

## City of Lake Elmo

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### NOTICE OF MEETING

The City of Lake Elmo  
Planning Commission will conduct a meeting on  
**Monday, February 13, 2006, at 7:00 p.m.**

**WELCOME NEW PLANNING COMMISSIONER, NICOLE PARK**

### AGENDA

1. Agenda Approval
2. Minutes
  - a. January 23, 2006
3. PUBLIC HEARING: Variance ~ 8160 Hill Trail
4. PUBLIC HEARING: Comprehensive Plan Amendment & Rezoning  
~ 8740 Stillwater Blvd
5. Drive-up Service Windows
6. Home Occupations
7. City Council Update
8. Adjourn

The public is invited to attend.



**City of Lake Elmo  
Planning Commission Meeting  
Minutes of January 23, 2006**

Chairman Helwig called to order the meeting of the Lake Elmo Planning Commission at 7:00 p.m. COMMISSIONERS PRESENT: Lyzenga, Deziel, Armstrong, Van Zandt, Ptacek, Roth, Pelletier. STAFF PRESENT: Administrator Rafferty, Planner Dillerud, and Recording Secretary Schaffel.

**Agenda**

M/S/P, VOTE: 9:0.

Eliminate 8-Home Occupations, replace with 8-Met Council Communication. 7B-Proposed Joint Community Playfield with Oakdale.

**Welcome New Commissioner**

The Planner relayed the City Council actions relative to the Planning Commission's composition. He reported that Laurie McGinnis was appointed 2<sup>nd</sup> Alternate Member and granted a Leave of Absence until she gets her Master Degree in June. Bob Van Zandt is now 1<sup>st</sup> Alternate Member and Julie Fliflet is now a Full Voting Member.

**Election of Officers**

Commissioners Ptacek and Armstrong nominated Commissioner Helwig for Chairman.

Commissioner Roth nominated Commissioner Armstrong for Chairman, and Commissioner Armstrong did not accept the nomination.

M/S/P, Ptacek/Armstrong to elect Bob Helwig as Chairman. VOTE: 8:0:1 Abstain: Helwig.

M/S/P, Helwig/Armstrong to nominate Commissioner Ptacek as Vice Chairman and elect by unanimous ballot. VOTE: 8:0:1 Abstain: Ptacek~Modesty.

M/S/P, Roth/Ptacek to nominate Commissioner Pelletier as Secretary and elect by unanimous ballot. VOTE: 8:0:1 Abstain: Pelletier~Modesty.

Commissioner Ptacek thanked Commissioner Sedro for her work and time served on the Planning Commission.

**Minutes of January 9, 2006**

M/S/P, Deziel/Lyzenga to accept the Minutes of January 9, 2006 as presented. VOTE: 6:0:3 Abstain: Armstrong, Ptacek, and Schneider~Absence.

**Variance: 4473 Olson Lake Trail (Continued)**

M/S/P, Deziel/Schneider to take from the table The Flanagan Variance. VOTE: 9:0.

Planner Dillerud explained that the applicant, after the of his tabling his application on January 10 and waiving the 60 day review period, has revised his plans for the home remodel and expansion in order to reduce the horizontal encroachment into the Ordinary High Water Mark by removal of the proposed decks. The applicant proposes to remove the two decks and convert the



sunroom into a covered deck. He has also removed the encroachment into the sideyard setback area.

Chairman Helwig said the two decks were the primary problem last time and asked if the applicant still requires a variance. The Planner said most of the home today is within the shoreland setback, and any work performed to the structure would require a variance.

Commissioner Schneider asked if the concrete patio is there today.

The applicant said that it is.

**Patrick Flanagan, Applicant**

Mr. Flanagan said they took off the decks and the sunroom will be converted to an open air covered deck. He said the area where the sunroom meets the house still has to be protected from the elements to prevent further deterioration.

Commissioner Roth asked about 6X8 opening by the area where the patio was previously planned. The applicant said there will be no deck there, just doors to the outside.

Commissioner Pelletier said she is concerned about the size of the home compared to that of the neighbors.

The Planner said the conversion to the open air porch eliminates about 250 square feet of living area, bringing the proposed scale of the applicant's house closer to that of the neighbors.

M/S/P, Deziel/Van Zandt to recommend approval of the variance application for a remodel and addition to a house at 4473 Olson Lake Trail based on the findings that the lot was platted before current zoning and the shoreland overlay district were established; the proposal is deemed to be reasonable; and it will not alter the character of the neighborhood in any negative fashion, pursuant to the condition that plans are modified to reflect the open air porch. VOTE: 8:0:1 Abstain: Ptacek~Absent from last meeting.

**Zoning Code Text Amendment: Vineyard Wedding Business as AG Use**

The Planner explained there is an existing vineyard just north of Carriage Station on 55<sup>th</sup> Street. The Zoning District is AG. Uses conditional and permitted on AG lands today generally relate to the existing use. The Commission was asked if this proposed use would be in the best interest of the City, and if so, should staff publish a public hearing notice for a Zoning Text Amendment.

Commissioner Ptacek asked about consumption of alcohol and liquor licensing questions. Not knowing the answer, he would suggest it as a Conditional Use.

Commissioner Schneider asked about parking when there might be 300 or more guests on ten acres.

Commissioner Deziel asked if this would be more like a garage sale or a permanent store. Perhaps if the plan is for this use on an occasional basis then liquor licensing could be handled on an occasional basis as well. He asked about advertising and whether the applicants would be trying to attract more business.



Commissioner Armstrong mentioned a snowmobiling event request by Green Acres but the noise factor became a problem. Issues of concern for him are the noise factor (such as a band), parking, permanent or tent structures only, whether we would allow a permanent building, sufficient toilet facilities would be necessary. He said perhaps these events could be limited to summertime. Liquor licensing and frequency of events are other concerns. He said it would probably fit in with the natural setting in the AG Zone but we have to address these other factors. He noted that the City has issued CUP s in the AG zone such as greenhouses, kennels, and stables. The City would want conditions established in advance for wedding receptions so everyone knows what to expect.

M/S/P, Armstrong/Ptacek to direct staff to come back with a draft ordinance in the next few weeks.

The Planner said he will investigate how this use is regulated in Stillwater. He agreed with Commissioner Armstrong about it needing to be a Conditional Use.

VOTE: 9:0.

**Drive-up/Drive-through Facilities for Table Service Restaurants in the GB Zone**

The Planner introduced the request for a zoning ordinance modification for a restaurant drive-up window in the GB zoning district.. He reported that the City Code says restaurants with table service are all that are permitted in the GB Zone. He also reported that the City Council agreed that clause was designed to preclude fast food restaurants in the City during a recent administrative determination appeal by Ed Gorman. The Council sustained the administrative decision to deny Mr. Gorman's request but directed that the Planning Commission review the Code to determine if it could be modified to allow a drive-up window without violating the original ordinance intent. The Planner believes it can. Oakdale's ordinance distinguishes fast food from classic restaurants. Order boards differentiate them partly because of lights and attendant noise.

Commissioner Van Zandt said Applebee's and Chili's car side to go is a successful model because you would not want to order food and then wait for it. The order must be placed in advance. He said this presents convenience for young parents and elderly people. He thinks there is a need for it in the City as long as it is controlled.

The Planner said Oak Park Heights addresses bank drive-up facilities very well. They must have room for stacking of automobiles on-site. There is room at Gorman's but there would not be room at the Lake Elmo Inn or Twin Points.

Mr. Gorman said he wants a limited menu board of coffees and ice cream cones. He would face it to the south with a 70 db squawk box.

Commissioner Armstrong said the menu board and intercom make it more difficult for the Planning Commission to accommodate the request.

Commissioner Pelletier said she is against any kind of intercom, menu board, or drive-up window. She suggested car side to go.

Chairman Helwig stated that he agreed with Commissioners Armstrong and Pelletier regarding the menu board and intercom..



Commissioner Lyzenga asked about a walk-up window instead.

A Straw Poll was conducted to see which commissioners would be in favor of a menu board/intercom system. 0: menu board/intercom system. Another Straw Poll was conducted for car side to go versus a drive-up window. 5: drive up window without menu or intercom. 9: car side to go. A Straw Poll was taken to determine if the Planning Commission would like to take up this matter. All 9 commissioners agreed.

M/S/P, Ptacek/Deziel to direct staff to draft an ordinance allowing window service without a menu board and without an intercom system allowing this type of use of a restaurant in the GB Zone. VOTE: 7:2 Nay - Lyzenga/Pelletier, Lyzenga expressed concern about getting cars to the window in an orderly fashion. Pelletier is worried about a negative precedent. PASSED.

The Planner said the City Council wants to see this back in February so he will try to draft something to bring back soon.

#### **Proposed Joint Community Playfield with Oakdale**

The Planner said the City Council has requested a recommendation for a joint playfield with Oakdale in Lake Elmo at northeast corner of Ideal and Stillwater Boulevard.

The Administrator explained the history of the donation from 3M for a park for the City of Oakdale. 3M offered Oakdale land in Lake Elmo. After discussions and meetings, it has matured to a possibility of joint ownership of the land, capitalization, maintenance, and government and field scheduling between Oakdale and Lake Elmo. Lake Elmo staff held out for joint governance and joint input on design. Eventually our population will be close to theirs but meanwhile we are only 30% of their size. So there might have to be consideration of proportionate terms in the meantime until we grow.

The Administrator reported that the City Council has asked if this is something the City wants to pursue, and do we want to take the next step to create a development agreement. The Parks Commission unanimously recommended doing that.

The Planner explained the City's need for ball fields today and into the future. He said the Park Plan is 15 years old. Oakdale is about where we will be at 2030 for population. They have a significant community playfield but it is not enough for their needs. An Old Village community playfield would still be needed in the future. He said it makes sense from a Planning standpoint.

Commissioner Deziel asked about new zoning with RAD2 on the parcel north of Highway 5. He said it would be the nearest Lake Elmo development to this.

Commissioner Ptacek agreed with Commissioner Deziel and the Planner. He also said there are not enough dates and times and fields available in Lake Elmo and Oakdale.

Commissioner Armstrong would want this park for ages 18 and under and daylight facilities only, no lights on this field. He said it is probably better to create a park here near the railroad without displacing homes and REC units, and it would be a good partnership with Oakdale for the future.

The Planner clarified the proposal is for youth only.



Chairman Helwig said he used to be on the Parks Commission in Oakdale and he said the Oakdale Athletic Association and the Parks Commission there are two distinct entities. The Athletic Association does all the scheduling and they will get lights if they want them.

Commissioner Schneider said the City is sacrificing 26 acres for no houses and no taxes. We should get more than 50% use of this park.

The Administrator said the Cities are insured by the League of MN Cities so liability is not a problem.

M/S/P, Ptacek/Deziel to recommend taking the next step to continue the discussions. VOTE: 9:0.

#### **Met Council Communication**

The Planner said a letter was received by courier today from Chairman Bell saying the materials submitted on January 6, 2006 still do not put the City in the "complete" category.. The City has until February 1, 2006, to get our Comprehensive Plan complete or Chair Bell will ask the Metropolitan Council Board to begin litigation against the City.

The City Council will conduct an Emergency Meeting on January 24, 2006 at 6:00 p.m. to address this issue.

#### **City Council Updates**

The Planner said the Council upheld two administrative determinations and dealt with a sewer issue at their last meeting..

Adjourned at 8:38 p.m.

