

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

September 23, 1991

7:30 P.M. **MEETING CONVENES**

1. AGENDA
2. MINUTES: August 26 & September 9, 1991
3. PUBLIC HEARING: Large Lot Subdivision & Variance: Everett Beaubien
4. PLANNING COMMISSION WORKPLAN
5. JOINT MEETING WITH THE COUNCIL  
SET TIME & DATE.
6. RECOMMENDATION FROM SUBCOMMITTEE ON  
DRIVEWAYS
7. OTHER - *ROLLING HILLS*
8. ADJOURN

**LAKE ELMO PLANNING COMMISSION MINUTES**

**SEPTEMBER 9, 1991**

Vice Chairman Enes called the Planning Commission meeting to order at 7:35 p.m. in the city council chambers. Present: Enes, Johnston, McLeod, Stevens, Bucheck (arrived 7:40), DeLapp, Schubert (arrived 7:50) Conlin, Weeks (arrived 7:40), City Planner Black, Administrator Kueffner. Absent: Thomas, John.

**1. AGENDA**

Add - 8. Other - Discussion of Woodbury & Oakdale letters to the City regarding MUSA.

**M/S/P** DeLapp/Conlin - to approve the agenda as amended. (**Motion carried** 6-0).

**2. MINUTES: August 26, 1991**

**M/S/P** McLeod/Bucheck - to table the August 26, 1991 minutes until the next meeting that Chairman John is present. (**Motion carried** 9-0).

**3. PUBLIC HEARING: Large Lot Subdivision:  
Ron Gjerstad, 11311 50th Street**

Notice of the public hearing was published in the St. Croix Valley Press on August 8, 1991, and adjoining property owners were notified.

This is a public hearing to consider the request of Ronny D. Gjerstad, 11311 50th Street N., for a large lot subdivision of the property legally described in part as the N 1/2 of the W 1/2 of the E 1/2 of the NW 1/4 of Section 12, Twp 29, R 21. The applicant proposes to subdivide a 20 acre parcel into two (2) 10 acre lots which require a variance for the frontage required and a variance to the lot ratio requirement in the Rural Residential Zoning district.

Vice Chairman Enes opened the public hearing at 7:55 p.m. in the city council chambers.

Mr. Gjerstad stated he would rather have the 300 foot frontage brought down to 150 feet because this would make the lot configuration less odd shaped. Mr. Gjerstad stated he would like to build a home on the back parcel for himself and has the existing house sold contingent on the decision of the Planning Commission tonight. Mr. Gjerstad stated he would gladly grant the city drainage easements, and dedicate the pond on his property as DNR protected wetland.

Mr. & Mrs. Dalluge, 11330 50th St. N., stated they are in support of the proposal.

As part of the public hearing process, a letter submitted by Reid Gilbertson and Laurel Drevlow, 11421 50th St. N., was made part of the minutes by reference.

Vice Chairman Enes closed the public hearing at 8:10 p.m.

The commission discussed basis for hardship for recommending the variances. City Planner Black reported his recommendations that the applicant should show a dedicated easement around the DNR protected wetland for the pond for both parcels, and show dedicated easements to the City for drainage from the West - Day Property, and this may restrict access to the property, and the planning commission react to what's before them or the applicant re-draw the subdivision as to what the applicant is really requesting and bring this back to the commission. Also, if the City is concerned about flag lots - this is indeed a flag lot and the commission would be setting a precedent by approving this proposal. It's up to the applicant to demonstrate a hardship.

M/S/F DeLapp/Johnston - to recommend approval of the proposed subdivision with the 350' frontage be changed to 150' frontage, both lots be 10 acre minimum, and contingent on the owner re-draw the survey showing the continuing D.U.E. lines and grant the City easement rights and the DNR protected wet land. (Motion failed 3-6, against: Bucheck, Conlin, Stevens, Schubert, McLeod, Weeks - all agree with City Planner Blacks recommendations.)

M/S/P Conlin/DeLapp - to table the discussion until the September 23rd meeting and the applicant should at that time present a new drawing which addresses the city planner's recommendations. (DNR easement and city drainage easements shown, flag lot issue, lot ratio issue, frontage issue). (Motion carried 9-0).

#### 4. ROLLING HILLS - PRELIMINARY PLAT (CONT.)

The City received a letter on August 9, 1991, from the applicant of Rolling Hills subdivision requesting the preliminary plat be tabled until the next planning commission meeting of September 23rd. The Planning Commission received copies of this letter at the meeting.

The commission discussed the park dedication for this plat.

M/S/P DeLapp/Bucheck - to recommend that the developer show on the preliminary plat a parkland dedication of 2.85 acres equal to 7% of the land plus another parcel of land adjoining this 2.85 acres to be purchased by the Parks Commission. (Motion carried 6-2-1, against: Conlin - the P&Z should not be deciding where land should be taken, the Parks Commission should make that recommendation, McLeod - the Parks Commission should make their recommendation to the City Council, abstain: Enes).

**5. FLOODPLAIN ORDINANCE**

The planning commission discussed the latest draft of the Floodplain Management Ordinance with City Planner Black.

**M/S/P** Conlin/Stevens - to table discussion of this ordinance and to form a subcommittee of Ann Bucheck, Steve DeLapp and Mike Black for the purpose of reviewing and discussing this ordinance further, and for this subcommittee to report back to the Planning Commission with any recommendations. (**Motion carried 9-0**).

**6. ECONOMIC DEVELOPMENT COMMITTEE RECOMMENDATIONS**

**M/S/P** DeLapp/Bucheck - to put an Economic Development Committee on the Planning Commission work plan for 1991. (**Motion carried 9-0**).

**7. DIRECTION FROM CITY COUNCIL ON DRIVEWAYS**

**M/S/P** Johnston/Bucheck - to form a subcommittee, consisting of Steve DeLapp, Jim McLeod and Rob Enes, to discuss the driveway ordinance and how it should now address homes with three car garages, and to report their recommendations at the September 23rd planning commission meeting. (**Motion carried 9-0**).

The September 9, 1991 Planning Commission meeting was adjourned at 10:45 p.m.

COPIED  
RZ + C.C.  
9/5/91  
Vlw

to: the Lake Elmo Planning Commission:  
attention: Mary Kueffner, City Administrator

This letter regards the request by Mr. R. Gjerstad for lot subdivision and variances related to it.

About a year ago, when we were attempting to purchase the property adjacent to Mr. Gjerstad's, a certain builder/developer was also hoping to buy the property and obtain similar variances to the ones requested by Mr. Gjerstad to allow more than one home to be built on the acreage. Mr. Gjerstad was, at that time, strongly opposed to any such variances or subdivisions. To our great fortune the builder's requests were denied and we were able to obtain the entire property. It is surprising, then, at the very least, to find Mr. Gjerstad requesting the very kind of variances he had so forcefully opposed less than a year ago. Without addressing the obvious incongruity in these actions or his motivation for them, we would simply like the planning commission to support, with us, a "no exceptions" approach to the ban on such variances in Lake Elmo and oppose this subdivision and the variances requested.

The wish to maintain the relaxed, rural lifestyle around Lake Elmo may be incompatible with population growth in the next millenium. But for the present we should be able to enforce rules, regulations, and ordinances that promote that much sought after environment. Accepting this request for subdivision and variances would, in our opinion, be contrary to this intention. We therefore respectfully urge the planning commission to administer their governances equitably and deny this request for property subdivision and variances just as they have done in the past. Thank you for this opportunity to be heard.

Sincerely,  
R. Gilbertson  
L. Drevlow

## REQUEST FOR PLANNING COMMISSION REVIEW

MEETING DATE: September 23, 1991

<b>AGENDA TOPIC:</b> PUBLIC HEARING: Large Lot Subdivision & Variance: Everett Beaubien.	<b>ITEM NO. 3.</b>
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This is a public hearing to consider the application of Everett Beaubien for a large lot subdivision , and variance to the requirement for 300 feet of frontage on a public road and the 4:1 lot ration required in the Rural Residential zoning district. Notice of this hearing has been published in our legal newspaper and residents within 350' have been notified.

