

City of Lake Elmo

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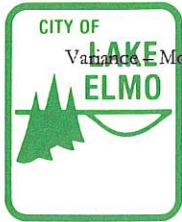
3800 Laverne Avenue North / Lake Elmo, Minnesota 55042



Planning Commission
MONDAY, September 23, 2002 at 7:00 p.m.
Council Chambers, City Hall, 3800 Laverne Ave. N.,
Lake Elmo, Minnesota

AGENDA

1. Agenda
2. Minutes: Draft of August 26, 2002
3. Preliminary Plat: RECO/LAKE ELMO BUSINESS PARK
4. Variance: McADAM/MOGREN
5. Met Council Update
6. Other Business
 - a. *Dense Thinkers*
 - b. *The Truth about 'Smart Growth'*
7. Adjourn



Variance Mogren 2002

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City of Lake Elmo Washington County, Minnesota

NOTICE OF MEETING

The Lake Elmo Planning Commission will hold a meeting on Monday, September 23, 2002, at 7:00 p.m. in the Council Chambers of City Hall, 3800 Laverne Avenue North, Lake Elmo, Minnesota, to consider a tabled request by Bob Mogren and Robert McAdam for a Variance to **Section 325.06 Shoreland Standards, Subd. 4. A Setback from Ordinary High Water Level** of Lake Jane to construct a Principal Structure 51 feet from the Ordinary High Water Level where 100 feet is required. The property is known as Property I. D. No. 09.029.21.41.0002, and generally described as:

Part of Government Lot 7, Section 9, Township 29 North, Range 21 West, Washington County, Minnesota, lying easterly of Lake Jane Manor No. 1, and northerly of the Centerline of Lake Jane Trail North.

All persons who wish to be heard regarding this Variance request will be given an opportunity at the meeting. Written comments will be accepted up until the time of the meeting.

Charles E. Dillerud
City Planner

Continuation of meeting held September 9, 2002.

**Planning Commission
Meeting Minutes
September 23, 2002**

Chairman Armstrong called the meeting to order at 7:00 p.m. COMMISSIONERS PRESENT: BERG, SEDRO, PTACEK, HELWIG, DEZIEL, TAYLOR, and BUNN (7:05). ALSO PRESENT: Charles Dillerud, City Planner; Kimberly Schaffel, Recording Secretary.

AGENDA

M/S, HELWIG/SEDRO, to accept the Agenda as presented. **VOTE: 6:0:1 (ABSTAIN TAYLOR) PASSED.**

MINUTES

M/S, ARMSTRONG/BERG, to accept the Minutes of August 26, 2002 as presented. **VOTE: 5:0:2 (ABSTAIN: SEDRO/TAYLOR) PASSED.**

PRELIMINARY PLAT-RECO/Lake Elmo Business Park

Staff Report, City Planner, Charles Dillerud

The Planner recommended the Planning Commission table this application at a previous meeting for additional information from the developer. The most significant was the Traffic Study for two intersections: Lake Elmo and Manning with Hudson/Frontage Road. A Draft Declaration and Covenants were also required because Outlot A shared a Wetland Treatment System, and Outlot B shared a stormwater retention facility. Those were submitted to the City Attorney who determined they are sufficient for a draft.

The Traffic Study looks at peak hour generation of traffic off the site, and also addresses peak hour volumes at those two intersections. Forecasted traffic for other future uses has not been submitted. The City Engineer says the work submitted is pertinent to what we need. The Laidlaw school bus terminal is two parcels over to the east.

Based on information submitted, we can recommend a Finding that the plat meets the standards of submission of Chapter 400 of the City Code. Conditions would be that it be subject to compliance with recommendations by the City Engineer, the City Attorney's recommendations, and that setbacks proposed shall comply with City Code.

Site Plans should be submitted in the future. For the purposes of preliminary plat approval, these lots are viewed as blank.

In his comments to the City Council of one week ago in regard to the Metropolitan Council, the Planner indicated that the Metropolitan Council's action may affect approval of divisions of lands. Last week the City Attorney spoke with their counsel. While this issue is in the appeal process, we are to rely on the latest approved 1997 Open Space Preservation Amendments to the Comprehensive Plan. Those on the Planning Commission, who do not have one, may tell the Recording Secretary in order to get one. This is the process we will follow regarding plans submitted and processed. We do not know how this will affect applicants and their lenders.

This preliminary plat application was a Public Hearing. Notice was sent to surrounding property owners, and published in the legal newspaper in June.

Commissioner Bunn

She is concerned about traffic impact because of this site's proximity to the Laidlaw Bus Terminal. She was disappointed to see it was not incorporated in the Traffic Study.

