

The Lake Elmo Old Village Special Projects Planning
Commission and City Council will meet for a **Workshop**
On **MONDAY, December 9, 2002**, at **7:00 p.m.**
in the Council Chambers of City Hall,
3800 Laverne Avenue North, Lake Elmo, Minnesota.

The Public is Welcome to Attend.

WORKSHOP AGENDA

Zoning Map Amendments – General Business to Limited Business



City of Lake Elmo
CITY COUNCIL/PLANNING COMMISSION WORKSHOP
Minutes of December 9, 2002

Chairman Tom Armstrong called the Planning Commission Workshop with the City Council and I-94 business owners to order at 7:00 p.m. COMMISSIONERS PRESENT: Meldahl, Sedro, Sessing, Ptacek, Helwig, (Berg, Bunn – 7:05 p.m., Deziel – 7:10 p.m.); COUNCIL MEMBERS PRESENT: DeLapp, Siedow, (Armstrong – 7:07 p.m.); STAFF PRESENT: City Planner, Chuck Dillerud and Administrative Secretary, Kimberly Schaffel. ALSO PRESENT: Old Village Commissioners Williams (and Herreid 7:07 p.m.).

Pledge of Allegiance

Agenda

M/S/P Helwig, Armstrong To accept the Agenda as presented. **6:0 VOTE: PASSED.**

WORKSHOP WITH RESIDENTS AND BUSINESS OWNERS, CITY COUNCIL, AND PLANNING COMMISSION FOR GENERAL BUSINESS ZONED SITES BEING REZONED TO LIMITED BUSINESS IN COMPLIANCE WITH THE 1990 COMPREHENSIVE PLAN

Staff Report, Chuck Dillerud

Some zoning along I-94 Corridor does not comply with our 1990 Comprehensive Plan. A state law was PASSED years ago stating that all zoning shall comply with land use planning. Zoning is the enforcement of a Comprehensive Plan. It is not intended to increase or decrease land values. This land should have been rezoned within 9 months of adoption of the 1990 Comprehensive Plan. It was not changed at that time.

The list originally included six properties within this rezoning petition. At the Public Hearing there was substantial objection raised by those property owners. The Planning Commission made a recommendation, after considerable discussion, subject to two conditions: Limited Business uses could be amended to include Conditional Uses for these existing uses. Second, there was a recommendation the CUP for existing businesses be initiated and issued by the city to assure these businesses were included as approved Conditional Uses in the Limited Business Zone.

The City Council heard the recommendations along with testimony from those property owners. They decided to hold a workshop tonight to discuss the issues. Many of these buildings are located on the property lines and don't meet setbacks.

Councilmember DeLapp

Sue Dunn and Lee Hunt are both ill. Charlie Schneider and Jim Van Pelt were supposed to be invited tonight but were not. They are both applicants for an opening on the Planning Commission. Mr. Schneider is present.

The City Council would like to hear the Planning Commission's reasons for their decision. They would also like to also hear the opinions of others who might wish to speak.

The philosophy behind the Limited Business Zone along the freeway was that existing businesses in the Old Village were being encouraged to stay. The General Business zoning was to remain in the city-center in order to develop that area.

Councilmember Armstrong

The City Council was not sure about Limited Business. They wanted to hear potential for that area and wanted to hear what the Planning Commission was thinking about the realities for that zoning.

Councilmember Siedow

The City would take away a lot of rights by changing to General Business from Limited Business. He would like to see something concrete and nothing taken away from them. He would like to work out something so they can stay as long as they like and rebuild if they burn down.

Councilmember Armstrong

She wants to preserve what they have. She wants to offer protection rather than a limitation to the property owners.

Chairman Armstrong

Other ordinances have language that recognizes existing uses allowing them to continue without restriction. It might suggest that existing uses shall continue to be permitted however no new uses or expansion can take place after a certain date. No reason to shove them out the door.

City Planner

They could refer to other ordinances that have standard language. How specific do you get? In many cases, these properties are built to zero setbacks. It is an option. Structure the ordinance usually at the time of draft but it could be drafted so that it might cover most circumstances.

