USGS, AEX, Getmapping, Aerogrid, IGN, IGP, swisstopo, and the GIS User Community

















## Planned Land Use

Lake Elmo Comprehensive Plan 2030



-  Municipal Boundary
-  White hatching denotes possible mixed use areas

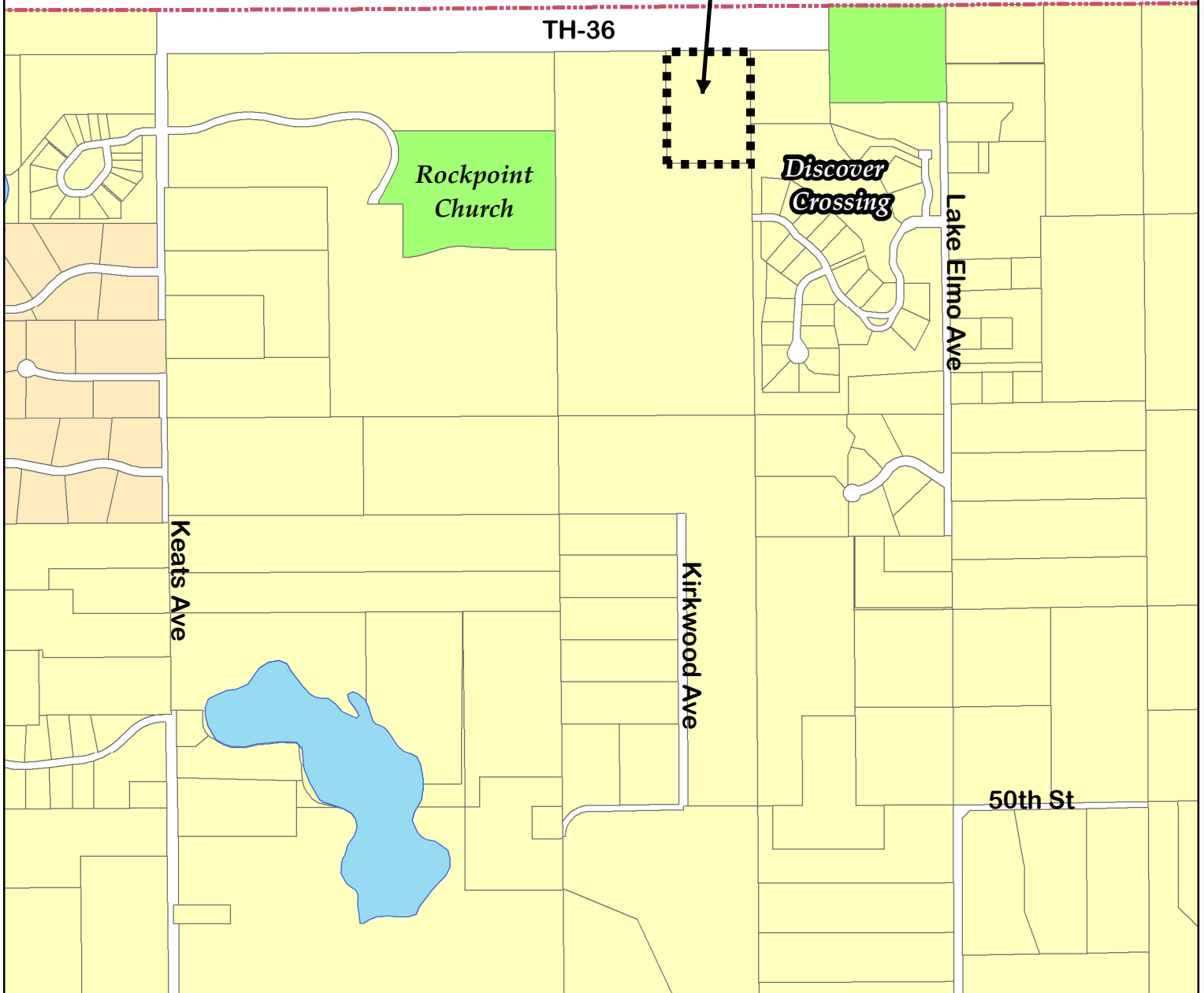
**Planned Land Uses**

- |   |  |
|---|--|
|  Business Park                |  Urban Medium Density       |
|  Commercial                   |  Urban High Density         |
|  Limited Business             |  Rural Single Family        |
|  Village Mixed Use            |  Residential Estate         |
|  Village Urban Low Density    |  Rural Area Development     |
|  Village Urban Medium Density |  Rural Area Development Alt |
|  Urban Low Density            |  Public/Park                |