City Planner

The study was based on peak hours. That is usually the focus. The operations forecast for Laidlaw showed traffic peaked early morning and mid-afternoon at the bus terminal.

Tim Freeman, Folz, Freeman, Dupay & Associates, Inc.

This preliminary plat meets every requirement in the Code. Buildings were drawn onto the lots to show that it could meet all building setback requirements, and are not being presented as a Site Plan. He hired the Traffic Engineer who found that the impact from this subdivision on the two intersections is very minimal. Peak hours of operation are different from the bus company's peak hours. Peak business hours will be 8 to 9 a.m. and 4:30 to 5:00 p.m. He does not see a negative impact at all.

Commissioner Bunn

Do we really know the peak hours of operation for the buses? She said she believes the morning hours will overlap considerably.

OPEN PUBLIC HEARING AT 7:20 P.M.

CLOSED PUBLIC HEARING AT 7:21 P.M.

Commissioner Bunn

In the Traffic Study, relative to direction, the westbound traffic gave the lowest number which was the one concerning her the most. If traffic is increased over time, turn lanes might be considered. The Commission should be aware that we need to keep an eye on it. The neighbors, The Andersons were concerned about that intersection.

Councilmember DeLapp

Both Lake Elmo Avenue below 10th Street and Hudson Boulevard are now both City roads. They will be treated as such. All maintenance and signals will be City responsibility.

City Planner

There is no access to the plat off Lake Elmo Avenue. Mn/DOT had no objections but recommended a right turn lane to the plat off Hudson Boulevard.

Patrick Regan, Developer, RECO Real Estate, LLC

He has a unique perspective on school bus traffic. He operates 400 school buses in six different locations around Minnesota. The school bus terminal traffic is busy very early in the morning. All drivers arrive in their cars; they need to be in buses and on the street by 7:00 a.m. By business hours they are in traffic and off-site. When routes drop students at schools, many drivers take their buses home, and some go on field trips. They will return to the terminal around 9 or 9:30. At 1 or 1:30 p.m. they will come back for the after school pick up. They generally return from 4 to 5:30 p.m.

They don't know the uses of this site yet. He intends to advertise, and refer Site Plans and uses back to Planning Commission.

Chairman Armstrong

Are there traffic maximums for General Business? If not, there is no basis to turn it down. No specific uses have been suggested either.

City Planner

A right turn lane may become necessary on Hudson Boulevard as advised by the City Engineer as recommended by Mn/DOT.

M/S, HELWIG/BERG, to recommend the Preliminary Plat of Lake Elmo Business Park for approval

with the Finding that it complies with Section 400 of the City Code, and is subject to the four conditions provided in the September 18, 2002 Staff Report. **VOTE: 8:0 PASSED.**

VARIANCE FROM OHW AND ROAD SETBACKS: McADAM/MOGREN

Staff Report, City Planner, Charles Dillerud

This parcel lies on the south shore of Lake Jane. It is a portion of the parcel known as Government Lot 1. Public Hearing Notice was published and mailed to surrounding property owners prior to the last Planning Commission Meeting.

There are setback problems over the entire length of the lot. 100 feet setback from the Ordinary High Water Level is a function of the Shoreland Overlay District Zoning. Lake Jane has a water level managed by Valley Branch Watershed District. A second setback is from the street at 30 feet. All but the extreme southwest corner of this lot have setbacks overlapping. There is basically a zero building line. The issue of on-site wastewater management has kept this parcel from being built upon for many years.

It looks like the principal purpose and intent of the Shoreland Ordinance is visibility from the lake. There is additional concern about runoff.

The DNR said if there were efforts to preserve vegetation, they might look at the variance positively. There are trees on virtually 100% of this lot. The applicant could assure preservation of vegetation in order to meet the purpose and intent of the Ordinary High Water setback. The sketch submitted to the City and the DNR indicates a clear cut halo around the house. Those areas represent the clear cut limits of the site. Included is a 50 foot corridor to the shore meeting the existing dock. The applicant would thin trees for the drainfield, not clear cut that area. When this drawing was submitted to the DNR, their response was ambivalent – it is the City's decision.

The drawing and narrative suggests the house will be relocated another five feet from Ordinary High Water but closer to the road. The relocation preserves more trees between the house and the lake. The single building parcel will be preserved by the applicant. The remainder of the beach would stay as it exists. Distance to the neighbor's well from the proposed septic is 52 feet.

