

APPROVED

LAKE ELMO PLANNING COMMISSION MINUTES

AUGUST 10, 1987

Chairman DeLapp called the Planning Commission meeting to order at 7:30 p.m. in the City Council Chambers. Present: DeLapp, Williams, Raleigh, Simpson, Johnson (arrived 7:38 p.m.), Stevens, Hunt, Enes, City Administrator Overby. Absent: Buecheck, Haacke, Reuther.

1. Agenda

Add: 7B. Review of Comp Plan Work Items (if time allows).

M/S/P Stevens/Simpson - to approve the August 10, 1987 Planning Commission agenda as amended. (Motion carried 7-0).

2. Minutes: July 27, 1987

M/S/P Enes/Simpson - to table the July 27, 1987 Planning Commission minutes until the August 18th Planning Commission meeting. (Motion carried 8-0).

3. Upcoming Requests

August 24, 1987

Final Plat: Lake Jane Highlands
Comprehensive Plan Revisions

September 14, 1987

Nothing scheduled at this time.

4. PUBLIC HEARING: Request for Amendment to the 1979 Municipal Code of Lake Elmo to allow a Restaurant/Bakery, Bakery-Retail Sales, Bakery-Wholesale Sales, or Catering Business in a Restaurant, Bakery, or Restaurant-Bakery in the General Business Zoning District. Applicant: Ed Gorman

This request was discussed previously by the Planning Commission on 7-13-87, but no action was taken at that time.

Chairman DeLapp opened up the public hearing at 7:43 p.m. in the City Council chambers.

Ed Gorman explained he was before the Planning Commission on June 22, 1987 for a site and building plan review for a bakery use in the General Business zoning district without the requirement of a Conditional Use permit. Gorman felt that City Administrator Overby successfully confused not only him but members of the Planning Commission that evening and again for this meeting. They went to Overby for help where he suggested what steps to take. Gorman's plan was to make bread in a bakery rather than in a free-standing structure, but he couldn't qualify with front setbacks.

Another comment made was that Gorman was looking for a rubber stamp

for an Industrial and Manufacturing business in a General Business zone. This is not true. He just wanted to open up communication to see how the City would look at a Bakery in the City.

In Administrator Overby's review he stated that a bakery is a manufacturing business, but Gorman pointed out definitions within our code and as defined in various dictionaries. He found the only connection between manufacturing and flour is he is not going to manufacture flour, but buy flour for manufacturing his baked goods.

City Administrator Overby stated that the City Attorney felt that a bakery operation is a manufacturing use so the Planning Commission should look at whether the code should be amended to allow a bakery without a Conditional Use Permit.

Ed Gorman called 27 different cities, Minnesota Restaurant Assoc., Minnesota bakery Assoc., and Minnesota Dept. of Agriculture which has jurisdiction over bakeries and everyone felt that his idea of a restaurant/bakery would fit into General Business and it was not a manufacturing industrial business.

Marge Williams stated that if Gorman opened up a bakery which sells directly retail in GB there would be no problem with the code. But when you expand this business to wholesale which requires larger packaging then according to code it creates a manufacturing use. The problem is at what point does this go beyond retail to a wholesale use? Gorman responded he could not produce much on 1600 sq.ft.; it is not going to be a Taystee Bread.

Sue Dunn (who lives behind the White Hat) felt that Ed has been a good neighbor. She questioned the public hearing notice for four different requests. Should it not be for one item at a time to be considered?

Tom Simpson suggested they stay with the code books' definition of manufacturing. The Commission needs to somehow come to a decision on how do they define General Business versus manufacturing and at what point the Commission has to draw an arbitrary line between GB and manufacturing.

Ed Gorman explained he would like to see the word wholesale because it would be illegal if he told the commission that he wouldn't do it. If someone wanted to buy his goods, he would like to sell it ^{to} him. The primary items dispensed will not be wholesale bread, but mainly made for his restaurant. He would be flattered if someone wanted to buy his goods and he would sell it to them like the Elmo Inn does. The only reason he brought in catering was because this goes hand-in-hand with restaurants and wants to make it legal because it does go on in the City. Gorman would support bakery in an Industrial zone if wholesale only is behind it, then the PZC could have control.

