

City of Lake Elmo

777-5510

3800 Laverne Avenue North / Lake Elmo, Minnesota 55042

The Lake Elmo Planning Commission will meet Monday, February 26, 2001 at 7:00 p.m., in the Council Chambers of City Hall, 3800 Laverne Avenue North, Lake Elmo, Minnesota.

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AGENDA

Convene with "Old Village" Special Projects Members

1. Public Hearing: "Old Village" Architectural Guidelines (continued from 1/22/01)

Adjourn "Old Village" Special Projects

Re-Convene as Planning Commission

2. Public Hearing: Variances Section 300.07 Subd. 4.K.5
Minimum District Requirements - Limited Business
Frauenshuh Companies - 8980 Hudson Blvd.
3. Public Hearing: Repeal Section 535.07 Subd. 1.G
Permitted Signs in Residential Districts
4. Site Plan Amendment: Countryside Wood Products
8603 N. 34th Street
Walter Pechan
5. Other
6. Adjourn

Note: The Environmental/Solid Waste Special Project Members will meet with the Planning Commission at its March 12, 2001 meeting, from 6:00 p.m.- 7:00 p.m.

~~DRAFT~~

Approved

Lake Elmo
Planning Commission

Meeting Minutes
Monday, February 26, 2001

"Special Projects" Old Village District

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 Berg, Brass, Deziel, Herber, Mandel, Sedro, Sessing, John, Herried and Williams. Absent: Commissioners Helwig, Ptacek, Taylor, Bucheck, and Frost. Also present: Planner Dillerud.

Chairman Armstrong explained that the 1997 Village Commission enabling ordinance mandates creation of Old Village design standards. He further explained that in January 2001, the City Council repealed the Village Commission Ordinance, appointed five individuals to participate as full voting members of the Planning Commission to meet occasionally to make recommendations to them regarding issues relating to the old village. He noted the proposed ordinance and a cover memo had been distributed to all parcel owners in the old village proposed geographic area, and comments from them were invited at the meeting. He opened the comment portion of the Public Hearing at 7:05 p.m.

Scott McDonald - Attorney representing
Roy & Laura Abbott, property owners
Mr. McDonald read a prepared statement (attached).

Planner Dillerud explained that, in 1997, the City Council directed the Village Commission to come up with Old Village Design Guidelines, and the result of that is a document, which was converted into Ordinance form. He said, with respect to the subjectivity of the document - it is difficult to discern what looks good, and what doesn't. He said the future of the document is adoption of the Ordinance, or create Policy, or "go no where." He noted in the past 30 months, the City has approved 6 commercial projects in the Old Village area - 4 of which were "controversial."

Robert Novak
2925 Klondike Avenue - Owner/Lake Elmo Oil
Mr. Novak stated he was opposed to the proposed ordinance, and suggested the commissioners take a look at how development in the old village occurred 15-20 years ago- stating business owners made sound design decisions on their own, without an ordinance in place. He noted that Joe Bush (owner-Bush Building, Lake Elmo Avenue) was not required to consult the City regarding his plan, and yet, he did, and it turned out well. He said property owners may want to reference the guidelines, but no ordinance was necessary. He said government does not need to get more involved.

Sherry Haley (on behalf of W.C. Blanton)
3012 Lake Elmo Avenue
Ms. Haley read a prepared statement (attached)

Liz Johnson
2945 Lake Elmo Avenue

Ms. Johnson asked why the City would want to perpetuate what is automatic for them. She said she did not want her tax dollars spent on enforcement of the standards; the ordinance does not address issues in the old village that affects the health, safety and welfare of residents; the result will cost property owners more money; senses the City does not listen to what affected property owners want; and, presented a petition (attached).

Daniel Rude
3250 Kraft Circle N.

Mr. Rude said he was opposed to the proposed ordinance because it limits diversity; restricts the dynamics of change; the geographic area is exaggerated, and wants to see closer boundaries. He noted he has a buildable lot, and all the other homes are "ramblers", thus, if the ordinance were in effect, any home built would not match those nearby, and ultimately would not be permitted. He said he felt the proposed ordinance created a special class, and asked if design standards were adopted in areas outside the overlay district. He said the ordinance was opposed to a common sense; does not approach health, safety & welfare of residents in the old village; and, does nothing more than protect the City from "bad architecture."

Steve Continenza
3686 Layton Avenue N.

Mr. Continenza said he thought the ordinance placed a great burden on the commercial property owners in the old village, those who have made great design decisions so far. He said he personally felt no one had the right to tell him what he has to do concerning what color he paints his house, or how it is designed. He said he thought the ordinance was simply covenants for the overlay district. He said he was tired of the City messing with his rights, and requested the entire issue be dropped.

John Dresler
11550 Stillwater Boulevard.

Mr. Dresler said, "At a previous meeting, a local architect mentioned a quirky building located on Highway 5." He said, "maybe I like quirky." He said he thought it was arrogant for government to impose such standards; asked if we really want more laws; and, said this issue is a dead horse.

William Hagberg II
3060 Lake Elmo Avenue

Mr. Hagberg noted several commercial structures, such as the Joshua Taylor Building, Savanna Designs, and the Bush Building in the old village district that were not directed by architectural guidelines – his point being good design was not directed by government.

Roy Abbott
4455 Lake Elmo Avenue

Mr. Abbott read a prepared statement (attached).

Steve Erban
Lake Elmo Old Village Commercial Property Owner

Mr. Erban said he thought Section 326.05 should focus on doing something about the sidewalks in the Old Village District.

Chuck Siedow
3585 Laverne Avenue

Mr. Siedow asked the audience if anyone wanted this ordinance (no response). He requested the Planning Commission make a motion to recommend the City Council drop the issue.

