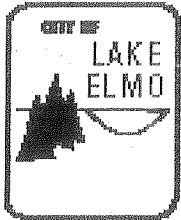


FILE



## City of Lake Elmo

3800 Laverne Avenue North  
Lake Elmo, Minnesota 55042

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### NOTICE OF MEETING

The City of Lake Elmo  
Planning Commission will conduct a meeting on  
**Monday, December 10, 2007, at 7:00 p.m.**

#### AGENDA

1. Pledge of Allegiance
2. Approve Agenda
3. Approve Minutes
  - a. November 14, 2007
4. Introduction of Kyle Klatt, Planning Director
5. Public Hearings:
  - a. Draft Comprehensive Park Plan
  - b. Neighborhood Conservation District
6. Business Items:
  - a. Signage – Off-site advertisement
  - b. 2008 Planning Commission Calendar
7. Informational Items:
  - a. City Council Updates
    - i. November 27 – Council workshop
      1. Village Planning Process – attachment
    - ii. December 4 – City Council meeting
      1. Legal opinion on the number of new housing units required in the comprehensive plan – attachment
      2. Interims Use Ordinance – approved
      3. Horses as interim use in PF zoning – tabled
      4. Non-Agricultural Low Impact Uses as interim use in HD-A-BP district – approved
      5. Accessory Building ordinance – approved
      6. Site Plan Review for City Hall Annex – approved
      7. Planning Commission terms as result of new ordinance – approved
8. Adjourn

**City of Lake Elmo  
Planning Commission Meeting  
Minutes of November 14, 2007**

Chairman Ptacek called to order the meeting of the Lake Elmo Planning Commission at 7:00 p.m. COMMISSIONERS PRESENT: Ptacek, Armstrong, Deziel, Schneider, Pelletier, Van Zandt, and McGinnis (7:05). STAFF PRESENT: Senior Planner Gozola and Planner Matzek.

**Agenda**

Chairman Ptacek asked to add item 5b. "Planning Commission Procedures"

M/S/P, Pelletier/Armstrong, move to approve the agenda as amended. Vote: 6:0.

**Minutes - October 10, 2007**

M/S/P, Pelletier/Deziel, motion to approve the minutes as presented. Vote: 3:0. Three abstentions: Armstrong, Van Zandt, and Deziel.

**Zoning Code Text Amendment – Non-Ag Low Impact Uses**

Senior Planner Gozola identified two separate ordinances being proposed based on the previous commission meeting - the first ordinance establishes an interim use ordinance tool and the second establishes Non-Agricultural Low Impact Uses as an interim use in the HD-A-BP zoning district. He expressed concern on how the site for the Non-Agricultural Low Impact Use would be calculated and that gravel was not counted toward the requirement. He said that option one provided is the text suggested by the commission at the last meeting.

Commissioner McGinnis arrived at 7:05 p.m.

Commissioner Armstrong suggested adding the proposed language of accepting the legal description of the Non-Agricultural Low Impact Use site to the commission's proposed language.

Commissioner Pelletier asked if there was a legal reason a council could deny a legal description.

Senior Planner Gozola said that would be a question for the city attorney.

THE CHAIRMAN OPENED THE PUBLIC HEARING AT 7:25 P.M.

No one spoke.

THE CHAIRMAN CLOSED THE PUBLIC HEARING AT 7:25 P.M.

M/S/P, Pelletier/Van Zandt, motion to move forward with the proposed ordinance with an amendment to subdivision F and directing staff to consult the city attorney. Vote: 7:0.

M/S/P, Deziel/Schneider, motion to move forward the ordinance regarding the interim use ordinance. Vote: 7:0.

**Zoning Code Text Amendment – accessory building as an interim use in the PF district**

Senior Planner Gozola asked that the item be tabled indefinitely as it was determined after reviewing city code that the city does not need to seek this permit to replace the trailer on the city hall site.

M/S/P, Armstrong/Van Zandt, move to table the item indefinitely. Vote: 7:0.

**City Code Recodification**

Senior Planner Gozola said this item was provided at the last meeting at which time a public hearing was held. The commission had requested further time to review the recodified code.

Commissioner Armstrong said he saw some misspellings and a couple link connections did not work. He said he would hope a review committee would catch any mistakes.

M/S/P, Deziel/Schneider, move to remove the item from being tabled. Vote: 7:0.

M/S/P, Armstrong, McGinnis, move to approve the recodified code and ask the council to set up a review committee of either staff or commissioners to review the document. Vote: 7:0.

Planner Matzek said she believed the City Clerk and City Attorney had reviewed all the recodified sections except for the zoning chapter.

**Planning Commission Procedures**

Commissioner Deziel asked how a commissioner would add items to an agenda and asked if they need to submit reminders for items on a commission's work plan.

Chairman Ptacek said he does not think it is incumbent on commissioners to direct staff's time, but that commissioners are free at any time to make motions to bring forward items they believe are not being addressed.

Commissioner Deziel said that the city has not been treating applicants uniformly. He said that sometimes a person is told that a code must be changed to allow what they are requesting and the application is tabled and sometimes they are told to apply and are denied because the code does not allow what they are requesting. He said the city should have a more consistent practice.

Commissioner Armstrong said residents have two routes – they can apply for a variance or they can request an ordinance amendment. He said that commissioners have the right to sponsor a code language change without an application.

Senior Planner Gozola said staff will always try to work with applicants so they do not make that kind of application. He said that the list of conditionally and interm permitted uses will be constantly evolving.

Commissioner Deziel said that in the case of Common Ground Church, it never came up to add horses to the ordinance. He said he thinks an ordinance change should be part of the options provided to an applicant. He said the commission needs to move forward with the neighborhood conservation area as it will decrease the overall workload of the commission.

M/S/P, Deziel, Armstrong, move to direct staff to bring forward the draft text for the Neighborhood Conservation District to the next meeting. Vote: 7:0.

