

**City of Lake Elmo
Planning Commission Meeting
Minutes of July 11, 2011**

Planning Director Klatt called to order the meeting of the Lake Elmo Planning Commission at 7:01 p.m. COMMISSIONERS PRESENT: Hall, Obermueller, Pelletier, Bidon, Haggard, and Williams (7:02). Absent: Van Zandt and Fliflet. Commissioner Ziertman abstained. STAFF PRESENT: Planning Director Klatt and Planning Intern Johnson.

Planning Director Klatt noted that Commissioner Van Zandt will not be able to attend due to illness. He asked that we keep Commissioner Van Zandt in our thoughts and prayers. Planning Director Klatt went on to explain that a motion must be made to nominate an acting chair, being that Vice Chair Fliflet is also absent.

M/S/P, Hall/Pelletier, move to nominate Commissioner Williams to acting as Chair for the meeting. Vote: 6:0

Agenda

M/S/P, Hall/Haggard, move to approve the agenda. Vote: 6-0

Minutes- *None.*

Public Hearing- *Variance Request 9940 59th Street Court North*

ACTING CHAIR WILLIAMS OPENED THE PUBLIC HEARING AT 7:02 PM

Planning Director Klatt explained that the City received an application to rebuild a damaged structure in a floodplain district that is not elevated above the regulatory flood protection elevation and is instead design to internally flood. The building requires a variance because it is larger than the allowable 500 square feet in size to utilize internal flood proofing. Planning Director Klatt went on to explain the other flood proofing options. These options include elevating the structure with fill, or elevating through other methods, such as stilts. However, these options proved far too costly to the homeowner.

Moving forward, Planning Director Klatt outlined the four criteria of the new variance ordinance. Following these criteria, he noted the additional criteria pertaining to variances with flood plain zones, as provided by FEMA. Planning Director Klatt noted that the applicants have fulfilled the requirements for variances in flood plain districts.

Commissioner Williams wanted clarification as to the flood plain in the map being a Flood Fringe District. Planning Director Klatt explained that some flood zones have not been designated Flood Fringe or Floodway, but that the City's ordinances allow the use of the Ordinary High Water level of lakes to delineate fringe areas

Planning Director Klatt reviewed the site plan, noting that the structure was built before the adoption of the zoning ordinance, thereby being larger than what the zoning district allows.

Planning Director Klatt then explained the conditions being attached by the recommendation of Staff, which come from the FEMA recommended conditions for wet flood proofing. He then mentioned that Staff will monitor the progress to ensure that the conditions will be met.

The applicant, Doug Lovett, 9940 59th St. Ct. N., explained the central reasons for the variance request. The applicant used the old structure for storing agricultural equipment. He also noted that the applicants have a mortgage against their house and barn, and that the insurance reimbursement will only be paid in full if full replacement occurs.

Doug Lovett also explained that the Ordinary High Water (OHW) mark for the pond is 954.9 and that the water level has been decreasing the last ten years. In addition, he stated that the current level is 946 and that there have been no flooding issues with the home or barn in the past. Regarding plans for the new barn, the dimensions are in fact a little smaller than the previous structure. The applicant noted that the plans meet all State standards. Finally, the applicant stated that if the variance is not granted then it will be difficult to continue the agriculture operation.

Joan Ziertman, 5761 Keats Ave N., speaking as a member of the public, noted that she is in favor of the project. She also reiterated that the building is solely used for storage related to the applicant's agricultural business.

ACTING CHAIR WILLIAMS CLOSED THE PUBLIC HEARING AT 7:31 PM

Commissioner Pelletier asked the applicant about the slope towards the pond. Doug Lovett noted that the slope towards the pond is quite gradual and that barn is out of sight.

Planning Director Klatt made a note that Staff forwarded this variance to MN DNR, but was unable to solicit a response or review due to the State government shutdown. He also noted that the City has the right to determine what constitutes a minimal structure in a Flood Fringe District. Finally, Planning Director Klatt stated that the DNR did not have any concerns when speaking with Staff.

