

City of Lake Elmo

777-5510

3800 Laverne Avenue North / Lake Elmo, Minnesota 55042

**The Lake Elmo Planning Commission will meet Monday, March 22, 1999 at
7:00 p.m. in the Council Chambers of City Hall,
3800 Laverne Avenue North, Lake Elmo, Minnesota.**

AGENDA

1. Agenda
2. Minutes March 8, 1999
3. Prairie Hamlet – Amend Conditional Use Permit and OP Plan (continued from 3-8-99)
4. Public Hearing: Public Facilities Ordinance
5. Comprehensive Plan (Continued Discussion)
6. Other
7. Adjourn

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Lake Elmo Planning Commission

Meeting Minutes Monday, March 22, 1999

Chairman Armstrong called the meeting to order at 7:00 p.m. in the Council Chambers of City Hall, 3800 Laverne Avenue North, Lake Elmo. Present: Commissioners Berg, Gerard, Helwig, Herber, Lipman, Mandel, Ptacek, Sedro and Sessing. Absent: Commissioner Brass. Also present: City Attorney Filla and City Planner Dillerud.

1. AGENDA

- Add: 6.a Motions/Helwig
- 6.b Next Agenda
- 6.c Baytown/LE Consolidation

**M/S/P Helwig/Sedro – to approve the agenda, as amended.
(Motion Passed 9-0).**

2. MINUTES

**M/S/P Sessing/Gerard – to approve the minutes from the March 8, 1999 meeting as presented.
(Motion Passed 6-0-4). Abstain: Herber, Mandel, Ptacek and Sedro.**

3. Prairie Hamlet –Amend Conditional Use Permit & OP Plan (continued from 3-9-99)

Planner Dillerud said that at its March 8, 1999 meeting, the Planning Commission tabled consideration of this application to allow staff the opportunity to draft resolutions reflecting the sense of the Commission regarding amendments proposed. He said by individual vote, the Commission directed that the following recommendations be incorporated into appropriate draft resolutions:

1. Denial of the application to increase the unit count from 16 to 17;
2. Approval of the application to amend the Conditional Use Permit to substitute Single Family Attached structures/platting for the previously approved Duplex structures/platting;
3. Approval of a modification to the application to substitute a Single Family Detached structure for the Single Family Attached structure on Lots 3 & 4, Block 1 Prairie Hamlet Second Plat; and approve creation of Lot 5, Block 1 from a portion of existing Outlot C.

He said no specific action was taken regarding the setback variance also proposed by the applicant on Lots 3 & 4. He said on March 10, 1999, the applicant provided staff with an alternative two family structure design and that this design would permit the construction of a two family structure on proposed Lots 3 & 4, Block 1 Prairie Hamlet Second Plat without the need for the setback variance previously proposed. He said the applicants also advised that, based upon the new structure design, they no longer wished to pursue the setback variance; redivision of Outlot C; or increase in new unit count from 16 to 17. He said based upon the applicant's letter and the Commission's March 8 actions, it appeared that the

previous recommendations of staff and the draft resolutions, with some modifications, remained valid. He said his recommendation is approval of the draft resolutions, approving amendments to the Prairie Hamlet OP Plan and Conditional Use Permit.

Chairman Armstrong noted a letter had been received from Steven and Joan Ziertman (attached).

M/S/P Armstrong/Berg – to recommend a resolution amending Resolution No. 98-2, approving the Amended Final Plat and Final Open Space Development Plan of Prairie Hamlet AND a resolution amending Resolution No. 99- ____, a Conditional Use Permit to substitute Single family Attached Structures for the previously approved Duplexes in Prairie Hamlet (Motion Passed 9-0).

4. PUBLIC HEARING: Public Facilities Ordinance

The Planning Commissioners reviewed the current Public Facilities draft Ordinance and made the following motions:

M/S/P Helwig/Sessing – to recommend deletion of Subd. 2 Uses Allowed by Conditional Use Permit (c) Compost Facilities. (Motion Passed 9-0).

It was noted that Lake Elmo does have a compost site within its City limits in the Buberl Landscaping and Compost facility, located in the newly annexed area.

M/S/P Helwig/Armstrong – to recommend addition of Subd.6. Performance Standards, a. Minimum Architectural Standards, viii. Additions to buildings existing as of the date of this ordinance may be of matching materials so as to blend. (Motion Passed 9-0).

City Attorney Eilla suggested adoption of the previous amendment, but it may later inserted elsewhere in the ordinance.

M/S/P Helwig/Berg – to recommend Subd.2. Uses Allowed by Conditional Use Permit; Uses allowed herein by Conditional Use Permit that are in existence within the City at the effective date of this Ordinance may continue such use as a conforming use without a Conditional Use Permit. A Conditional Use Permit in the PF zoning district may allow the following new and additional uses and structures. (Motion Passed 9-0).