Rob Enes felt they were for the proposal, but the problem was not Gorman's but the City's problem which was stated in the City Attorney's letter. They would set precedent by saying this is approved and for some reason Gorman leaves the business and it is sold

then anyone could come in and this could be industrial, a Taystee Bread could happen. Gorman responded that "what ifs" shouldn't enter into it, because if he died the City would be alert to what went in there and would stop them if it was not according to code.

Marge Williams explained that one of the functions of the Planning Commission is to review our ordinances, to amend them when necessary and to follow them. Their job is not to make arbitrary decisions based on emotions, which is difficult to do. At this time as the code stands, they need to follow it and decide if they should respect the decisions of the City Attorney or the City Engineer. The point is not the bakery itself, it is the point when it becomes a wholesale operation. She would like to see this operated under a CUP in order to allow him to do what he wants especially if he intends to stay here. A distinction is needed between bakery retail, bakery wholesale and bakery manufacturing. Williams voiced no problem with a bakery retail sales, but she has concerns on trucks coming in and out across from the school. Gorman pointed out there would only be one truck involved.

Ed Gorman asked if, whatever the decision is, will this be carried through to the other operations in town that are doing some of these things now. Is this how tough the stand will be with other businesses in the City?

City Administrator Overby responded that this zoning amendment is City-wide. It would be an allowed use under General Business zoning, not specific to Gorman's property even though he is initiating the request. It could apply to other vacant GB land or to land that might be rezoned to GB.

Chairman DeLapp closed the public hearing at 8:25 p.m.

Ed Stevens stated that the City pays a substantial sum to an attorney who advises them and felt that City Attorney Knaak's letter explains it very clearly and suggests the Commission stick to what the attorney suggests.

Steve Raleigh concurred with the general consensus, but he has a problem with the word "wholesale" appearing in General Business. He felt the reason for bakeries occurring in manufacturing areas had to do with buildings existing on drainfields because of the excess amount of solid waste generated.

M/S/P Raleigh/Enes - to recommend to the City Council that the General Business zoning ordinance be amended to allowed uses of a restaurant/bakery, retail bakery and/or a catering business as part of a restaurant, bakery or bakery-restaurant operation with the condition of the approved amendment. (Motion carried 6-2<Williams, DeLapp>).

Chairman DeLapp voted against the motion because he felt there was no reason the applicnt could not have had this bakery built if the applicant wanted to because we have every provision in the code to allow it through the CUP process.

Marge Williams voted against the motion because she believes that until we have cleaned up the situation of what the ordinance meanings are, the City could end up leaving itself open for lawsuits.

Marge had a concern on the transfer of wording from the current manufacturing zoning. Bakery is listed as a manufacturing activity, so it has to be defined as a retail bakery-not a bakery with retail sales. Marge would like to have the City Attorney advise them on the amended ordinance wording change.

Lee Hunt wanted to make sure they don't get the City in trouble and would like to know how this would affect the City in regard to the difficulty of the City refusing future requests. He personally would like to see a bakery there.

M/S/P Stevens/Williams - to amend the motion with any request for code amendment should be commented on by the City Attorney and then the Planning Commission would reconsider the subject after they hear his advice on the implication of the zoning amendment that they are proposing. (Motion carried 6-2<Enes/Johnson>).

5. Preliminary Plat: Packard Park 2nd Addition, Gene Peltier
(Continued from June 8, 1987).

This subdivision was reviewed by the Planning Commission in June and no drainage computations were provided. Therefore, no action was taken on this preliminary plat. Since then, the developer had proposed to obtain a ponding easement from Cliff Adkins, property owner to the south, but this did not materialize. Mr. Peltier proposed to return to the original plan shown on the preliminary plat dated April 24, 1987. This plan shows construction on a water storage pond on Lot 2, Block 2 in the proposed 3rd Addition.

City Engineer Bohrer reported in his letter of 8-7-87 that the City drainage rules require a developer to permanently store all additional runoff generated from the development. This is the additional amount of runoff produced from covering land with impervious roads, houses, and driveways. The developer is not required to improve the situation, just maintain the status quo.

