



# City of Lake Elmo

777-5510

3800 Laverne Avenue North / Lake Elmo, Minnesota 55042

**The Lake Elmo Planning Commission will meet Monday, November 22, 1999 at 6:00 p.m. in the Council Chambers of City Hall, 3800 Laverne Avenue North, Lake Elmo, Minnesota.**

**(6:00 p.m. the Planning Commission will continue the discussion of the Comprehensive Plan)**

## 7:00 AGENDA

1. Agenda
2. Minutes – November 8, 1999
3. **PUBLIC HEARING: Amendment to Conditional Use Permit  
Breheim Kennel – Geraldine Breheim  
8415 38<sup>th</sup> Street North**
4. Other
5. Adjourn

**City of Lake Elmo  
Planning Commission**

**Meeting Minutes  
Monday, November 22, 1999**

*(The Planning Commission met at 6:00 p.m. to continue  
the discussion of the Comprehensive Plan).*

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, Minnesota. Present: Commissioners Brass, Gerard, Helwig, Lipman, Mandel, Ptacek, Sedro and Sessing. Absent: Commissioners Berg & Herber. Also present: City Planner Dillerud.

**1. Agenda**

**M/S/P Sessing/Lipman – to approve the agenda, as presented.  
(Motion Passed 9-0).**

**2. Minutes**

**M/S/P Lipman/Sedro – to approve the Minutes from the November 8, 1999 meeting, as presented.  
(Motion Passed 8-0-1).**

**3. PUBLIC HEARING: Amendment to Conditional Use Permit  
Breheim Kennel – Geraldine Breheim, applicant  
8415 38<sup>th</sup> Street North**

Planner Dillerud explained that the site is an existing single family dwelling situated on a 1.47 acre lot that is 305 feet by 210 feet. He said city records indicate a special use permit issued to the applicant in 1973. The original permit was subject to the following three conditions:

1. That there be no more than seven (7) Shetland Sheep Dogs (a/k/a toy collies) over six months of age.
2. That the Special Use Permit is not transferable.
3. That the Special Use Permit is to stipulate that if a nuisance should occur, a hearing may be held and the license may be reviewed.

Further, although the term spelled out, this does not mean that permit cannot be rescinded if evidence of violation to the Special Use Permit is shown to exist. Any and all complaints against a special use permit are to be heard and are subject to review at a public hearing.

Planner Dillerud said it appears that a new zoning ordinance and map resulted in this use becoming legal non-conforming in the R-1 Zoning District. He noted that in 1982 additional conditions had been added to the renewed CUP (formerly Special Use Permits) that included a setback requirement of 400 feet, which is an impossibility due to the lot size that is only 210 feet wide and 305 feet deep. He noted that a recent complaint regarding barking dogs also brought the 400-foot condition to the attention of staff. He explained that the City Administrator advised that it is her opinion the 400-foot setback condition is clearly a previous clerical error.

**Douglas Meslow**

**Attorney representing Breheim Kennels**

Mr. Meslow stated Washington County Deputies had been dispatched to the Breheim residence and has noted no barking dogs. He submitted a signed petition (attached).

Commissioner Lipman suggested he was uncomfortable with deletion of the 400-foot setback condition and asked if there may be other options. Planner Dillerud said the noise issue is definitely addressed by the original special use permit limitation of 7 dogs.

Chairman Armstrong noted the 1982 renewal letter indicates the addition/changes to the original special use permit. He said he felt the legality of the situation would be to revert to the 1973 conditions that do not indicate any setback requirement for the kennel.

**Chairman Armstrong opened the comment portion of the Public Hearing at 7:22 p.m.**

**Warren Haffley**

**3817 Innsdale Avenue North**

*Mr. Haffley noted he lives next to the Breheim's and has no complaints regarding barking dogs and supports the deletion of the 400-foot setback requirement from the CUP.*

**Greg Peterson**

**Resident**

*Mr. Peterson stated he lives across the street from the Breheim's, and for the past twenty years has never heard the dogs barking. He said his home does not have air conditioning and in the summer, when his windows are open, he has not heard the Breheim dogs bark.*

**Robert Henderson**

**Resident**

*Unable to attend the meeting, earlier in the day Mr. Henderson submitted several pages of comments (attached).*

**Chairman Armstrong closed the comment portion of the Public Hearing at 7:22 p.m.**

Commissioner Sedro asked if Mr. Henderson lived closer to the Breheim's than other residents, to which Geraldine Breheim replied, "no".