Steve Continenza

3686 Layton Avenue

Mr. Contineriza thanked the Planning Commission for circulating the notice and draft ordinance to all property owners in the Old Village District. He requested Old Village property owners are sent updates and meeting schedules, so this issue does not "get lost."

Chairman Armstrong closed the comment portion of the Public Hearing at 7:55 p.m., and thanked the audience for participating in the discussion.

M/S/P Armstrong/Berg - to table the issue until such time that the City Attorney can review the constitutionality of the ordinance and respond in writing to the Planning Commission.

Commissioner Berg said he supported the motion, stating much more discussion time is necessary, and it would not be good judgement to make a recommendation at this time.

Planner Dillerud questioned what form of notification to the residents was preferred.

Commissioner John suggested notification of the March 26, 2001 Planning Commission meeting dealing with the Old Village Design Guideline Ordinance should be circulated in the same manner as was for the February 26, 2001 meeting.

Commissioner Deziel said he agreed with the audience members who spoke in opposition to the ordinance, thanked them, and asked his fellow commissioners to look at the foundation/roots of the proposed ordinance - stating he felt it was not a reasonable.

Planner Dillerud said he wanted to "keep the ball rolling", stating the ordinance deserved to be tabled to a future meeting, the reason being the 2+ years of work by the Village Commission.

Commissioner Brass said she favored the motion because she felt making a snap judgement on something that has been worked on for so many years would not be a good call.

Dan Rude

Resident

Mr. Rude said he felt there was a flaw in the original charge to the Village Commission; it bothered him that the City wanted to "fix something that is not broken"; and, delaying a decision on this issue was simply a stalling tactic.

Resident

A resident asked why the City was willing to spend more of their tax dollars on something when none of the affected people supported doing so.

(Motion Passed 7-1). Opposed: Deziel

Adjourn as Old Village Special Project Commission

Break - 8:10 p.m. - 8:20 p.m.

Convene as Planning Commission

1. Agenda

**M/S/P Berg/Brass – to accept the Agenda, as presented.
(Motion Passed 8-0).**

2. Minutes – February 12, 2001

Todd Williams requested the approval of Special Project portion of meeting minutes be distributed separately, and reviewed for approval only when the Special Project members were in attendance.

There was discussion pertaining to meeting times. It was agreed that meetings with special project members would be discussed at the March 12, 2001 meeting, and a decision regarding meeting time policy would follow.

**M/S/P Sessing/Herber – to approve the February 12, 2001 meeting minutes, as amended.
(Motion Passed 6-0-2). Abstain: Brass, Deziel.**

**3. Public Hearing: Variances – Section 300.07 Subd. 4.K.5
 Minimum District Requirements – Limited Business
 Frauenshuh Companies – 8980 Hudson Boulevard**

Planner Dillerud said on February 12, 2001, the Planning Commission recommended approval of a Section 520 Site Plan for construction of a dental facility of 10,000 square feet on a site of 1.4 acres. He noted the commissioner's approval was subject to several conditions, including subsequent consideration and approval of the variances identified. He reported that on February 20, 2001, the City Council tabled consideration of the Frauenshuh/Park Dental Site Plan pending a decision by the Planning Commission regarding the variances. He explained that the variances were the minimum lot area requirements of the Business Park zone of 3.0 acres, to the proposed 1.4 acres; and, from the Business Park minimum building setback from a property line adjacent to lands zoned Residential of 150 feet, to the proposed 30 feet. He said the subject is a lot of record created well before the Business Park minimum lot area standard was adopted; and, a building setback standard designed for application to lots created under BP area and aspect ratio standards, not earlier zoning standards under which the subject lot was created. Therefore, application of either standard from which variances are requested, when coupled with the minimum building footprint requirement of 10,000 square feet, render the lot of record essentially unbuildable under the Business Park classification.

Planner Dillerud said, based on the following finding, staff recommends approval of the variances requested:

1. The circumstances of this parcel are exceptional in that it is a substandard Lot of Record created by City zoning classification actions of recent date. Only one (1) other lot now zoned Business Park exhibits similar circumstances.
2. The literal interpretation of Business Park standards and provisions would deprive the applicant of rights enjoyed by other owners of property within the Business Park Zoning District.
3. The circumstances that result in the variance requests are not the result of actions by the property owner. It is the City that recently amended the zoning of the parcel, and applied the new Business Park standards.
4. No special privilege will result to this property owner not enjoyed, under similar circumstances, by other Business Park property owners.

5. The variance requested appears to be the minimum necessary to alleviate the hardship while permitting construction of the minimum building footprint, as also required by Business Park standards.
6. The variance would not be detrimental to the purposes of the Business Park zoning district or other properties within that district.
7. A hardship exists – not self imposed by the applicant – that is related to the physical characteristics of the site which are the result of recent zoning district and design standards that are inconsistent with the shape and size of a historic Lot of Record.

Chairman Armstrong opened the comment portion of the Public Hearing at 8:40 p.m.

Todd Williams

3025 Lake Elmo Avenue

Mr. Williams said he felt the plan would be good for Lake Elmo, but was concerned about commercial businesses abutting a residential zone. He noted that because this business is localized in this case, he requests comments from the adjacent property owner.

Chairman Armstrong closed the comment portion of the Public Hearing at 8:41 p.m.

Planner Dillerud explained that the property east to Keats was guided Limited Business for years, up until the new land use plan. The Planning Commission recommended it remain Limited Business, and become Business Park once the MUSA was extended. He noted the City Council appeared to be unhappy with the early phases of Eagle Pointe Business Park. Because of this, the City Council decided to guide all land in the I-94 Corridor east of Eagle Pointe as RAD, pending a review of the Business Park Development performance standards. The City Council implied that once the Business Park standards were improved they would consider Limited Business guiding along the I-94 corridor as far east as Keats, consistent with the Planning Commission recommendation.

