

## City of Lake Elmo

Phone: 651-777-5510

Fax: 651-777-9615

3800 Laverne Avenue North / Lake Elmo, Minnesota 55042

The Lake Elmo Planning Commission will meet

**MONDAY, APRIL 22, 2002, at 7:00 p.m.**

In the Council Chambers of City Hall, 3800 Laverne Avenue North,  
Lake Elmo, Minnesota

1. Agenda
2. MINUTES: April 8, 2002
3. PUBLIC HEARING: Comprehensive Plan Amendment  
Nass/Buberl/Bidon - Amend RAD to C
4. Hiner Site Plan
5. Daniel Rude Variances
6. Land use/Water Quality Relationship: Jeff Berg & Jay Michels  
Washington SWCD
7. Other
8. Adjourn



# LAKE ELMO PLANNING COMMISSION MINUTES

APRIL 8, 2002

PRESENT: Planning Commission Members: Taylor, Herber, Armstrong, Sessing, Sedro, Helwig, (Bunn arrived 7:03 p.m.), (Berg arrived 7:04 p.m.), (Deziel arrived 7:24 p.m.)  
MAC Members: Stanley, Talcott, Gustafson

## 1. AGENDA

ADD Other: LB Zoning

M/S/P Armstrong/Helwig – to approve the April 8, 2002 Planning Commission agenda, as amended. (Motion passed 6-0.)

## 2. MINUTES: March 25, 2002

M/S/P Armstrong/Sedro – to approve the March 25, 2002 Planning Commission minutes, as presented. (Motion passed 5-0-1:Abstain:Herber).

## 3. PUBLIC HEARING: Zoning Variance – Minimum Lot Size Patrick Kinney – PJK FRealty, Inc.

Planner Dillerud reported this vacant parcel of 30,403 sq.ft. consists of two separate platted lots; the south lot is Lot 7, Beau Haven and is approximately 19,000 sq.ft. in area; and the north lot is Outlot G Eagle Point Creek, and is 11,400 sq.ft. in area. The two lots are legally combined by Washington County and under single ownership. Dillerud explained that neither the Land Use Plan nor the Zoning Map were amended to change the RE guiding and zoning of the Outlots to SRD and R-1, consistent with the Beau Haven lots. He suggested this should be a City “housekeeping” item regardless of the deposition of this applicant.

The applicant submitted the report of a qualified septic system designer that advised that the site is large enough to support two septic systems. Given the location of the OHW (Flood Elevation) of Eagle Point Creek, Dillerud questioned how the 75 foot OHW setback from the 940 contour would be maintained for both septic drain fields.

Mr. Kinney asked that his proposal be tabled because he had not heard this information before. When asked by a Planning Commission member if this lot would be for his residence, Mr. Kinney answered it will be a single family residence, but the lot would be for sale.

Jon Duffert and Marie Rau, 8364 Stillwater Blvd. N., submitted a petition with names of neighbors in opposition to the proposal, stating a house would not fit into neighborhood because lot is very thin. Chairman Armstrong acknowledged a letter from Dorsey & Whitney, LLC voicing the strong objections of John Duffert and Mare Rau to the variance request.

Chairman Armstrong opened up the Public Hearing at 7:18 p.m.

Alan Markart, 8308 Stillwater Blvd., stated the land is next to his and it's steep incline, would be intrusive, much excavation, and needs fill to keep from flooding out.

Albert Christ talked about safety issues. He stated that the lot is on a hill and the access is blind.

Chairman Armstrong closed the public hearing at 7:22 p.m.

M/S/P Herber/Sessing – to postpone agenda item at the request of the applicant. (Motion passed 9-0.)

4. **PUBLIC HEARING:** Open Space Preservation Concept Plan  
Krongard/Wier

Planner Dillerud reported the proposed OP Concept Plan is comprised of a single 34+ parcel and a 6+ acre portion of a second parcel for a total of 40.74 acres. The existing parcel (Wier) from which the 6+ acres will be taken now exists as a 16.655 acre parcel. If the OP is eventually approved and plated, the remainder of the Wier site will continue to comply with the RR minimum parcel size of 10 acres.

Tim Freeman, Folz, Freeman and Dupay, reported the plan meets the letter and intent of the OP code and will meet the regulations for ponding. Freeman reported that Outlot C has a huge hill, which will not be disturbed. He said people want to gather on village greens, so it is important to keep a village green even if we move lots. He said there is a DNR Protected wetland at the southeast corner; and that there may be additional wetlands along the entire west periphery of the site.

Commissioner Taylor suggested that they move the triangular village green further south to make it larger. Commissioner Sessing would like to see the cul-de-sacs backed away from buffer zones.

Chairman Armstrong opened up the Public Hearing at 8 p.m.

Neil Krueger, 4452 Lake Elmo Avenue N., explained when the MN Design Team visited Lake Elmo, the message from the residents was Listen to the Land. This residential proposal takes 40 acres of farmland for which the highest and best use is Ag. Mr. Krueger pointed out items in the Open Space Ordinance; such as; who is responsible for landscaping that dies and not replaced, the outlots do not give contiguous open space; and homes should be visually absorbed. Mr. Krueger added that the scenic vista is severely interrupted by the high homes on the berm when you drive down 43<sup>rd</sup> Street. The higher the homes the more light pollution. He stated that buffer zones shall be 100' from an Ag site, and there are at least two Ag sites around this land. Also, he stated that Krongard Homes does not have a good track record in OPH according to the newspaper.



Doug Olson, 3834 Kindred Way, stated Hamlet on Sunfish Lake outlot is in the MN Land Trust and is a DNR wetland. Planner Dillerud responded that we need a wetland delineation along the west side of the plat.

Dennis Kelly, 4233 Kindred Way, asked if there will be zero use change to the 6 acres. Since the landscape plan has divided the 6 acres. He asked if the City could give a variance for the 40 acres? Dillerud answered the purpose of the 6 acres is to get the total to 40 acres. The purpose of the OP ordinance is to reduce the units ultimately developed in the city.

John Krueger voiced his concern on fragmentation of open space. He made the following comments: Outlot B will not be visible due to the tree line on the north side. Outlot A will not benefit the community in general. The ridge where the homes will be located are 35' tall without basements. He asked why not put them in the lower area where it's not so intrusive. The City should look at all the water flows. The open space ordinance is not subjective, and asked if this property layout constitutes the definition of rural.

Bruce Volz stated it would be nice if the houses are lower, such as ramblers. He stated that there are bikers and joggers on the road, and he is concerned with the fast moving traffic in the curve of road. He noted that the 40 mph limit is a joke.

Pete Schiltgen voiced his concern of the cul-de-sacs next to his property and would like them moved to the north. He suggested the developer knock off the southern four lots because he is getting closed in.

Dennis Kelly asked if the lots could be rearranged better because the visuals from 43<sup>rd</sup> Street would be the back of the houses.

Jim Graupner indicated development transforms the community, and there is a certain grace about the scene of Schiltgen's Farm. He stated that this is beautiful, precious land; and there is a piecemeal quality here.

Chairman Armstrong closed the Public Hearing at 8:26 p.m.

Tim Freeman, Folz, Freeman and Dupay, stated the maximum the code allows is 35' high houses. The desire would be to place more ramblers. Landscaping is taken care of by a nursery.

Mark Sky asked if Outlot C would be open to the public. Planner Dillerud responded in the negative.

M/S/P Helwig/Berg - to recommend approval of the open space concept plan, Sunfish Ponds, conditioned upon the three conditions stated Planner Dillerud's memo; and with the recommendations to move the developed area to the north to create more of a contiguous open space, the cul-de-sac can then be shortened and moved to the north. Berming may not be needed. (Motion passed 9-0.)



5. Conditional Uses in the LB Zoning

M/S/P Armstrong/Sessing - to publish Planner Dillerud's draft of Conditional Uses in the Limited Business Zone, as presented. (Motion passed 9 -0.)

CONVENE AS MAINTENANCE ADVISORY SPECIAL PROJECTS

1. AGENDA

M/S/P Herber/Sessing – to approve the Maintenance Advisory Special Projects agenda, as presented. (Motion passed 9-0.)

2. TKDA – Community Facilities Forecast

1. Richard Thompson provided revised demographic information.
2. Mikaela Huot provided revised and additional information re-Services for other cities
3. Terry Olsen provided a report on Building Inventory Condition Analysis.
4. Next Steps

The TKDA representatives will develop a better fix on the facilities and put the information together for a meeting on May 6<sup>th</sup>, 7:00 p.m.

3. Public Works Request for Capital Improvement

Public Works Request for Capital Improvement

Planner Dillerud provided a memo with the request of Dan Olinger, Public Works Superintendent, for two capital equipment units: (1) a 1-ton truck with dump box to replace the 1989 unit; and (2) a heated pavement patching trailer – new unit. He reported that both of these units appear in the approved 2002-2006 Capital Improvement Program, with funding for the purchases from the Public Works Equipment Fund.

Rick Gustafson, Public Works Dept., explained the 1-ton truck has a diesel engine and is a heavier truck. The wood chipping top has been eliminated. Dan is still looking into the possibility of purchase vs. lease of the heated pavement patching trailer.

M/S/P Stanley/Talcott – to approve the specifications, as presented, for the 1-ton truck with dump box and recommended approval by the City Council for purchase as described in the City Planner's memo, dated April 4. (Motion passed 13-0).

The Commission Adjourn meeting at 10:00 p.m.

LAKE ELMO PLANNING COMMISSION MINUTES

MARCH 25, 2002

Chairman Armstrong called the meeting to order at 7:00 p.m. in the Council chambers at City Hall. PRESENT: Armstrong, Taylor, Deziel, Sessing, Helwig, Sedro and Planner Dillerud.

1. **AGENDA**

M/S/P Helwig Deziel – to approve the March 25, 2002 Planning Commission Agenda, as presented. (Motion passed 6-0.)

2. **MINUTES:** March 11, 2002

M/S/P Sedro/Helwig – to approve the March 11, 2002 Planning Commission Minutes, as amended. (Motion passed 5-1 Abstain Taylor)

3. **PUBLIC HEARING:** United Properties, Preliminary Plat of Outlot B Eagle Point Business Park 2nd Addition

Planner Dillerud reported the preliminary plat is to replat one of the 2001 outlots in Eagle Point Business Park to create the site for the Bremer Financial project, for which a Site Plan has already been approved by the City Council. Dillerud explained the preliminary plat is consistent with the process of land division, consistent with the approved PUD Plan; and consistent with the approved Site Plan for Bremer Financial. Staff recommended approval of the preliminary plat.

Chairman Armstrong opened up the Public Hearing at 7:02 p.m.  
There was no one to speak for or against the preliminary plat application.  
Chairman Armstrong closed the public hearing at 7:03 p.m.