Mike Black has reviewed this application, and his report is attached. Also attached is the minutes from the meeting at which the planning commission reviewed this application in concept.

For those of you that have not had the opportunity to visit this site, I would encourage you to do so.



**JAMES R. HILL, INC.**  
PLANNERS ENGINEERS SURVEYORS

2500 WEST COUNTY ROAD 42, SUITE 120, BURNSVILLE, MINNESOTA 55337 (612) 890-6044 FAX 890-6244

MEMORANDUM

TO: Lake Elmo Planning Commission and City Administrator  
FROM: Mike Black *Mike Black*  
DATE: September 17, 1991  
RE: Everett Beaubien - Large Lot Subdivision

INTRODUCTION

Mr. Everett Beaubien has submitted an application for a large lot subdivision in order to create a new home site on the southwest side of Sunfish Lake. The applicant actually owns three separate parcels which are identified as Parcels 1, 2 and 3 on Exhibit "A" attached.

Parcel 1 is approximately 40 acres and is rented for cropland. The property has an existing metal pole building on the property. Along the northeast portion of this property, on the shore of Sunfish Lake, is where the applicant would like a new home site. This 40 acre tract of land currently has approximately 675 feet of frontage along Kelvin Avenue North.

Parcel 2 consists of 5.22 acres and Mr. Beaubien has his home on this parcel. Access to the Beaubien property is from Kelvin Avenue and across a 33 foot private road easement over the 40 acre tract. Please refer to Exhibit "B". Approximately 50% of the parcel is below the ordinary high water level of Sunfish Lake.

Parcel 3 consists of 11.23 acres and consists mainly of Lake bed area. A very small area of dry land is in the northeast corner of the property on the northeast shore of Sunfish Lake.

The applicant's properties are all designated as Rural Agricultural Density (RAD) on the City's Future Land Use Map. All three parcels are currently zoned R-R Rural Residential. The R-R zoning standards include:

Lot Size: 10 Ac. (nominal)  
Lot Width: 300 feet  
Lot Ratio: 4 to 1  
Setbacks\*: front - 30 feet  
side - 10 feet  
side street - 25 feet  
rear - 40 feet

\* Sunfish Lake is classified as a natural environment lake and the shoreland standards require a 200 foot setback from the ordinary high water elevation.

Sunfish Lake OHW - 896.4  
100 yr. - 900.0  
bldg. elev. - 903.0

Attached as Exhibit "C-1" is a copy of the surveyor's certificate showing the proposed 11.37 acre parcel (2.6 acres plus 8.77 acres). Exhibit "C-2" further describes the proposed new parcel in relation to the existing three parcels owned by the applicant. Exhibit "D" shows the westerly portion of the proposed new parcel in relation to the existing private road easement to the Beaubien's homestead. It is assumed that this new parcel will also have access to Kelvin Avenue North via this same private roadway easement.

STAFF COMMENTS

My concerns and comments regarding this request for a large lot subdivision are as follows:

1. Subdivision Process. The applicant has requested a large lot subdivision. Large lot subdivisions are allowed as an exception to the platting requirements and procedures where conditions are "simple" or easily defined. This is not a simple division of one large parcel into two parcels meeting all code requirements. This request involves three existing parcels which will result in four parcels and this request may eventually involve a fifth parcel - the Harstad property. In this case, I question if a large lot subdivision is appropriate as opposed to a plat.
2. Lot Configuration. The proposed lot configuration is very unusual and appears only to be drawn to circumvent the minimum lot size of 10 acres in the R-R zone. The majority of the parcel is lake bed and the only buildable portion of the parcel is approximately the westerly 2.5 acres.
3. Lot Frontage. Section 401.040 (p. 400-5) of the City Code requires 300 feet of frontage on a public street. The proposed new parcel would have no frontage on a public street.
4. Remnant Parcels. The applicant's existing homestead parcel (Parcel #2 on Exhibit A) consists of 5.22 acres in a zoning district where the minimum lot size is 10 acres. By approving the proposed large lot subdivision the existing homestead parcel will be reduced in size to approximately 4.8 acres. Also by approving the new 11.37 acre parcel a 100 foot wide remnant portion of the original Parcel 3 will be created. The applicant has talked about adding this land to his homestead and to the Harstad homestead.



5. Existing Conditions. Section 401.260 B.3. (p. 400-17) state the submission requirements for a large lot subdivision. The survey submitted by the applicant (Exhibit "C-1"), which was prepared by Delmar H. Schwanz, has no topographical data (2 foot contours), it does not show the existing private easement and it does not show all existing buildings. The topography is important relative to the City's Shoreland Standards. It is questionable if a new home could be built on the proposed parcel and still meet the 200 foot shoreland setback standard. It is also not known where the exact location of the existing pole barn is relative to the new proposed property lines.

#### RECOMMENDATION

At the July 8, 1991 Planning Commission meeting a concept review of this subdivision was made. At that time a favorable review was made by the Planning Commission because it would be the last shoreland development along the lake in this area and there was discussion of the applicant granting parkland to the City.

I do not recommend approval of this large lot subdivision; however, if the Planning Commission's wishes to give further consideration to this request, then I would recommend to table until:

1. The applicant demonstrates that a home can be constructed on the proposed lot and meet all setback requirements.
2. In addition to locating a proposed house on the property, the applicant should also show a primary and second drainfield location.
3. The location of all existing buildings should be shown.
4. The applicant and City should agree upon a parkland or cash in lieu of land dedication.
5. The applicant should clearly indicate his future intentions for all remnant parcels.

My recommendation for denial of this large lot subdivision is for the following reasons:

1. The new parcel would not have frontage on a public roadway.
2. This large lot subdivision is not in an area easily defined or conditions are simple, hence platting procedures are more appropriate.

3. The existing 40 acre parcel (Parcel #1 on Exhibit "A") is a buildable parcel.
4. A 10 acre parcel could be subdivided from the 40 acre parcel.
5. Although the proposed parcel is 11.37 acres, the parcel shape is unusual and more than 50% of the land is below the OHW of Sunfish Lake.
6. The subdivision would create a new land locked parcel which is also less than 10 acres.
7. The existing non-conforming homestead parcel will be reduced further in size.
8. It is not clear that a new home could be constructed on the new parcel and meet all setback standards including the 200 foot shoreland setback from the OHW of Sunfish Lake.

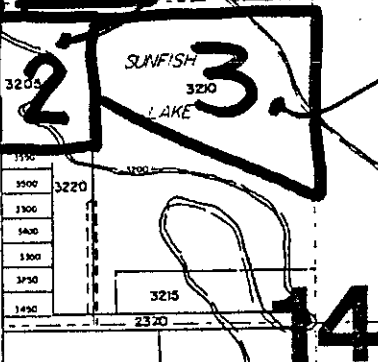
**EXHIBIT "A"**

**SUNFISH LAKE PARK**

5.22 ± AC.

11.23 ± AC.

