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## City of Lake Elmo

651/777-5510

3800 Laverne Avenue North / Lake Elmo, MN 55042

### Planning Commission

### NOTICE OF MEETING

**MONDAY, November 25, 2002 at 7:00 p.m.**

Council Chambers - City Hall  
3800 Laverne Ave. North  
Lake Elmo, Minnesota 55042

### **AGENDA**

1. Agenda
2. Welcome Thomas Meldahl as 2<sup>nd</sup> Alternate, Planning Commissioner
3. Minutes of October 28, 2002
4. PUBLIC HEARING – Variance for Sign: Hilpisch/Pechan
5. Adjourn



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CITY OF LAKE ELMO  
PLANNING COMMISSION MEETING  
MINUTES OF OCTOBER 28, 2002

Chairman Armstrong called the Planning Commission Meeting to order at 7:00 p.m. COMMISSIONERS PRESENT: Armstrong, Helwig, Bunn, Deziel, Pelletier, Ptacek, Sedro, and Sessing. STAFF PRESENT: Charles Dillerud, City Planner.

### AGENDA

M/S, Sessing/Sedro, To accept the agenda as presented. VOTE: 8:0 PASSED.

### WELCOME NEW PLANNING COMMISSIONER

Jennifer Pelletier was welcomed as the new 1<sup>st</sup> Alternate Planning Commissioner.

### MINUTES OF OCTOBER 17, 2002

The Chairman pointed out to the Commission that a memorandum was received from the Finance Director asking for changes in the minutes. The Commissioners were given a copy. The City Planner received the memorandum late this afternoon. The City Planner explained that the procedure for the preparation of minutes is that the Recording Secretary drafts them, and he proofreads and amends or trims them. The Finance Director thinks some of those things should have been left in. She reviewed the videotape from the meeting of October 17, 2002, and drafted this memo that outlines very specific changes she would like to be made to the minutes. The City Planner explained that minutes are meant to be representative, and perhaps this was too much to read and review. He suggested the Commission could table the minutes or attach the memo to the minutes.

Commissioner Bunn asked for page 7 to reflect that she asked the City Planner for a summary of Mr. Hugunin's comments or to provide copies of the letter to the commissioners. On page 8, she reminded the Commission of stronger language regarding the PowerPoint presentation. The City Planner explained he removed those remarks for that reason. On page 3 she said that line 3 should read, "...Push it in farther without cutting a larger swath into the hill in order to accommodate a sideways garage."

Commissioner Deziel said that on the bottom of page 7, the question was his but the answer belonged to the City Planner.

Chairman Armstrong reminded the Commission that minutes are meant to be a summary. He said there are audiotapes and videotapes available for anyone who wants to get very specific. He said the Commission was getting awfully particular on these minutes, and they are getting bogged down.

M/S Armstrong/Deziel, To accept the Minutes of October 17, 2002 as amended, attach the memorandum from the Finance Director to the end of the minutes, and let the Council decide. VOTE: 8:0 PASSED.

### ZONING AMENDMENT: GENERAL BUSINESS TO LIMITED BUSINESS; GENERAL BUSINESS TO AGRICULTURE

### PUBLIC HEARING

#### Staff Report, City Planner, Charles Dillerud

The City Council had asked for a review of the zoning along the I-94 corridor back in June. The Planning Commission has looked at this issue a couple of times. State Statute governs how regulatory devices, such as zoning should be done.

He summarized the past history. The City Zoning Map has not been changed over many years since the 1990 Plan was developed. The Metropolitan Land Use Planning Act says that zoning ordinances must be consistent with the approved Comprehensive Plan within 9 months of adoption of the Plan.

This hearing was originally noticed for the last meeting but it was pulled from the agenda when we discovered that the surrounding parcel owners' list did not include the parcels in question. The RECO Plat was originally included. Since the Preliminary Plat has been approved, they cannot be rezoned for one year. They were removed from this action.

The Planner was contacted by most of the property owners. He sent copies of the uses in General Business and Limited Business to most of them at their requests. These businesses could continue business as they exist. If they wanted to expand use or expand their buildings, those become variance issues.

Value is not an issue the City should involve itself in. Up-zoning and down-zoning artificially change the value of the land in most cases.

There are two State Statutes that provide legal basis for these zoning amendments.

He distributed a copy of a letter he received at 4:00 p.m. from an attorney representing one of the owners.

#### **Commissioner Deziel**

Did the City Attorney offer a legal opinion? He feels that this is legal limbo.

#### **City Planner**

There is no legal limbo. This is a housekeeping issue that should have been done in 1990.

#### **Commissioner Bunn**

There is a misprint in the staff report on line three. The General and Limited Business uses were reversed. She clarified that one of the six parcels is east of Lake Elmo Avenue, and is guided RAD.

#### **City Planner**

That is correct. That one may be rezoned to Agriculture or Rural Residential.

#### **The Chair opened the Public Hearing at 7:22 p.m.**

#### **Christopher Dolan**

He is speaking on behalf of the owners of J & W Boat and Motor, 9200 Hudson. They are strongly opposed to rezoning. They have owned the property since 1998\*(see below) and it was classified General Business when they purchased the land, and the price reflected that. There are almost 100 different uses allowable under GB; rezoning to LB would allow about 4 different permitted uses. He objected to the use of the word "artificial" in relation to their property values. The value is real, and they are looking to sell it. Their real estate broker said the proposed rezoning would cut the value by at least half. Why does the city want to promote a Limited Business District with such a restrictive use along I-94 anyway? He said Met Council has taken issue with city's Comp Plan deficiencies such as the failure to expand the MUSA line, increasing minimum densities, and create districts to balance residential and industrial uses. If they are successful it may force the city to amend the Comp Plan to incorporate those factors. Will we be in the same situation in one or two years? Wait until that is resolved to discuss rezoning.

#### **Scott Sayer**

He is a new partner on the undeveloped parcel east of the outdoor theater. He completely agrees with Chris Dolan's statement. It does not make sense that a corridor on I-94 would have such limited uses when anywhere else you go has General Business. A change now would significantly affect his investment. He thinks the city should have General Business Zoning for its tax base. Limited Business might be for the middle of the city but not for the I-94 corridor. His parcel would not be grandfathered in, and he feels discriminated against. He strongly recommends taking no action now, at least waiting until the Met Council has determined where the city is or is not in compliance. Please, take a hard look at it before changing this zoning.



**Bob Egan**

He represents the owners of Lamperts. It is strange to change uses on the I-94 corridor. His other concern is that the shape of his property is long and narrow; a prospective buyer will look at the 20,000 square feet building, and say, "We'll give \$1.50 for it, and you can keep the back three-quarters because nobody is going to want it either." That value is not artificial. It is real to us. We would take a hit (financially) if we chose to move.

**Chuck Goss**

He is the owner of Crossroads Collision. He strongly opposes this zoning change. He has been there since 1981, and the building was there since 1985. He had his attorney draft a letter that was received by the Planning Commission.