M/S/P Sessing/Sedro – to recommend to the City Council approval of the Preliminary Plat of Eagle Point Business Park 3rd Addition per plans staff dated February 21, 2002, subject to the following condition:

1. Compliance with the recommendations of the City Engineer. (Motion passed 6-0.)

4. **PUBLIC HEARING** Zoning Ordinance Amendment Accessory Structures

The Zoning Ordinance include a clause that requests the written approval by adjacent property owners, as one condition for approval of location garages or other accessory structures closer to the front property line than the principal structure on the lot. Planner Dillerud explained the provision for property owners written approval is probable illegal in this state, called referendum zoning. The City Council directed that the Commission consider repealing that neighbor's permission clause from the code.

Chairman Armstrong opened the Public Hearing at 7:05 p.m.

There was no one to speak for or against the amendment.  
Chairman Armstrong closed the Public Hearing at 7:06 p.m.

Commissioner Sessing suggested repealing the entire ordinance and have the applicants go through the variance process. Chairman Armstrong stated this provision is not used often, but would like some standards in place. Commissioner Sedro asked why the other zoning districts are not included.

M/S/P Sessing/Helwig – to recommend to the Council repealing the entire ordinance because this would allow granting a variance rather than require the applicant to go thru the variance process. (Motion passed 5-1 Deziel: A variance is a costly application and he would rather set up some guidelines).

5. PUBLIC HEARING: Zoning Variances – Shoreland Overlay District  
Kevin & Lori Peterson, 8278 Hidden Bay Ct.

Planner Dillerud reported the applicants have proposed two additions to the existing home. A 288 sq.ft. addition to the north end of the home and a one level 120 sq.ft. addition to the street side (east) of the home. The addition to the north end of the home will be an expansion of the non-conformity of the structure and cannot be permitted without a variance. The addition will be no closer to the OHW than the existing home and within the required 100 foot OHW setback.

Planner Dillerud indicated the DNR had no objections with the variance request. The City engineer has not responded on wastewater and staff needs to get his input before it goes to Council.

Kevin Peterson stated they are looking for more space

Chairman Armstrong open up the Public Hearing at 7:22 p.m.  
There was no one to speak for or against the zoning variances.  
Chairman closed the Public Hearing at 7:23 p.m.

Commissioner Deziel asked Findings #5 be changed to “any addition to the existing house would require a variance of this nature. This variance is the minimum variances necessary to alleviate the hardship”.

M/S/P Deziel/Armstrong – to recommend approval of the Shoreland Overlay District variance for Lori and Kevin Peterson at 8278 Hidden Bay Court, based on home expansion plans staff dated March 21, 2002 and the Findings of the Planning Staff Report dated March 21, 2002 to include the word change of Finding #5 and add Finding #7; contingent on the approval that the septic system will handle the house with the variances approved by the City Eng. (Motion passed 6 -0).

6. PUBLIC HEARING: Family Violence Network/Dee Flatau  
9730 Hudson Blvd, Rezoning from HB to LB, CUP



Planner Dillerud explained the zoning map has not been changed and still shows the use as (HB) Highway Business, but guided as (LB) Limited Business and should have been zoned LB years ago. This is a two part application, First part is to rezone to LB and then deal with the CUP. Dillerud found out today there are a few physical modifications for health, safety and welfare. Dillerud had talked to Filla, who stated even though this facility is not specifically licensed; the proposed use is surely dependent care.

Beverly Dusso, FVN, explained this facility would be a short term shelter for women and children. They need enough time, 3-5 years, to raise the money for a property site for a permanent shelter facility. They are asking permission for a façade and to close all doors to the outside. There is a need for a room to dine together and a staff room. This facility would have a 32 maximum occupancy. There are no live in staff, but have three shifts. Dave Engstrom stated they could live with the conditions now, usable for the purpose, but may come back after talking to architect for a variance to add onto the building for security and safety issues. A committee is working on building a new shelter so this facility would be sold and the proceeds used to build a new facility.

Chairman Armstrong opened up the Public Hearing at 7:45 p.m.

There was no one to speak for or against the application.

Chairman Armstrong closed the Public Hearing at 7:46 p.m.

M/S/P Armstrong/ Taylor – to recommend to the Council approval of the rezoning of 9730 Hudson Blvd. from Highway Business to Limited Business, based on compliance with the Comprehensive Plan. (Motion passed 6-0).

M/S/P Armstrong/Taylor – to recommend to the Council that the use posed by applicant of FVN/HTC, Inc. is of the same general character as “licensed dependent care center”. (Motion passed 6-0).

Planner Dillerud explained if the Planning Commission is to approve the CUP then the applicant should go to their architect and bring back for consideration no footprint expansion doorway removal.

M/S/P Armstrong/Taylor – to recommend approval of a Conditional Use Permit for FVN/HTC, Inc. to permit the use of the existing facility, with the enclosure of the sidewalk area, doorway removal, and no footprint expansion, at 9730 Hudson Blvd. for temporary housing of women and children based on a Finding that the proposed use complies with the standards of Section 300.06, Subd. 4; and subject to the conditions specified by the March 21, 2002 Planning Staff Report. (Motion passed 6-0).

## 7. Daniel Rude Variance

Planner Dillerud reported the City Attorney had investigated the history of the minimum lot size in the R1 zoning and the platting of the site. The City Engineer reviewed the soil investigation submitted by the Petersons for a new septic system a few hundred feet north

of the Rude site. Prew stated in his letter that it would appear that the 6,400 sq.ft of area would be required for the two drain fields to serve the Rude site if the City owned land is included.

Dillerud explained that the Council continued its consideration of a policy regarding sale of city owned land.

Dan Rude didn't have any more to say than what was in his letter presented to the Commission at their last meeting.

Commissioner Helwig asked the applicant to consider postponement until the Council makes up its mind on whether they would sell city owned land. If the Council decides not to sell Mr. Rude the land, then he would have a problem with the variance application.

M/S/P Helwig/Taylor - to table application until we get a definite response from the Council if the land would be sold or not sold to Mr. Rude. (Motion passed 3-2  
Armstrong, Deziel-1:Sedro abstain.)

Mr. Rude stated if the City permits selling lot, he would not go ahead with purchase if he could not combine the land.

Commissioner Deziel wanted to approve variance contingent on sale of land. Armstrong and Taylor would not approve. Sedro had a concern on septic if it will hurt the environment around it.

Chairman Armstrong brought up his concern on the 60 day rule. This application could have to go on the April 2 council agenda for Mr. Rude to request an extension. It is not fair to the applicant and have the applicant come back and seeing no progress. Commissioner Helwig stated if the Council denies variance application and then in a certain month period the City sells the land, Mr. Rude now has to pay the variance fee.

Commissioner Sedro asked the City Eng to comment on the aggregate affect??

#### 8. Allowable Uses in the Limited Business Zone

Chairman Armstrong stated if this is what the Commission wants to do then we should not put the weasel words in it. He did have a concern about creating the Big Boxes. The City will overhaul LB when the consultant gets hired to work on the zoning code. .

The following changes were recommended:

Exhibit 2, 3. Conditional Uses in Limited Business

Item #4 Business Services. The word "etc." gets you into trouble and should be deleted.

Item #9 Light Manufacturing What is light manufacturing??

Item #10 Limited Retail Sales should be stricken.

Item #11 Limited Retail Uses.....Move all the wording from right to left and leave as is.

Item #15 Restaurants and Cafeterias. The people don't want a McDonalds

Item #22 Other similar to Uses: Strike this item

Item #25 Accessory Uses. Dillerud stated this is common language. Add wording "incidental to a permitted use or conditional use". The wording "as determined by the Council is unusual".

The Commission agreed to taking out the language that is not specific and would get the City into trouble.

M/S/P Helwig/Taylor – to deincorporate the recommendations made by Chairman Armstrong. (Motion passed 5-1:Deziel).

Commissioner member Sedro suggested limiting by size.

Bruce Miller explained that a Best Buy is 45,000 sq.ft., Home Depot is 100,000 sq.ft. A Big Box would be 20,000 plus sq.ft. He is trying to bring in something without requiring utilities and is aiming for the office users. A Furniture store has the least amount of traffic. A Best Buy and Home Depot give four times the amount of traffic. Mr. Miller stated putting in a 10,000 sq.ft. building on 3 ½ Acres is not economical. Impervious surface is 40,000 sq.ft so the code does have some limitations.

Commissioner Sessing suggested limiting Big Boxes by traffic as in parking lot size and the square footage of the building.

M/S/P Sedro/Helwig – that the conditional uses, after Chairman Armstrong's recommendation for elimination and Light Manufacturing, be limited to the floor area to under 20,000 sq.ft.. (Motion passed 4-2 Deziel, Armstrong – would have a hard time to meet impervious surface coverage requirement.)

Planner Dillerud will provide a clean draft of the LB Uses for the Planning Commission before they call a Public Hearing.

Commission adjourn the meeting at 8:40 p.m.



**LAKE ELMO PLANNING COMMISSION  
STAFF REPORT**

**Date:** April 17, 2002 for the Meeting of April 22, 2002

**Applicant:** Nass/Buberl/Bidon

**Location:** Southeast Quadrant of State Highway 36 and Manning Avenue

**Requested Action:** Comprehensive Plan Amendment

**Land Use Plan Guiding:** RAD

**Existing Zoning:** AG

**Site History and Existing Conditions:**

The combined and contiguous ownership of the three applicants totals approximately 49 acres, excepting Highway 36 and Manning Avenue ROW. A 1.5 acre (mostly water) portion of one of the Nass parcels is located west of Manning Avenue. That portion of the Nass site is not included on the application graphics as proposed for Comprehensive Plan Amendment. Two homes (Nass and Bidon), and a scrap wood processing operation (Buberl) occupy various portions of the site

The site exhibits extreme topography, with numerous changes in elevation, ranging from a maximum elevation of 990 near State Highway 36 at the north side of the site, to a minimum elevation of 928 adjacent to the water features near the south side of the site. Gradients in excess of 25% are found in several locations, primarily within the north 2/3 of the site. The site is partially wooded – some naturally occurring, and some planted in “tree farm” style.

The aerial photos (2000) indicate a sum of 3+ acres of open water including several ponds at various locations – not including the Nass ownership west of Manning. While the ponding west of Manning Avenue is a DNR Protected Wetland, the ponds east of Manning – even though physically connected to the west ponds by a culvert under Manning – are not DNR Protected, but surely Jurisdictional Wetlands.

As the applicant has noted, the northern portion of the combined site is encumbered by a power line easement ranging from 230 to 265 feet in width, and covering approximately 9.4 acres. That power line easement extends within Lake Elmo, parallel to State Highway 36 for the entire east/west width of the City, and has been a design factor for site development in the past.