**1**  
40 ± AC.



BOULEVARD RAILROAD

NORTH

STATE

HIGHWAY

CHICAGO

NORTH  
KLONDIKE AVENUE

LANE NO. 5

STILLWATER

SUNFISH LAKE

REGISTERED LAND SURVEY  
18196 or 8032  
4th DISTRICT  
2750 1100  
1430 2350

REGISTERED LAND SURVEY  
54  
131674

43rd STREET

STREET

NO. 3

1228 AC  
4th DISTRICT  
2000

8047  
ADDITN  
11188  
2000

776

11

20E

2055

82°48'4\"/>

82°39'21\"/>

82°10'7\"/>

**14**

2300

2100

2000

33rd

3200

1500

1200

1000

800

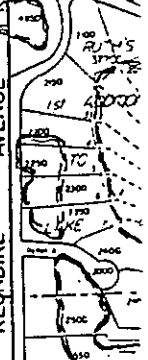
600

400

82°39'8\"/>

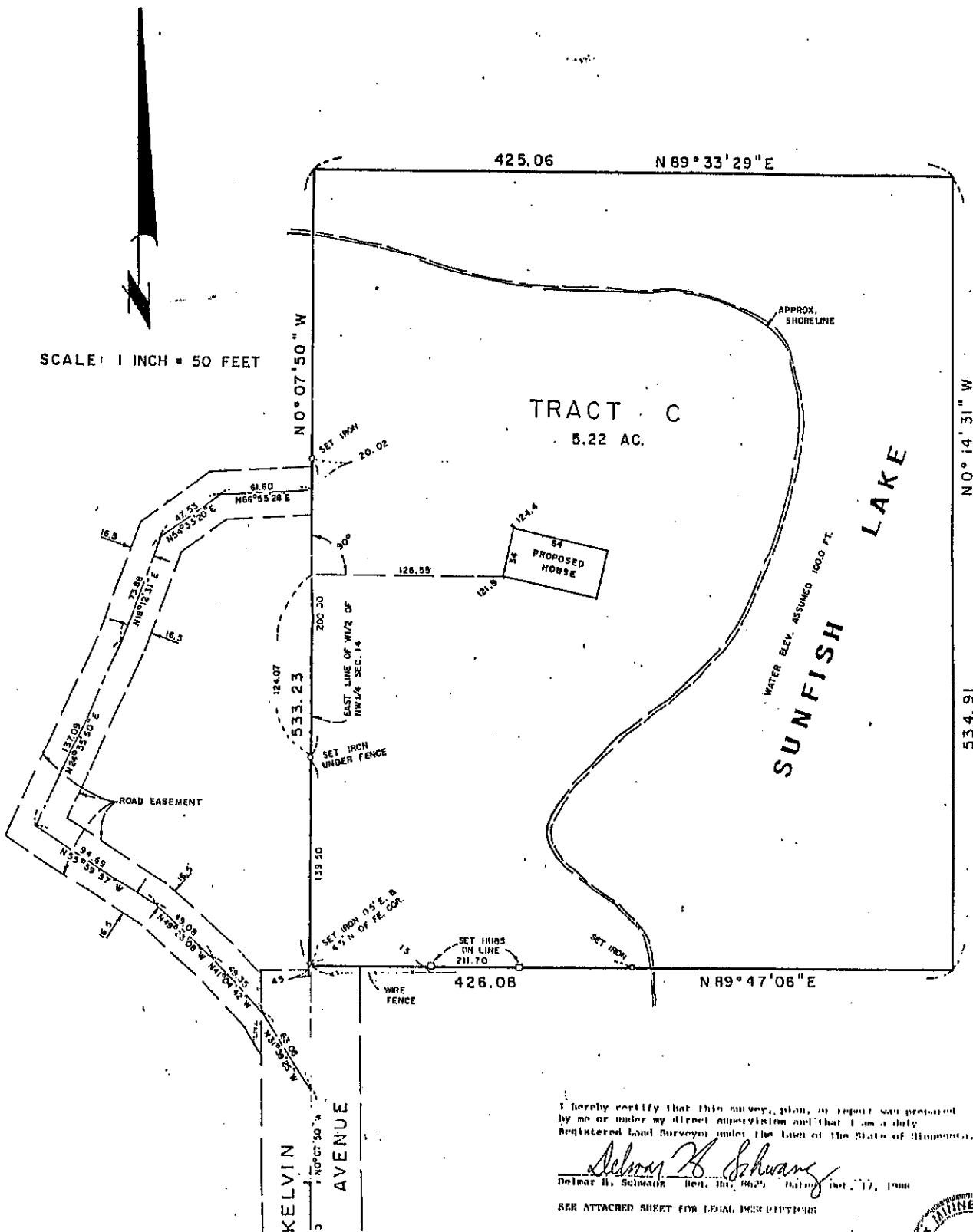
82°41'4\"/>

2030



# EXHIBIT "B"

SCALE: 1 INCH = 50 FEET



I hereby certify that this survey, plan, or report was prepared by me or under my direct supervision and that I am a duly Registered Land Surveyor under the Laws of the State of Minnesota.

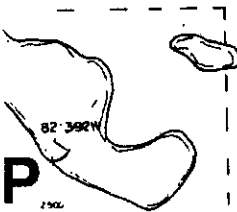
*Delmar H. Schwanz*  
 Delmar H. Schwanz Reg. No. 8625 (dated Oct. 17, 1988)