**Proposed Amendment: RAD to C**



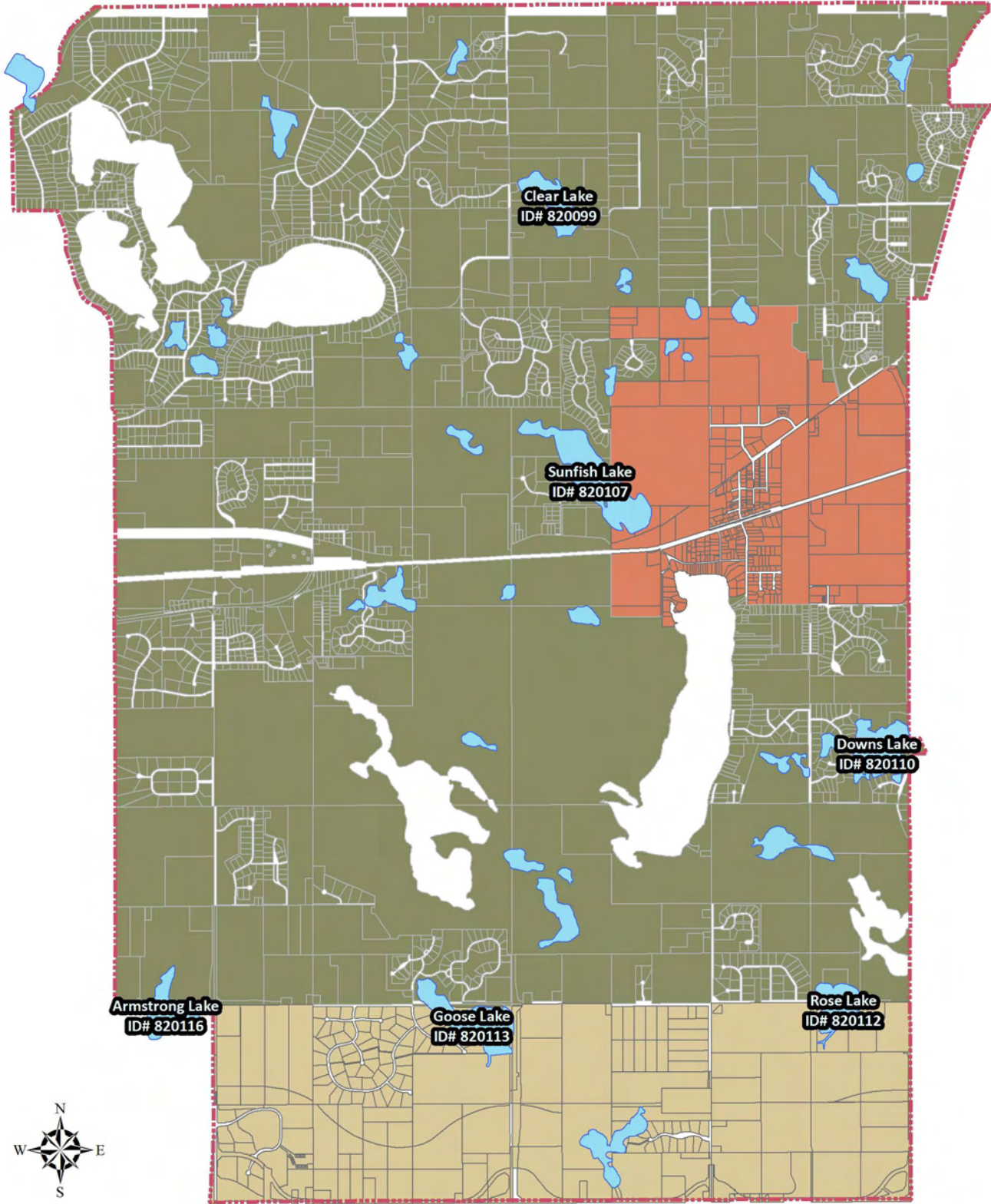
Sources: Washington County & Metro GIS  
11-21-2013



