

AMENDED/APPROVED: MAR. 27, 2006
City of Lake Elmo
Planning Commission Meeting
Minutes of February 27, 2006

Chairman Helwig called to order the meeting of the Lake Elmo Planning Commission at 7:00 p.m. COMMISSIONERS PRESENT: Lyzenga, Van Zandt, Deziel, Ptacek, Fliflet, Armstrong, Pelletier, and Park (7:12 p.m.). STAFF PRESENT: Planner Dillerud, Administrator Rafferty, and Recording Secretary Schaffel. ALSO PRESENT: Mayor Johnston.

Agenda

M/S/P, Ptacek/Armstrong to accept the Agenda as presented. Vote: 8:0.

Minutes of February 13, 2006

Commissioner Ptacek, Page 3, the motion made by Armstrong/Fliflet, Ptacek should replace Pelletier under the Nay votes.

Commissioner Pelletier, The vote that was 8:1 Nay – Fliflet, for the drive-up window, should be 7:2 Nay – Fliflet and Pelletier- Commissioner Fliflet stated that her nay vote was because the restaurant owner requesting this amendment had inferred his disinterest in anything other than a message board and intercom. Commissioner Pelletier-The Commission voted against those so she sees no need to add verbiage relating to a drive up window since there is no need and no applicant.

M/S/P, Ptacek/Van Zandt to accept the Minutes of February 13, 2006 as amended. Vote: 8:0.

Home Occupations

The Planner said he published a hearing notice for March 13, 2006. Discussion will take place this evening. He said he was discomfited with some wording in the example code. He phoned the City Attorney to ask if there had been challenges to that wording (“... adverse affect on adjacent properties.” “... adequate off-street parking must be provided...”) in Shoreview. There have been no challenges.

Commissioner Fliflet suggested a change under Prohibited Businesses “... due to traffic.” Maybe traffic should be removed because it is covered in other boxes.

The Planner suggested “as may be defined elsewhere by applicable city codes.” as potential language .

Commissioner Lyzenga asked for clarification about how Home Occupation is defined now.

The Planner said what is in Section 150 of the City Code is inadequate and that is prompting this change. He referred the Commission to the Section 150 Home Occupation which was attached to the staff memo in their agenda packets.

Commissioner Lyzenga said that the present Home Occupati9on definition seems to cover what needs to be covered.

The Planner said “stock in trade” stored on the premises seems to have been the primary issue prompting this review by the Commission, but that the concept of regulating land use by definition only is inappropriate practice.

Mayor Johnston reported to the Commission that the Home Occupation issue has been discussed at Council meetings.

Commissioner Armstrong asked if the staff's intent is to replace Section 150 Definitions.

The Planner said he planned to divide the Home Occupation definition into two new definitions: "Home Office" and "Home Based Business" .

Commissioner Armstrong said he does not want to completely eliminate some of the clauses in the current Home Occupation definition that do work well. Set up a permitting process but what will the difference be in permitting between home offices and home based businesses.?

Commissioner Ptacek said that for him the distinction was between goods and services. The storage of stock in trade seemed to be the problem at the Council but with no exterior evidence of the storage or use , he did not see a concern.

Commissioner Deziel said the approach under consideration could result in the need for a permit for a Tupperware Party.

Commissioner Fliflet considered a Home Office as a person working from home at their computer. No customers, delivery, parking, etc. Everything else could be a home-based business regardless of the size.

The Planner said Home Offices could be permitted in all zones, Home-based Businesses could be limited to AG and RR Zones, since larger properties presented less concern for impact on adjacent property owners.

Chairman Helwig said he agreed with Commissioner Armstrong about the value of the present Home Occupation definition. He suggested using the definition, taking out objectionable items.

Commissioner Armstrong asked about a home office sales rep where the principal location for a business in the home. He said we are dealing with a situation where a home is the only primary location for a business, and the homeowners is deducting a portion of the home for taxes, etc. He suggested treating all zones treated equally, and maintaining some of the Home Occupation definition.

Chairman Helwig asked about service companies, lawn care, plumber, snow plowing. Need to fit that into the scheme. Equipment and stock in trade are the concerns.

Commissioner Ptacek said customers coming and going and stock in trade are the concerns.

