

**MINNETONKA PLANNING COMMISSION  
MINUTES**

**JANUARY 17, 2002**

**1. CALL TO ORDER**

Chair Sodergren called the meeting to order at 6:30 p.m.

**2. ROLL CALL**

Commissioners Gallop, Knight, Yearwood, Abry, Egge, and Sodergren were present. Clinton was absent.

Staff Members Present: Planning Director Geoff Olson, Principal Planner Cary Teague, Environmental Coordinator Jo Colleran, Associate Planner Virginia Finlayson, Planning Intern Susan Thomas and City Attorney Desyl Peterson.

- 3. APPROVAL OF AGENDA:** The agenda was approved as submitted. Olson reviewed information provided in the January 17, 2002, Change Memo. Olson announced a correction to the agenda that stated that item 7D, an application for a minor amendment to the master development plan that would add three more units to the Waterstone Place Apartments at the northwest corner of Highway 169 and Minnetonka Boulevard for Steven-Scott Development (90021.01c), would be reviewed by the City Council. He stated that the Planning Commission made the final determination.

- 4. APPROVAL OF MINUTES:** January 3, 2002

*Yearwood moved, second by Abry, to approve the January 3, 2002, meeting minutes as amended in the Change Memo dated January 17, 2002, and as follows:*

- Page 8, second to the last paragraph:

Abry did not have the information needed to determine what funds would be needed for the acquisition of parks funds for the next five years.

- Page 9, middle of the page:

Abry suggested using changes in property value and construction cost indices as a basis for determining escalation for outyear costs ~~inflation to set inflation standards.~~

*Knight, Yearwood, Abry, Egge, and Sodergren voted yes. Clinton was absent. Gallop abstained. Motion carried.*

## 5. REPORT FROM STAFF

Olson briefed the Commission on land use applications considered by the City Council at its meeting of January 7, 2002:

- Adopted a resolution approving a conditional use permit for a medical clinic in the Westwind Plaza shopping center at 4703-4795 County Road 101 for Heritage Property Investment Trust.
- Adopted a resolution approving a side yard setback variance from 10 feet to 7 feet for a detached garage at 10250 Crestridge Drive for Brian Van Wey.
- Adopted an ordinance regarding telecommunications towers and antennas. Council added wording to restrict allowing a pole's height to be up to 90 feet to areas where it would not cause an adverse visual impact. Council acknowledged the hard work done by former Planner Tom Goodrum and City Attorney Desyl Peterson in developing the compromise between the City and the antenna companies.

Olson thanked Egge for her attendance at the joint work session and water resources kick-off program. He described the issues discussed relating to the wetland buffer and use of fertilizer ordinances.

Olson announced a meeting will be held Thursday, January 31, 2002, at 6:30 p.m. in the Shady Oak Room to discuss a proposed water tower in Tower Hill Park.

Olson asked Commissioners to mark their calendars for February 21, 2002, at 6:00 p.m. to attend a training session on effective use of meeting time.

## 6. REPORT FROM PLANNING COMMISSION MEMBERS: None

## 7. PUBLIC HEARINGS: CONSENT AGENDA

No items were removed from the Consent Agenda for discussion or separate action.

*Yearwood moved, second by Egge, to approve the items listed on the Consent Agenda as recommended in the respective staff reports and amended by the January 17, 2002, Change Memo as follows:*

**A. Resolution approving a conditional use permit for an accessory structure that exceeds 12 feet in height at 3904 Williston Road for Kirk Velett (01065.01a)**

Recommend that the City Council adopt the resolution on pages A1–A3 of the staff report. This resolution approves a conditional use permit at 3904 Williston Road to construct an accessory building in excess of 12 feet in height. Approval is based on the following findings:

1. The proposal meets the required conditional use permit standards
2. The proposal would not impose any negative impacts on the surrounding area.
3. The proposal is consistent with the spirit and intent of the ordinance.

Approval is subject to the following conditions:

1. Record this resolution with the county before the City issues a building permit.
2. The City Council may reasonably add or revise conditions to address any future unforeseen problems.
3. Any change to the approved use that results in a significant increase in traffic or a significant change in character would require a revised conditional use permit.
4. The applicant must agree to the above conditions in writing.