**Planned Land Use - Amendment**

Lake Elmo Comprehensive Plan 2030









Sources: MetroGIS  
7-6-12

# Urban/Rural Areas & Surface Waters

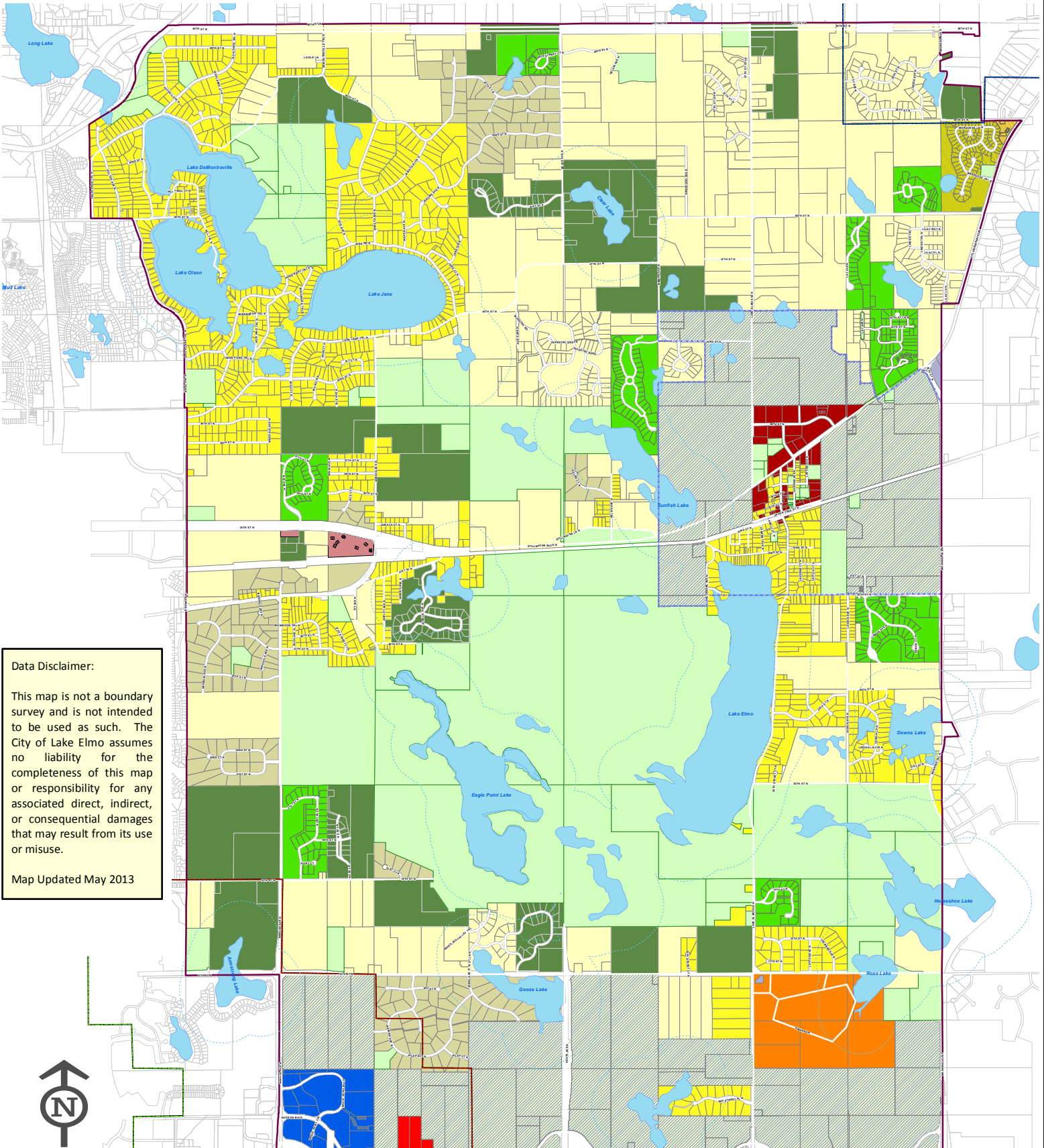
Lake Elmo Comprehensive Plan 2030

-  Municipal Boundary
-  Rural
-  Urban (I-94)
-  Urban (Old Village)



This map was created using MFRA's Geographic Information Systems (GIS), it is a compilation of information and data from various sources. This map is not a surveyed or legally recorded map and is intended to be used as a reference. MFRA is not responsible for any inaccuracies contained herein.