Respectfully submitted,

Kimberly Schaffel  
Recording Secretary



**City of Lake Elmo  
Planning Commission Meeting  
Minutes of January 9, 2006**

Chairman Helwig called to order the meeting of the Lake Elmo Planning Commission at 7:00 p.m. COMMISSIONERS PRESENT: Van Zandt, Fliflet, Pelletier, Deziel, Sedro, Roth, and Lyzenga. STAFF PRESENT: Planner Dillerud, Administrator Rafferty, and Recording Secretary Schaffel.

**Agenda**

M/S/P, Sedro/Roth, To accept the Agenda as presented. VOTE: 8:0.

**Minutes**

Commissioner Fliflet said she made the motion on page 3 regarding off roads trails to on road trails in the Minutes of December 12, 2005 and it was seconded by Commissioner Roth. M/S/P, Sedro/Van Zandt, To accept the Minutes of December 12, 2005 as amended. VOTE: 8:0.

M/S/P, Sedro/Van Zandt, To accept the Minutes of December 19, 2005 as presented. VOTE: 7:0:1, Abstain: Fliflet-Absence.

**Public Hearing: Variance ~ 4473 Olson Lake Trail**

The Planner explained the applicant wishes to remodel and substantially add to the existing home. A portion of the home is within the 100 feet setback from the lake. The existing garage is not within the OHW setback, however, the addition to the garage would be. A shoreland variance was approved in the past for a septic system a distance of 65 feet from the OHW of the lake. He said the applicant proposes a second story where a walkout now exists, to enclose the area between the house and garage, and to add a sunroom, a deck, and a cantilevered 4 foot deck on the second story of the house. He noted that if not for the proposed expansion behind the garage, there could be a place for the deck that did not further encroach into the OHW.

The Planner reported that Valley Branch Watershed District requested guttering to divert water away from the lake. The DNR only commented on the proposed deck and objects to the additional encroachment into the OHW setback as a result of the deck.

The Planner noted that the septic system design is for a four-bedroom home and five bedrooms are on the plan, however the downstairs room is eliminating a closet so the home could be considered four bedrooms.

Commissioner Deziel asked if there were ordinances regulating a size of the house other than setbacks and lot size. The Planner said yes, 6,000 square feet footprint is the maximum size of a house in the Shoreland.

Patrick and Ann Flanagan, the applicants introduced their son, daughter, and adjoining neighbors.

Scott Wesch of Westcott Construction, Contractor

Mr. Wesch said the existing garage is a two-story. There is living space beneath the patio. The home was built in 1962, when flat roofs were the norm. It was manufactured by Durock, a panelized, modular construction. Durock is a precast, autoclaved cellular concrete or Swedish



gas concrete panel. These are lightweight panels. The home has a basic foundation, the footings, concrete block, and then Durock within the concrete blocks, wall panels of Durock, the main floor is also made of concrete panels of Durock, upstairs walls, and the exterior roof system are Durock, and interior walls are made of Durock, some of which are supporting walls. Inside there is no interior wall or wall cavity, there is plaster directly over the Durock. At some point they paneled over some of the Durock. There is no insulation, no wall cavities, floor cavities, or attic spaces. Those are also places for plumbing, electricity, HVAC, and ductwork. It is all paneled, and it is energy inefficient. There is a great deal of decay and structural rods are revealing themselves. They do not know if the house is going to fall down. There is no data to make a determination of structural integrity. It is impossible to know if it would be safe to relocate a window, cut into a wall where HVAC could be placed, or determine if a doorway could be moved. Therefore, they recommend removing the structure down to the basement.

Mr. Wesch said the original drawings for the home reveal the house was not built to the specifications of those plans. The basement foundation, walkout wall to the lake, and main floor can be preserved. The nature of the construction offers little opportunity to work within the existing footprint or existing walls. The entire home is a hardship for The Flanagan's.

Patrick Flanagan, Applicant

Mr. Flanagan presented his calculations for the size of the house. He said there is an increase of 17%, on the main level 18%, and going up one floor results in 56% increase over all in the volume of this house. He did not know he was being challenged vertically for encroachment. He did not know he could not go to a second floor. Without going to a second floor, he would not be able to go forward with this plan; it would be cost prohibitive. They have lived here twenty years, and want to retire here. They left one bedroom on the main floor in case they cannot get upstairs in the future. The only way to get back the money he is investing is to increase the size. There are three two-story walkouts in his neighborhood, including the mayor's house. There are two-story walkouts on a lot of neighbor's parcels. Another costly factor is the need to have a road side face and a lake side face. There will be more trees lost for the septic system. He is asking for the vertical variance tonight.

He said that his house is situated between houses, one built in 1969 and one built in 1993 when setbacks were changed. It makes it look like he is standing out there (toward the lake) all by himself.

He handed out a diagram indicating the line between neighbors showing him sticking out. However, he said a second line drawn across the four houses northwest that were built around when his was built show that he is behind the setback line. He asked if it is fair to judge him against houses built after the setback was increased in the City Code or if it is fairer to judge him against houses built before the OHW setback was created.

He said that there is one window air conditioner in the house, and it is difficult for a family member with allergies.

Mr. Flanagan said his Landscape Plan is to redirect water, put in some plantings, but nothing specific. He said that his garage is not on a slab on the ground. This garage has to be heated to protect it in the future. The reference to the three car garage is not accurate, he has to heat that area. You could get a car in but not out again due to the grade.

When asked about the color for the structure, Mr. Flanagan said the bottom level walkout area

would be stone, then the siding above will be a light neutral color, in earthtones.

Commissioner Sedro asked if a structure be a cause for hardship.

The Planner said a hardship can be based on unique physical characteristics of the property. The commission could include or exclude construction as they see fit.

Commissioner Van Zandt said it sounds like this house is somewhat doomed. He asked the prediction if they don't do something.

Mr. Flanagan said besides all the water damage every time it rains. He has had the chimney re-tuck-pointed, the chimney rebuilt, the roof repaired, latex fill coating, and nothing has stopped the water at all. They want to attack the problem before a car goes through the floor of the garage. You can pull on some of the concrete and the rebar is seen to be rusting behind it.

Scott Wesch

Ceiling panels are over the garage and patio area. He said he cannot get good advice about these panels anymore. He said they may get good information if they could find an engineer who worked for Durock. He said they do not fully understand the structural integrity of the home. Also, the elevations preclude moving further up the hill because they would have to dig too far into the hill.

Commissioner Lyzenga asked what would happen if once they began that you find you cannot salvage any of it.

The contractor said the existing concrete perimeter block is there, and they will maintain the main floor. The ceiling for that main floor will stay because it has never been exposed to the weather.

Commissioner Lyzenga asked if they are comfortable with putting this kind of weight on a lightweight material. Mr. Wesch said there is an I beam with steel in there. There are structural issues also on the walls facing the lake. He said there is never a plan for finding out something is terribly wrong once they tear down to the foundation.

Commissioner Lyzenga said she thinks it would be best to tear the house down and start over.

Commissioner Deziel asked if the applicants could move the decks to the side or somewhere else so there is no additional encroachment to the lake.

Mr. Flanagan said the deck plan is for the patio door off the kitchen. He said he walked the lakeshore and there are some homes that have 100% of their lakeside as decking some encroaching way into the OHW. He thought his request was modest by comparison. He said he could adjust the one off the kitchen but is unsure what to do about the one upstairs. He is more concerned with the vertical concerns.

Commissioner Deziel said he is more concerned with horizontal encroachment. He asked the applicant if he would be willing to remove both decks from his application.

Mr. Flanagan said he needed time to consider that question.



THE CHAIRMAN OPENED THE PUBLIC HEARING AT 8:02 P.M.

John Holm, neighbor northwest

Mr. Holm said he looks at the aesthetics around the shoreline, and there are a lot of three-story houses on the lake. Some of the houses that are there are like hotels. His and Flanagan's house, because of the topography, seem farther off the water. He said he and his wife support the proposal, and they are adjoining neighbors.

Michelle Hills, neighbor south

Ms. Hill said they built their home in 1994 after setbacks had changed. At that time of new construction, they were told to build a larger two-story home. They asked the lot owner to approve a walkout rambler instead. Next door on their other side is the Olson House, a two-story house. They think the Flanagan's proposal would only be an improvement to the neighborhood.

THE CHAIRMAN CLOSED THE PUBLIC HEARING AT 8:06 P.M.

Commissioner Fliflet said the applicants made a strong case for hardship due to the structure. The issue for her is the request to build a home significantly bigger. She sees no problem with the two-story look with a lot of trees on the lot. She does not think it will stick out like a sore thumb. She thinks it will be much more attractive and will increase neighboring property value. The decks are a sticking point for her.

The Chairman took a Straw Poll on the two-story aspect of the home, and all agreed that was okay. He then took a Straw Poll on the encroachment into the OHW, and only one agreed the deck would be okay.

The Applicant requested tabling the application.

Commissioner Deziel asked for additional landscaping plans. He said the septic should be sized for five bedrooms if you are going to construct five bedrooms. Darker colors are better. He said that going up vertically is more energy efficient and creates a smaller footprint.

Commissioner Sedro said she is against any new impervious surface within the OHW setback even if it is no closer to the lake, such as for the garage area.

The Planner said one of the best options might be to move the deck where that sun room is now proposed..

M/S/P, Deziel/Sedro, To table with consent of the applicant. VOTE: 8:0.

Commissioner Sedro said her objection would be based upon the requirement of the state variance statute- that the variance granted is to be the least variance possible. Since the scope of the proposed finished size of the home is so large and possibly threatening to change the character of the neighborhood, the City should be that much more careful in granting the least possible variance with respect to new impervious surface within the high water mark.

### **City Council Update**

The Planner reported that the Council approved an Amendment to the Comprehensive Plan for the Trail Guide Plan with a list of 14 adjustments to be sent back to the Parks Commission. They approved modification to the 2030 Comprehensive Plan to accommodate the text covering the

Village Area Plan and the Metropolitan Council Resolution 2005-20 . The Resolution will be placed into the Appendix, but the conditions are addressed within Chapter III of the Plan. He reported that the City Council adopted the Plan modifications unanimously; and, Chapter III was restructured and submitted to the Met Council on Friday.

The Planner said that on December 30, the City presented its objections to the 2008 Metropolitan Council Systems Statement to the Met Council Land Use Advisory Committee. He noted the Met Council attorney suggested that the City's objections were a matter of process rather than content. He reported that the Committee will report its findings in 30 days and the Metropolitan Council Board will make a final decision within 30 days thereafter.

The Planner said the City was served a lawsuit by seven plaintiffs who own property along I-94 Corridor. That complaint asks for three things. Ask the court to roll back the clock to the last list of modifications (pre MOU) so sewer gets to that area of the city first. Then, if the City does not modify its Plan as the plaintiffs demand, the Met Council be mandated by the court to draft a Plan that complies with the plaintiffs demands and make the City adopt and comply with that Plan. The plaintiffs also ask the court to find that the City has created a procedural "taking" of their property by the Comp Plan Staging Plan and demands damages.

The Planner said that the City is by the League of Minnesota Cities for this type of litigation and will defend the case for the City.

The Planner submitted a letter from an applicant for the commissioners to review for the next meeting agenda.

It was reported that at the Council Workshop January 10, the City Council will conduct interviews for Planning Commission; and that The Election of Officers for the Planning Commission will take place at the next Planning Commission Meeting.

Adjourned at 8:35 p.m.