### **Council Updates**

Planner Matzek said the septic variance at 8186 Hill Trail N was approved at the November 5<sup>th</sup> Council meeting. Also approved at that meeting was the impervious surface ordinance, the planning director position, the amended Planning Commissioner appointment and termination to be consistent with other commissions, and the direction to study options for off-site signage. The Common Ground Church CUP was denied and the four properties proposed for rezoning was tabled.

Planner Matzek pointed out that the December 2007 meeting schedule identifies the potential canceling of the December 24<sup>th</sup> meeting.

Adjourned at 8:11 p.m.

Respectfully submitted,

Kelli Matzek  
Planner

ITEM: Draft Comprehensive Park Plan

SUBMITTED BY: Kelli Matzek, Planner

REVIEWED BY: Ben Gozola, Senior Planner  
Susan Hoyt, City Administrator

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#### SUMMARY AND ACTION REQUESTED:

The Planning Commission is being asked to hold a public hearing to consider the approval of the proposed draft Comprehensive Park Plan (please see the draft Comprehensive Park Plan that was attached to the November 26<sup>th</sup> Planning Commission packet). This plan would update the 1990 park plan to reflect future demographics, existing park system amenities, and projected future park needs. The park consultants from TKDA who prepared the document will be at the meeting to present the various sections of the draft document.

This plan does not address how to pay for the proposed parks and greenway system, nor does it identify specific parcels of land in the city for future park and recreation locations. The purpose of the document is to provide a vision for how the City would like to develop a comprehensive park and recreation system so that the City can adequately respond when opportunities arise for new parks through donated land, new developments, or potential land purchases.

Both staff and the Park Commission are recommending approval of the draft Comprehensive Park Plan.

#### PARK PLAN PROCESS

Since September of 2006, the Park Commission and park consultants have worked to update the 1990 Comprehensive Park Plan. The draft plan was crafted over many meetings including a joint Park Commission and City Council meeting on April 24, 2007. A public open house was held on February 15, 2007.

#### MAIN POINTS OF THE DRAFT *COMPREHENSIVE PARK PLAN*

- The draft Comprehensive Park Plan begins with an introduction that includes a list of park system principles written and edited by the Park Commission. The principles serve as the foundation of the Park Plan.
- The existing parks inventory was also compiled and edited by the Park Commission. This list includes the Lake Elmo Center for the Arts Park as that property was purchased with park funding and will eventually be converted into a park use.
- The demographic assessment section of the plan utilizes information from the Lake Elmo Comprehensive Plan for population forecasts, the Minnesota Department of Natural Resources for recreation participation information, and the U.S. Census for city demographics. This information provided guidance in the proposed future park locations.
- The Natural Resources section identifies city and state policies as well as a Minnesota DNR Conservation Corridor program for guidance. This shows the overlapping vision at various levels of government for the protection of natural resources. Lake Elmo's natural resources were identified as potential future park features.

- The classifications for the park system as identified in the document are based upon characteristics and purpose of the park, and are helpful in assessing the resources currently available to residents.
- The National Recreation and Parks Association (NRPA) recommends that Cities locally establish a level-of-service rather than use a generalized standard model. The new draft plan follows this recommendation by establishing levels-of-service for the various park types based on discussions at the meetings held throughout the planning process.
- The accepted Village Area Master Plan identifies an area around which sports fields are located. The park plan integrated information provided from the Village Area Master Plan consultants early on in the process. The park plan has identified a primary community sports complex—a green area with the potential for recreational activities such as ball and soccer fields in collaboration with the village plan. Like the other proposed search areas in the park plan, this search area is intended to offer guidance as to where to obtain additional park land, but is flexible to allow for other opportunities as they arise.
- The two other areas identified on map 10 as community sports complex search areas are suggested locations if an additional sports complex is determined to be needed after 2020.
- The community park search area was suggested to be located within the village area to serve as a major central community park with a sports center and walking paths that would be the heart of the community. This was further discussed at the March 14, 2007 Park Commission meeting with the Village Area Planning consultant.
- The plan recommends a greenway and trail loop that utilized existing and proposed trails identified in the approved 2005 Comprehensive Trail Guide Plan. The greenway along with the trail system would provide for a highly connected park system and establish new connections among the rural and future urban areas of the city.
- Sunfish Lake Park was singled out as it is the largest of all the city parks, and is considered the crown jewel of Lake Elmo's park system. Six policy statements were created by the park commission to provide more detailed guidance for the future use of Sunfish Lake Park.
- Search Area D (as shown on map 9) identifies a search area for a local park directly adjacent to Sunfish Lake Park. The park commission recommended that neighborhood park type facilities not be placed within Sunfish Lake Park as it would not conform to the policies outlined for Sunfish Lake Park in the park plan.
- A recreation preference menu was distributed in a city newsletter, was available on the city website, and also at city hall. The menu was not an official survey, but an attempt to receive information from a broad range of residents on information relevant to the existing and future park system and recreational programming.
- The benchmark study (discussed in section 4) compares Lake Elmo with three other metro area cities. The three cities were chosen by the Park Commission, and were used **only** for identifying at what point did these communities establish city recreation programs and how do those programs function.

In summary, the draft plan finds that within the next twenty years, the City will develop needs for thirteen neighborhood parks, one community park, one or two community sports complexes, two special use parks, and a greenway to provide connectivity throughout the city. The specific locations for these recreation amenities would be guided by the search areas established in the plan, but the final locations would be dictated by opportunity (primarily through development projects). Essential to the plan's success is the City's ability to be flexible with final park locations and proactive as opportunities arise.

RECOMMENDATION:

Move to recommend approval of the Comprehensive Park Plan.