# Lake Elmo Zoning Map



**Data Disclaimer:**

This map is not a boundary survey and is not intended to be used as such. The City of Lake Elmo assumes no liability for the completeness of this map or responsibility for any associated direct, indirect, or consequential damages that may result from its use or misuse.

Map Updated May 2013



## Legend

### General

- Village Area
- Lakes
- Lake Elmo Boundary
- Shoreland District Boundary

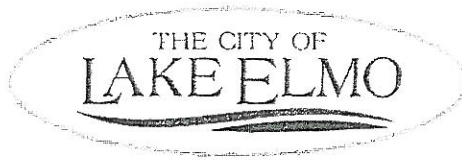
- ### Watershed Districts
- Browns Creek
  - South Washington
  - Valley Branch

## Zoning Districts

- |    |        |     |        |    |
|----|--------|-----|--------|----|
| A  | OP     | HDR | CC     | RT |
| RR | R2-PUD | BP  | LC     | PF |
| RE | LDR    | C   | LC-PUD |    |
| RS | MDR    | GB  | VMX    |    |



Lake Elmo Planning Department  
May 21, 2013



August 23, 2013

John Putzier  
Brian Meyers  
Joseph Skaar  
W 8085 810<sup>th</sup> Ave.  
River Falls, WI 54022

**RE: Code Violations at 10689 60<sup>th</sup> Street North, Lake Elmo, MN**

Mr. Putzier, Mr. Meyers and Mr. Skaar,

On August 13<sup>th</sup>, the City received your proposed schedule to address the various code violations on your property at 10689 60<sup>th</sup> Street North, Lake Elmo, MN. After reviewing the proposed schedule of removing the debris and work related equipment, the timeline for mitigating the various code violations is determined to be adequate. To be clear, this schedule would include removing all debris by November 30<sup>th</sup>, and removing 70% of the equipment by November 15<sup>th</sup>. We understand that you also store equipment related to snow removal that may be utilized over the course of the winter. The proposed schedule would only be acceptable if the equipment related to snow removal is the only equipment that remains on site after November 15<sup>th</sup>. This equipment would have to be removed by April 1st, 2014, effectively ending the use of this site for commercial purposes. In addition, the City only agrees to move forward with the proposed schedule under two conditions:

1. You must demonstrate incremental improvement related to debris cleanup and equipment removal leading up to the two critical dates (11/15 and 11/30). The proposed schedule allows for roughly 10 weeks to address the various code violations. The City will reinspect the property every 2.5 weeks (4 total inspections) to ensure that incremental progress is made. Given the time frame, it stands to reason that the debris cleanup should improve by 25% between each inspection date. The first phase of cleanup should focus on Areas #1 and #2 (as shown in attached pictures). Cleanup of Areas #3 and #4 will be determined after the cleanup of Areas #1 and #2 is completed. For the City to follow the proposed plan of cleanup, it is critical for the City that you show good faith in making incremental progress in the cleanup effort.
2. To ensure the tasks related to the cleanup of the code violations are completed, the city will require a security escrow in the amount of \$5,000. This escrow is to not only ensure that the cleanup proceeds as planned, but protect the City should the cleanup not proceed as planned. As you make incremental improvement in removing the debris and equipment, the City is willing to release portions of the escrow in the amount equal to the progress of cleanup (i.e. 25% of escrow released for 25% of debris and equipment removal).

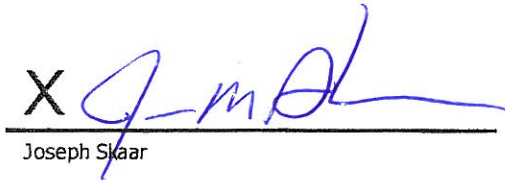
See  
Page (2)  
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As we have stated in previous meetings, the City wants to work with you to address the code violations in a reasonable timeframe. In reviewing your proposed schedule, the timeframe seems reasonable. However, the City has to ensure that incremental progress is being made on the site, and your intention to remove all business activities on the site is made in good faith.