Respectfully submitted,



Kimberly A. Schaffel  
Planning Secretary



**LAKE ELMO PLANNING COMMISSION  
STAFF REPORT**

**Date:** February 8, 2006 for the Meeting of February 13, 2006

**Applicant:** Kevin & Gina Haire

**Location:** 8160 Hill Trail

**Requested Action:** Shoreland Overlay District Variances

**Land Use Plan Guiding:** SRD

**Existing Zoning:** R-1 (Subject to Shoreland Overlay)

**Site History and Existing Conditions:**

The Washington County Assessor records reveal that this 34,700 square foot parcel contains a 1,267 square foot split entry house (1,056 square foot print) constructed in 1930. City records for this parcel date back to 1971 and reveal only the customary septic and HVAC upgrades expected with a house of this age.

The site slopes gradually east (Lake Demontreville) and west (Hill Trail and Olson Lake) from a high point of 940 at the north center of the parcel to 931 at Hill Trail, 933 at the south property line, and 930 at Lake Demontreville. The existing house is situated approximately 37 feet from the Lake Demontreville OHW; and the septic drain field (single site 201) is well outside the 75 foot septic setback on the north extremity of the parcel. There is a detached storage shed, but no garage on the site.

**Discussion and Analysis:**

The applicant proposes to raze the existing residence and construct a new residence reported to be designed as 4,239 square feet with a 3,742 square foot footprint (including attached 2 car garage). An existing 70 square foot storage shed is proposed to be retained on the site. While the proposed total site coverage percentage (including drive) will exceed one Shoreland maximum (15%), the total impervious square feet will remain less than the other (6,000 square feet) maximum. The ordinance specifies the greater of the two standards as applicable. Therefore, though extensive, the proposed impervious does comply with the Shoreland standards, but little more impervious can be added on the site in the future.

The new house is proposed to be located a minimum of 52 feet from the OHW – set back 15 feet further than the existing house, but still well within the 100 foot OHW set back. The proposed location would place the house at or behind a line drawn between the houses north and south and parallel to the OHW; and, (as noted by the applicant) the proposed location would also retain several mature Oak trees within the OHW set back.

The applicant's variance request is similar in circumstances and claimed hardship to several variances approved by the City in recent years where mid-20<sup>th</sup> Century lakeside houses/cabins originally constructed prior to Shoreland standards are proposed to be brought up to 21<sup>st</sup> Century



standards resulting in conflict with those standards.. In some cases these have been garage additions and some cases they have been home additions.

In this case a completely new house and garage are proposed., thereby creating a zoning issue regarding construction on a non-conforming (by area) lot. As noted above, the subject parcel is made up of several "shotgun" lots is reported to be 34,700 square in area. The required lot area in the R-1 zone (and Shoreland Overlay R-1) is 1.5 acres – 65,340 square feet, but as a "parcel of record" prior to 1980, the parcel would qualify for a dwelling if it were at least 1 acre (43,560 square feet). The subject parcel fails to meet either standard, and a variance for lot area would be required to permit construction of a new house once the existing house (and legal non-conformity) is removed.

This lot area variance proposal could become far more of an issue for the City than the OHW set back variances we process on a regular basis in these neighborhoods that pre-exist the Shoreland standards. Within the R-1 zoned areas of the City, including the Tri-Lakes, Old Village and other neighborhood in the western half of the City there are numerous parcels of record that are not legally buildable as now vacant. There are numerous other non-conforming parcels that would become candidates for tear downs and new houses using a variance in this case as a precedent. By the approval of this application to build a totally new house on a legally sub-standard parcel – by any measure, Shoreland or R-1 – the City will be essentially re-writing the zoning ordinance. The Commission and City Council should address this proposal with "eyes open" as to the precedent consequences. While there is on-going discussion of a Neighborhood Conservation zoning district that may address this non-conformity issue, that discussion remains months away from conclusions and new code. This variance (lot area) is not an appropriate way to short circuit the new zoning ordinance.

In each of the prior similar cases the City addressed a Finding as to whether the applicant's proposed improvements/expansion constituted a "reasonable use" of the site given contemporary housing design/features and the scale of the resulting structures in relation to other contemporary structures on the subject lakefront and/or neighborhood. In some cases the City required modifications to applicant plans to reduce scale and/or mitigate lakefront impact of the expansion. In at least one recent case the City denied the variance based on scale, and the Court upheld the City's decision at subsequent litigation by the applicant.

As staff has done with recent OHW variance proposals, we have reviewed Washington County records regarding the scale/lake impact of existing homes that are in close proximity to the subject. In this case we have surveyed the existing homes 4 parcels north (one parcel is a vacant 20,000 square foot lot) and 3 parcels south. The north parcels (including the Frazzone parcel, for which an OHW set back variance was recently approved) present structure foot prints (including the approved additions in the Frazzone case) ranging from 830 square feet to 3,000 square feet and finished areas of 830 square feet to 3,400 square feet. The south neighboring parcels range 948 square feet to 1,288 square feet of foot print and 2,686 to 3,592 square feet of finished area. As noted above, the applicant's proposal is for 3,742 square feet of structure coverage and 4,239 square feet "finished" – in both cases larger than neighboring properties.

In previous cases where significant increases in house scale (and resulting out of proportion house scale compared to neighboring properties) have been proposed one mitigating factor has been the extent and scale of forestry between the proposed house and the lake. In this case the applicant has demonstrated a significant growth of mature trees that would be saved that would work to mitigate the impact of the larger structure as viewed from the lake.



Minnesota DNR and the Valley Branch Watershed have been asked to comment on the application. Valley Branch has responded by a letter of February 1 with no objections to the variances, but with several recommendations regarding erosion control and run-off mitigation. No response has been received from DNR as of this writing.

### **Findings and Recommendations:**

The requested variance regarding OHW setback appears to respond favorably to the required variance findings – if structure scale is considered to be mitigated by the existing forestry on the site. A reduction in the degree of OHW encroachment represented by the proposed structure from that existing with the house to be razed along with conformity with the averaged setbacks of the adjoining structures appears to support OHW setback variance approval. Moving the structure further west on the site by as little as 10 feet will place it in the OHW setback of Olson Lake to the west – a unique physical circumstance.

The concern of staff regarding this application goes to the construction of a new residence on a parcel clearly non-conforming by area – the second variance. The City-wide ramifications of approval of this variance will be significant without Findings that are carefully structured to overcome precedent that would undermine the zoning ordinance. Staff continues to work with the City Attorney toward properly worded findings regarding the parcel area variance. We are publishing this staff report pending those findings to enable timely completion of the February 13 Commission packet.

With respect to the OHW setback variance only, we suggest the following findings:

1. The property can not be put to reasonable use without the granting of the variance requested. The variance is the minimum possible given the unique circumstances of the parcel essentially “fronting” two lakes.
2. The variance requested results from circumstances unique to this property platted prior to the adoption of Shoreland Regulations by the City resulting in OHW setback applicable from two lake frontages; 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.

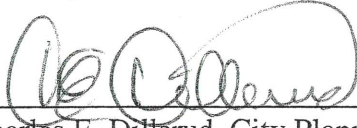
We therefore recommend approval of the OHW setback variance only (at this time) upon the following conditions:

1. Compliance with the Valley Branch Watershed District recommendations regarding silt fence erosion control and installation of rain gutters directed away from Lake Demontreville.
2. Compliance with any recommendations of the City Forester regarding protection of the existing forestry on the site during construction

Staff will report to the Commission on February 13 regarding recommendations and findings regarding the non-conforming lot area variance.

**Planning Commission Actions Requested:**

Motions for recommendation to the City Council regarding the OHW setback and non-conforming lot area variances requested to enable construction of a new residence at 8160 Hill Trail North based on the findings presented and conditions recommended by City Staff per plans staff-dated February 9, 2006.

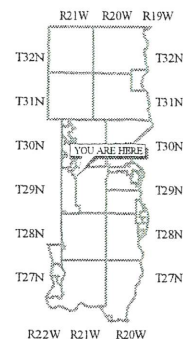
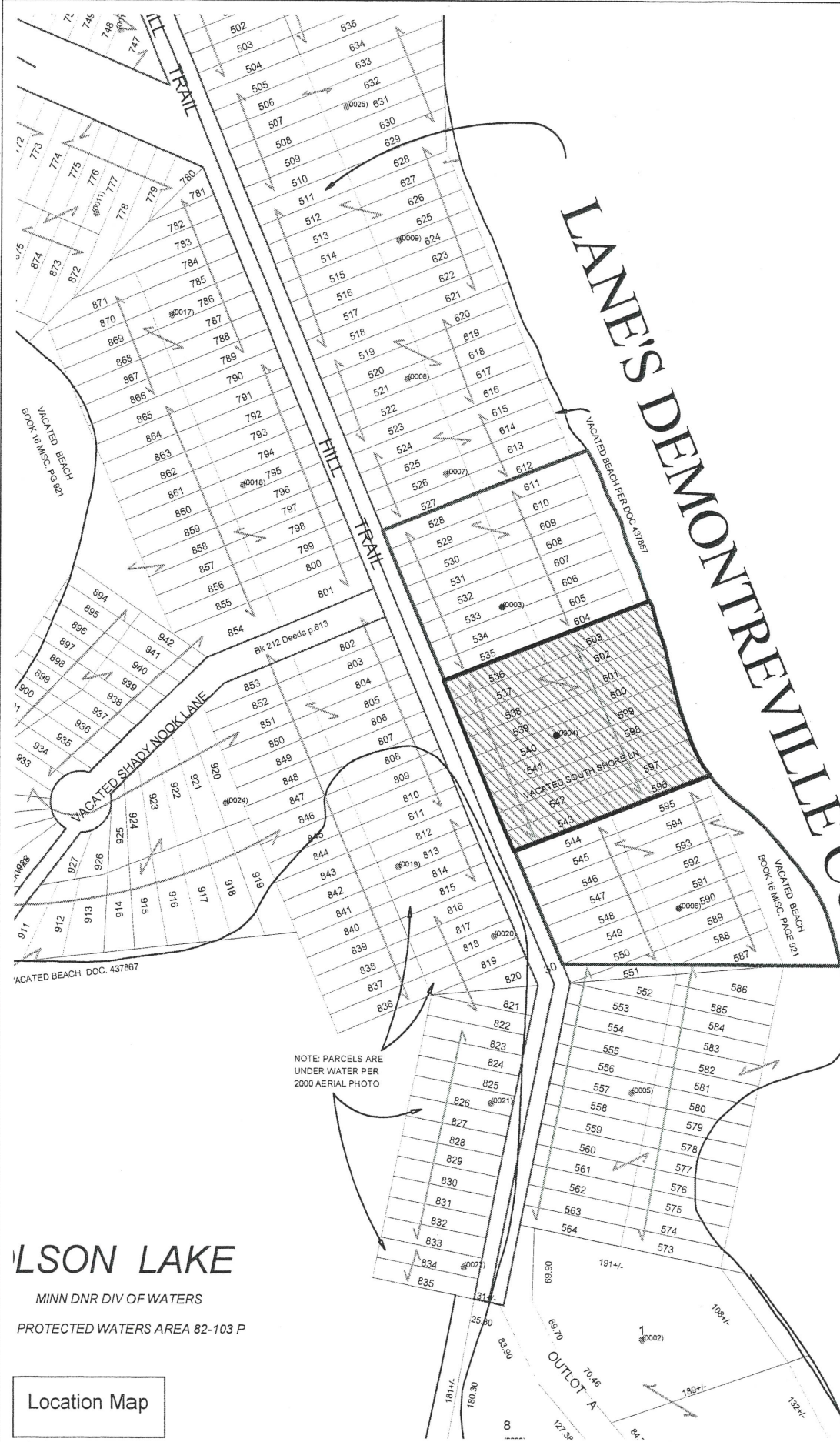
A handwritten signature in dark ink, appearing to read 'C. Dillerud', is written over a horizontal line.