The Planner said if nobody can see stock-in-trade, and we are controlling deliveries, what is the problem?

Mayor Johnston said the Council discussed this and three members provided written input and a fourth gave a verbal statement. Over the counter retail sales and warehousing were undesirable. A reasonable control of over the counter sales may be a dollar minimum or 100 square feet. If you don't put in some restrictions you are ignoring the requests of 4/5 of Council. That was a strong desire from the Council.

Commissioner Ptacek said he does not understand the negative impact of warehousing if a neighbor cannot see it, touch it, or smell it.

Mayor Johnston said we are talking about an exchange of payment for goods on hand. A retail sporting goods business operated in this city. The philosophy is if we allow large square footages for storage of stock in trade, eventually neighborhoods change because we are providing incentive.

Commissioner Van Zandt said there are two major holiday boutiques in the city where more than half the house is used to display stock. Those events are assets to the community. There should be a distinction between ongoing versus seasonal or sporadic. Parking is a problem during those times.

Commissioner Lyzenga said there could be dollar threshold, the generation of revenue. It is simply an enforcement tool. A business owner could be asked to produce a tax return.

Chairman Helwig pointed out that gemstones have high value but little pieces that could fit into one drawer in the home.

Commissioner Fliflet said if a neighbor is not bothered, we should not regulate it? If a basement is completely full of stuff it does not affect anyone. Deliveries and traffic affect neighbors.

Commissioner Deziel asked the difference between step-vans and vehicles with customers.

Commissioner Fliflet said nothing larger than a step-van to make deliveries of product. Number of trips and traffic are the concern.

Commissioner Deziel said he has six customers per year. We should have safe harbors of storage volume, over the counter sales, customers and deliveries, and anything in excess of those safe harbors requires a permit.

Commissioner Lyzenga questioned whether it would be enforceable. Who is going to make the judgment and do the investigation? Keep it generic and put in some measurements. The tool triggers a complaint going to court. Keep it simple.

Commissioner Deziel agreed that a tax return would be subpoenaable along with other business records. There should be reasonably low thresholds.

The Planner said if it is structured to be enforced by the next door neighbor then that is not a good ordinance.

M/S, Ptacek/Van Zandt to move forward with table as presented and redefine Home Occupation as stated with elimination of "no stock in trade to be stored on the premises" and "no over the counter retail sales" without eliminating the ability to have a home party.

MOTION WITHDRAWN

M/S/P, Ptacek/Fliflet to redefine Section 150 - Home Occupation striking two phrases "no stock in trade to be stored on the premises" and "no over the counter retail sales." Vote: 9:0.

M/S/P Armstrong/Fliflet to combine the two columns for Home Occupations into one. Vote: 9:0.

M/S/P, Armstrong/Deziel to establish safe harbor criteria for a Home Office as home-based, no sales, stock, or customers, and it will need no permit. Vote: 9:0.

M/S/P Armstrong/Fliflet any Home-based Business not qualifying for the safe harbor needs a one time Administrative Permit registering the business with the City of Lake Elmo. Vote: 9:0.

The Planner will draft text accordingly and present it to the Commission for the Public Hearing of March 13, 2006.

Commissioner Fliflet said that parking should be no more than three spaces like in the existing definition.

Wedding Ceremonies in AG Zoning District

The Planner said he has been trying to get a handle on this use since the interested Lake Elmo party has reported that a similar use is regulated in Stillwater.

Commissioner Ptacek said the concern is alcohol for money.

The Planner said that liquor licensing is a separate issue granted by City Council on a case by case basis.

Chairman Helwig's concerns were for parking, sanitary, and noise. He asked if they wanted a bad weather shelter.

Commissioner Deziel suggested that an event or two special occasions could be permitted but a regular establishment with permanent or semi-permanent structures would be more restricted.

Commissioner Armstrong suggested adding Weddings to the CUP list under AG. H, Outdoor social events limited from May to October no more than twice per week, no excessive noise, no more than 200 people, all off street parking, no permanent structures, adequate portable sanitation, no more than six hours per each event, no later than midnight, and maybe screening or proximity to neighbors.

Commissioner Training Dates

Bob Van Zandt and Nicole Park have had no Planning training. They can choose April 12 or June 15 for an entire day session at the Extension Service at St. Paul Campus. Staff will advise Laurie McGinnis too. 9 am to 4:30 pm.