Existing access to the site from Lake Elmo is limited to the frontage on Manning Avenue. Manning remains an unimproved gravel road bed, with a recently installed “dead end” near the 55<sup>th</sup> Avenue North intersection. While Manning is now signalized at State Highway 36, several iterations of MnDOT plans for Highway 36 “improvement” suggest elimination of the south leg of the Manning/36 intersection access. Those plans are not official MnDOT Policy at this time, however.

The combined site is a portion of the lands annexed to the City of Lake Elmo from Baytown Township by Order of the Minnesota Municipal Board in April, 1998. By that Order, the west corporate line of Lake Elmo and the east corporate line of Oak Park Heights meet at the east line

of the subject site. East of the common corporate line (within Oak Park Heights) the land has been platted and the majority developed with a variety of office/warehouse uses. The platting, and much of the development, preceded the annexation when this land was a part of Baytown Township. The subject site was not addressed by the 1997 Lake Elmo Comprehensive Plan since it was apart of Baytown Township at the time of plan adoption. The 2000 Comprehensive Plan designates the site as RAD land use guiding, offering the property owner(s) at several development options:

1. AG zoning, with 1/40 residential density; or, Conditional Use Permit for Non-Agricultural Low Impact AG Use, under certain conditions.
2. RR Zoning, with 1/10 residential density.
3. RR Zoning with 5-7 acre conventional clustering.
4. RR or AG Zoning with a Conditional Use Permit for Open Space Preservation Residential Development.

Adjacent properties to the east, and within the City of Oak Park Heights are developed in the office/warehouse configuration "inherited" from Baytown Township by Oak Park Heights. Adjacent lands to the south and west in Lake Elmo are either large acreage residential (south) or producing agricultural (west). One non-conforming residential parcel within Lake Elmo of approximately 1 acre is bordered on 3 sides by the subject site.

#### **Discussion and Analysis:**

A city's Comprehensive Plan actually a series of elements. In hierarchal order those elements are Planning Policy, the Land Use Plan, and, the several System Plans (such as Transportation, Utilities and Parks). The Land Use Plan responds to and reflects the Planning Policy; and, the System Plans respond to and reflect the Land Use Plan. The Zoning Ordinance and Subdivision Regulations are the implementation devices for the Land Use Plan and System Plans.

This application is for amendment to the Land Use Plan element, which is the foundation for zoning and other land use regulation and permitting. The applicant proposes amendment of the Land Use Plan from RAD (Rural Agricultural Development) to C (Commercial). The zoning and uses allowable with the existing RAD designation have been described above. The proposed C land use designation would permit either LB (Limited Business) or BP (Business Park) zoning of the site. LB and BP zoning allow identical uses "by right" (primarily office); and, as of today, LB allows a number of non-office uses by Conditional Use Permit. The extent of that list of CUP uses in the LB district is currently under review by the Planning Commission, and likely will be reduced in scale. The distinction between LB and BP zoning (other than the list of the CUP uses) is the manner in which waste water is treated. BP zoning assumes Regional Sewer service, while LB assumes private wastewater treatment - on-site, or otherwise.

Generally an amendment of the Land Use Element (change of guiding designation) is based on either a change of conditions related to the site and/or its surroundings; or, a documented error with the existing Plan designation of the site. While not specifically stated by the applicants' application documentation (Coyle letter dated March 25, 2002), it appears from the statements in support of the application in that letter, that an error in the existing guiding is claimed. The applicant appears to contend those development strategies of adjacent communities; proximity to State Highway 36; and, terrain/easement issues related to the site constitute, in sum, basis for the City to reconsider the land use guiding of the site. That reconsideration would be from a land use decision regarding the site rendered by the City less than 2 years ago. Since the conditions on, and



surrounding, the site have changed little during those two years, we must assume the applicant maintains there was an error made by the City regarding the land use guiding of this site.

As noted previously, the Land Use Plan element of Lake Elmo's Comprehensive Plan is largely based on the Planning Policy adopted by the City prior to, but also as integral element of, the Comprehensive Plan. The Vision Statement of the Lake Elmo Comprehensive Plan both acknowledges the development policies and strategies of surrounding communities, and the umbrella development policy and strategy of Lake Elmo in two sentences:

**"It continues to be the policy of many of Lake Elmo's neighboring communities to urbanize as rapidly as land developers show interest and City bond capacity remains available. Lake Elmo embraces the development concept which controls the pace, form, geographic location and intensity of development within its borders." (Page 17, Lake Elmo 2000-2020 Comprehensive Plan)**

In other words, Lake Elmo was not blind or unknowing as to what the applicants contend the development strategy of Oak Park Heights, Stillwater, and Grant may be with regard to lands in those communities in the vicinity of the subject site. That strategy/policy of those communities was considered as an option for Lake Elmo, and was rejected in favor of a more measured approach to preserve rural character and natural resources in which our residents maintain great pride. In fact, commercial land options for this site were specifically discussed and rejected during preparation of the Land Use Plan – less than two years ago.

The Planning Policy Element of the Comprehensive Plan continues with Policy related to "Non-Residential Development", as proposed by this application for Land Use Plan amendment, as follows:

**"While Lake Elmo is bordered on the north and south by Principal Arterial roadways, the City specifically rejects the concept that the traffic counts represented by those roadways is the basis for non-residential land use at interchanges/intersections or in a service road "strip" arrangement. Non-residential land use within the City should be local need driven, not traffic count driven.**

**Non-residential land use shall be focused in two geographic areas of the City: the I-94 Corridor (Principally Office/Research); and, as in-fill and renovation, in the Old Village. Limitation of non-residential land use to those geographic areas will enhance the City policy of retaining the rural character of the community, while, in concert with existing and planned non-residential uses in adjacent communities and existing non-residential within the City, the residents of the City will enjoy reasonable access to employment opportunities, and required goods/services." (Page 20, Lake Elmo 2000-2020 Comprehensive Plan)**

These Planning Policy statements formed the majority (but not all) of the basis for the land use guiding of the subject site as residential - rather than commercial, as now proposed by the applicants.

The applicants state that, "The terrain and easement challenges on these parcels make Rural Agricultural Development infeasible." As noted above, the terrain of the site is indeed varied and difficult, with 60 foot elevation changes, ponds/wetlands, and steep grades. "Exhibit C" of the applicants' documentation (referred to as "Exhibit 3" by the applicants' attorney's letter of March



25, 2002) provides a faint concept sketch depicting how the site might lay out with commercial guiding and zoning. It is difficult to imagine how that layout would be accomplished without extensive mass grading of the site, destroying virtually all of the natural features the site now exhibits; and, likely would result in inconsistency with the Non-Residential Planning Policy statement which reads:

**Alterations to the natural environment; or site layout, signage, lighting or structure architecture in excess of Code requirements, to enhance the visibility of a non-residential use to vehicular traffic shall be considered substantial evidence that the use is intended to serve other than City residents.** (Lake Elmo 2000-2020 Comprehensive Plan, Page 21)

Many new residential neighborhoods throughout the City have been developed under one of the RAD development options (notably Open Space Preservation) on site exhibiting similar physical characteristics, with little or no alteration to those characteristics. Regardless of the overall Planning Policy, the site appears better suited for RAD development than Commercial development from the perspective of the preservation of natural site features.

The power line easement through the site has been encountered and successfully addressed with Open Space Preservation development, under RAD land use guiding, elsewhere in the City. The Prairie Hamlet OP, at the southwest corner of Keats Avenue and State Highway 36 is an example of how the easement can be addressed through RAD-based land development. A portion of the required Preserved Open Space was that land subject also to the power line easement in Prairie Hamlet, and could be with the subject site as well.

### **Findings and Recommendations:**

We offer the following Findings with regard to the application, based on the foregoing discussion and analysis:

1. The proposed Comprehensive Plan Amendment (Land Use Plan Element) is inconsistent with the Planning Policy Element of the Comprehensive Plan regarding Non-Residential Development. Said Policy specifies commercial development to be located in the I-94 corridor and the Old Village only.
2. The topography and other natural features of the site result in the site being better suited to residential development than commercial development as a means of best preserving the natural topography and other natural features of the site. Said preservation of natural features would be the result of the reduced site grading and alteration that would be required for residential development of the site.
3. Sufficient development options are available for the site with the existing RAD land use designation to provide the property owners reasonable use of the site. Residential development density significantly in excess of that now existing on the site is potentially available to the owners by aggregating their respective parcels – in the same manner they have by this application - for development as an Open Space Preservation Project.
4. It has been successfully demonstrated elsewhere in the City that a power line easement encroaching on a site can be successfully addressed with residential development options available by RAD land use guiding.

Based on the foregoing Findings, we recommend the application for Comprehensive Plan Amendment be denied.

**Planning Commission Actions Requested:**

A Motion recommending denial of the application of Nass, Buberl and Bidon for a Comprehensive Plan Amendment to reclassify approximately 49 acres located in Section 6 from Rural Agricultural Development (RAD) to Commercial (C) based on the Findings contained in the April 17, 2002 Planning Staff Report.

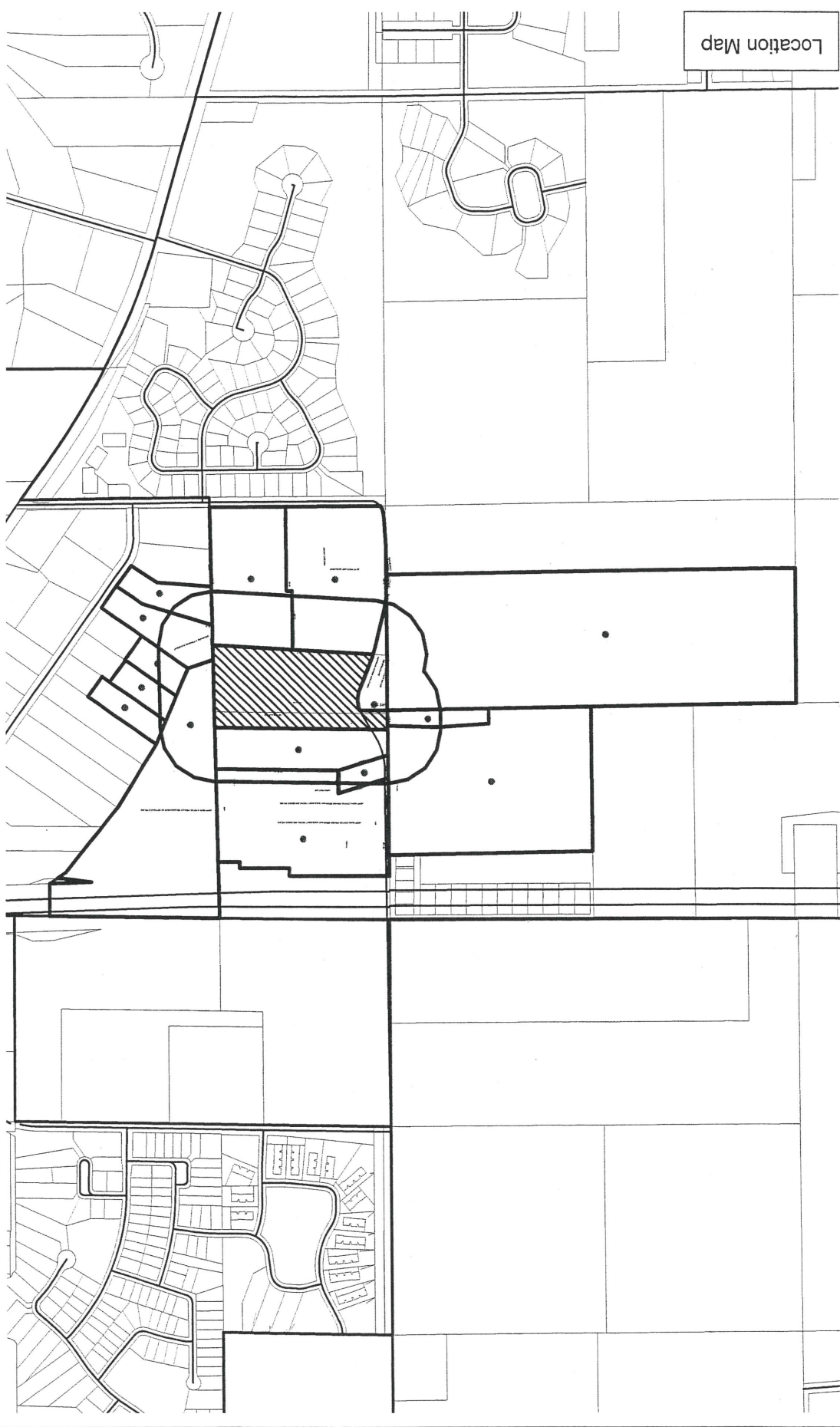
A handwritten signature in black ink, appearing to read "Charles E. Dillerud", written over a horizontal line.

