

**CITY OF LAKE ELMO
WASHINGTON COUNTY, MINNESOTA**

RESOLUTION NO. 2002-068

**A RESOLUTION DENYING PATRICK KINNEY/P.J. REALITY, INC.
REQUEST FOR A MINIMUM LOT SIZE ZONING VARIANCE**

A. WHEREAS, Patrick Kinney represents that he and/or his company, PJK Realty, Inc., is the record fee owner of the following described parcels (both herein the "Kinney Property"):

1. Lot 7, Beau Haven which is zoned R-1 and contains approximately 19,000 square feet; and
2. Outlot G, Eagle Point Creek Estates which is zoned RE and contains approximately 11,4000 square feet.

B. WHEREAS, Kinney has applied to the City of the Lake Elmo for a minimum lot size variance so that a residential dwelling could be constructed on the Kinney Property; and

C. WHEREAS, it appears that Outlot G, Eagle Point Creek Estates should have been rezoned from RE to R-1 in 1995; and

D. WHEREAS, the minimum lot size requirements for property located in the R-1 zone are less restrictive than the minimum lot size requirements of property located in the RE zone; and

E. WHEREAS, the City Planner has indicated that the City should treat the Kinney Property as if it were all zoned R-1 for purposes of reviewing this variance application thereby applying the less restrictive lot size standard to all of the Kinney Property; and

F. WHEREAS, the Kinney Property is not served by municipal sanitary sewer; and

G. WHEREAS, the City's development regulations indicate that:

1. For property which is not served by municipal sanitary sewer, the minimum lot size in an R-1 zone is 1 and ½ acres (300.07 Subd. 4 C.2).
2. Substandard lots will be considered buildable if the area and width of the substandard lot are at least 60% of the minimum requirements, and if it is demonstrated that a safe and adequate sewage treatment system can be installed (300.09 Subd. 1).

3. If two or more non-contiguous parcels are owned by the same person, the parcels must be combined to meet the minimum requirements (300.09 Subd. 2).

4. If public sewer is not available and not anticipated, single family home sites must have a one acre on-site sewage treatment area; and

H. WHEREAS, the Kinney Property:

1. Has 30,400 square feet;

2. Has a lot size which is only 48% of the minimum lot size requirement for property in R-1 zones;

3. Had been owned by the adjacent property owner who sold the property to Kinney;

4. Has less than one acre which can be utilized for an on-site sewage treatment area; and

I. WHEREAS, a portion of the Kinney Property is located within the 940 flood plain, and all of the Kinney Property is located within 300 feet of the shore line of Eagle Point Creek; and

J. WHEREAS, it has not been demonstrated that a residential building could be constructed in full compliance with all of the City's other zoning and flood plain regulations; and

K. WHEREAS, on May 29, 2002, the Lake Elmo Planning Commission, by a 4 to 3 vote, recommended approval of the variance;

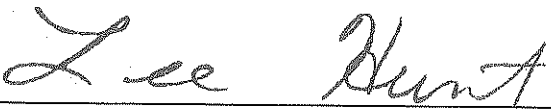
L. WHEREAS, on June 18, 2002, the Lake Elmo City Council considered the recommendations of the City Planner, the comments of the applicant and residents who appeared at the meeting, the recommendations of the Planning Commission and directed the City staff to prepare a resolution denying the application for a variance to be considered on July 16, 2002; and

M. WHEREAS, Patrick Kinney has twenty-three (23) years of real estate experience; did not review the City's regulations prior to purchasing the Kinney Property; did not apply for a variance prior to purchasing the Kinney Property; and did not purchase the Kinney Property contingent upon the granting of the variance by the City.

NOW, THEREFORE, BE IT RESOLVED that the Lake Elmo City Council hereby denies the Kinney application for a minimum lot size variance and makes the following findings:

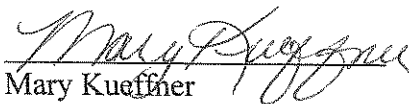
1. The Kinney Property (given its location, size, prior ownership by an adjacent property owner, and lack of public sanitary sewer) was and can be used in a reasonable manner as part of one or more adjacent parcels, just as it had been used prior to the acquisition of the Kinney Property by Patrick Kinney.
2. The plight of the property owner is due to circumstances created by the previous owner of the property and by the applicant, and is not due to the unique circumstances of the property.
3. The variance, if granted, may not change the character of the neighborhood, but a final determination on this point cannot be made without a complete set of plans demonstrating that a single family dwelling can be constructed in compliance with all other zoning and flood plain regulations.
4. The applicant has not proven an undue hardship.

ADOPTED, by the Lake Elmo City Council on the 16th day of July, 2002



Lee Hunt, Mayor

Attest:



Mary Kueffner
City Administrator

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