M/S/P Helwig/Sessing – to recommend extension of the moratorium of Public Facilities for an additional three months. (Motion Passed 9-0).

M/S/P Armstrong/Lipman – to recommend Subd.6. Performance Standards, d. Buffering The area of the required buffer may be in addition to the 15 acre maximum parcel size specified only if such additional area is a separate tax parcel, contiguous to the principal parcel; and, the resulting buffer area is encumbered by a perpetual easement prohibiting development and legal combination with any other parcel. (Motion Passed 5-4).

Chairman Armstrong opened the comment portion of the Public Hearing at 7:35 p.m.

**Ed Stevens
10133 47th Street North**

Mr. Stevens said he felt that Lake Elmo had been "beaten up" by the churches a little and that he was opposed to any other changes to the current draft of the PF ordinance. He said he did not want to see Lake Elmo become another Woodbury and preferred to see Lake Elmo kept the way it is.

Barb Larson
8200 Hidden Bay Trail

Ms. Larson said she had been a resident of Lake Elmo for 26 years. She said she cannot understand why Lake Elmo wants to restrict churches from building in the City. She said she walks every Sunday morning and sees cars leaving the City to "serve" elsewhere and not in our community. She said she thought the purpose of a church was to serve the community, in part by certain outreach programs and that she felt churches offered many things that would enhance a community.

David Malchow
5274 Stillwater Blvd.
Pastor-St. John's Evangelical Lutheran Church

Pastor Malchow thanked the Planning Commission for all their hard work and effort given the PF Ordinance. He said he was not opposed to the philosophy of Lake Elmo, but did cite that St. John's was the "ideal" little country church. He said their members wanted to, and needed to expand so that they can better serve the growing needs of the community. He said under the current proposed amendments, St. John's would not be able to grow, without applying for a variance.

Brian Latchow
10240 Stillwater Blvd.
Pastor-Parkview Community Church

Pastor Latchow said the members of Parkview Community Church are committed to serving the community and that the current proposed amendments to the P.D. Ordinance regarding building materials would create a hardship for their facility. He said that restricting the building materials financially prohibits them from doing what they want by limiting similar or matching facades. He said they wanted to do something to the building that would be more enhancing and the current ordinance would cause them to apply for a variance. He said limiting the expansion of their facility would not allow the church to grow and therefore, they could not meet the needs of the growing community. He said that statistics show that 1 church is needed for every 500 residents, and that means Lake Elmo could support 5-12 churches.

Nate Sabin
8080 59th Street

Mr. Sabin said he has been a resident of Lake Elmo for 6 months. He said he loves the rural quality and hates to see the beautiful things destroyed. He said he is also a member of a church and sees the need for more in Lake Elmo. He said he has waved at his neighbors and they have not waved back. He said he meant by this that he sees a real lack of a sense of "community" in Lake Elmo. He said he thinks churches offer more enrichment and a sense of "community" and a sense of service. He encouraged the Planning Commission to recommend changing the ordinance to allow churches to grow and help meet the needs of Lake Elmo.

Jeff Roos
10985 N. 56th Avenue
Plymouth, MN

Mr. Roos said he has been involved with the PF process for about 3-4 months and has been reviewing all the church sites. He resented 1/2 section maps that illustrated the sites of 6 churches in Lake Elmo, 4 of which are existing structures and 2 sites that are not yet developed. He said the current ordinance prohibits any significant growth for the 4 churches that have existing structures. He said the 2 churches that have not applied for building permit are waiting for a conclusion by the City before they make plans for development. He said the physical restrictions of the current ordinance do not allow for any growth. He distributed three photos of 3 modern churches that utilized non-stone for the fascia.

Peter Beck
(Attorney representing Churches)
Doherty, Rumble & Butler

Mr. Beck said the churches were very reluctant to have legal council represent them. He presented and reviewed a letter (attached).

Jerry Rouse
5111 Hilltop Avenue
Pastor

Pastor Rouse said he was taking on two roles in this issue, one as Pastor of a church and another as a resident of Lake Elmo. He acknowledged the Planning Commission's hard work over the past year and a half. He said he sees the current ordinance as very restrictive to church growth. He said churches not only provide a place of worship, but they support many civic organizations. He said he felt this was a deeper issue than square footage, zones and codes. He said he felt it was about the character of a community and that the City was not allowing churches. He said currently, out of the 2,000 acres of PF zoned land, 31 acres of that were churches. He said that churches provide lifespan services-birth, marriage and funerals. He said churches also provide for today's teens, divorce recovery, drug rehabilitation, support to single parents, marriage enrichment programs, family and teen counseling. He asked that the Planning Commission considers all this "good" and that they think about churches providing more good to a community than harm.

