



# City of Lake Elmo

651/777-5510

3800 Laverne Avenue North / Lake Elmo, MN 55042

**The Lake Elmo Planning Commission  
Will hold a meeting on  
Monday, June 28, 2004 at 7:00 p.m.**

In Council Chambers,  
Lake Elmo City Hall  
3800 Laverne Ave. N.  
Lake Elmo, MN 55042

## **AGENDA**

- 1) Pledge of Allegiance
- 2) Agenda
- 3) Minutes of June 14, 2004
- 4) Public Hearing: Wireless Communication Tower – T-Mobile
- 5) Public Hearing: Zoning Code Amendment - Fences
- 6) Public Hearing: Variance – 8061 Hill Trail North
- 7) Public Hearing: Comprehensive Plan Amendment and Rezone – Olinger
- 8) Public Hearing: Amend Condition Uses in Limited Business Zone
- 9) Continued: OP Concept Plan – DEER GLEN
- 10) City Council Update
- 11) Adjourn

The public is invited to attend.

**City of Lake Elmo  
PLANNING COMMISSION MEETING  
Minutes of June 28, 2004**

Chairman Helwig called to order the meeting of the Lake Elmo Planning Commission at 7:00 p.m.  
COMMISSIONERS PRESENT: Deziel, Pelletier, Johnson, Sessing, Sedro, Van Pelt (Schneider 7:03 p.m., Ptacek 7:05 p.m.)

**Agenda**

M/S/P, Johnson/Sedro, To accept the Agenda as presented. **VOTE: 7:0.**

**Minutes of June 14, 2004**

Commissioner Sedro requested the addition at the bottom of Page 1, "Length of access roads for emergency vehicles." M/S/P, Sessing/Deziel, To accept the Minutes of June 14, 2004 as amended.  
**VOTE: 5:0:2 (Abstain: Johnson/Pelletier)**

*Enter: Schneider 7:03 p.m.*

**Public Hearing: Wireless Communication Tower**

The Planner said that the applicant has asked the City to table his application until further notice. The Planner suggested opening, closing, and tabling. The location for the proposed antenna is at 2769 Imperial Avenue. He explained that this is not a zoning matter, but a permit application for a wireless communication tower.

*Enter: Ptacek 7:05 p.m.*

The Planner said that federal law prohibits a city saying no to an application, but a city can regulate towers. The city ordinance was drafted just to address these applications, and it is a good one. This application deals with a three-antenna array on an existing power line pole in an NSP easement. The antennae would be placed part way up the existing power pole. The Planner said that today he received a photo simulation of what it might look like. The applicant is also requesting facilities - cabinets to be located in a 9 X 14 cedar-fenced area slightly to the northwest of the power pole. Seven coniferous trees would be planted, 8 feet tall, which would screen northeast and south sides of the fenced area. The following Findings were suggested by the Planner consistent with the Wireless Communications Permit Section of the City Code:

1. No two-year plan is required showing other locations and coverage within the community.
2. The Agreement with the property owner must include a provision that if the antennae are no longer used for telecommunication purposes. The tower must be removed by the landowner if the company does not do so itself. The agreement submitted does not include that provision.
3. The applicant failed to provide a sketch or photo of what this will look like from adjoining properties on the ground. The photo simulation of the power pole came just before 5:00 p.m. on the day of the Hearing.
4. A brick building with a steel roof is required by Code to house the cabinets on the ground. The applicant proposes to locate it within a fence without a roof.

The Planner said that based upon the Findings, the application is not in compliance with City Code. Should the Commission wish to recommend approval, he suggested that Findings be made for approval with conditions for compliance or with the condition that the applicant shows how they might comply.

THE CHAIRMAN OPENED THE PUBLIC HEARING AT 7:14 P.M.

**Mrs. Seigler**

Mrs. Seigler said she lives directly next door to the house. The problem she has is that the tower and building is 3 times farther from the applicant's house than it is from hers. Their property is surrounded by a tower and power easement, another tower, and a water line.

**Mr. Seigler**

Is it possible for them to locate the antennae down one pole to the city park, eight acre area? There are no houses there. Could they at least take a look at it? This is not on anyone else's front doorstep except ours, and we have enough there. He said he realizes that if the applicant follows the Code, he can do nothing about it. He and his wife planted little trees when they moved there. 15 years later, they were 8 feet tall, and NSP told them to move the trees out of the power line easement or NSP would take them down. Now the applicant is planning to plant trees there. These towers and easements affect the value of his property.