SEE ATTACHED SHEET FOR LEGAL DESCRIPTION

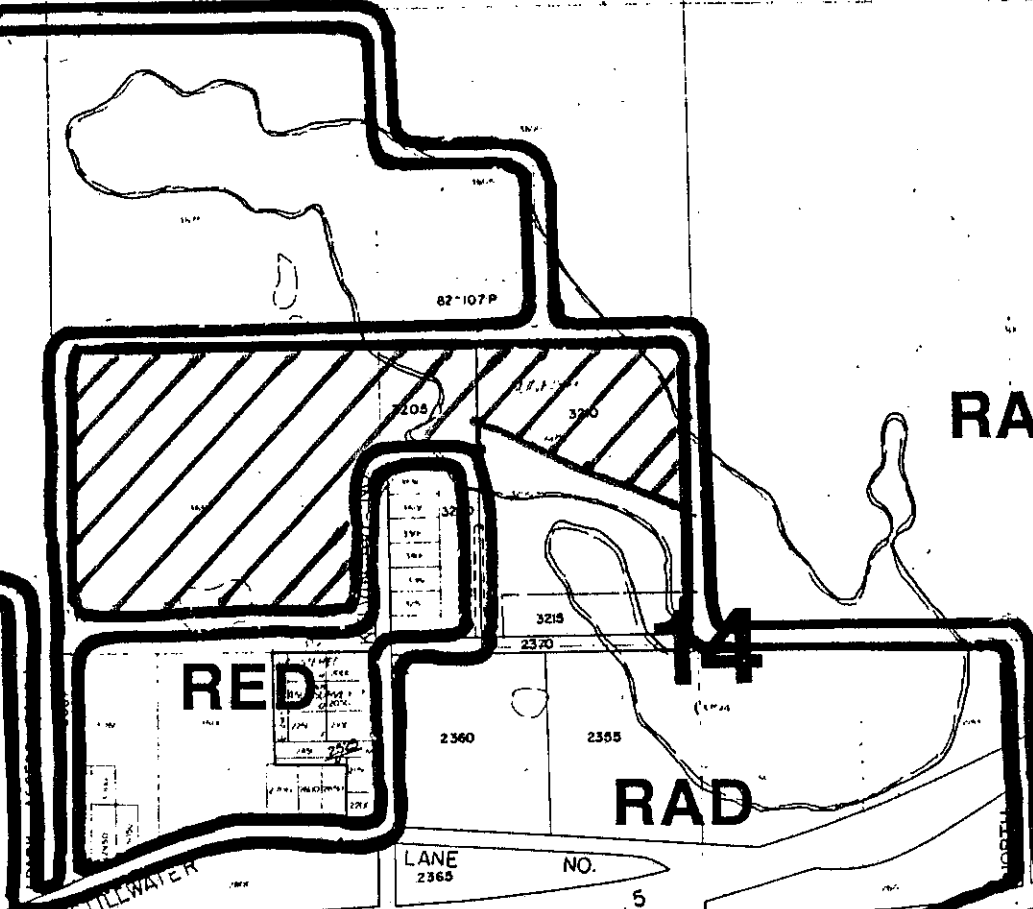


# FUTURE LAND USE

2055  
2050



P



RAD

RED

RAD

RAD

LANE NO. 5

WARD NORTH STATE HIGHWAY CHICAGO RAILROAD

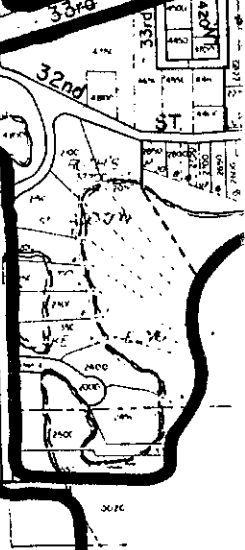
33rd STREET

32nd STREET

2050

82°398W

82°414W



R-R

# ZONING MAP

P

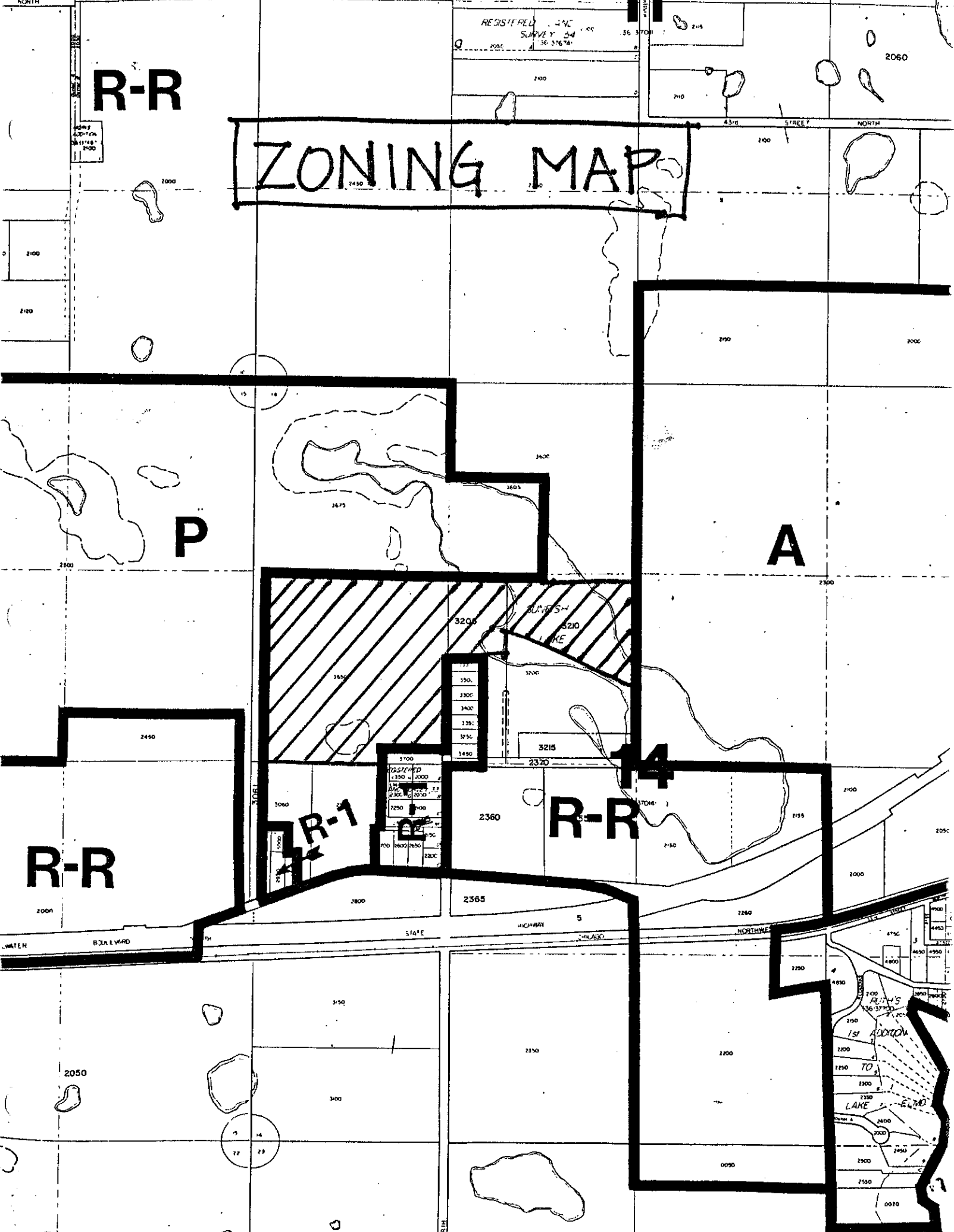
A

R-R

R-1

R-R

14



# EXHIBIT "C-1"

**DELMAR H. SCHWANZ**

LAND SURVEYORS, INC.  
Registered Under Laws of the State of Minnesota

ROSEMOUNT, MINNESOTA 55088

612/423-1789

14780 SOUTH ROBERT TRAIL

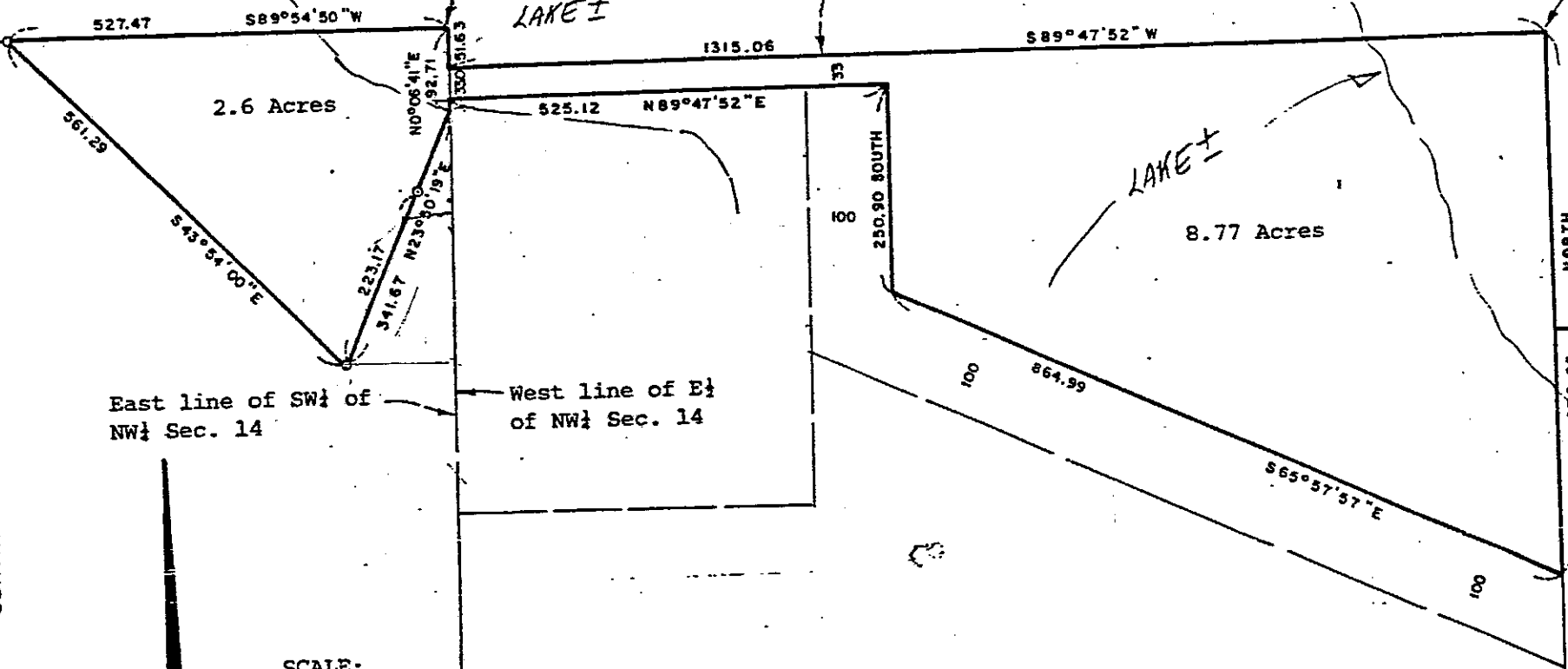
SURVEYOR'S CERTIFICATE

North line of SW $\frac{1}{4}$  of NW $\frac{1}{4}$  Sec. 14

NE. corner of SW $\frac{1}{4}$  of NW $\frac{1}{4}$  Sec. 14

South line of North 83 rods of E $\frac{1}{2}$  of NW $\frac{1}{4}$  Sec. 14

SE. c  
N. 83  
E $\frac{1}{2}$  of



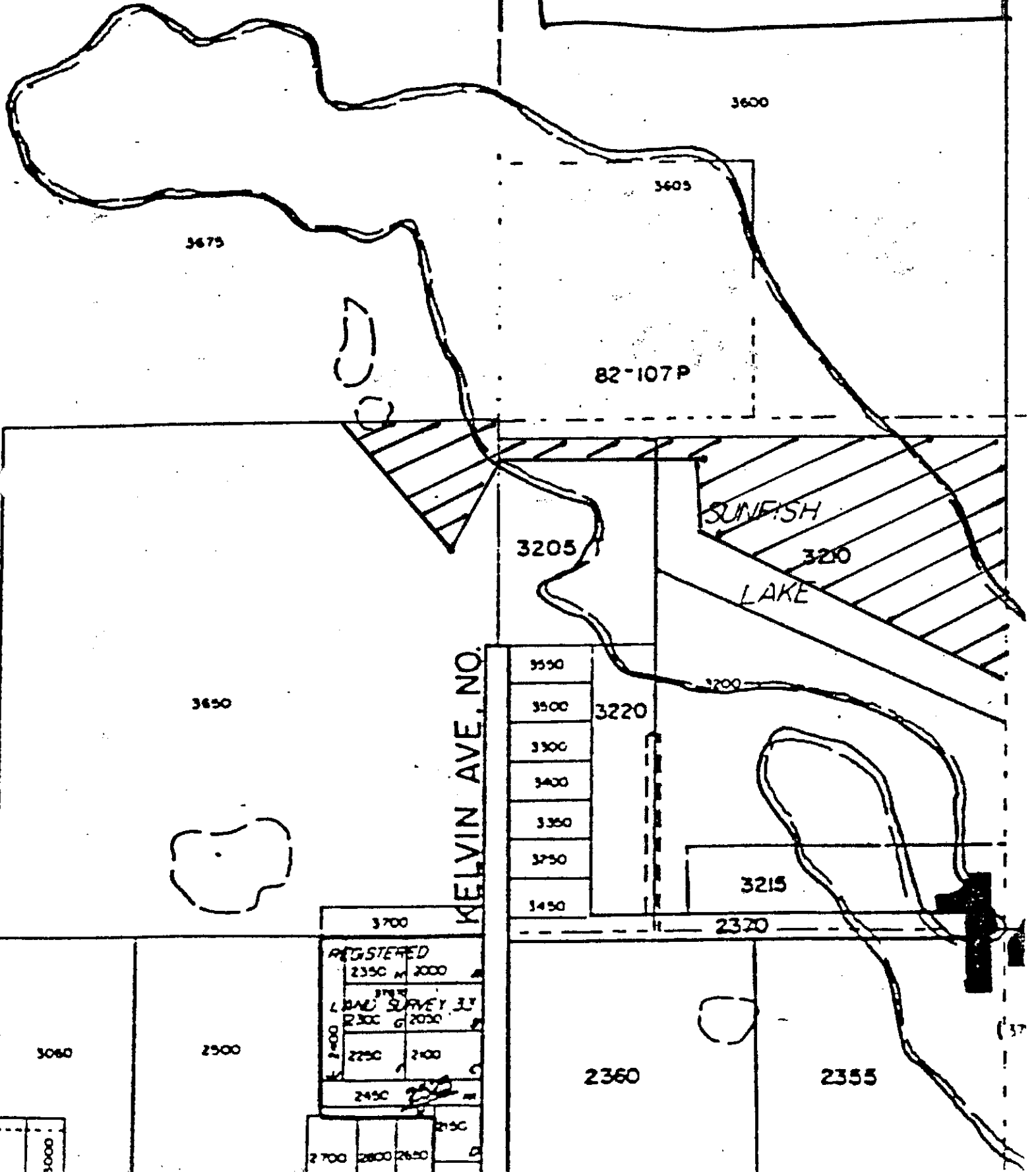