Joyce Kvasse
4655 Olson Lake Trail

Ms. Kvasse said she has been a landowner in Lake Elmo for 41 years and a resident for 39 years. She said she loves the quality of life in Lake Elmo and sees churches as a very positive influence in a community. She said the days of a little country church are gone. She asked the Planning Commission to note that one-room schoolhouses do not meet today's growing needs and small country churches do not meet those needs, as well.

Charles Palmer
660 Edith Avenue
(Representing Lakewood Church-Ziertman Property)

Mr. Palmer presented a "position summary" (attached). He said he sees churches in a community as an investment and payback that helps enhance the way of life.

Emily Felling
800 Cascade Avenue
232 Crabtree Hall

River Falls, Wisconsin 54022

Ms. Felling asked why there were restrictions imposed on the type of exterior building materials churches could use.

Penny Demko
3929 Innsdale Avenue N.

Ms. Demko said she was a resident and business owner in Lake Elmo. She said she is not a member of a Lake Elmo church. She asked what the "bottom line" was regarding this ordinance. She said it appears that the City of Lake Elmo does not want to allow churches in the community. She said it seems that Lake Elmo values land more than the people who live on the land do. She said that farmers sell their land and she sees the City working with developers to compromise when cluster developments are proposed. She said she sees absolutely no compromise regarding churches and the PF Ordinance.

Robert Ziertman
Previous resident of Lake Elmo

Mr. Ziertman said, "What are you people trying to do, did you ever hear of a church doing bad."

Greg Soderbeck
9393 N. Jane Road

Mr. Soderbeck said he sees churches as the moral fabric of any community. He said Lake Elmo needs more community cohesiveness, and that Lake Elmo was founded on a "church" philosophy.

Ed Stevens
10133 47th Street

Mr. Stevens said he has lived in Lake Elmo since 1961 on 10 acres of land, which was originally open farmland. He said he had planted trees and has a great respect for the land and restoration of woodland. He said he is a member of a church, but not one in Lake Elmo. He asked if other surrounding communities are as short of churches as Lake Elmo. He said he wants to leave Lake Elmo the way it is.

Ted Buckhholtz
3597 Kelvin Avenue

Mr. Buckhholtz said, "I am a senior citizen, and you all will be, sooner than you think, and I want you to think about when you are on your dying bed, who do you call? You call your minister."

Chairman Armstrong closed the comment portion of the public hearing at 8:30 p.m.

Chairman Armstrong responded to Ms. Felling's question by saying that specific building material requirements for churches are consistent with other non-residential applications.

Attorney Filla said that the Public Facility Ordinance comments seemed to be focused on churches; the PF covered all and Quasi-Public Facilities, and the City was not singling out churches. He said he had read Mr. Beck's letter and did not interpret it the same way. He said he believes the City does have the authority and right to regulate the use on land and its effect on surrounding properties as a way of balancing values and competing interests, but clearly has a responsibility to be reasonable. He said the ordinance needs some modifications and wanted to take some time to respond to Mr. Beck's letter. He suggested the Planning Commission take a closer look at the existing public facility uses and what could occur regarding churches so that they did not have to apply for variances. He said there may be many ways to make land uses compatible. He asked if any of the churches had any immediate plans to expand or build in the next three months.

City Planner Dillerud said there might be some re-designing necessary for all PF zoned property regarding existing structures.

M/S/F Lipman/Gerard – to recommend amending the PF District Requirements-Lot Size/Maximum from 15 Acres-Buildable Land, not including the 200 foot setback, to 30 Acres-Buildable Land.

(Motion Failed 2-7).

Commissioner Mandel said he found fault in some of the testimony heard. He said he did not think Lake Elmo was opposed to churches, rather that Lake Elmo wanted to protect the rights of property owners by limiting how close a lighted parking lot or other PF buildings could be to a residential zone.

Commissioner Berg said he sees two "goods" happening; one being that Lake Elmo DOES want to allow churches into the community and the other being Lake Elmo also wants to preserve open space. He said he feels a compromise needs to be reached.

M/S/P Armstrong/Lipman – to table the PF Ordinance and recommend the City Council extend the moratorium for three months.

(Motion passed 8-1). Opposed: Helwig

5. Comprehensive Plan Update

Planner Dillerud said the referendum on consolidation of Baytown Township and Lake Elmo has been rescheduled to June 15, 1999 at the request of the Town Board. He said the Commission may wish to consider scheduling dedicated meetings or workshops in order to complete their work on the Comprehensive Plan.

M/S/P Helwig/Mandel – the Lake Elmo Planning Commission will meet at 6:00 p.m. instead of their regularly scheduled time at 7:00 p.m. until the work on the Comprehensive Plan is complete. (Motion Passed 7-2).

6.a./b. M/S/P Helwig/Ptacek – to re-visit permitted uses in the AG (Agricultural) Zoning District at a subsequent meeting. (Motion Passed 9-0).