**Richard Ross, 8284 26<sup>th</sup> Street**

Mr. Ross said there is no proven health risk for these antennae, but there is a stigma. He said microwaves can decrease the value of his property. He moved to live in a rural area. The park land is actually closer to his house. Put the antennae in a cornfield somewhere.

Chairman Helwig showed the photo simulation the applicant had submitted.

**Mrs. Seigler**

Mrs. Seigler said with the power lines, tower, and the T-Mobile antennae, she is concerned about the combination causing cancer.

**Darren Heller, 2850 Imperial Avenue**

Mr. Heller said he lives down the street. He said he is concerned it might interrupt the ham radio tower with interference. It is not a good fit in a residential neighborhood.

**Patrick Fleming, 2696 Imperial Avenue**

Mr. Fleming lives kitty corner from the property. He said they should put it in a building instead of a fence. An outbuilding would fit in better. He suggested the applicant find a better spot. Why does it have to go there? He cannot figure out the logic of it being located there. Usually there is little flexibility, and he would like to hear the technical reasons for it being placed on that spot.

**Scott Deutch, 2699 Imperial Avenue**

Mr. Deutch said he lives across the street, and he prefers it is not placed there. He said he went out and looked in both directions. There are two poles in either direction, behind trees on the border of a cornfield in one direction and almost near a cornfield in the other direction. The antenna as presented poses little interference visually. He said he is more concerned about what visual impact it will have on the ground. Is it code to even have an 8 foot fence? He suggests a building instead.

THE CHAIRMAN TABLED THE PUBLIC HEARING AT 7:22 P.M.

The Planner said the applicant will answer some of these questions when it comes back before the Planning Commission. Meanwhile, he tried to address some of the questions raised.

He advised that the City Code says the ground cabinets must be housed in a brick building. He said the applicant's two-year plan might help explain why the facility is planned where proposed; and, that is one major component of the application that is missing.

Chairman Helwig said he believes they chose this spot because it is close to power and phone lines and to where they can access it for maintenance. He said the antennae do not affect ham radio operations.

Commissioner Schneider clarified that the Commission cannot say they can't put the antenna there. The Commission can only make suggestions regarding landscaping and diffusing its visual impact.

Commissioner Ptacek asked whether there can be more than one accessory structure on a lot guided RAD.

Chairman Helwig said that usually these buildings are climate controlled with exhaust fans, and he has not heard a quiet exhaust fan yet.

M/S/P, Johnson/Sessing, To table the application pending more information from the applicant. **VOTE: 9:0.**

**Public Hearing: Zoning Code Amendment – Fences**

The Planner explained the lengthy process involved after the Planning Commission received direction from the City Council to make modifications to our existing Fence Ordinance. The Planning Commission worked on the 20 year old ordinance with advice received from the zoning consultant in Chicago. The Council took the Commission's earlier advice, adopting permitting for fences. The Council took the ordinance the Commission presented, had a workshop, provided directives, and the Planner took those directives and put them into ordinance format, added continuations from the existing ordinance and the permitting process into the new Section 302 of City Code. He said the plan would be to repeal the entire existing Fence Ordinance if we pass the draft ordinance.

The Planner said that the Hearing Notice was published generic, so the Commission can also consider their original draft ordinance. The Commission can make a recommendation of either one or neither.

Commissioner Deziel asked if the City requires permits for Temporary Fences now, and if it is considered a Temporary Fence around a swimming pool.

THE CHAIR OPENED THE PUBLIC HEARING AT 7:42 P.M.

**Charles Dennis 9385 Lake Jane Trail,**

Mr. Dennis said he is the author of a letter in the Commission's packet. His are philosophical, practical concerns. He researched, and the only fence at Menard's that complies with 75% open to air and light is cyclone at 72" height. Lattice is only 25%. Commercial picket is 40%. Nothing is commercially available that will meet the standards specified in the draft ordinance. Snow fencing is only about 25% open space. In order for a fence to meet the Code, it would have to be custom made. He said he supposed the intent is to have an uninterrupted view but that prevents using a fence for privacy. He suggested that there are less obstructive ways of drafting the ordinance. Nobody gets privacy with this ordinance. Grade is defined, but grading is a timing element as a consequence of construction. Section 302.05 essentially disallows horse fences.