Charles E. Dillerud, City Planner

**Attachments:**

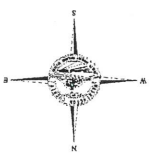
1. Location Map
2. Applicants Documentation

Location Map

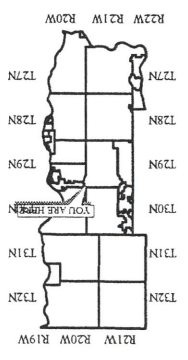


This drawing is the result of a compilation  
and reproduction of land records as they  
appear in various Washington County offices.  
The drawing should be used for reference  
purposes only. Washington County is not  
responsible for any inaccuracies.  
Source: Washington County Surveyors Office  
Phone (661) 430-6875  
Current through: February 28, 2002  
Map printed: April 4, 2002

Scale in Feet  
0 956



Vicinity Map





ROBERT L. HOFFMAN  
 GERALD H. FRIEDEL  
 EDWARD J. DRISCOLL  
 JOHN D. FULLMER  
 FRANK I. HARVEY  
 CHARLES S. MODELL  
 CHRISTOPHER J. DIETZEN  
 LINDA H. FISHER  
 THOMAS P. STOLTZMAN  
 MICHAEL C. JACKMAN  
 JOHN E. DIEHL  
 JON S. SWIERZEWSKI  
 THOMAS J. FLYNN  
 JAMES P. QUINN  
 TODD I. FREEMAN  
 GERALD L. SECK  
 JOHN B. LUNDQUIST  
 DAYLE NOLAN \*  
 JOHN A. COTTER \*  
 PAUL B. PLUNKETT  
 ALAN L. KILDOW  
 KATHLEEN M. PICOTTE NEWMAN  
 GREGORY E. KORSTAD  
 GARY A. VAN CLEVE \*  
 TIMOTHY J. KEANE  
 MICHAEL W. SCHLEY  
 TERRENCE E. BISHOP  
 GARY A. RENNEKE  
 CHRISTOPHER J. HARRISTHAL  
 KENDEL J. OHLROGGE  
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 WILLIAM C. GRIFFITH, JR.  
 JOHN R. HILL  
 PETER J. COYLE  
 LARRY D. MARTIN  
 JANE E. BREMER  
 JOHN J. STEFFENHAGEN  
 MICHAEL J. SMITH  
 ANDREW F. PERRIN  
 FREDERICK W. NIEBUHR

# LARKIN, HOFFMAN, DALY & LINDGREN LTD.

ATTORNEYS AT LAW

1500 WELLS FARGO PLAZA  
 7900 XERXES AVENUE SOUTH  
 BLOOMINGTON, MINNESOTA 55431-1194  
 TELEPHONE (952) 835-3800  
 FAX (952) 896-3333

WILLIAM G. THORNTON  
 DOUGLAS M. RAMLER  
 LYNN M. STARKOVICH  
 KENNETH COREY-EDSTROM  
 ANN M. MEYER  
 STEPHEN J. KAMINSKI  
 THOMAS F. ALEXANDER  
 DANIEL T. KADLEC  
 PAUL H. MCDOWALL  
 ADAM S. HUHTA \*  
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 SEAN D. KELLY  
 SONYA R. BRAUNTSCHWEIG  
 JOSEPH J. FITTANTE, JR.  
 THOMAS J. OPOLD \*\*  
 JONATHAN J. FOGEL  
 CYNTHIA M. KLAUS  
 MARK D. CHRISTOPHERSON  
 NEAL J. BLANCHETT  
 TAMARA O'NEILL MORELAND  
 JAMES A. MCGREEVY, III  
 THOMAS A. GUMP \*  
 TODD A. TAYLOR  
 CHRISTOPHER J. DEIKE  
 GENEVIEVE A. BECK  
 MARLA M. ZACK  
 DIONNE M. BENSON  
 JEREMY C. STIER  
 CHRIS M. HEFFELBOWER

OF COUNSEL  
 JAMES P. LARKIN \*  
 JACK F. DALY  
 D. KENNETH LINDGREN

\* ALSO ADMITTED IN WISCONSIN  
 \*\* ONLY ADMITTED IN IOWA

March 25, 2002

Ms. Mary Kueffner  
 Lake Elmo City Administrator  
 3800 Laverne Avenue North  
 Lake Elmo, MN 55042

Re: Request for Comprehensive Plan Amendment

Dear Ms. Kueffner:

On behalf of Mr. Bernie Nass, please consider our request to change the City of Lake Elmo's Comprehensive Plan Designation for a parcel Mr. Nass owns (the Site) southeast of the intersection of State Highway 36 and Manning Avenue. We understand that Mr. Nass's site is now guided for Rural Agricultural Density (RAD) development, i.e. large residential estates or small hobby farms of 10 acres. The attached exhibits illustrate why a change to guide the area for Commercial use, and allow the extension of utilities from the east, is appropriate.

Exhibit 1 shows the Site as it currently exists, including the physical development constraints. Exhibit 2 shows surrounding development. The Site is at the intersection of four communities. To the east and south, Oak Park Heights is developing with commercial and industrial uses. To the north, Stillwater is developing with commercial uses that depend heavily on Highway 36 as a transportation corridor. To the northeast, the City of Grant will remain large-scale commercial, to preserve the possibility of development when utilities are extended. These three communities recognize the importance of the Highway 36 corridor to serve the commercial needs of area residents, and consequently have enacted Comprehensive Planning and zoning controls to foster and allow this continued commercial development. Our proposed Comprehensive Plan amendment would allow Lake Elmo to join its neighbors in this regard. Exhibit 3 shows a conceptual proposal of development that could occur on site under the appropriate Comprehensive Plan designation.

Mr. Nass's neighboring property owners, Mr. Robert Buberl to the east, and Mr. Tom Bidon, who owns the property between the two parcels Mr. Nass owns, have joined in our application. The terrain and easement challenges on these parcels make Rural Agricultural Development infeasible. The properties

Lake Elmo, MN 55042

March 25, 2002

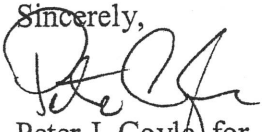
Page 2

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slope toward Highway 36, combined with the power line easement would either force residences intended to be rural too close to a major highway, or would force oversize lots that would idle most of the properties. The site constraints, high traffic counts, and growth in the area combine to make the properties appropriate for commercial, and inappropriate for residential development.

Please review these materials and notify us when this matter is scheduled for a hearing by the City Council or Planning Commission. In the meantime, you may contact me with any questions at 952-896-3214.

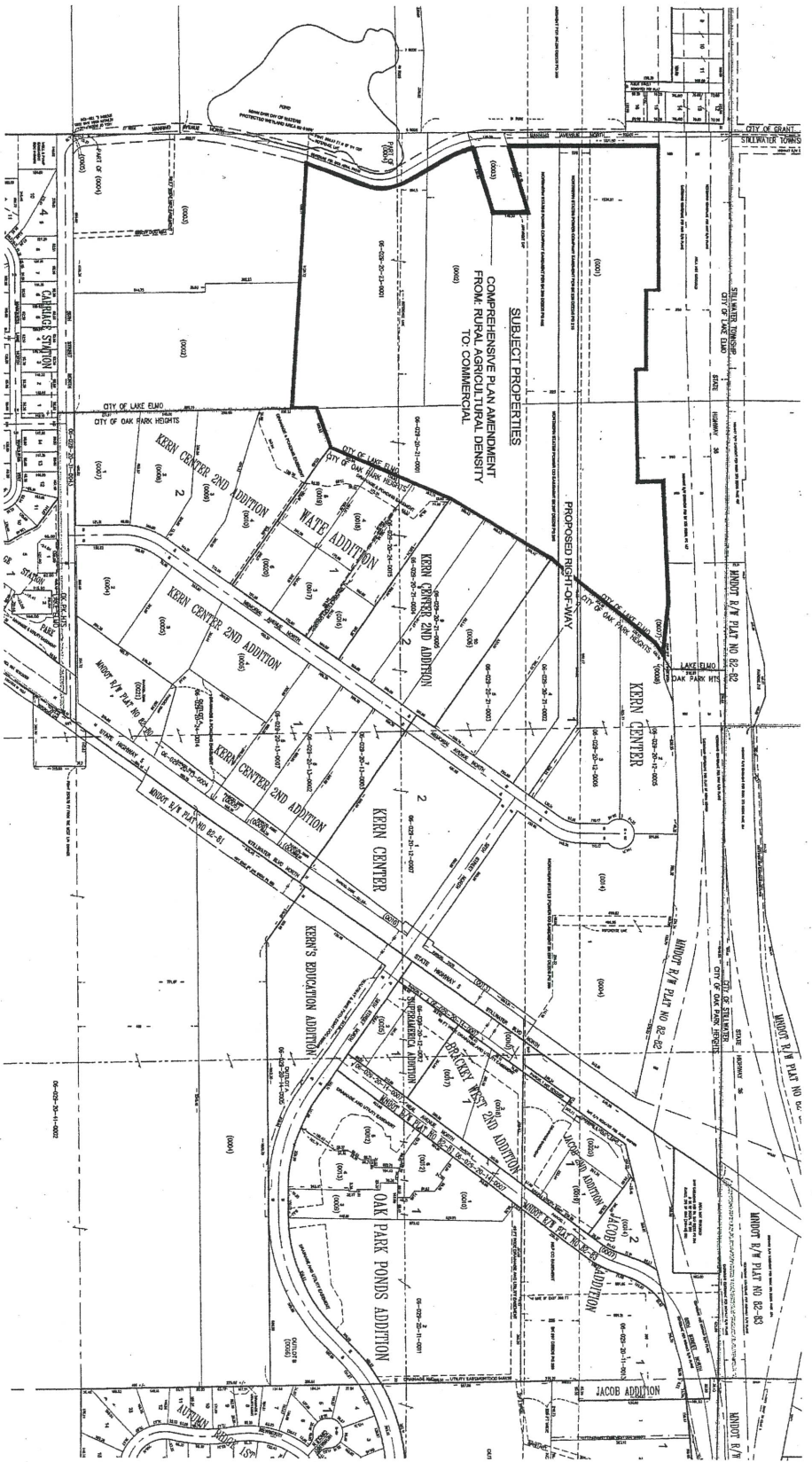
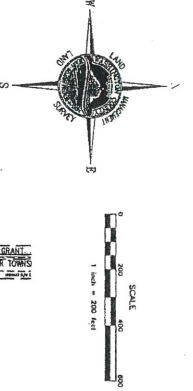
Sincerely,