Commissioner Williams asked about why the City Ordinance specifies a size of 500 square feet as the size of an allowable minimal structure. Planning Director Klatt explained that this size most likely comes from the State standards for minimal buildings in such a case. The size of 500 square feet is similar to the size of a two car garage.

Commissioner Pelletier asked whether this particular situation could arise in the future with more development coming to Lake Elmo. Planning Director Klatt does not feel that

this will be a large issue moving forward due to the fact that new construction generally uses fill for flood proofing.

M/S/P, Pelletier/Obermeuller, to approve the variance request for 9940 59th St. Ct. N. with the attached conditions written by Staff.

Commissioner Williams suggested that condition #3 read “it must be designed to allow for the automatic exit and entry of flood waters”. Commissioner Hall explained that the purpose of flood mitigation is so that there is no hydrostatic pressure on either side. If the water enters, it can exit from the same point.

Commissioner Williams asked to add that there has been no historical evidence of flooding as the fourth finding of fact. He stated that this is important in terms of approving the variance.

Commissioner Obermueller voiced her support for organic farming in Lake Elmo.

Motion carried. Vote: 6:0 with Commissioner Ziertman abstaining from the vote.

Public Hearing- *Variance Request 5761 Keats Avenue North*

Planning Director Klatt introduced the variance request for 5761 Keats Ave. N. He also noted that this request would be reviewed under the criteria in the new variance ordinance.

Planning Director Klatt review the staff report and recommendation with the Planning Commission. He described the request of the variance, which would allow an additional 2,400 square foot accessory building to be constructed on an 11-acre parcel that already has a 2,500 square accessory building.

Klatt noted that the applicant’s property exists in the current code as a Wayside Stand because they do not have a permanent structure for their sales business; an agricultural business requires more property. In addition, the property is zoned Rural Residential, which exists as more of a hybrid, as opposed to Agricultural. He also noted that if the property was larger than the 20 acre benchmark to qualify as an agricultural building, then there would not be any problem with the construction of an additional accessory building. The fact that the accessory building is there second on the property, a variance is required. Planning Director Klatt explained that with the Rural Residential zoning, only one accessory building is allowed. According to this designation, the applicants are allowed one building up to 2,500 square feet because their property is between 10 and 15 acres.

Planning Director Klatt further reviewed the revised criteria related to variances with the Planning Commission. Klatt provided reviewed the possible options for the Planning Commission.

Klatt also outlined two conditions that should be included if the Planning Commission approves the Variance. First, the building should be used solely for agricultural purposes, not for personal storage, home business, or as vehicle storage. In addition, Staff would like additional screening to the East.

Commissioner Obermueller asked where the future residential development will be located in this area. Planning Director Klatt explained that this will occur directly to the East of the applicant's property, but with a 200 ft. buffer.

Commissioner Haggard asked if the developers of this residential area are required to provide screening. Planning Director Klatt explained that the developers have not submitted a final plat, but that a 200 ft. buffer typically is considered an adequate separation. He added that he has not seen any landscaping plan for this future development.

Commissioner Obermueller asked whether the Church can choose not to develop their property. Klatt explained that there is a development agreement in place and infrastructure in place that should encourage the Church to proceed. However, the City cannot force them to proceed.

Commissioner Williams asked which barns the applicants currently use for storage. The applicant, Steve Ziertman, 5761 Keats Ave. N., explained that they are currently using the barns owned by Rockoint church to store their equipment, but that the church will no longer let them store their equipment in these buildings.

Commissioner Obermueller asked about how Staff came to find that the property was not unique in terms of agriculture and the size of lot. Planning Director Klatt explained that agricultural designation is used by the County to designate a tax rate for the property, which is separate from how the City may have the property zoned. In addition, he added that most of the other properties of similar size in the community are not being actively farmed.