ORDER OF BUSINESS:

- Introduction..... Kelli Matzek, Planner
- Report by park consultants..... Rich Gray and Berry Farrington, TKDA
- Questions from the Planning Commission  
to the park consultants and Park Commission ..... 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

**ITEM: Ordinance addressing temporary off-site advertising signage**

REQUESTED BY: City Council & the Planning Commission

SUBMITTED BY: Ben Gozola, Senior Planner

REVIEWED BY: Susan Hoyt, City Administrator  
Kelli Matzek, Assistant City Planner

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**SUMMARY AND ACTION REQUESTED:**

What is the issue? In late 2006, Council identified off-site advertising signage as a matter to study, but due to higher priorities and staff turnover, it unfortunately has not returned as an issue until now. The request for the study was mainly in response to seasonal businesses seeking temporary signage along major roadways, and developers/realtors seeking opportunities to direct motorists to their properties. The planning commission is asked to express your concerns on this topic to allow staff to prepare an initial ordinance for consideration in early January.

What does current code allow? Temporary signs are currently allowed by code for special business events such as openings and closings. Such signs are allowed for a maximum of 15 days, and are not subject to size or design standards. According to code, the main purpose of sign regulations is to minimize the overall impact signs have on the community's rural character. That purpose will need to be kept in mind with any proposed changes to code.

Different types of temporary off-site advertising signage staff has been directed to review. The City Council has directed staff to examine three distinct types of off-site temporary signage:

- Temporary holiday related business signage;
- Temporary agricultural related business signage;
- Realtor directional signage (i.e. open houses and "parade of homes" event signs);

Questions that must be addressed. This type of signage is temporary by nature, and the right conditions/restrictions on such signs could ensure they adhere to the purpose for signs outlined in Lake Elmo City code. When investigating this topic, staff will strive to answer the following:

- What impacts may arise if temporary holiday/agricultural related off-site business signs are allowed via permit?
- What impacts could arise from temporary real estate directional signs?
- How do you define temporary real estate signs?
- How might changes to code impact administrative or enforcement staff time?
- What restrictions should be placed on signs in terms of size?
- Should the city adopt specific design requirements for signs?
- How many signs would be allowed?



- How far could a sign be located from the business/home being advertised?
- Under what conditions can a permit be requested?
- How long can the sign be up?
- Where could these types of signs be located (i.e. out of the ROW on private property)?
- What assurances must be provided to the city for the sign permit?

RECOMMENDATION

Unfortunately, due to limited staff time and deadlines for both a planning commission and city council packet, further information was unavailable at the time of packet delivery. Information will instead be handed out at the meeting, and staff will lead a discussion on the topic in order to get feedback on concerns to keep in mind when preparing a draft ordinance.

ORDER OF BUSINESS:

- Introduction ..... Susan Hoyt, City Administrator
- Report by staff ..... Ben Gozola, Senior Planner
- Questions from the Commission ..... Chair & Commission Members
- Questions/Comments from the public ..... Chair facilitates
- Direction to staff from the Commission ..... Chair facilitates

ATTACHMENTS: None

6b.

CITY OF LAKE ELMO  
PLANNING COMMISSION

2008 MEETING SCHEDULE

January 14	Monday	<i>Annual Meeting – Election of Officers</i>
January 28	Monday	
February 11	Monday	
February 25	Monday	
March 10	Monday	
March 24	Monday	
April 14	Monday	
April 28	Monday	
May 12	Monday	
May 28	Wednesday	<i>Due to Monday holiday</i>
June 9	Monday	
June 23	Monday	
July 14	Monday	
July 28	Monday	
August 11	Monday	
August 25	Monday	
September 8	Monday	
September 22	Monday	
October 15	Wednesday	<i>Due to Monday holiday</i>
October 27	Monday	
November 10	Monday	
November 24	Monday	
December 8	Monday	
December 22	Monday	<i>Tentative because of holiday</i>

Village Planning Process  
7a1

Planning Commission  
Date: 12/10/07  
INFORMATION

ITEM: Process chart for the Village plan

SUBMITTED BY: Susan Hoyt, City Administrator

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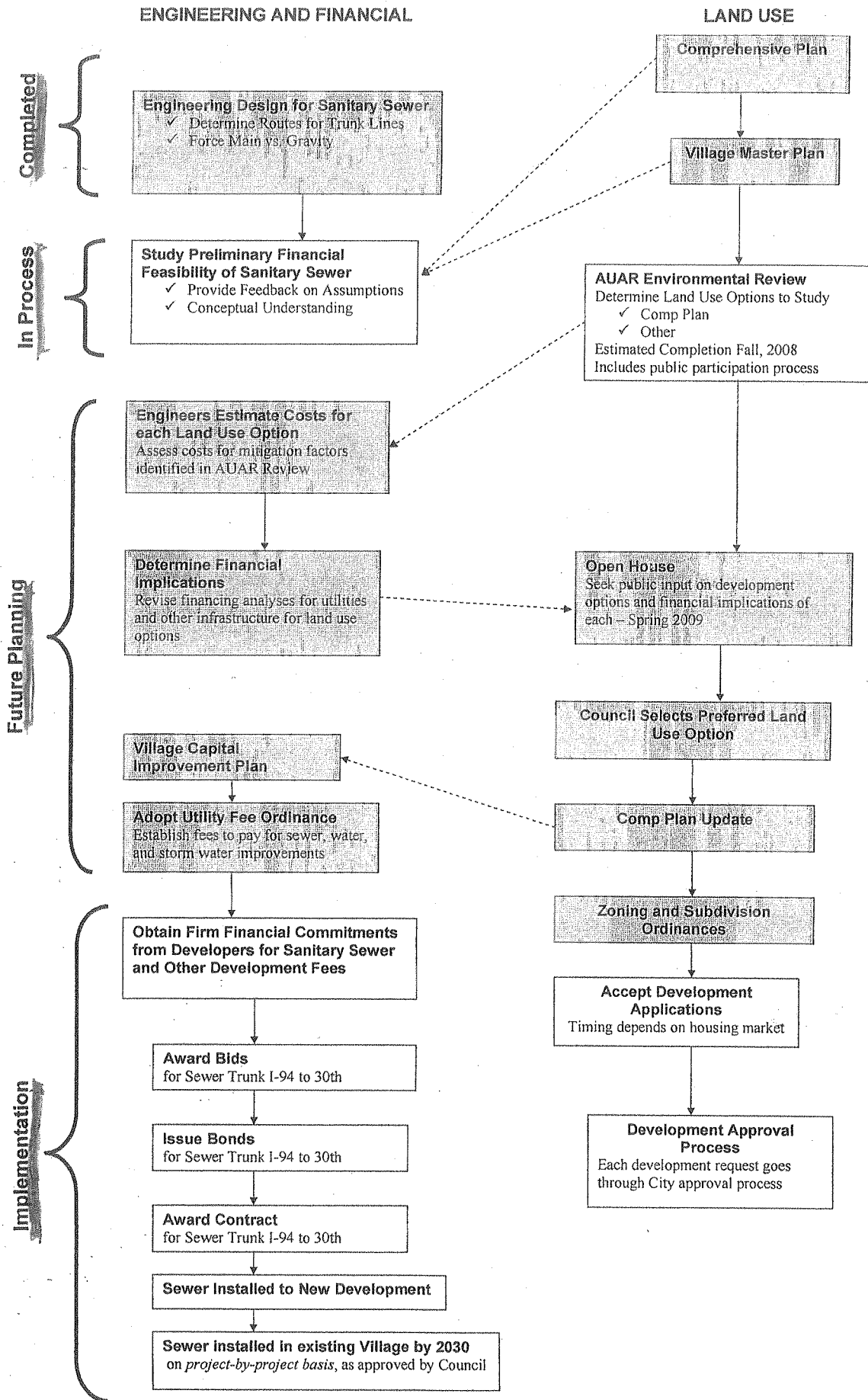
The attached process chart gives a simple process outline for steps to implementation of the Village plan. The first two steps, the comprehensive plan and the masterplan, were major steps in moving along this path.