**Jack Dolan**

They bought that property in 1988. He opposes the rezoning, and Christopher Dolan stated their position.

**The Chair closed the Public Hearing at 7:38 p.m.**

**Chairman Armstrong**

There might need to be changes to the Conditional Uses for Limited Business. It might be best to retain Limited Business Zoning along I-94 and amend the zone to accommodate present uses. The law says there is no vested interest in zoning.

**Commissioner Bunn**

With respect to Comprehensive Plan zoning, are owners generally notified of changes?

**City Planner**

No.

**Sabrina Dolan**

She feels an attitude (by the city) that we should approach this in a sophisticated way. Many of these owners bought their properties prior to the 1990 Comp Plan. When prices were negotiated the GB Zoning was a factor. These are small business owners without deep pockets. Our family's life savings are (invested) in this. When you take away these uses you are taking away our earning (power). She objected to the use of the word, "artificial" in relation to their property values.

**Commissioner Bunn**

The citizens and elected officials came up with a vision for Lake Elmo and for the I-94 corridor, prior to 1990. Some may disagree with those visions; they may be different from what most people's would be for the area along the highway but this was a public process, and the conclusion is why we are here. That area was to be zoned Limited Business in order to protect the area around that highway corridor, and to protect the village businesses from impact. We have those Comprehensive Plans. The Planning Commission's role is to support that vision. She challenged the City Council to make all the zoning changes in order to conform to the Comprehensive Plan. In the future it should be done in a timely basis.

**City Planner**

We have rezoned for consistency but all those were up-zones.

**Wyn John**

At the time of the formation of the 1990 Comp Plan there were working meetings and two public hearings to come up with this vision for the city. They hoped to attract high quality office buildings along I-94.



**Chairman Armstrong**

As a community we have to decide and plan for the City. These decisions are made with citizen input.

**Commissioner Ptacek**

Paralleling what Commissioners Bunn and Armstrong said, he feels the Commission must honor decisions made years ago while allowing existing uses to remain.

**Commissioner Sedro**

If one of these buildings burned down, could it be rebuilt? Can they expand?

**City Planner**

They can rebuild but expansion requires a Conditional Use amendment.

M/S, PTACEK/SESSING, Move forward with Limited Business Zoning as proposed on the condition that these six existing uses are added as Conditional Uses in the Limited Business District, and the existing businesses receive Limited Business Conditional Use Permits that will preserve their status as confirming uses.

**Commissioner Bunn**

She noted that some of the current uses are allowable in the Limited Business District.

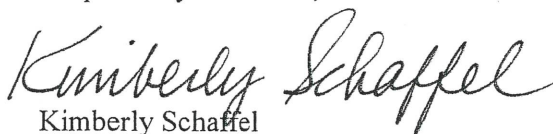
**VOTE: 7:1 (Deziel) PASSED.**

**Chairman Armstrong**

He noted that this action will come before the City Council on November 6, 2002. He said he hoped some of these people will come in to work together with the Commission in the near future on the uses for the Limited Business Zone.

**ADJOURN THE PLANNING COMMISSION AT 8:00 P.M.**

Respectfully submitted,



Kimberly Schaffel  
Recording Secretary

CITY OF LAKE ELMO  
PLANNING COMMISSION MEETING  
MINUTES OF 10/17/02

Chairman Armstrong called the Planning Commission Meeting to order at 7:00 p.m. COMMISSIONERS PRESENT: Bunn, Berg, Deziel, Sedro, Helwig, and Ptacek. STAFF PRESENT: Charles Dillerud, City Planner; Abigail Grenfell, Finance Director; Kimberly Schaffel, Recording Secretary.

**AGENDA**

- 5A. Maps of Natural Resources of Regional Significance
- 5B. Comprehensive Plan Update
- 5C. Old Village Special Projects Update

M/S ARMSTRONG/BUNN, To accept the Agenda as amended. **VOTE: 7:0 PASSED.**

**MINUTES OF SEPTEMBER 9, 2002**

M/S Helwig/Berg, To accept pages one through the top of page 6 of the Minutes of September 9, 2002 as presented. **VOTE: 6:0:1 (ABSTAIN: Armstrong) PASSED.**

**MINUTES OF SEPTEMBER 23, 2002**

M/S Helwig/Armstrong, To accept the Minutes of September 23, 2002 as presented. **VOTE: 7:0 PASSED.**

**VARIANCE FROM FRONT PROPERTY LINE – ERIC SVENDSEN**

**Staff Report, City Planner, Charles Dillerud**

A Public Hearing was requested to consider a Variance from Front Property Line setback. Notice of Public Hearing was published in the *Stillwater Gazette*, and affected property owners were notified.

The proposed project is the reconstruction of an old garage on 32<sup>nd</sup> Street. This lot is very hilly, falling from the rear to the front of the lot. The proposal by Mr. Svendsen was well documented. Essentially, he wishes to build the new garage in the same location as the former garage. The original fell down. The new garage would be approximately four feet deeper than the former garage.

The front line of the proposed garage is very close to the right-of-way of the street. That was the case with the old one too. The setback requirement is 30 feet. Virtually the entire garage sits in that setback area. There are unique topographical features on this parcel that preclude another building site. The only alternative is deep digging into the hillside. He suggested the Planning Commission may not wish to recreate the safety hazard of the garage being located that close to the 32<sup>nd</sup> Street driving surface. The options are to restructure the variance application in one of two ways.

1. Reduce depth from proposed 24 feet to 20 feet.
2. Orient the garage differently so it is not perpendicular to the roadway but parallel to the road.  
Recognize this option requires a greater movement of soil from the hillside to the west.

If the garage is reoriented, 32 feet of width won't work. It probably could not be a three-car garage, maybe a two-car at most, potentially it might only be a single car garage. Findings are in the Staff Report. Mr. Svendsen could get reasonable use of the property without the degree of variance, and in the interest of public safety. Circumstances of this situation are unique in topography. The essential character could negatively impact the neighborhood by backing out of the garage directly into the street with no driveway apron. Staff suggests the commission recommends denial or ask the applicant if he wants to table the application to consider the other options. He reminded them to keep in mind the potential safety situation.

**Commissioner Sedro**

The plan shows the garage only 11 feet from the septic tank.

**City Planner**

There is no set standard for distance separation between structures and septic systems – only wells.

**Eric Svendsen, Applicant**

He distributed snapshots of the site. One of the main concerns is safety. He handed out a braking and stopping distance chart. The speed limit on that road is 25 mph. That speed requires 85 feet to stop based on the chart. His mailboxes are actually over the blacktop. Page 3 shows his car (backing out of the site) is not at blacktop yet, and there is still good visibility. Page 4 shows a close-up of the same angle. The garage was there when he bought the parcel but one wall was falling down already. One wall collapsed. The last page shows what it looked like when it came down. Twenty feet of depth in the garage might be too little for a vehicle 18.5 feet long. Eight inch walls would make it a tight fit. His coupe is close to 18 feet long as well. He tried flipping the garage plan or going on an angle; those options did not seem to work either. If it is done, he would have to cut the retaining wall at the adjoining property line. He could shave some of the hill to see better up the street.