**Ron Iber 4677 Lily Avenue North**

The ordinance would allow six foot fencing around gas pipes, but it does not look good. He understands the necessity for fencing around pools too. In a residential area, fencing causes you to lose friendliness among neighbors. Associations should be the ones dealing with the issue. He suggested asking the Homeowner's Associations to review their rules. He would like the ordinance drafted to attempt to be friendly to the environment. Fences chop the land, and he said he does not favor them. If we have to have fences that go to 6 feet, we go to alternate materials, destroying the beauty. A 6 foot, stockade fence destroys values of homes on either side. 72 inches is a problem. Maybe it would be better to keep it at 42 inches. Associations can make those rules.

**Joan Ziertman, 5691 Keats**

Mrs. Ziertman said the draft says any type of domestic farm animals, but those should be defined as true AG type fences. She does not like the AG exemption. She lives on 10 acres and thinks it should still be regulated. Restrictions should still apply to livestock, and be defined. She approved of the specification

for finished grade, because her neighbor's fence filled and raised the grade six feet. Something like that should not be allowed, ten feet from a property line.

**Anne Smith-Johnson, 12152 Marquess Lane North**

Mrs. Johnson said her question for the City Planner was the purpose of moving fences to the Zoning Code. In neighborhoods of small lots like hers, a deck is at six feet of elevation, what kind of privacy is that giving anyone? In walkout lots, people are not getting privacy on small lots. Award winning neighborhoods have no fences at all, like some of her surrounding neighborhoods.

THE CHAIRMAN CLOSED THE PUBLIC HEARING AT 7:49 P.M.

The City Planner said that in reference to the mention that cyclone fence is the only type that can meet the 75% provision, wrought iron could meet that standard as well and there might be other materials too. He said the City Council discussed privacy it but no clear direction was given. A fence around a patio was discussed at the Council Meeting, and that is something that could be looked at. It could be a practical extension of the house, an outdoor living area.

The Planner said that deletion of AG exemption was just recommended this morning. The Planner's observation was that fences for the sole purpose of keeping domestic farm animals should be exempt from an installation permit. That is still a possibility.

The Planner explained that moving fencing to the zoning ordinance is a structural decision. Most of the fence ordinances he has seen have fencing there. If something in the Zoning Code is appealed, you have to show a hardship to get a variance. No hardship is necessary in other areas of the code.

He said that the point about fences affording little privacy in the case of a walkout/lookout is a good one.

Commissioner Pelletier asked for direction from the Planner.

The Planner asked if the Commission is ready to recommend the ordinance similar to what has been prepared or go back to the old ordinance or some modification of the first draft ordinance. The Commission could apply what they have heard this evening along with an ordinance draft.

Commissioner Deziel said that extensive discussion will be necessary before a recommendation can be made. **M/S/P, Deziel/Johnson, To table amending the Fence Ordinance. VOTE: 8:1.** Commissioner Ptacek would like to discuss it further.

**Public Hearing: Variance - Carl Abrahamson**

The City Planner introduced this variance request for a resident on Hill Trail Circle. This is an old platted area in the community, where multiple tiny lots were combined to make a buildable lot.

An application for a building permit was granted to build a screen house on this property. At the time of application, an issue was raised by the inspector regarding the size of an existing small, very old detached garage that is used as for a storage shed. When the screen house permit was issued it became an accessory structure, and our code specifies a parcel can have only one in addition to an attached garage. Secondary structures in R-1 have been designated as a tool or storage shed. Under a certain size, it is not considered to be an accessory structure. At the time it was assumed that this was 160 square feet or less. The screen house would have been their first accessory structure. At some point during construction, an inquiry was made about whether this was a second accessory structure. The City Administrator asked the Building Official to measure the building, it was slightly more than 200 square feet in area. It is too big to be a tool shed. A Stop Work Order was issued, it still is hanging there on the framed porch with a concrete floor but it is still unfinished. The applicant felt the City is partly responsible for the dilemma, and he has requested a variance to allow a shed in excess of 160 square feet. The Council at the last meeting agreed to waive the application fee for the variance.

