



City of Lake Elmo

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Lake Elmo, Minnesota 55042

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NOTICE OF MEETING

The City of Lake Elmo
Planning Commission will conduct a meeting on
WEDNESDAY, February 9, 2011, at 7:00 p.m.

AGENDA

1. Pledge of Allegiance
2. Election of Officers
3. Approve Agenda
4. Approve Minutes
 - a. January 24, 2010
5. Public Hearing
 - a. ZONING MAP AMENDMENT: Rezoning for two properties off of 27th and 28th Street North from Rural Residential to R-1.
6. Business Item
 - a. Acknowledge Outgoing Commissioners
 - b. Proposed I-94 and Village Area Draft Timeline
 - c. Exterior Storage Work Group
 - d. "City Variance Authority" – Article from a League of MN Cities Publication
7. Updates (Verbal)
 - a. City Council Updates
 - i. Commission Appointments
 - ii. Update on Early Childhood Family Center
 - iii. Approval of 2011 Planning Commission Work Plan and Planning Commission Annual Report
 - b. Staff Updates
 - c. Commission Concerns
8. Adjourn

**City of Lake Elmo
Planning Commission Meeting
Minutes of January 24, 2011**

Chairman Van Zandt called to order the meeting of the Lake Elmo Planning Commission at 7:00 p.m. COMMISSIONERS PRESENT: Britz, Van Zandt and Williams. Absent: Bidon, Fliflet, Hall, Pelletier, Van Erem and Ziertman. STAFF PRESENT: Planning Director Klatt and Planner Matzek

Chairman Van Zandt identified a lack of quorum, which consists of five members of the commission. He said that does not allow the existing members to undertake any action.

Planning Director Klatt said those commissioners not in attendance were all either unavailable or unreachable as staff had tried to contact commissioners before the meeting began. He said the public hearing and other scheduled items for the meeting will take place instead at the next commission meeting – Wednesday, February 9th.

Adjournment:

The meeting was adjourned at 7:04 p.m.

Respectfully submitted,

Kelli Matzek
Planner

ITEM: Hold a public hearing to consider a zoning map amendment application to allow two properties located at 27th and 28th Street North to be rezoned from RR – Rural Residential to R-1 – PID 21-029-21-14-0003 and 21-029-21-14-0002.

SUBMITTED BY: Kelli Matzek, City Planner

REVIEWED BY: Kyle Klatt, Planning Director

SUMMARY AND ACTION REQUESTED

The Planning Commission is being asked to conduct a public hearing and consider a zoning map amendment request from the Lake Elmo Bank to rezone two properties currently zoned RR-Rural Residential to R-1 One Family Residential. This change would reduce the minimum lot size requirement from 10 acres to 1.5 acres.

The Valley Branch Watershed District has expressed interest in having the culvert under the existing driveway removed due to flooding on properties north of the culvert. In addition, the existing driveway floods in a 10-year rain event, which causes concern for access in the event emergency personnel need to access the site. Instead, staff is suggesting future access for the two sites, if considered buildable, be constructed off of 27th Street North. Due to minor constraints such as existing city infrastructure and neighboring driveway locations, a shared driveway off of 27th Street North may be something the city would wish to explore as a condition of approval.

In reviewing the unique site, city staff has also approached Lake Elmo Bank with the idea of trading land area. The City owns an unimproved, unused piece of property adjacent to the applicant's property. Staff is suggesting the commission review the idea of trading land area so the city may take over a portion of Raleigh Creek as it may serve as a potential future (partial) trail connection between the Lake Elmo Regional Park Reserve and Tablyn Park.

ADDITIONAL INFORMATION:

- There are significant surface water easements as well as floodplains and a setback to Raleigh Creek, primarily on the northern property.
- The two properties are currently vacant. The southern property previously had a dilapidated home that was torn down by Lake Elmo Bank in 2010.

RECOMMENDATION:

Staff is recommending approval of the zoning map amendment to allow the rezoning as it is in conformance with the Comprehensive Plan with the following conditions:

- 1) The applicants must provide documentation to the satisfaction of the City Attorney that all property line discrepancies are resolved.
- 2) Any future building permit is subject to a full review at the time of submission. Staff can not determine at this time that each of the two properties is suitable for single family residential homes.

- 3) The existing driveway must be removed from the northern property. All future access for both properties shall be from 27th Street North.
- 4) The applicants shall provide a driveway access easement for a proposed shared driveway, which shall include any ancillary snow storage areas deemed necessary to by the Public Works Director.
- 5) The applicants shall work with the City and the Valley Branch Watershed District on a potential land trade.