**Chairman Armstrong**

He thanked the applicant for the photos. Page 4 where Mr. Svendsen is standing by the rear excavation wall, and where the garage needs to be has what appears to be a steep angle.

**Eric Svendsen, Applicant**

Yes, page 5 shows the angle of the slope.

**Commissioner Sedro**

It looks like 11 feet between the existing excavation and the next contour line. Could you work with that?

**Eric Svendsen, Applicant**

Yes, but that would require an 11 foot retaining wall, and he would like a normal looking garage.

**Commissioner Deziel**

He thought that appeared to be a better solution too, especially with height allowances. Safety is his main concern. You definitely need a variance. Making the view better has everything to do with the safety issues. It would be better if the applicant could go back further with the garage.

**Commissioner Sedro**

With 11 feet, there is the possibility of a partial turn before entering the street.

**Eric Svendsen, Applicant**

11 feet would be hard to do; that would put him back behind the tree. Once you hit the dirt line it inclines dramatically.

**Commissioner Deziel**

There appears to be quite a bit of land on either side, especially toward the western side.

**Eric Svendsen, Applicant**

He could knock the corner out of that, and see a bit further.

**City Planner**

At what point are you out of the garage? You can't see until you are out of the garage.

**Eric Svendsen, Applicant**

The lower picture on page four is exactly where the garage was and would be. On page 2, the car never



moved, and he could see fairly well down that street. He has been parking in the street lately, and that is also a safety issue.

**OPENED THE PUBLIC HEARING AT 7:31 P.M.**

There was no public comment.

**CLOSED THE PUBLIC HEARING AT 7:32 P.M.**

**Chairman Armstrong**

It is not our job to design for the applicant. Obviously he has a hardship here. He would like to see an agreement on the safety issues. He asked the applicant if he would like to see it tabled.

**Commissioner Bunn**

She walks and bikes past the site at least once per week. She would be opposed to the suggestion of turning it sideways for several reasons. The photos support that the eastern view appears safe. On the west is the curve in the road. Her suggestion would be to push it in without cutting a larger swath into the hill to accommodate a sideways garage. The stopping distance chart is helpful. He can see people, whether they can see him or not is another question. She has never noticed speeders on that street. Visually, she'd like to leave it where it was, shave the hill, and mount a fisheye mirror where it could be seen from the driver's seat to further the view west.

**Commissioner Sedro**

She disagreed because she said what is crucial is where the front wall is located. There is no view at all until you are past it. She would like to see the garage pushed further back.

**Commissioner Ptacek**

From a safety perspective, the lower photo on page 2 where the car door is open is the western view.

**Eric Svendsen, Applicant**

Page 1 shows where you can see if I was in the road.

**Commissioner Ptacek**

A parallel side loading garage is the only way to accomplish this.

**Eric Svendsen, Applicant**

Page 3 at the bottom shows a Sprite soda bottle; that is approximately where the property line is. It won't solve much by turning the garage, it just pushes it further west, and then there is a twelve foot garage to see beyond. He would have to pull even further into the street. That does not solve safety. Picture 3 actually puts him further away from the road at that point then if he moved the garage further west. That locates the entry zone in a better place.

**Commissioner Berg**

There is a strong case for a variance. He recommended the applicant involve himself in Old Village Planning because these are suburban standards he must meet in what is an urban area.

**Commissioner Deziel**

Creating a new retaining wall to the east between the stairway and garage would give significant visibility for reasonable cost, along with the combination of dropping the garage back two-three feet. Conditions are there for a variance but he is not comfortable with the safety issues.

**Eric Svendsen, Applicant**

The sight distance to the east is at least 250 feet now. He would not gain much of anything.

**Commissioner Deziel**

We are concerned not only with your safety but drivers and future owners too.

**Eric Svendsen, Applicant**

His coupe and truck have the same height seats.

**Commissioner Deziel**

Many vehicles would be substantially different. A variance is for the property, not for an individual.

**Eric Svendsen, Applicant**

He is not sure how to get around that wall and that hill.

**Commissioner Bunn**

The problem is to the west; that bank still obstructs the view. The height of that bank is similar to that of the wall.

**Commissioner Ptacek**

There are two options, either table to reconsider the design or move a motion. This is only a recommending body, maybe the City Council will do the work.

M/S Ptacek/Sedro, To deny the variance application as presented.

**VOTE: 3 (Sedro, Helwig, Ptacek) :3 (Bunn, Berg, Armstrong) :1 (ABSTAIN: Deziel) FAILED.**

M/S Armstrong/Helwig, To refer this application to the City Council without recommendation other than that the applicant reconsiders his plan. **VOTE: 7:0 PASSED.**

**CAPITAL IMPROVEMENT PROGRAM, 2003 – 2007**

**Staff Report, City Planner, Charles Dillerud**

The City Planner introduced Finance Director, Abby Grenfell.

This CIP is different from any the Planning Commission has ever seen. Department heads submit the data. No effort was made by administration to subtract from what was proposed. All department heads were invited to attend this Hearing to explain their CIP proposals. The purpose of the Public Hearing is to invite the public to comment as well.

The City Planner presented the CIP section by section by function without going into individual projects. This is a five-year CIP, 2003 - 2007.

In financing sections of the CIP, there are no specific references to which funds will be used. The Finance Director's philosophy is to work in logical order – first getting done the General Fund Budget in order to know what funding we will have available for Capital Improvements. The Operating Budget is not complete yet but must be by November 25, 2002.

**PARKS**

These are projects proposed by the Parks Superintendent and the Parks Commission. Of significance in this group is the 20<sup>th</sup> Street Trail proposed this year, and an extraordinarily expensive project. The Park Commission has expressed the desire to begin this project in 2003 because of some safety concerns on 20<sup>th</sup> Street. There may be several funding sources for that trail. The City Planner is working with the Trails Sub-Committee to update the entire Trail System Plan. He is not enthusiastic about creating any trail before the whole plan is done. It could turn out this trail would not have the greatest priority.

**Commissioner Bunn**

She recalled that there might be a road project on 20<sup>th</sup> Street, and that there might be opportunity to build

this trail in conjunction with the new road in 2006. If there are significant cost savings, she would be in favor of waiting and creating both at the same time.

**Commissioner Berg**

He would like to have a page with definitions of terms. How does the Finance Director assign the costs by proposed funding sources?

**Finance Director**

She will look at expanding the section on funding sources.

**ENTERPRISE FUNDS**

*Water Enterprise Fund*

**City Planner**

In Municipal Budgeting, Enterprise Funds are separate profit centers that are established primarily for public utilities. We have been trying to build up these funds over the years for future plans. These funds are supposed to be self-sufficient. They are not supposed to tap the General Budget. The Finance Director is investigating these two.

The City Engineer recommends looping water mains.

**Commissioner Bunn**

The text says \$50,000, and the table says \$5,000 for water tower painting.

**Finance Director**

The cost is \$50,000, in \$5,000 installments. The whole thing is an investment over time.