If you are amenable to the proposed schedule and agree to execute it as determined by the City, please sign this document and return it to the City to the attention of the City Clerk, Adam Bell.

X   
John Putzier

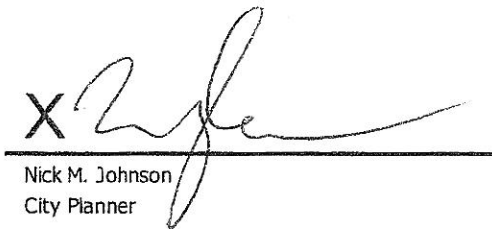
X   
Brian Meyers

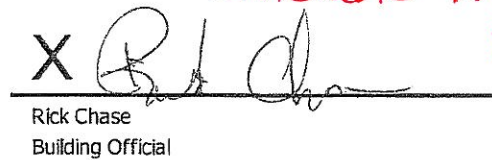
X   
Joseph Skaar

In addition to agreeing to the proposed schedule of cleanup, the City must have the security escrow in the amount of ~~\$5,000~~ posted to the City within 7 business days of receipt of this letter. As soon as the City receives the required security escrow and the signed letter, we can proceed with the proposed schedule and postpone further Code Enforcement action with the understanding that all required elements of the cleanup plan are followed.

Let us know if you have any further questions.

Sincerely,

X   
Nick M. Johnson  
City Planner

X   
Rick Chase  
Building Official

*\$1,000 Each  
Separate checks  
& receipts  
Include Address  
Escrow*

Second Letter

8/23/2013



# MEMORANDUM

# FOCUS ENGINEERING, inc.

Cara Geheren, P.E. 651.300.4261  
Jack Griffin, P.E. 651.300.4264  
Ryan Stempski, P.E. 651.300.4267  
Chad Isakson, P.E. 651.300.4285

Date: November 19, 2013

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To: Nick Johnson, City Planner  
Cc: Kyle Klatt, Community Development Director  
From: Jack Griffin, P.E., City Engineer  
Re: 10689 60<sup>th</sup> Street North  
Comp Plan and Zoning Map Amendment

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An engineering review has been completed for the above Comprehensive Plan and Zoning map amendment for 10689 60<sup>th</sup> Street North. The applicant has requested an amendment to the comprehensive plan and zoning map in order to change the land use designation and zoning for the subject property from residential to commercial. The applicant intends to use the property to operate a landscaping business.

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**STATUS/FINDINGS:** An expanded access to TH 36 should not be allowed due to safety concerns and access management issues existing along the corridor. Any consideration given to allow the expanded use of the subject property should be done only after the applicant has demonstrated an acceptable alternative access for the use of the property. Further consideration should be given to requiring the applicant to connect to city water and demonstrate a viable long term plan for wastewater management.

- 
- The property currently accesses TH 36 directly. As part of MnDOT's TH 36 Corridor Plan, this access point will need to be eliminated at some time in the future, and an alternative access will need to be provided.

Extensive transportation planning work has been completed over the years by the City, MnDOT and Washington County to address safe access to State Highway 36. MnDOT has designated TH 36 as an Inter-Regional Corridor. The City of Lake Elmo is in process of completing a State Highway 36 South Frontage Road Study to identify a long range access management plan and to identify an east-west collector roadway to facilitate this access for the community.

- The property resides outside of the city's planned sewer service areas. Sanitary sewer service is not available to this property and there are no future plans to provide this property with sanitary sewer service in the future.
- City water service is available in the vicinity of the property from the northern trunk watermain extension project. The property is not currently connected to city water.

**From:** [Sherman, Tod \(DOT\)](#)  
**To:** [Nick Johnson](#)  
**Cc:** [Josephson, Adam \(DOT\)](#)  
**Subject:** Access off of TH 36  
**Date:** Friday, November 22, 2013 12:03:30 PM

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Nick:

Thank You for providing MnDOT information concerning the proposed zoning change for the property adjacent to Hwy 36. As you are aware, since there is no other reasonably convenient and suitable alternative access available for the property, MnDOT would likely continue to allow the property direct access onto Hwy 36. Hwy 36 is functionally classified as a principal arterial and therefore emphasizes mobility rather than private property access. Property access should be provided off local public streets wherever possible. Therefore, until access to this property can be relocated to the local roadway network, MnDOT recommends minimizing the amount of traffic using adjacent private driveways.