6.c Commissioner Mandel expressed his concern regarding the addition of 5 more council members and 9 more planning commissioners, if the consolidation with Baytown is successful. He noted that Lake Elmo has a population of 6,400 and Baytown has a population of 1,400 and feels that the combining of the boards does not illustrate equal representation.

Commissioner Berg stated that Baytown wants to maintain their identity, as well.

Chairman Armstrong adjourned the meeting at 10:00 p.m.

Respectfully submitted, Cynthia Young-Planning Secretary

To: The Lake Elmo Planning Commission members

From: Joan and Steve Ziertman
5761 Keats Ave

Date: March 22, 1999

RE: Prairie Hamlet, Second Plat

RECEIVED

MAR 22 1999

CITY OF LAKE ELMO

We would like to take this opportunity to express our views regarding the Prairie Hamlet Development. The first issue we would like to comment on is the request for a variance for a 10 foot setback on Lot 1 Block 1. We feel this is way too close. Twenty feet is even too close. The developer has also suggested that they will make lot 3 & 4 into a single family home if they will be granted an extra lot from outlot C. This is ridiculous. The developer should not be rewarded with this extra lot just because the only thing that will fit in this area is a single family home. That is what they will need to do anyway.

As far as changing from duplexes to single family attached, we do not feel that the City should allow for this on lots smaller than half an Acre. The Ordinance is clear that Single family attached housing should be on a minimum of half an Acre and we do not feel the City should deviate from this. When this Plat was originally approved there was a lot of discussion at the City Council level that the duplexes might not be a viable option with the joint ownership. The developer wanted to do it anyway because back then the City Council was not willing to approve Single family attached housing on less than half an Acre. So why should it be approved now just because the developer is finding out the duplexes are not a realistic option? The developer does have other options. They could go to two single family attached or four single family. In this instance it would be reasonable to give them lot five as their density would be decreasing.

As far as the density goes we have some questions about that. There seems to have been some changes since this plat was approved. Originally we were seeing that this was a 50 Acre parcel. Now it has gone down to 46.15 Acres. Also the existing home was on 1 Acre and then 9 Acres and now all of a sudden on 11 Acres. This seems somewhat strange. We would like to ask why the existing home and Acreage is used to calculate the density. In our view it is an 11 Acre parcel next to the Prairie Hamlet development. It is not incorporated into the roadway system or the village green like at Fields of St. Croix or Sunfish Lake. It does not meet the definition of an existing home that gets ~~incorporated~~ into the development. It is off on its own 11 Acre parcel. Is it part of the Association that shares ownership and maintenance responsibility for the open space? If not, it is not part of the developemnt and should not be counted in the density calculation. If this parcel is not counted as part of the calculation the parcel goes down to 35.15 Acres and therefore would be entitled to I believe 13 units instead of 17 units. That is quite a big difference. Thank you for your time.

RURAL HAMLETS

- Provide neighborhoods that foster a sense of community and communication between residents and the City.

Policy 15. The City of Lake Elmo acknowledges the future residential development of the areas defined for open space development. The future residential neighborhoods will be developed in a "rural hamlet" manner. A rural hamlet is a group of 5-25 housing units located in a contiguous group, with adjacent and fronting lots oriented towards each other in some geometric way as on a street or a square and forming a distinct boundary with the countryside as shown on Graphics 3-7.

A rural hamlet development pattern will maintain the visual quality of Lake Elmo's countryside while developing cohesive neighborhoods. The following general standards apply to the development rural hamlets:

1. The appearance of a hamlet from a public road shall be a grouping of homes in that they are clustered together and obviously a use subsidiary to the prime use of the land as open space.
2. The Hamlet shall be planned and designed as a single unit with careful consideration given to the relationship of structures to one another, landscaping, screening, views, light, air, and internal circulation.
3. Strong provision shall be made to walking as opposed to vehicular connections within the hamlet.
4. Street widths, alignments, and parking shall be carefully scaled to the size of the hamlet.
5. The streetscape of the hamlet should be designed in detail to avoid repetitious setbacks, driveways, elevations, and landscaping.
6. When a hamlet incorporates an existing historic barn, home or farmstead, the buildings should be harmonious with the historic structures.
7. Parks, pathways and recreational facilities shall be incorporated into the development.