*Sewer Enterprise Fund*

There are few sewers in the city but we have to be careful something does not wear out; so we have to budget for it. The 32<sup>nd</sup> Street system concerns our City Engineer. In four or five years we may have to add to the system just to handle what we already need. Maybe we should hire a consultant to look at all of our 201. The city may become the owner/operator of wetland treatment systems in the future.

**Commissioner Deziel**

32<sup>nd</sup> Street will cost \$50,000?

**City Planner**

That is to add to the system; on the lake side of the street. We have no design for it yet.

**PUBLIC WORKS STREET IMPROVEMENTS**

**City Planner**

Usually street overlays are being done project by project. This year we asked the City Engineer to look at all the older streets to see if we can create a Maintenance and Reconstruction Plan. We have some streets coming unglued pretty badly. Streets built in last four or five years are nine-ton streets, even on cul-de-sacs. That will save us money in the future. This CIP for streets would require bonding. There is some MSA money but not enough. There will be some income from assessments but we don't know how much. This is a logical 'wish list' from the City Engineer. Our Assessment Policy is currently under review.

**Commissioner Deziel**

On old roads, do we do a boring to determine constructed cross sections and sub-base?



**City Planner**

Yes, before we consider a reconstruction. We did that on Hill Trail. There is no sense doing an overlay on a street that is coming apart or was poorly constructed on inadequate sub-base.

**Commissioner Berg**

Washington County Transportation and Physical Development already did a cost analysis including MSA Funds related to a gas tax increase of one-cent. An increase in the gas tax will mean increased MSA funding for the city.

**EQUIPMENT**

There is a depreciable life for equipment that gets used. The telephone system in City Hall is beginning to reach end of its life. It was purchased in the 1980's. There have been no failures yet but we anticipate them soon. Computer networks are obsolete after two years. Our copy machine is truly a publishing machine, and it gets replaced every five years or so.

**Commissioner Berg**

When he calls City Hall, he sometimes gets a busy signal.

**City Planner**

The public didn't like automated answering. We try to provide quality service.

Parks Equipment has been included in the CIP every year. These things are not purchased automatically if an item is not worn out. In Public Works, virtually all of the equipment has been working its way down the CIP. One new item is the water line locator. We have the ability to find shutoffs but not to find the line that goes to the house. We now have more than 500 connections. TKDA was doing this for us now, and billing us for it.

**Commissioner Berg**

Public Works staff knocked on his door when the main broke, and asked where the line was. Could the public use it?

**City Planner**

He didn't think it would be available for public use. Also, staff is in the process of restructuring the water billing system.

**FIRE**

This CIP for the Fire Department includes the Civil Defense Sirens seen by the Maintenance Advisory Special Projects Commission. The City Council adopted your recommendation. Grass rigs were owned by surrounding departments. Now those areas don't have grass or grass rigs. We still have plenty of grass here, and less help from other departments. We have to keep the equipment current. We just bought a new used chief's vehicle after it was knocked out of last year's CIP.

**Commissioner Berg**

Can groups donate equipment? And if they do, can you spend that money elsewhere?

**City Planner**

The City Council is discussing it but generally the answer will be no. It might go into a fund but the departments won't have a prerogative to then spend that money as they choose. That would be a City Council decision.

**Commissioner Bunn**

If the Fire Department had washing equipment, their turn-out equipment would last longer. What would that cost, and why isn't it being pursued?

**City Planner**

The problem is not buying the washing equipment but where to install it. We are short of building space everywhere.

**PUBLIC BUILDINGS**

The Facilities Plan was accepted and adopted by the City Council. They are supposed to get a detailed study. They will then take that study to the Facilities Committee. Staff has left it blank for now.

**Commissioner Bunn**

Where does the money come from for the Old Village Streetscape?

**City Planner**

Those funds come to the city through tax abatement. That is the benefit of a development such as the Eagle Point Business Park in the tax abatement district.

**PUBLIC HEARING OPENED AT 8:29 P.M.**

There was no public comment.

**PUBLIC HEARING CLOSED AT 8:30 P.M.**

M/S ARMSTRONG /PTACEK, To recommend adoption of the CIP 2003-2007, and forward it to the City Council with commissioner comments. **VOTE: 7:0 PASSED.**

**OTHER BUSINESS**

Commissioner Berg brought in several large maps identifying natural resources in Washington County. He invited the public to come in to City Hall to look at the maps.

**COMPREHENSIVE PLAN**

**Staff Report, City Planner, Charles Dillerud**

The Metropolitan Council rejected our Comprehensive Plan on September 11. Our City Council adopted a resolution, and asked staff and the city attorney to provide names of attorneys. They interviewed three firms eight days ago. They hired Lindquist & Vennum, P.L.L.P., and Dick Nowlin will be the lead counsel. Henceforth these matters will be closed. He asked all commissioners and staff to temper any public comments regarding this matter.

**Commissioner Bunn**

Council Member Dunn said the Metropolitan Council's Marc Hugunin sent a letter to all local government officials. She asked the City Planner to summarize his comments or provide the commissioners with copies.

**City Planner**

It appeared to be similar to what we have seen Hugunin and Mondale write in the past.

**Commissioner Bunn**

She went to a Metropolitan Council Workshop in Woodbury. They were surprised Lake Elmo wasn't there.

**Commissioner Deziel**

Is there a time frame for administrative review?

**City Planner**

The appeal would be heard by an administrative law judge. The city has 60 days, and it expires before November 10. Law gets fuzzy but it says the appeal shall be heard in a 60 day period. Once there is a hearing and an administrative law judge renders a decision, it is then sent to the Metropolitan Council,

and they then make the final decision. If the final decision is not different or is unacceptable, then the next step is the Municipal Court of Appeals. Presumably the Metropolitan Council would have to abide by what is instructed.

**Chairman Armstrong**

This is all new ground. He has no doubt it will end up in Appellate Court.

**City Planner**

He senses that the Metropolitan Council is as concerned with how and where this will go as we are. They had a representative at our interview meeting.

**OLD VILLAGE SPECIAL PROJECTS**

**City Planner**

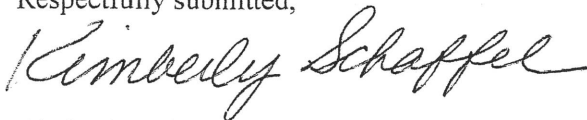
The Old Village Special Projects Subcommittee was appointed for the Old Village Forum process. They looked at the date structure; proposed notice for mailing, cable, and the web; and reviewed the PowerPoint presentation in detail. The subcommittee had a large number of modifications, most were necessary. They presented a rather lengthy list to Thorbeck to fix the presentation. He could fix it but it would be costly. The dollar amount exceeds the contract. The Planner asked the City Council last week how important is this to you to see it before the end of the year? They said it was really not as important to have it timely as to do it right. They said the City Planner should do the modifications. It was done primarily in PowerPoint, and he can do that. We still have a room reserved for November 12, which could be our first forum night. Oct 22 was cancelled.