Peter J. Coyle, for  
LARKIN, HOFFMAN, DALY & LINDGREN, Ltd.

N1/2 SEC. 06, T.029N., R.20W.

CITY OF OAK PARK HEIGHTS  
CITY OF LAKE ELMO



WASHINGTON COUNTY  
DEPARTMENT OF TRANSPORTATION AND PHYSICAL DEVELOPMENT  
LAND MANAGEMENT/LAND SURVEY DIVISION  
1400 East 1st Ave., Suite 100  
Stanhope, Minnesota 55068-0000  
(651) 685-6275  
www.washingtoncountymn.gov/transportation/land

COMPREHENSIVE PLAN  
AMENDMENT SITE

PREPARED BY:  
**BRODSKI CONSULTING**  
200 NORTH LINCOLN AVENUE  
STANHOPE, MN 55068  
(651) 685-7443 Fax  
brodski@brodski.com

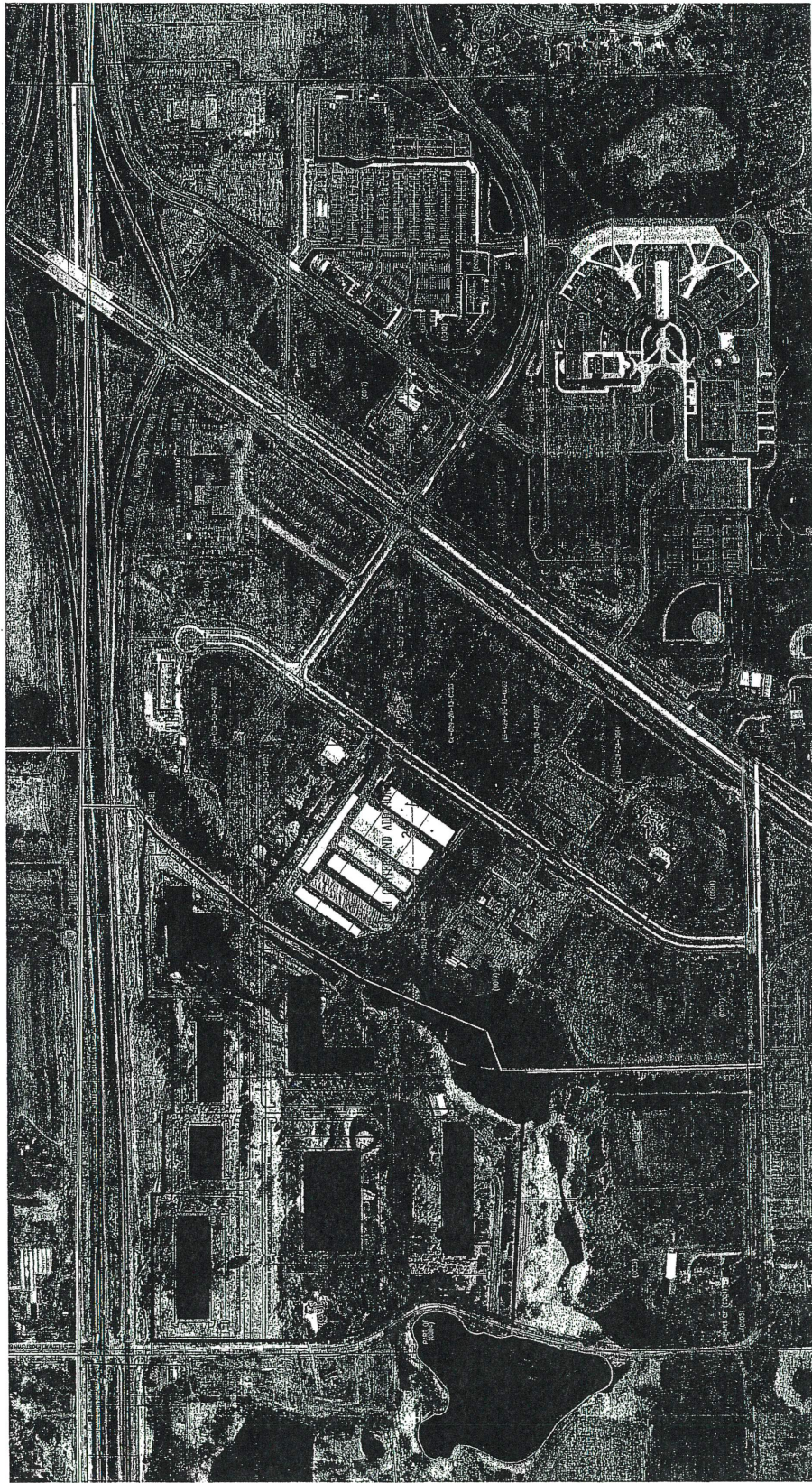
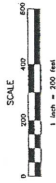
1. Landowner hereby certifies that this plat, specification,  
or report was prepared by me or under my direct supervision  
and that I am a duly Licensed Professional Engineer in the State of Minnesota.  
Other: *Brodski*  
2348  
Registration No. *FL-02*

THIS DRAWING IS THE RESULT OF A COMPARISON AND REPRODUCTION  
OF LAND RECORDS AS THEY APPEAR IN VARIOUS WASHINGTON COUNTY OFFICES.  
THE DRAWING IS NOT A GUARANTEE FOR ANY DISCREPANCIES.  
MAP LAST UPDATED: OCTOBER 21, 2011  
NO ADDITIONAL CHANGES HAVE BEEN REPORTED TO DATE



N1/2 SEC. 06, T.029N., R.20W.

CITY OF OAK PARK HEIGHTS  
CITY OF LAKE ELMO



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LAND RECORDS AS THEY APPEAR IN VARIOUS WASHINGTON COUNTY OFFICES.  
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NO ADDITIONAL CHANGES HAVE BEEN REPORTED TO DATE

PREPARED BY:  
**BRODSKI CONSULTING**  
480 NORTHERSDALE COURT  
BAYAN, MINNESOTA 55123  
(612) 445-1741  
www.brodski.com

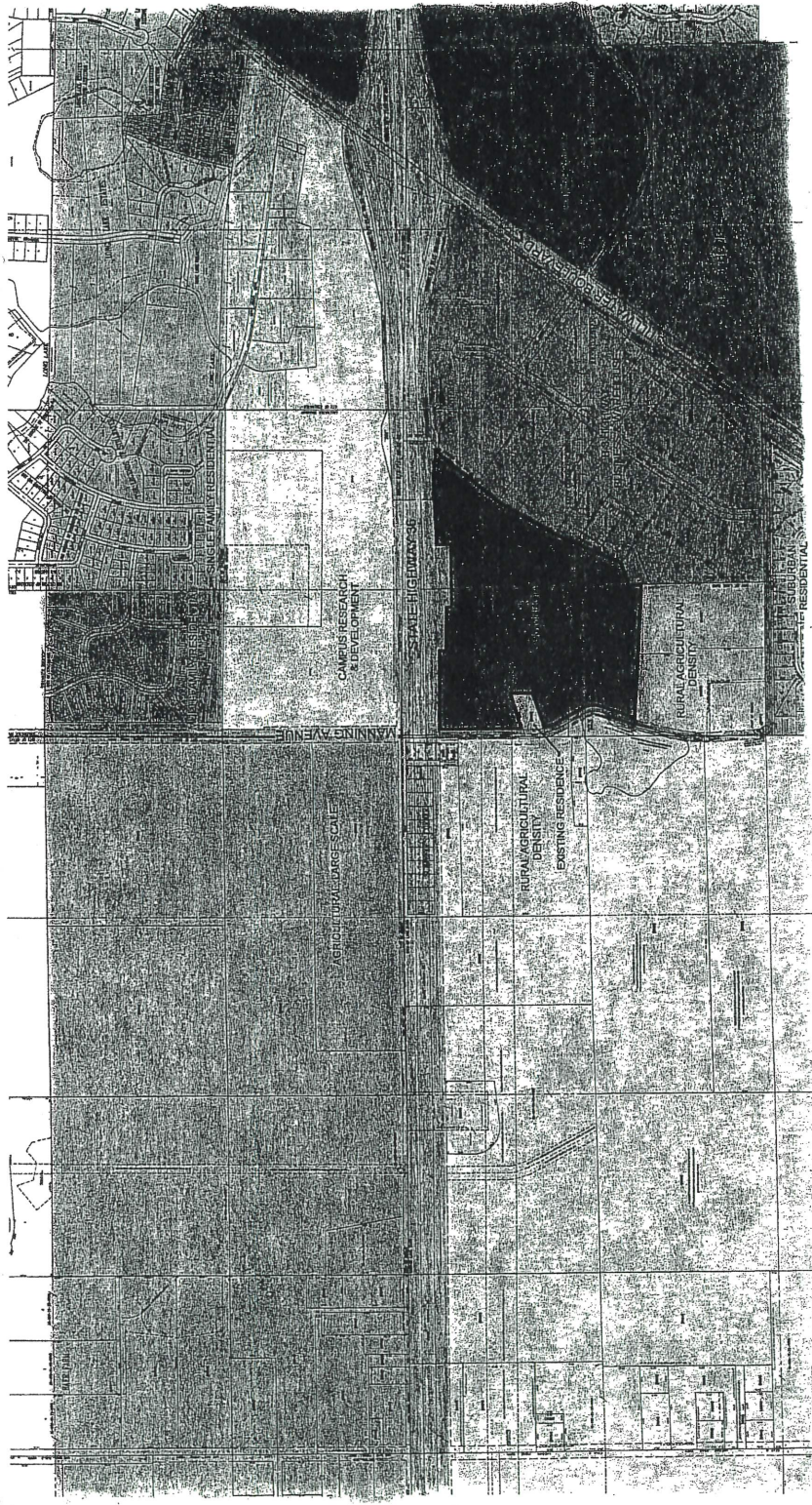
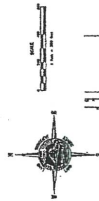
CONCEPTUAL SITE PLAN