East line of SW $\frac{1}{4}$  of NW $\frac{1}{4}$  Sec. 14

West line of E $\frac{1}{2}$  of NW $\frac{1}{4}$  Sec. 14

SCALE:  
1 INCH = 200 FEET  
o Denotes set iron pipe

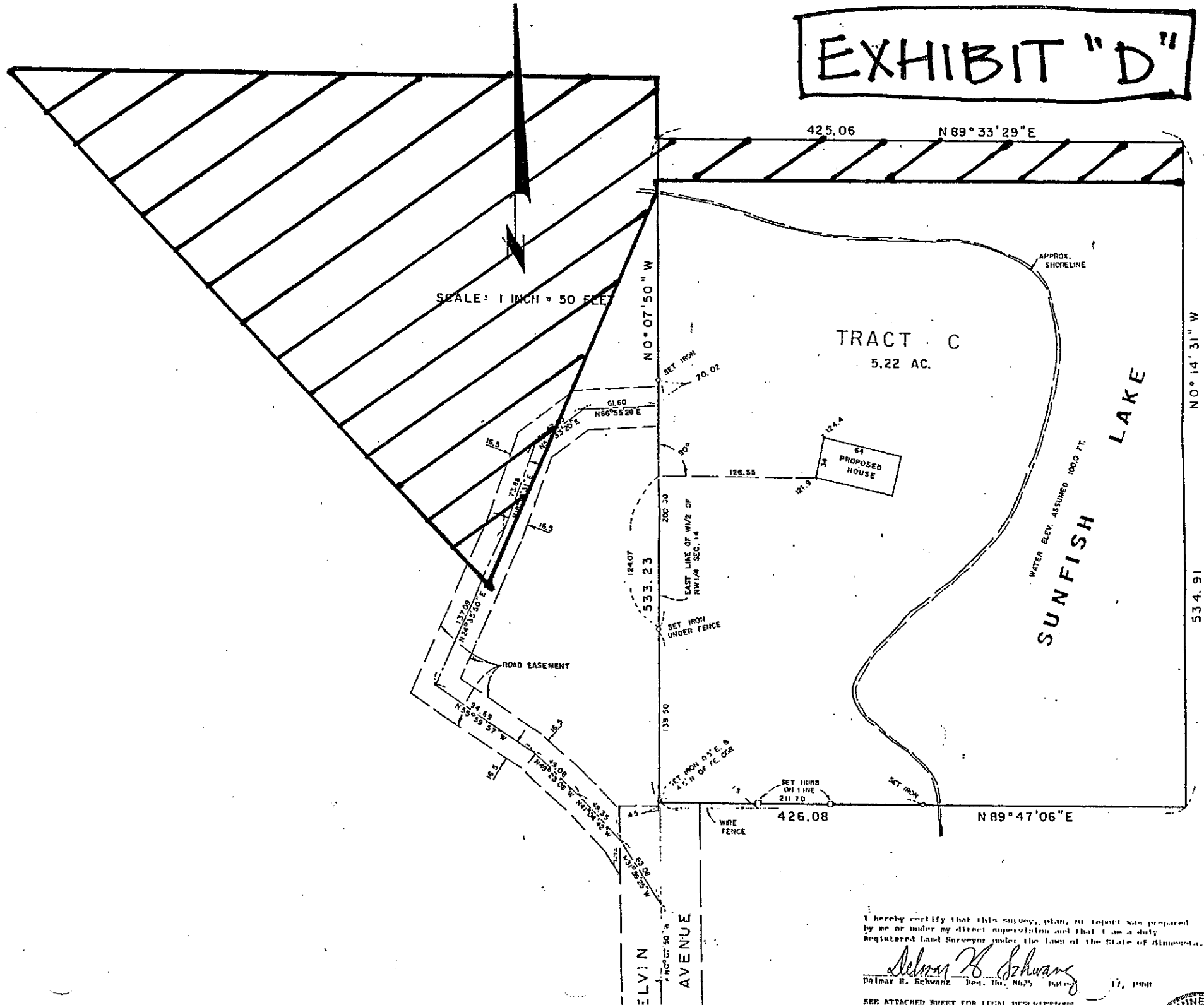


# EXHIBIT "C-2"





# EXHIBIT "D"



I hereby certify that this survey, plan, or report was prepared by me or under my direct supervision and that I am a duly Registered Land Surveyor under the laws of the State of Minnesota.

*Delmar H. Schwanz*  
Delmar H. Schwanz Reg. No. 6025 Date: 11, 1988

5. EVERETT BEAUBIEN CONCEPT

Mr. Beaubien, 3691 Kelvin, has asked for a concept review of a proposed subdivision and variance to the required frontage on a city improved street. The Planning Commission received a drawing indicating Mr. Beaubien's request for another homesite allowed off of the private road, and all commissioner's were encouraged to visit the site to better understand the proposal.