Commissioner's Brass and Mandel said they would not support a motion to approve of variances because of the residential property to the east. Commissioner Brass suggested the applicant could locate within the Eagle Pointe Business Park.

M/S/P Sessing/Deziel – to approve Resolution Number PZ 2001-10, Zoning Ordinance Variances for Frauenshuh Companies to permit a lot area of 1.4 acres where 3.0 acres is required; and, to permit a setback of 30 feet from a building to a property line where 150 feet is required because the adjacent property is zoned residential, based on the following findings:

1. The circumstances of this parcel are exceptional in that it is a substandard Lot of Record created by City zoning classification actions of recent date. Only one (1) other lot now zoned Business Park exhibits similar circumstances.
2. The literal interpretation of Business Park standards and provisions would deprive the applicant of rights enjoyed by other owners of property within the Business Park Zoning District.
3. The circumstances that result in the variance requests are not the result of actions by the property owner. It is the City that recently amended the zoning of the parcel, and applied the new Business Park standards.
4. No special privilege will result to this property owner not enjoyed, under similar circumstances, by other Business Park property owners.

5. The variance requested appears to be the minimum necessary to alleviate the hardship while permitting construction of the minimum building footprint, as also required by Business Park standards.
6. The variance would not be detrimental to the purposes of the Business Park zoning district or other properties within that district.
7. A hardship exists – not self imposed by the applicant – that is related to the physical characteristics of the site which are the result of recent zoning district and design standards that are inconsistent with the shape and size of a historic Lot of Record.

and, subject to redevelopment of the site responsive to the Site Plan staff-dated February 7, 2001.

(Motion Passed 6-2). Opposed: Brass, Mandel.

4. Public Hearing: Repeal Section 535.07 Subd. 1.G
Permitted Signs in Residential Districts

Planner Dillerud said, as directed, staff published a Public Hearing Notice regarding the initiative of the Commission to repeal the portion of the Sign Code that permits neighborhood monument signs with a Conditional Use Permit.

Chairman Armstrong opened the comment portion of the Public Hearing at 9:00 p.m.

Ann Bucheck
2301 Legion Avenue

Ms. Bucheck said she thought neighborhood signs were terrible, distasteful, and some look like caskets. She asked who was going to maintain them. She said she wants some neighborhood signs removed.

Todd Williams
3025 Lake Elmo Avenue

Mr. Williams said he felt neighborhood signs are distasteful, separate the city into smaller cliches; lends an air of exclusivity; implies other areas in the city are not so nice; and, supports the repeal.

Chairman Armstrong closed the comment portion of the Public Hearing at 9:03 p.m.

M/S/P Mandel/Herber – to recommend the City Council Repeal Section 535.07 Subd. 1.G, Permitted Signs in Residential Districts, of the Municipal Code.

(Motion Passed 7-1). Opposed: Deziel: Sees neighborhood signs as reasonable marking.

4. Site Plan Amendment: Countryside Wood Products
8603 34th Street North
Walter Pechan, applicant

Planner Dillerud explained the applicant proposes the construction of a 2,000 square foot, freestanding accessory structure on the site. He noted the structure would be used for the storage of materials associated with the Countryside Wood Products light manufacturing use of the site, as approved by the 1998 Conditional Use Permit. He said the accessory structure would be of similar design, and the same exterior finish as a portion of the principal structure, noting no additional parking or driving area is proposed. He said MnDOT, Valley Branch Watershed District, and the City Engineer have been advised of the proposed Site Plan Amendment, stating MnDOT has responded with no comments or additional requirements. He said the City Engineer noted the

possible need for enlarged storm water storage, and Valley Branch Watershed District had not commented, as yet.

M/S/P Armstrong/Herber - to recommend the City Council approve a Site Plan Amendment to Walter Pechan-Countryside Wood Products for the construction of a 2,000 square foot accessory structure at 8603 34th Street North, in the Limited Business Zoning District, with the following conditions:

1. Compliance with the recommendations of the City Engineer, including those Valley Branch Watershed District recommendation determined appropriate by the City Engineer;
2. The height of the Accessory Building Permit shall not exceed that of the Principal Building existing on the site.
3. Prior to issuance of the Building Permit for the Accessory Building, the applicant shall provide a recordable memorial precluding use of the accessory structure for storage/warehousing other than that directly related to the approved light manufacturing use of the Principal Building. Said memorial to be recorded on the title to site by the City Attorney.
4. The applicant shall provide City Staff with evidence of enhanced site landscaping equal in value to 2% of the estimated construction cost of the Accessory Structure, with security to ensure such enhancement to be provided the City prior to Building Permit issue.

(Motion Passed 7-1). Abstain: Brass

Chairman Armstrong adjourned the meeting at 9:15 p.m.

Respectfully submitted, Cynthia Young-Planning Secretary

LAWSON, MARSHALL, McDONALD & GALOWITZ, P.A.
LAWYERS

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FEB 26 2001
CITY OF LAKE ELMO

Of Counsel
Roderick A. Lawson
Elizabeth A. Raleigh

February 25, 2001

Honorable Members of the Lake Elmo Planning Commission

RE: Abbott property and Old Village Architectural Control Overlay District

Ladies and Gentlemen:

This office represents Roy and Laura Abbott concerning zoning matters relating to their property at 4455 Lake Elmo Avenue North. Mr. and Mrs. Abbott have reviewed the proposed ordinance which would subject a portion of their property to the Old Village Architectural Control Overlay District. The Abbotts own over 100 acres in Lake Elmo and will be perhaps the single most affected property owners if the proposal is adopted. They strongly oppose the ordinance. The ordinance in its present form is inappropriate generally and especially as it relates to the Abbott property for the following reasons:

1. The description of the proposed zone as used in the Notice of Public Hearing is erroneous. It refers to the north boundary of the zone as a line drawn from the centerline of Section 12 to the centerline of Section 14. In fact Section 11, not Section 14, lies west of Section 12.
2. The ordinance appears to have been written with the idea of keeping the "Old Village" area looking like the old village. Somewhere in the review process a decision was made that the ordinance should not apply to existing residential structures in the old village. The result of that decision is to require new construction to look like someone's idea of the old village but without preserving the need for the old village to continue to look like the old village. It defies logic to ordain that new homes or buildings must look like the old but the old can be changed to look like something new.
3. The proposed ordinance tends to rely on subjective aesthetic standards that could not be enforced in court. A few examples are the line in 326.05 (C) (2) which states "The location, proportion, size, rhythm and detailing of windows and entries shall be consistent with these traditional Village forms." One can only imagine the difficulty facing a fact finder trying to establish whether the **rhythm** of the windows in a proposed structure meets the standards of the ordinance. Another example is in Section 326.05 (B) 5 which states, "New construction shall conform to the massing, volume, height, facade proportions and scale of buildings within view of the site and also comply with existing zoning regulations." Even if an owner could establish whether a building had the same **massing** as others in sight the others may be of different

massing. Furthermore, since the old buildings will predate the existing zoning ordinances it may well be impossible to both match the old buildings and meet the current ordinance.

The ordinance is full of references to buildings being "compatible" with or "consistent" with some standard. The wording appears to be taken from development covenants where an architectural review committee determines the acceptability of plans. It just doesn't work for an ordinance. The proposal recognizes this problem in Section 326.07 (B). That section directs that an architect shall certify the "compliance of the plans to this section." Does that mean an architect will be required for every home built in this district?

4. The commercial buildings which can be seen from the Abbott property look nothing like the buildings in the traditional old village area. The Brookfield I and II buildings are most visible from the Abbott property. Are they Colonial Revival, Tudor or Italian Renaissance? Again it appears the proposal is to conform to the main street area which can't even be seen from the Abbott property.

5. The proposed zoning district divides the Abbott property in half further complicating any proposed development of the parcel.

6. The City's power to zone is derived from its ability to protect the public health, safety and welfare. Overreaching attempts at zoning result in an unconstitutional taking of property subjecting the City to damage claims from affected property owners. When the City starts enacting laws relating to matters of color, architectural style and kind not quality of building materials it is crossing the line between safety and intrusion and the line between lawful regulation and taking. Directing how a home built on one's own property must look (as opposed to the soundness of its construction) is not a giant step from directing what a person may say or where a person should worship. To mandate how a home built on a person's own land should look stifles creativity and values the aesthetic tastes of a few individuals over a person's right to reasonable use of their own property.

This ordinance represents many hours of work by well meaning people who have a vision of how they want the community to look. The vision is not necessarily shared by everyone. It would be more appropriate for those areas of the old village which have already been exempted from its coverage. It is not a vision which should be forced upon other property owners in the City. The City already has and uses ordinances to restrict and protect the development of property within the proposed area. Adoption of this ordinance will not serve a useful purpose and will likely result in unnecessary litigation and animosity for the City. On behalf of Mr. Abbott we urge you not to adopt or recommend this ordinance. If the ordinance is adopted the Abbott property should not be included within the boundaries. The Abbotts are vehemently opposed to their property being included in the ordinance and although they would like this resolved in a friendly manner they are prepared to take all action necessary to have their property excluded from the arbitrary and unreasonable provisions of this proposed ordinance.

Sincerely,


John S. McDonald

ORIGINAL

Recd.
2/26/01
for P2-
[Signature]

**COMMENTS IN OPPOSITION TO PROPOSED
NEW ZONING ORDINANCE SECTION 326**

Reasonable land use regulation is necessary in a modern urban society in order to accommodate competing societal interests in such a way as to minimize their adverse effects on each other. However, the proposed amendment to the City of Lake Elmo Zoning Ordinance that would add a new Section 326 (“Section 326” or “Amendment”) establishing purely aesthetic architectural standards applicable to certain structures in the City¹ is an effort at unreasonable, unnecessary, unwise, and unacceptable regulation of and interference with purely private property rights. For the numerous reasons discussed below, the Lake Elmo Planning Commission should recommend to the Lake Elmo City Council that proposed new Section 326 should not be adopted and the City Council in turn should not adopt proposed new Section 326.

The Proposed Amendment Is A Bad Idea At Its Core

At the root of the proposed Amendment is the pernicious idea that some people have the right to impose their personal aesthetic standards on an entire community. That idea is fundamentally contrary to the basic principles of a free society. Absent the existence of some exceptional circumstances not present in the Old Village, no American government has the right to impose any group’s purely personal aesthetic judgments on others. This bad idea is exacerbated by the lack of objective standards in proposed Section 326 that requires further case-by-case subjective taste judgments in implementing the proposed aesthetic/architectural standards.

As drafted, of course, the proposed Amendment applies only to existing commercial buildings and newly-constructed residences. However, all property owners in the Subject Area (indeed, all City residents) will be affected if the proposed Amendment is adopted. First, as a

¹ The area subject to proposed Section 326 extends well beyond the boundaries of what is commonly understood to constitute the Old Village and, therefore, will be referenced herein as the “Subject Area.”

practical matter, proposed Section 326 is a long step down a slippery slope. The proposed Amendment was initially drafted to apply to all property in the Subject Area; and, once the precedent of government control of purely aesthetic features of some structures in the Subject Area is established, it will be a simple — and likely — matter to extend that control throughout the entire Subject Area as originally intended by the drafters and proponents of the Amendment. Second, and more fundamentally, the proposed Amendment's initial deprivation of the fundamental rights of a small minority of City residents is a de facto deprivation of the rights of all. When the government confiscates one person's fundamental rights, every one subject to that government's power also loses the same rights, because they have by that confiscation become converted to mere privileges that may be enjoyed only at the government's sufferance.