ORDER OF BUSINESS:

- Introduction Kelli Matzek, City Planner
- Report by staff Kelli Matzek, City Planner
- Questions from the Commission Chair & Commission Members
- Applicant Comments Chair facilitates
- Questions of the Applicant Chair & Commission Members
- Open the Public Hearing Chair
- Close the Public Hearing Chair
- Call for a motion Chair Facilitates
- Discussion of Commission on the motion Chair Facilitates
- Action by the Planning Commission..... Chair & Commission Members

ATTACHMENTS (3):

1. Staff Report
2. Area Map
3. Proposed Site Plan

City of Lake Elmo Planning Department
Zoning Map Amendment Review

To: **Planning Commission**

From: Kelli Matzek, City Planner

Meeting Date: **2/9/11**

Applicant: **Dan Raleigh, Lake Elmo Bank**

Owner: Lake Elmo Bank

Location: **2 Properties – 21-029-21-14-0003; 21-029-21-14-0002 (2742 Ivy Ave)**

Zoning: RR – Rural Residential

Introductory Information

Request Mr. Raleigh, on behalf of the current owner, Lake Elmo Bank, is requesting two properties located at the end of 27th Street North and 28th Street North, be rezoned from Rural Residential which has a 10 acre minimum lot size, to R-1 which has a one and a half acre minimum lot size. The proposed rezoning would result in two potentially buildable lots where one was previously used for single family residential purposes and the other as a vacant property through which the driveway was built.

A minor lot line adjustment is also proposed which would shift a small amount of land from one parcel to the other. The proposed property line shift would not impact the ability to build on the property; the ability to build on the lot will be contingent on the ability to construct a functioning septic system on the site. A lot line adjustment can be processed administratively, but is being mentioned at this time due to the rezoning request.

<i>Site Data:</i>	<i>Property Identification No.</i>	<i>Existing Area</i>	<i>Use</i>
	21-029-21-14-0003	Approx. 1.92 Acres	Vacant/Floodplain
	21-029-21-14-0002	Approx. 2.45 Acres	Former Homesite/Vacant

Right-of-way Vacation Review

Background Information: The southern, larger property was previously used for residential purposes. After the bank became owners of the property, the dilapidated single family home was torn down and the lot now remains vacant. The driveway was left intact and utilities are still available to this site.

The northern property, owned by the same homeowner prior to the bank's ownership, is currently vacant except for the driveway that serviced the southern property's

previous home. This driveway meanders through the southern portion of the north property and over to 28th Street North. Raleigh Creek runs through the western side of this property and therefore is subject to not only a setback to the creek, but must adhere to the floodplain regulations where applicable. The northern property also has a significant surface water drainage easement.

The existing driveway crosses over a culvert. This culvert was enlarged a number of years ago as flooding occurred on the north side of the culvert due to ice damming. Because of the location of Raleigh Creek, the flat topography and the culvert, ice continues to form behind the culvert and causes flooding on the northern property as well as on other properties upstream.

Both properties have noteworthy, but manageable slopes on the west side, near the 27th Street North cul-de-sac. Review by the City Engineer confirms that driveways could be added off the cul-de-sac and have less than a ten percent grade.

The property is just north of the Lake Elmo Regional Park Reserve, a significant park owned and managed by Washington County.

Both properties are located within School District 622.

Review Comments:

***Planning
Issues:***

Comprehensive Plan, Existing Neighborhood

The two properties are currently zoned RR – Rural Residential, but are guided for NC – Neighborhood Conservation in the Comprehensive Plan. This land use coincides with the R-1 zoning district, which is being requested by the applicant. Therefore, the rezoning of the properties from RR to R-1 would be in conformance with the Comprehensive Plan.

The R-1 zoning is also consistent with the properties directly to the west and in the neighborhood to the east of the two properties. The two nearby neighborhoods are on generally smaller lots and are developed with single family residential homes.

Site Access

As more thoroughly described on page four of this report, the Valley Branch Watershed District (VBWD) and city staff are interested in having the access for the two properties removed from 28th Street North and instead be located off of 27th Street North (the end of a cul-de-sac).

The removal of the culvert (currently allowing the driveway/access off of 28th Street North) would reduce the flooding north of the culvert onto private properties. Because the existing driveway floods in a 10-year rain event, city staff is interested in seeing this driveway removed and replaced on higher ground which would be accomplished by the relocation to 27th Street. If the driveway is utilized by homes in the future and

in the event the existing driveway is flooded, it is a concern that public safety vehicles may not be able to access the home(s) in cases of emergency. In addition, the relocation of the driveways to 27th Street North would be beneficial to school district 622 for bussing purposes, should that service be used in the future.

Existing city improvements such as a fire hydrant and the current configuration of a neighbor's driveway are existing conditions that need to be considered if and when two driveways would be added to serve the two properties. Although a shared driveway is something the city does not encourage due to potential future neighbor conflicts, it may be something the city would like to further explore with the applicant. This may mean requiring an easement and maintenance agreement or an extension of the city's road right-of-way.

Although not an option preferred by city staff or the VBWD, if the existing driveway were to be left as-is, an access easement would be needed as it must cross through the northern property to reach 28th Street North. This is a situation not preferred by city staff.

Land Exchange

City staff is suggesting consideration of a land exchange between the city, the VBWD and the property owner. The northern property has a portion of land that is located within FEMA identified floodplains and is therefore unbuildable. In addition, Raleigh Creek flows through the eastern side of this property. Staff is suggesting the city request that area of the property be turned over to the city so as to leave an option for a possible future trail connection between Tablyn Park and the Lake Elmo Regional Park Reserve.

The city currently owns a 0.35 acre parcel directly adjacent to the northern property. Staff has speculated that property may have been acquired at some point with the intention of someday connecting 27th and 28th Streets, to add a cul-de-sac onto 28th Street or for a turnaround to be constructed at the end of 28th Street. In speaking with the City Engineer, he does not believe any of those scenarios would occur. Therefore, a portion of that land may be of interest to the current or future landowner. The two land areas identified are roughly similar in size.