The consensus of the Planning Commission was approval of the 10 acre subdivision with no variance required. Commissioner Stevens did not approve of the subdivision as it creates a crazy lot shape. City Planner Black stated the strip of land between the Harstead property should be legally included in the plat and replat this piece or an RLS.

M/S/P DeLapp/Conlin - to table the remaining agenda items until the next planning commission meeting. (Motion carried 9-0).

6. RECOMMENDATION ON PLANNER

At the last city council meeting the council received a print out of the current budget - what was budgeted vs. what has been spent. This budget review showed the city has almost expended its funds for our Planner. However, escrow fees have been increased.

M/S/P Johnston/DeLapp - recommend the City Council give until the end of the year to build the Planner Fund from escrows based on the finding of fact that the City is running more smoothly and in the long run will be saving money by using a professional planner. (Motion carried 9-0).

The meeting was adjourned at 11:20 p.m.

CITY OF LAKE ELMO  
REQUEST TO APPEAR BEFORE THE CITY COUNCIL  
OR PLANNING COMMISSION

If you wish to address the City Council or Planning Commission, please follow the suggestions listed below:

(Please Print)

Name Patrick Curran Date 9/20/91  
Address 3607 N. Kelvin Av Phone 777 0572

Agenda Item or Subject you wish to address \_\_\_\_\_

Large Lot Subdivision & Variance - E. Beaubien

Company or Individual Representing, if applicable \_\_\_\_\_

None

NOTES: Please complete this form so that you may be recognized at the appropriate time on the Agenda. You are under no obligation to speak if you decide against it during the meeting. Please state your full name and address so that the record of your comments will be complete in the minutes of this meeting.

## WILLNER, ZABINSKY, DORSAY &amp; CORDELLO

ATTORNEYS AT LAW

SUITE 303

111 S W. FRONT AVENUE

PORTLAND, OREGON 97204-3500

(503) 228-4000

September 23, 1991

DON S. WILLNER  
ZACHARY ZABINSKY  
CRAIG J. DORSAY \*  
ROSEMARIE CORDELLO  
REBECCA E. SWANSON

\* Also Admitted in  
Washington and New Mexico

FAX (503) 228-4261

Lake Elmo Village Hall  
3800 Laverne Avenue North  
Lake Elmo, Minnesota 55042

To the Mayor, Council Members and Members of the Planning  
Commission:

This is a written comment in response to the notice for public hearing on the application of Everett Beaubien for a subdivision of his property at 3691 Kelvin Avenue North and a request for two variances for road frontage and exceeding the aspect ratio for a Rural Residential Zoning District.

This comment is directed to the issue of the resulting housing density should the variance be granted, and the feasibility of alternative platting to achieve the placement of one more home site.

History of Area

The impact of the current request for a variance can only be

understood in the context of the history of the development of the surrounding area. Everett Beaubien purchased the Collopy farm in the mid-1960's (See, Preliminary Development Sketch ); at that time the farm was used for grazing cattle and raising crops. In the early 1960's Percy Collopy had platted out and developed what for the time was precursor of a cluster development. The development consisted of six homes on seven fractional acre lots on Kelvin Avenue (See, Sketch at (A)) with a dedicated outlot on the shoreline of Sunfish Lake. (See, attached Deed (1)) The outlot covered parts of an area covering the current Beaubien home site, the Harstad home site, and the area marked 11.237 acres on the Sketch. The outlot was dedicated to the common recreational use of the families living in the Collopy-platted homes on Kelvin Avenue. The common recreational use included boating and fishing and other lake related recreation. Just prior to the purchase of the Collopy farm by Everett Beaubien Percy Collopy exercised an option in the deed for the outlot to move the access to the outlot. A second deed was granted to the Collopy-platted homes on Kelvin Avenue. (See, attached Deed (2)) As stated on the second deed, the original purpose of the outlot had been defeated. At that time, a then-receding shoreline defeated access to Sunfish Lake. The second deed extinguished the original access and outlot and in its place granted an unrestricted easement to Sunfish Lake. (See, Sketch at (B)) This transfer preserved (to this day) the goal of the cluster development, to allow higher density housing to be offset by a large undeveloped common area.

After Everett Beaubien purchased the Collopy farm he began a slow pattern of development. The first home he built is marked on the Sketch as the Harstad home and was the first of only two homes which to this date have been built within the Sunfish Lake basin. (that is, below the level of the surrounding fields which form a shelf above Sunfish Lake and upon which all previous development had been limited. This is significant in that Sunfish Lake is designated as a "Natural Environment" lake for which the esthetics are to be preserved.) The next step in Everett Beaubien's development came when he subdivided another lot next to the Harstad home for his daughter, Joanie Chavez to build a home. After this Everett Beaubien further subdivided the area where his home sat, sold the home to the Harstad's and moved out of state while retaining title to the rest of the Collopy farm.

After a few years Everett Beaubien decided to build a summer home on Sunfish Lake. He again subdivided his property after receiving variances from a reluctant City Council, and built the current Beaubien home (See, Sketch) which became only the second home to be built within the Sunfish Lake basin (both homes in the basin have now been built by Everett Beaubien. This is aggravated further by the close proximity of Sunfish Park).

#### Current Development

Everett Beaubien is now coming before the City of Lake Elmo to ask permission once again to subdivide his property. And the

result of this subdivision will be to create two nonconforming lots, that of the current Beaubien home and a new lot which is believed to be the future homesite of his son, Roger. As the proposal is currently set out, the development is illegal and does not rise to the standards for which a variance can be granted.

#### Development Requirements

The Beaubien-developed land on Sunfish Lake is zoned Rural Residential. The non-clustered lot size for Rural Residential is 10 acres; if the subdivision is granted, it would create two lots for which acreage above the water line is well less than 10 acres combined. The Beaubien home site would sit on a lot, with combined submerged acreage of approximately half that required by law. These figures are based on acreage figures derived from the Preliminary Development Sketch and the Final Survey.

Putting aside the issue of lot acreage totals, there is a second related issue of the use of submerged lands to fulfill the acreage requirement. Less than 3 contiguous unsubmerged lands make up the new proposed lot; the majority of the lot is underwater. And has been for several years. According to the recollections of Percy Collopy (now deceased) it was his understanding that when the original Civil War patent was taken out for the land even then the lake basin was a Tamarack swamp. There have been brief periods in past history when Sunfish Lake has receded; the last episode occurred in the mid-1960's when the narrow neck of the lake dried

up enough for a brief period to allow a person to walk from one shore to another. However, in the ensuing years the lake has always maintained itself. Even in the years after the cessation of pumping from Lake Jane the lake has remained relatively stable. The permanency of the lake is evidenced by its many years of use in the 1970's and 1980's for fishing, boating, swimming, and canoeing. I can personally attest to the above. In recognition of the permanent character of the lake, the Minnesota DNR has established official lake elevations for the purposes of development and lake level maintenance.

In using what in reality is lake bottom to fulfill the requirements of lot size, the applicant is being at best disingenuous. My name was on the first comprehensive zoning ordinance, as a Planning Commission member, adopted by the City of Lake Elmo. I was vice chairman when my term expired. I can state that it was never the intention, when considering development density, to include lake bottom in the calculation of lot sizes.

Personal opinions aside, there is a question as to whether clear title to the submerged lands rests with Everett Beaubien anymore. While in the past the argument has been made that Sunfish Lake is unmeandered and Everett Beaubien may still be paying taxes on the submerged property; the use of Sunfish Lake by the public has continued openly, notoriously, with claim to right, and unhindered for longer than the statutory time required for title in Everett Beaubien to be extinguished and to vest instead in the State by virtue of public use.



The proposed lots do not conform to the 4 to 1 aspect requirement of the zoning ordinance. This may seem to be a trivial or arcane requirement; however, it is meant to prevent the very gerrymandering of lot boundaries which is occurring here. By changing the shape of the lots homes can actually be placed closer together, creating a higher effective development density than is allowed by law.

For the above described reasons the proposed subdivision is illegal.