Charles E. Dillerud, City Planner

**Attachments:**

1. Location Map
2. Valley Branch Letter of February 1, 2006
3. Applicant's Documentation and Graphics





Vicinity Map



0 145  
Scale in Feet

This drawing is the result of a compilation and reproduction of land records as they appear in various Washington County offices. The drawing should be used for reference purposes only. Washington County is not responsible for any inaccuracies.

Source: Washington County Surveyor's Office.  
Phone (651) 430-6675

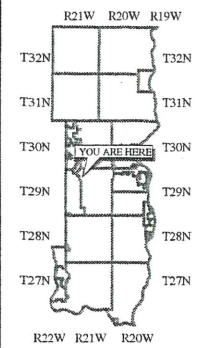
Parcel data based on AS400 information

FAZZONE,JAMES M & MELISSA J  
8148 HILL TRL N  
LAKE ELMO MN 55042

HAIRE,KEVIN J & GENA R  
8160 HILL TRL N  
LAKE ELMO MN 55042

SINCLAIR,PATRICK B & KATHLEEN  
8164 HILL TRL N  
LAKE ELMO MN 55042





Vicinity Map



0 200  
Scale in Feet

This drawing is the result of a compilation and reproduction of land records as they appear in various Washington County offices. The drawing should be used for reference purposes only. Washington County is not responsible for any inaccuracies.

Source: Washington County Surveyor's Office.  
Phone (651) 430-6875

Parcel data based on AS400 information



February 1, 2006

Mr. Chuck Dillerud  
City of Lake Elmo  
3800 Laverne Avenue North  
Lake Elmo, MN 55042

Re: 8160 Hill Trail North, Lake Elmo

Dear Mr. Dillerud:



Thank you for submitting the request for a variance from the Ordinary High Water level setback from Lake DeMontreville at 8160 Hill Trail North. The project appears to involve tearing down the existing home and constructing a new home, driveway, and septic system.

Based on the information that was submitted, it appears that a Valley Branch Watershed District permit is not required for the work. It appears that less than 6,000 square feet of new impervious surfaces will be created, less than an acre of land will be disturbed, and no work will occur below the 100-year flood level of Lake DeMontreville (Elevation 931.5).

The proposed lowest floor is noted on the plans as Elevation 934.0, which is more than two feet above the 100-year flood level of Lake DeMontreville and in conformance to the Valley Branch Watershed District rules.

The plans show silt fence around the perimeter of the area to be disturbed. While this perimeter fencing will define the construction limits, silt fence should try to follow the ground contours so that runoff doesn't flow next to the fence to a low point and then break through or undermine the silt fence. To prevent this type of erosion control failure, the silt fence on the lake side should be installed to better follow the contours or an additional row of silt fence that follows the contours should be installed. Temporary rock checks or bio-rolls might need to be installed at the areas of concentrated flow to prevent sediment from leaving the site. All erosion controls should be installed prior to any earthwork activities, and the site should be re-vegetated as soon as possible. The silt fence should not be removed until the site is re-vegetated.

If possible, gutters should be installed on the house to direct all roof runoff to the front of the lot. A rainwater garden could be constructed at the southwest corner of the site by expanding the existing low area and planting vegetation that will encourage infiltration.

If you have any questions, please contact me at 952-832-2622.

Sincerely,

John P. Hanson, P.E.  
BARR ENGINEERING COMPANY  
Engineers for the District

c: David Bucheck, VBWD Vice President (via e-mail)  
Gena Haire, property owner



LINCOLN FETTER DAVID BUCHECK DONALD SCHEEL DALE BORASH DUANE JOHNSON

VALLEY BRANCH WATERSHED DISTRICT  
P.O. BOX 838

www.vbwd.org  
LAKE ELMO, MINNESOTA 55042-0538



Merit Custom Homes, Inc.  
21471 Ulysses Street NE, #2  
East Bethel, MN 55011  
(763) 434-1500  
(763) 434-6416 fax

January 26, 2006

2/9/06  
ed

Planning Commission  
City of Lake Elmo  
3800 Laverne Avenue N  
Lake Elmo, MN 55042

Re: Variance at 8160 Hill Trail N

Dear Planning Commission:

Merit Custom Homes, Inc. (builder) is requesting a variance for the property at 8160 Hill Trail N for the following reasons:

Setback requirement from the normal high water level on Lake Demontreville is 100 feet, we are asking for a variance of 52 feet. Our proposed location for the new structure is 48 feet. The existing structure on the property is currently 37 feet from the normal high water level. We will be moving the new structure back an additional 11 feet from where the existing home sits, and the patio shown extending off the great room towards the lake will be moved to the south side, off the master bedroom.

By moving the future structure back and jogging the lake side of the home back away from the shoreline we preserve numerous mature oak trees and do not disturb any of the shoreline vegetation or the view from the lake towards the new home.

There are two hardships associated with this property:

1. There is Black Mold Infestation of the existing foundation. (see enclosed photos)  
Due to the severity of the infestation and the expense to clean up with no guarantees that the mold will not return, the fee owner has decided not to use the existing foundation for the remodel that they had initially designed for his property.

8/19/06  
[Signature]

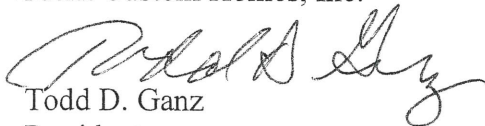
2. The limitation to move the structure back towards the road because of the area required for the future septic system.

Merit Custom Homes has been contracted to build/remodel and represent the Haire family for this project, which includes variance submittals and meetings. The Haire family has redesigned the home several times in order to abide by the rules of setback and also the preservation of the lake views, from the lake and also to the lake.

Merit Custom Homes has had preliminary conversations with Travis Germundson for the Minnesota DNR and John Hanson from the watershed district. They have also been sent pictures of the site and sketch plans of the location of the new house. Both had favorable comments about the site and what was planned for the improvement. Neither of them has seen the current survey which was submitted with this application.

In reference to the existing septic, it is currently in compliance for a three bedroom home and will be used for the new structure, which will also be a three bedroom home. The septic compliance and design was done by Barry Brown. As you can see on the survey the future septic locations is next to the existing septic. Soil borings for the future septic were done on the south side of the driveway and the mottled soils were too high in elevation to support a future septic system in that location.

Merit Custom Homes, Inc.

  
Todd D. Ganz  
President

enclosures



Fee \$ \_\_\_\_\_

**City of Lake Elmo  
DEVELOPMENT APPLICATION FORM**

- |  |  |   |
|--|--|---|
| <input type="checkbox"/> Comprehensive Plan Amendment              | <input checked="" type="checkbox"/> Variance * (See below)           | <input type="checkbox"/> Residential Subdivision Preliminary/Final Plat                         |
| <input type="checkbox"/> Zoning District Amendment                 | <input type="checkbox"/> Minor Subdivision                           | <input type="radio"/> 01 - 10 Lots  |
| <input type="checkbox"/> Text Amendment                            | <input type="checkbox"/> Lot Line Adjustment                         | <input type="radio"/> 11 - 20 Lots  |
|  |  | <input type="radio"/> 21 Lots or More   |
| <input type="checkbox"/> Flood Plain C.U.P. Conditional Use Permit | <input type="checkbox"/> Residential Subdivision Sketch/Concept Plan | <input type="checkbox"/> Excavating & Grading Permit  |
| <input type="checkbox"/> Conditional Use Permit (C.U.P.)           | <input type="checkbox"/> Site & Building Plan Review                 | <input type="checkbox"/> Appeal <span style="float: right;"><input type="checkbox"/> PUD</span> |

APPLICANT: Merit Custom Homes, Inc. 21471 Ulysses Street NE #2  
(Name) (Mailing Address) (Zip)  
East Bethel MN 55011

TELEPHONES: 763.434.1500 612.369.2747 763.434.6410  
(Home) (Work) (Mobile) (Fax)

FEE OWNER: Kevin + Gina Heire 13034 Crooked Lake Boulevard  
(Name) (Mailing Address) (Zip)  
Coon Rapids MN 55448

TELEPHONES: 763.862.4102  
(Home) (Work) (Mobile) (Fax)

PROPERTY LOCATION (Address and Complete (Long) Legal Description): 8160 Hill Trail N  
Legal description - separate sheet attached

DETAILED REASON FOR REQUEST: SEE ATTACHED EXPLANATION

**\*VARIANCE REQUESTS:** As outlined in Section 301.060 C. of the Lake Elmo Municipal Code, the Applicant must demonstrate a hardship before a variance can be granted. The hardship related to this application is as follows:

SEE ATTACHED EXPLANATION

In signing this application, I hereby acknowledge that I have read and fully understand the applicable provisions of the Zoning and Subdivision Ordinances and current administrative procedures. I further acknowledge the fee explanation as outlined in the application procedures and hereby agree to pay all statements received from the City pertaining to additional application expense.

