

ADDENDA
Minnetonka City Council
Meeting of October 3, 2011

13A. Resolution approving a request to vacate all of or portions of Marion Avenue, Hill Street and Earl Street in proximity to the residence at 2542 Crosby Road

Attached is a letter from the adjacent property owners that was received after the council packet was distributed.

14B. Appeal of planning commission's decision regarding minor amendment to the existing Circuit City Plaza master development plan

Attached is a letter from the applicant's attorney that was provided after the council packet was distributed.

Memorandum

To: City Council

From: Loren Gordon, AICP, City Planner
Julie Wischnack, AICP, Community Development Director

Date: October 3, 2011

Subject: Change Memo for the October 3, 2011 City Council Agenda

13A. Resolution approving a request to vacate all of or portions of Marion Avenue, Hill Street and Earl Street in proximity to the residence at 2542 Crosby Road:

The attached letter from the adjacent property owners was provided after the packet was prepared. (see attachment A).

14B. Appeal of planning commission's decision regarding minor amendment to the existing Circuit City Plaza master development plan:

The attached letter from the applicant's attorney was provided after the packet was prepared. (see attachment B).

Attachment A

Loren Gordon

From: JC Simmons [judith_c_simmons@yahoo.com]
Sent: Saturday, October 01, 2011 1:47 PM
To: Terry Schneider; Dick Allendorf; Amber Greves; Bob Ellingson; Tony Wagner; Brad Wiersum; James Hiller
Cc: Loren Gordon; Ben Simmons
Subject: Mr. Benson Street Vacation Requests on October 3rd Council Agenda

To: Members of the Minnetonka City Council

Subject: Application by Mr. Benson for the vacation of parts of Hill, Marion and Earl Streets at October 3rd Council Meeting

My husband Ben and I have owned the property at 2558 Crosby Rd, since 1979. Our property abuts two platted but undeveloped streets that are mostly marshland: the west side of Hill Street, and part of the south side of Marion Street.

We strongly oppose the application by our neighbor, Mr. Benson, to vacate Hill and Marion Streets for 4 reasons:

1. Approval of this request could negatively affect the environment and animals that use and live in the marshland covered by Hill, Marion and Earl Streets.
2. Vacation of public marshland property for private benefit is inconsistent with Minnetonka's stated natural environment goals, i.e.: "Carefully balancing growth and development with preservation efforts that protect the highly valued water and woodland resources of our community. "
3. The city did not approve our request in the 1990's to vacate Hill Street in order to retain access to public marshland and approval now could negatively affect the value of our property.
4. The only possible outcome from approval of this request would be to increase the value of Mr. Benson's property to the detriment of the marshland and the multitude of plants and critters that call it home.

Negative Impact on the Marshland and Animals that use it

These platted streets primarily overlay marshland. We have seen beavers, muskrats, mink, deer, raccoons, wood ducks, mallards, night herons, egrets, blue herons, red wing black birds and geese on these "streets". Mr. Benson has already applied to the appropriate agencies to dredge that marshland, plus build a boardwalk and dock on it. While he retracted that application in the face of resistance, he has continued to pursue them in a reconfigured state. If approved, they would certainly alter the tranquility of the

marshland, quality of the water and lives of all the plants and animals that live there. Vacation of these "streets" is currently a necessary step in his plan.

Minnetonka Goals to Preserve the Environment

On its website, Minnetonka states:

"We will protect and enhance the unique **natural environment** of our community by:

- Carefully balancing growth and development with preservation efforts that protect the highly valued water and woodland resources of our community.
- Developing and implementing realistic long-term plans to mitigate threats to water quality, urban forests, and the unique natural character of Minnetonka.
- Taking an active role in promoting energy and water conservation, sustainable operations and infrastructure, recycling and environmental stewardship."

To help achieve these goals, the City of Minnetonka rightly owns and preserves many wetlands and marshlands within the city limits.

Our Prior Attempt to Vacate Hill Street

The people that we purchased our property from in 1979 previously owned the marshland east and northwest of it and had sold it to Mr. Binger. We discovered in 1987 that Hill Street covered the marshland east of us plus part of our driveway and most of the shed at the end of our driveway. After making that discovery, we took a number of steps to vacate Hill Street and purchase all of it plus the marshland property to the East of it. Mr. Binger wished to retain the marshland but agreed to give us his half of Hill Street if it were vacated. The city staff recommended against the vacation request to retain access to city marshlands as they have this time.

We have reason to believe that Mr. Benson would not be such a benign owner of Hill Street should he acquire half of it through this vacation request. We have had numerous communications with Mr. We offered to let him use a dock in our small harbor, but he really wants to own the dock. He offered to swap some of his marshland north and west of our property for half of our harbor assuring us that such a swap would protect us from having docks built beside our property. As the marshland was of little or no value, we declined his offer. Now he seems to be taking a different tack to achieve his goal.

Increase to the Value of Mr. Benson's property

Mr. Benson told us that his real objective is to increase the value of his property. That is exactly what would happen should it become Minnetonka Lake access property.

As I'm sure you know, Minnetonka Lake access property is very expensive. When Mr. Benson purchased his property, he could have bought a lake access lot with a dock in our neighborhood within Crosby Cove. We don't know for sure why he didn't buy that lot, but it was much smaller and its list price was hundreds of thousands of dollars more than he paid.