City Council Updates

No planning items were on the last agenda.

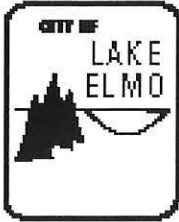
Employee and Volunteer Recognition Dinner is planned for March 10, 2006 at 6:30 p.m. at Tartan Park Clubhouse.

Adjourned 8:21 p.m.

Respectfully submitted,



Kimberly Schaffel
Recording Secretary



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NOTICE OF MEETING

The City of Lake Elmo
Planning Commission will conduct a meeting on
Monday, February 27, 2006, at 7:00 p.m.

AGENDA

1. Agenda Approval
2. Minutes
 - a. February 13, 2006
3. Home Occupations
4. Wedding Ceremonies in AG Zoning District
5. Commissioner Training Dates
6. City Council Update
7. Adjourn

The public is invited to attend.

**City of Lake Elmo
Planning Commission Meeting
Minutes of February 13, 2006**

Chairman Helwig called to order the meeting of the Lake Elmo Planning Commission at 7:00 p.m. COMMISSIONERS PRESENT: Armstrong, Deziel, Van Zandt, Park, Ptacek, Pelletier, Lyzenga, Fliflet, and Schneider. STAFF PRESENT: Planner Dillerud, Administrator Rafferty, and Recording Secretary Schaffel.

Pledge of Allegiance

Welcome Nicole Park to the Planning Commission.

Agenda

M/S/P, Ptacek/Deziel, to accept the Agenda as presented. PASSED: 9:0.

Minutes

M/S/P, Ptacek/Deziel, to accept the Minutes of January 23, 2006 as presented. PASSED: 8:0:2
Fliflet and Park-Absent.

Public Hearing:

Variance to OHW Setback and Minimum Lot Size Requirements, 8160 Hill Trail N.

The Planner explained the application proposes the razing of an existing home and complete construction of a new home on a lot fronting on both Lake Demontreville and Lake Olson.

The Planner said the original home does not comply with Shoreland Setback Standards; and, that construction of a new home on this non-conforming parcel is difficult without variances. The proposed home is 52 feet from the OHW mark of Lake Demontreville. He said that legal non-conforming status expires should the existing home be removed. The proposed home is much larger than its neighbors' homes. Positive findings can be made for the variance to shoreland setback, but the new construction on a non-conforming lot by area could establish a problematic precedent with carefully crafted findings addressing specific circumstances.. The Planner advised the Commission that he has worked with the City Attorney on potential findings that could support all of the variances requested, including new construction on a non-conforming lot, as follow:

1. The property cannot be put to reasonable use without the granting of the variances requested. The OHW setback variance is the minimum possible given the unique circumstances of the parcel essentially "fronting" two lakes. The lot area variance responds to this "reasonable use" Finding only due to the existence of a habitable dwelling and functioning private wastewater treatment system on this parcel. This Finding would not be applicable were this non-conforming vacant parcel of similar parcel area non-conformity.
2. The variances requested result from circumstances unique to this property platted prior to the adoption of Shoreland Regulations by the City resulting in OHW setback applicable from two lake frontages, and an existing home/functioning private wastewater treatment system constructed prior to current zoning ordinance/City Code lot area and septic treatment standards; and, the circumstances of the variance were not solely created by the applicant.
3. Granting of the variance will not change the essential character of the neighborhood.

Significant mature trees on the parcel will effectively mitigate the visual impact of increased structure mass of the new house.

Based on those findings, the Planner recommends approval subject to the following conditions:

1. Compliance with VBWD recommendations pertaining to silt fencing, erosion control, and rain guttering.
2. The City Forester must be involved in the staking of trees on this lot prior to and during construction.

Commissioner Schneider asked how tall the house will be from the lake.

The Planner said he thinks about 30 to 35 from the adjoining ground level plus the elevation difference from ground near the house and the lake elevation – several more feet.

Commissioner Fliflet asked if the chance of saving the trees is good.

The Planner said the new house is a little bit farther from the lake but in an entirely new area on the parcel that will improve the odds on saving the trees. He also noted that the City Forester could participate in reviewing tree protection measures during construction

Commissioner Ptacek asked about the backup septic system.