The AUAR environmental process is the next major and time-consuming step in the process.

Attachment 1: Process Chart

# ROAD MAP FOR DECISION MAKING

Village Planning Process  
7a11



7a11

Planning Commission  
Date: 12/10/07  
INFORMATION

ITEM: Legal Opinion on the required number of new housing units in the  
Comprehensive Plan

SUBMITTED BY: Susan Hoyt

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The city council received a legal opinion on the number of required new housing units in the Comprehensive plan. (Attachment 1). This legal opinion was requested because the language in The comprehensive plan is always clear. The legal number in the city's legal land use document must be one of the development scenarios evaluated in the AUAR process. (The AUAR does not choose between development scenarios; it evaluates the mitigation required as a result of the development scenarios environmental impacts). The city is a long way away from making a decision on the housing units in the new Village.

The Mayor received the attached letter from Peter Bell regarding housing units recently.

Warren E. Peterson  
Jerome P. Filla  
Daniel Witt Fram  
Glenn A. Bergman  
John Michael Miller  
Michael T. Oberle  
Steven H. Bruns\*  
Paul W. Fahning\*  
Sonja R. Ortiz  
Amy K. L. Schmidt  
Ben I. Rust  
Jared M. Goerlitz



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December 3, 2007

Tail 1

Mayor Dean Johnston and  
Lake Elmo City Councilmembers  
City of Lake Elmo  
3800 Laverne Ave. North  
Lake Elmo, MN 55042

Re: Sewered Housing Units  
Old Village Area

Dear Mayor Johnston and Members of the City Council:

In 2004, the Minnesota Supreme Court determined that the Metropolitan Council had the statutory authority to require the City to modify its proposed Comprehensive Plan in the manner provided by Metropolitan Council Resolution No. 2003-10. This particular Metropolitan Council Resolution effectively incorporated a list of nine (9) required modifications, including a requirement that there would be development to accommodate 7,850 Residential Equivalent Units (REC's) of regional sewer capacity. All City Councilmembers opposed this level of development and asked the Metropolitan Council if it would be willing to negotiate some other solution. The negotiation resulted in the Memorandum of Understanding.



The Memorandum of Understanding was intended to provide guidance to the City as it began the task of revising the Comprehensive Plan draft that had been rejected by the Metropolitan Council. The Memorandum of Understanding mandates that the City achieve certain development goals by 2030 (Population-24,000; residential REC's- 5,200; and employment REC's-1,400), but it permits the City to use its discretion in determining how to achieve the 2030 development goals. The specific manner in which the City chose to exercise its discretion is reflected in the Comprehensive Plan that was approved by the City and by the Metropolitan Council, and in the official control which the City has and will adopt to implement the policies of the Comprehensive Plan.

In regard to the Old Village (both existing and new), the Comprehensive Plan identifies the number of sewered housing units in two (2) ways. First, it specifically states that there will be 1,100 sewered housing units in the Old Village by 2030 (Comprehensive Plan III-17). The City Engineer advises me there are 194 current

December 3, 2007

Page 2

housing units in the Old Village. By subtracting current housing units from the projected housing units, the result is 906 new housing units.

Secondly, the Comprehensive Plan indirectly estimates the possible number of new housing units by adopting zoning categories for the Old Village (Comprehensive Plan III-3 through III-5); by specifying permissible densities within zoning categories for the Old Village (Comprehensive Plan III-3 through III-5); and by identifying the number of acres available for development within various zoning categories (Comprehensive Plan III-7).

Zone	Units/Acre	Acres	Max. Units
1. VR/HD	14.5	7	101.5
2. VR/LD	0.45	77	34.65
3. VR MU/MD	5-6	86	430-516
4. VR P/S	0.45	43	19.5
5. VR/GB	0.45	717	322.65

The above calculations indicate that there could be 909-995 new housing units to the Village area in addition to the existing 194.

If you have any questions please contact me.

Very truly yours,

/s/

Jerome P. Filla

JPF/jmt

RECEIVED

November 19, 2007

The Honorable Dean Johnston  
City of Lake Elmo  
3800 Laverne Avenue North  
Lake Elmo, Minnesota 55042

**Re: City of Lake Elmo Comprehensive Plan; Sewered Development and Densities**

Dear Mayor Johnston:

I am writing in response to recent inquiries about sewered development in the City of Lake Elmo, the City's comprehensive plan, and the January 2005 Memorandum of Understanding that outlines criteria that were to be considered when the City prepared its comprehensive plan. Some have noted minor discrepancies between certain numbers in the Memorandum of Understanding and the comprehensive plan submitted to the Metropolitan Council and have asked whether existing housing in the Old Village that may be connected to the regional wastewater treatment system must have a density of at least 3.0 units per acre.