The Commissioners reviewed the January 5, 1982 Conditional Use Permit renewal letter to the applicant, and noted alterations had been made to the original Special Use Permit. Their consensus was that the changes in the conditions may have been a clerical error, and therefore, an amendment to the original SUP is not necessary.

**M/S/P Lipman/Gerard – to recommend adoption of Resolution No. 99-86 granting a Conditional Use Permit to Geraldine Breheim/Breheim Kennels based on the following findings:**

- 1. The physical circumstances of the site and the surrounding neighborhood have not changed in a manner that obviates the original Findings in support of Conditional Use Permit approval, and subsequent review and renewal over 27 years.**
- 2. Conditional Use condition requiring a 400-foot kennel setback was not a part of the original Conditional Use Permit. There is no evidence of City Record to indicate changes in the site or operations that would have dictated the need to add the setback condition after-the-fact.**

**Including the following conditions as stated in the September 18, 1973 Special Use Permit,**

- 1. There be no more than seven (7) Shetland Sheep Dogs (a/k/a toy collie) over six months of age.**
- 2. The Conditional Use Permit is not transferable.**
- 3. If a nuisance should occur, a Public Hearing may be held to review the Conditional Use Permit.**

**(Motion Passed 9-0).**

**4. Report on Saturday, November 20, 1999 Workshop with Stillwater Investment**

Commissioner Sedro said Mr. Arkell proposed 23% open space, small sized lots, and that he was making an attempt to "listen to the land."

Commissioner Lipman explained that Mr. Arkell presented a plan that illustrated the northeast portion of the parcel to include approximately 150 units situated on lots sized ¼ acre to 1 acre. He said he felt in the nature of compromise, the plan focused on smaller clusters of residential as opposed to commercial.

Planner Dillerud reminded the Commissioners that there is currently no formal application for development of the northeast annexed area.

**Chairman Armstrong adjourned the meeting at 8:10 p.m.**

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Respectfully submitted, Cynthia Young-Planning Secretary

**BREHEIM SHELTYE KENNEL - AUGUST, 1999**

**Breheim Kennels in existence since 1960.**

Over the years homes have been built with in 400 feet of Breheim Sheltie Kennel at 8415 38<sup>th</sup> Street N, Lake, MN. I am trying to update the language, which the Kennel is regulated under. I would like the language to read "The location of the kennel to reside in the original location, (since 1970) as is on this date of August, 1999 forward, within the legal boundary of the Geraldine and Barry Breheim residence at 8415 38<sup>th</sup> ST. N., Lake Elmo, MN .

Have you had any problems with Breheim Sheltie Dogs - Such as ;  
Running at large, aggressive, excessive barking, or out of control?