Chairman Armstrong

The city had to do that in the Agriculture Zone. Some sort of language should be found that would allow existing structures to be rebuilt in the existing footprint, height, same or similar materials, etc. You can tell from the aerials where those buildings are now.

City Planner

What are you preserving? Use and structure? There is already a proposal to change the use on at least one of these structures. Suppose the marine dealer wants to sell for another use.

Chairman Armstrong

Everybody in the city is limited to who they can sell to under those circumstances. Anyone can change their zoning if they apply to the Planning Commission.

City Planner

Nothing is built on the vacant land at the moment.

Chairman Armstrong

They would be rezoned Agriculture. The intention would be that ongoing businesses are being protected.

City Planner

That might be helpful to some owners. It is certainly doable.

Commissioner Deziel

He is bothered by the zoning process creating inequities. He doesn't like partial taking and granting of up and down-zoning. There might be some compensation fund so individuals won't suffer alone. Partial taking is a problem for him.

Chairman Armstrong

That is contract zoning, and it is illegal. There is no vested right in zoning. It is against the law to accept money for upzoning.

Commissioner Deziel

The nature of the partial taking is an obvious loss. How can you find compensation for that? It is not unlike transfer of densities. Thinking creatively perhaps you can find something to help with that.

Councilmember DeLapp

The City of Lake Elmo had to decide what to name the zones for the land there. In 1970 they called those properties General Business if there was a business there. Those businesses left but the zoning remained. The intent back then was not to create another downtown. Their existing circumstances don't become a bonanza for them that fractures the city.

Steve Lair, Representing Dolan Marine

He works for CB Richard Ellis trying to help The Dolans sell their business. It is difficult because of uncertainties. Limited Business is a buzzword for a red flag, meaning there is something wrong with this property and with this zoning. When he learned that this property was to be rezoned and he looked at uses allowed in current and proposed zoning. It would have a tremendous impact on the property value. Just the reduced density alone would have an impact. It is a practical consideration to property owners whether it impacts the council or Planning Commission or not.

He lives in an area that prohibits fast food restaurants. Protecting the status quo would be best right now for these businesses. If you change to Limited Business you lose opportunity for appropriately redeveloping. If you leave it General Business, it would be more thoughtful development. A developer might see a larger redevelopment if those properties were merged for sale. Those same buildings might just end up being there in years to come as empty shells. You need to look at what you want in the future.

He is glad to see the council allowing this opportunity for discussion.

He has been working on selling a property of 28 acres at 10th and Helmo that had been off the market since 1995. It was not marketable because of the change to Limited Business. Potential developers don't want to try to develop it. They don't want to push a sled uphill. Every year the owner holds it, it is a tremendous drain on his resources. He applied for a PUD which has taken about one year. It is painful to redo the zoning. Consider the PUD or an overlay or a three-way zoning or three-way uses. City codes might prevent those uses you don't want. Limited Business is too restrictive on these owners.

Jeff Goss, Crossroads Collision

If his site does get rezoned, he wants to be allowed to rebuild should something happen. He wants to be able to stay there and clean it up. He wanted to expand but might not.

Mark Radke

In 1993, he and his wife bought the land between the excavating business and the drive-in. He had a representative. This was a good investment. He is still paying for it with the hope of it being a good investment. It is difficult to understand that it should be an Agriculture zone on his land when it is surrounded by businesses. We may not buy zoning, but we do invest in it. He certainly did. Several times there was talk about developing the site according to my zoning. He has owned it nine years. A car dealership would not fly. The city told him no sewer, no water, but be patient, some day down the road it might work. If left as Agriculture, then there are no other avenues. That makes no sense for this property. It is absolutely nothing but tax forfeit if it is zoned Agriculture.

Councilmember DeLapp

The bus company on the east is zoned Agriculture.

Mark Radke

His site was zoned General Business when he bought it, and he was not really aware of the Comprehensive Plan. Now it seems arbitrary to change the zoning after thirteen years. He does not have an explanation for the zoning to Agriculture. He is just begging not to be zoned Agriculture. He would prefer General Business. Next to a drive-in, an excavation company with buses, and with 90,000 cars going in both directions why would anyone want to live there. It is too rocky to grow things.