WASHINGTON COUNTY  
DEPARTMENT OF TRANSPORTATION AND PHYSICAL DEVELOPMENT  
LAND MANAGEMENT / LAND SURVEY DIVISION  
1400 6th Street North, P.O. Box 6  
Shoreview, Minnesota 55125-0006  
(612) 435-6975  
www.washingtoncounty.mn.us

EXHIBIT C

N1/2 06-029-20





**MINNESOTA COUNTY**  
PLANNING AND ZONING DEPARTMENT  
1000 W. WASHINGTON ST., SUITE 200  
MINNEAPOLIS, MN 55401  
TEL: (612) 668-1234 FAX: (612) 668-1235  
WWW.MNPLANNING.ORG

**LEGEND**

[Symbol]	EXISTING RESIDENCE
[Symbol]	COMMERCIAL DEVELOPMENT
[Symbol]	AGRICULTURAL LARGE SCALE
[Symbol]	RURAL AGRICULTURAL DENSITY
[Symbol]	SINGLE-FAMILY RESIDENTIAL

**PREPARED BY:**  
**BRONSHO CONSULTING**  
LAND-USE CONSULTANTS & PLANNERS  
689 NOTTERIDGE COURT  
BAGAN, MINNESOTA 55120  
(612) 456-3748  
dbronsho@gmail.com

**DATE:** 1-16-07  
**BY:** [Signature]  
**PROJECT NO.:** 23049  
**REGISTRATION NO.:** 0000

I hereby certify that this plan, specification, or report was prepared by me or under my direct supervision and that I am a duly Licensed Land Use Consultant in the State of Minnesota.

CONCEPTUAL LAND USE PLAN



## MEMO

(April 18, 2002 for the Meeting of April 22, 2002)

To: Lake Elmo Planning Commission

From: Chuck Dillerud

Subject: Zoning Variance – Dan Rude

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Mr. Rude has requested that his application be placed on the April 22, 2002 Planning Commission Agenda for further Commission consideration. On a 3-2 vote on March 25 the Commission tabled Mr. Rude's application, "...until we get a definite response from the Council if the land would be sold or not sold to Mr. Rude."

Since March 25 the Council has addressed the sale of the land to Mr. Rude (and others) twice. On April 2, 2002 the Council adopted a Policy regarding the sale of any City-owned land to private parties. A copy of that Policy is attached. The strict application of the new Policy would appear to preclude sale of the land to Mr. Rude, since his circumstances are not that of a failed private septic system. In the discussion that followed adoption of the Policy on April 2 there appears to have been some sentiment from the three Council Members in attendance to waive application of the Policy regarding the Kraft Circle situation – potentially impacting Mr. Rude as well as two other Kraft Circle property owners.

The Kraft Circle land sale issue was on the Council Agenda again on April 16. The purpose for discussing the matter at that meeting was to review previous Council discussion and actions (pre-dating the new Policy) regarding the Kraft Circle land sale matter. Again, the Council did not adopt any motion providing a definitive "yes" or "no" to the sale of the land, but did direct the City Assessor to attend the next Council meeting to discuss the value (and resulting potential sales price) of the land. That action would seem to imply that waiver of the new Policy regarding sale of City owned land - regarding the Kraft Circle situation - is a distinct possibility. I am guessing that Mr. Rude came away from the April 16 Council meeting with a feeling that he has a "green light" to buy the additional land – with only the price in question.

I have also attached the previous Planning Staff Report on the Rude Variance.



2. MINUTES: March 19, 2002

M/S/P Armstrong/DeLapp - to postpone approval of the March 19, 2002 Council minutes until the April 16 meeting. 3-0.

3. PUBLIC INQUIRIES/INFORMATIONAL:

A. Public Inquiries

Gloria Knoblauch asked about the solid waste management committee. Administrator Kueffner responded the Environmental Committee meets the third Wednesday of every month. The first order of business of the commission is to remind residents of the City's curbside recycling programs and the products that are accepted for recycling. They are applying for a grant for purchasing recycling bins from Washington County.

B. Tim Freeman: Update on appointment to the Brown's Creek Watershed Board

Tim Freeman introduced himself as the newest member on the Brown's Creek Watershed Board of Managers and discussed issues of interest from recent board meetings. He provided the City a copy of the Watershed's Second Generation Watershed Management Plan.

→ C. Policy for sale and use of City owned land

Staff was directed to incorporate comments from the Council into a third draft of the proposed policy for the sale or use of City-owned land. Staff was also directed to make some minor changes to the draft ordinance prohibiting new construction from hooking up to an existing 201 system, or a future communal system.

Council member DeLapp asked if underlying ownership is addressed under Vacations. For an example the Mandel vacation, who gets the land or is it shared 50/50?

Mayor Hunt acknowledged Dan Rude's letter dated April 2, 2002.

Jennie Wiese, 3328 Kraft Circle N., stated at the December 18, 2001 Council meeting several property owners made an offer to buy land adjacent to their property for septic systems and never get an answer.

Council member Armstrong explained the Council tried to deal with an emergency situation without all the information to make a decision. Then there was a change of mind to start the process of adopting a policy while we discussed this issue. Council member DeLapp asked the questions who can buy city owned land, how much, and what can they do with the land. Mayor Hunt suggested the Council give staff time to pull information together and deal with the decision of selling the lots on Kraft Circle.

M/S/P Armstrong/DeLapp - to direct the City to draft a resolution for adoption of policy for sale and use of City owned land. (Motion passed 3-0.)

M/S/P Armstrong/DeLapp – to adopt Ordinance No. 97-105, An Ordinance amending Section 700.04 Subd. 2.B.2 prohibiting new connections to a community sewage treatment system. (Motion passed 3-0).

Administrator Kueffner will copy the code on requiring the upgrade of a septic system if a house is sold in the shoreland distinct.

~~D. Support for name change of Lake Elmo airport~~

Al Kupferschmidt, temporary representative to the Reliever Airport Advisory Committee, requested the City's support in changing the name of the Lake Elmo Airport. The airport is not in Lake Elmo and wants the name changed to reflect the entire area. West Lakeland and Baytown have responded favorably to this request. Councilmember Armstrong indicated Council member Sue Dunn had advised the request for the name change was suggested by a person from St. Paul.

M/S/P DeLapp/Armstrong – that the City supports name change from the Lake Elmo Airport to the St. Croix Valley Airport. (Motion passed 2-1:Armstrong voted against the motion based on her conversation with Council member Dunn.)

**4. FINANCE**

**A. Claims**

Fire Chief Malmquist requested the claim for Troy Bonin be eliminated until he talks to him.

M/S/P DeLapp/Armstrong - to adopt Resolution No. 2002-020 approving claim numbers 21383 through 21402 used for the March 21, 2002 payroll and claim numbers 21403 through 21438 in the amount of \$28,398.00. (Motion passed 3-0).

**5. NEW BUSINESS: NONE**

**6. CONSENT AGENDA:**

Resignation from Parks Commission, Resignation from Planning Commission  
The City received three letters of resignation from Kes Tautvydas and Dave Pletscher from the Parks Commission and Tim Mandel from the Planning Commission.

M/S/P Armstrong/DeLapp – to accept with regrets the resignations from Kes Tautvydas and Dave Pletscher from the Parks Commission and Tim Mandel from the Planning Commission. Staff will send them a letter thanking them for serving on the commission and making substantial contributions to the City. (Motion passed 3-0).

**Clean Up day Agreement with Washington County Fairgrounds**

M/S/P Armstrong/DeLapp – to approve the Lease Agreement with Washington County Fairgrounds for Lake Elmo Clean Up Day, May 4, 2002. (Motion passed 3-0).



Planner Dillerud explained the zoning map has not been changed and still shows the use as (HB) Highway Business, but guided as (LB) Limited Business and should have been zoned LB years ago. This is a two part application, First part is to rezone to LB and then deal with the CUP. Dillerud found out today there are a few physical modifications for health, safety and welfare. Dillerud had talked to Filla, who stated even though this facility is not specifically licensed; the proposed use is surely dependent care.

Beverly Dusso, FVN, explained this facility would be a short term shelter for women and children. They need enough time, 3-5 years, to raise the money for a property site for a permanent shelter facility. They are asking permission for a façade and to close all doors to the outside. There is a need for a room to dine together and a staff room. This facility would have a 32 maximum occupancy. There are no live in staff, but have three shifts. Dave Engstrom stated they could live with the conditions now, usable for the purpose, but may come back after talking to architect for a variance to add onto the building for security and safety issues. A committee is working on building a new shelter so this facility would be sold and the proceeds used to build a new facility.

Chairman Armstrong opened up the Public Hearing at 7:45 p.m.  
There was no one to speak for or against the application.  
Chairman Armstrong closed the Public Hearing at 7:46 p.m.

M/S/P Armstrong/ Taylor – to recommend to the Council approval of the rezoning of 9730 Hudson Blvd. from Highway Business to Limited Business, based on compliance with the Comprehensive Plan. (Motion passed 6-0).

M/S/P Armstrong/Taylor – to recommend to the Council that the use posed by applicant of FVN/HTC, Inc. is of the same general character as “licensed dependent care center”. (Motion passed 6-0).

Planner Dillerud explained if the Planning Commission is to approve the CUP then the applicant should go to their architect and bring back for consideration no footprint expansion doorway removal.

M/S/P Armstrong/Taylor – to recommend approval of a Conditional Use Permit for FVN/HTC, Inc. to permit the use of the existing facility, with the enclosure of the sidewalk area, doorway removal, and no footprint expansion, at 9730 Hudson Blvd. for temporary housing of women and children based on a Finding that the proposed use complies with the standards of Section 300.06, Subd. 4; and subject to the conditions specified by the March 21, 2002 Planning Staff Report. (Motion passed 6-0).

#### 7. Daniel Rude Variance

Planner Dillerud reported the City Attorney had investigated the history of the minimum lot size in the R1 zoning and the platting of the site. The City Engineer reviewed the soil investigation submitted by the Petersons for a new septic system a few hundred feet north



of the Rude site. Prew stated in his letter that it would appear that the 6,400 sq.ft of area would be required for the two drain fields to serve the Rude site if the City owned land is included.