Staff would suggest obtaining an easement adjacent to 28th Street North for snow storage purposes.

The VBWD may also be interested in exchanging, selling, or giving land currently owned by them for additional land or easements to other more sensitive areas. Again, this is discussed in more detail on page four of this report.

Engineer Comments:

The City Engineer's comments are included in full as an attachment to this report. A summary of his comments are below:

- Engineering would be in support of moving the access to the properties to 27th Street North.
- Water service to the second lot would need to be addressed.
- Proposed and secondary septic systems must meet all setback requirements.

- Areas of adjoining discrepancy with the adjoining plats should be addressed.
- City owned properties should be reviewed for their public purpose and should be modified as necessary with this proposal.

DNR/VBWD No comments were received from the DNR.

Comments:

The Valley Branch Watershed District (VBWD) owns two properties adjacent to this property – a thin property that wraps around the south and east side of the southern property and one that lies between the two properties. The VBWD also owns and manages the culvert allowing Raleigh Creek to flow underneath the existing driveway that connects to 28th Street North. As mentioned previously, flooding occurs north of the culvert onto private property as the physical characteristics of the land and creek in combination with the culvert, allow ice to back up the water flow in the winter and spring.

The VBWD is interested in removing the culvert to reduce the flooding that occurs. Although some flooding will still occur and federally identified floodplains exist, the removal of the culvert would likely reduce the impact on both the existing neighbor's property as well as the applicant's northern property. In order to remove the culvert, the existing driveway would need to be removed and alternative access for the two properties would need to be addressed.

The access relocation to 27th Street would allow the removal of the culvert and would likely reduce flooding on adjacent properties. Staff believes the removal of the culvert would provide a public benefit by reducing flooding upstream.

Conclusion:

The applicant is seeking approval of a zoning map amendment request for two properties located at the end of 27th Street North and 28th Street North from RR to R-1.

Commission Options:

The Planning Commission may consider the following options for taking action on this request:

- A) Approve the zoning map amendment based on the findings drafted by Staff or other additional information that is presented at the public hearing;
- B) Deny the request based on findings (...cite findings...)

Secondly, the Planning Commission may recommend requiring the access points for both properties be located off of 27th Street North (suggested as a condition of approval below).

The Planning Commission may recommend the City Council direct staff to work with the applicants to identify suitable land areas for exchange of ownership (suggested as a

condition of approval below).

Staff Rec: Staff recommends approval of the zoning map amendment request based on the following:

- 1) The proposed zoning is in conformance with the guidance of the Comprehensive Plan.
- 2) The neighborhoods adjacent to and nearby the two properties are already zoned R-1. The rezoning of the properties to R-1 to allow single family residential homes would be in conformance with the existing neighborhood.

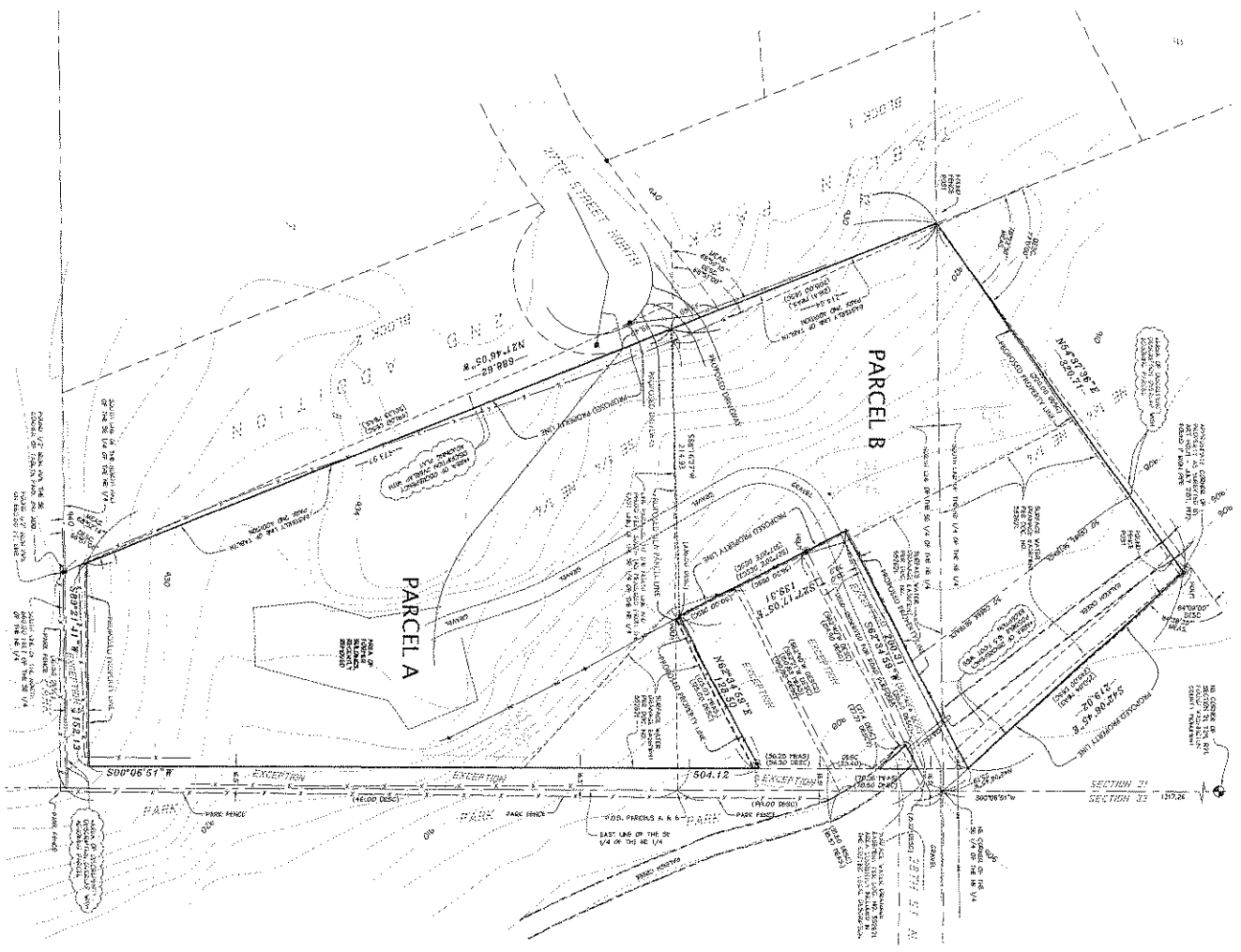
Provided the following conditions are met