#### Standards For Granting Variance

It is in recognition of the failure to meet the requirements of the law that variance is being requested for the subdivision. However, the request for subdivision also fails to meet the standards required for a variance.

Paraphrasing the City Code at 301.060 (C) (1) (a)-(c) to receive a variance, undue hardship must be shown that is created by exceptional or extraordinary circumstances which are unique to that property only; literal interpretation of the Code would deny the applicant rights enjoyed by others; the special conditions did not result from the actions of the applicant; the variance requested is the minimum which would alleviate the hardship; and the variance would not be materially detrimental to the purposes of the zoning ordinance. The Code also defines "hardship" saying that a hardship, "means the proposed use of the property... cannot be

established under the conditions allowed by this Ordinance... and no other reasonable alternative use exists ... [and] these unique conditions of the site cannot be caused or accepted by the landowner after the effective date of this Ordinance. Economic considerations alone shall not constitute a hardship."

Additionally, in the Code it states with regard to a variance, that, " the entire property of the appellant... cannot yield a reasonable return to the owner unless the permit is granted...[and that] the granting of such permit is required by the considerations of justice and equity." (emphasis added to above quotes and paraphrase)

From the facts of the circumstances surrounding the request for a variance, none of the standards are met. The hardship did not come about based on existing circumstances; the hardship is the result of the drawing of the boundaries of the lots. Justice and equity do not demand that this variance be granted. Instead, justice and equity demand that the proposed subdivision be made to conform to the requirements of the law and the intent of the protection offered by the zoning ordinance, or else the subdivision be denied.

#### Alternatives to Subdivision

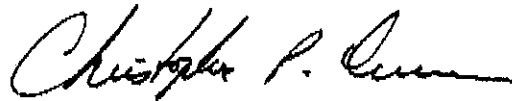
Legal alternatives appear to exist which would accomplish the objective of the subdivision, and provide an additional homesite for Everett Beaubien. There is an additional 40 acre tract

adjacent to the proposed subdivision owned by Everett Beaubien. There are two alternatives for incorporating that 40 acre tract to achieve the requirements of the zoning ordinance and still maintain the Agricultural use zoning of the tract. The simplest is to make the actual 2.6 acre house site a part of the 40 acre tract. This would allow for one home to be built and still meet all the zoning requirements.

The second alternative would be to combine the current Beaubien homesite with the proposed new homesite and the additional acreage owned by Everett Beaubien on the former Collopy farm to meet or come close to meeting the required 61 acres for a clustered development in an Agricultural Zoning district. This second alternative would come closest to matching the intent of development on the Collopy farm prior to the purchase by Everett Beaubien. The Agricultural cluster development would complement the original cluster development on Kelvin Avenue. A variance for the Agricultural cluster development would be keeping more with the intent of the zoning code by preserving the large open space and foreclosing once and for all the sporadic, substandard development pattern which has occurred on the Collopy farm.

It is my hope that these alternatives will be considered.

Sincerely,



Christopher P. Curran  
OSB #87036

enc

William P. Collopy and  
Elizabeth C. Collopy, husband  
and wife

48.

to  
Donald V. Paulson and  
Phyllis K. Paulson, husband  
and wife  
(Joint tenancy clause)

Warranty Deed

Dated May 8, 1959

Filed June 15, 1959

Book 221 Deeds page 202

All that part of the E 1/2 of  
NW 1/4 of Sec. 14, T. 29, R.  
21, described as follows:

The N 100 feet of the S 233  
feet of the W. 250 feet thereof,  
subject to a 33 foot easement  
over and across the W. 33 feet

for road purposes, containing .575 acres, more or less; Together  
with an easement for road purposes over and across the W. 33 feet  
of the S. 233 feet of the before mentioned E 1/2 of NW 1/4 of Sec.  
14, together with an easement over and across the E. 33 feet of the  
S. 233 feet of the W 1/2 of NW 1/4 of said Sec. 14, also an  
easement over and across the W. 25 feet of the N. 907.5 feet of  
the NE 1/4 of SW 1/4 of said Sec. 14, and an easement over and  
across the E. 33 feet of the N. 907.5 feet of the NW 1/4 of SW 1/4  
of said Sec. 14, said roadway to be used by the parties as a means of  
ingress to and egress from the property hereby conveyed: Together  
with an easement over and across the N. 66 feet of the S. 699  
feet of the W. 616 feet of the E 1/2 of NW 1/4 of said Sec. 14, for  
the purpose of providing access to the following described tract;  
The E 300 feet of the W. 916 feet of the N 87 feet of the S. 720  
feet of the E 1/2 of NW 1/4 of said Sec. 14, the last described tract  
to be used by parties of the second part with parties of the first  
part and others to whom parties of the first part may grant the  
right as a beach and for dock purposes and for the purpose of  
launching a boat therefrom to be used on the non-meandered lake known  
as Sunfish Lake; it is understood and parties of the second part do  
agree in accepting this deed that should the roadway above described  
providing access to the said beach tract be changed by first parties  
and another roadway provided for said purpose that said second part  
will release and relinquish their right to the said roadway easement  
above described; second parties further understand that any such  
roadway together with the tract designated as beach shall be used  
by them with others for the purpose of utilizing the said Sunfish  
Lake; first parties do in addition hereby grant to the second  
parties the right to use in common with others the surface of said  
Sunfish Lake over any part of the land now owned by parties of the  
first part for purposes of boating, fishing, swimming and similar  
recreation.

Subject to the restrictions set forth in Exhibit A hereto attached an

Deed 1

Erwin D. Beutel, husband  
and wife, parties of the  
first part.

and  
Erwin D. Beutel and  
Joan S. Beutel, husband  
and wife, Donald V.  
Paulson and Phyllis  
K. Paulson, husband and  
wife, Earl L. Kask and  
Freya L. Kask, husband  
and wife, David S. Loos and  
Wendy Loos, husband and  
wife and Donald A. Miller and  
Constance F. Miller, husband  
and wife, Parties of the  
second part

**Grant of New Easement**

Dated Dec. 6, 1962

Filed Jan. 4, 1963

Book 254 Deeds page 112

Whereas, first parties are the  
fee owners of the following  
described tracts of land in  
Washington County, Minnesota  
Tract 1. The N 66 feet of the  
S. 699 feet of the W. 616 feet  
of the E 1/2 of the NW 1/4 of  
Sec. 14, T. 29, R. 21  
Tract 2. The E 300 feet of the W  
916 feet of the N 87 feet of the  
S. 720 feet of the E 1/2 of  
the NW 1/4 of Sec. 14, T. 29,  
R. 21, and

Whereas first parties have  
previously granted to second

parties easements over Tract 1 for access to Tract 2 and easements  
over Tract 2 for beach and dock purposes; and  
Whereas, said easements no longer provide access to Sunfish Lake as  
originally intended and;

Whereas, first parties are willing and intend by this instrument  
to grant second parties access to present water or shoreline of said  
Lake in consideration for a release from second parties of their  
easement rights over said tracts 1 and 2 above described.  
Now therefore in consideration of \$1.00 and other good and valuable

considerations including the release from second parties herein  
contained, first parties do hereby grant and convey to second parties  
i.e. to said individual couples, husband and wife, as named, as  
joint tenants and not as tenants in common, a permanent easement  
to run with the respective individual tracts of land now owned by  
second parties in the E 1/2 of the NW 1/4 of said Sec. 14, over and  
across the following described tract:

That part of the S. 33 feet of the E 1/2 of the NW 1/4 of Sec.  
14, T. 29, R. 21, commencing at the W. line of said E 1/2 of  
NW 1/4 of Sec. 14, and running E. to the water line of said  
Sunfish Lake, such easement to be used by second parties and first  
parties, and others as a means of access to said Lake and said  
easement shall run in a straight line to the water line of said Lake  
as such water line recedes or rises.