Policy 16. The City of Lake Elmo has developed the following design guidelines that will create developments with quality architectural detailing, landscaping and a street design that fosters the pedestrian and slows traffic:

Architecture:

1. Graphic 8 depicts the "Don'ts and Do's regarding garages.

Lake Elmo Municipal Code
Section 301.070 D. 16 Open Space Preservation District (OP)

- K. Open Space. A tract of land used for agricultural, natural habitat, walkways (sidewalks) and pathways and/or neighborhood recreational purposes.
- L. Primary Conservation Area. Wetlands, hydric soils, restrictive soils, shorelands, and steep slopes which shall be preserved.
- M. Rural Hamlet. A group of 5-25 housing units within an open space development located in a contiguous group, with adjacent and fronting lots oriented towards each other in some geometric way, as on a street, green or square and forming a district boundary with the open space.
- N. Secondary Conservation Area. Woodlands, meadows, view sheds/corridors and historic structures.
- O. Single Family Dwelling. A residential structure designed for or used exclusively as one dwelling unit of permanent occupancy.
1. Detached. A single family dwelling that is surrounded by yards on all sides, is located on its own individual lot, and which is not attached to any other dwelling by any means.
 2. Attached. Two or more single family dwellings sharing one or more common wall, each on its own individual lot.
- P. Stable; Private. The keeping, breeding, raising and uses of horses or ponies on open space owned and maintained by an association of adjacent property owners for the exclusive personal use and enjoyment of association members and for which commercial gain is not the primary objective.
- Q. Townhouse. A grouping of three or more attached, single-family dwellings in which each unit has its own front and rear access to the outside, no unit is located over any other unit, and each unit is separated from any other unit by one or more common walls.
- R. Wayside Stand. A structure used for the seasonal retail sale of agricultural goods, floriculture, and horticulture produced by the operator of the wayside stand on site or on other property in Lake Elmo.

8-28-96

STATEMENT OF INTENT: It is our intent to establish a homeowners association with bylaws to define and regulate the open space, both private and public. These bylaws will include the following:

1. The ownership, management and maintenance of open space within the approximately 13.0 acres in the development and the 4.2 acres of common space. ← is existing home part of this?
2. Easements for the septic drainfields, nature trail and access road shall be granted in designated natural and open space areas. We plan to use the INFILTRATOR system for sewage drainfields and surface and stormwater disposal.
3. The required amount of land shall be set aside in a Land Trust to meet the densities requirements of the ordinance. We are presently negotiating the terms and conditions of a conservation easement with the Minnesota Land Trust.
4. The general architectural guidelines for the principle structures in the development area are as follows:
 - A. Building Mass: The primary building footprint will be a simple rectangle or square with small appendages to break up large wall areas. Buildings will be one, one and a half or two story structures with a maximum height of 35 feet.
 - B. Roof Types: Roofs will be gabled (side-gabled, front-gabled or cross-gabled) with dormers to break up large roof masses. Roof pitches will be between $7\frac{1}{2}$ and $12\frac{1}{2}$. Roofing materials will consist of asphalt shingles or metal seam roofing.
 - C. Facade Treatment: Building facades will have a defined base or foundation (rock-face block or veneer stone), a middle wall area (horizontal lap siding or stucco), and a top formed by a pitched roof.
 - D. Porches: Porches will be used between the private space of the dwelling and the public street to create a semiprivate space for neighbor interaction. The front porch will define the public entrance or front door to the dwelling.
 - E. Garages: All garages will be set back from the front face of the primary structure. The garages will be oriented with the short side of the structure facing the street.

To: The Lake Elmo Planning Commission members

From: Joan and Steve Ziertman
5761 Keats Ave

Date: March 22, 1999

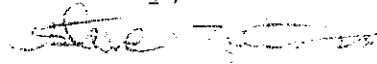
RE: Proposed changes to the Public Facilities Ordinance

RECEIVED
MAR 22 1999
CITY OF LAKE ELMO

We would like to take this opportunity to express our views regarding the proposed changes to the public facilities ordinance. We would like to express our opposition to the 15 Acre maximum. We feel that there should actually be a 15 Acre minimum. This would allow for adequate setbacks and buffering and would allow for the 50% impervious surface. Many people have asked where the 15 Acre Maximum came from and what it's significance is. This has yet to be addressed. We feel that the public has a right to have this answered. We feel that the City should be able to adequately explain the reasoning behind the 15 Acre Maximum or it should not be a part of this Ordinance. We are wondering if the City is concerned with loss of future tax revenue. In a previous planning commission meeting on October 28, 1996, Chairman McLeod stated that for every dollar received in a residential district more than a dollar was spent to maintain roads, provide schools, etc. If this is true, we don't understand why the city is so opposed to Public Facilities having more than a 15 Acre parcel.

The other item we have concerns about is that direct access needs to be provided by a street classified as Major Collector or Arterial. We are wondering about the importance of this. There already are Public Facilities that are not on these types of streets. There does not seem to be a traffic problem with these facilities, so why is this item in there. What would happen to existing facilities if something happened and they needed to be rebuilt? I would assume that they could not rebuild on the same site. Thank you for your time and consideration.