David D. Lutz, Pres. 1-12-06  
Signature of Applicant Date

Signature of Applicant Date

**RECEIVED**  
**JAN 17 2006**







# LAKE ELEVATION



12" OAK

18" OAK

12" OAK

12" OAK

12" OAK

15" OAK

12" OAK

12" OAK

12" OAK

12" OAK

12" OAK

12" OAK

9" birch

2/9/06  
D

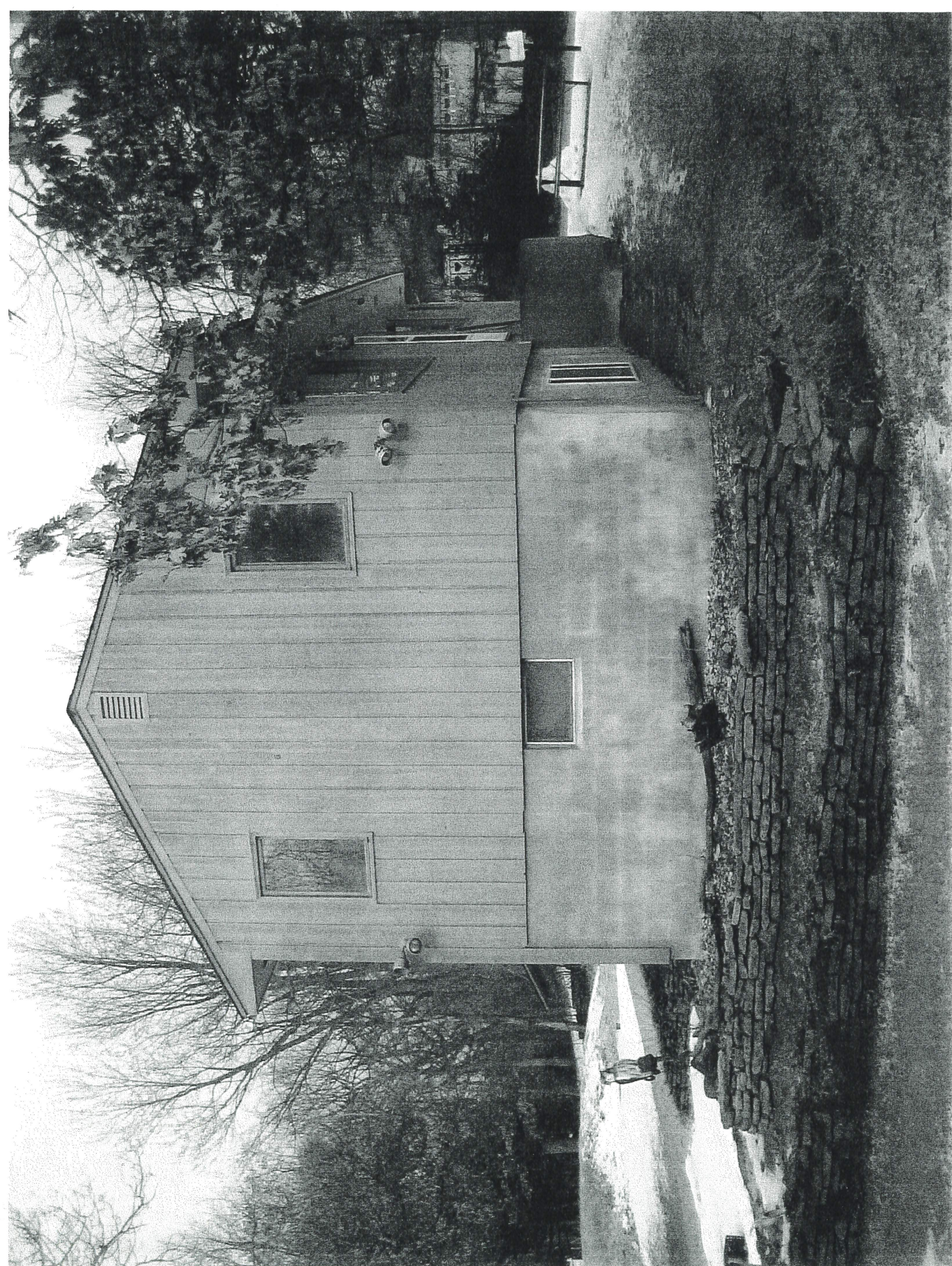
























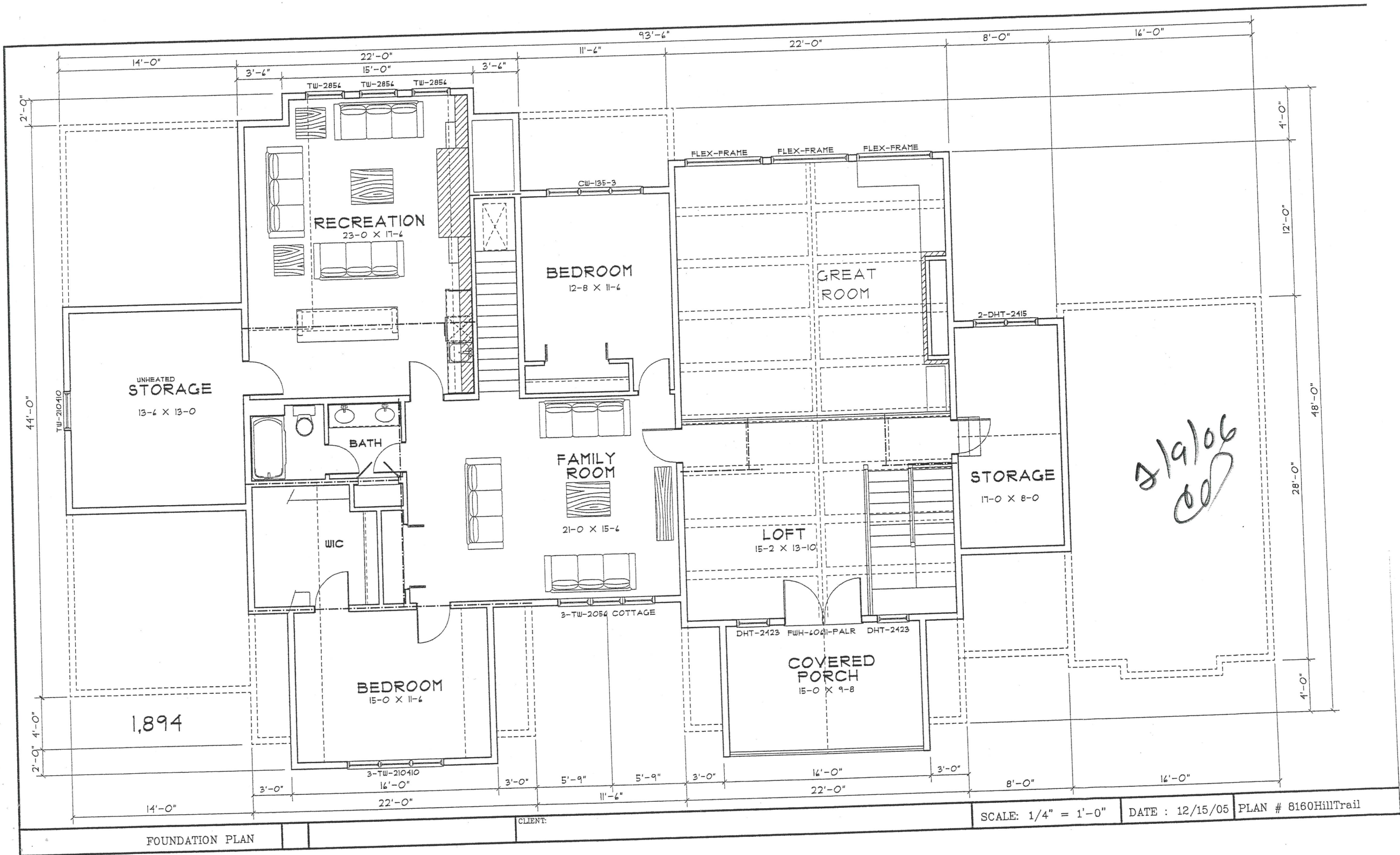
REAR ELEVATION EAST



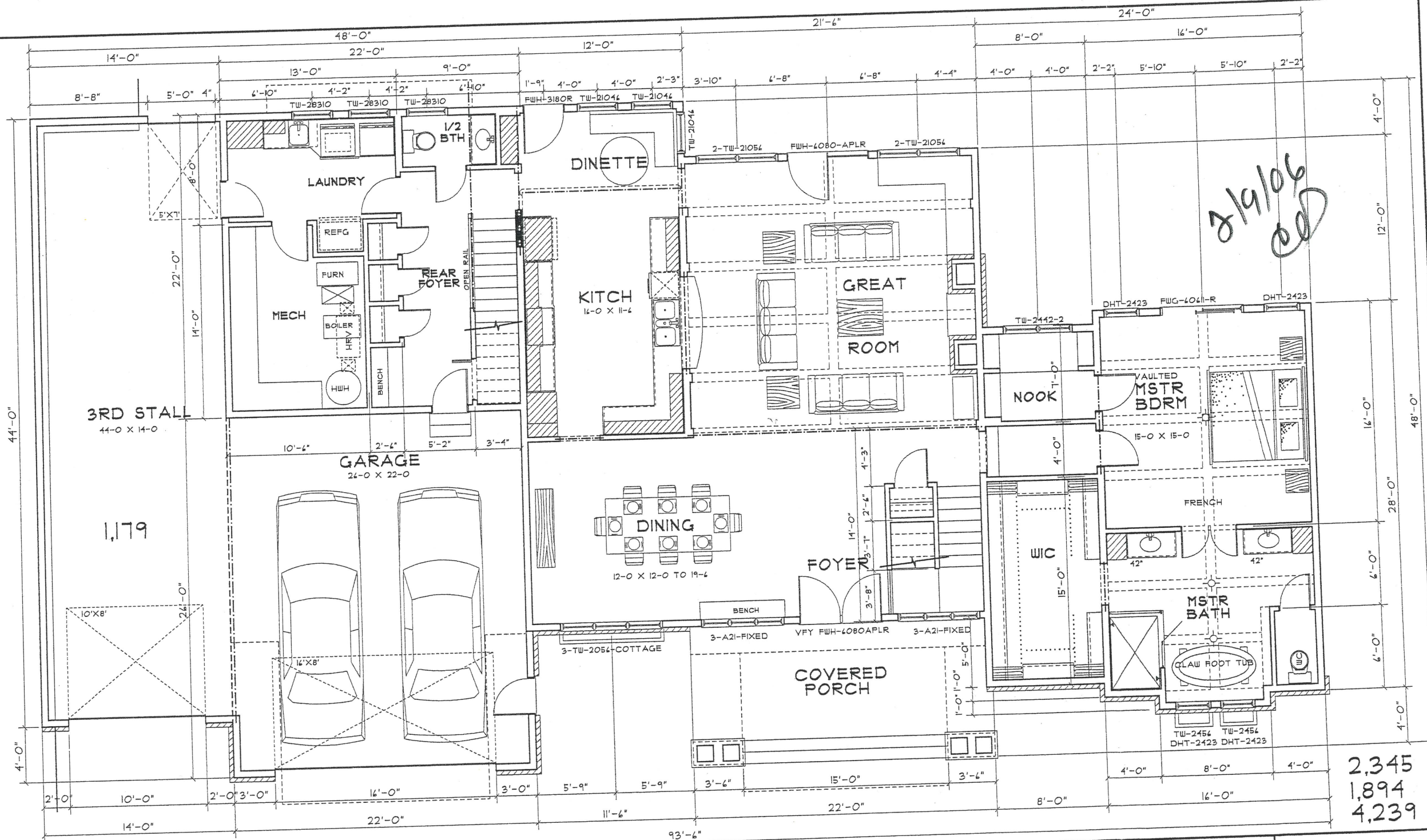
FRONT ELEVATION WEST

8/19/06  
con









MAIN FLOOR PLAN

3/4

NOLLET DESIGN

CLIENT:

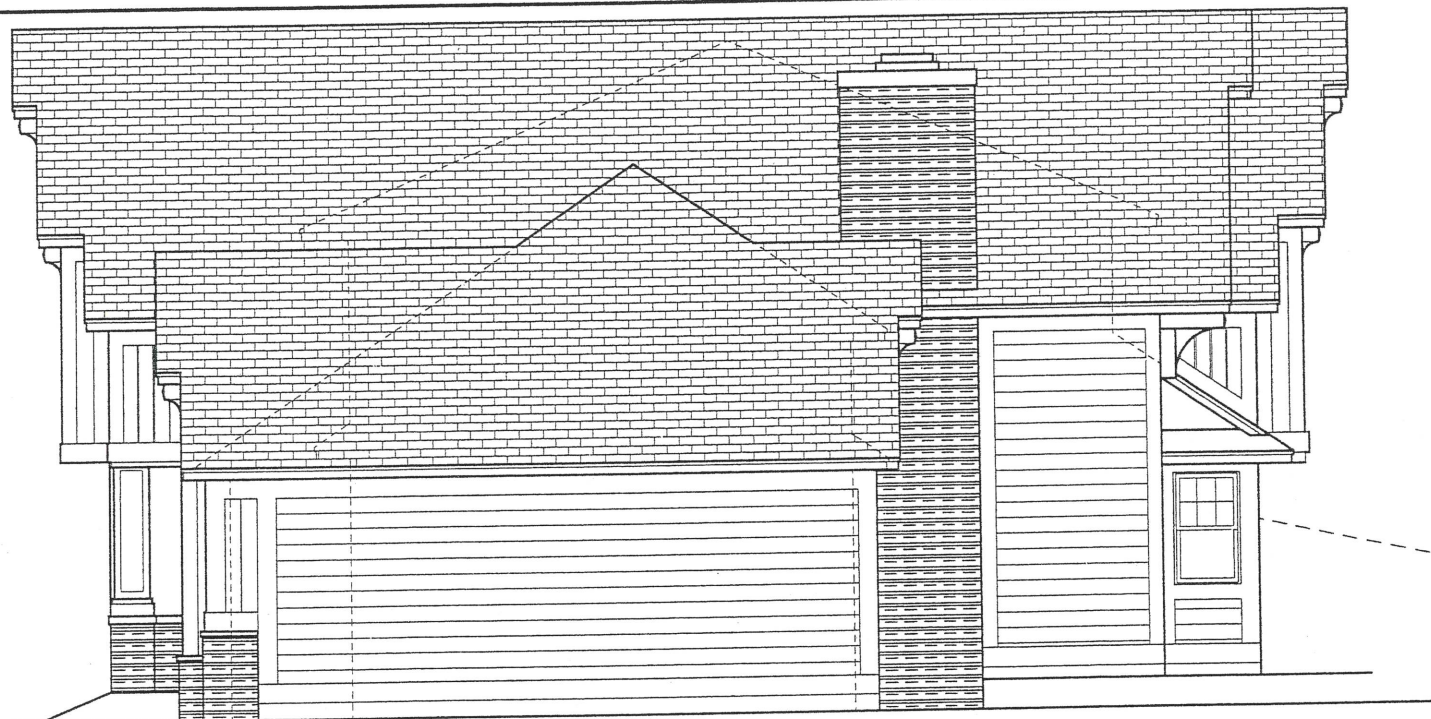
SCALE: 1/4" = 1'-0"

DATE: 12/15/05

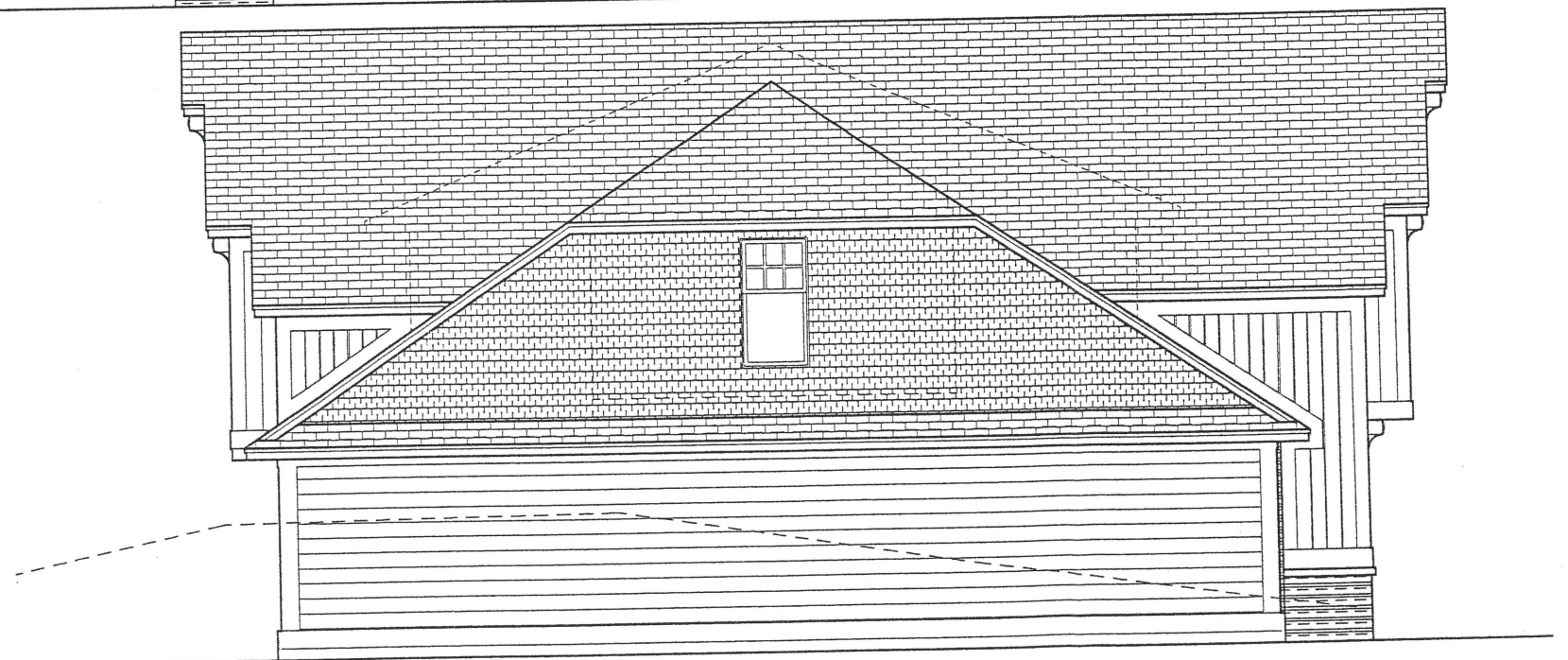
PLAN # 8160HillTrail



2/19/06  
007



SOUTH ELEVATION



NORTH ELEVATION



**LAKE ELMO PLANNING COMMISSION  
STAFF REPORT**

**Date:** February 7, 2006 for the Meeting of February 13, 2006

**Applicant:** Conlin

**Location:** 8740 Stillwater Blvd.

**Requested Action:** Comprehensive Plan Amendment and Rezoning

**Land Use Plan Guiding:** RAD

**Existing Zoning:** RR

**Site History and Existing Conditions:**

This 9.4 acre site was created in 1994 by a simple lot division approved by the City Council. The 9.4 acres was, at the time of the division action, also a part of a Comprehensive Plan Amendment involving 30+ additional acres to the west that had been approved by the City, but still under review by the Metropolitan Council. The Comprehensive Plan Amendment was to reclassify the 40+ acres (including this site) from RAD to RED.

The property owner at the time (Mr. Michels) decided in late 1994 that the Metropolitan Council review was taking too long, and he asked the City to allow conveyance (by the simple lot division) of this 9.4 acre portion of the overall site. Thereafter, the Comprehensive Plan amendment and rezoning on the balance of the original 40+ acres was approved by the Metropolitan Council and those lands were platted RE as Eagle Point Creek Estates – 3.3 acre average lot area, with a minimum lot area of 2.5 acres. The subject 9.4 acre parcel remained classified RAD and zoned RR, and is today.

The site is bordered on the south by Stillwater Blvd.; on the east by a 10 acre parcel with a single family home; on the north by the Union Pacific railroad right-of-way; and on the west by Raleigh Creek and the 2.50 and 2.77 acre lots of Eagle Point Creek Estates. The site contains a single family home constructed in 1952. Other than the aforementioned planning/zoning actions from 1994/1995, City records reflect only septic system replacement permits for the subject site.

No site topography is available other than that provided with the RE plat to the east in 1995. That topography depicts Raleigh Creek at approximately elevation 916, with the subject site sloping upward to the Northeast to at least elevation 930. The northeast 2/3 of the site is wooded with the south portion (along Stillwater Blvd.) and the area paralleling the Creek appearing to be wetland growth. It appears that the flood plain of Raleigh Creek extends to elevation 921 (per the FEMA Flood Insurance mapping). Since Raleigh Creek is designated a “Tributary Stream” by the Lake Elmo Shoreland Overlay zoning district, all development within 300 feet of the Creek centerline is regulated by Shoreland Overlay District standards of the zoning ordinance. In this case, it appears that both the 75 foot setback from OHW for the septic systems, and the 100 foot setback from OHW for any new structures on the site will constrain site development.



## Discussion and Analysis:

The applicant proposes a Comprehensive Plan amendment to reclassify the entire 9.4 acre site from RAD to SRD, and complimentary rezoning of the entire site from RR to R-1. The present RAD classification results in either AG (1 unit per 40 acres) or RR (1 unit per 10 acres) zoning. In addition, any site of 40 acres or more in the AG or RR District is eligible for development as an OP project with a Conditional Use Permit. This site would not qualify for OP development.

As we have advised the Commission with prior Comprehensive Plan Amendment proposals, there are two primary findings that are addressed by the planning profession and many courts (and this Planning Commission in with prior Plan Amendment applications) to support any Comprehensive Plan Amendment:

1. To correct an error in the Comprehensive Plan.
2. A change of conditions impacting the site since adoption of the Comprehensive Plan.

The land use classifications contained in the 1990 Comprehensive Plan (the still-official Plan of the City) are generally not defined in great detail, and the Plan speaks more to zoning districts than to land use classifications. That Plan format was common in the late 1980's and earlier. In the view of some practitioners (courts included) the outmoded concept of zoning prevailing over the comprehensive plan remained valid. In other professional quarters it was held that there was no logical basis for zoning unless it was responsive to a comprehensive plan. The Legislature has (since the 1980's Plans) amended the Planning Statutes to clearly spell out that zoning is no longer an end alone, but merely a means to an end – execution of a Comprehensive Plan.

In 2000 the City Council, by Resolution 2000-011 (copy attached) amended the 1990 Comprehensive Plan to clearly define the SRD land use classification to function as a guide for any future proposals for an SRD land use classification and resulting R-1 zoning. That Plan text amendment resulted SRD becoming applicable to certain portions of the City defined by pre-existing development patterns; and to undeveloped lands within the City meeting strict locational and physical criteria. The subject site does not comply with 4 of the 5 listed criteria for SRD land use classification. Only the common ownership criterion is complied with.

The applicant's documentation in support of the proposed Plan amendment addresses several arguments that can be summarized and responded to as follows:

1. *R-1 zoning (from the required SRD land use classification) "...is consistent and compatible with the way the area has developed..."*. In fact, the only directly abutting properties to the subject site are land use classified RED/RE (to the west) and RAD/RR (to the east). While there are neighborhoods that are classified SRD/R-1 several hundred feet distant from the site, those neighborhoods were developed decades ago responsive to City development regulations that have long since been abandoned by the City. The SRD/R-1 classification of these existing neighborhoods is only to acknowledge the platting structure and overcome mass issues of legal non-conformity. The 2000 amendment to the Comprehensive Plan regarding the definition of SRD both clearly addresses this circumstance and also clearly addresses the only locational and physical circumstances under which additional SRD land use classification and R-1 zoning can be considered
2. *"A rezoning and future subdivision on this site will not impact the surrounding properties..."* It has been previously noted that directing abutting lands to the west are



classified and developed RED/RE (effectively 0.30 dwelling units per acre) and to the east RAD/RR (not more than 1 dwelling unit per 10 acres, or 0.10 dwelling units per acre). The proposed SRD/R-1 classification/zoning of the subject site could result in a dwelling unit density of 1.40 dwelling units per acre net of the delineated wetland of Raleigh Creek – over 4 times as intense as the developed lands to the west and 14 times as intense as the lands directly abutting to the east. Staff suggests that there would be a negative impact on directing abutting lands that could not be reasonably mitigated to the extent the City requires where such differing levels of use intensity abut - such as the OP buffer requirements.