In short, the Planning Commission and the City Council must recognize and respect the basic right of American citizens to manage their own affairs as they see fit with respect to matters that do not affect the fundamental rights of other citizens. The Old Village is a living, evolving community; and none of its residents and their property should ~~not~~ be turned into a petrified museum for the enjoyment of others.

The Proposed Amendment Exceeds The City's Authority

The City's Zoning Authority is established by — and limited by — statute. Under Minnesota law, the City may enact a zoning ordinance only for the purpose of promoting the “public health, safety, morals, and general welfare.” M.S.A. § 462.357. It is clear, however, that proposed Section 326 is not intended for this purpose. Rather, it is intended solely to impose upon property owners in the Subject Area the purely personal aesthetic tastes of the drafters and supporters of the proposed Amendment.

Furthermore, under Minnesota law, the City may implement its limited zoning authority only by regulating the “location, height, width, bulk, type of foundation, number of stories, size

of buildings and other structures, the percentage of lots which may be occupied, the size of yards and other open spaces, the density and distribution of population, the uses of buildings and structures . . .” and by establishing standards and procedures regulating such uses. Id. Proposed Section 326, however, far exceeds the City’s authority in this regard by establishing detailed standards, requirements, and limitations regarding purely aesthetic aspects of the exterior design and construction details of otherwise perfectly conforming structures employed for perfectly conforming uses under the terms of the existing Zoning Ordinance.

It appears clear from the explicit statement of goals, objectives, purpose and intent in proposed Subsection 326.01 and the rest of proposed Section 326 that the drafters and supporters of the proposed Amendment are essentially attempting to declare the entire Subject Area some sort of historic district and thereby freeze the architectural and aesthetic standards of that area in their current state. The Subject Area, however, has not been identified as a historic district under the Minnesota Historic District Act of 1971. M.S.A. § 138.73.

To the extent the City might otherwise have any authority to impose purely aesthetic standards on some or all property owners, proposed Section 326 exceeds that authority. The proposed Amendment is overly broad in scope; it is vague, non-specific and almost entirely subjective in its standards; and it is incapable of being applied in a consistent manner. As such, the proposed Amendment is very likely to be unlawful.

**The Proposed Amendment Will Have Adverse Effects On The City,
The Old Village, and City Residents**

For the reasons pointed out above, it is highly likely that the proposed Amendment exceeds the City’s zoning authority. It is, therefore, even more likely that the proposed Amendment will be challenged in court by one or more affected property owners. Whether or not the proposed Amendment is upheld, defending it in court will involve a significant expenditure of taxpayer funds.

If the proposed Amendment were to withstand challenge in the courts, it nonetheless is highly likely that proposed Section 326 is sufficiently restrictive of changes in existing structures and the use of undeveloped property that significant "takings" issues will arise in many cases. If a "taking" for a public purpose is effected by the proposed Amendment, of course, taxpayer funds will be utilized to compensate the property owners whose rights have been taken. Even if it is ultimately determined that no "taking" has occurred in a given instance, it is taxpayer funds that will be used to defend all the "takings" cases that will be prompted by proposed Section 326.

Furthermore, given the scope and degree of detail involved in the standards, requirements, and restrictions included in the proposed Amendment, the process of reviewing building permit applications will be significantly more complicated and time-consuming than is presently the case. This, too, will involve a significant expenditure of taxpayer funds.

Additionally, the proposed Amendment will directly contribute to a decline of the Old Village commercial area generally and will, at a minimum, serve as a substantial disincentive to any physical upgrade or improved use of existing structures. By effectively freezing existing structures in time, the proposed Amendment will saddle property owners with antiquated and dysfunctional structural elements and preclude them from utilizing available cost- and function-effective building materials. Similarly, the process of obtaining a building permit will also be more complicated, time-consuming, and expensive for any directly affected property owner. This expense in and of itself is likely to deter any property owner who otherwise might be inclined to improve an existing structure. The proposed Amendment thereby will generally inhibit directly affected property owners from improving (or even maintaining) existing structures and instead will encourage them to allow their structures to deteriorate.

Having access to basic goods and services in one's own community, literally within walking distance for many Old Village residents is a highly desirable and greatly appreciated

aspect of small town life. City policies, then, should encourage, rather than discourage, existing and new businesses in the Old Village commercial district that provide amenities for Old Village and other City residents. Otherwise, residents must obtain all required and otherwise desired goods and services elsewhere, with the attendant increased costs, inconvenience, and adverse environmental consequences of additional automobile use. To the extent that the proposed Amendment discourages the establishment and promotion of local businesses, the quality of life for Old Village residents will suffer.

The proposed Amendment will adversely affect property values both in and near the Old Village. The most immediate impact will be on directly affected property owners. If neither current owners nor prospective buyers can remodel or renovate an existing structure in order to reflect current tastes and standards, the market value of that property obviously will be decreased. This principle also applies (perhaps even more so) to owners of undeveloped property and owners of property on which existing structures are sufficiently modest that the best use of the property would be to take those structures down and build new from the ground up; the market for newly-built outmoded homes is not large.

There also, though, will be an indirect adverse affect on all property values in and near the Old Village area. To the extent that property owners are not allowed, or choose not to undergo the costs, to improve their property in accordance with current standards because of the restrictions that would be imposed by the proposed Amendment, there will be physical deterioration of existing structures and a corresponding decline in property values throughout the area. Furthermore, to the extent that existing structures simply are not improved in accordance with current standards, neighboring properties will not enjoy increases in value comparable to other areas.

