

**City of Lake Elmo  
Planning Commission Meeting Minutes  
February 10, 2003**

Chairman Helwig called to order the meeting of the Planning Commission at 7:00 p.m.  
COMMISSIONERS PRESENT: Meldahl, Pelletier, Sessing, Van Pelt, Johnson, Ptacek, Deziel.  
STAFF PRESENT: Kimberly Schaffel, Recording Secretary.

**PLEDGE OF ALLEGIANCE**

**WELCOME**

The Chair and Planning Commissioners welcomed new members Jim Van Pelt, 1<sup>st</sup> Alternate and Liz Johnson, 2<sup>nd</sup> Alternate.

**AGENDA**

Chairman Helwig added the City Council update of the Concept Plan of WHISTLING VALLEY. M/S, Ptacek/Helwig, To accept the Agenda as amended. **VOTE: 8:0 PASSED.**

**PUBLIC HEARING: VARIANCE FROM OHW – ROGER KOSTELNIK**

The City Planner is not in attendance tonight. Chairman Helwig asked for comments on the Staff Report from the Commissioners and the Applicant.

**Roger Kostelnik, Owner**

He would like to build a 3 Season Porch instead where his existing deck is. His house is entirely within the OHW level of the lake. Anything done to the house requires a variance. The neighboring house to the south is closer to the water. The house to the north seems within the OHW Setback too. He has many trees, and his lot is screened. He does not anticipate problems with drainage because in front of his house it is too dry to grow grass.

Due to his health, diabetes, he can't walk as far, and expects to spend more time in his home as time progresses.

**Chairman Helwig**

Those are personal hardships.

**Roger Kostelnik**

The home was within the 100 feet setback from OHW when he purchased it. The zoning change came after the house was built. All the neighbors are within 100 feet of Ordinary High Water.

The surveyor shows the existing deck as 12 X 21 on the drawing but it is 12 X 20. He wants to be able to grill out, so he would like to put a small deck on the 3 Season Porch. That deck would be 9 X 10 and built three steps down so he doesn't have to climb up and down to the ground.

**Commissioner Pelletier**

Would the size of that deck also be negotiable?

2-10

**Roger Kostelnik**

He would like it large enough for two or three people.

**THE CHAIRMAN OPENED THE PUBLIC HEARING at 7:11 p.m.**

There were no speakers

**THE CHAIRMAN CLOSED THE PUBLIC HEARING at 7:12 p.m.****Discussion****Commissioner Deziel**

Mark distributed a copy of the Code, Section 325.06, Subd. 4.A. He said the Planner did not reference it in his report. He drew a diagram to show where the setback line should be based upon his understanding of that section of the Code. Planner Dillerud showed it to the Planning Commission in a similar diagram within the last 1.5 years.

If you take a straight edge to the aerial photograph in the packet, then line up the houses on the adjoining properties, there appears to be considerable space on the applicants' lot to build this porch without a variance. There may be a variance necessary for other conditions but that alone is not cause for a variance. However, the Code does not explain it very well.

**Commissioner Ptacek**

Isn't this a Shore Impact Zone? Shore Impact Zone means OHW. He believes that clause does not apply in this case.

**Commissioner Sessing**

He interprets that section the same was as Commissioner Ptacek.

**Commissioner Deziel**

It says, "Where structures exist on adjoining lots." Planner Dillerud did not consider this for this application. The drawing indicates it does not require a variance. Clearly the proposed building site is within that line.

**Commissioner Ptacek**

He thinks Shore Impact Zone is used interchangeably with OHW. While he is sympathetic to the applicant, the Planner did state it is a personal, not a property hardship. It is not unique to this property. The plan indicates a complete wall with siding to the roof. This leads him to wonder as the Planner indicated in point number 3, is it a 3 season or 4 season porch? There will be many conditions to add to any approved variance in this case. He is leaning toward denial.

**Commissioner Deziel**

The definition of Shore Impact Zone from Section 150 of the Code indicates a closer line. He believes the applicant is not within the impact zone. It indicates that the Shore Impact Zone lies halfway between the OHW and a parallel line at the structure setback. He thinks perhaps the Planner missed this.

**Commissioner Ptacek**

He thinks the Planner would not have missed it if applied to this case.

M/S, Deziel/Meldahl, To table the application in order to review the question with the Planner.

**Chairman Helwig**

He asked if the applicant would be amenable to tabling.

**Roger Kostelnik**

It is the dead of winter. He would be willing to postpone because he is curious. The existing house distance from OHW would be halfway.

**The Motion was Withdrawn by the Mover and Seconder.**

**Commissioner Sessing**

To look at that section of the Code there can be a couple of ways to interpret it. 50% of the existing houses could add on toward the lake. He can see one or two more in the aerial photo.

**Commissioner Deziel**

He thinks that was the intent and purpose when that subdivision was created.

**Commissioner Sessing**

All those houses could move closer and closer toward the lake.

**Commissioner Deziel**

This is a reasonable use for any structure. The concept that it can be put to reasonable use precludes ever needing a variance.

**Commissioner Sessing**

The point is that this house can be reasonably used on this property.

