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MEETING NOTICE

**The Lake Elmo Planning Commission
Will hold its regular meeting on
Monday, October 25, 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. Minor Subdivision and OP Final Plan Amendment**
- 4. Zoning Code – Neighborhood Conservation District**
- 5. Legal Opinion - Variances**
- 6. City Council Update**
- 7. Adjourn**

City of Lake Elmo
PLANNING COMMISSION MEETING
Minutes of October 13, 2004

Chairman Helwig called to order the meeting of the Lake Elmo Planning Commission at 7:00 p.m.
COMMISSIONERS PRESENT: Sessing, Sedro, Johnson, Ptacek, Schneider, Deziel, Armstrong, and Roth. STAFF PRESENT: Chuck Dillerud, City Planner and Marty Rafferty, City Administrator.

Pledge of Allegiance

Welcome to Planning Commissioners

The Chair introduced recently appointed Commissioners Tom Armstrong and Ben Roth.

Agenda

Chairman Helwig changed Item Number 7 to indicate that it is a Public Hearing. M/S/P, Ptacek/Sessing, To accept the Agenda as amended. VOTE: 9:0.

Appointments

Commissioner Sedro nominated Rod Sessing for Vice Chairman. Second: Ptacek. VOTE: 8:0:1 (Abstain: Sessing)

Commissioner Ptacek nominated Kathy Sedro for Secretary. Second: Sessing. VOTE: 8:0:1 (Abstain: Sedro).

Minutes of September 27, 2004

M/S/P, To accept the Minutes of September 27, 2004 as presented. VOTE: 6:0:3 (Abstain: Johnson, Armstrong, and Roth).

Public Hearing: Minor Subdivision Variance – Tauer/Pechan

The Planner explained the history of the site where eight parcels were created by metes and bounds descriptions rather than platting. Seven of the eight parcels have uses relating to dogs, the eighth parcel is a wood working business. Parcel 1 is zoned Limited Business while the other seven parcels are zoned AG. All eight parcels are guided for Limited Business.

The Planner said that this property line arrangement would be an Administrative action but since all of the parcels are non-conforming as to area, a zoning variance is required to create the proposed new parcels. He observed that, if the minor subdivision is approved, the two resulting parcels will be larger than today, and therefore less non-conforming.

The City Planner proposed the following Findings:

1. The property can not be put to reasonable use without the granting of the variances requested. Reasonable use can here be defined in the context of historic approval Limited Business parcel area well below the minimum area today required in the Limited Business district.
2. The variance requested results from circumstances unique these properties where land divisions were approved prior to adoption of City zoning and subdivision regulations; and, the circumstances of the variance were not solely created by the applicant.
3. Granting of the variance will not change the essential character of the neighborhood.

The Planner recommended approval based upon the Findings. He noted that the resulting Parcel 1 would have split zoning, which means there should be a condition that no structures may be built on the added portion of Parcel 1.

Commissioner Johnson asked why we do not change the zoning to LB for that portion of land being added to Parcel 1.

The Planner replied that the portion of land being added is already guided LB in the current Comprehensive Plan. When the city arrives at an agreement with the Metropolitan Council, we can then consider the entire site zoning with whatever other zoning modifications the Comprehensive Plan may dictate.

THE CHAIR OPENED THE PUBLIC HEARING AT 7:15 P.M.

Toni Osojnicki, Co-owner of Animal Inn Training School

Ms. Osojnicki asked why this minor subdivision is being done.

Don Tauer, Applicant

Mr. Tauer said that Mr. Pechan is currently using that portion of one of his parcels as a turnaround, and Mr. Pechan asked if he could buy that portion of land should Mr. Tauer decide to sell. Mr. Tauer said he is selling the rest of his land now, so the time is appropriate to address Mr. Pechan's request.

Dennis Ostrander, Owner of Parcel 3

Dr. Ostrander said he would like to be sure that the existing roadway is maintained in its existing location, and that he would like to be guaranteed use of that roadway.

THE CHAIR CLOSED THE PUBLIC HEARING AT 7:19 P.M.

Commissioner Armstrong explained that the easement for the private road is decided to those owners, and the owners would have to change their own deeds to lose that driveway access.

M/S/P, Ptacek/Sessing, To recommend approval of the parcel area variances and minor subdivision based on the Findings from the staff report dated October 7, 2004. **VOTE: 9:0.**

Public Hearing: Zoning Code – Miscellaneous Amendments to Fence Ordinance

The Planner explained that when the City Council adopted the amendments to the Fence Ordinance, he told them to expect to find holes in it after a period of use. He noted that it is not unusual to find areas undone, forgotten, or mistakes in a complex ordinance.

The Planner said that four issues have evolved since the ordinance was drafted.