As Drafted, The Proposed Amendment Is Grossly Flawed

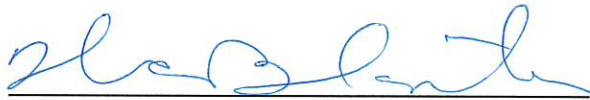
It is clear that proposed Section 326 was drafted to apply to all existing structures in the Subject Area. The subsequent limitation of the proposed Amendment so that it would apply only to existing commercial structures and new residential structures has not been accompanied by appropriate modifications throughout the remainder of proposed Section 326. Most notably, much of proposed Section 326 is devoted to the preservation of existing residential structure features that exist on few, if any, existing commercial buildings. As such, many provisions of the proposed Amendment are completely pointless.

As Subsection 326.01 on its face acknowledges, there are at least ten architectural styles represented in existing Old Village structures, yet the proposed Section 326 provisions provide no guidance as to which of these styles must be utilized in new construction. Similarly, to the extent that an existing structure is a hodgepodge of architectural styles, the proposed Amendment provides no guidance as to which of these styles must be preserved in any particular instance; and if the hodgepodge itself must be preserved, there is a serious internal inconsistency between the standards to be applied for new and existing structures.


Finally, the proposed Section 326 provides no objective bases for many, if not most, of the judgments that must be made by City employees in attempting to implement the vague architectural/aesthetic standards with respect to covered structures. Therefore, the proposed Amendment is fundamentally incapable of being reasonably, rationally, and economically implemented. Rather, the "standards" in proposed Section 326 are so subjective and nonspecific that there is a very high likelihood of either innocent or arbitrary discriminatory treatment of similarly situated property owners.

The Purported Benefits Of The Proposed Amendment Are Negligible

Under the current scope of the proposed Amendment as set forth in Subsection 326.03, the standards established by proposed Section 326 will apply to fewer than 20 existing structures in the Subject Area, i.e., existing commercial buildings. No other existing structures will be covered. Thus, there will be essentially no aesthetic/architectural standards applicable to the vast majority of existing structures, all of which therefore can be — and likely will be, over time — transformed in accordance with evolving societal tastes and norms. Consequently, the extent to which the Old Village will or won't retain its current appearance will be overwhelmingly the result of social and economic factors totally unhindered by the proposed Amendment. Under these circumstances, the extraordinary administrative efforts and significant costs that will be associated with implementing the proposed Amendment will have virtually no observable benefit even on its own terms.



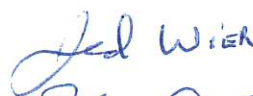

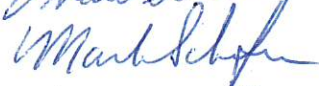



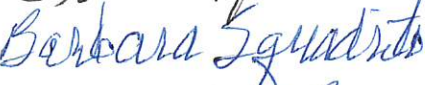




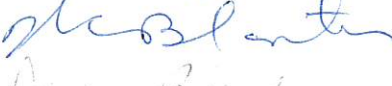

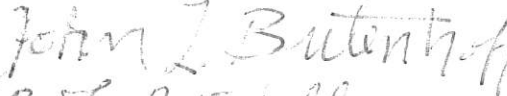
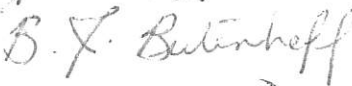

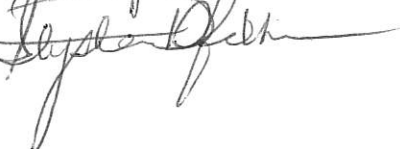
W. C. Blanton
3012 Lake Elmo Avenue North

Rec'd @
 County 8/26/01


65 Signatures ①

PETITION

We, the undersigned residents of the City of Lake Elmo, hereby urge the Lake Elmo Planning Commission to recommend that the Lake Elmo City Council not adopt the proposed amendment to the City Zoning Ordinance that would add a new Section 326 establishing new architectural standards to certain existing and new structures, and further urge the City Council not to adopt the proposed amendment.

SIGNATURE	NAME	ADDRESS
	JED WIER	10875 43rd ST N
	FRAN POTT	10833 33rd ST N.
	MARK SCHAFFEN	11144 STILLWATER BLVD. N.
	HARRIETT ARNDT	3315 LAMPERT AV. NO
	MICHAEL T NOVAK	11123 UPPER 33rd ST No.
	FRANK SQUADRITO	3570 LAVERNE AVE N.
	BARBARA SQUADRITO	3570 LAVERNE AVE. NO.
	ARLINE BEUTEL	3590 LAVERNE AVE NO
	BRUCE BEUTEL	" " "
	MIKE ZIEMER	11091 STILLWATER BLVD
	MIKE ZIEMER	11079 Stillwater Blvd.
	W.C. BLANTON	3012 Lake Elmo Ave. N.
	DARIA BLANTON	3012 Lake Elmo Ave. N.
	JOHN BUTENHEFF	2976 LAKE ELMO AVE. N.
	B. BUTENHEFF	" " " "
	ELIZABETH JOHNSON	2945 Lake Elmo Ave. N.
	STEPHEN JOHNSON	" " " "

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<u>SIGNATURE</u>	<u>NAME</u>	<u>ADDRESS</u>
<i>April C. Schumacher</i>	APRIL SCHUMACHER	3625 LAKE ELMO AVE.
<i>Kurt Schumacher</i>	Kurt Schumacher	3625 Lake Elmo Ave N.
<i>Dale F. Dorschner</i>	DALE F. DORSCHNER	3150 Lake Elmo Ave
<i>Dave Faint</i>	DAVE FAINT	3617 LAVERNE AVE W
<i>Kristin Hagberg</i>	KRISTIN HAGBERG	10807 32ND ST NORTH
<i>Kerth Hagberg</i>	KERTH HAGBERG	10807 32nd ST N
<i>James Banister</i>	JAMES BANISTER	2197 Lake Elmo Ave N
<i>Barry Weeks</i>	BARRY WEEKS	3647 LAKE ELMO AVE. N.
<i>Stephen A. Continenza</i>	STEVE CONTINENZA	3686 N. Layton
<i>Dick Wier</i>	DICK WIER	3645 LAVERNE AVE. N
<i>John Dresler</i>		
<i>Edmund Farnham</i>	EDMUND FARNHAM	11227 N. 30th St.
<i>Jon Place</i>	Jon Place	3712 Layton Ave. N.