**Commissioner Bunn**

The PowerPoint presentation was missing legends for maps, no titles and text pages without connection to graphics pages. The font size was unreadable and too small. Their changes would minimally make it more appropriate and adequate.

**ADJOURN AT 8:47 P.M.**

Respectfully submitted,



Kimberly Schaffel  
Recording Secretary



**Chuck Dillerud**

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**From:** Abby Grenfell  
**Sent:** Monday, October 28, 2002 3:41 PM  
**To:** Chuck Dillerud  
**Cc:** Mary Kueffner  
**Subject:** Planning Commission Minutes

Chuck: I have reviewed the draft planning commission minutes from the CIP public hearing and the videotape. There are several comments that have been omitted from the draft minutes that I am requesting be included. Since these minutes will go to the City Council as comments regarding the CIP and its transmittal, I think it is important that they are included so the record is accurate and inclusive.

Page 4

After "This CIP is different..." add "The Finance Director was instrumental in bringing the CIP to you this year, especially in format. It is very complete and very well done."

Change "Department heads submit the data." The content was proposed by the department heads".

Add "This is considered to be a comp plan amendment." After "The purpose of the Public Hearing is to invite the public to comment as well."

Add "other than in general terms" to the end of this sentence: In financing sections of the CIP, there are no specific references to which funds will be used."

Change "for Capital Improvements" to "to contribute to Capital Improvements"

Add the following to the end of paragraph 4 after November 25, 2002. "The transition between finance directors is difficult, especially during the budget preparation as we transitioned in July during the budget preparation.

Add to the end of the last paragraph on page 4: "The balance of projects have been seen in previous years. The Park Dedication fund is pretty well funded and we can do this CIP easily."

Page 5

Second paragraph under Commissioner Berg. Start with "The Finance Director did a phenomenal job itemizing. It is nice and easy to understand."

At the end of his sentence change "... proposed funding sources" to "... proposed funding sources by cost center."

Before Enterprise Funds add: "The City Planner directed the Recording Secretary to record commissioner comments accurately because it will be the basis of their recommendations to the City Council."

Change: "We have been trying to build up ..." to "We have been trying to build up these funds over the years for future plans. As we get development, it assumes a good part of the cost will be assumed by the developer, our portion in the CIP will pay for oversizing."

Change: "They are not supposed to tap the General Budget" to "They are not supposed to tap the General Levy. We have two factions for the water supply. A portion is served by public water out of the enterprise fund and another portion have private wells and septic systems. It is not a reasonable assumption that those with private systems should subsidize with ad valorem taxes to support City water. The Finance Director is working on a project to get a full analysis of our two enterprise funds."

Delete "The Finance Director is investigating these two."

Change "The City Engineer recommends looping water mains." To "The City Engineer and City Planner have looked at the water system issues with dead ending and have recommended improvements."

Add "We need to do some preventative improvements." after "There are few sewers in the city... so we have to budget for it."

Under Deziel comment change to: "Will the wetland treatment system for 32<sup>nd</sup> Street cost \$50,000?"

Change "Maybe we should hire a consultant..." to "Maybe we should have an independent firm...."

Under Public Works first paragraph. Change "This year we asked the City Engineer to look at all the older streets ...." To "This year we asked the City Engineer to look at the entire street system, especially those streets with years on them..."

## Page 6

First paragraph change "Yes, before we consider a reconstruction" to "Yes, before we consider an overlay or reconstruction."

Under Berg's comments, change City to County.

Under Equipment, add this sentence first: "Capital Equipment is handled differently. Previously, through the MAC, there was a depreciation schedule. Equipment was scheduled to be replaced at that point but not always was. If it is in good shape, we keep using it."

Add: "We really ought to have direct lines because we are having problems running calls from one main line." After "The telephone system in City Hall is beginning to reach the end of its life."

Under Comm. Berg's comments, change to "Telephones are a priority. When he calls City Hall, he sometimes gets a busy and it doesn't happen in business today."

After the City Planner's "We try to provide quality service." add "With 4 lines coming in, it's active. We are a City offering services and it's hard with the system we have, and the answer is direct lines so people aren't answering phones for us. It will save us money."

Under City Planner change "He didn't think ... restructuring the water billing system." To "He doesn't know if it would be available for public use. Also, staff is in the process of restructuring the commercial water rates."

Under Comm. Bunn comments add: "The CIP didn't mention how many turnout gear in stock. Add: "and wouldn't need to replace as often" after "...would last longer"

## Page 7

Add: "based on your recommendations" after "They are supposed to get a detailed study"

Under City Planner add: "Staff would suggest a motion that you have reviewed the CIP and move it on to the City Council with any commentary. You have asked the recording secretary to record it and pass it on to the City Council."

After motion and before other business, add: Chair Armstrong commented that the CIP was great, a nice document.

Abby Grenfell  
Finance Director, City of Lake Elmo  
(651) 777-5510



# Extending the Time to Act Under the 60-Day Rule

By Karen Cole

By now, nearly all Minnesota cities have had experience with the 60-day statute—Minn. Stat. Sect. 15.99—that sets a time limit for certain land-use decisions. Under the statute, cities have 60 days to make zoning and septic system decisions. Cities may extend the 60-day period, but only if they carefully comply with the statute's requirements.

There are two different ways cities may extend the 60-day period. First, cities may extend the period on their own if they notify the applicant in writing within the initial 60-day period. In its written notice, the city must give reasons for the extension and specify its length (no longer than an additional 60 days). Reasons for the extension should relate in some way to the specific application. For example, the reason may be the need to complete a certain study before acting on the application.

The deadline may be extended in another way: where the applicant and the city both agree additional time may be taken. This approach does not require that any reason be given for the extension. It is sufficient that both parties agree.

A recent case decided by the Court of Appeals underscores some of the pitfalls cities can encounter when seeking the agreement of applicants to extend the statutory time period. The case of *Northern States Power Company v. City of Mendota Heights*, 646 N.W.2d 919 (Minn. Ct. App. 2002), dealt with an application for a conditional use permit for the upgrade of a power line. Before the first 60-day period expired, the city realized it needed more time to study the application and extended the time period. After that, the city proposed that Xcel Energy hire an independent consultant and that other cities along the power line route appoint a committee to evaluate the design and

location of the expanded power line. Xcel Energy agreed to the proposals and agreed the statutory period for review would be extended, as long as the work of the committee was done in good faith and within a set time limit.

In the meantime, the consultant was hired and the committee was created and met. Near the end of the statutory period, the City Council determined it needed more time and adopted a reso-

**"The Court's decision, along with several others, suggest that Minnesota courts will interpret the 60-day statute strictly and that cities should be careful in extending the deadline."**

lution denying the conditional use permit unless Xcel Energy agreed to additional time. Xcel Energy agreed in writing to a five-month extension.