**B. Resolution approving a two-lot subdivision at 5349 Mayview Road for Kurt M. Kisch (01069.01a)**

Recommend the City Council adopt the resolution on pages A1–A5 of the staff report that approves a two-lot subdivision at 5349 Mayview Road, subject to the following conditions:

1. Complete the following before release of this resolution approving the lot division:
  - a. The following documents for the City Attorney's approval:
    - (1) At least ten-foot-wide drainage and utility easements next to any existing or proposed public street right-of-way and at least seven-foot-wide drainage and utility easements along all other lot lines;

- (2) A utility easement over existing or proposed public utilities, as determined by the City Engineer;
- (3) Drainage easement below the 928.0 elevation.

These documents must be recorded with the lot division, and a drawing of any easements must be attached to the easement deed.

- b. Title evidence that is acceptable to the City Attorney. Title evidence must be current within thirty days before release of the lot split resolution.
  - c. Restrictive covenants to be recorded against the individual lots with the lot-split resolution. The covenants must include the conditions below that have not been met as of the release of the resolution. These covenants must first be submitted for the approval of the City Attorney.
  - d. Pay the park dedication fee of \$550.
2. The following must be submitted to the City before the City issues a building permit:
- a. Final grading, drainage and erosion control plans must be submitted for staff approval.
  - b. Soil within 30 feet of oak trees located on Parcel B must remain undisturbed. Tree protection fencing and erosion control measures must be installed for staff approval.
  - c. The minimum floor elevation for any new structure must be 929.0, as required by engineering for drainage purposes.
  - d. A driveway permit for Parcel B.
  - e. A copy of the recorded resolution and a copy of any easements or restrictive covenants required to be recorded must be submitted to the City.
  - f. A hookup fee for sanitary sewer and water at the current amount of \$363.50.
  - g. A letter from the surveyor stating that boundary and lot stakes have been installed as required by ordinance.
3. This resolution must be recorded by the county within one year, unless the City Council approves a time extension. If the council does not approve the extension, the lot division approval will be void.

**C. Resolution approving a conditional use permit for a licensed residential care-facility for seven Alzheimer/Dementia residents at 4605 Fairhills Road East for Gianna Homes Inc. (01071.01a)**

Recommend that the City Council adopt the resolution on pages A1–A5 of the staff report. This resolution approves a conditional use permit for a residential care facility for Gianna Homes, Inc. at 4605 Fairhills Road East. Approval is based on the finding that the proposal meets the required conditional use permit standards and is subject to the following conditions:

1. Before the City releases the resolution the following items must be submitted:
  - a. Pay the delinquent utility bill and 2001 taxes.
  - b. Install a fire sprinkler system by December 31, 2002 that is approved by the City's Fire Marshal.
2. Record this resolution with the county before the City issues a building permit.
3. The City Council may reasonably add or revise conditions to address any future unforeseen problems.
4. Any change to the approved use that results in a significant increase in traffic or a significant change in character would require a revised conditional use permit.
5. Maximum number of residents on the site shall be seven.
6. A neighborhood representative(s) must be invited to sit on the Board of Directors.
7. The applicant must agree to the above conditions in writing.

**D. Minor amendment to the master development plan that would add three more units to the Waterstone Place Apartments at the northwest corner of Highway 169 and Minnetonka Boulevard for Steven-Scott Development (90021.01c)**

Approve the amendment to the master development plan to add three more units to the Waterstone Place Apartment project, with the addition of at least one exterior parking space and three enclosed spaces.

*Gallop, Knight, Yearwood, Abry, Egge, and Sodergren voted yes. Clinton was absent. Motion carried and the items on the Consent Agenda were approved as submitted.*

## 8. PUBLIC HEARINGS

### A. Request for a 28 square foot sign size variance at 4626 Linnea Lane for Accell Academy (94036.01a)

Chair Sodergren introduced the proposal and called for the staff report.

Teague reported. He recommended the Commission deny the application based on the findings listed in the staff report.