A physical hardship must be demonstrated for a variance. Findings suggested support a recommendation for approval:

Findings

1. The property cannot be put to reasonable use without the variance.
2. Circumstances are beyond the fault of the applicant. City did not insist on a dimensioned drawing, though it is in the Code.
3. The granting of the variance will not change the essential character of the neighborhood.

Still a hardship, not the first time we saw similar circumstances. The Planner said he did not think this would be a precedent, so there would be no harm resulting to the Zoning Ordinance. He said staff recommends approval, however a motion to deny would be based upon finding number 1 requiring removal of one of the two accessory structures or modify it to make it smaller.

Commissioner Sedro pointed out that if this screen porch were attached to the primary structure, this would be a moot point.

Commissioner Sessing asked if there is no limit to the number of tool sheds allowed in R-1.

**Carl Abrahamson**

Mr. Abramson said he got a building permit. He said the Building Inspector asked if he was sure the tool shed is less than 200 square feet. Mr. Abramson told him it was. The Building Official inspected the footing. The Building Official signed off on the pouring of cement, and did not question it. He said he has been a resident of the City for forty years and is unfamiliar with the Code requirements. He suggested that portions be included in the newsletter so people know. If he knew he had to be smaller than 160 square feet, he would have planned it that way. When he told him 200 square feet, Mr. Abrahamson checked dimensions and said it was fine. The Building Official talked with him more than just during inspections, and he never mentioned a problem. The building is almost done.

Mr. Abrahamson said his home is next to the new City pond, which the DNR said is just another mosquito hole, so he built his wife a nice screen house. He said his neighborhood is not covered by mosquito treatment. His screen porch has been Red Tagged and put on hold. He asked the Planning Commission for their consideration.

Commissioner Sedro asked if the pond Mr. Abrahamson referred to is on City property.

The Planner said it is.

Mr. Abrahamson said he has a 201 system on two sides, and the pond is there now.

The Planner said the pond is a weir to treat water before it hits the lake.

Commissioner Schneider asked if the old building was just a garage in the past which now functions as a tool shed.

Mr. Abrahamson said yes it is one solid building with a new roof replaced a few years ago.

THE CHAIR OPENED THE PUBLIC HEARING AT 8:22 P.M.

**Bud Talcott**

Mr. Talcott said he lives north of the applicant. He would like the Planning Commission to approve the variance because the applicant has used a portable screen house that is not as nice as this structure will be.

Mr. Clayton Michaels had no problem with the building.

THE CHAIR CLOSED THE PUBLIC HEARING AT 8:24 P.M.

Commissioner Deziel said that the reworking of roads in area and the island that was created did create the need for the new pond immediately. That pond is right next door, and mosquitoes do breed there. He recommended that as a possible physical hardship. The screen porch is a response to the new City pond. The applicant made no complaint at all about its location. That should count for something.

Commissioner Ptacek sympathizes with applicant but is concerned about precedent. He said that neighborhoods might have had covenants that were more restrictive but HOAs drop off and covenants go out the door. If this building were 160 square feet, he would be happy. The City could end up with a lot of different size structures. In our Code 300.3.B., "A tool shed as defined." That means only one. He would support moving it along at 160 square feet.

Commissioner Deziel recalled times where buildings were moved along in the construction process, in one form or another. He is concerned that the City could face some liability for it. The City granted the applicant a building permit.

The Planner said liability is not the Commission's concern.

Commissioner Van Pelt said he disagrees with Commissioner Ptacek but hard to ignore that City seems partly culpable. The applicant put together a design that he hoped conformed. We did not perform our responsibility.

Commissioner Sedro said we should make sure we measure in the future. She goes along with the mosquito hardship because the City created the pond.

**M/S/P, Deziel/Johnson,** To recommend approval of the variance with a demonstrated hardship, the circumstances are unique and not entirely the fault of the homeowner, and that approval will not essentially change the character of the neighborhood. **VOTE: 7:2.** (Ptacek/Helwig).