*Discrepancies*

It is my understanding that the City's comprehensive plan indicates 1,100 Residential Equivalent Units (RECs) will be available for existing and new housing in the Old Village area of Lake Elmo, while the Memorandum of Understanding indicates 1,000 RECs will be available for the Old Village area (up to 500 RECs for existing Old Village housing; up to 500 RECs for new Old Village housing). The discrepancy is minor and inconsequential, and poses no problems for the Metropolitan Council. The City may implement the comprehensive plan presented to and acted on by the Metropolitan Council.

*Densities*

Paragraph 7 of the 2005 Memorandum of Understanding was included as an accommodation to the City with the understanding that the City may need to remediate failing on-site sewer systems in the existing Old Village. The 3.0 units-per-acre average density standard does not apply to the pre-existing units in the Old Village; only to new development.

With regard to future development, the Metropolitan Council has the following expectations based on the approved comprehensive plan. All development permitted after the comprehensive plan went into effect in April 2006 will be consistent with the City's adopted plan. The existing Old Village will remain pretty much as is—a mix of commercial and neighborhood construction (conventionally platted subdivisions prior to 2005). In response to a request from Metropolitan



Honorable Dean Johnston


November 19, 2007

Page 2

Council staff, City staff estimated the overall density of existing units in the Old Village is 1.5 units per acre. Until regional sewer service is available, areas outside the existing/already developed portion of the Old Village area are in a 1-unit-per-20-acre holding zone. Once regional sewer service is available, development will occur as shown in the City's plan, which has three designated village residential (VR) areas: mid- to high-density (VR-HD); mixed-use/medium density (VR-MU/MD) and low-density (VR-LD). The average density of all new development within and around the Old Village will occur at an overall average density of at least 3.0 units per acre. In the area south of 10<sup>th</sup> Street, the average residential density will be at least 3.0 units per acre, while the density of non-residential development will be at least 40 employees per acre in sewerred areas.

I hope these responses and clarifications are helpful as the City moves forward with its planning efforts and the implementation of its comprehensive plan. As always, Metropolitan Council staff are available to assist the City of Lake Elmo as it addresses these important planning issues.

Sincerely,



Peter Bell, Chair

Metropolitan Council

cc: Susan Hoyt, City Administrator  
Sherry Broeker, Metropolitan Council Member, District 12  
Tom Weaver, Regional Administrator  
Guy Peterson, Director, Community Development Division  
Bill Moore, General Manager, Environmental Services Division  
Bob Mazanec, Metropolitan Council Sector Representative

Planning Commission

Date: 12/10/07

Item: 5b

ITEM: Addressing Neighborhood Conservation (NC) zoning issues

REQUESTED BY: Planning Commission

SUBMITTED BY: Ben Gozola, Senior Planner

REVIEWED BY: Susan Hoyt, City Administrator  
Kelli Matzek, Planner

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**SUMMARY AND ACTION REQUESTED:**

The Planning Commission is seeking a way to amend R-1 zoning standards to minimize the number of variance requests on properties guided as Neighborhood Conservation (NC) in the comprehensive plan. To that end, staff was asked to look into or address the following issues:

- Examine whether adjacency averaged will address the main concerns;
- Provide a good definition of adjacency averaged;
- Look at past variances to see what ones could have been avoided with the adjacency averaged concept;
- Examine how other cities use an average;
- Look at septic requirements
- Determine if recent statutory change that allows for reconstruction addresses most of the problems.

Attached to this executive summary is an in-depth report outlining staff's analysis of the existing ordinance and how it relates to the issues the City is seeking to address. In summary, staff did not identify any major code deficiencies based on NC variance requests over the past five years that would lead us to recommend adoption of a new zoning district for NC guided properties. Second, the "adjacency averaging" concept previously considered by the commission appears to be unnecessary as code already contains language allowing for setback averaging in front yards and in lakeshore setback situations (whether this language has been used in the past was not determined). Third, there does not appear to be a need to amend local septic regulations as the requests over the past five years demanded to be reviewed on a case-by-case basis given the proposed locations for the sites. The only change to code recommended by staff at this time would be a clarification of the front yard setbacks averaging rules outlined in section 300.11. Amending the existing language to cover all lots rather than just vacant lots could help to address some of the situations that may arise on NC guided property.

Because staff did not notice a public hearing to amend the section of code now recommended for change, a separate public hearing will need to be noticed and held at a future point in time if the commission agrees with staff's recommended course of action.

**ADDITIONAL INFORMATION:**

- None

RECOMMENDATION:

Staff is recommending the planning commission review the provided analysis, and determine if the proposed ordinance resolves existing NC concerns. Keep in mind that state statute has changed to allow reconstruction of nonconforming structures without a variance (provided no expansion is requested). As such, residents cannot be denied the ability to fix structures they currently have on their properties.

ORDER OF BUSINESS:

- Introduction ..... Ben Gozola, Senior Planner
- Report by staff ..... Ben Gozola, Senior Planner
- Questions from the Commission ..... Chair & Commission Members
- Call for a motion ..... Chair Facilitates
- Discussion of Commission on the motion ..... Chair Facilitates
- Action by the Planning Commission ..... Chair & Commission Members

ATTACHMENTS (xxx):

1. Detailed staff report analyzing NC guided properties and related city requirements;
2. Proposed ordinance to amend existing general front yard setback regulations.
3. Former proposed ordinance (2006) incorporating "adjacency averaging."