3. *“The proposed rezoning and development is consistent with the Lake Elmo comprehensive planning goals and metropolitan systems plans.”* While “planned sustainable growth” surely was and continues to be a Policy of the City, the emphasis is on “planned” and “sustainable”. Those growth factors have been defined in recent years by the Open Space Development neighborhoods that have resulted in a City growth of several hundred homes, while concurrently preserving several hundred acres forever as open space and as significant buffers between conflicting land use intensities. Reclassification of this site as SRD/R-1 and the resulting type/intensity of development will likely not respond to “planned” and “sustainable” as defined by the City today. The Metropolitan Council Development Framework standard of 3 dwelling units per acre applies only to areas designated by the City to be served by regional sewer. Neither the City’s 1990 nor 2005 Comprehensive Plans designate this site to be served by regional sewer – ever. The 3 dwelling unit per acre density standard is not applicable in this case.

### **Findings and Recommendations:**

Based on the foregoing discussion of the application staff suggests the following findings by the Commission regarding the application for Comprehensive Plan amendment:

1. No error in the 1990 Lake Elmo Comprehensive Plan regarding the land use classification of the subject site is demonstrated by the applicant nor detected by the Planning Commission that would support land use reclassification of the subject site from RAD to SRD.
2. There has been no change of City policy nor change in physical circumstances regarding the subject site or its environs that supports an amendment to the 1990 Lake Elmo Comprehensive Plan land use classification of the subject site from RAD to SRD.
3. The subject site does not present 4 of the 5 locational or physical characteristics required by the Lake Elmo Comprehensive Plan for SRD land use classification.

Based on the foregoing suggested Findings, staff recommends that the application for Comprehensive Plan amendment to reclassify planned land use of the subject site from RAD to SRD be denied. We observe that there are scores of land parcels in the City of like size and physical characteristics. The essential character of the City as well as the environmental integrity of both surface water and ground water could be severely compromised if a reclassification to SRD of this site were approved and become a precedent (as it surely would) for the numerous other sites in the City presenting the same physical characteristics – primarily site area less than 20 acres (the RED minimum site area).

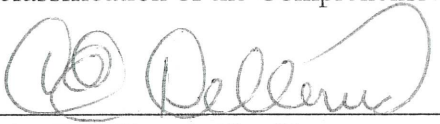


Based the foregoing findings and recommendation regarding the Comprehensive Plan amendment, staff also suggests a finding that rezoning of the site from RR to R-1 would be inconsistent with State Law regarding Plan and zoning conformity, and should be recommended for denial as well . This application is dated January 25, 2006. City Council action regarding these applications must be completed by the Council meeting of March 21, 2006 , if not before.

**Planning Commission Actions Requested:**

Motion to recommend denial of the application by Conlin to amend the Comprehensive Plan to reclassify 9.4 acres at 8740 Stillwater Blvd. from RAD to SRD based on the findings of the Planning Staff Report dated February 7, 2006.

Motion to recommend denial of the application by Conlin to rezone 9.4 acres at 8740 Stillwater Blvd. from RR to R-1 based on a finding that R-1 zoning is not in conformity with the RAD land use classification of the Comprehensive Plan.

A handwritten signature in cursive script, appearing to read "C. E. Dillerud", written over a horizontal line.

Charles E. Dillerud, City Planner

**Attachments:**

1. City Council Resolution #2000-11 – SRD Definition
2. Location Map
3. Applicant's Documentation – No Graphics



CITY OF LAKE ELMO  
WASHINGTON COUNTY, MINNESOTA

RESOLUTION NO. 2000-011

A RESOLUTION ADDING SECTION II A3  
OF THE 1990 LAKE ELMO COMPREHENSIVE PLAN

WHEREAS, SECTION 1. Amendment: Section II A3 of the 1990 Lake Elmo Comprehensive Plan is hereby added to read as follows:

**SRD (Suburban Residential Development)**

Areas of the City primarily, but not exclusively, adjacent to lakes where lot sizes and resulting density exceeds that of land use classifications and zoning established in the City in 1990, and existing as platted "lots of record" as of 1999.

Also, areas of the City exhibiting all of the following characteristics:

1. Common ownership of all included tax parcels.
2. Directly abutting the Lake Elmo Corporate Limits with an adjacent local political government unit for a distance of at least 1,200 lineal feet, with no public Right-of-Way or roadway easement of any type intervening between the site within Lake Elmo and the Corporate Limits with the adjacent city.
3. Abutting properties within an adjacent governmental unit which are currently serviced by Regional Sewer, and which are within the Metropolitan Urban Service Area.
4. At least 2,000 feet of public street frontage on an existing improved street, except County, State or Federal Highway.
5. The depth of the site, including all common ownership parcels, may not exceed 2,640 feet, as measured perpendicular to the Lake Elmo Corporate Limits referred to by Site Characteristic #2 above.

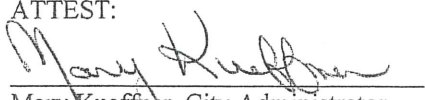
The residential dwelling unit density of any newly developed or redeveloped SRD site shall not exceed 1.4 dwelling units per acre, net of DNR Protected Wetland.

**NOW, THEREFORE, BE IT RESOLVED**, that the Lake Elmo City Council does hereby approve the amendment of adding Section II A3 SRD (Suburban Residential Development) to the 1990 Comprehensive Plan.

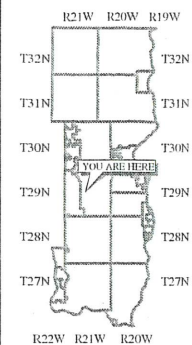
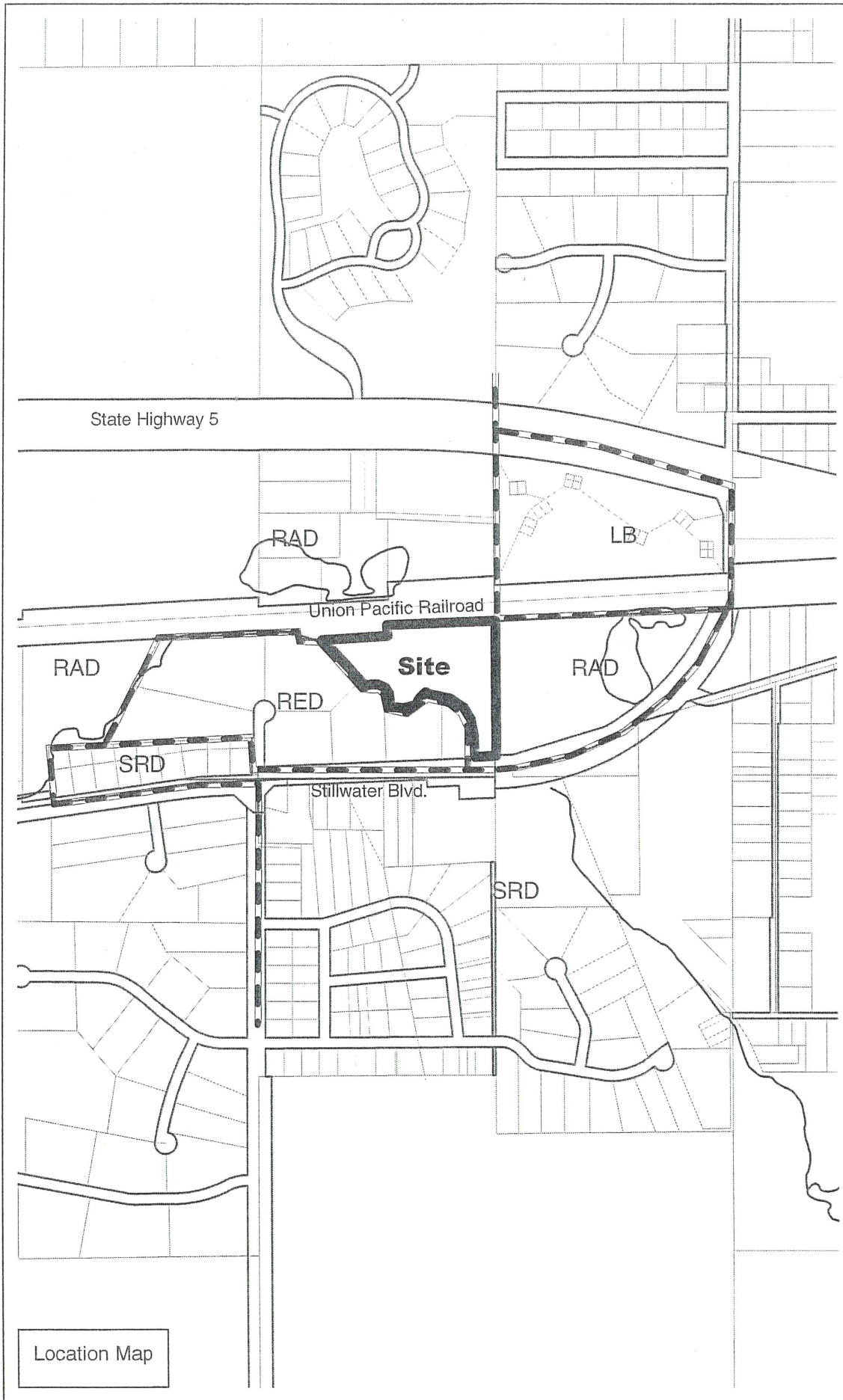
**ADOPTED**, by the Lake Elmo City Council the 18<sup>th</sup> day of April, 2000.

  
\_\_\_\_\_  
Lee Hunt, Mayor

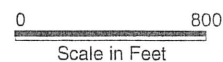
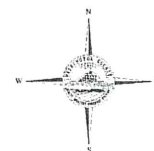
ATTEST:

  
\_\_\_\_\_  
Mary Kueffner, City Administrator





Vicinity Map



Location Map

This drawing is the result of a compilation and reproduction of land records as they appear in various Washington County offices. The drawing should be used for reference purposes only. Washington County is not responsible for any inaccuracies.

Source: Washington County Surveyor's Office.  
Phone (651) 430-6875

Parcel data based on AS400 information



**City of Lake Elmo  
Development Application Form  
Comprehensive Plan and Zoning District Amendment**

**File Name:** Pierson Farm

**Applicants:** Michael J. Conlin

**Type of Application:** Comprehensive Plan and Zoning District Amendment to permit a rezoning from RR (Rural Agricultural Density) to R1 (Suburban Residential Density)

**Location:** 8740 Stillwater Boulevard North (across from Tablyn Park)

**PIN and Legal Description:** 160-292-143-0007; see attached legal description

**Date Submitted:** January 27, 2006

- 
- A. Purpose:** Rezone from RR (Rural Agricultural Density) to R1 (Suburban Residential Density) to allow for a six unit subdivision on a 9.4 acre site.
- B. Parcel Size:** 409,326 sq. ft.
- C. Existing Land Use:** There is one single family residence, the Conlin homestead, on the northeast side of the site that will be incorporated into the new development.
- D. Surrounding Land Use:**  
**North:** Railroad tracks  
**East:** Single family homes  
**South:** Creek bed and single family homes  
**West:** Single family homes
- E. History and Discussion:** The existing home of Mike and Genevieve Conlin is the original home built by Paul Pierson. Since 1938, the property at 8740 Stillwater Boulevard was know as Pierson Farm, a leading Holstein dairy operation.

**F. Findings:**

The proposed rezoning to R1 is consistent and compatible with the way the area has developed, and would not impact the adjacent property owners. The site is bounded by railroad tracts to the north and a creek bed to the south, which provides a natural hedge between the proposed development and the adjacent single family homes. A rezoning and future subdivision on this site would not impact the surrounding properties, because of the unique natural features and heavy tree coverage. In addition, none of the new residential dwellings within the development would be closer than 800 ft. from Stillwater Boulevard. All the lots would be serviced by new city water mains and private sewer systems, and will not require additional city infrastructure. In addition, a small subdivision of six lots would not measurably impact the existing traffic flow on Stillwater Avenue.