	PROBLEM with dog		NAME/ADDRESS	LIVE WITHIN 200FT/400FT	WALKER BY*	I APPROVE	
	NO	YES					
			Warren N. Kaffely	50 FT			
1	NO		WARREN HAFELY	3817 INNSDALE AVE	NO	APPROVE	22 years
2	NO		Bonnie J. Kaffely	3817 Innsdale Ave	na.	approve	
3	NO		Gregory J. Pittman	100 ft 8388	38 ST N	- approved	
4	NO		Sybil Sampson	200 ft 3889	Innsdale Ave N	- approve	
5	NO		Robert Contact	200 ft 3889	Innsdale Ave N	I approve	
6	NO		Gudy Running	3909 Innsdale N	1-7*	approve	
7	NO		Kathy Dyer	8367	39 <sup>th</sup> ST. N	Please approve	Neighbor for 28 years
8	NO		Wendell Rupp	8367	39 <sup>th</sup> ST. N	No - Please Approve	
9	NO		Wendell Rupp	8367	39 <sup>th</sup> ST. N.	approve	
10	NO		Mildred Rupp	8321	38 <sup>th</sup> ST.	Approve	
11	NO		Michael E. Anderson	8321	38 <sup>th</sup> ST.	PLEASE APPROVE	Neighbor for 8 years
12	NO		Nanda Swenson	8321	38 <sup>th</sup> ST.	approve language change	
13	NO		Laraine Curtis	8309 - 38 <sup>th</sup> ST		Approve	36 yrs
14	NO		Ben Curtis	8309 - 38 <sup>th</sup> ST		APPROVE	36 yrs
15	NO		Joan E. Oles	8290	38 <sup>th</sup> ST N	Approve	21 years Home owner
16	NO		Richard A. Audens	8290	38 <sup>th</sup> ST	Approve	21 years Home owner
17	NO		Tom & Adam	3740	Frysdale Ave	Approve	40 yrs
18	NO		William J. Fisher	8111	38 <sup>th</sup> ST	No License NO Approve NA	
19	NO		Barbara F. Boderer	8350	38 ST N	Lake Elmo	Approve 29 years
*20	NO		Gary Hoff	8332	38 <sup>th</sup> ST N	Lake Elmo MN	approve 26 years
21	NO		Patty Hoff	8332	38 <sup>th</sup> ST N	Lake Elmo MN	approve 26 years
22	NO		Nanda Swenson	8196	38 <sup>th</sup> ST N	Lake Elmo MN	I approve Walker by 7 times a week
23	NO		Donna W. Dyer	8196	38 <sup>th</sup> ST N	Lake Elmo MN	I approve Walker by 7x a week
24	NO		Aileen M. Miller Fisher	8139	38 <sup>th</sup> ST	Lake Elmo MN	approve

\* In my presence, Gary requested Patty to sign for him - All other signatures on this form are valid and signed in my presence. I explained the problem questions and made each individual aware of what they signed. Answers to questions wrote by signature next to it.  
Geraldine Breheim - Breheim Sheltie Kennel - proprietor  
(less)

RECEIVED  
NOV 2 1999  
CITY OF LAKE ELMO

**ComputerBob**

*Planning Commission*  
**To:** The Honorable Lee Hunt, Mayor of Lake Elmo; The Lake Elmo City Council  
**From:** Robert B. Henderson *Robert B Henderson*  
**Date:** 11/22/99  
**Re:** Geraldine Breheim's Request For An Amendment To Her Conditional Use Permit

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As Mrs. Breheim's nextdoor neighbor to her west, I ask that the Mayor and City Council consider several facts about Mrs. Breheim's dog kennel from my viewpoint before deciding whether or not to amend her Conditional Use Permit. Unfortunately, I am unable to attend tonight's hearing, as I am teaching a computer-training course at a local community college. This letter will serve as my proxy.

Three or four years ago, I started noticing loud, shrill barking coming from the Breheim's dog kennel at all hours of the day and night. Only one dog was doing the barking, but that one dog would bark all of the time for no apparent reason; sometimes for hours at a time; sometimes all night long. One night, I walked down the street and could hear the Breheim's dog barking from 5 doors away, which is a very long distance, because out here we have 1 ½ acre yards.

Without saying anything, I decided to wait for the Breheims to have that dog's bark surgically removed, like they had done with all of their other dogs. I waited for an entire year, but they didn't have its bark fixed, and the dog just kept barking. Finally, one day, I saw Mr. Breheim in his back yard and asked him about that barking dog. He told me that they were not going to have its bark removed because they felt safer having the dog would bark if a burglar ever approached their house. I told him that his dog barks constantly, making it useless as a watchdog. After all, how would you know when a burglar approaches if your dog is always barking?

A couple of hours later, Mrs. Breheim showed up at my back door. She was angry that I had complained to her husband about their barking dog. She told me that she has a license to have a kennel. She told me that she has lived in the neighborhood far longer than I have, and she has a right to have a barking dog. When I insisted that she stop the dog from barking all the time for no reason, she offered to try to keep the dog quiet whenever I was home. She then asked me to give her my daily schedule, so that she would know when to keep the dog quiet. Then, she warned that she leaves for work before 7:00 every morning, so she wouldn't be able to do anything to keep the dog quiet while she was at work. I told her that my personal schedule is really none of her business, and that it is her responsibility to keep her dog quiet, whether or not I am at home, because her barking dog was undoubtedly bothering other neighbors besides me. She walked away, then stopped and turned around to remind me again that she has a license to have a kennel.