The drainage plan supplied by the developer does meet the City requirements and the 1% Rule. All of the house pads and most of the street will drain to the excavated pad. This pond will trap a volume equal to the additional runoff generated by the development during a 6-inch rainfall in a 24 hour period. The same volume of runoff that drained to the south under pre-development conditions will continue to drain to the south under post-development conditions.

Bohrer also stated in his letter that there are existing water problems in the area of Eden Park Addition, located east of Legion Avenue. At the time Eden Park was platted, the minimum building elevation was 892, based on a computed 100-year flood of 891. At least one house (Voge) has a basement floor below this level and there may be more. The septic systems are probably below the basement levels. Bohrer was disturbed to discover that these low basements or systems

exist in a relatively new plat where minimum elevations were established. The VBWD revised the flood elevation in 1983, based on new computations to 894.

City Engineer Bohrer recommended that the preliminary plat and drainage plan be approved with the following conditions:

1. The street grade on 24th Street Court North and Lansing Avenue (3rd Addition) should be lowered sufficiently so that the entire house pads will drain to the street.
2. Move the high point in 24th Street from Station 7+87 to Station 5+00 to 6+00.
3. When the storm sewer is constructed in the 3rd Addition, it shall be extended to the 24th Street Court intersection.
4. The 24th Street right-of-way between the 2nd Addition and the west line of the pond, shall be reserved as a permanent road easement. The pond shall also be reserved as a permanent ponding esement until such time as the 3rd Addition is platted.
5. The pond volume below the outlet shall be at least 0.43 acre feet for the 2nd Addition. When the 3rd Addition is platted, the pond shall be enlarged to approximately 1.10 acre feet.

Linda Voge explained that their proposed pond has sandy loam material and the water will perk down into Durand's pond and into their pond and into her basement and others. Linda pointed out on the plat survey there are several culverts shown, but the main drainage culvert which drains the west side of Legion Avenue to the eastside is missing. She also pointed out according to the flood plain map, that about two-thirds of Legion Avenue is under water.

Debra Wilfong asked how many inches of rain in a 24-hr. period can this pond accomodate. According to the City Engineer's letter, this pond will trap a volume equal to the additional runoff generated by the development during a 6-inch rainfall in a 24-hr period.

Linda Voge read neighbor Ann Bucheck's concerns which included suggesting staying with our code in regard to cul-de-sacs are only to be 800 feet and the one drawn is 900 feet long. The developer had stated that he would not put the proposed street through in the 3rd addition if it was zoned RR. At the present and for many years, it will remain zoned RR, therefore she takes exception to the cul-de-sac and the manner in which the street for the future subdivision is drawn as it does not coincide with the zoning. Ann did agree with the City Engineer that the developer is not required to improve the situation, just maintain the status quo, but asked "what is the citys obligation or responsibility to those homeowners in Eden park who bought there and believed the City would not allow a development unless it met code?"

See Appendix A for Ann Bucheck's reasons for recommending denial of Packard Park Preliminary Plat 2nd Addition.

Another of Ann Bucheck's concerns was if Mr. Folz's estimates of the basement levels of homes on Legion Avenue are correct and we accept the flood elevation of 892 then three homes will be flooded and another two homes will be within 1 foot of flooding. Also, 4 or 5 of the septic systems will be under water.

Marge Williams would like to know the city's liability if they were to approve this plan based on current information. This information being that houses are approaching being flooded and that if the worse flood storm happens, what would the City's liability be if the outlet were to overflow into the so-called Durand pond and into that area. On the surface it looks like all the city's conditions are met, however there seems to be some extenuating circumstances that we need our City Attorney to look at.

Chairman DeLapp added what if our City engineer miscalculated or misunderstood the calculations and came up with recommending something that was not proper, then what would the City's obligation be.

David Johnson stated if these people have problems because they were allowed to build it too low, they may have some claim against the City. He feels they cannot re-address that problem by insisting no more development go on.

Steve Raleigh felt that the plat meets the code according to our City Engineer. We have houses with flooded basements, but actions of this City in the past indicate that we have not ever stopped a development or plat because of houses being flooded.