The memo modified the latest staff Finding. From staff perspective, the spirit and intent of the Shoreland Ordinance would be maintained by the efforts made by the applicant. We could not insure that without a covenant. The City Attorney would look at it after approval. With the tree drawing, and covenants on the deed prior to issuance of a building permit or a variance release, this appears to staff to be a reasonable approach to use of this property. Staff recommends approval.

Commissioner Bunn

If the Variance is granted based on this site remaining one buildable parcel, would that covenant exist in perpetuity? She was struck by the magnitude of tree cutting in areas of 30 and 40 feet, and the 50 foot swath to the lake. Why so much? If DNR is in charge of this, will they monitor it?

City Planner

We can place that single buildable parcel in the covenant as well. The DNR was ambivalent; 50 feet of beach is not unusual. There is almost that much there now. The fifty feet of cut was not there.

Commissioner Bunn

The distance from the neighbor's well to the proposed septic is different from the report.

City Planner

He measured it himself from the City GIS, and the neighbor's survey document in City records.

Commissioner Deziel

Shoreland and road setbacks aside, are there other reasons to require a variance for this parcel to make it buildable?

Bob McAdam, Applicant

There is currently a dock and boat with almost fifty feet of beach now. He is only asking for what is allowable.

Commissioner Helwig

Have you done a percolation test on the area for the septic system?

Bob McAdam, Applicant

The first thing they did was find the areas for conforming and backup septic systems.

City Planner

He received a letter from Mike and Gayle Wagner, property owners on Lake Jane, indicating their objections to this proposal. He later received an e-mail from the same parties. Those are included in the packet. The gist of the e-mail is that the author thinks all property owners on Lake Jane should have been notified of the Public Hearing. City Ordinance calls for abutting property owners on a variance request. Notice was given to those mandated by ordinance. If the commission wanted additional notice, they could direct it.

THE CHAIRMAN OPENED THE PUBLIC HEARING AT 7:45 P.M.

Dean Johnston

He lives on Lakes Olson and Demontreville. He has seen deterioration on those lakes, runoff and weed/algae growth. He would request anything that can be create additional filtration of runoff.

Gary Kimlinger

He lives one-half mile away on the other side of Lake Jane. They do not have that water quality problem on their lake. He supports approval of the variance request.

Councilmember DeLapp

The Council's position on hearing notices is to take the requirements of the Code as a minimum, then to take additional impacts of the neighbors into account. The state maximum for a cleared swath to the water is 35 feet but weeds must remain.

Mike Billstein

He also lives on the south side of Lake Jane. His biggest objection is that this is an excessive request. To cut the setback to Ordinary High Water in half is excessive. This proposed house is different from all other structures on that lake. It must be at least twice as wide as any other on the lake. He would like to see it fit in. If the variance is granted, what constrains the applicant to keep this design, or is this design forced given the variances? Would there be something more traditional otherwise?

Chairman Armstrong

The design is the applicants'. We base our decision on their design.

Bob McAdam, Applicant

He has been a builder for over 25 years. He built many of the homes in The Fields of St. Croix. This house will be pleasing to the eye.

Councilmember DeLapp

There have been two decisions prior to today that evaluated whether these are buildable lots. When the Valley Branch Project went through, many landowners paid \$10,000 in assessments for having a

buildable lot there. If they were assessed at that rate, the assumption was that the lot was buildable. If those amounts were not assessed, they were not intending for this to be a buildable lot.

CHAIRMAN ARMSTRONG CLOSED THE PUBLIC HEARING AT 8:54.

Commissioner Sedro

Was this lot unbuildable until mound systems came about?

City Planner

He could not find evidence of that in the files or with either of two staff members who have been with the City over seventeen years regarding exactly why the parcel had been deemed unbuildable. He also noted that Valley Branch did assess this parcel for the water project based on before/after value. Assessment amounts around the lakes varied in amount using that formula.

Commissioner Taylor

The state minimum setback is 75 feet from Ordinary High Water. There is a channel that drains the lake. Yesterday, it filled up with gunk to about one foot. Does Councilmember DeLapp's end of the lake flood and plug up too? She cannot go along with fifty feet of setback variance, maybe twenty-five. We need to be stewards and take better care of the waters. Perhaps a smaller house would help.

Commissioner Deziel

The house will be well behind the actual water line of the lake. The de facto Ordinary High Water is quite a bit less than shown in the Code. This is a pre-weir DNR figure. They are enforcing something that is not realistically there. This is a lot that will continue to see development pressure. This plan offers reasonable conformity with the land. The lot would stay mostly wooded; the neighbors should be satisfied. Encourage the neighbors on Lake Jane to grow woods again. This could be a model for how to develop a lake property. He would like to see equality under the law. The applicant appears to be sensitive to the lake, the neighbors, and everything around.