The new deadline came and went. In the meantime, the consultant's work continued. About seven months after the new deadline passed, the mayor told Xcel Energy its proposal would be on the agenda at the planning commission's next meeting and suggested that some additional conditions were appropriate. At that point, things came to a head. Xcel Energy demanded the city issue the permit. The company contended it had not agreed to any extension beyond the initial one. Xcel Energy contended that its permit application was automatically approved under the 60-day law because the city did not live within the time limits and brought suit to force issuance of the permit.

One of the arguments made by the city was that Xcel Energy had waived its right to invoke the 60-day time limit because it had acquiesced while studies continued after the time limit had passed.

The district court accepted that argument and ruled for the city. The Court of Appeals, however, reversed and ruled that the permit must be issued. The Court reached this conclusion even though Xcel Energy waited seven months to insist the permit be issued, even though the studies funded by Xcel at the city's request were ongoing, and even though there had been a spirit of cooperation between the city and the company. The Court's decision, along with several others, suggest that Minnesota courts will interpret the 60-day statute strictly and that cities should be careful in extending the deadline.

Cities should draw several lessons from the Xcel Energy case. When extending the time period by agreement, cities should get the applicant's consent to the extension in writing. Cities should never rely on an informal verbal agreement. Consent is sometimes given by applicants at public meetings. In that case, cities should ensure the meeting is recorded so that an accurate, written record can be made of the agreement. Cities should supplement the verbal consent with a written document signed by the applicant before the time period expires. Although not required, it is a good idea to specify the precise date when the extension will lapse. This will avoid misunderstandings about the deadline later. Lastly, cities should not be lulled into thinking that a written and specific agreement is not necessary because the applicant and the city are on good terms. More than one city has learned that misunderstandings can arise and relationships can change. The automatic approval of an application contrary to the city's wishes can be the unfortunate result. ■

*Karen Cole is a shareholder at Kennedy & Graven where she practices in the area of municipal law and litigation. E-mail: [kcole@kennedy-graven.com](mailto:kcole@kennedy-graven.com).*



## **LAKE ELMO PLANNING COMMISSION STAFF REPORT**

**Date:** November 20, 2002 for the Meeting of November 25, 2002

**Applicant:** Hilpisch/Pechan

**Location:** 8603 34<sup>th</sup> Street North

**Requested Action:** Sign Ordinance Variances

**Land Use Plan Guiding:** Limited Business

**Existing Zoning:** Limited Business

### **Site History and Existing Conditions:**

A Site Plan, Conditional Use Permit and several Variances were approved by the City Council in 1998 to permit construction of a 7,500 square foot office/warehouse on the site of 2.2 acres. The 1998 action by the Council were actually a renewal of the 1996 CUP approval, which was required since the applicant had not proceeded with construction within 1 year of the initial approval. The process leading to the eventual 1998 approval was somewhat complex, and involved several City Council meetings. The approved construction has been completed and is occupied by Countryside Wood Products (by CUP), Hilpisch Chiropractic Clinic, and one other tenant (with no signage needs). No specific freestanding sign plans were presented by the applicant with the site plan application; and, no such signs were approved at this time.

In March, 2001 Mr. Pehan received approval to construct a 2,000 square foot accessory structure on the site for storage of materials related to the Countryside Wood Products principal use.

A City Permit was issued for a freestanding sign – meeting City Code standards – on March 8, 2000.

### **Discussion and Analysis:**

The applicant proposes relocating the existing sign from its present location to a point 10 feet from the Highway 5 property line of the site versus the City Code minimum setback of 15 feet. The applicant also proposes the reinstalled sign be reinstalled at the new location at a height of 20 feet from grade maximum versus the Code maximum of 6 feet.

The applicant argues that the 15 foot high berm located along State Highway 5, and parallel to this site presents a physical site characteristic that reduces the intended purpose of the Code-compliant existing sign significantly. The applicant suggest that visibility of the sign from Highway is non-existent from the east and limited from the west.

The applicants' submitted graphics are difficult to interpret. While the photo image of the sign at the new proposed location may imply (as it did, initially, to staff) that the new sign location would straddle the berm, comparing the plan view graphic sketch with the 1998 site and grading plan for the site reveals that the new sign location would be at a point where the berm has flattened considerably. While we initially assumed that the 20 foot height proposed would be from the

north-most leg of the sign – on the down slope of the berm – it now appears that both legs of the sign will be at close to the same grade. A generous interpretation of “height above grade” taken from what we believed to be the short leg on the berm is not possible. That results in 2 variances being proposed (setback and sign height), rather than the single variance (setback) that was assumed with publication of the Hearing Notice. The Notice oversight will be resolved by re-publication prior to City Council consideration of this variance application.

### **Findings and Recommendations:**

Commercial site freestanding signage (all signage, for that matter) has been as often-discussed issue in Lake Elmo; and, the subject of numerous variance applications – particularly in the Old Village along Highway 5. Impairment of sign visibility by the historic placement of other structures and/or the posted speeds on Highway 5 have been the hardships usually claimed, and usually found by the City to be supportive of variance approval. This circumstance differs little from those that preceded it – except that the impairment is related to grade characteristics of the site rather than location of existing structures. Those grade characteristics are both a function of another governmental agency (most of the troublesome berm is in the Highway 5 right-of-way); and, contribute positively to mitigating the visual impact of the structures on the applicants’ site.

We recommend the following Findings regarding the variances applied for:

1. There are extraordinary circumstances that apply to this property which do not apply to other properties in this zoning district. Specifically, a berm of approximately 15 height on State Property that reduces the reasonable effectiveness of a freestanding sign at the location and height prescribed by the City Code.
2. The literal interpretation of the setback and height provisions of the City Code (Sign Ordinance) would deprive the applicants’ of rights enjoyed by other commercial properties under the terms of the sign ordinance.
3. The special circumstances related to the size and location of the berm are not the result of the applicants’, but rather the State of Minnesota.
4. The granting of the variance will not confer on the applicants’ special privileges related to free standing signage that are denied to owners of other lands in the same zoning district.
5. The variances are the minimum required to alleviate the hardship.
6. The variances requested will not be materially detrimental to the Sign Ordinance, if approved.
7. The sign proposed is the of the exact size, s\design and coloration of the existing sign on the site.

Based on the foregoing, Staff recommends approval of variances form the standards of Section 535 to permit relocation of the existing free standing sign at 8603 34<sup>th</sup> Street North to a location 10 feet from the State Highway 5 right-of-way line; and at a maximum height of 20 feet, as depicted by the applicants’ graphics staff dated November 21, 2002.

Note that a corrected Notice must be published to reflect the height variance prior to consideration of the variance application by the City Council.

### **Planning Commission Actions Requested:**

Motion to recommend approval of the sign variances for Hilpisch/Pechan upon the Findings found in the Planning Staff Report dated November 20, 2002.