The planner reported that there is enough room to enlarge the drain field site adjacent to the existing drain field if they need to in the future.

Commissioner Pelletier asked who would verify silt would not go into the lake.

The Planner said the Building Official monitors erosion control during construction.

Commissioner Lyzenga asked the rationale for 1.5 acre minimum in the R-1 Zoning District.

The Planner said it was before his time with the City and he is not aware Of the exact rationale.

Commissioner Ptacek said the rationale was room for primary and backup traditional septic systems.

Commissioner Armstrong said the reason was concern for the environment. The mid 1980's failure of numerous septic systems and the resulting 201 Septic System Program had a great deal to do with the lot area zoning, especially on lake lots. The City did not want to repeat a 201 program in the future.

Chairman Helwig asked if the existing 201 Mound System on this lot meets current standards.

The Planner said he does not know.

Todd Ganz, Merit Custom Homes representing The Haire Family

Mr. Ganz said that all the trees are at least 25 feet from the new house location.

Chairman Helwig asked what about footings in relation to the trees..

Mr. Ganz said the plan puts the footings about 23 feet from the trees and they will be happy to work with the City Forester regarding tree protection measures.. The proposed house is 28 feet tall from 934 elevation to the highest peak. He said the existing 1200 gallon dual compartment tank will be replaced with a new dual tank treating 1600 gallons. The mound has been tested by Barry Brown and the future system would be next to and south of the existing septic system.

THE CHAIRMAN OPENED THE PUBLIC HEARING AT 7:30 P.M.

Nobody came forward to speak.

THE CHAIRMAN CLOSED THE PUBLIC HEARING AT 7:31 P.M.

Commissioner Ptacek said he has no problem with the proposed OHW setback because it is further from the lake than the existing house. He said he does have a problem continuing to grant variances without the new zoning for Neighborhood Conservation Districts. He supports the OHW variance but does not feel comfortable with the minimum lot size variance.

Commissioner Deziel said this lot is almost nine-tenths of an acre. He asked if we should force people who live on lakeshore to live in shanties. He complimented the applicant for locating the house behind the trees instead of a more exposed location. He encouraged them to make the house as dark a color as possible to decrease visibility from the lake.

Commissioner Armstrong said he is concerned that the plan says three bedrooms, but that plan shows an unheated storage room and a family room that could be converted to bedrooms. This is more accurately a four bedroom home on a mound system that cannot handle it. He wants to be sure this septic system will be sufficient. He believes we should look at a square footage equation instead of a bedroom count for future variances.

M/S/P, Armstrong/Fliflet, To recommend approval based on three findings in the staff report and three conditions to include that staff and the City engineer review applicable Code to insure that the septic system is up to date. PASSED: 5:4. Nay: Ptacek, Schneider, Lyzenga, Helwig.

Commissioner Pelletier asked for staff and the applicant to watch to prevent erosion into the lake.

The Planner said there are scores of lots like this one. Presumably these findings are specific enough to this lot.

Commissioner Schneider said this is a very large house on a non-conforming lot on two lakes.

Commissioner Lyzenga said she looks at the plans as a five bedroom home. She is not convinced the scale of the home is supported by this lot. It is disproportionately out of scale.

Public Hearing:

Comprehensive Plan Amendment and Rezoning, 8740 Stillwater Blv.

The Planner said that what is proposed with this application is for a nominal ten (9.4) acre site north of Lake Elmo Heights and Tablyn Park neighborhood, south of the railroad tracks to be reguided from RAD to SRD and rezoned from RR to R-1. Originally the site was part of a Comp Plan Amendment action from RAD to RED in the mid-1990's. This 9.4 acre portion was

removed from the amendment at the applicant's request during review of the Comp Plan amendment by the Metropolitan Council. The reduced RE request was approved by the City for RED guiding and Residential Estates Zoning. He explained the guiding and zoning adjacent to and surrounding the subject property.

The Planner asked the Commission to determine whether there was an error for this parcel to be guided RAD and/or whether conditions have changed since the Comprehensive Plan was adopted 15 to 16 years ago.

He said the neighborhood properties are larger lots east and west of the site, smaller lots south of the site. He said 1.5 acre R-1 lots on this parcel would be incompatible with abutting properties.