1. Lakefront Property - Where houses are within the Shoreland setbacks and no fences are allowed in those setbacks. The City's intent was not to allow a fence between a home and a lake. Section 302.03 says except where the entire principal structure is within the Shoreland setback. An amendment to substitute the words "any part of" for "entire"; and, appropriate additional language would allow fencing of side yards to screen boats and other items on Shoreland lots.
2. Double Street Frontage Lots – Owners with double street frontages have requested some protection from roadway noise and related factors, and the Planning Commission did recommend a strategy for these circumstances for new subdivisions previously. Staff suggests a Condition Use Permit for allowing privacy fences for rear of lots in those cases. Each CUP would be reviewed by the Planning Commission, and the City can require continued fence maintenance as a condition. The City could then revoke the CUP if conditions change or are not met.
3. Fence Height in Non-street Frontage Yards – The City Council adopted 72" fence height for interior yards with the lower 42" allowed to be solid and the upper 30" 75% open to air and light. There was a suggestion to allow a 50% open standard for the upper 30".
4. Temporary Fences – Should these fences require permits and/or a reduced permit fee?

The Planner suggested the commission deal with the mechanics of the ordinance and not the philosophy. Commissioner Ptacek suggested that a lattice configuration for the upper 30" open would be typical. If lattice is 50% open to air and light, we could use that as a standard.

The Planner said the 75% number was used but it was not arrived at scientifically. The intent was to

avoid the appearance of a baseball park.

Commissioner Johnson said that fences require a survey which can be very expensive. That might be a prohibitive factor for a temporary fence.

Commissioner Sedro asked if the city has to worry about a fence being in the wrong place if a fence is temporary. She asked if deadlines for taking down a temporary fence were ever a problem.

The Planner said that a survey insures that a fence is placed on the fence owner's property. Deadlines for removal of temporary fences have never been a problem.

Commissioners Armstrong and Deziel said there should be no permit fee for temporary fences.

Commissioner Johnson said there should be no permit or fee for a temporary fence.

Commissioner Schneider suggested \$25 permit fee refunded when the fence is removed.

Commissioner Deziel said that Lakeland allows neighbors to approve the placement of fencing, so a survey is not required. The requirements we have are unnecessary and cumbersome.

Commissioner Sessing said that a 2 by 6 at an angle on the 30" upper portion of a fence would be open but at angles it would appear solid.

Commissioner Armstrong asked if we need to schedule another Public Hearing based upon the new ordinance draft.

Commissioner Ptacek said he is comfortable staff can provide the wording based upon the commission's direction.

The Planner said the City Attorney takes no exception to generalized Notice of Public Hearing.

THE CHAIR OPENED THE PUBLIC HEARING AT 7:52 P.M.

Tom McCormick, Resident of Carriage Station

Mr. McCormick said his home backs up to 55th Street and his front yard faces Marquess Way. Four of his neighbors share the same situation. They have been looking at a 6 foot solid wall or alternating board fence for noise abatement and to hide the view of the post office and industrial park across the street. They are looking for a uniform appearance and submitted a plan to the City Planner. One of their neighbors has a 6 foot picket fence, and they would mimic that appearance with alternating boards on the inside. They would like to install the fence this year.

Councilmember Dean Johnston

Councilmember Johnston explained that the intent of the fencing near water was if one wall was within the Shoreland setback. The lakes he considered would be Olson, Jane, Demontreville, or Elmo, not for a pond, not for water bodies without boat traffic. It was not intended universally but only for Recreational Lakes.

Councilmember Johnston said that six feet tall fences present a problem in small lot neighborhoods. He intended that solid wall fencing for screening which would be allowed if it meets setbacks.

Councilmember Johnston agreed that there should be no fee or survey required for a temporary fence.

Anne Smith, Resident of Carriage Station

Ms. Smith agrees there should be no fee or permit required for a temporary fence. She said that other cities have neighbors agree about fence placement. She asked the meaning of the percentage credit for

additional openness. She agreed that a CUP should be necessary for fences on double street frontage lots.

THE CHAIR CLOSED THE PUBLIC HEARING AT 8:00 P.M.

The Planner said that openness can be addressed from many different perspectives. We could average the openness across the entire 72" height. He said that neighbor concurrence for fence location is not a good idea because neighbors change. The Planner explained that the reason for our fee structure is the cost to the taxpayers. If there is no fee there should be no permit. The permitting process costs money.

The Planner said that Councilmember Johnston's approach to screening up to six feet tall if located inside the setback lines could be a simple fix.

The Administrator said that screening could be allowed if the fence were connected to the house, for patio for example. It fails if the house is at the structure setback.

The Planner continued that if that were the case, an individual could not have six feet of fence for privacy and the Code would then apply. If the fence is an architectural extension of the house, it could be looked at on a case by case basis.

Councilmember Johnston said six feet of fence adjacent to a major road might be appropriate.