Commissioner Taylor

Even with covenants we have no way to enforce these rules. Many landowners mow all the way to the water. We have no alternative but to sue. We have no way to protect it.

Chairman Armstrong

Is it common for Ordinary High Water elevations to remain at pre-lake management project levels after a project?

Commissioner Berg

That is pretty common when it is a managed lake.

City Planner

Assuming that what Commissioner Deziel said is accurate, the proposed house does sit about 100 feet from the actual lakeshore.

Commissioner Sedro

Does the Planner agree with the enforcement issues?

City Planner

He does not know about DNR enforcement. We have one tree covenant in place at Hamlet on Sunfish Lake, and we did enforce it recently. Neighbors reported tree removal at Hamlet, and they were caught before more than two trees were cut down. There can be a penalty clause in the covenant. We can make it so expensive you could plant a forest there. The DNR has gone through it several times throughout the state, and they have made it painful but sometimes only through legal action.

Commissioner Taylor

How can that assessment be made as a penalty?

Chairman Armstrong

It would be a civil process; we could set fines that are very high. Enforcement is very difficult.

Commissioner Bunn

Before the clear cutting and that 50 feet swath, she was originally supportive. Now they have neighbors who wrote not wanting anything there at all. It is a very excessive variance request. We are looking for something special in return to allow this. There should be a penalty for breaking the vegetation covenant, and there should be a tree inventory.

Commissioner Berg

He works for Washington County Soil and Water Conservation District. In his experience, the County asks for two to one replacement of mature trees. It would be important to inventory what you already have. There are ways developments can be done to make them more compatible with lakeshore; perhaps not quite the same footprint, limit the impervious surface percentage. Extra conditions might be added based on the percentage of impervious surfacing. Improved filtration could be impacted by that fifty feet swath but there are people who can tell you if it needs to be controlled.

He is glad to see the applicant moved the house back five feet from the Ordinary High Water level. He could go along with the variance if there were additional conditions set forth. On the third page of the staff report is the applicants' number three for creating one building parcel without subdivision, numbers 4 and 5 are for not cutting the forests. Is the applicant thinking the remainder of the lot will be undisturbed? Is that the intent? He would like to keep it with lakeshore vegetation and understory vegetation in order for the lakeshore to benefit. There should be no fill below the Ordinary High Water line, and minimize the cutting within the fifty feet swath. Selective cutting should be used to keep it from being clear cut.

Commissioner Deziel

Are we setting conditional uses or contract zoning?

Councilmember DeLapp

This is a legal issue in Crow Wing County and in counties in Wisconsin. If you get a special consideration for your lot, you give us something special to ameliorate the impact of that.

Commissioner Bunn

What is on the lakeshore with the trees? Grasses and buffer zones help to filter the nutrients before they contaminate the water. She would like assistance with the wording to require treatment within the fifty feet swath of beach area.

M/S, BERG/DEZIEL, to recommend approval of these variances to Ordinary High Water and road setback requested to the City Council subject to staff conditions, and the following conditions:

1. Compliance with the tree preservation proposal of the applicant, staff dated September 19, 2002.
2. A covenant shall be recorded on the deed of the site prior to issuance of a building permit that insures maintenance of the tree preservation plan. The covenant shall be prepared by the applicants' attorney and approved/recorded by the City Attorney.
3. The covenant shall also specify that the existing parcel shall not be reduced in size or subdivided in the future.
4. The preserved area of the site shall remain undisturbed from its natural state, including ground vegetation and tree cover.
5. All lake frontage except the fifty foot wide beach shall remain undisturbed in its natural state.
6. Minimize disturbance of any vegetation within the fifty foot wide corridor, including at the

shoreline.

7. All trees of twelve-inch diameter and greater at breast height within the fifty foot corridor to the lake shall be retained.
8. No grading or filling shall be permitted below the Ordinary High Water level.

VOTE: FAVOR: BUNN, BERG, HELWIG, and DEZIEL; OPPOSED: PTACEK, TAYLOR, and ARMSTRONG. 5:3 PASSED.

Commissioner Bunn

In the future, should all lakeshore owners be notified of variance applications?

City Planner

If you are going to add units, perhaps; if just for additions to existing structures, no. Another option is to have an extra step in the process where the Planning Commission would decide on a case-by-case basis as to the extent of notification.

Commissioner Ptacek

There are numerous outlets for the applicant and homeowner who feels strongly, to learn of variance applications and provide comment. There are opportunities for neighbors to come together. On a case-by-case basis this is a good thing to do. This was a Lake Jane issue, and there is the Tri-Lakes Association that could be involved.