That in consideration of one dollar \$1.00 and other good and valuable  
considerations including the 33 foot easement herein granted to  
second parties, do grant and release

Deed 2

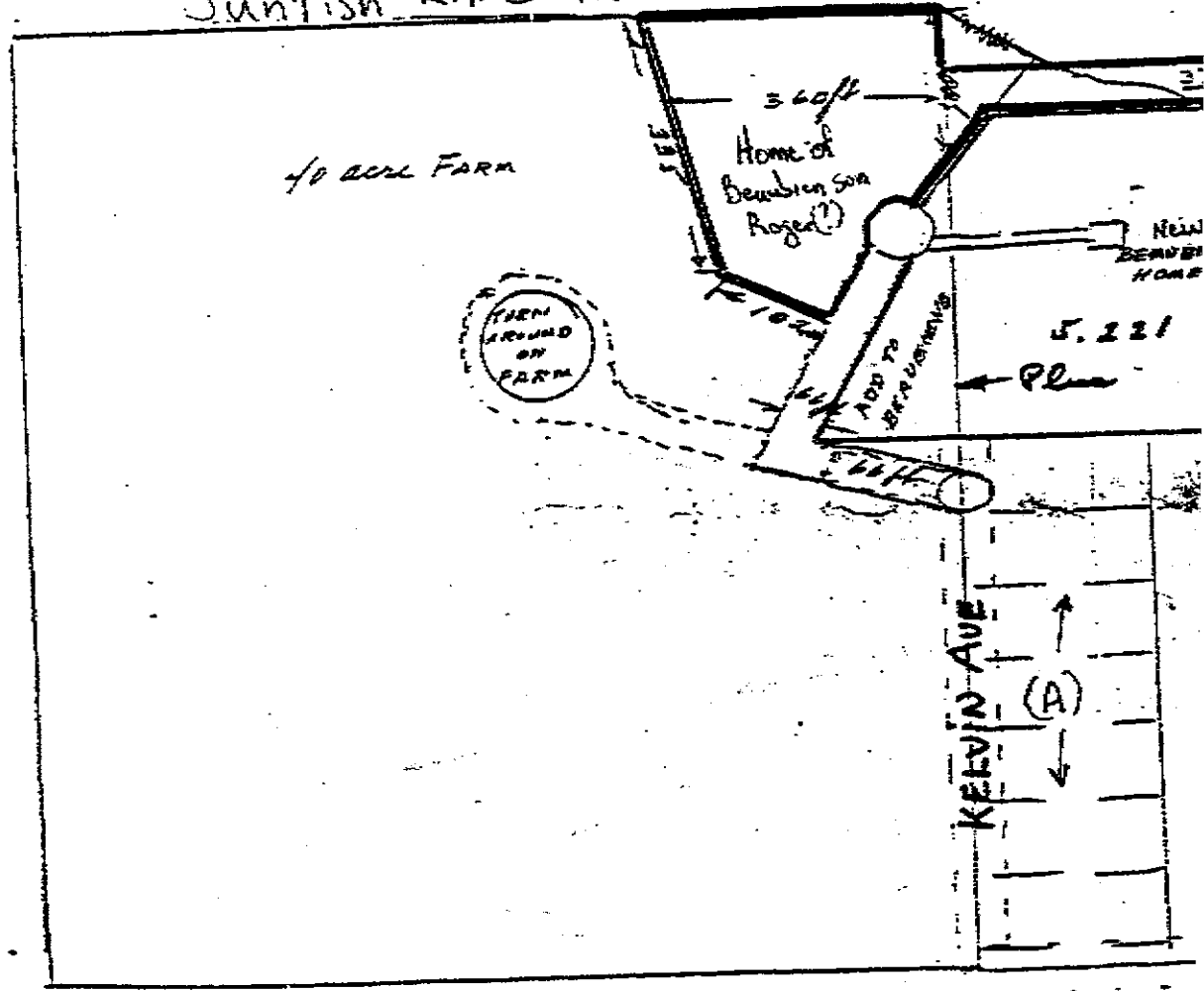
611 P09

WILLNER AND ASSOC.

SEP 23 '91 15:37

Sunfish Lake  
Park

Sunfish Lake Park



former Collopy FARM →



**REQUEST FOR PLANNING COMMISSION REVIEW**

**MEETING DATE:** September 23, 1991

<b>AGENDA TOPIC:</b>	PLANNING COMMISSION WORKPLAN.	<b>ITEM</b>
		NO. <del>4</del> 5.

Attached is the planning commission's current work plan. Before we ask the council for a joint meeting to discuss this work plan, I would suggest we review this plan and rearrange, add, delete, etc., before we take it to the council for approval.

Please think about any other items that you would like to add to the work plan so this can be finalized at this meeting.

## 1991 PLANNING COMMISSION WORK PLAN

1. Review all applications in accordance to the Comprehensive Plan, comment and make recommendations to the City Council.
2. Update Ordinance to relate to the Comp. Plan.
- IN PROCESS* 3. Consider local responses to State of MN proposed revisions to Shoreland Management regulations.
4. Residential Estates Zoning:
  - a. Landscape Plan.
- DONE?* 5. Building height limitation - eliminate the exception which allows broadcast transmission towers.
6. Stronger restrictions for accessory structures in the R1 zoning district - the size and number of parcels of less than 5 acres. Definition of garage and storage accessory structures. Size and number of accessory structures in RR Zone on parcels of 20 acres or more. (Check amended ordinances).
7. Conditions or possible restrictions on residential subdivisions where large accessory structures exist.
8. Meet with the county and adjacent community planners to discuss common issues on an "as-needed" basis.
- IN PROCESS* 9. Future Road Plan (ties in with road design).
10. Retention of wildlife habitat and wetland areas - adequacy of wetland overlay district.
11. Recommend t the City Council a committee be established, comprising of PZ members, business owners, and intereseted residents (5-7 members) to study an Historic Building/ Architectural Design Overlay District in the Old Village Area.
12. Adopt an ordinance for utility (pipeline and power lines) setbacks in the City's Subdivision and platting regulations.
13. Sign Ordinance.
14. Review sideyard setbacks relative to lot size.
15. Standards for holding ponds.
16. Fill Ordinance.
17. Driveway Ordinance.
18. Economic Development Committee.

\* = Top priority

(revised from 1989 plan)



1602 DRIVEWAYS...

1602.060. General Requirements

A. Licensed Contractor. All vehicular work done within the right-of-way of the street shall be done under the supervision of the Building Official, who will see that all regulations are rigidly followed. Work may be performed by an owner/resident or a ~~regularly~~ licensed contractor.

B. Driveway Surface. Whenever a driveway is constructed, all that portion of the boulevard designated as driveway shall be surfaced with a plant-mixed machine laid bituminous material conforming to M.H.D. Specification Number 2331, in accordance with plans approved by the Building Official. Driveway paving blocks or concrete with a design approved by the City Engineer may alternatively be used.

D. Notification of Construction. The Building Official is to be notified of the proposed start of construction at least 24 hours in advance.

E. Plot Plan. Prior to the construction of a driveway not associated with new building construction, a plot plan must be submitted to the Building Official which indicates the location and specifications for the driveway, and curb cuts where applicable. A Building permit will be issued when the Building Official determines that the proposed Work meets City requirements and the permit fee has been paid. For construction of a driveway associated with new building construction, the driveway submission shall be included with plans for the new building construction and one permit will be issued for the driveway and the building.

1602.070 Standards. The following regulations shall apply to all driveways, curb cuts and alicoe:

A. Width. The width of any new residential driveway may be between 10 feet and 16 feet from the edge of the street surface to a minimum distance of 20 feet beyond the street right-of-way. Curb cuts may be up to 6 feet wider than the driveway width. The maximum width for any commercial driveway shall be 24 feet with curb cuts designed to provide safe entrance and egress. Existing residential driveways may be maintained or reconstructed with a maximum driveway and curb cut of 24 feet.

G. Access to Street. On properties having frontage on both thoroughfares and minor roads, access shall be provided via the minor road wherever feasible in order to reduce the number of curb cuts on the thoroughfare. One curb cut is permitted for each residential lot.

1504.010 Required Screening. A. No. of vehicles? Motor Homes?

301.130 E (4. a. Calls for a 32 foot maximum driveway width???)

2. e. No off-street parking area shall be located closer the twenty (20) feet from an adjacent lot zoned or used for residential purposes.

3. h. ??? 25% of yard allowed for driveway or vehicle storage.