Staff suggested Findings and recommendations are:

1. No error in the 1990 Lake Elmo Comprehensive Plan regarding the land use classification of the subject site is demonstrated by the applicant nor detected by the Planning Commission that would support land use reclassification of the subject site from RAD to SRD.
2. There has been no change of City policy nor change in physical circumstances regarding the subject site or its environs that supports an amendment to the 1990 Lake Elmo Comprehensive Plan land use classification of the subject site from RAD to SRD.
3. The subject site does not present 4 of the 5 locational or physical characteristics required by the Lake Elmo Comprehensive Plan for SRD land use classification.

Based on the findings he recommends denial of the request.

Michael Conlin , Applicant

Mr. Conlin said he lives on the property. The only purpose for being here is to save his home for his family. He has four children. They moved here six years ago. They have a special needs child going to school in Lake Elmo where there is a special program for his needs. They remodeled the home substantially. His child has had numerous brain surgeries since coming to Lake Elmo. They now have an opportunity to keep the home if the remaining parcel is subdivided. One year ago they wanted to sell the property and they received a letter saying their property is in the middle of the groundwater contamination. That is a substantial change to the environment. That makes his property unmarketable until City water arrives. Now he has an offer from a developer. If he has to wait one year for water to arrive or is not allowed to develop, he and his family will have to move.

Commissioner Deziel asked if he agrees there isn't necessarily an error but that conditions have changed.

The applicant agreed.

Chairman Helwig explained that 3M has granted funds to bring City water to the area during 2006 at no expense to the property owners .

THE CHAIRMAN OPENED THE PUBLIC HEARING AT 8:20 P.M.

David Moore, 8680 Stillwater Boulevard

APPROVED: 2/27/06

Mr. Moore said he is not opposed to the applicant subdividing the property, but objects to size of lots on a concept plan he received, and feels the applicant could do a better job on the layout without impacting wetlands and the drainage ditch. He said there is an eroded ditch leading into a culvert that goes under County Road 6, and a holding pond should be placed there for sediment control where the water goes under Stillwater Boulevard, and trees should be preserved. They are old trees. Some have wind damage but there is not much oak wilt in that area. He walked the site last week. The layout could be improved for aesthetics and erosion control due to runoff of the water. That water drains into Lake Elmo Park Reserve. His lot is just south of Raleigh Creek and this parcel.

THE CHAIRMAN CLOSED THE PUBLIC HEARING AT 8:24 P.M.

Commissioner Armstrong said that SRD Guiding in the Comprehensive Plan was basically used for existing neighborhoods back in the 1980's with the attitude that they are great neighborhoods but we cannot duplicate them due to septic systems and other problems. The City developed a method for devising SRD Guidings based on five criteria that had to be met before parcels could be rezoned. Perhaps this parcel could go to RED but SRD is absolutely inappropriate for this site.

Commissioner Deziel said the water pollution does seem to be a change in condition. He asked the Planner's opinion.

The Planner said the water will be taken care of in less than one year and does not constitute a change in conditions that would support a Comp Plan amendment. He also noted that a variance for minimum plat are would be required to go to RE Zoning.

M/S/P, Ptacek/Armstrong to recommend denial of the application to amend the Comprehensive Plan and rezone this parcel 8740 Stillwater Boulevard to SRD and R-1 based on the findings suggested by City Staff.

Commissioner Deziel said he does not see an error to the Comprehensive Plan. RED guiding might get some sympathy with the Planning Commission. The density of R-1 doesn't comply with neighboring densities.

PASSED: 9:0.

The Chairman recessed the meeting at 8:31 p.m. and reconvened at 8:39 p.m.

Amend Uses in GB Zone to Allow a Drive-up Window

The Planner said he wants to be sure the Commission approves what text changes have been made for permitted and conditional use. He will publish immediately following this meeting when a final draft of the Code is determined.

Commissioner Armstrong said his concern is that a drive-up window should be tied into an existing sit down restaurant so a coffee shack would not be allowed in the future. "Attached only to a sit down restaurant."

In that case the Planner said he would define restaurants differently.

Commissioner Pelletier asked if someone can do a carside to go or a walk-up window without it

being added to the Code.

The Planner said a walk-up window would probably be okay.