Chairman Armstrong

We can discuss the notification distance issue at a future meeting; it can be looked at.

City Planner

There are people who are not impacted but want to get involved. We should be cautious of that tendency.

METROPOLITAN COUNCIL UPDATE

Staff Report, City Planner, Charles Dillerud

The Metropolitan Council adopted a resolution that says our Comprehensive Plan is a substantial departure from Regional Systems. Nine modifications to our 2020 Comprehensive Plan were mandated; we have either nine months to modify or sixty days to appeal the Metropolitan Council's preliminary decision. Hearing/s will be held before an administrative law judge in a formal appeal process, then we can appeal again but then to a court. It will take a long time to follow that process. A resolution will go to the City Council next week for distribution to 180 governments in the metropolitan area, saying if it happened to us it could happen to you. Here is a regional planning agency telling you what to do. The City Council asked the City Planner and City Attorney for a short list of attorneys who could be hired.

New applications in the interim will be handled based on the 1990/1997 Comprehensive Plan. Should we get into the appeal process, we cannot challenge the regional systems themselves.

Councilmember DeLapp

There are twice as many Planning Commissioners as there are council members. The people watching on television are all constituents.

City Planner

Former Governor Carlson's office called Friday. He will be sending some communication to challenge the Metropolitan Council's decision.

Commissioner Deziel

The Lake Elmo Interceptor doesn't have to be used in Lake Elmo.

City Planner

Where they go is part of the regional system plan.

Chairman Armstrong

Just because you can't challenge a regional system at appeal doesn't mean the decision maker doesn't want to hear the full story. It may be pertinent to the person hearing this case. We were not kept notified of this massive sewer line for the Lake Elmo Interceptor.

City Planner

He fully intends to hire assistance for any appeal hearings if directed by the City Council. A couple of the nine items the Metropolitan Council wants us to change in the Comprehensive Plan are simple matters.

Commissioner Ptacek

Did they want us to see the three suggested land use maps adopted or rejected?

City Planner

They allow local latitude as long as we assume 7200 SAC units. Three different ways to do it were presented. Chair Mondale has said he wants cities to set their own destinies. What he meant was, as long as we accept 7200 SAC units we can do it any way we want.

Commissioner Ptacek

He shared those maps with his neighbors. His neighborhood would be surrounded by urban density. His public position would be to appeal.

Councilmember DeLapp

The map that Metropolitan Council has on the website, shows everything west of the middle of the City and everything south of 10th will be in urban reserve.

City Planner

Rocky Mountain Institute, using foundation money, is developing a case study of alternative wastewater treatment systems. With our wetland treatment systems, we are one of their examples.

Commissioner Bunn

Chair Mondale claims Lake Elmo refused accepting consequences of failing systems. Where does City stand on that issue? Second, regarding the Regional Park, there are different historical views of the facts. Point is, if we do have the factual higher ground, this might be time for another council member to write a letter to editor responding to Mondale's specifics. Regarding the regional park, who funded it and who wanted it? She recommends some further public debate and response to Mondale's comments.

Councilmember DeLapp

Sue Dunn was chair of that Parks Commission at that time the regional park was being planned.

City Planner

When the Metropolitan Council looked for potential regional park sites, they had to have a lot of acreage, significant environmental features, and had to be within 45 minutes of an urbanized portion of the metro. They did not say anything about Lake Elmo being urbanized. Why did Lake Elmo support that decision? Dayton-Hudson owned a lot of that land. We did not want a regional shopping center. The alternative to the park was much worse.

Councilmember DeLapp

To get to the regional park from his home is about eight miles. There is no access at the back of the park or facing into Lake Elmo. At the dedication in 1986, the mayor's wife had to move her house. The mayor said, "We welcome you as guests, treat us with respect." There was trepidation we would have a burden on our hands.

Commissioner Sedro

Can we expect or assume that with the appeal the Metropolitan Council will pay more attention to Opinion/Editorial pieces?

Commissioner Deziel

If the 2030 can be negotiated, then we move into the 2040 Plan. How do you prevent that next step?

City Planner

The key is the sewer interceptor no matter when it happens. The difficulty is they act as though it is a foregone conclusion that the area is going to grow by a certain number. They have been off by fifty per cent in the past on forecasting these numbers.

OTHER BUSINESS

Commissioner Bunn

Regarding the reprints of articles provided the commission, she noted that the "Truth" article was well-done and the research was sound. The other article came up short for sources. That second author is the founder and director of the Thoreau Institute. Their efforts are for caring about the environment and minimizing government.

ADJOURNED AT 9:00 P.M.

Respectfully submitted,



Kimberly Schaffel
Recording Secretary