Sincerely,



Steve Ziertman
Joan Ziertman

CC: City Council Members

File Copy
Re: ;

612-677-4533
beckp@drblaw.com

March 22, 1999

City of Lake Elmo
3800 Laverne Avenue N
Lake Elmo, Minnesota 55402

Re: Proposed PF-Ordinance

Dear Members of the Planning Commission:

We have been retained by the churches of Lake Elmo, all of which will be adversely affected by the Proposed PF-Ordinance. We have been asked to analyze the legal issues raised by the Proposed Ordinance, and to present the churches' position with respect to those issues to the City of Lake Elmo. Following is a summary of changes to the proposed ordinance which the churches believe must be made to meet minimal constitutional standards, accompanied by supporting legal analysis.

1. Churches should be a Permitted Use rather than a Conditional Use.

Excluding churches from all zoning districts except the PF district, and allowing churches only as a Conditional Use in the PF district, means that within the City of Lake Elmo churches are not permitted at all. The failure to permit churches within the City unquestionably impinges the churches' and church members' First Amendment Constitutional rights, and their rights under the Minnesota Constitution. In effect, the existence of any church in Lake Elmo in the future falls to the sole discretion of the City Council.

2. The maximum lot size requirement should be eliminated.

The maximum lot size, coupled with the buffer, impervious surface and other requirements, virtually prohibits the existing churches in the City from expanding, severely restricts the ability to build a new church in the City, and severely limits the size of all churches within the City. These restrictions, for which there is no rational basis, unconstitutionally interfere with the First Amendment rights of the churches and their members to assemble and practice their religion.

Furthermore, no other zoning district in the City of Lake Elmo contains a maximum lot size restriction. The City is treating churches differently than other uses. While some secular uses fall

within the PF district, and will be subject to the same restrictions, there is no relationship between the proposed restriction and the land uses and impacts involved. Uses in other zoning districts with far greater land use impacts are not subject to a lot size maximum.

3. The 200 foot residential buffer requirement should be modified to a 150 foot structure setback and 50 foot parking setback.

The 200 foot buffer requirement is unique to the PF district, and far out of proportion to the impact of the uses allowed in the district. It amounts to nothing more than a thinly veiled effort to restrict the size of churches, which is unconstitutional. The buffer should be modified to a 150 foot building setback requirement, which is consistent with the setback required in other zoning districts. Setbacks for parking areas and driveways should also be similar to those required in other districts, and no more than 50 feet.

The 200 foot buffer requirement consumes the entire parcel of several existing churches, leaving no use for the land and rendering those churches nonconforming. For those churches with at least some usable land remaining, the amount of usable area is so limited that the ability to assemble and worship will be seriously inhibited, if not altogether eliminated.

4. The impervious surface limitation should be increased to a minimum of 50%.

The 35% impervious surface limitation contained in the Proposed Ordinance is also unduly restrictive, not supported by any rational basis, and inconsistent with other zoning districts. This restriction also treats religious uses differently than secular uses, bears no relationship to the land use or impact involved, and violates the constitutional rights of churches and their members.

5. Protection for churches rendered nonconforming should be added.

The proposed PF ordinance will render every existing church in the City a nonconforming use, effectively prohibiting their expansion. The buffer area, setback and impervious surface requirements of the proposed ordinance need to be modified so that these churches can retain their conforming status, and a provision should be added allowing the expansion of remaining nonconforming uses in a manner which would not render the church any more nonconforming.

6. The ordinance must allow more flexibility with respect to building materials.

The City of Lake Elmo has no basis upon which it can restrict the churches use of certain building materials. The City has offered no explanation for the specific limitations. There are numerous building materials available which would have no negative impact and would blend into the

surroundings in Lake Elmo. Many of these building materials are more inexpensive than those permitted in the proposed ordinance.

7. The ordinance must provide for appropriate signage.

The proposed ordinance does not allow signs. The ordinance states that all signs must comply with §535.07 Subdivision 2 of the City Code. That provision governs, and allows for signs, in the “Old Village” and General Business zone. The City must recognize the need for uses in PF districts to be able to identify themselves with appropriate signage. Under the current proposal, current church signs would be nonconforming, and new churches would have no signs. Other zoning districts which permit uses with greater impacts than churches allow signs. There is no rational basis to support the denial of any signs in the PF district.

Regulation of churches and church related land uses by local government has been the frequent topic of litigation across the United States. While the constitutional jurisprudence in this area has been dynamic, a relatively clear set of rules has evolved. Under that set of rules, it is clear that Lake Elmo’s proposed ordinance is unconstitutionally restrictive of churches.

1. First Amendment--Free Speech, Freedom of Association

It is well established in law that the regulation of churches and church related conduct, either directly or indirectly, implicates concerns related to the regulation of religious speech, and the first amendment right to associate with others. Cornerstone Bible Church v. City of Hastings, 948 F.2d 464 (8th Cir. 1991). In Cornerstone, the Eighth Circuit held that exclusion of a church even from a single zoning district within Hastings raised serious constitutional questions. Id. In evaluating the zoning ordinance, the Court examined whether the zoning limitation: 1)advanced a substantial governmental interest; 2)whether the ordinance was narrowly drawn to advance the governmental purpose; and 3)whether the ordinance left open ample alternatives for the expression and communication. That test is the most lenient test that could be applied to Lake Elmo’s proposed ordinance. Even under this lenient test, the ordinance fails constitutional muster.