City of Lake Elmo Planning Department  
**Addressing Neighborhood Conservation (NC) zoning issues**

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*To:* Planning Commission

*From:* Ben Gozola, City Planner

*Meeting Date:* 12-10-07

***Introductory Information***

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***Objective:*** The intent of an "NC Ordinance" is to minimize variance requests in the R-1 zoning district for things that make sense and fit with the neighborhood. The ordinance has come forward at the request of the planning commission in response to the number of R-1 variances reviewed over the past five (5) years, and out of concern that residents are being forced to request variances for projects that ultimately will not or cannot be denied. Previous work on a new NC zoning district was considered in the preparation of this report.

***Variance Review:*** After discussing this issue with the planning commission on 11-26-07, we felt it was important to put down in writing staff findings for variances on NC guided properties over the last five years, and our analysis of these requests. Such an examination is critical for determining what changes (if any) are needed at this time. Here is what we found:

**All seven of the variances requested so far in 2007 have been on NC guided properties.**

<u>2007</u>	<u>Variance</u>	<u>Address</u>
Res. 07-060 (9/4)	OHW, side yd	8838 Lake Jane Trl
Res. 07-047 (6/19)	OHW, front	8186 Hill Trl N
Res. 07-046 (6/19)	min lot size, septic	8961 37th St. N
Res. 07-033 (4/17)	lot width	3200 Lake Elmo Ave
Res. 07-032 (4/17)	off-site septic	xxxx Klondike Ave.
Res. 07-018 (2/20)	Septic	11225 31st St. N
Res. 07-#### (##/##)	septic	8186 Hill Trl N

*(continued on next page)*

(cont.) **Six (6) of the ten (10) variances requested in 2006 were on NC guided properties.**

<u>2006</u>	<u>Variance</u>	<u>Address</u>
Res. 06-082	Septic Drainfield	8320 Hidden Bay Trl
Res. 06-058 (6/20)	Street, side yd	9429 Jane Rd N
Res. 06-041 (5/16)	Front yd/min lot size	8009 Hill Trl N
Res. 06-028 (3/21) D	Septic	7949 Hill Trl N
Res. 06-024 (3/6) D	OHW, min lot area	8160 Hill Trl N
Res. 06-017 (2/7)	OHW	4773 Olson Lk Trl

**Four (4) of the six (6) variances requested in 2005 were on NC guided properties.**

<u>2005</u>	<u>Variance</u>	<u>Address</u>
Res. 05-144 (12/20) D	OHW, side yd, min lot	10941 32nd St.
Res. 05-110 (10/18)	OHW	8148 Hill Trl N
Res. 05-087 (8/16)	min lot area	31st St N
Res. 05-020 (3/1)	Septic, OHW	8784 Lake Jane Trl

**Nine (9) of the ten (10) variances requested in 2004 were on NC guided properties.**

<u>2004</u>	<u>Variance</u>	<u>Address</u>
Res. 04-091 (10/19)	min lot area	34th St.
Res. 04-088 (10/5) D	Side Yd	3385 Lake Elmo Ave
Res. 04-081 (9/21)	side yd	8384 Stillwater Blvd.
Res. 04-059 (7/20)	OHW	2225 Legion Ln
Res. 04-054 (7/06)	shed size	8061 Hill Trl N
Res. 04-046 (6/18)	side, front yd	8017 50th
Res. 04-043 (5/18) D	Septic	3604 Layton Ave N
Res. 04-027 (4/20)	side, front yd	11094 35th St. N
Res. 04-009 (1/20)	OHW	8056 Hill Trl N

(continued on next page)

(cont.) **Four (4) of the six (6) variances requested in 2003 were on NC guided properties.**

2003	Variance	Address
Res. 03-094 (11/18)	OHW	8048 Hill Trl
Res. 03-039 (5/6)	OHW	8120 Hill Trl N
Res. 03-030 (4/1)	OHW	8098 Hill Trl N
Res. 03-005 (1/7)	front yd	10920 32nd St.

Based purely on numbers, examination of R1 zoning is a prudent idea to ensure the zoning district requirements are functioning as intended and are regulating these areas of the community appropriately. That said, it is also important to examine the specific nature of these variances to see what may be causing the problems. That breakdown is as follows:

A = Approved  
 D = Denied

Variances

	Variances																														
	2003					2004								2005					2006					2007							
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	
OHW		A	A	A	A				A					A		A	D	A	D											A	A
Septic							D							A						D				A	A	A	A		A		
Yard Setbacks	A					A		A			A	D					D				A	A								A	A
Lot Req													A		A		D			D		A						A	A		
Other									A																						
Replacing Existing (X)									X	X	X											X									

Shaded parcels indicate that a variance was denied, or was for replacement of an existing structure which would no longer require an application due to a change to state statutes.

- Twenty-five (25) of the thirty (30) R-1 variance requests in the past five years were approved. Staff is assuming the denied variances were for justified reasons given that the commission is seeking to change code to avoid having to approve requests that arguably have no hardship.
- Of the 25 approved variances, four requested the ability to reconstruct or repair an existing structure. Due to a recent change to state statutes, these requests would no longer require a variance so they can be taken out of consideration when determining the nature of the existing problem. This would leave a total of 21 variances over the past five years to examine when assessing if a code problem exists.
- Of the 21 identified variances, the following can be deduced:
  - Eight (8) required variances from the setbacks requirement from the OHW of a protected waterbody (38%);
  - Six (6) required variances from yard setback requirements (29%);

(cont.)

- Six (6) required variances from septic regulations (29%);
- Five (5) required variances from a lot requirement ostensibly to make it buildable (24%);

**OHW Setback  
Analysis:**

Setbacks from lakes and other water bodies are found in the shoreland district section of City Code (section 325). Currently the required setback from Natural Environment lakes is 150 feet, and the setback from Recreational Development lakes is 100 feet. However, section 325.06 subd. 4 also states that "...structure setbacks may be altered without a variance to conform to the adjoining setbacks from the ordinary high water level, provided the proposed building site is not located in a shore impact zone or in a bluff impact zone." In effect, the existing shoreland standards already provides the zoning administrator latitude to use an average setback based on adjoining properties.