Dillerud explained that the Council continued its consideration of a policy regarding sale of city owned land.

Dan Rude didn't have any more to say than what was in his letter presented to the Commission at their last meeting.

Commissioner Helwig asked the applicant to consider postponement until the Council makes up its mind on whether they would sell city owned land. If the Council decides not to sell Mr. Rude the land, then he would have a problem with the variance application.

M/S/P Helwig/Taylor - to table application until we get a definite response from the Council if the land would be sold or not sold to Mr. Rude. (Motion passed 3-2 Armstrong, Deziel-1; Sedro abstain.)

Mr. Rude stated if the City permits selling lot, he would not go ahead with purchase if he could not combine the land.

Commissioner Deziel wanted to approve variance contingent on sale of land. Armstrong and Taylor would not approve. Sedro had a concern on septic if it will hurt the environment around it.

Chairman Armstrong brought up his concern on the 60 day rule. This application could have to go on the April 2 council agenda for Mr. Rude to request an extension. It is not fair to the applicant and have the applicant come back and seeing no progress. Commissioner Helwig stated if the Council denies variance application and then in a certain month period the City sells the land, Mr. Rude now has to pay the variance fee.

Commissioner Sedro asked the City Eng to comment on the aggregate affect??

#### ~~8. Allowable Uses in the Limited Business Zone~~

Chairman Armstrong stated if this is what the Commission wants to do then we should not put the weasel words in it. He did have a concern about creating the Big Boxes. The City will overhaul LB when the consultant gets hired to work on the zoning code.

The following changes were recommended:

Exhibit 2, 3. Conditional Uses in Limited Business

Item #4 Business Services. The word "etc." gets you into trouble and should be deleted.

Item #9 Light Manufacturing What is light manufacturing??

Item #10 Limited Retail Sales should be stricken.

Item #11 Limited Retail Uses.....Move all the wording from right to left and leave as is.

~~Item #15 Restaurants and Cafeterias. The people don't want a McDonalds~~

**DANIEL B. RUDE**

3250 KRAFT CIRCLE NORTH  
LAKE ELMO, MINNESOTA 55042  
651.779.6564

---

Date: Monday, March 11, 2002

To: City of Lake Elmo Planning Commission  
Re: Rude/Hegna Variance Application (Amended)

The Staff Report before you presents one main argument for its recommendation to deny this request – the adverse Public Impacts of residential density, and in particular the aggregate impact of private septic systems on a given geographic area, in this case, the Old Village.

On May 30, 2001 the Planning Commission passed a Resolution approving the variance request by Anthony Carlone for lots in the Tablyn Park neighborhood. The decision in that action was based, in part, on three criteria, with two notable omissions:

- an earlier request by the City to combine existing lots (unique circumstances),
- the Average Lot Size of the Neighborhood criterion,
- the current direction of the City regarding non-conforming lots in R-1 zones,
- *The lots were contiguous non-conforming parcels under common ownership, and*
- *there was no mention of the Public Impacts in Carlone Findings, yet the decision actually increased the Public Impacts (especially the impact of private septic systems) by a factor of two and one-half.*

No two variance applications are identical, but they all must meet the same standards in order for a variance to be approved. The ambiguous language of the zoning ordinance with respect to variances seems to allow some latitude when it comes to applying those standards and, as a result, not all applications are treated equally.

The following ideas may lead to a different recommendation than the one presented in the Staff Report.

1. If a broad definition of “unique circumstances” was used in other decisions, it should be used here.
2. If the “Average Lot Size of a Neighborhood” criterion was used in other decisions, then it should be used here.
3. If the “current direction of the City regarding non-conforming lots in the R-1 zone” was considered in other applications, It should be considered here.
4. If other recent applications involving non-conforming lots under common ownership in R-1 zoning (300.09 Subd. 2) were approved by the City, this application should also be approved.

5. If the Public Impacts included under the R-1 zoning (aggregate effect of private septic systems) were *not* considered in other decisions, they should *not* be included here.

Clearly, the City recognizes the unique circumstances which exist in the Old Village and plans to address the issue of non-conforming lots in the R-1 zone.

I am seeking equal consideration for this request based on previous actions of the City. I respectfully request you set aside the recommendations of City Staff based on the additional information provided here, and that you will find sufficient cause to pass a resolution recommending the approval of this application based on the following Alternate Findings.

#### Alternate Findings

1. There would appear to be unique circumstances regarding this lot as it exists because it was created prior to the current R-1 zoning ordinance and it is located in the Old Village, an area which the City has determined requires special consideration.
2. The Literal interpretation of the lot area standards of the R-1 district in this case would deprive me of rights enjoyed by other property owners in this Old Village neighborhood, if not all R-1 zoned areas in the City. The average lot size in the neighborhood is 15, 000 sq. ft. This lot combined with the proposed purchase of a city owned lot would result in a lot of 24,000 sq. ft., larger than many of the other lots in the neighborhood. (see Carlone Resolution)
3. Although the City can not create a hardship, adopting the current zoning ordinance did create "unique circumstances". In past actions the City has worked to address those circumstances with other lot owners. I am seeking similar relief.
4. The variances requested would not confer any privilege that has been denied to other property owners in the neighborhood, if not all of the R-1 zoned areas of the City. In fact it complies with prior variance approvals which have used the Average Lot size of the Neighborhood criterion. (see Carlone Resolution)
5. The variances requested are the minimum necessary to alleviate the requirements 300.9 Subd. 2 and 3 of R-1 zoning.
6. The variances will not be detrimental to the purpose of the Zoning Code nor to properties within the neighborhood and zone. (see Carlone Resolution)
7. The hardship may be, in part, economic but is also due, in part, to previous actions by the City and the unique nature of the Old Village as demonstrated by the decision of the Planning Commission, Village Commission, and the City Council to consider changes to the existing R-1 zoning ordinance.

Respectfully,  
Daniel B. Rude



## MEMO

(March 20, 2002 for the Meeting of March 25, 2002)

To: Lake Elmo Planning Commission

From: Chuck Dillerud

Subject: Daniel Rude Variances

---

The Commission tabled this application on March 11; and, requested staff to address two specific issues:

1. At what point in time was the R-1 District minimum lot area changed to 1.5 acres (or 1 acre).
2. The City Engineer's opinion as to what surface area would be required to accommodate two septic drain fields for a home of the proposed size.

I recalled that the City Attorney had researched the history of Lake Elmo zoning some time ago related to another issue. I have therefore asked him to repeat his findings in that regard. He had also, more recently, researched the County records regarding the land division action(s) that resulted in the Kraft Circle parcels.

From what we can gather the subject Rude parcel was created in 1956 as the result of the "Simonet Survey", at the existing lot areas – 10,000 or 12,000 square feet, depending on whether Kraft Circle ROW is included. If there was any zoning ordinance at all at that time, it was likely the Washington County Model Ordinance. The zoning of this site, and probably most of the Village (which was only about 700 acres at that time) was SFU, which had a 10,000 square foot minimum lot size – **with public sanitary sewer assumed**. As often is the case when Model Ordinances are adopted, certain "model" standards and features are not universally applicable to each governmental unit adopting the model. That **public** sanitary sewer caveat should have been addressed by the village before adopting the model, but did not, and the Kraft Circle lots were created at or near the SFU minimum without **public** sanitary sewer as a result.

If there were no formal zoning standards in 1956, there certainly were in by the time of Lake Elmo/East Oakdale consolidation in 1969. But, these were the same model ordinance standards; with the same problem regarding the reference to public sanitary sewer lot area minimums.

In 1979 the City adopted a "local" zoning ordinance, which changed the zoning class from SFU to R-1, and included recognition of the difference in lot size minimums for private on-site and public sanitary sewer. (1.5 acres for private sanitary sewer/24,000 for public) I understand that there was discussion, and even intent, by the City to install

public sanitary sewer at some point (or points) of time in the 60's and 70's. That probably influenced the inclusion of R-1 alternative lot area standards.

The City Engineer has reviewed the soil investigations recently submitted with the design of a new septic system a few hundred feet north of the Rude site. It would appear, from the Engineer's March 20 communication, that 6,400 square feet of area would be required for the 2 drain fields (one active and one backup area) to serve the Rude site. While the sketch the applicant submitted with his present application does not depict drain fields that large, it does appear that drain fields of the area suggested by the City Engineer could fit on the site – if the City owned land is included.

The City Council has continued its consideration of a Policy regarding sale of City owned land. There is no clear direction as to whether the applicant's plan to include City owned land with his existing parcel will be approved by the Council as to sale by the City of the additional land area the application assumes. It is clear, however, that two septic drain fields of the required area would be difficult, if not impossible, on the parcel that the applicant now owns.

Attachments:

1. City Attorney's Letter of March 18, 2002
2. City Engineer's Email of March 20, 2002
3. Applicant's Response to the Staff Report
4. March 5 Planning Staff Report and Attachments

**LAKE ELMO PLANNING COMMISSION  
STAFF REPORT**

**Date:** March 5, 2002 for the Meeting of March 11, 2002

**Applicant:** Daniel Rude

**Location:** West Side of Kraft Circle, South of 32<sup>nd</sup> Street

**Requested Action:** Zoning Code Variance(s)

**Land Use Plan Guiding:** SRD (Single Family Residential)

**Existing Zoning:** R-1

**Site History and Existing Conditions:**

The Planning Commission denied a variance application at this location on September 24, 2002. The Commission's denial action was appealed by the applicant. The appeal was not heard by the City Council. The applicant has requested City reconsideration of the previous variance application based on an enlarged site area. Staff has agreed to present this modified application to the Planning Commission/City Council as an amendment to the earlier application. A Public Hearing Notice has been published, however, to overcome any potential process issues regarding consideration of the amended application. For all practical purposes, therefore, this becomes a new application.

The City Code has been amended as to Zoning Variance process since the 2002 consideration of this application. Based on the present Code procedures, the Planning Commission will conduct the Public Hearing; and, adopt a recommendation to the City Council, rather than render a decision. The necessity for Findings in support of that recommendations remains, however.

The detailed "Site History" regarding this site is addressed in the attached copy of the September 18, 2001 Planning Staff Report, and therefore not repeated here. Since preparation of that report, the applicant has petitioned the City for connection of this site to the 32<sup>nd</sup> Street 201 Wastewater Treatment System. We have attached the Staff memo to the City Council from the February 5, 2002 City Council meeting, at which the applicant's request was considered. I have also attached the City Council Minutes of February 5, 2002, which describe the discussion of the applicant's 201 connection request, as well as the Council's action denying that request.

**Discussion and Analysis:**

There are two major differences between the applicant's 2001 variance application, and that which is now before the Commission:

1. The area of the land parcel for which a variance from the R-1 lot area standard is requested.
2. An increased site area over which drain fields for a private wastewater system are possible – making the ability to provide area for those two drain fields probable, rather than doubtful.