At a minimum, a MnDOT access permit will be needed for this property due to the change in use. With the permit review for the change in use, MnDOT will need to review plans (site plan, grading plan, landscaping plan, etc.) to insure safe access and to identify any additional permits that may be needed (such as a drainage permit).

Thank You, Tod

Tod Sherman, Planning Supervisor

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## Understanding Spot Zoning

by Daniel Shapiro, Esq.

November 7th, 2013

Editor's note: We're pleased to continue offering articles providing an overview of some of the key zoning and land use law issues planners and planning commissioners face. As with all such articles, we encourage you to consult with your municipal attorney as laws and legal practice vary from state to state.

Occasionally, planning boards or commissions are faced with a petitioner's request to re-zone property only to be challenged with an objector's claim that doing so would constitute illegal spot zoning. The plan commission often has a quandary; approve the development and risk making an improper, if not illegal decision, or deny the development which would have financially improved the community. To better assist with this difficult decision, it is beneficial for the commission to understand exactly what "spot zoning" is.

### What Constitutes Spot Zoning

The "classic" definition of spot zoning is **"the process of singling out a small parcel of land for a use classification totally different from that of the surrounding area for the benefit of the owner of such property and to the detriment of other owners."**<sup>1</sup>

Spot zoning is, in fact, often thought of as the very antithesis of plan zoning.<sup>2</sup> When considering spot zoning, courts will generally determine whether the zoning relates to the compatibility of the zoning of surrounding uses. Other factors may include; the characteristics of the land, the size of the parcel, and the degree of the "public benefit." Perhaps the most important criteria in determining spot zoning is the extent to which the disputed zoning is consistent with the municipality's comprehensive plan.

Counties and municipalities both adopt comprehensive plans for the purposes of stating their long term planning objectives, and addressing the needs of the community in one comprehensive document that can be referred to in making many zoning decisions over time.

Comprehensive plans also typically map out the types (and locations) of future land use patterns which the municipality (or county) would like see — again, these provide guidance for changes in the zoning ordinance and zoning district maps.

The key point: rezonings should be consistent with the policies and land use designations set out in the comprehensive plan.

Importantly, each claim of spot zoning must be considered based upon its own factual scenario. Indeed, some courts engage in a

cost/benefit analysis to determine whether the challenged zoning is spot zoning.

For instance, in *Griswold v. Homer*,<sup>3</sup> the Alaska Supreme Court found spot zoning to exist by considering a cost benefit analysis, as well as the size of the parcel in question and the rezoning in relationship to the comprehensive plan. Critically, it found that the spot zoning was absent because, among other things, the underlying ordinance resulted in genuine benefits to the City of Homer as a whole, and not just to the particular land owner.

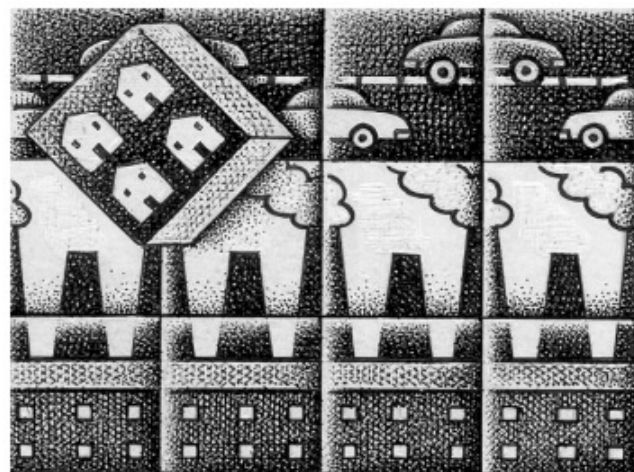


illustration by Paul Hoffman for PlannersWeb

Although courts often find spot zoning where the challenged zone is surrounded by other incompatible zones, spot zoning is less likely to occur when the rezoning has “slopped over” by the extension of the perimeter of an existing zone to include the rezoned area.



illustration by Paul Hoffman for PlannersWeb

Additionally, improper spot zoning is less likely when the disputed area is characterized by mixed uses or transitional areas. In other words, spot zoning is more frequently found in residential than in commercial neighborhoods.