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SIGNATURE

NAME

ADDRESS

[Handwritten Signature]

520 Lake Elmo Blvd.

[Handwritten Signature]

Edward T. Gorm

11011 Stillwater Blvd

[Handwritten Signature]

Randy Wagner

11005 Upper 33rd St

[Handwritten Signature]

Myron Wendt

11306 32nd St. N.

[Handwritten Signature]

MIKE DAVIS

10899 32nd St. W

[Handwritten Signature] Patti Koolin-Downs

Patti Koolin-Downs

4

PETITION

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SIGNATURE

NAME

ADDRESS

<i>Karen Reynolds</i>		11247 32nd St No Lake Elmo
<i>Bocky Reynolds</i>		" " " "
<i>Andrea Grobner</i>	11299	Stillwater Blvd No.
<i>David Gubner</i>	10867	33RD ST.
<i>Jerry Komschodek</i>	10823	32nd St Lk Elmo
<i>Sherry Komschodek</i>	3517	Lk Elmo

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SIGNATURE NAME ADDRESS

<i>C. Jeanne Novak</i>	C. Jeanne Novak	2925 Klondike Av.
<i>Anne Leikam</i>	Anne Leikam	LK. ELMO, MN 55042
<i>David S. Leikam</i>	DAVID S. LEIKAM	2641 Lake Elmo Ave. N.
<i>Proy Abbott</i>	PROY ABBOTT	LK. ELMO, MN. 55042
<i>Laura Abbott</i>	LAURA ABBOTT	2641 LAKE ELMO AVE N
<i>Robert B. Novak</i>	ROBERT B. NOVAK	LK. ELMO, MN 55042
<i>Matthew S. Northrup</i>	MATTHEW NORTHRUP	4455 Lake Elmo Ave N
<i>Bill Hagberg</i>	Bill Hagberg	Lake Elmo MN
		4455 LAKE ELMO MN
		55042
		2925 KLONDIKE AVE
		11075 32nd St. N.
		11325 Stillwater Blvd.

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SIGNATURE

NAME

ADDRESS

<i>John E. Zignego</i>	JOHN E ZIGNEGO	3081 LAVERNE
<i>Lucille Zignego</i>	Lucille Zignego	3081 Laverne
<i>Jim & Eric Deere</i>		2235 S. E. One
<i>William O'Hughes</i>		3060 Le Earl N.
<i>Patricia Haysburg</i>		3060 Lake Elmo Ave. N.
<i>Melanie Dittmann</i>		3624 Rayton Ave. No.

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SIGNATURE

NAME

ADDRESS

JB JOE BUSH 3537 LAKE ELMO

Jim Waldemar Jim Waldemar 11094 35th St Lake Elmo

MW Dave Whitman 11325 Stillwater Blvd N ^{LE Reinked as well}

Judith H. Eder Judith H. Eder 11082 34th St. NO. Lake Elmo

Joel R Eder Joel R. Eder 11082 34th St. N. LAKE ELMO

Constance Smith Constance Smith 3200 LK ELMO RD. N

Christina Smith " " " "

Constance Arthur Constance Northrop 11075-32nd St. N.

Rec'd @ Henry
7/26/01
(10)

Ladies and Gentlemen of the Lake Elmo planning commission:

Having carefully read the proposed Old Village Architectural Control Ordinance, I have come to the conclusion that its legality and constitutionality are open to grave doubt. I believe the ordinance is flawed beyond repair and should be voted down in its entirety.

In regard to the property owned by my wife and I, which I have outlined on the map of the Geographic Extent of the Old Village. Our property is clearly outside the Geographic Concept of the Old Village. When we purchased our property 13 years ago, there were no architectural covenants enforced. Legally, you cannot impose them on us retroactively.

On page one of your discussion of the proposed ordinance, you state it will maintain or improve property valuations. This is absolutely not true of our property. How can complicated, complex regulations that increase the costs of construction maintain or improve property values? They cannot. The opposite is true.

I respectfully request that our property be removed from within the boundaries of the Old Village. In addition to my objections regarding our property specifically, I have many objections to the ordinance.

1. It infringes on all property owners rights
2. It addresses no common good cures, no common problems
3. It attempts to enforce the beliefs of a few people on all property owners
4. It stifles creativity and stands in the way of progress

DOES LAKE ELMO WANT TO BE REGULATED TO STANDARDS OF 50 OR 60 YEARS AGO? I DON'T THINK SO.

Does Lake Elmo want to repel creative, bright, imaginative people by erecting architectural barriers? Just think, Frank Lloyd Wright would not be able to build in old town Lake Elmo under this ordinance!

On page four, it is stated that the standards apply to new residential construction. Do you really want new residential construction to look like the Old Village?

On page eleven, the ordinance now begins to look like a full employment act for architects. **PLANS HAVE TO BE CERTIFIED BY AN ARCHITECT TO BE CERTIFIED THAT THEY ARE IN COMPLIANCE! WHO WILL BE FORCED TO PAY FOR THESE ADDITIONAL COSTS?**

In closing, I again respectfully request that this ordinance be voted down in its entirety.