The Planner addressed fencing on a lakeshore lot within the Shoreland setback. He said the city prohibits fencing in the Shoreland setback.

Councilmember Johnston said a fence should not be nearer the water than the nearest wall of the house but only on Recreational Lakes and not on ponds.

The Planner said some of those ponds are classified with the DNR. We might have to specify bodies of water by name.

Commissioner Deziel said we could say a fence may be built 2/3 the distance to the OHW from the principal structure. Children, pets, and danger of the water are considerations of safety.

Commissioner Sedro asked if the issue was for flooding and visual impact for the DNR.

The Planner said he believes it is a matter of both impact from the lake and for neighbors' views of the lake.

M/S/P, Ptacek/Sedro, To recommend preparing the ordinance in legislative format that says, "... where any portion of the principle structure is located within the OHW setback." And strike the word, "Entire."

Commissioner Sedro said then a fence could go only to the back of the house and no farther.

Commissioner Ptacek said he tends to agree with the DNR; no decks or fences in Shoreland setback.

Commissioner Helwig asked for clarification for which bodies of water.

The Planner said only those that have OHW's.

VOTE: 8:1 (Nay: Deziel). Commissioner Deziel said that safety is not a philosophical issue. It is irresponsible not to allow a fence if there are children.

Commissioner Sessing said a CUP fee is expensive. Perhaps there could be a reduced fee for a Fence CUP.

The Planner explained that anything less costs the city money.

Commissioner Armstrong asked what if ¾ of neighbors do not agree regarding a double frontage fence, would the city then reject the whole thing.

The Planner suggested those neighbors could share the fee.

M/S/P, Sessing/Ptacek, To recommend amending the Fence Ordinance to allow six feet tall, solid wall fences in rear yards on double street frontage lots by Conditional Use Permit.

Commissioner Ptacek said that in most cases neighbors will cooperate to save the fee.

VOTE: 8:1 (Nay: Armstrong. There should be no CUP for a fence.)

M/S/P, Deziel/Johnson, To recommend one-quarter of the usual CUP fee (currently \$206.25) for a fence CUP for fences in rear yards on double street frontage lots. **VOTE: 7:2** (Nay: Schneider – Neighbors should cooperate. Sessing – Loss of fee to the city.)

Commissioner Ptacek asked for a straw poll of the commission with regard to crediting the percentage of openness below 42". The majority of commissioners favored the concept.

Commissioner Roth said a fence could be 25% open up to 42" and 100% closed above.

The Administrator explained the ordinance prohibits solid fencing above 42" in height.

The Planner asked if the percentage of openness could be as viewed from 90 degrees perpendicular to the fence.

Commissioner Deziel said 20% of a yard could be screenable.

The Planner said that section could be partly addressed to modify the section on screening but only if the fence meets the structure setbacks. The effect could still be bad with a sea of fences chopping up a neighborhood.,.

M/S/P, Ptacek/Armstrong, To recommend amending the Fence Ordinance to allow fencing above 42" height be at least 50% open to air and light as viewed perpendicular to the fence, and as described in the staff report and comments. **VOTE: 9:0.**

M/S/P, Sedro/Johnson, To recommend removal of qualifiers from within Section 302.06. **VOTE: 9:0.**

City Council Update

The Planner said the City Council approved the vacation of 55th Street and directed staff to work with neighbors. Legal notice has to be re-published because the published legal does not match the Council's directive to vacate all the way to the well site.

Commissioner Ptacek said if the Manning Avenue access to Highway 36 gets shut down, those residents inland will have to levitate to get to/from their homes.

The Planner reported that the Antenna Permit was approved without changes. The Council also approved the Preliminary Plat and Development Stage Plan of Tapestry as recommended. The City Council denied the Comprehensive Plan Amendment for Inwood Associates as recommended. They also denied the variance to sideyard setback in the Old Village as recommended. However, they directed staff to come up with ordinance language that would address setbacks on small lots.

The Planner said the City Council made two appointments to the Planning Commission. They also

APPROVED: NOV. 8, 2004

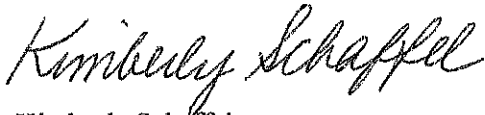
approved a one year extension of the Old Village Moratorium, although they don't anticipate needing the full year. They also approved landscape security reduction.

The Administrator said the mayor met with the Metropolitan Council representatives to start structuring the Comprehensive Plan. As of today, Met Council is still contemplating and evaluating our presentation. They have not made a decision yet.

The City Council is having a Workshop on October 16 from 9:30 am to 12:30 p.m. to discuss the Master Developer Concept.

Adjourn at 8:50 p.m.

Respectfully submitted,



Kimberly Schaffel
Recording Secretary