Because the standard setbacks apply to all shoreland district lots in Lake Elmo regardless of zoning district, the only way to minimize OHW variances in the R-1 zoning district would be to change the standards that are applicable to the entire City. Shoreland district codes are intended to achieve two main goals: 1) protection of water quality through septic & structure setbacks and minimization of hardcover / disturbance of shoreland vegetation; and 2) preservation of the natural view of land from the lake. Lessening the required setback tends to work contrary to both of these goals, so a change is not advisable unless there is an overwhelming number of lakeshore variances before the City. As that does not seem to be the case, staff would not recommend any changes to lakeshore setbacks.

**Septic Codes  
Analysis:**

Regulations governing septic sites are found in different sections of code. Essentially for R-1 properties, code has three requirements:

- 1) All lots must have a minimum of one (1) acre of land suitable for septic drainfields;
- 2) Locations for a primary and secondary site must be identified; and
- 3) The septic sites must meet minimum setbacks.

Note that qualifying lots-of-record<sup>1</sup> do not need to meet the one acre requirement, and must only show that safe and adequate sewage treatment systems can be installed.

To analyze the one acre requirement, staff conducted a rough analysis of existing R-1 lots which resulted in the following figures:

- Of the 1358 lots zoned R-1, approximately 130 (10%) appear unsuitable for construction and likely have no current improvements on the land (typically these parcels are too small or are oddly shaped);

<sup>1</sup> By code, a lot of record is a property platted before roughly 1980 that meet at least 60% of the area and width requirements of the underlying zoning district.

(cont.)

- Of the 1358 lots zoned R-1, approximately 393 (29%) would not qualify as lots of record, but likely have improvements or could support improvements;
- The remaining lots are all conforming to minimum lot size or would qualify as lots-of-record.

Writing an exception to the one-acre septic requirement for the 29% of lots that may request a variance could be considered, but is likely not be necessary given that only six such variances have been granted in the past five years. Additionally, while some of the six septic variances may have included a problem with the one-acre minimum, all required setback variances. Therefore, any exception written into code would not have alleviated the need for a variance process.

Septic setbacks are needed to ensure the health, safety, and welfare of neighborhoods. Properly located systems protect water bodies and adjacent properties from potentially failing systems. Variances to these existing regulations should really be granted on a case-by-case basis when no alternative sites are available. Staff would not recommend any changes to these codes.

**Setbacks  
Analysis:**

It is not uncommon for codes to provide allowances for lesser yard setbacks based on existing structures on adjacent properties. Typically such allowances are only applicable to front or rear yard setbacks. Side yard setbacks are generally not varied as it is important to maintain adequate separation of structures (and to not compound the problems created by existing nonconformities). Some examples of such codes in other communities are as follows:

**MINNETRISTA**

**505.09. Setbacks.**

Subdivision 1. Front yard setbacks.

- (a) When more than 25 percent of the frontage on the side of the street between intersections is occupied by structures having setbacks from street rights-of-way of a greater or lesser amount than hereinafter required, the average setback of all existing structures between the intersections will be maintained by all new or relocated structures.
- (b) In the event a structure is to be built where there is such an established setback different from that required hereinafter and there are existing structures on both sides of the said new structure, the front setback will not be required to be greater than that which would be established by connecting a straight line between the forward most portions of the first adjacent structure on each side.

(continued on next page)



(cont.) **GREENFIELD**

(2) *Setbacks.* All buildings and structures shall meet or exceed the following setbacks:

Front yard setback	30 feet from the right-of-way or the average distance of the existing single-family dwellings on the same block
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**SHOREWOOD**

Subd. 3. *Yard requirements.*

d. Where adjacent residential structures within the same block have front yard setbacks different from those required, the front yard minimum setback shall be the average of the adjacent structures. If there is only one adjacent structure, the front yard minimum setback shall be the average of the required setback and the setback of the adjacent structure. In no case shall the required front yard setback exceed that required minimum established within the districts of this chapter.

**WASECA**

(b) The exception to these setback requirements is in a block where two or more residences have already been constructed facing the same street, the setbacks for the remaining lots in that block fronting on the same street shall be determined by the average setback of the existing buildings.

(1) (a) The minimum front yard setback shall be 50 feet from the road right-of-way; or the average distance of existing setbacks of all buildings on the same block facing the same street.

**HUTCHINSON**

**§ 154.023 EXCEPTIONS TO YARD AND FRONTAGE LIMITATIONS.**

In any district where front yards are required and where 40% or more of the frontage on one side of a street between two intersecting streets or around the circumference of a cul-de-sac is developed with buildings that have a front yard that is greater or less than the required front yard in the district, no building shall project beyond the average yard so established.

(continued on next page)

(cont.) 154.056...

(c) *Front street setback.* The above listed setback and yard requirements are subject to the following additional requirement: When more than 40% of the frontage of the side of a street between intersections is occupied by structures having setbacks from street rights-of-way of greater or lesser amounts than hereinafter required, the average setback of all existing buildings between the intersections shall be maintained by all new or relocated structures. In the event a building is to be built where there is such an established average setback different from that required hereinafter and there are existing buildings on one side only, the front setback of the new building shall match that of the next adjoining building. In case the building is to be built where there is such an established average setback and there are existing buildings on both sides of the new building, the front setback shall match that which would be established by connecting a straight line between the forward most portion of the first adjacent building on each side.

Using similar language as one of the cities noted above to address front and rear yard setbacks in the R-1 district would seem to be a reasonable way to allow residents to build in concert with existing neighborhood improvements while still promoting the minimum standards established for the R-1 district.

**Lot Size  
Analysis:**

Lot area requirements will only come into play on undeveloped parcels that do not qualify as lots-of-record. Typically, there is little to no reason to grant variances in these cases, and there are generally other impediments to building other than lot size (which is why the lot is still vacant). Because of the nature of these requests, and because the city has only received a handful of such requests in the past five years, staff would suggest continuing to review these requests on a case-by-case basis.