**The Chairman called for a recess at 9:34 p.m. At 9:44 p.m. the Commission reconvened.**

**Public Hearing: Olinger – Rezone and Comprehensive Plan Amendment**

The Planner said he has not seen many applications of this type in the last six years. The location is the south shore of Lake Jane involving what has become an odd-shaped piece of property with lots of history. The applicant has requested that the parcel be reguided from RAD to SRD and rezoned from RR to R1. There have been previous actions on this property, and one amounted to a similar set of circumstances. There was an application years ago for platting of this area into multiple R1 lots. Since then one parcel was created from the parent parcel. A change in ownership resulted in reattaching another parcel. There is a remnant of about 16 acres. The history is unclear as to why it was zoned that way. An old graphic from the 1990 Comp Plan shows the same circumstances applied then as today. RAD guiding extended as a hook into this property. During a 1997 amendment to the plan, something of an error may have been made. Properties to the east did not receive the appropriate guiding or the guiding that matched everything else around the lake. It was not guided SRD, and the Planner said we don't know what happened. He does not think it was intentional. With the Comp Plan operating today, that error was carried over. We should correct that outside of this application tonight. The Planner advised that the review for a change to the Comprehensive Plan has to respond to one of two things, 1.) a determination that an error was made in the original guiding or, 2.) that conditions have changed to make the guiding incorrect. A more usual circumstance is a change of conditions.

The Planner asked what makes sense graphically. What kind of pattern have you created or replicated? In that case, the entire area was guided SRD because of pre-existing lots. The only apparent logic to this area not being guided SRD was because it was not platted. Is that a good reason not to guide it that way in the first place?

The Planner said this parcel is too small to be eligible for RE Zoning which requires 20 acres. It is too small for clustering which requires 40 acres. Some day the owners might wish to ask for a 4/5 vote of Council to eliminate the 40 acre minimum. That might be a solution.

The Planner suggests that we extend SRD guiding along the same line from east to west as others existing along the lake and another tier along the road, but not on the balance of the parcel. That would result in R-1 Zoning for part of the parcel. The Planner said he thinks that will effectively clean up the logics of the guiding in that area in line with the rest of the Lake Jane Area.

The Planner suggested an amendment to the application splitting the zoning. The owners could then create a potential two lots for R-1 if standards can be met. Depth might be a problem on the lake but it can be done as Commissioners have seen in the past. There would remain only a single lot to the south that will be difficult to develop in the future because it is long and narrow. If this is done, the south area would be about 13.09 acres. The misguiding in 1997 should be considered separately from this application.

Commissioner Sedro asked if the portion of land to the north of Lake Jane Trail is within the 100 year flood elevation.

The Planner said that with the minimum setback of 100 feet from Ordinary High Water, it could be a problem but those lakefront areas could be combined with property across the road to meet setbacks and minimums.

Commissioner Deziel noted that everything to the west of Jamaca is zoned R-1. He asked if there is any logic to extending R-1 to the entire parcel. He sees no logical reason for it to stay RR.

The Planner responded that the area to the west extends farther south because of previous platting. Would it have any usage at all with the residue parcel remaining RR? Could it be buffer land for OP? Are we handicapping that parcel that we will need variances in the future?

The Planner said he does not think it will be handicapped any more than it is today.

Commissioner Sedro asked about the Public Facility status and if MPCA is reclaiming it.

The Planner replied that the north part of that adjoining parcel is the Public Works garage. The City has been advised repeatedly, dependent upon test wells, that the day could arrive where we might be asked to abandon that site should water problems migrate north. If these properties were developed then Oakdale water would extend along there.

Commissioner Schneider asked what could become of that residue RR parcel.

The Planner said it can have one single home as it is today. It also could be combined with property to the east for an RE project.

**Tim Freeman, Land Surveyor and Land Planner with FFE**

Mr. Freeman said there are reasons for asking for it all to be under one ownership, not to chop it. One owner should mean that it will all be the same zoning. The surrounding lands were previously platted along smaller lots. The owners of this parcel wanted to keep it open, and they did not get the same opportunity to plat. He said that seems unfair. In the entire Tri-Lakes area, all lots are one acre or 1.5. When FFE looked at how this was developed, it seemed to make sense with property to the south never being developed. It seemed consistent to FFE to rezone the whole thing R-1. There is no master plan, the owners and Mr. Freeman are just looking at the big picture and they want to create a parcel for the daughter. The residue parcel zoned RR is cumbersome to do anything with. It seems reasonable to rezone the whole piece. With minimum lot sizes for RE, building a road through the entire long parcel to