Planning Director Klatt noted that Commissioner Ziertman is recusing herself from her duty as a Commissioner for tonight due to the fact that she is applying for a variance.

The applicant, Joan Ziertman, 5761 Keats Ave. N., wanted to make a note that other large properties that are zoned rural residential have difficulty with this designation and getting additional accessory structures.

Joan Ziertman also explained how the staff outlined the process in terms of Zoning Text Amendments or Zoning Map Amendments. She also noted that they contemplated a Zoning Map Amendment to rezone their property as Agriculture, but that would make their lot nonconforming. She also asked the Planning Commission to move this issue through to the City Council as soon as possible due to the difficult timing of their agricultural operation, as opposed to tabling the item. Finally, she also noted that other

properties that are zoned Agriculture are not using for that purpose but still building additional accessory structures.

Joan Ziertman went on to describe the history of the property and the agricultural activities there. She then described why they are requesting the variance.

Commissioner Williams wanted further explanation of how much storage space is needed. Joan Ziertman explained that they calculated how much storage space they use at their alternative storage site, and decided 2,400 square feet is the size that is necessary.

Joan Ziertman referenced the city-wide planning policy from the Lake Elmo Comprehensive Plan, which states that “preserving and enhancing the rural character and features of Lake Elmo that make the city a unique and desirable community”. She felt that the City Zoning Code is “big-picture” and the variance should be used as a tool when special circumstances exist.

The applicant then explained why she felt that the variance findings were met. First, she addressed finding #3, explaining that there will be no future homes to the North, so the character of locality will not be altered.

Addressing finding #1, “practical difficulties”, Joan Ziertman explained that their use is certainly reasonable and that their property is designated for agricultural use by the State and Washington County. In addition, one 2,500 square foot accessory building is not enough for their farming operation.

Joan Ziertman then addressed finding #2, “unique circumstances”, stating that the use of the property should apply in this case, and that she did not find anything regarding use not qualifying in the state statute. Additionally, she noted that their 10 acre property has more productive farm land than many other larger properties in the community. Finally, Joan Ziertman noted that they did not choose to relocate their storage space; it had to be vacated.

Commissioner Williams asked how much of the property is tilled. Joan and Steve Ziertman noted that over 90% is productive due to the fact that whatever isn’t tilled is used for hay production.

Commissioner Williams wants to know how the existing accessory building is currently being used. Steve and Joan Ziertman answered that one shed has some personal items mixed with farm equipment, while the other shed is packed with agricultural equipment. In addition, during harvest time for pumpkins, all of the personal items are removed for the storage of pumpkins.

Commissioner Bidon asked about the height of the buildings. Steve Ziertman stated that it would be 10 ft., standard height.

Haggard asked if the finished look of the building would match the surrounding structures. Steve Ziertman noted it will match the other accessory building.

Commissioner Bidon noted that the building they are requesting is not that large, and that it is difficult to engage in agricultural activities with only one 2,500 square foot accessory building.

Commissioner Williams asked about how the property is divided in terms of tax purposes. Joan Ziertman responded that 1 acre is classified as homestead and the rest is agricultural for tax purposes.

ACTING CHAIR WILLIAMS OPENED THE PUBLIC HEARING AT 8:56 PM.

Doug Lovett, 9940 59th St. Ct. N., noted that he is a neighbor of the applicant and that they borrow equipment from one another. In addition, it has become increasingly difficult to successfully farm higher value products due to the large amount of equipment required.

Planning Director Klatt read the other two emails of support from Heidi and Steve Moller, 9580 53rd St. N., and Bonnie and Leonard Geran, 109874 57th St. N., that were not in the planning packet.

Commissioner Williams noted that other letters of support were attached as part of the Planning Commission report on this item.

ACTING CHAIR WILLIAMS CLOSED THE PUBLIC HEARING AT 9:00 PM.