Sabrina Dolan

After some of the earlier discussions she understands what is allowable and what is not. What it comes down to for us is the financial devastation. Our life savings are invested in this business. Looking to impact the city as a whole is understandable, but we are taking the hit if this happens to us. Our attempts at selling this predate our notice of this rezoning. Down the road all of us are liable to think that way. I hope you will consider this. Did we pay for upzoning? Essentially we did, when we bought from the previous owner not the city. We are urging you to consider this as a factor. We don't know the laws just the impact to our family.

Commissioner Williams

What was the original intent of Limited Business vs. General Business?

City Planner

He does not know. It was drafted before he got here. Generally it is based on intensity of use. Traffic, hours of operation, degree of land coverage. Therefore there is a distinction. Not every city has the same layers of zoning distinctions.

Commissioner Williams

In the General Business Zone is there provision for both unsewered and sewerred uses.

City Planner

General Business focuses on unsewered use. The city did take the Limited Business zone and created another zone with regional sewer service called Business Park.

Commissioner Williams

Another (fourth) option is to change the Comprehensive Plan. Since our most recent submission was rejected can't we go back and change it without losing much? Maybe more open. We are also rejected by the Met Council.

City Planner

That option is also there.

Commissioner Bunn

Is the City Council looking for something of a compromise between Limited Business and General Business? That would require a change to the Comp Plan. Is that what they want? It seems the issue for most of the owners is the perception of a down-zoning. Allow the continued uses as they are now? That is not the solution to this problem. A new classification might not work for us but it might for the owners. Is that even an option the Council wants us to look at?

She asked Chairman Armstrong for a clarification of Limited Business.

Chairman Armstrong

The Planning Commission went through this twice last year.

Commissioner Bunn

She did not understand that. One position is not consistent with the Comp Plan and the other is not in the interests of the landowners. There are not a whole lot of choices. Council could offer more options or give us some direction here.

Councilmember Siedow

The properties have not been legally zoned in the last ten years. Is there a chance for a third tier zone or would that be legal?

City Planner

If that were the case, we'd leave it the way it is. The way the Comp Plan is structured, you can have a middle zone. Limited Business land use guiding results in gives Limited Business or Business Park. General Business guiding results in only General Business Zoning. You might not change the zoning map, just a sentence of new standards in the Comp Plan. Not sure what it would be like to cover everyone here tonight. Don't expect it overnight, if that is what the council wants.

Councilmember Siedow

The city won't leave it General Business and the owners don't want Limited Business. Compromise

Commissioner Sedro

Do existing buildings fit within the 20,000 square feet limit?

City Planner

No.

Commissioner Sedro

Second, in the past year more than one applicant wanted offices along 94. Why wouldn't this be a viable use for these properties?

City Planner

The City Council thought it was a viable use then and most of them think so now. It is not as compensatory as a more intense use. How much should it be an issue to the city? Clearly it is very important to the owners. 90,000 vehicles per day would be great without any zoning at all.

Steve Lair

If there is genuine desire for development, get them to submit RFP's for what is out there. It could appease property owners and maximize values. It could provide some redevelopment instead of the possibility of an eyesore and not very viable.

Councilmember Armstrong

This land use guiding is intentional. These properties on 94 have been there a long time. The land use guiding is what we wanted for the city at that time. Valuation is an impediment with the appearance of some of those buildings. People have to be cognizant of the fact we only have sewer in a small area. The City wants to listen to these people. Revisit the conditions for Limited Business.

Councilmember DeLapp

He wants the voters to like their city more. How far do we extend Woodbury into Lake Elmo? It is very valuable land. That was the intention. That was the test and why we got sewer there. Just because they can't get into Woodbury, they want to come into Lake Elmo. We do quality things, we care about our city, long-term there are many things you can do with your land, maybe not immediately but eventually.