get lots on only one side is not sensible. The only thing reasonable is R-1. If there is enough reason to reguide and rezone the north half of the parcel, there is enough reason to rezone and reguide the whole thing. Future Land Use guiding is not supposed to be used just to guide something based upon the way it is developed. The 1.5 acre proposed is too narrow along the lake. It worked for a neighboring property. He said the applicants are not asking for a specific development request, they are just taking the first step. After that they can decide how it can be used. He said he thinks it was overlooked, an oversight, and community planning should take in the whole area. He asked if all those properties were developed in R-1 zoning, why not this piece.

Chairman Helwig knew why that parcel wasn't changed before is because Carl Olinger did not want it changed. What its use is and what it should be guided should be two different things.

THE CHAIRMAN OPENED THE PUBLIC HEARING AT 9:18 P.M.

No testimony was given. But the Chairman noted that a letter was received from Mildred Thurmes supporting the application.

THE CHAIRMAN CLOSED THE PUBLIC HEARING AT 9:19 P.M.

Commissioner Deziel asked if this would be reviewed when we redo the Comprehensive Plan, and if so when that next review will occur.

The Planner said the new Zoning Ordinance could change circumstances here. Distinctions between RAD and SRD could blur. Our Comprehensive Plan is required to be reviewed every ten years. Next year this time, our new systems statement will be due. A new or review Comp Plan will be needed by 2008.

Commissioner Ptacek said he agrees with the majority of the Staff Report, and he thinks drawing the line is a good one. Had the parcel to the east been zoned SRD, we might want to zone it the same way all the way down. Two tiers along Lake Jane are fine. It will serve the applicant's near future needs.

**M/S/P, Ptacek/Van Pelt,** To recommend approval of the Comprehensive Plan Amendment for certain portions of the subject parcel, and to recommend approval of those same portions be rezoned as described in the Staff report.

Commissioner Van Pelt asked if it can be confirmed the description of parcels don't match.

Mr. Freeman confirmed.

Chairman Helwig said the applicant can always reapply to change it later.

Mr. Freeman said the sensible thing would be to plan the whole parcel at one time. Building a road for three lots (RE) would make little sense, it would be more realistic to build for more lots should they ever wish to rezone.

Commissioner Deziel asked how often the City splits zoning on a single parcel.

The Planner said it is not that unusual.

Mr. Freeman added it is not the preferred method for rezoning.

Commissioner Ptacek said that if the applicants don't want to do anything with the bottom ten acres, then let's leave it alone. Giving up the other half makes a clean delineation of SRD around the lake.

Commissioner Sedro said she supports the application because R-1 was created to fill in what was already small. She said she does not see that zoning as fitting the southern portion of the parcel.

Mr. Freeman said there was a preliminary plat approved in the past but Carl Olinger did not go forward with it. He said they would not be here with this application today if he had done that but the applicants should not be penalized. R-1 lots created today would have to be 1.5 acres in size. Existing lots on Lake Jane are one-half and even one-third that size. Today's R-1 standards would make newly created lots more like on the west side of Jamaca, and those lots are considerably larger than many others in the neighborhood.

**VOTE: 8:1.** (Commissioner Deziel said there has been insufficient discussion. Geometry here has just been a guess.)

**Public Hearing: To add Salon/Spa as a Conditional Use in the LB District**

The Planner said this topic was mentioned in a previous meeting because of a proposed use in PRAIRIE RIDGE OFFICE PARK. Salon/Spa is not a legal use in LB. Ms. Gander requested that use in a letter but the question today is not for her specific use. He said the Commission went over the list of uses about one year ago. Beauty Shop appears as a Permitted Use in GB and CB (but we don't use Convenience Business District here). GB only allows Salon/Spa. Therefore, a Zoning Amendment is requested as a Conditional Use in Limited Business Zoning District.

The Planner decided to define the term Beauty Salon first, then to define Day Spa as a separate use again Conditional but most definitions carry deeper social uses. The City could allow the Accessory Use for a Day Spa, and make Salon as the Conditional Use. The Planner provided two definitions for Chapter 150. He said this hearing does not cover those definitions. Also, the Commission will not get into the specifications of Ms. Gander's letter. The Public Hearing is to add those uses to the LB Zoning District.