- 1) The applicants must provide documentation to the satisfaction of the City Attorney that all property line discrepancies are resolved.
- 2) Any future building permit is subject to a full review at the time of submission. Staff can not determine at this time that each of the two properties is suitable for single family residential homes.
- 3) The existing driveway must be removed from the northern property. All future access for both properties shall be from 27th Street North.
- 4) The applicants shall provide a driveway access easement for a proposed shared driveway, which shall include any ancillary snow storage areas deemed necessary to by the Public Works Director.
- 5) The applicants shall work with the City and the Valley Branch Watershed District on a potential land trade.

Approval Motion Template: To approve the request, the Planning Commission is asked to use the following motion as a guide:

I move to recommend approval of the zoning map amendment request from the Lake Elmo Bank to rezone two properties off of 27th Street North from Rural Residential to R-1 with the conditions outlined in the staff report....(use staff's findings provided above or cite your own)

cc: Dan Raleigh, Lake Elmo Bank
Bob Clark, Lynsky & Clark



EXISTING LEGAL DESCRIPTION

Parcel A is a portion of the Northwest Quarter of Section 21, Township 28 North, Range 21 East, 4th Meridian, containing a total area of 160.00 acres, more or less, as shown on the attached map. Parcel B is a portion of the Northwest Quarter of Section 21, Township 28 North, Range 21 East, 4th Meridian, containing a total area of 160.00 acres, more or less, as shown on the attached map. The survey was conducted by the City of Washington, D.C., on the 15th day of August, 2011.

PROPOSED LEGAL DESCRIPTIONS

Parcel A is a portion of the Northwest Quarter of Section 21, Township 28 North, Range 21 East, 4th Meridian, containing a total area of 160.00 acres, more or less, as shown on the attached map. Parcel B is a portion of the Northwest Quarter of Section 21, Township 28 North, Range 21 East, 4th Meridian, containing a total area of 160.00 acres, more or less, as shown on the attached map. The survey was conducted by the City of Washington, D.C., on the 15th day of August, 2011.

PHOTOCOPYED LEGAL DESCRIPTIONS

Parcel A is a portion of the Northwest Quarter of Section 21, Township 28 North, Range 21 East, 4th Meridian, containing a total area of 160.00 acres, more or less, as shown on the attached map. Parcel B is a portion of the Northwest Quarter of Section 21, Township 28 North, Range 21 East, 4th Meridian, containing a total area of 160.00 acres, more or less, as shown on the attached map. The survey was conducted by the City of Washington, D.C., on the 15th day of August, 2011.

AREAS

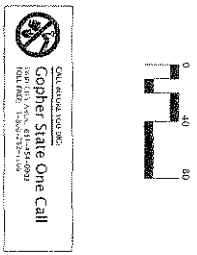
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SYMBOLS

- 1. Surveyed boundary lines
- 2. Unsurveyed boundary lines
- 3. Easements
- 4. Right-of-way lines
- 5. Utility lines
- 6. Other lines

UTILITY NOTE

The survey was conducted in accordance with the provisions of the Surveying Act of 1992, as amended. The survey was conducted by the City of Washington, D.C., on the 15th day of August, 2011.



OWNER

LAKE ELMO BANK
C/O DAN MALKIN
LAKE ELMO OFFICE
10000 LAKE ELMO DRIVE
LAKE ELMO, WASHINGTON 98001
PH: (206) 835-3344
FAX: (206) 835-3345

CITY - COUNTY

WASHINGTON COUNTY

SEAL

Professional seal area for the surveyor.

REVISIONS

1. Initial survey
2. Final survey

CERTIFICATION

I, the undersigned, being a duly qualified and licensed surveyor, do hereby certify that the foregoing is a true and correct copy of the original survey as shown on the attached map.