Sabrina Dolan

That isn't what we are trying to do. We just want to maintain what we had. Mr. Lair isn't trying to tell you how you are doing it wrong. Just allowing us to sell to another boat dealer is not fair. Let us find out what the market will bear. There are a limited number of office buildings. If we can't market to an office complex, they are going to know that. That is going to make a difference in what we can sell it for. We don't want to hurt the citizens of Lake Elmo. We want to maximize the uses. We are only using three of our ten acres, and we already exceed the maximum Limited Business floor area. A new owner won't be able to add additional storage on that property.

Chairman Armstrong

He would not want to limit them to the existing Limited Business uses. There are a list of permitted uses that are banks, clinics, offices, and schools. They don't have size limits. You can use the full extent of the property for those uses. The other point is the properties in the first one-eighth mile north of I-94 to Keats Avenue are zoned Rural Residential and will have to be upzoned to Limited Business at some point comply with either the 1990 or 2000 Comprehensive Plan.

In the 1990 Comp Plan, some of those are guided Rural Residential, creating this third zone – another tier of bureaucracy, another complication and inconsistency. This was done by the community as a whole in 1990. The Commission would be more than happy to make exceptions to existing businesses. There are options to market the same as your neighbors. We don't want multiple layers of zoning in that area.

Commissioner Bunn

Where are we going with this? The City Council might give some guidance for this.

Steve Lair

He has no intention of talking down to you. He is not here to suggest what is good for Lake Elmo, only what is good for the Dolans. The population in 1990 had to have grown since then. Those since then have not participated in the politics.

Chairman Armstrong

They have updated in the last year. We talk about 1990 being the first change.

Mark Radke

What about the Agriculture zoning? Why am I not in this discussion?

Chairman Armstrong

This is not going all the way down. That would require a Comp Plan change.

City Planner

That is a much longer process.

Chairman Armstrong

Whatever you are doing there is grandfathered in.

Commissioner Meldahl

Couldn't we filter out to Agriculture? The older area would grandfather in and then work up to a newer area of usage. He doesn't really see the need for rezoning.

Chairman Armstrong

There are no real grandfather rights - just the physical buildings and current uses. The intention is to allow them to continue their existing uses.

Mark Radke

We have a drive-in, a brand new contiguous building, an industrial business behind, and I am surrounded with highway on the fourth side. Where is the logic for Agriculture with CUP's? I only have 14 acres.

Chairman Armstrong

He does not have the same options for alternative AG uses without forty acres.

Commissioner Williams

If you can hold off sixty or ninety days, hopefully the Met Council litigation will be done.

Mark Radke

The only reason we are doing this is the Met Council says we have to?

Commissioner Williams

Now is not the right time to consider a change to the Comp Plan. We would have to do that to change your special circumstance.

Mark Radke

If I am patient you will fix this for me.

Commissioner Williams

No. I am not representing the city or the council.

Chairman Armstrong

We have to conform to the land use guiding that is there. The guiding cannot be changed right now. Once the Met Council makes their decision, we might be able to change it.

City Planner

An owner can do just about anything on the list (which is four pages long). I would structure General Business to be more like Limited Business and make the rest of the uses conditional. What does the City want us to do or staff to do? Should we wait until the Met Council makes its decision?

Councilmember DeLapp

There are about 100 downtown acres and about 100 acres currently in General Business on the freeway. We don't want another downtown. Speculators would rather be on the freeway than up Lake Elmo Avenue. There seems to be something special about Ii-94 that is different from Highway 36.

City Planner

90,000 vehicles per day. Do we want a gas station on every corner? That is where the cars are. Just because of traffic count, does not mean we have to place a business there.

Commissioner Williams

Can we take a straw-vote on the three options on the third page we received from the planner?

Chairman Armstrong

We can adopt the ordinance to change the zoning from General Business to Limited Business and General Business to Agriculture or Rural Residential. We can defer rezoning at this time and work up standards for Conditional Use Permits. A third option is to do nothing at this time.

Changing the code regarding the 50% non-conforming use damage clause with the same footprint and same height has come up at the Planning Commission before. To protect existing structures, add a clause under Limited Business that allows non-conforming uses to rebuild their structures. That has never gotten too far in the past.