Commissioner Deziel said limited full table service operation is already in there. The Planner would add it to the definition of restaurants in another part of the Code.

Commissioner Van Zandt said he lived five blocks off Grand Avenue for 22 years. There was an empty lot there. The City would not allow a restaurant applicant to go in there and instead allowed a drug store there that resulted in putting a smaller drug store out of business. If we don't allow some businesses here to thrive and remain competitive, we will lose our significant businesses. We should look for compromises.

Commissioner Armstrong said we are helping our businesses by disallowing menu boards and intercoms. We want to exclude fast food while allowing a business like Gorman's to continue. We always have to look at the big picture. If there are other ways to distinguish fast food, he would like to here about them.

M/S/P, Ptacek/Schneider direct staff to publish a revised definition of restaurants in order to allow drive-up service adjacent to full service table restaurant as a conditional use in the General Business Zone as the Planner drafted.

Commissioner Ptacek said the CUP gives us opportunity to review space for traffic stacking.

Commissioner Fliflet said she does not see the need for allowing menu board and intercom when other restaurants are doing great carside to go business. She sees no need to change the Code to allow it. She also agrees with Commissioners Armstrong and Ptacek as to protecting our existing restaurants.

Commissioner Park said she sees how a drive-up window could work. She often gets carside to go.

Ed Gorman

Mr. Gorman said he has owned Gorman's Restaurant for 26 years. He does not sell liquor. He has enough room to stack traffic. The proposed addition is only 200 square feet and 100 square feet of it is for adding more ice cream flavors. There are only three restaurants in the GB zone in Lake Elmo. He has been doing this work for forty years and the industry is changing. The window without the intercom is less convenient for customers.

Commissioner Deziel asked how we exclude fast food if we approve what Mr. Gorman requests.

Mr. Gorman said the Health Department classifies his business as Table Business. Traffic flow would be fine on his site, and it would be a natural fit.

Commissioner Ptacek pointed out that it takes no longer if someone talks at the window or uses an intercom. Commissioner Fliflet said people walked up to the window at the old Dairy Queens.

PASSED: 7:2 Nay – Fliflet and Pelletier-Because the restaurant owner we talked to had inferred his disinterest in anything other than a message board and intercom. We voted against those so

she sees no need to add verbiage relating to a drive up window since there is no need and no applicant.

Home Occupations

The Planner explained the history of the review of Home Occupations. He asked the Commission to review a handout while he rewords some of the table with the City Attorney to eliminate subjective phrasing such as “adequate parking on-site” and “adverse effect on adjacent properties.”

City Council Update

The planner reported that as of one week ago, Metropolitan Council considers our Comprehensive Plan to be “complete”. The Met Council now has sixty days to complete its detailed review of the City’s Plan..

Commissioner Schneider asked when the nine months begins regarding an amended zoning ordinance and map to match the Plan.

The Planner said the nine months will begin as soon as the Met Council Board has concurred in the City’s Comp Plan. That could still be a couple months out. He suggested that the Commission will soon have to pick up the Zoning Code and have a performance-based and form-based zoning refresher. It would be expensive to bring the zoning ordinance consultant Lane Kendig back again. Staff will look to see if we have tapes of the previous workshops with Kendig.

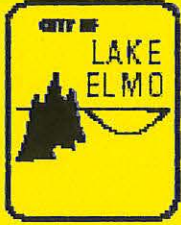
Commissioner Armstrong noted that congratulations were in order to Commissioner Fliflet for helping us meet our population goals!

The meeting adjourned at 9:12 p.m.

Respectfully submitted,



Kimberly Schaffel
Recording Secretary



City of Lake Elmo

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NOTICE OF MEETING

The City of Lake Elmo
Planning Commission will conduct a meeting on
Monday, February 13, 2006, at 7:00 p.m.

WELCOME NEW PLANNING COMMISSIONER, NICOLE PARK

AGENDA

1. Agenda Approval
2. Minutes
 - a. January 23, 2006
3. PUBLIC HEARING: Variance ~ 8160 Hill Trail
4. PUBLIC HEARING: Comprehensive Plan Amendment & Rezoning
~ 8740 Stillwater Blvd
5. Drive-up Service Windows
6. Home Occupations
7. City Council Update
8. Adjourn

The public is invited to attend.