PROJECT LOCATION

2742
N W AVE. N.

PROJECT INFO

PROJECT NO. 123456
DATE 08/15/11




CORNERSTONE
LAND SURVEYING, INC.
1000 1st Avenue, Suite 100
Seattle, WA 98101
PH: (206) 461-1100
FAX: (206) 461-1101
WWW.CORNERSTONE-SURVEYING.COM

CERTIFICATE OF SURVEY

Zoning Map Amendment



ITEM: Review Draft Timeline for Village Area and I-94 Area Comprehensive Plan Updates
(RESUBMITTED FROM 1/24/11 MEETING)

SUBMITTED BY: Kyle Klatt, Director of Planning 

REVIEWED BY: Kelli Matzek, City Planner

SUMMARY AND ACTION REQUESTED:

The Planning Commission is being asked to review and provide feedback on proposed timelines associated with future updates to the Comprehensive Plan for the Village and I-94 Corridor Planning Areas (the portions of Lake Elmo that are planned for future sewer development). Staff envisions that the City's development of updates to the Comprehensive Plan for each of the proposed sewer development areas will occur as separate planning processes, but with some similarities in order to help staff better manage these complex projects.

Included for review by the Planning Commission are three separate documents as follows:

- A general project outline/timeline for the I-94 Corridor
- A general project outline/timeline for the Village Area
- A graphical representation of the proposed timeline, with both project areas shown on the same page.

At this time, Staff is seeking general feedback from the Commission regarding the proposed project schedules. The Council will be reviewing these documents at its workshop on February 8th; and at the completion of these reviews, Staff intends to begin pulling together the citizen participation groups.

Please note that the latter portions of the Village planning timeline will need to be expanded upon at some point in the future. This timeline will be further revised based on feedback from the Planning Commission and Council and proposed work groups.

RECOMMENDATION:

Staff recommends that the Planning Commission review the proposed timelines and discuss any comments or suggested revisions at its meeting.

ORDER OF BUSINESS:

- Introduction Kyle Klatt, Director of Planning
- Report by staff Kyle Klatt, Director of Planning/Kelli Matzek, City Planner
- Questions/Comments from the Planning Commission Planning Commission

ATTACHMENTS:

- I-94 Area Draft Timeline/Process
- Village Area Draft Timeline/Review Process
- Graphical Timeline

A Draft Timeline/Process

JANUARY

- Identify *Stakeholders Group*
- Identify *Technical Committee*
- Identify *Work Group* (subset of Stakeholders Group; 7-10 people)

FEBRUARY

- First meeting of *Stakeholders Group*
Meeting One – Existing Conditions
Purpose: What is there now? What does the Comp Plan currently say? What are the Met Council requirements? What is happening in adjacent communities? What are the land uses adjacent to the areas in developing Lake Elmo?
- Report back to Planning Commission, City Council

MARCH

- Hold Open House
 - o Invite stakeholder group, commissioners (Planning, Parks, Environmental, etc.), general public
 - o Seek input on Vision – If we can't all agree (at least in part) where we are headed, getting there will never "end."
- First meeting of *Work Group*
Meeting One – What is the Vision?
Purpose: Receive information received from open house. What is the end goal for the Area South of 10th Street? A bustling commercial node? Stable, safe neighborhoods? A regional draw such as _____? How does the city want to be seen from I-94? What is the community identity?

APRIL

- Report back to Planning Commission, City Council
 - o Get consensus on Vision for Area South of 10th Street
- First meeting of *Technical Committee*
Purpose: What services need to be discussed? What do current plans call for? What other plans are out there (school district, Washington County, etc.)? Gather information.
 - Schools
 - Streets
 - Sewer
 - Storm Sewer/Surface Water
 - Water
 - Fire

- Police
 - Parks
 - Trails
- Second meeting of *Stakeholders Group*
 - Meeting Two – Report on Work To Date**
 - Purpose:* Report on established Vision for South of 10th Street Area. Report on work done by Technical Committee, City Staff. Identify upcoming meetings, work, and options for more public input.

MAY

- Second meeting of *Work Group*
 - Meeting Two – Figuring out the Details – Commercial Focus**
 - Purpose:* Revisiting the existing land use map:
 - Does residential housing along I-94 coincide with the agreed upon vision? Does it make sense? If the land continues to be designated for residential along I-94, what does the city want to do with existing businesses?
 - Does a corporate campus at the corner of Manning Avenue and I-94 make sense? Is there a market?
- Third meeting of *Work Group*
 - Meeting Three – Figuring out the Details – Residential Focus**
 - Purpose:* Revisiting the existing land use map:
 - Does residential housing along I-94 coincide with the agreed upon vision? Does it make sense? If the land continues to be designated for residential along I-94, what does the city want to do with existing businesses?
 - Do the property owners at the corner of Lake Elmo Avenue and 10th Street continue to want part of their properties guided for sewer? Is it feasible? Where are their existing homes and septic systems?
 - Buffering existing neighborhoods (III-3 of Comp Plan identifies requirements)
 - Property guided for PF, but currently zoned R-3. Should that be changed?
- Report back to Planning Commission, City Council
 - o Review work done by Work Group, Technical Committee/City Staff

JUNE

- Third meeting of *Stakeholders Group*
 - Meeting Three – Report on Work To Date**
 - Purpose:* Report on work done by Work Group - where land use types should be located (generically residential and commercial).