Lee Hunt felt that even if we have plans here or not, there are some people that have water problems and something should be done to address these problems. The issue is not the plat, but there is a water problem in this entire area and he thought they should get City Council approval for asking the city engineer to come up with some recommendations on what could be done.

Chairman DeLapp felt that until this plat is completely within any limit of our codes (which would require a change in the cul-de-sac exceeding the 800' limit), he would not recommend approval. If it should meet every code in our book, he could not see any reason for not approving it.

Marge Williams suggested tabling approval of the plat in order to ask for engineering and attorney's opinions as to the City's liability. She understands the plat meets the code with the exception of the cul-de-sac, but feels because of the fact of the houses being flooded, we should not approve the plat until we consider the liability to the City.

M/S/F Williams/Stevens - to table action on approving the preliminary plat for Packard Park 2nd Addition until we get an evaluation of the legal ramifications of the subdivision of this plat from the City Attorney. (Motion failed 2-5-1<Opposed: Hunt, Johnson, Enes, Raleigh, Simpson, Abstain: Stevens>).

M/S/F Johnson/Simpson - to recommend to the City Council approval of the preliminary plat for Packard park 2nd Addition; subject to the City Engineer's conditions as listed in his letter of 8-7-87 and including the Findings of Fact as listed in the June 8th meeting. (Motion failed: 3-5<Hunt, Enes, Simpson, Stevens, Williams>).

M/S/P Stevens/Enes - to recommend to the City Council disapproval of the preliminary plat for Packard Park 2nd Addition because of the 24th Street and Court cul-de-sac exceeding the 800' limit. (Motion carried 5-3<Raleigh, Johnson, Simpson>).

David Johnson and Tom Simpson referred to City Engineer Bohrer's letter where he states that he feels the road can temporarily exceed 800 feet because the concept plan shows it will become a through street in the future.

6. Future City Land Need: MnDOT Right-of-Way at 4th Street & Ideal Avenue.

The Minnesota Dept. of Transportation is preparing to sell off parcels of land left over from the "northern route" freeway corridor that it acquired in the 60's and 70's. The City of Lake Elmo may be able to acquire some of this land if it expresses an interest to MnDOT. The specific property in question is a triangular area bounded by 4th Street and ideal Avenue. The total area, included 1.0 acre of existing city land equals about 10.3 acres. Potential public uses for the land include a neighborhood play park or a site for fire station number three.

M/S/P Enes/Stevens - to recommend to the City Council that the City express to MnDOT an interest in the 9.2 acres of state-owned land for public uses. (Motion carried 7-1<Williams: would be in favor of the motion if it specifically limited it to a park or fire station.>).

7. Comprehensive Plan Revisions

M/S/P Johnson/Enes - to try to put this as the first item on the next Planning Commission agenda. (Motion carried 8-0).

A. Appendix B - Housing

M/S/P Johnson/Simpson - to adjourn the Planning Commission meeting at 10:50 p.m. (Motion carried 8-0).

APPENDIX A

Ann Bucheck, 2301 Legion Avenue N., presented the following reasons for denial of the preliminary plat for Packard Park 2nd Addition to be read at the August 10, 1987 Planning Commission meeting.

1. We are only looking at the preliminary for the 2nd Addition. We would like it to be on record that in no way is any kind of approval being given for the 3rd Addition and, in fact, there should be disapproval of it at this time as it is drawn in 1/2 acres when it is zoned RR.

(401.380.B amended 9-14-87)

2. According to Code-~~400-28~~ a cul-de-sac is only to be 800 feet long and the one drawn is 900 feet long. The developer has stated that he would not put the proposed street through in the 3rd Addition if it was zoned RR. At the present, and possibly for many; many years to come, it will remain zoned RR, therefore, we take exception to the cul-de-sac and the manner in which the street for the future subdivision is drawn as it does not coincide with the zoning.