Respectfully,
Roy & Laura Abbott

Geographic Extent of Old Village

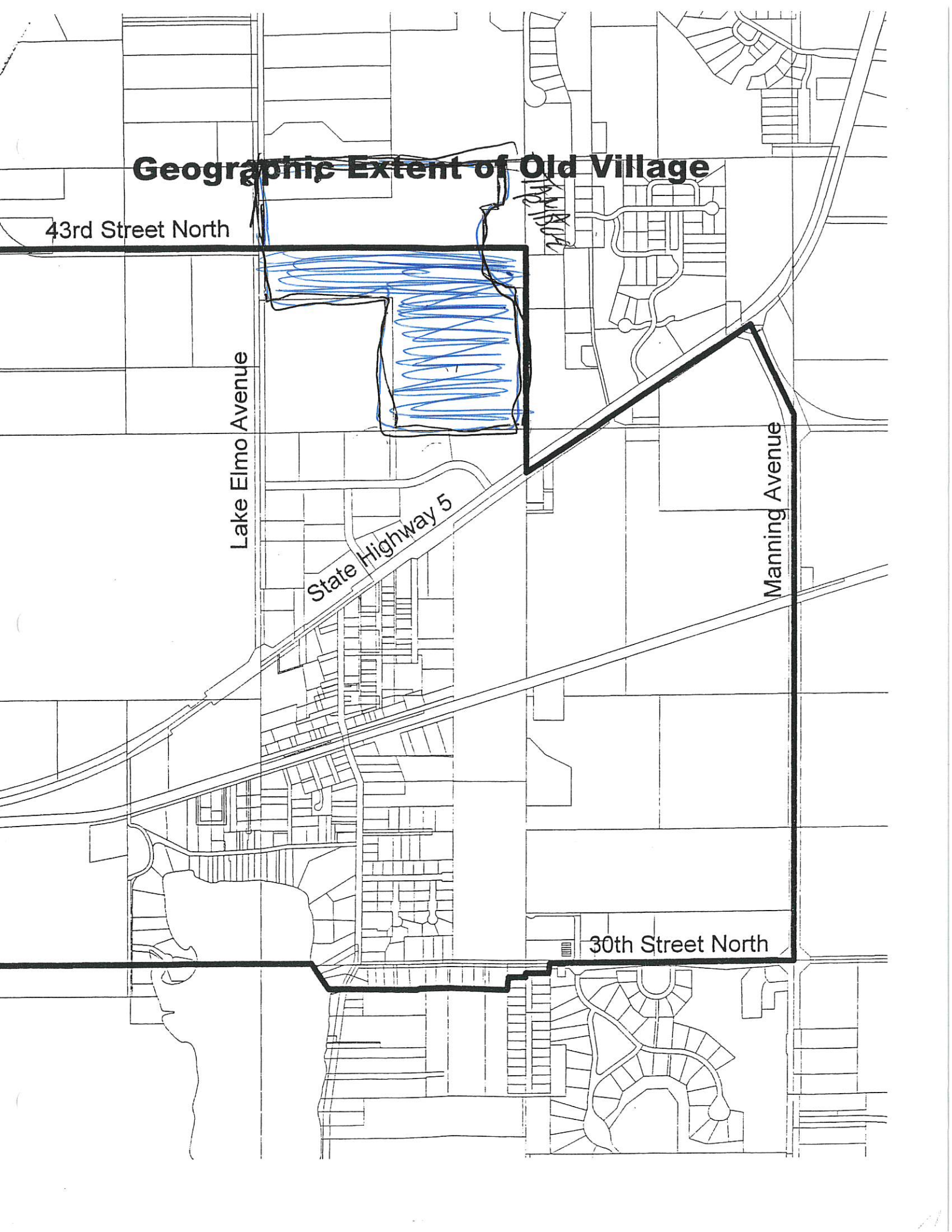
43rd Street North

Lake Elmo Avenue

State Highway 5

Manning Avenue

30th Street North



2-24-2001

RECEIVED

FEB 26 2001

CITY OF LAKE ELMO

James M. Leod
2543 Lake Elmo Ave
Lake Elmo Mn 55042

Lake Elmo Planning Commission

I am writing regarding the proposed "Old Village Design Guidelines" as I am out of town and will not be at the public hearing Feb. 26, 2001 as a property owner within the "Old Village Area" I wish to share my opinion with the Commission regarding fence heights allowed.

A 3 ft high fence is neither historic, practical, or safe! Historic fences include wood picket and wrought iron fences. It is much easier for a young child to injure him/herself climbing or falling on to such a fence at a 3 ft height than one at a 4 ft height. In addition a 4 ft high fence is more practical for keeping children and/or pets in the yard. A review of existing historic fences throughout the region will find that most are closer to 4 ft high than 3 ft.

2

I also believe that a higher limit such as 7 ft should be allowed within 8 ft to 10 ft of the driveway entrance. This would allow for an attractive gated type entrance on larger lots within the district. My present home at 2543 Lake Elm Ave has a 4 ft high fence with a higher pickett gated entrance that people within the community find attractive. I plan to build a new home on my 5+ acre lot within the district and planned to include a similar historic appearing white fence 4 ft high with a gated pickett entrance. I urge you to amend your standards to allow this.

I would also like to address the issue of having a separate set of standards for peoples homes in this overlay district. If it is necessary to have this set of standards to preserve the village atmosphere, then these standards should apply to all homes in the City of Lake Elm, not just those in this Old Village Overlay District. Are we not all

3.
entitled to equal treatment
under the law? If having double
sash windows is so desirable,
and not altering window size is so
necessary, then let it be so for all
of the homes in Lake Elmo.

Respectfully
Jim McLeod