Although a municipality’s interest in zoning is well recognized, it is clear that this ordinance goes too far. It is not narrowly drawn to advance Lake Elmo’s interests, and there are no alternatives left for the churches’ expression. Churches are excluded from every single zoning district in the City. They are conditionally permitted in only one district, where the City Council has sole discretion to allow or deny the use. The Eighth Circuit indicated substantial concern when Hastings excluded churches from *one* zoning district. Lake Elmo attempts to exclude churches from all zoning districts. Such a limitation violates the churches’ rights of free speech and to associate and share religious ideas.

2. First Amendment-Free Exercise of Religion

The United States Constitution precludes local governments from placing unreasonable limitations on religious conduct and from regulating religious beliefs. When an ordinance directly regulates religious conduct such as worship, it may be deemed to substantially burden an individual's right to the free exercise of religion. If such a burden is found, the government must set forth a compelling interest which supports the infringement of that right. Absent a compelling interest, the ordinance will not be upheld by the court. Generally, if an ordinance is a law of general applicability, and does not expressly or directly regulate religious conduct or beliefs, the ordinance will be upheld. A court will examine governmental intent as well, if the ordinance is neutral on its face. If there is evidence of an intent to regulate religious conduct or beliefs, the ordinance will not be deemed neutral. If the ordinance is not one of general applicability, the courts will apply strict scrutiny to it.

When an ordinance impacts both the free exercise of religion and some other first amendment right (such as those discussed above). The Courts will scrutinize it more vigorously than if the limitation only affects the free exercise of religion. Cornerstone, 948 F.2d at 472. Such a claim is known as a "hybrid rights" claim. Id.

Lake Elmo's ordinance is, on its face, a law of general applicability. However, the harsh treatment of churches compared to other more intense uses, and the lack of any rational support for the treatment, evidences a discriminatory intent. Furthermore, the churches clearly have a "hybrid rights" claim, because the ordinance affects more than just religious rights. As such, the impact the proposed ordinance has on the churches free speech and free association rights trigger a violation of their free exercise rights.

3. Equal Protection

Lake Elmo's zoning ordinance must treat similarly situated entities the same, or the ordinance may violate the equal protection clause of the United States Constitution. See, Cornerstone, 948 F.2d at 471. See also, City of Cleburne v. Cleburne Living Center, Inc., 473 U.S. 432 (1985). The proposed ordinance fails to treat entities which are similarly situated in relevant ways equally. To determine whether churches are similarly situated with other entities, the question must be addressed from a land use perspective. As such, if a church has a similar impact as another land use, they should be treated as similarly situated, and the restrictions applied to each ought to be equal. In the present case, churches are treated more restrictively than other land uses in other zoning districts with equal or greater impact. By excluding churches from the other zoning districts the zoning ordinance as a whole does not maintain the necessary equality. The City has offered no explanation for this differing treatment, and has offered no explanation for why churches are not a permitted use in any zoning district in the City. The ordinance as written and as applied violates the equal protection clause by treating similarly situated entities differently, without any rational basis for doing so.

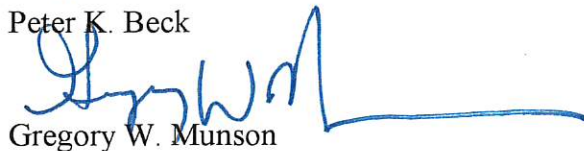
The proposed PF-Ordinance contains serious constitutional deficiencies which should be addressed prior to adoption by the City. Furthermore, the zoning ordinance as a whole may contain constitutional deficiencies to the extent it unnecessarily excludes churches from other zoning districts, where similarly situated entities are permitted.

The churches of Lake Elmo respectfully request that the proposed PF Ordinance be revised as recommended above. The churches are still interested and excited about the chance to work with the City to find an amicable resolution to the challenges presented by the proposed PF-Ordinance.

Very Truly Yours,



Peter K. Beck



Gregory W. Munson

Position Summary

Lakewood Evangelical Free Church

Joint Workshop with the City Council and Planning Commission

City of Lake Elmo

February 9 & 22, 1999

We thank Mayor Hunt, the City Council, Planning Commission and City staff for the opportunity to respond to the issues regarding the draft Public Facilities zoning ordinance and how it would affect plans for the Lakewood Evangelical Free Church (Lakewood Church) site development. We agree that this is basically a "land use" issue and would like to demonstrate how the land could best be used by Lakewood Evangelical Free Church to serve the people in Lake Elmo and surrounding communities.