The next year, the Breheim's kennel had 2 barking dogs. They've had 2 barking dogs ever since.

In the past few years, I've called the Sheriff's office a couple of times when the Breheim's dogs were barking non-stop late at night or early in the morning, but I've felt embarrassed to bother police officers with something as trivial as a barking dog complaint, so I didn't call them very often.

This past Summer, the barking kept me awake for several nights in a row, so this past August 13, I finally went to the Lake Elmo City Office, to find out what, if anything, I could do about the Breheim's barking dogs. I was given a copy of the Breheim's Conditional Use Permit, which stipulates that the

their kennel "shall be set back 400 feet from existing property owners." That really surprised me, since the Breheim's property is only 205 feet wide, and their kennel is only about 80 feet from my property. Standing at the counter in the lobby of the Lake Elmo City Hall, I wondered out loud to the woman behind the counter why the Breheims have held that CUP since January 1, 1985, without telling anyone that the size of their property has never met the conditions of the CUP that they had been granted, and without ever asking anyone to correct that supposed error in their CUP.

That same evening, Mrs. Breheim called me on the telephone. When I said, "Hello," she snapped, "This is Gerry Breheim. I'd just like to know "WHAT is YOUR PROBLEM over there?!!" Stunned at her anger and rudeness, I waited a few seconds and then quietly hung up the phone. She did not call back.

Mrs. Breheim's abusive phone call made me wonder who had told her that I had complained about her dogs at Lake Elmo City Hall that same afternoon. After all, my complaint was supposed to have been anonymous. I began to suspect that Mrs. Breheim had a friend in the Lake Elmo City Hall.

That's when I decided to start contacting you directly about this problem. Since this past summer, I have written email messages to you several times, to document the continuing problem and to inquire about the City's progress toward solving it. I have attached copies of 2 of my email messages to you, and I request that they be included as part of the official record of this hearing.

At your request, I have also kept a record of the times that I have been disturbed by the Breheim's barking dogs since August 15 of this year. To this date, I have recorded over 20 such events, some as early as 6:00 in the morning, and some as late as 11:30 at night. I have also called the Sheriff's office a couple of times to report the barking. I have attached a copy of my record of barking dog incidents since August 15 of this year, and I request that it be included as part of the official record of this hearing.

Ever since August 13, the night that Mrs. Breheim called to yell at me, I have had only one other contact with her. At 11:30 in the morning on November 6 of this year, just 2 weeks ago, I was getting my mail from my mailbox at the end of my driveway. Mrs. Breheim drove by in her van. She stopped right next to me, shouted, "You have a problem over there... next door!" and drove away. I ignored her and said nothing, but I immediately wrote to you to document what had happened.

I understand that the correction of a clerical error on a Conditional Use Permit is typically a foregone conclusion, but I ask you to please consider the following before you take a vote on this issue:

- How you would feel if you were repeatedly awoken late at night and early in the morning by the loud, shrill barking of your nextdoor neighbor's dogs?
- How would you feel if your neighbor repeatedly chose to do nothing to stop their dogs from barking?
- How would you feel if the owner of the barking dogs acted as if YOU were the problem, and chose to harass you by telephone and by shouting things at you, all because you had complained about their dogs' barking.

Finally, how would you feel if Geraldine Breheim and her barking dogs lived next door to YOU?

Thank you for your thoughtful consideration of this letter.

## ComputerBob

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**From:** ComputerBob [computerbob@computerbob.com]  
**Sent:** Friday, August 13, 1999 4:48 PM  
**To:** Lee Hunt  
**Subject:** Anonymous Complaint Not Anonymous

Mr. Mayor,

This email message is to document what I told you on the phone about an hour ago, regarding my neighbor's barking dogs, and my complaint about it.