**Conclusion:**

After fully examining the issues outlined by the planning commission on 11/26/07, staff does not believe the "adjacency averaging" concept is needed to address the commission's concerns. If any changes are to be made, we would suggest amending the regulations in section 300.11 Setbacks as follows (underlined language is new; strikeouts indicate language to be eliminated):

**Section 300.11 SETBACKS.**

Subd 1. *Front setbacks.* Where adjacent residential structures within the same block have front yard setbacks different from those required, the front yard minimum setback shall be the average of the adjacent structures. If there is only one adjacent structure, the front yard minimum setback shall be the average of the required setback and the setback of the adjacent structure. In no case shall the required front yard setback exceed that required minimum established within the districts of this chapter. Where

(cont.)

~~a vacant, buildable lot is adjacent to structures existing at the time of adoption of this chapter that have a substandard setback from that required by this chapter, the Zoning Administrator shall determine a reasonable, average, calculated front yard setback to implement the requirements of this chapter and to fulfill its purpose and intent. In no case shall a building be required to be set back more than 180 feet from the street center line, except where an industrial district is adjacent to a residential district. In a residential district, the front yard setback shall conform to the established setback line, unless the Zoning Administrator determines that another setback is more appropriate as provided in this section.~~

Subd 2. *Side and rear setbacks.* Subject to regulations contained in the Building Code and other applicable regulations, side and rear setback requirements may be waived, provided party walls are used and the adjacent buildings are constructed as an integral unit and are part of an approved shopping center, townhouse development, or other similar development. The waiver shall only be by issuance of a variance.

Subd 3. *Setbacks from private roads.* All setback requirements of this chapter shall also be applicable to private roads and easement access rights-of-way.

The proposed change to the front yard setback language would apply to both vacant and currently built lots, and would provide a little more flexibility for built out areas of the City that may contain a number of nonconformities. Side yard setbacks are not proposed to change as it is important to encourage and maintain a minimum separation between structures. Providing leeway on side yard setbacks would only tend to worsen existing nonconformities by bringing neighboring structures closer together. Additionally, lakeshore and septic regulations are also not proposed to change for the reasons outlined in this report.

**Commission  
Options:**

The Planning Commission has the following options:

- A) Recommend approval of the proposed ordinance to amend the front yard setback averaging requirements in all zoning districts;
- B) Recommend staff make changes to the proposed ordinance, or add additional changes;
- C) Table the item for further study.

As this is a city driven process, there is no 60-day deadline.

CITY OF LAKE ELMO  
COUNTY OF WASHINGTON  
STATE OF MINNESOTA

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE TO AMEND GENERAL FRONT YARD SETBACK  
REGULATIONS APPLICABLE TO ALL ZONING DISTRICTS

**Section 1.** The City Council of the City of Lake Elmo hereby ordains that Section 300.11 subdivision is hereby amended to read as follows:

**Section 300.11 SETBACKS.**

Subd 1. *Front setbacks.* Where adjacent residential structures within the same block have front yard setbacks different from those required, the front yard minimum setback shall be the average of the adjacent structures. If there is only one adjacent structure, the front yard minimum setback shall be the average of the required setback and the setback of the adjacent structure. In no case shall the required front yard setback exceed that required minimum established within the districts of this chapter. ~~Where a vacant, buildable lot is adjacent to structures existing at the time of adoption of this chapter that have a substandard setback from that required by this chapter, the Zoning Administrator shall determine a reasonable, average, calculated front yard setback to implement the requirements of this chapter and to fulfill its purpose and intent. In no case shall a building be required to be set back more than 180 feet from the street center line, except where an industrial district is adjacent to a residential district. In a residential district, the front yard setback shall conform to the established setback line, unless the Zoning Administrator determines that another setback is more appropriate as provided in this section.~~

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Subd 3. *Setbacks from private roads.* All setback requirements of this chapter shall also be applicable to private roads and easement access rights-of-way.

**Section 2. Adoption Date**

This ordinance shall become effective immediately upon adoption and publication in the official newspaper of the City of Lake Elmo.

This Ordinance No. \_\_\_\_ was adopted on this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_, by a vote of \_\_ Ayes and \_\_ Nays.

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Mayor Dean Johnston

ATTEST:

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Susan Hoyt  
Administrator

This Ordinance No. \_\_\_\_\_ was published on the \_\_\_\_ day of \_\_\_\_\_, 2007.

NC (Neighborhood Conservation) Zoning District.

1. Purpose

The purpose of the NC zoning district is the preservation, restoration and enhancement of neighborhoods within the City that have been developed over time responsive to earlier or nonexistent zoning standards of the City or East Oakdale Township. The goal of NC zoning is the retention of the existing physical environment of these pre-existing neighborhoods with a minimum of zoning non-conformities created by NC district standards, as well as to regulate "in-fill" development/redevelopment in those pre-existing neighborhoods. It is not the intent or purpose to apply the NC district standards to platting of undeveloped lands, or the division of existing tax parcels to create additional buildable tax parcels.

2. Permitted Uses

a. One family detached dwellings;

3. Accessory Uses.

a. Uses which are customarily accessory and clearly incidental and subordinate to permitted uses;

b. Home occupations.

3. Minimum District Requirements.

<u>NC Zoning District</u>	
<u>Minimum Lot Size</u>	<u>18,500 square feet, or adjacency averaged, whichever is less</u>
<u>Lot Width</u>	<u>75 feet at front yard setback line, or adjacency averaged, whichever is less</u>
<u>Building setback from property lines</u>	
<u>Front:</u>	<u>30 Feet, or adjacency averaged, whichever is less</u>
<u>Side (Interior):</u>	<u>10 Feet</u>
<u>Side (Corner):</u>	<u>25 Feet, or adjacency averaged, whichever is less</u>
<u>Rear:</u>	<u>40 Feet</u>
<u>Arterial Street:</u>	<u>50 Feet, or adjacency averaged, whichever is less</u>
<u>Primary Building Height</u>	<u>35 Feet</u>
<u>Accessory Structures Height</u>	<u>14 feet</u>
<u>Maximum Impervious Surface Coverage</u>	<u>25%</u>
<u>Maximum Floor Area Ratio</u>	<u>0.25</u>