When holding that spot zoning is invalid, some courts will couch their ruling in in terms of substantive due process — in other words, that the rezoning was not “reasonably related” to a legitimate state interest. Other courts will frame a ruling upon equal protection principles.<sup>4</sup>

Regardless, when courts declare such rezoning invalid they must base their declaration on: (1) the lack of connection of the rezoning to a legitimate power or purpose; (2) the lack of the rezoning’s conformity to the comprehensive plan; or (3) the rezoning’s representing an unreasonable inequality in the treatment of similarly situated lands. See, e.g., *Hanna v. City of Chicago*<sup>5</sup> (spot zoning occurs when a relatively small parcel or area is rezoned to a classification out of harmony with the comprehensive plan).

### Rebutting Spot Zoning

Spot zoning, however, may be rebutted when the challenged zoning is found to be consistent with a municipality’s recent zoning trends in the area, not just with the present surrounding uses.<sup>6</sup> To illustrate the importance that each factual scenario must be closely addressed, rather than merely labeled, it should be noted that one Illinois court found that the rezoning of small parcels inconsistent with the zoning of surrounding areas is not necessarily unlawful.<sup>7</sup> The size of a parcel is just one factor to be considered in determining spot zoning.

A claim of spot zoning may also lack merit, for instance, when the zoning or planning regulations consider the boundaries of the property in dispute to contain a line of demarcation between zoning districts which would appropriately separate one zoning district from another.<sup>8</sup>

Most importantly though, if the zoning is enacted in accordance with a comprehensive plan, it is typically not “spot zoning.”<sup>9</sup>

### What’s a Planning Commission to Do?

When considering zoning map amendments, the planning commission or board must not only determine whether the petitioner has satisfactorily responded to the traditional standards in support of his or her application, but it should also closely scrutinize whether a potential exists for spot zoning. In doing so, the commission should look at the comprehensive plan and the surrounding uses to the property at issue.

While the commission is not qualified to make legal determinations of spot zoning, it is nonetheless the gatekeeper of identifying that such an issue may exist. It is therefore appropriate for the commission to defer its decision and consult with its municipal attorney *before* voting to approve the rezoning and referring it to the governing body for adoption.

### Summing Up:

Spot zoning must be addressed upon the facts and circumstances of each case. As such, when faced with allegations of spot zoning, the courts will closely look at factors such as the size of the parcel; the anticipated public benefit; the consistency with the community’s comprehensive plan; and the consistency with surrounding zoning, and uses, to make a determination of the validity of the rezoning.



Dan Shapiro is a partner with the law firm of Robbins, Salomon and Patt, Ltd in Chicago, Illinois. He practices in the areas of land use, zoning, governmental relations, municipal law, and civil litigation.

Dan represents a wide variety of private developers as well as governmental entities and advises his clients closely on issues of concern. As part of his practice, he has successfully presented legislative and administrative matters before plan commissions, zoning boards, and other village, city, and county bodies.

Dan also is an adjunct professor teaching land use at Kent Law School in Chicago, and is the Chairman of the Village of Deerfield (Illinois) Plan Commission.

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### Notes:

1. Anderson’s American Law of Zoning, 4th Edition, § 5.12 (1995). \_\_
2. See, e.g., *Jones v Zoning Board of Adjustment of Township of Long Beach*, 32 N.J. Super 397,108 A.2d 498, 502 (1954). \_\_
3. *Griswold v. Homer*, 926 P.2d 1015 (Alaska 1996) \_\_
4. See, e.g., *Rando v. Town of N. Attleborough*, 692 N.E.2d 544 (Mass. App. Ct. 1998). \_\_
5. *Hanna v. City of Chicago* 771 N.E.2d 13 (2002) \_\_
6. See e.g., *1350 Lakeshore Associates v. Casalino*, 352 Ill.App.3d 1027, 816 N.E.2d 675 (1st Dist. 2004). \_\_
7. See, e.g., *Goffinet v. County of Christian*, 65 Ill.2d 40 357 N.E.2d 442 (1976). \_\_

8. See, e.g., *LaSalle National Bank v. City of Highland Park*, 344 Ill.App.3d 259, 799 N.E.2d 781 (2nd Dist. 2003).  
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9. See, e.g., *Jones v. Zoning Board of Adjustment of Township of Long Beach*, 32 N.J. Super. 397, 108 A.2d 498, 502 (1954). —

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