Both of those are “conditional” in nature, however. This application is made on the assumption that the City will sell the applicant approximately 12,000 square feet of the City-owned land located immediately West of the applicant’s 12,000 square foot (or 10,000 square foot, depending on whether the area of the lot under Kraft Circle ins included) parcel. A portion of this City-owned land was sold earlier this year (subject to appropriate parcel division/consolidation) to a neighboring land owner in immediate need of a replacement drain field location. The City Council has directed that no further sales of City-owned land be made until a Policy is established governing such sales. The City Council will be considering a draft Policy at its February 6, 2002 meeting.

Based on the assumption that the City will sell the additional 12,000 square feet of land to the applicant, this application is to allow construction of a new home on a parcel of 22,000-24,000 square feet with private on-site wastewater treatment. Since the parcel assumed is not a “Lot of Record” in its assumed configuration, the standard from which variance is requested is 1.5 acres (65,340 square feet). In addition, the applicant is the owner of three other contiguous parcels, the sum area of which does not meet the 1.5 acre R-1 minimum lot area requirement. A second variance is required from the terms of Section 300.09 Subd.2., regarding the required combination of separate contiguous non-conforming parcels of land under single ownership. Finally, a variance is required from Section 300.09 Subd. 8, regarding the need for at least 1 acre of on-site sewage treatment area for each dwelling unit.

The applicant has concurrently applied to combine his other three tax parcels (all fronting 32<sup>nd</sup> Street North) into a single parcel. The sum of all 4 of the applicant’s parcels, plus the area of land proposed to be acquired from the City is still well short of 1.5 acres (approximately 45,000 square feet, or 7/10 of an acre, including Kraft Circle)

Most of the “Discussion” found in the September 18, 2001 Planning Staff Report on the previous application focused on two areas of concern:

1. The high probability that there would not be adequate space on the 12,000 square foot parcel for a second drain field.
2. Concern with the effective residential density that would result from approving a new residence on a lot ; and, the potential compounding of that density by future variance actions using that application as a precedent.

Assuming that the applicant’s land purchase from the City is consummated, the probability that a second “back up” drain field site can be accommodated is increased – but not assured. At this point, the applicant has not invested in the investigations necessary to determine soils suitability for drain fields. One impediment to the variance for lot area would, therefore, likely be reduced or eliminated by adding lot area, as proposed.

The second issue – that of effective residential density – is reduced by a factor of one-half when compared to the previous application. If one assumes that there is a certain measure of logic to support the lot area standards of the R-1 zoning district, one may (at this proposed lot area – 24,000 square feet) conclude that the residential density issue is partly addressed as well. The rationale for residential density standards (incorrectly, but commonly, reflected by minimum lot size requirements) is a function of several factors that will result from land development – sometimes referred to as “externalities”. Those include traffic generation, impacts on municipal and educational services and facilities, and others. Whether or not a site is served with public or private wastewater handling is but one of those externalities. Where public sewer is available, it

becomes a matter of conveyance and treatment system capacities – the capacity is either there or it is not. The permitted residential density can – and often is – based on that factor (treatment capacity) alone when public waste treatment is available.

That same concern/logic is likely one basis for the 1.5 acre R-1 lot area minimum in the Lake Elmo zoning ordinance. In Lake Elmo's case, however, it is not the capacity of a wastewater plant at issue, but rather the aggregated wastewater treatment carrying capacity of the soils. While individual on-site wastewater treatment systems may be of adequate size and design to each function properly for the residence, at some point the combined impact (density) of multiple individual systems in a given geographic area may exceed the capability of the soils to process the waste product from the multiple drain fields. The density of homes/private septic systems at which that soils capability is lost will vary with the types of soils encountered. A density equal to home sites not less than 1.5 acres in area (6/10 units per acre) has been determined to be a safe assumption for soils caring capacity for the R-1 areas of in Lake Elmo (primarily the areas of the City that were platted under earlier – or non-existent – zoning regulations).

### **Findings and Recommendations:**

We have carefully considered the 7 Findings recommended by Staff, and adopted by the Planning Commission regarding the 2001 variance application. This review was to determine how those findings could now be different, given the increased site size the applicant now conditionally proposes, together with any impact on those findings that may result from recent interpretations of the City Code confirmed by the City Council (particularly the intended meaning of the zoning ordinance terms, "with sanitary sewer"). Considering those factors, the Findings of September 18, 2001 appear remain accurate and valid essentially as written:

1. The requested variance does not exhibit extraordinary or exceptional circumstances which do not apply generally to other properties in the R-1 zone or vicinity of the site. A significant number of vacant tax parcels, zoned R-1 and of a similar parcel area exist within the platted area of the Old Village.
2. The granting of the variance will confer on the applicant a special privilege that is denied by standards of the Zoning Ordinance to other owners of land under similar circumstances within the R-1 district. Numerous vacant tax parcels of similar area are denied the privilege to construct a residence that would be conferred on the applicant by approval of the variance.
3. The granting of the variance would be materially detrimental to the purposes of the Zoning Ordinance by establishing s significantly reduced standard for unsewered R-1 lot area. Granting of the variance request would nearly triple the land use intensity from that assumed by the Zoning Ordinance for unsewered parcels.
4. The hardship claimed by the applicant is economic alone.
5. The hardship claimed is the direct result of actions by the applicant by his failure to combine several substandard lots of record that are contiguous.
6. The applicant's existing reasonable use of the subject parcel is established by the fact that, when the area of the subject parcel is combined with the area of the three additional contiguous parcels owned by the applicant, and the land area proposed to be purchased by the applicant from the City, the resulting sum area is substandard for a single residence by R-1 standards. There is no hardship demonstrated by lack of reasonable use of the subject parcel.
7. The approval of the variance would be inconsistent with the provisions of Section 300.09, Subd. 2 of the City Code regarding contiguous non-conforming parcels of record in common ownership.



**Planning Commission Actions Requested:**

Motion to recommend denial of the application of Daniel Rude for variances to Section 300.07 Subd. 4C3 (R-1 Minimum Lot Area); Section 300.09 Subd.2. (Contiguous Parcel Ownership); and, Section 300.09 Subd. 8 (Minimum Sewage Treatment Area) based on the seven Findings found in the Planning Staff Report dated March 5, 2002.

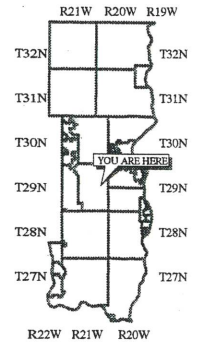
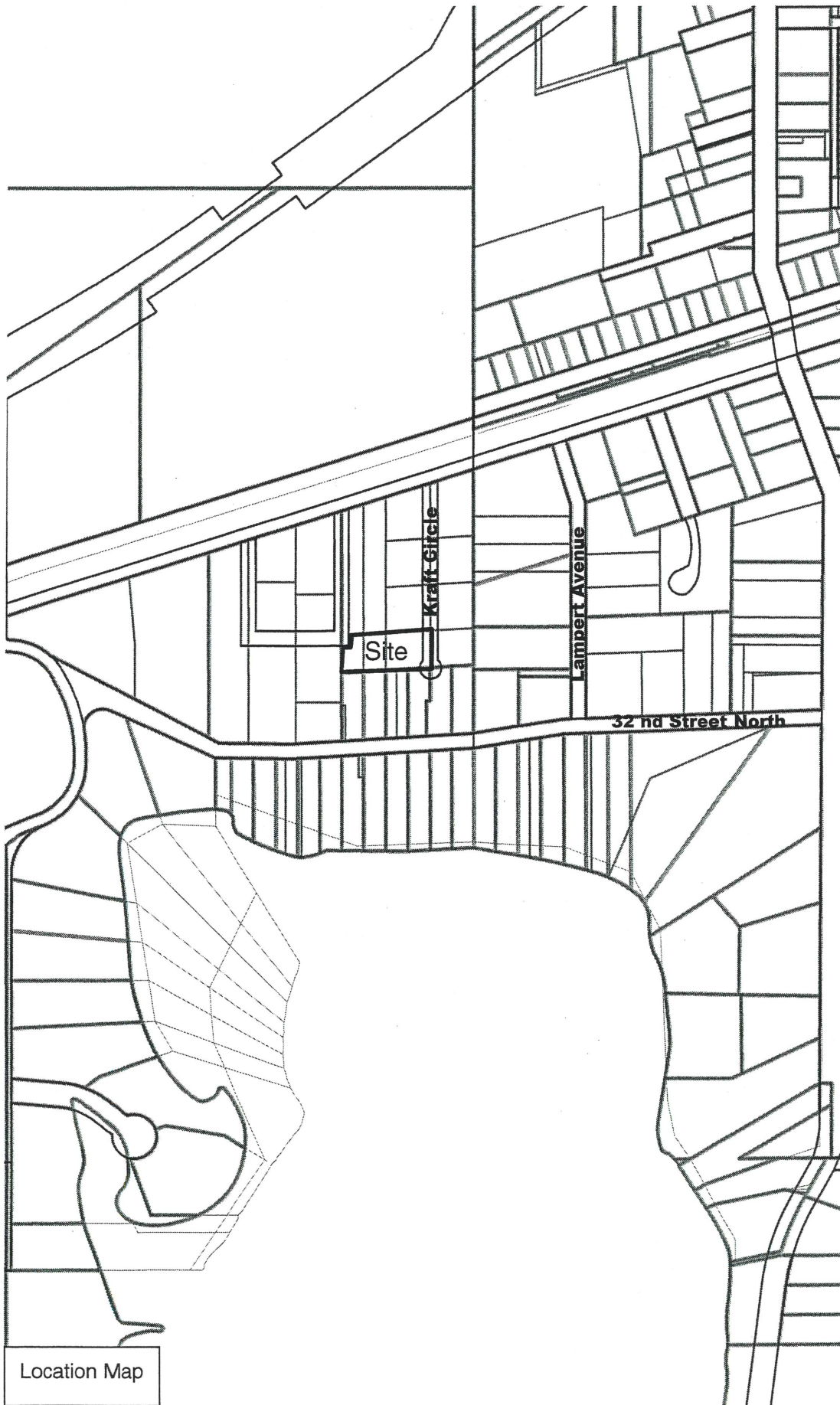
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Charles E. Dillerud, City Planner

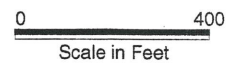
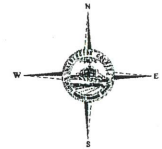
**Attachments:**

1. Location Map
2. Applicant's Documentation
3. City Council Minutes of February 5, 2002
4. Staff Memo to Council for February 5, 2002
5. Planning Commission Minutes of September 24, 2001
6. September 18, 2001 Planning Staff Report





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) 450-6875

Parcel data based on AS400 information current through: January 31, 2002  
Map printed: March 6, 2002

# Kraft Circle Site Plan