Conclusion

Approval of the vacation requests for Hill and Marion streets would benefit only Mr. Benson's property value at the expense of the environment and neighbors. Please don't approve his street vacation requests so that the marshland might remain as it is today.

Thank you for your service to the city, and for your time and attention to this matter.

Judy Simmons

Attachment B

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**SIEGEL
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ATTORNEYS AT LAW

September 30, 2011

Via Hand Delivery

Mayor Terry Schneider
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Minnetonka, MN 55345

Council Member Tony Wagner
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**Re: Appeal of Resolution No. 2011-13
Our File No. 25662-002**

Dear Mayor Schneider and City Council Members,

This letter is submitted in response to DJD's appeal of Resolution No. 2011-13 dated September 15, 2011 amending the existing Circuit City Master Development Plan. I represent Paster Enterprises which applied for the amendment on behalf of Whole Foods.

Some history relating to this property may be helpful. From 1994 into 2009, Circuit City and Office Depot were adjoining tenants in the shopping center. The center operated during those 16 years without a Plymouth Road Right-out and without a right turn lane onto the frontage road. As Principal Planner Susan Thomas points out in her report, the property is zoned and guided for retail use. Because Whole Foods is a retail use, the City would not have required the right-out as a condition to approval of this project. It was only because Paster and Whole Foods requested that the City approve a right-out that the issue came before the Planning Commission on December 2, 2010. Had Paster and Whole Foods not sought and received approval of the right-out, the September 15, 2011 Planning Commission meeting would never have occurred.

Resolution No. 2011-13, currently before you on appeal, is identical to Resolution No. 2010-17 dated December 2, 2010 except that the Resolution before you makes the Plymouth Road

Right-out optional. All of the information contained in the September 6, 2011 SRF memorandum, including the recommendation to add a right turn lane at the frontage road access, is contained in SRF's original traffic study dated September 9, 2010. The recent SRF report simply explains the impact on queuing of not implementing the Plymouth Road Right-out. The Planning Commission approved the project on December 2 without requiring a right turn lane at the frontage road access.

Prior to the December 2, 2010 Planning Commission meeting, the SRF traffic study was provided to DJD and John Johansson was invited by Julie Wischnack to meet and discuss Paster's application. Mr. Johansson declined Ms. Wischnack's invitation, did not appear at the December 2 Planning Commission meeting and did not appeal Resolution No. 2010-17. Although the frontage road access is on DJD's property, DJD has never proposed to Paster or Whole Foods the addition of a right turn lane. In fact, DJD never communicated any interest in adding the right turn lane to the frontage road access until after the September 15, 2011 Planning Commission meeting. The first objection ever raised by DJD to the city's December 2 approval of the project without a right turn lane was on September 15, 2011.

As you know, the parties are involved in a lawsuit arising out of a dispute over a Reciprocal Easement Agreement that governs the parking lot and access points at the shopping center. The lawsuit has prevented construction of the Plymouth Road Right-out which is the reason Paster recently applied for an amendment to the master development plan to make the right-out optional. The only substantive item the Planning Commission was asked to approve on September 15, 2011 was the addition of language to the December 2, 2010 Resolution that "the site plan may include, but is not required to include, access/egress reconfiguration resulting in a right-out onto Plymouth Road." As Chair Cheleen pointed out that night to Mr. Johansson, "the disputes you may have with Whole Foods... aren't really in our purview here tonight." All of the issues raised by Mr. Johansson on September 15 and in Mr. Obermueller's September 28 letter will be addressed in the lawsuit.

Whole Foods is scheduled to open on October 12. If the City Council reverses the Planning Commission, the certificate of occupancy will not issue and the store opening will be delayed an indefinite period of time. Many million of dollars have been expended in planning, studying and constructing the Whole Foods renovation, including extensive study by civil engineers of the parking lot and delivery areas. Many lives will be impacted if the store does not open as scheduled, not the least of which is the lives of the store employees and their families. Whole Foods has an outstanding national reputation and certainly has more reason than the adjoining property owner to ensure the safety of its customers. As Mr. Gordon advised the Planning Commission, the City will conduct some follow-up after the store is in operation to see if "there needs to be other tweaks."

To summarize:

1. Under the city code, the center will operate the same as it operated during the previous 16 years without a right turn lane or right-out
2. The right turn lane onto the frontage road was considered by the Planning Commission on December 2, 2010 and was not a condition to approval in Resolution 2010-17. The time to appeal that decision expired.
3. SRF's September 6, 2011 memorandum does not raise any safety concerns but only discusses queuing on the site.

4. Over the last year, civil engineers from RLK Incorporated have studied the planned deliveries to the northwest corner and have determined that the trucks can maneuver safely
5. Neither the right turn lane nor deliveries by panel trucks to the northwest corner were before the Planning Commission on September 15, 2011
6. The issues discussed by Mr. Johannson and Mr. Obermueller involve a dispute between private parties under their Reciprocal Easement Agreement and will be determined in the lawsuit
7. DJD's attempt to prevent the opening of the Whole Foods store based only on speculation and a request for more study should not be sanctioned by this body.

Very truly yours,



Wm. Christopher Penwell

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cc: ~~(Principal Planner Susan Thomas (Via Hand Delivery))~~
Michael E. Obermueller, Esq. (Via Email)