**Roger Kostelnik**

Is this applied evenly to new as well as old buildings or do you have ways to deal with new construction? Would everybody move to the waters edge? If that interpretation is correct, there is a self-limiting factor. The line won't continue to move to the waterfront. He can't begin to comply with the ordinance that currently exists.

**Chairman Helwig**

New homes must conform to all ordinances that are in place. With existing structures, you have to comply when there are changes. There are four choices available to the Commissioners: table, deny, approve, or pass it on to the City Council without recommendation.

**Roger Kostelnik**

He will leave it to the Commission to table or not.

**Commissioner Deziel**

M/S, Meldahl/Deziel, To table the application until they can get an explanation from the City Planner. **VOTE:** (Meldahl, Deziel, Johnson) **3:5** (Pelletier, Ptacek, Helwig, Sessing, Van Pelt) **FAILED.**

**MOTION, Deziel, To recommend approval of the variance application. FAILED for a Second.**

M/S, Sessing/Ptacek, To recommend denial of the variance application because the property has reasonable use.

**Commissioner Sessing**

Moving closer to the high water line in this case opens up the potential of many more additions being created closer to the water.

**VOTE: 5:3 (Deziel, Meldahl, Johnson) PASSED.**

**Commissioner Deziel**

We have to learn our laws and enforce them evenly. We need this law explained again.

**Commissioner Meldahl**

He agrees with Commissioner Deziel. It can be looked at two or three ways. To get to the correct definition, it needs to be better explained. The applicant may not even need a variance.

This matter will go before the City Council on March 4.

**Commissioner Pelletier**

Would the applicant consider a screen porch? Is that something that could come before us again? In the opinion of the Chairman, would that be as cut and dried as this enclosed porch?

**Chairman Helwig**

That would be a question for the Planner; it would not be as much of an amenity. The application here is for increased livable area.

**Roger Kostelnik**

In order to do that, he would still have to put in trusses. At that point, you may as well enclose it.

**Commissioner Sessing**

Either would result in the same impervious impact.

**Commissioner Ptacek**

We are just a recommending body. There is time to get an interpretation of that section of the Code.

**Roger Kostelnik**

He stood out there last fall when the leaves were gone. This plan takes nothing away from the land. The new construction next door took 10 or 11 variances to build. He thought the plan was insignificant.

**Commissioner Ptacek**

Our job is to interpret the Code. The Planner gave us his interpretation. Maybe Commissioner Deziel's questions will ring a bell with him.

**Commissioners Helwig and Ptacek**

They agreed they would like to see a new Shoreland Ordinance but this is what the Commission has to use.

**Commissioner Helwig**

There may be a short wait until we get an answer.

**OTHER BUSINESS**

The Chair updated the Commission on the City Council meeting for WHISTLING VALLEY the OP Development Concept planned for 10<sup>th</sup> Street. The Planning Commission's recommendation to deny was based on the number of residential lots. The City Council approved 19 units for the Concept Plan.

**Commissioner Deziel**

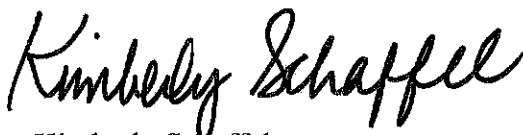
He asked the Planning Commission not to forget about the need to review the 100% rebuild on structures located on substandard lots after a catastrophic loss.

**Commissioner Helwig**

He thinks the City Planner has it on his Agenda.

**ADJOURN**

Respectfully submitted,



Kimberly Schaffel  
Recording Secretary

City of Lake Elmo  
Washington County, Minnesota

**NOTICE OF PUBLIC HEARING**

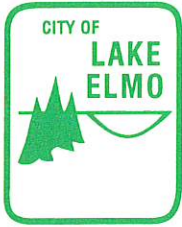
The Lake Elmo Planning Commission will hold a Public Hearing on Monday, February 10, 2003, at 7:00 p.m. in the Council Chambers of City Hall, 3800 Laverne Avenue North, Lake Elmo, Minnesota, to consider a request by Roger and Mary Kostelnik for a Variance to **Section 325.06 Shoreland Standards, Subd. 4. A Setback from Ordinary High Water Level** of Lake Demontreville to construct a three-season porch where a deck now exists 37.5 feet from the Ordinary High Water Level where 100 feet is required. The property is known as Property I. D. No. 04.029.21.33.0037, and generally described as:

Lanes Demontreville Country Club, lots 495 & 496, 643 & 644, and the northwesterly 10 feet of lots 497 & 642 & vacated street adjusting lots 495 & 644; 8098 Hill Trail North.

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

  
Charles E. Dillerud  
City Planner

Published in the Friday, January 31, 2003, Stillwater *Gazette*



## City of Lake Elmo

651/777-5510

3800 Laverne Avenue North / Lake Elmo, MN 55042

### MEETING NOTICE

The Lake Elmo Planning Commission will meet

**Monday, February 10, 2003, at 7:00 p.m.**

Council Chambers

City Hall

3800 Laverne Avenue N.

Lake Elmo, MN 55042.

### AGENDA

- 1) Pledge of Allegiance
- 2) Agenda
- 3) Public Hearing: Variance from OHW - Kostelnik
- 4) Other Business
- 5) Adjourn

The public is invited to attend.