Commissioner Sedro said she was confused that the definition of Beauty Salon can be a vehicle.

The Planner said we should probably remove the words vehicle and one or more persons.

Commissioner Van Pelt said the Zoning Ordinance prohibits Beauty Shops as a Home Occupation, but the proposed definitions say we allow it in a residence. Also, he said that the part that says Salon/Day Spa is nurturing, safe, clean, etc., might not be good wording. He noted that the list of treatments does not include massage. He suggested that Day Spa exclude overnight resort spa scenarios. A sentence could be added that makes the distinction.

THE CHAIRMAN OPENED THE PUBLIC HEARING 9:42 PM

**Mary Gander**

Ms. Gander said she appreciates the work done by the Planning Commission for future situations and applications. Her plan is for a lovely, upscale facility that will enhance the community.

THE CHAIRMAN CLOSED THE PUBLIC HEARING AT 9:44 P.M.

**M/S/P, Ptacek/Sessing,** To recommend to amend the Zoning Ordinance to allow Beauty Salon as a Conditional Use in the LB Zone with a 20,000 sq. ft. maximum floor area, and to allow Day Spa as an Accessory Use to a Beauty Salon, and to recommend amending the definitions of Beauty Salon and Day Spa s previously discussed including removing residence and vehicle from the definition of Beauty Salon, and to add language to differentiate between Day Spa and Overnight Spa. **VOTE: 9:0.**

**Continuation: OP Concept Plan - DEER GLEN**

**M/S/P, Sessing/Johnson,** Take from the table the OP Concept Plan application for DEER GLEN.

**VOTE: 9:0.**

The Planner explained that the Public Hearing for DEER GLEN was continued on June 14 to allow the applicants time to address issues raised regarding flood plain filling and grading and to comply the standards of the OP Ordinance.

Commissioner Schneider asked how the applicant's graphic depicts flood mitigation.

The Planner said the cross-hatched area on the Concept Plan is now flood plain, and the broad circled area will be created flood plain.

The Planner asked if the Planning Commission to advise the applicant if the Commission is going to approve a Preliminary Plat for 108 acres that does not address the 40 acres at the north end of the parcel. He said that he and some of the Commissioners would like to see a plan that includes the northerly 40 acre portion.

Commissioner Sessing noted that this set of graphics shows a new road coming off the east parking lot and a second parking lot that was not depicted on earlier plans.

The Planner thanked him for pointing out that detail that appeared on only one of the maps the applicant presented with the modified plan.

**Paul Danielson, Kimley-Horn**

Mr. Danielson said his amended plan was created to clarify the flood plain, and the overall plan is simply a concept. The applicant still has to do a Grading Plan. He said they just wanted to show a way the flood plain issue could be mitigated. That plan would basically call for moving dirt from one spot to another. He advised that the applicant has no current plans to develop Parcel C. They would request it stay zoned as RR. The applicants will ask for a designation for the 20 acre church parcel and the CUP for the Open Space Zoning. The applicants want no encumbrance on Parcel C. If it did develop in the future, the applicant will apply and accept the Planning Commission's conditions for development, should that occur.

**Grant Nelson, Lakewood Church**

Mr. Nelson said he does not understand the logic of the staff position regarding designation of a use for Parcel C. If the church did not own it, residential development would go fine and the church would go fine. He observed that it appeared as though just because the church owns the 40 acres, the City wants to restrict it. He asked the Commission to let the church know the basis the City has for doing that. Their Open Space Concept Plan is not proposing to change the current status of that parcel. Their proposal is to leave it in its current status. Whatever would come in the future will have to come before the Planning Commission for their approval.

Commissioner Sessing asked whether slopes had been recalculated because if more unbuildable land, slopes are created by way of the flood plain mitigation, the applicant must compensate for it in Open Space preserved.

Commissioner Pelletier asked what the rationale is for asking the applicant to specify Parcel C's use.

The Planner explained that the entire 108 acres is in the same ownership, and he would be concerned about the future plans of a site with two road frontages. He would be concerned that two more church sites could be requested from the undesignated 40 acres.