About an hour before you and I spoke on the phone this afternoon, my next door neighbor called me on the phone. When I answered, there was a pause of a few seconds, and then she very angrily said,

"This is Gerry Breheim. I'd just like to know WHAT is YOUR PROBLEM over there?!!!"

I waited for a second and then quietly hung up the phone. It was obvious that my neighbor knew that I was the one who had complained, despite the fact that her dogs can be heard from 5 doors away in any direction. It was also obvious that she considers my complaining about her barking dogs to be the problem in this situation, rather than the fact that her dogs are always barking.

As you and I discussed this afternoon, my neighbor had probably just received a letter from the city, asking her to control her barking dogs. As we both know, it is illegal for city employees to divulge the name of an anonymous complainant to anyone, yet I suspect that that is exactly what happened in this case.

I believe that this message pretty much summarized what you and I discussed this afternoon.

--  
Bob Henderson



## ComputerBob

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**From:** ComputerBob [computerbob@computerbob.com]  
**Sent:** Saturday, November 06, 1999 12:13 PM  
**To:** Lee Hunt (E-mail)  
**Subject:** FW: Anonymous Complaint Not Anonymous



Mr. Mayor,

I'm writing to inform you that the problem with Barry and Gerry Breheim's barking dogs has continued since you and I last discussed it. As you previously requested, I have attached an Excel spreadsheet, documenting the dates and times that I have heard the Breheim's dogs barking uncontrollably since this past August, including once or twice that I actually called the Sheriff's office about it.

An additional disturbing note: About 30 minutes ago, I arrived home from teaching a Saturday morning computer class, and stopped at the end of my driveway to check my mail. Mrs. Breheim pulled up in her van, stopped next to me, rolled down her window, shouted, "You have a problem over there... next door!" and sped away. I kept looking at my mail and ignored her. As you may remember, Mrs. Breheim called me on the phone a couple of months ago to say that same thing. (see message below).

I ask that your office take appropriate action to end the barking, both from the Breheim's dogs, and from Mrs. Breheim herself.

Thank you.

--  
Bob Henderson

-----Original Message-----

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--

Bob Henderson

## Breheim's Barking Dogs at 8415 38th Street North

DATE	TIME	DURATION	NOTE
August 15, 1999	7:00 PM	5 minutes	
August 16, 1999	6:00 AM	10 minutes	Woke us up - Bonnie closed windows and turned on fan
August 17, 1999	6:30 AM	5 minutes	Woke me up
August 17, 1999	6:20 PM	10 minutes	
August 28, 1999	6:30 PM	10 minutes	
August 29, 1999	9:15 PM	10 minutes	Closed window - turned on fan to cover the sound
August 30, 1999	9:30 PM	10 minutes	
September 7, 1999	9:30 PM	10 minutes	
September 8, 1999	6:30 AM	10 minutes	
September 17, 1999	3:30 PM	10 minutes	
September 17, 1999	5:25 PM	10 minutes	
September 23, 1999	11:30 PM	10 minutes	
September 24, 1999	7:00 AM	15 minutes	Woke me up
September 24, 1999	5:30 PM	15 minutes	I walked out to look - she was in the back yard with the dogs. Two were tied on ropes, barking and yipping, while she worked with a third. She didn't see me. She made no effort to quiet the 2 dogs who were making all the noise. I called the Sheriff's Office to complain.
September 27, 1999	6:00 AM	5 minutes	Woke me up - turned on fan to cover the sound
October 10, 1999	10:30 AM	5 minutes	
October 10, 1999	7:00 PM	10 minutes	
October 17, 1999	7:15 AM	10 minutes	Woke me up - I called the sheriff's office to complain
October 17, 1999	6:15 PM	5 minutes	
November 6, 1999	11:30 AM		I was at my mailbox by the side of the road when Mrs. Breheim drove by in her van. She stopped, shouted "You have a problem over there... next door!" and drove away. I ignored her and said nothing.
November 16, 1999	5:30 PM	5 minutes	
November 17, 1999	6:30 PM	5 minutes	
November 20, 1999	10:30 PM	5 minutes	