- Second meeting of *Technical Committee*
 - Purpose:* Given the established vision and ideas of what land use types should be where, do services need to be reevaluated? Are there any red flags? Additional services needed? Where appropriate?
 - Schools
 - Streets
 - Sewer
 - Storm Sewer/Surface Water
 - Water
 - Fire
 - Police
 - Parks
 - Trails

JULY

- Fourth meeting of *Work Group*
 - Meeting Four – How to Implement – Creating a Future Land Use Map**
 - Purpose:* Given the established vision, the additional services needed (school, fire, police, etc.) and the ideas for appropriate residential and commercial locations – create a Future Land Use Map.

AUGUST

- Fifth meeting of *Work Group*
 - Meeting Five – A More Detailed Future Land Use Map**
 - Purpose:* Revisit the Draft Future Land Use Map and give more detailed review to what type of uses would be appropriate in which commercial areas. What level of density would be more appropriate for residentially guided properties.

SEPTEMBER

- Hold Open House
 - Invite stakeholder group, commissioners (Planning, Parks, Environmental, etc.), general public
 - Seek input on Detailed Future Land Use Map
- Report back to Planning Commission, City Council
 - Review work done by Work Group, Stakeholders Group, Technical Committee/City Staff, Information from Open House

OCTOBER

- Sixth meeting of *Work Group*

Meeting Six – How Do We Get to the Vision? View Draft Ordinance Language and Design Standards

Purpose: Revisit the Draft Future Land Use Map and give more detailed review to what type of uses would be appropriate in which commercial areas. What level of density would be more appropriate for residentially guided properties.

- Park Commission Meeting
 - o Review draft Future Land Use Map and More Detailed Plans

- Planning Commission Meeting
 - o Review draft Future Land Use Map and More Detailed Plans
 - o Hold public hearing to amend the Comprehensive Plan

NOVEMBER

- City Council Workshop
 - o Review draft Future Land Use Map and More Detailed Plans
- City Council Meeting
 - o Approve Comprehensive Plan Amendment

Staff sends Comprehensive Plan Amendment to Metropolitan Council for approval.

DECEMBER

**Village Area Comprehensive Plan Update
Draft Timeline/Review Process
Prepared By: Lake Elmo Planning Department
1/24/11**

2011	Task/Meeting Summary
January	Establish Stakeholder Group <ul style="list-style-type: none"> • All potential stakeholders Create Village Comprehensive Plan Update Work Group <ul style="list-style-type: none"> • Including some members of the stakeholder group Create Technical Review Committee <ul style="list-style-type: none"> • Comprised of same members as recommended in the I-94 review process
February	Stakeholder Meeting <ul style="list-style-type: none"> • Planning Update – History of recent planning efforts • Discuss overall Village housing unit count with update regarding City Council density decision • Review Planning Department density analysis Work Group <ul style="list-style-type: none"> • Meeting 1 • Review current plans and AUAR • Discuss Civic/Institutional Plans and alternative scenarios for public and semi-public uses • Review transportation plans • Discuss public realm (streets, parks, sidewalks, public squares) and design options • Storm Water Update Planning Commission/Council Update <ul style="list-style-type: none"> • Stakeholder feedback and comments • Work group update
March	Open House #1 <ul style="list-style-type: none"> • Present options for civic and institutional “Community Campus” • General update concerning population and density projections for the Village • Sewer Project update • Storm Water Planning discussion
April	Technical Committee <ul style="list-style-type: none"> • Discuss Service needs in community • Review current agency/departmental/governmental

	<p>planning efforts</p> <p>Work Group</p> <ul style="list-style-type: none"> • Consider design standards and integration into the Zoning Ordinance • Review zoning district alternatives • Identity preferred location for community campus concept • Review site design options for community campus • Consider revised residential and open space plan with new density projections. • Establish preferred scale for Village area development <p>Planning Commission/Council Update</p> <ul style="list-style-type: none"> • Open House Review • Review draft Land Use Plan update
May	<p>Work Group</p> <ul style="list-style-type: none"> • Meeting 3
June	<p>Technical Committee Meeting</p> <p>Stakeholder Group</p> <ul style="list-style-type: none"> • Meeting 2 <p>Planning Commission/Council Update</p>
July	<p>Work Group</p> <ul style="list-style-type: none"> • Meeting 4
August	<p>Work Group</p> <ul style="list-style-type: none"> • Meeting 5 <p>Planning Commission/Council Update</p>
September	<p>Open House #2</p>
October	<p>Technical Committee Meeting</p> <ul style="list-style-type: none"> • Review AUAR Update Document for submission to EQB <p>Work Group</p> <ul style="list-style-type: none"> • Meeting 6 <p>Planning Commission/Council Update</p> <ul style="list-style-type: none"> • Review Draft Comprehensive Plan Update - with revised Land Use Plan
November	<p>Work Group</p> <ul style="list-style-type: none"> • Meeting 7
December	<p>Stakeholder Group</p> <ul style="list-style-type: none"> • Meeting 3