Chairman Helwig said the applicant is saying they want to keep that 40 acres open. If so, put it in a Land Trust.

Commissioner Deziel said that at this time the City is only being asked to look at an OP Concept proposal by the applicant on 48 of the 108 acres, so he feels that it is out of order to continue to talk about 40 acres that are not part of the proposal.

Commissioner Van Pelt said the Planning Commission is evaluating a plan for 108 acres. The plan is not for Parcel A, B, or C but for 108 acres. He thinks they should keep it open and dedicated, consistent with church desires.

The Planner reminded the Commission of the Eagle Point site of 120 acres where the City reviewed and approved a specific use parameter for the entire site prior to approving use on any portion of the site. He pointed that circumstance out as ample precedent for the City requiring this 108 acre site under single ownership to be likewise completely committed to the City by the owner as to ultimate use.

Commissioner Deziel observed that in the Business Park Zone applicants know what they can and cannot do with a customized CUP. The use list is very narrow. The 120 acres is pre-committed on the Eagle Point site. The City knows the usage, but not the actual users.

Commissioner Van Pelt said this could be looked at as three different parcels. He asked if the applicant has the latitude to create three parcels.

The Planner said they do, if they meet minimum standards. The point being that if that were not one legal parcel, but three with a single ownership, we would ask the same questions.

Commissioner Schneider said he would like to see what is going to be done on Parcel C.

Commissioner Ptacek noted that technical issues of septic are addressed in this plan, so the movement of soil does not affect the building sites or location of septic.

**M/S/P, Ptacek/Van Pelt,** To recommend approval of the Concept Plan of DEER GLEN, because, by the numbers provided, that plan meets the City's criteria, and based on the recommended Findings of the Planning Staff Report with the addition of Condition 4, to designate a specified use for the northerly 40 acres known as Parcel C.

Commissioner Deziel asked how the City can do that. Parcel C maintains existing zoning. In a PUD we give up density and uses, do we need to know other density and uses? He said this is a 108 acre parcel. If the plan does not stand by itself don't approve it.

Commissioner Van Pelt said this is the first of a three stage application. The next stage will be a Preliminary Plat for 108 acres. To ask for a design to address 108 acres is part of the exercise. We must know the ultimate use for the entire 108 acres. We can not be asked to evaluate a design for 108 acres and leave 40% undiscussed. If those 40 acres are in the total, then the entire plan must be viable.

The Planner said he could ask the City Attorney for a legal opinion as to the propriety of adding a Condition to the OP Concept Plan that relates to lands not a part of the OP Concept application.

Commissioner Deziel ask for a friendly amendment to the motion to separate condition number four to become a separate motion to amend.

Commissioner Ptacek said he would rather call the vote on the motion as stated. If Condition 4 is inappropriate, then the Planner can have it removed.

#### **CALL THE QUESTION**

**VOTE: 8:1.** Commission Deziel said he voted against it for reasons previously discussed, and also as a question, because he said he is not sure we are treating the applicant the same as we have treated other applicants and he does not understand why.

Commissioner Ptacek said that Eagle Point Business Park was required to provide the same type of plan but Commissioner Deziel was not on the Planning Commission for that entire process.

**City Council Update – City Planner**

The Planner said the Isaacson Variance on 50<sup>th</sup> Street was approved by the City Council as recommended. The Council also vacated a section of Highlands Trail, adding that portion to tax rolls.

The Planner also reported that the City Council adopted a rezoning action on a small remnant of vacant land at the northwest corner of Keats and Hudson Blvd. At the time of the Mulligan Master review a Hearing had been conducted by the Commission and the Commission had then recommended rezoning that parcel from AG to LB for consistency with the Comp Plan. The adoption of the rezoning action had been tabled pending the Commission's review of the LB allowed uses that was completed in 2002. The Council simply removed the action from the table and adopted the rezoning.

The Council amended the fence moratorium removing one property for an applicant with accessibility issues to allow cyclone fencing.

Commissioner Mel is 1<sup>st</sup> Alternate Member of the Planning Commission and Commissioner Johnson has taken his place as Full Voting Member.

**ADJOURNED 10:30 P.M.**

Respectfully submitted,



Kimberly Schaffel  
Recording Secretary