3. We agree with Larry Bohrer that a "developer is not required to improve the situation, just maintain the status quo", however we are wondering what the city's obligation or responsibility is to those homeowners in Eden Park who bought the land believing the city would not allow a development unless it met code. Looking at the 100 year flood plain map one can easily see that Eden Park is in difficulty and the street Legion Avenue could easily be under water and in fact is shown to be covered in time. Also, the water will be lapping at the doors or in the doors of homes. If Mr. Folz's estimates of the basement levels of homes on Legion Avenue are correct and we accept the flood elevation of 892 then three homes will be flooded and another two homes will be within 1-foot of flood. Also, 4 or 5 of the septic systems will be under water. Knowing the above facts we ask what responsibility does the city have to those persons already living in the Eden Park Addition if the ponding does not hold for Mr. Peltier's addition?

Also, what responsibility does the city have after allowing homes to be built and drainfields to go in that are below the flood plain. The homeowners fully felt the city would not have allowed homes to be built that did not meet code. Myself and others were not told by the developer, Mr. Folz, nor the City that we needed to be careful regarding water. We now face a very real potential problem that could become dangerous.

4. Mr. Bohrer feels that a pond needs to be built which will trap a volume of additional runoff generated by a 6-inch rainfall. We do not feel this is sufficient due to the record amount of rainfall we have had in the last 10 years--including the one only two weeks ago.

5. We would like to be noted on record that the water surface level on Legion Avenue pond and measured by Mr. Folz on 6-22-87, is considerably lower than what we have at the present time and for what it has been in the last two years. We would guess it to be at least 1-1 1/2 feet higher at this time. Also, the basement elevations of three of the homes on Legion Avenue ~~is higher~~ than their actual elevation--they could be about 8' lower than what was measured by Mr. Folz. (were measured higher amended 9-14-87)

6. Mr. Peltier does own all of the land, however it is zoned both R-1 and RR. Are we setting a precedent that we may later regret by allowing a developer to pond on land which is zoned different than that which he is developing at the present time? We see no reason to have his 3rd Addition zoning changed and therefore feel that it may be in the best interest to have his ponding take place in the 2nd Addition, that parcel which he is developing.

According to code 401.220 B3 point C "a proposed design feature is to have provisions for surface water disposal, drainage, and flood control within the boundaries of the proposed property division". We believe that this indicates the pond is not to be outside of addition 2, but rather inside addition 2 and it does not meet code.

7. Culverts not drawn in and how much is he allowing to come down Legion Avenue and into your drainage, pond, house.

We believe the preliminary plat for Packard Park should be denied on the above reasons and further we question the manner in which the rezoning of Mr. Peltier's land was accomplished. According to code 301.060D4 all property owners within 350 feet of the property being discussed at a public hearing need to be notified of the public hearing. However, when the notices for the rezoning of Peltier's property were sent, the Durands, Voges and myself were not notified. Mr. Folz should have given these names to the city officials, but he neglected to do so.

The Planning Commission is an advisory body to the City Council. One of the Commission's functions is to hold public hearings and make recommendations to the City Council. The City Council makes all final decisions on these matters.

Lake Elmo Ordinances require that certain documents and information be included in applications. The Planning Commission may postpone consideration of an application that is incomplete and may for other reasons postpone final action on an application.

For each item, the Commission will receive reports prepared by the City Staff, open the hearing to the public, and discuss and act on the application. If you are aware of information that hasn't been discussed, please fill out a "Request to Appear Before the Planning Commission" slip; or, if you came late, raise your hand to be recognized. Comments that are pertinent are appreciated.

AGENDA

LAKE ELMO PLANNING COMMISSION

AUGUST 10, 1987

7:30 p.m.

MEETING CONVENES

1. Agenda
2. Minutes: July 27, 1987
3. Upcoming Requests

7:45 p.m.

4. PUBLIC HEARING: Request for Amendment to the 1979 Municipal Code of Lake Elmo to allow a Restaurant/Bakery, Bakery-Retail Sales, Bakery-Wholesale Sales, or Catering Business in a restaurant, bakery, or restaurant-bakery in the General Business zoning district.
Applicant: Ed Gorman
5. Preliminary Plat: Packard Park 2nd Addition
(continued from June 8, 1987)
Applicant: Gene Peltier
6. Future City Land Need: MnDOT Right-of-Way at 4th Street & Ideal Avenue
7. Comprehensive Plan Revisions
 - A. Appendix B - Housing
8. Other
9. Adjourn