City Planner

Just strike the non-conforming clause in the code. What is the city trying to accomplish anyway? Did you really mean 1.5 acre residential lots in Tri-Lakes or the Old Village? It may have just been in the model code that was adopted. There is no structural reason why it just does not come out of the code.

Councilmember DeLapp

Option two is better. Non-conformity is automatic. Add 25% allowance for a footprint change, perhaps some other number regardless of present use could be placed in code to allow some flexibility and expansion - even if it is non-conforming.

City Planner

There are a number ways to massage that. Recognize you have what you have. You may not make it better but you won't create new ones either. What would happen if my building burns and my setbacks are bad? It will not resolve the problems The Dolans have.

Chairman Armstrong

There was a straw-vote suggestion from Commissioner Williams. Option Two was the Planning Commission's original vote.

Commissioner Deziel

These people are stuck right now. Wouldn't number three be a better option? Shouldn't we wait sixty to ninety days? They could be squeezed by circumstance and timing.

Commissioner Bunn

Met Council changes might be forthcoming and changes in the Comp Plan would then follow. They probably would not change the Limited Business stats. Agriculture might be changed. One of the reasons this comes up now is a General Business property intended to be changed to Limited Business was developed under General Business in the last six months. That was not our intention or the vision of those planners in the past. The city is trying to take control of that kind of development.

Chairman Armstrong

To provide indication to council a straw-vote was called. Option 1 = 1 Vote, Option 2 = 9 Votes, Option 3 = 1 Vote.

Commissioner Sedro

She would vote for Option Two if more of the fourth option was also included.

Chairman Armstrong

The Planning Commission is asking the City Council to provide direction whether to allow existing uses and strike non-conforming uses, and to offer existing property owners protection and the right to rebuild their existing uses.

Motion/Second, DeLapp/Armstrong, To ask the Planning Commission to take up the issue to allow existing uses, strike non-conforming uses from the City Code, giving existing property owners the right to rebuild existing uses in order to protect them. **Vote: 3:0 PASSED.**

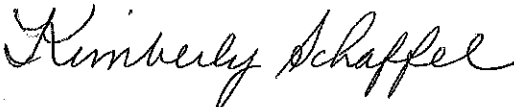
Commissioner Sedro

She heard some good ideas and would like to listen to more of it.

Chairman Armstrong thanked everyone for coming.

Meeting adjourned at 8:40 p.m.

Respectfully Submitted,



Kimberly Schaffel
Recording Secretary

**Steve DeLapp's Notes
Zoning Amendment Workshop
December 9, 2002**

1. Maintain existing buildings and current uses.
2. Try to be as general as possible – avoid Conditional Uses if possible.
3. Address existing setbacks – zero lot line.
4. Address exterior materials for remodeling and for replacement in event of catastrophe.
5. “Upzones vs. Downzones” – transfer of density.
6. Existing zoning based
7. Zoning uncertain going between GB & LB – inability of property owners to keep existing flexibility.
8. Leaving GB might allow replacement of boat dealership.
9. Might end up with empty building shells.
10. Maybe fast food could be kept out.
11. Crossroads wants to be able to expand in character.
12. Land bought for investment should be based on continuing zoning not Limited Business.
13. Limited property owner notification of 1990 – 2000 Comprehensive Plan.
14. Will be financially devastating to one property owner if marine dealership cannot be replaced with more viable GB-type business.
15. What is primary difference between GB and LB?
16. LB and Business Park are primarily differentiated by sewer availability.
17. What would effect of changing Comp Plan be?
18. Possible intermediate zone between LB and GB.
19. Existing buildings an “eyesore” – need to redevelop to current standards.
20. Modify LB to allow alternative uses.
21. No sewer.
22. Property owners trying to maintain what they have.
23. What will market bear? Let's find out.

24. Uses now in LB are banks, medical, office, plus any existing uses.
25. Don't need multiple layers of zoning.
26. Some parcels interspersed that what is best for one may not be best for all.
27. Concern about changing Comp Plan while in litigation.
28. Issues on "takings" issue.
29. Could delete "non-conforming" use clause.
30. Could allow percent expansion of non-conforming uses.
31. Could delay.