The proposed rezoning and development is consistent with the Lake Elmo comprehensive planning goals and the metropolitan systems plans. The 1991 Comprehensive Plan states that the City has the "desire to maintain a planned sustainable growth through land use goals and policies" (Land Use Plan, Policy 3, pg. 3). A small development with six residential parcels, all having over one acre of land area is consistent with the Comprehensive Plan, which desires to maintain a low density development pattern. In addition, the proposed development will help to meet the metropolitan systems planning goals, which calls for an average of 3 residential units per acre.



**City of Lake Elmo  
DEVELOPMENT APPLICATION FORM**

- |  |  |   |
|--|--|---|
| <input checked="" type="checkbox"/> Comprehensive Plan Amendment   | <input type="checkbox"/> Variance * (See below)                      | <input type="checkbox"/> Residential Subdivision Preliminary/Final Plat |
| <input checked="" type="checkbox"/> Zoning District Amendment      | <input type="checkbox"/> Minor Subdivision                           | <input type="checkbox"/> 01 - 10 Lots                                   |
| <input type="checkbox"/> Text Amendment                            | <input type="checkbox"/> Lot Line Adjustment                         | <input type="checkbox"/> 11 - 20 Lots                                   |
|  |  | <input type="checkbox"/> 21 Lots or More                                |
| <input type="checkbox"/> Flood Plain C.U.P. Conditional Use Permit | <input type="checkbox"/> Residential Subdivision Sketch/Concept Plan | <input type="checkbox"/> Excavating & Grading Permit                    |
| <input type="checkbox"/> Conditional Use Permit (C.U.P.)           | <input type="checkbox"/> Site & Building Plan Review                 | <input type="checkbox"/> Appeal <input type="checkbox"/> PUD            |

APPLICANT: Michael J. Conlin 8740 Stillwater Blvd. N., Lake Elmo, Minnesota 55042  
 (Name) (Mailing Address) (Zip)

TELEPHONES: 651-704-0898 651-353-0289 651-777-1782  
 (Home) (Work) (Mobile) (Fax)

FEE OWNER: Brent Stein 3432 Denmark Ave., Eagan, Minnesota 55123  
 (Name) (Mailing Address) (Zip)

TELEPHONES: 651-905-1380 612-987-4305  
 (Home) (Work) (Mobile) (Fax)

PROPERTY LOCATION (Address and Complete (Long) Legal Description): 8740 Stillwater Boulevard N.  
See Attached Legal Description

DETAILED REASON FOR REQUEST: See Attached Document

\*VARIANCE REQUESTS: As outlined in Section 301.060 C. of the Lake Elmo Municipal Code, the Applicant must demonstrate a hardship before a variance can be granted. The hardship related to this application is as follows:

In signing this application, I hereby acknowledge that I have read and fully understand the applicable provisions of the Zoning and Subdivision Ordinances and current administrative procedures. I further acknowledge the fee explanation as outlined in the application procedures and hereby agree to pay all statements received from the City pertaining to additional application expense.

Michael J. Conlin 1-25-06  
 Signature of Applicant Date  
 Michael J. Conlin

Brent Stein  
 Signature of Applicant Date  
 Brent Stein



## MEMO

(February 7, 2006 for the Meeting of February 13, 2006)

To: Lake Elmo Planning Commission

From: Chuck Dillerud

Subject: Drive-up Facilities for Restaurants – GB Zoning District

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On January 23 the Commission addressed a proposal by Ed Gorman to amend the City Code to allow drive-up window facilities at restaurants in the GB zoning districts. This request was the result of Mr. Gorman applying for a Building Permit to modify a small portion of his existing restaurant for such a facility. City Staff denied the permit based on a provision of the City Code limiting restaurants to “full table service operations”. Mr. Gorman appealed the Staff determination to the City Council (sitting as the Board of Adjustments and Appeals). On January 17 the Board upheld the Staff’s administrative determination that the noted Code provision effectively prohibits drive-in, drive-through or any other type of restaurant where food is picked-up without the customer leaving his/her vehicle.

On January 23 the Commission heard and discussed Mr. Gorman’s request together with Staff comments regarding how other cities have addressed this issue. Following the discussion the Chair conducted a series of “straw votes” of Commission Members to determine the direction the Commission should take in directing Staff regarding any zoning ordinance amendments in this regard. The straw votes and outcomes were as follow:

1. Should the Commission further consider amending the zoning ordinance to address drive-up window for restaurants in the GB zone? Yes. (9-0)
2. Should the zoning ordinance allow full feature drive-up window (with menu board and intercom, drive-up window (without menu board or intercom), or only curb-side pick-up?
  - a. Curb-side (9-0)
  - b. Drive-up window without menu board or intercom (5-4)
  - c. Drive-up window with menu board and intercom (0-9)

The Commission then adopted a Motion to direct staff to draft a zoning ordinance amendment to allow drive-up window service without a menu board or intercom. (7-2)

We have attached amendments to the GB district standards drafted in two ways:

1. The Drive-up window (no menu board or intercom) as a permitted use in the GB district; and,
2. The drive-up window (no menu board or intercom) as a Conditional Use in the GB district.



In both cases language has been added to address the third issue usually addressed with drive-up facilities (with intercoms and menu boards the first two issues) – vehicle stacking. This concern would be more easily addressed via the Conditional Use process than as a Permitted Use due to the Public Health/Safety finding required for every Conditional Use Permit. No Public Hearing Notice has been published yet – pending the Commission's direction as to exactly how (Permitted or Conditional) the amendment should be presented.

Subsequent to the January 23 Commission meeting Mr. Gorman has contacted Staff to urge drafting of amendment language that would allow use of a menu board and intercom under strictly defined circumstances – perhaps close to his own circumstances. He has advised staff that he would not be interested in doing the drive-up window unless he were allowed a menu board (with limited selections) and intercom system. Staff does not believe that the Commission has provided latitude for staff to address menu board or intercom (except as prohibitions) by the Commission's 7-2 vote on the motion of direction from January 23.



General Business	
Accounting	
Advertising	(Sign fabrication not a permitted use)
Alterations	
Apparel Cleaning pick-up Stations	
Apparel Repair and Alterations	
Architectural	
Art Gallery	
Auditing	
Bakeries	(with production of bakery goods limited to retail sales)
Barber Services	
Beauty Shops	
Bookkeeping	
Business and Management Consultant Offices	
Business Associations	
Cafes and Restaurants	(Limited to full table service operations)
<b><u>Cafes and Restaurants – Drive-up Window</u></b>	<b><u>(Menu Boards and intercom systems prohibited)</u></b> <b><u>(Adequate vehicle stacking must be provided)</u></b>
Charitable	
Chiropractic	
Civic, Social and Fraternal Association Offices and Halls	
Collection and Adjustment Services	
Credit Reporting (Consumer and Mercantile)	
Dental	
Detective and Protective Agencies	
Duplication	
Educational	
Employment Agencies	
Engineering	
Finance	
Galleries	
Governmental Offices	
Insurance	
Investment	
Labor Unions	
Legal	
Libraries	
Mailing	
Medical	



e. Uses Permitted by Conditional Use Permit: (Amended Ordinance 97-20 on 10-21-97)

General Business	
Bed and Breakfast Facility	15 Beds Maximum
Boarding Care Facility	15 Residents Maximum
Day Care Centers	40 Children Maximum
<u>Drive-up Window Service (Restaurants)</u>	<u>Shall not include menu boards or intercom system; and must provide adequate vehicle stacking outside of public street right-of-way.</u>
Kennels	
Nursing Care Facility	15 Residents Maximum
Open Sales Lots	
Manufacturing	Any industrial manufacturing operation in existence within the City at the effective date of this section, including manufacture of wood products and plastic products, may continue the use as a conforming use without a conditional use permit. Nothing in this provision shall otherwise be construed to require the City to authorize any manufacturing use in the general business zone after the effective date of this section.
Veterinary Clinics	



1/22/06

RECEIVED

JAN 26 2006

Dear Anne,

Sunday paper had yet another article about our community. This time, the zoning law concerning Cormax's restaurant.

I think Lake Elmo has a good ordinance, for a good reason. I feel a permit that allows a drive through (drive up) window should be denied.

Hormans, is attractively remodeled, with lots of good parking. With some planning, a drive up entrance could be designed, with good lighting and conveniently located for efficient service to their customers.

As an aside,



2. Don't we hear everyday that we should add a few steps to our everyday lives, for our health? This includes our children too.

If delicious, well prepared food is offered, people will take the extra few steps.

Lake Elmo Inn does a brick business, and also offers take out, Would they want a drive through too? What about those burgers at Twin Peaks and the deli sandwiches at Hegberg. This is not to mention the open spaces on Highway 5, just waiting to be developed for our convenience. We have lots of potential.



3.

Please, work with all  
businesses, use imagination,  
common sense and vision.

Keep a good city ordinance.

Sincerely,

Susan Allen

cc: Council members  
Mayor

Planning Commission



RECEIVED

FEB 07 2005

February 4, 2005

Dear Mayor, members of the City Council, and Planning Commission members,

We are residents that live south of 10<sup>th</sup> St No. We would like to express our dissatisfaction with the agreement reached with the Metropolitan Council. Like many of you, we chose this area for the good schools and the rural feel. Yes, we do feel like we are being made the sacrificial lambs for the city. How can someone even think that this decision is not going to do anything to the rural character of Lake Elmo? Our four acre plot could potentially support 21 residential units and/or 160 employees. This is being done, we are told, so the rest of Lake Elmo will be free to develop in whatever way it sees fit. How is this fair? When you were all out campaigning last fall every last person to come to our door (including those of you who were elected) assured us that our voice was being heard and that you would protect our right to live as we choose on this property. How can you justify what has now happened? You are quoted to have said that the agreement gives Lake Elmo the freedom to develop in a manner that best fits our community, Mayor Johnston. Does that mean the families south of 10<sup>th</sup> St are no longer important members of the community? Are we supposed to feel better that Rafferty and Dillerud recommended holding back on signing the agreement until it clearly stipulated that the heaviest development must be in our own yards? Is it any wonder we feel sold out? Now we read that you are requesting rerouting of highway 5 to keep traffic out of the Old Village area. Will you listen to area residents and business owners on that issue? We would appreciate any and all responses to our concerns.

Sincerely,

David and Denise Richter

10841 10<sup>th</sup> St No  
Lake Elmo, MN 55042



**HAIRE**  
**AMENDED STAFF FINDINGS – FEBRUARY 13, 2006**

1. The property can not be put to reasonable use without the granting of the variances requested. The OHW setback variance is the minimum possible given the unique circumstances of the parcel essentially “fronting” two lakes. The lot area variance responds to this “reasonable use” Finding only due to the existence of a habitable dwelling and functioning private wastewater treatment system on this parcel. This Finding would not be applicable were this non-conforming vacant parcel of similar parcel area non-conformity.
2. The variances requested result from circumstances unique to this property platted prior to the adoption of Shoreland Regulations by the City resulting in OHW setback applicable from two lake frontages, and an existing home/functioning private wastewater treatment system constructed prior to current zoning ordinance/City Code lot area and septic treatment standards; 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. Significant mature trees on the parcel will effectively mitigate the visual impact of increased structure mass of the new house.