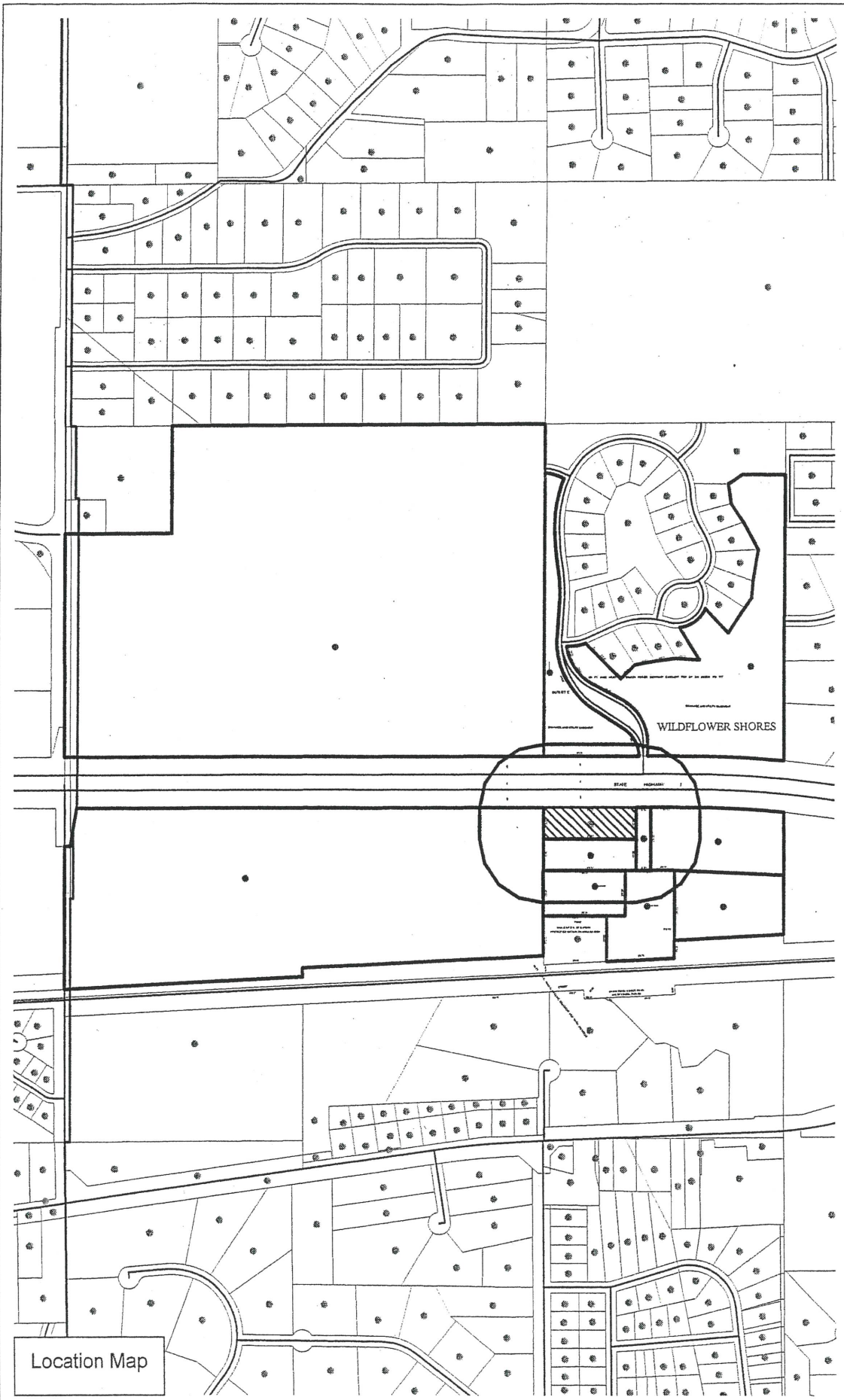
Charles E. Dillerud, City Planner

**Attachments:**

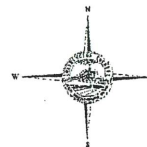
1. Location Map
2. Applicant Graphics and Documentation
3. Section 535 Sign Variance Standards



8603 - 34<sup>th</sup> Street



Vicinity Map



0 800  
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.

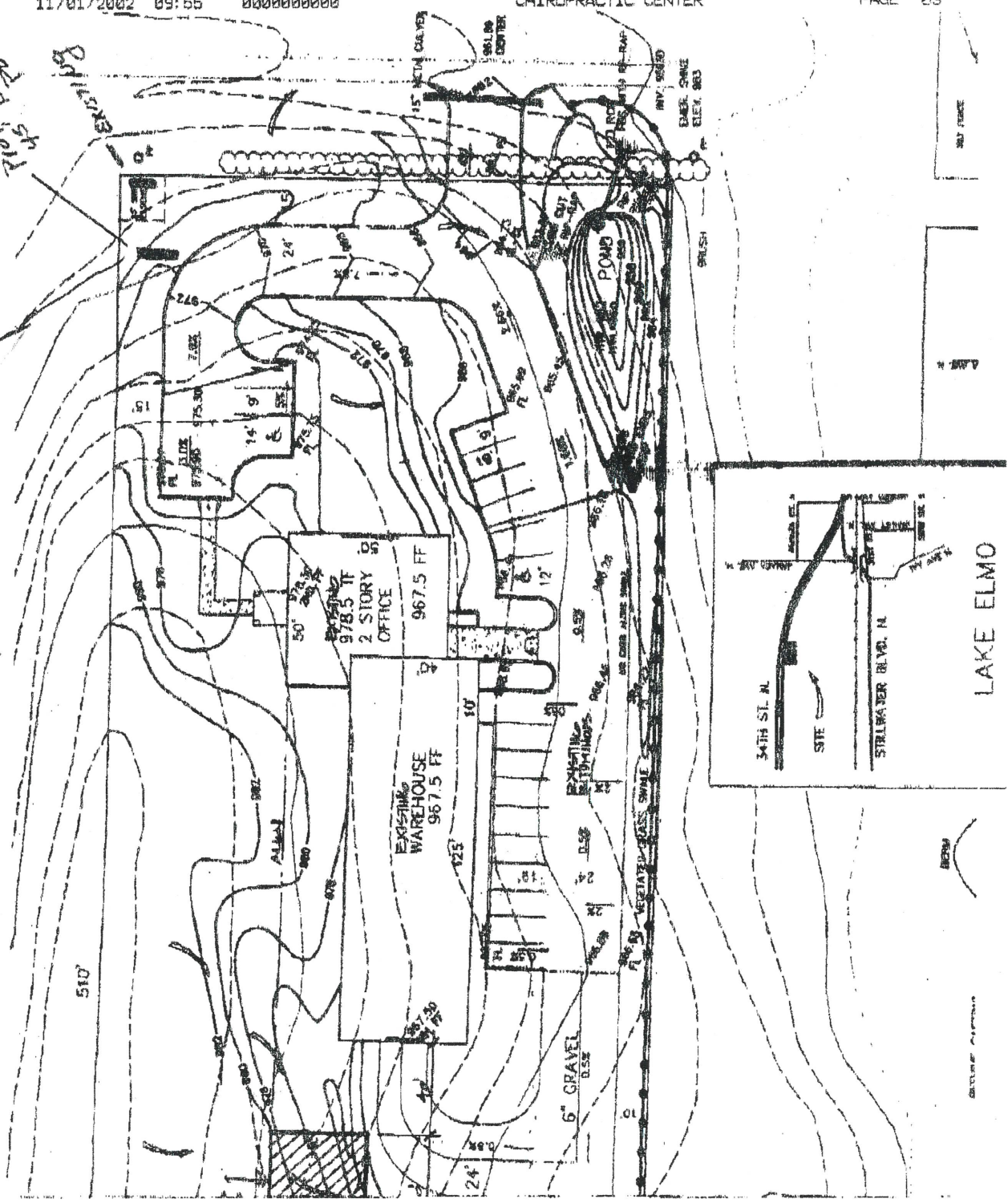
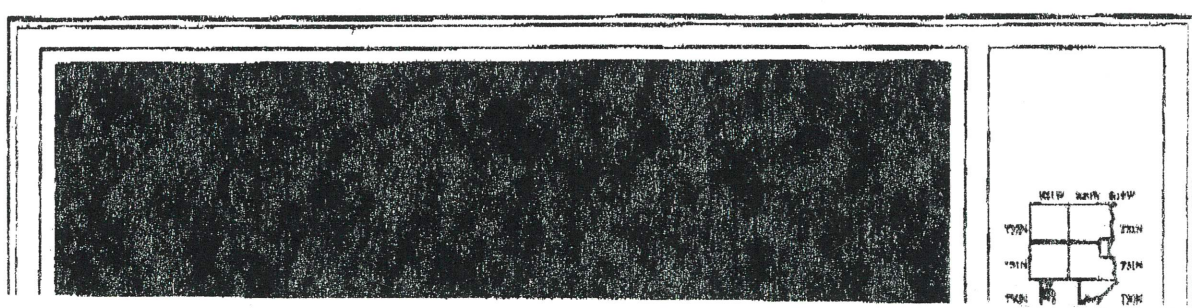
Source: Washington County Surveyor's Office.  
Phone (851) 430-6875