	Planning Commission/Council Update Public Hearing – Planning Commission
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Notes:

- Technical Committee meeting schedule will be timed to coincide with I-94 Planning schedule
- Additional Work Group meetings will be called on an as-needed basis

	January	February	March	April	May	June	July	August	September	October	November	December	January	February
	Establish Stakeholders, Technical, and Work Groups													
	Stakeholders Group - large (subset of stakeholder)	1st Mtg.		2nd Mtg.		3rd Mtg.			4th Mtg.					
1-94			1st Mtg.		2nd and 3rd Mtg.		4th Mtg.	5th Mtg.	X	6th Mtg.				
	Open House - public		X						X					
	Technical Group		X		X				X					
	Commissions City Council	X	X	X	X				X	X	X			
	Establish Stakeholders, Technical, and Work Groups													
	Stakeholders Group - large	1st Mtg.				2nd Mtg.						3rd Mtg.		
Village	Work Group (include some stakeholders)													
	Open House - public	1st Mtg.		2nd Mtg.	3rd Mtg.		4th Mtg.	5th Mtg.	X	6th Mtg.			7th Mtg.	
	Technical Group					X								
	Commissions City Council	X	X	X	X	X		X	X	X	X	X	X	X

ITEM: Establishment of an Exterior Storage/Accessory Building Review
Committee (RESUBMITTED FROM 1/24/11 MEETING)

SUBMITTED BY: Kyle Klatt, Director of Planning 

REVIEWED BY: Kelli Matzek, City Planner

SUMMARY AND ACTION REQUESTED:

The Planning Commission is being asked to review and confirm the selection of three members of the Commission to serve on a committee to further refine draft amendments to the City's exterior storage and accessory building ordinances. These ordinances were reviewed by the Planning Commission earlier last year, but were tabled either by the City Council or by the Commission in order to further study each of the documents. During the course of the year, the City reviewed several other code amendments, but did not conduct any further review of the exterior storage and accessory building ordinances.

Due to the lack of consensus regarding the proposed exterior storage requirements, the Commission suggested forming a work group comprised of those Commissioner's particularly interested in exterior storage regulations to draft further revisions to the ordinance. At this time, Staff would like to confirm which Planning Commission members would like to serve on the work group and to begin working to prepare a final ordinance draft.

RECOMMENDATION:

Staff recommends that the Planning Commission select three members to serve on a work group to further refine the proposed Exterior Storage and Accessory Building Ordinances.

ORDER OF BUSINESS:

- Introduction..... Kyle Klatt, Director of Planning
- Report by staff..... Kyle Klatt, Director of Planning
- Questions/Comments from the Planning Commission..... Planning Commission

ATTACHMENTS:

- None

City Variance Authority

A Supreme Court ruling last year greatly limited cities' authority to grant variances.

During the 2011 legislative session, the League of Minnesota Cities will work to restore that authority. In the meantime, cities must make adjustments.

By Craig Johnson

In the world of law, a single court ruling can suddenly and unexpectedly change decades of precedence. That definitely proved to be true for municipal variance authority last year.

In the case of *Krummenacher v. City of Minnetonka*, the Minnesota Supreme Court issued a decision last June that changed the longstanding interpretation of the statutory standard for granting zoning variances. The decision also went counter to 20 years of previous rulings by the Minnesota Court of Appeals.

Background

The City of Minnetonka issued a variance to a residential property owner, permitting the vertical expansion of a legal, non-conforming garage. The city, relying on a 1989 Minnesota Court of Appeals decision and other judicial precedence, concluded that the grant of the variance was appropriate. The city's decision was challenged by an adjacent property owner. Both the district court and the Minnesota Court of Appeals agreed with the city's decision. On June 24, 2010, the Minnesota Supreme Court reversed the Court of Appeals decision, and found the city's variance impermissible.

In *Krummenacher v. City of Minnetonka*, the Supreme Court examined the statutory definition of "undue hardship." The statutes that limit when a variance may be granted are found in *Minnesota Statutes*, section 462.357, subdivision 6, and list three tests that must be met for a variance to be appropriate due to an undue hardship. They are:

- The property in question cannot be put to reasonable use if used under

conditions allowed by the official controls.

- The plight of the landowner is due to circumstances unique to the property not created by the landowner.
- The variance, if granted, will not alter the essential character of the locality.

In its decision, the court held that the "reasonable use" prong of the "undue hardship" test is not whether the proposed use of the property is reasonable, but whether any reason-

In its decision, the court held that the "reasonable use" prong of the "undue hardship" test is not whether the proposed use of the property is reasonable, but whether any reasonable use of the property exists in the absence of a variance.

able use of the property exists in the absence of a variance. This establishes a high threshold for both the city and the property owner when considering variance requests. Furthermore, it means that in the vast majority of cases, cities do not have the authority to grant a variance to local zoning regulations.

The Supreme Court explicitly recognized that it was changing a longstanding standard that cities have relied on in considering variance requests. In particular, the court specifically rejected a 1989 Court of Appeals interpretation of the phrase "undue hardship," which allowed for the grant of a variance in

circumstances where the "property owner would like to use the property in a reasonable manner that is prohibited by the ordinance."