Commissioner Bidon noted that if agriculture is to continue to survive here, it must be supported. In addition, he felt that the building is not that large.

Commissioner Obermueller noted that local agriculture is important to the character of Lake Elmo, and that the fact that Washington County classifies the use as agricultural strengthens the case for the variance.

Commissioner Haggard noted that she visited the site and she felt that the next door neighbor would not be affected due to the appropriate screening.

Commissioner Williams asked the Commission about how they should deal with the 2nd finding about unique circumstances. First, he went over the other three findings. No Commissioner had any concern with findings #3 and #4. In terms of finding #1 and #3, Commissioner Williams noted the importance of differentiating the property in question from other 10 acre Rural Residential properties.

Commissioner Obermueller noted that the amount of land used in agricultural production may be a good benchmark for differentiating it from other properties.

Commissioner Hall stated that the property is not unique in its physical attributes. He also noted that he believes that a variance is not the best method to address this issue due to the fact that the practical difficulties are a result of the applicants overextending their ability to farm that much product in 10 acres. Additionally, he wanted it known that he felt that this project does benefit the community, but a variance is not the best way to support this.

Joan Ziertman noted that she believes that unique circumstances does not exclude use and history of the property.

Commissioner Hall noted that how the County determines its classification is strictly for tax purposes and is not based on the other elements of zoning.

Commissioner Pelletier stated that all the Commissioners want to promote this activity, but is not sure how it affects future land decisions in the big picture. She then asked how many parcels in the city were 10 acres an under. Planning Director Klatt commented that density studies were made when the Comprehensive Plan was updated, but we don't have data on how the properties are being used.

Commissioner Williams questioned whether we can recommend approving the variance, but at the same time recommend studying the zoning text amendment in terms of additional accessory buildings in cases of building for agricultural purposes.

Commissioner Bidon explained that additional equipment storage is necessary to protect the investment made by farmers who are farming on smaller properties.

Commissioner Haggard noted that she is okay with approving the request due to the fact that the building is properly screened and out of sight. She then asked Commissioner Williams if this is what he had in mind for Zoning Text Amendment. Commissioner Williams replied that he is thinking about land 10 acres or more which is aggressively farmed (high percentage).

Commissioner Haggard stated that she would not feel comfortable with a Zoning Text Amendment until she knew what the other similar properties in the community looked like.

M/S/P, Bidon/Obermueller, to approve the variance request to allow construction of a second detached accessory building on the applicants' property with the condition that the building is used only for agricultural use, and that the acreage would be substantially used for farming.

Commissioner Williams indicated that he would like to include that the Planning Commission make a recommendation to look at the issue of Zoning Text Amendment and accessory buildings again.

Planning Director Klatt noted that he heard two additional conditions in the discussion of the Planning Commission. Based on the Commission's discussion, Staff recommended

that the approval statement for finding #2 should include the size of the agricultural product and that there is a history of farming (established farm) to qualify as a unique circumstances.

Motion carried. Vote 5:1, with Commissioner Hall voting nay and Commission Ziertman abstaining form the vote.

M/S/P, Hall/Pelletier, that City Council direct the Staff and Planning Commission to consider amendments to the Zoning Ordinance to allow for accessory agricultural structures on parcel between the range of 10 to 40 acres in certain districts within Lake Elmo.

Motion carried. Vote 6:0

Business Items- *Vote to appoint an interim vice chair.*

M/S/P, Pelletier/Hall, move to appoint Commissioner Williams as interim vice-chair until Chair Van Zandt returns. Motion carried. Vote: 6:0

Updates

City Council updates

Planning Director Klatt noted that the variance ordinance was approved by City Council.

Planning Director Klatt then described an appeal decision made by the City Council concerning a lot line interpretation. This decision was reversed.

Adjournment

Meeting adjourned at 10:04PM

Respectfully submitted,

Kyle Klatt
Planning Director