History:

- Lakewood Church conducted an exhaustive land search over a several year period from 1994-1996 to identify a new site upon which to locate our growing ministry.
- One of the sites we determined was particularly suited to our needs, and those of our constituents, was located on the Southeast corner of Keats Avenue and Highway 36 in Lake Elmo. The Former City Planner Ms. Ann Pung-Terweedo initially recommended this site to our Real Estate representative Mr. Bill Ostlund, with Griffin Companies.
- After due diligence proceedings in early 1996 Lakewood Church made a purchase offer on the property, completing the purchase in early 1997.
- An application for Comprehensive Plan Amendment and Zoning District Amendment was made in September 1996. This application was approved by the Planning Commission and Metropolitan Council. Lakewood Church withdrew this application in December of 1996 after it was made clear during the City Council meeting that it would be denied. This denial was predicated on the basis that the City Council would not vote to change the land use primarily due to concerns about the inadequacy of the Public Facilities zoning ordinance.
- Lakewood Church has continued to work with the Planning Commission, City Council and City staff from early 1997 to this date to resolve issues and gain the approval and support of the City of Lake Elmo to build a Church on the Keats Avenue site.
- Lakewood Church has incurred considerable cost and expended immeasurable time in an effort to assist the City of Lake Elmo in developing an excellent Public Facilities Zoning Ordinance because we have been told that a "weak" PF zoning ordinance is the reason our application to change the land use and zoning was, and continues to be, rejected.

Issues:

- Permitted versus conditional use. Lakewood Church believes that Churches and all places of worship, as well as Cemeteries, should be a permitted land use. We continue to believe this is in the best interest of the community as well as the

Church. However, we are willing to drop the discussion of this point based on the "good faith" testimony of City Planner Dillerud during prior public hearings regarding the draft PF Ordinance. In Mr. Dillerud's testimony he indicated that, based on his many years of experience, it would be highly unusual that a permitted use would be revoked, or conditions changed, such that a Church would no longer be able to continue its ministry.

- Maximum lot size. The proposed maximum lot size is 15 acres. At first reading this provision does not appear to be completely unreasonable. However, when combined with the buffering, setback and impervious surface requirements it is overly restrictive. As has been demonstrated by Mr. Roos, who represents Apostolic Bible Church, the three requirements, when combined, essentially reduce the usable land to approximately 3.8 acres which eliminates all but a very small structure with supporting land use, such as parking lots. Lakewood Church continues to recommend that the maximum lot size for a site to be zoned Public Facility be determined at the time the site plan is presented to, and approved by, the Planning Commission. Alternatively, the maximum lot size should be 30 or more acres to encourage Public Facilities of the size and quality, which would most benefit the Lake Elmo community, and it's future land use.
- Buffering requirements. Every Church wants to be a "good neighbor." Land use and zoning requirements must include buffers to help accomplish peaceful existence between Public Facilities and other land users. However, Lakewood Church believes that buffering should be determined depending on the geography, expected land use next to the site, screening, topography, etc. The setbacks and mandatory 200-foot buffer requirement become extraordinarily burdensome and restrictive for many Public Facilities, including Churches. This is especially true when combined with the 15-acre maximum lot size.
- Impervious surface coverage. Lakewood Church supports the City of Lake Elmo in its efforts to retain its rural character and open spaces. When you consider land use for Public Facilities it must be kept in mind that these land uses will only be desirable and successful when supported by appropriate parking facilities. We continue to believe that, as proposed, the 50% requirement, combined with buffering and maximum lot size, are not necessary to meet the goals of the community as stated above.

To specifically answer the Mayor's inquiry regarding what Lakewood Church would need in the Public Facility zoning ordinance to support its goals:

Please refer to the attached Site Feasibility Plan.

Lakewood Church desires a Public Facilities zoning ordinance which would support a land use with a principle building site lot size of 15-16 acres, 60-70% impervious surface and the ability to provide appropriate buffers outside of the perimeter of the principle building site.


Alternatively, as a second option, Lakewood Church would desire an increase in the maximum lot size to 30 acres.

Conclusion:

Ken Larson, a long time member of Lakewood Church, has provided, during several of the public hearings, examples of the social, health, educational and spiritual benefits communities have gained, over the centuries, when they support and encourage land use by a Church and other places of worship. Lakewood Church would submit to the City of Lake Elmo, during this evening workshop, that there is no better decision it can make regarding value to the people of this community than to use its land and Public Facilities zoning to support the growth and services of Churches.

On behalf of the people it serves in Lake Elmo and surrounding communities, Lakewood Church sincerely and humbly ask the Mayor, City Council, Planning Commission and City staff to take action on the final PF ordinance which will remove the barriers to, and encourage land use for, Public Facilities such as Churches.

Sincerely,



Charles D. Palmer
Chair, Land Development Committee
Lakewood Evangelical Free Church