The Supreme Court stated that "unless and until the Legislature takes action to provide a more flexible variance standard for municipalities, we are constrained by the language of the statute to hold that a municipality does not have the authority to grant a variance unless the applicant can show that her property cannot be put to a reasonable use without the variance."

Counties in opposite position

The Supreme Court also reviewed the parallel county authority that allows for a variance in situations of "practical difficulties" or "hardship," which are found in *Minnesota Statutes*, section 394.27, subdivision 7. The court found that the city authority was more limited because it did not contain the "practical difficulties" provision found in that section.

Counties, meanwhile, have been adapting to a change in how that same section of law functions for them after a 2008 Supreme Court opinion (*Stads-vold v. County of Ottertail Board of Adjustments*). The court distinguished between "practical difficulties" and "particular hardships," the terms used in that section of law, and the types of variances to which each apply.

The court applied the more easily met standard—practical difficulties—to area variances where a property owner is seeking to avoid a lot restriction set in ordinance, such as a setback, fencing, height, density, or parking space. The court applied the more stringent

requirement—particular hardship—to use variance requests, which are requests to use the property in a way that is not otherwise allowed under adopted zoning regulations. The court reached this conclusion despite the fact that the statute specifically states that use variances are forbidden. The court went on to define a list of tests that would determine when a practical difficulty exists.

That ruling left counties in the exact opposite position of cities. In many cases, counties feel they have no option but to grant area variance requests, since “particular hardship” is no longer allowed to be used as a test in those cases, and because of the broad description given of what constitutes “practical difficulty.”

Interim impacts

Many cities have ordinances that are drafted to provide a solid baseline that protects public health, safety, and welfare while leaving room for appropriate exemptions that do not jeopardize those goals. They often allow for variances in cases where the standard cannot be reasonably met, the problem was not caused by the actions of the property owner, and the exception will not change the nature of the neighborhood.

The *Krummenacher* decision has left cities with the choice of hoping their variances aren’t challenged, making significant and complicated changes to how they have drafted their ordinances, or simply refusing to consider granting any variances until the Legislature resolves the issue. This means that a project that might have previously qualified for a variance cannot move forward in most communities right now. City officials are very concerned about what that could mean for badly needed economic and residential development projects.

This ruling gets even more problematic when coupled with state land use regulations. Many of those rules, such as state shoreland regulations and metropolitan land use regulations, are written intentionally to use the variance procedure to identify cases where a special case justifies a different solution within set parameters. In light of *Krummenacher*, the authority to grant variances in those cases is limited, which makes some of the standards unintentionally restrictive.

Because of the far-reaching nature of the decision, there are at least four

responses cities can consider to keep their regulatory systems functional until a legislative correction can be achieved:

- **Reevaluate the variance criteria.** Cities are reevaluating the criteria they have historically used in deciding whether or not to grant a variance. The Supreme Court’s decision limits a city’s discretion. The ruling limits the authority to circumstances where the property owner can demonstrate that there is not a reasonable use of the property absent the variance.
- **Make sure reasons for variances are clear.** In circumstances where the city council believes a variance is appropriate, the city must take great care to make a detailed finding describing why the grant of the variance is necessary to provide the property owner with a reason-

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able use of his or her property. What constitutes a reasonable use of property is not defined and may differ depending on the unique circumstances of the property and attributes of various communities.

- **Reexamine the zoning code.** If a city routinely grants variances, this may be an indicator that it may want to reexamine its zoning code to ensure that standards, setbacks, uses, and other requirements are consistent with the city council’s current vision for the community. Some cities are using this ruling as an opportunity to review their land use practices.
- **Build in flexibility.** Cities can build greater flexibility into their existing conditional use permit, planned unit development, and setback regulations to explicitly afford greater

latitude to allow “variance-like” approvals under the zoning code. For instance, a city might establish alternative setback requirements to allow for construction that is consistent with neighborhood attributes.

Legislative solution

As noted by the comments of Chief Justice Gildea in the *Krummenacher* opinion, legislative action will be needed to restore the flexibility for municipalities to grant variances. Ideally, local government variance authority language that is clear, consistent, and well-defined will come out of this legislative session. While the legislation is not expected to be controversial, the League of Minnesota Cities has made this a priority issue to be resolved as quickly as possible in the 2011 legislative session. A quick resolution will help avoid confusion for city officials and the public, prevent needless changes to systems that functioned well, and avert costly litigation.

The need for this legislation also provides an opportunity to redraft the county and city variance authority language found in their respective sections of law to make them consistent. The League’s initial proposed legislative solution will likely make identical most of the language in *Minnesota Statutes*, section 462.357, subdivision 6 (2) and *Minnesota Statutes*, section 394.27, subdivision 7. This would eliminate confusion and the need for judicial cross-references about which wording, standards, and tests apply to cities and counties.

During the legislative interim, the League has worked with cities, counties, municipal law experts, and other interested parties to determine how to amend current statutes to clarify the issue for the courts. The goal is to do this without substantially changing the authority as it was understood prior to the *Krummenacher* case. The proposed legislation will use the term “practical difficulties” as the test for area variances, and will define what that term means for the purposes of granting variances.

To read the League’s policy on this issue (SD-23), access the *2011 City Policies* at www.lmc.org/policies.

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