Parcel data based on AS400 information current through: September 30, 2002  
Map printed: November 13, 2002

Sign Placement Sign Hgt 20' from grade to top.

10' BACK FROM PROPERTY LINE

10' BACK FROM PROPERTY LINE  
Proposed Fwy 20



Suburban Lighting  
651-439-7440 - Duane





STATE OF TEXAS  
COUNTY OF DALLAS  
CITY OF DALLAS

STATE OF TEXAS  
COUNTY OF DALLAS  
CITY OF DALLAS

STATE OF TEXAS  
COUNTY OF DALLAS  
CITY OF DALLAS





City of Lake Elmo  
3800 Laverne Avenue North  
Lake Elmo, Minnesota 55042  
777-5510

DEVELOPMENT APPLICATION FORM

☐ COMPREHENSIVE PLAN AMENDMENT  
☐ ZONING DISTRICT AMENDMENT  
☐ TEXT AMENDMENT  
☐ CONDITIONAL USE PERMIT (C.U.P.)  
☐ C.U.P. AMENDMENT  
☐ APPEALS  
☐ SITE & BLDG. PLAN REVIEW  
☒ VARIANCE\* (see below)  
☐ MINOR SUBDIVISION  
☐ RESIDENTIAL SUBDIVISION SKETCH/CONCEPT PLAN  
☐ RESIDENTIAL SUBDIVISION PRELIMINARY/FINAL PLAT  
☐ 1-10 LOTS  
☐ 11-20 LOTS  
☐ 21 LOTS OR MORE  
☐ EXCAVATION & GRADING PERMIT  
☐ FLOOD PLAIN CONDITIONAL USE PERMIT

APPLICANT: JOHN HILPISCH, D.C. 8603 34<sup>th</sup> ST N LAKE ELMO 55042  
(Name) (Address) (Zip)

TELEPHONE: Work: 651 748-5731 Home: 651 4300676

FEE OWNER: Walter Pechan 8603 34<sup>th</sup> ST N LAKE ELMO 55042  
(Name) (Address) (Zip)

TELEPHONE: Work: 651 748 3636 Home: 651 777-3410

PROPERTY LOCATION (Street Address and Complete (Long) Legal Description):

SEE ATTACHED

DETAILED REASON FOR REQUEST:

Our current sign has been in place for nearly 3 years. Because of where the sign had to be installed to comply with the city ordinances, the sign is virtually useless. It is not visible from the east and out of natural sight lines from the west. Traffic travels 55 m.p.h., our sign is essential. We want  
\* 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: <sup>to move the sign</sup>

1.) Exceptional/extraordinary circumstances apply to the property which do not apply generally to other properties in this same zone/vacinity. This circumstance applies to the topography of land and set back from right of way. 2.) The literal interpretation of the provision deprives us rights enjoyed by other properties under the terms of this Section. 3.) Other exception may apply.

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.

J. G. Hilpisch  
Signature of Applicant

10/11/01  
Date

Walter Pechan  
Signature of Fee Owner

10-11-01  
Date

- B. Freestanding Signs. There shall be no more than one (1) freestanding sign for each principal building. A freestanding sign shall be set back fifteen (15) feet from the front and side property line. A freestanding sign shall not project higher than six (6) feet as measured from grade or contain more than thirty (30) square feet of signage.
- C. Service Bay and Island Identification Signs. Service bay and island identification signs are permitted providing direction or instructions to persons using the facility, but shall contain no advertising material of any kind.

#### **Section 535.10 Variance Standards**

##### **Subd. 1 Variances.**

The Planning Commission shall hear requests for a variance to the literal provisions of this section in instances where the strict enforcement would cause an undue hardship because of circumstances unique to the individual property under consideration and to grant the variance only when it is demonstrated that:

- A. There are extraordinary circumstances that apply to this property which do not generally apply to other properties in the same zone. These circumstances may include the narrowness, shallowness, shape, and topography of the parcel of land or setback from right-of-way.
- B. The literal interpretation of the provisions of the sign ordinance deprives the applicant rights commonly enjoyed by other properties in the same district under the terms of the sign ordinance.
- C. The special circumstances are not the result of the applicant.
- D. The granting of the variances requested do not confer on the applicant a special privilege that is denied by this ordinance to owners of other lands, structures, and building in the same district.
- E. The variances requested are the minimum variances, which would alleviate the hardship.
- F. The variance requested would not be materially detrimental to the purposes of the sign ordinance.
- G. The design of the sign or signs are as follows:
  - a. Compatible with the character of the adjacent buildings and with the character of the adjacent neighborhood.
  - b. Have good scale and proportion in the visual relationship to buildings and adjacent areas.
  - c. The material, size, color, lettering, location and arrangement of the sign(s) is an integral part of the site and building design.
  - d. The colors, materials, and lighting of the sign(s) are restrained and harmonious, as interpreted by the City Planner.

##### **Subd. 2 Application.**

An application for a variance to this section shall be processed according to Section 300 of the Lake Elmo Municipal Code, **Zoning Ordinance, 300.06 Administration.**