Mark Kelly, attorney for applicant, stated:

- The sign would be located on the northwest corner of the property which would not be on Linnea Lane or visible to homes on that street.
- The Woodland Hills Church supports the request.
- The academy has been in operation since 1993.
- The school is not an accessory use or an occasional use; it is a co-use or mixed use.
- The school and the City entered into an agreement in 1994.
- The school predates the current ordinances, which the staff is basing its recommendation on.
- The proposed sign would not be dissimilar to any other school sign.
- The school will continue to operate at this location indefinitely.
- The present sign is inadequate; it needs to be illuminated for drivers to see the sign in the morning and evening. It is too small to be read safely by a driver.
- The proposed sign would not be out of character with the area.
- Since the City allows signs of this size for schools, it would be reasonable to allow a similar sized sign for the Accell Academy.
- Denying the sign would cause hardship to Accell Academy.
- There is a sign, similar to the proposal, a few hundred feet away.

Knight asked if the applicant was concerned that if the City treated the school similar to other schools in regard to the application, that the 50-foot setback may also be required. Mr. Kelly explained that the agreement entered into in 1994 would not allow enforcement of the 50-foot setback standard.

Knight asked if the agreement superseded ordinance requirements. Mr. Kelly answered in the negative, but explained that the City gave the school the legal right to operate indefinitely.

Knight asked if the agreement approved a 30-square-foot sign for Accell Academy. Mr. Kelly answered in the negative.

Knight felt the issue was the appropriateness of the proposed sign in a residential district. Mr. Kelly stated that most schools are located in residential zones.

Abry pointed out that the 1994 agreement allows a two-foot square sign without a variance. The language does not presume a variance would be approved. Mr. Kelly suggested that the spirit and intent criterion for a variance does not apply to the current ordinance, which was adopted after the Accell Academy was approved. He stated that the educational institution is unique to the property and has a reasonable expectation for signage.

Chair Sodergren asked for clarification of whether Mr. Kelly considered the academy an accessory use. Mr. Kelly considered it a mixed use or co-use of the property. He stated that the agreement does not subordinate the educational institution to the residence.

Chair Sodergren requested Peterson clarify the use classification of Accell Academy. Peterson stated that Accell Academy is an accessory use of the property. She stated that Mr. Kelly was correct in his understanding that the ordinance was adopted after the school was established; however, there was a significant dispute regarding the school's right to exist. A settlement agreement was reached that included limiting the sign size to two-square feet. Peterson stated that the current application should be considered in light of the current ordinance and that the standards of the agreement and the ordinance are the same.

Yearwood asked what had changed to justify the need for the proposed sign. Mr. Kelly stated that the school had grown in size and status by providing special education to the school district. He stated that the need was there seven years ago, but "politics" did not allow a larger sign to be approved.

In response to Yearwood's question, Mr. Kelly stated that the school enrolled twenty-eight students.

Abry explained that the property is treated as a residence with a school as an accessory use or as a school as a primary use with a conditional use permit. Since there was no conditional use permit, then Accell Academy remained an accessory use of a residence.

Peterson acknowledged Abry's comments. She stated that the application must be viewed in consideration of the agreement, which acted as an overlay zoning district. The sign size standard remained the same in the ordinance and the agreement.

Knight asked if the applicant considered a smaller sign. Mr. Kelly stated that the applicants consider Accell Academy a school that should be allowed to have the same size sign as allowed for other schools.

Knight acknowledged that the variance would be fifteen times what the agreement allowed. Mr. Kelly stated that the City found a 30-foot-square sign a reasonable size for an educational institution. The applicant felt that Accell Academy is an educational institution that is

indistinguishable from any other school in the City. Mr. Kelly stated that the public health, safety, and welfare would be served by approving the application.

Peterson disagreed with Mr. Kelly regarding his statement that the school was indistinguishable from the other schools. She stated that Accell Academy is a nonconforming use in the sense that it was allowed to exist before the sign ordinance was adopted. There was a dispute whether the academy should have the right to exist at all. An agreement was entered into which identifies the academy's unique situation and acknowledges that it should be treated differently.

Gallop asked if the applicant would consider a compromise. Mr. Kelly stated that the applicant would consider a compromise that would meet the needs of the institution.

The public hearing was opened. No testimony was submitted and the hearing was closed.

Chair Sodergren stated that the applicant could withdraw the application, work with staff, and resubmit the application; but she did not support redesigning sign size standards. She favored the Commission acting on the proposal before them.

Yearwood questioned how to categorize Accell Academy. Peterson favored not labeling the use type. She stated that to try and fit it into a category would create a barrier to the merits of the proposal.

Chair Sodergren provided the swimming school as an example of students going to a home for instruction. Olson stated that there was no sign issue involved in the case of the resident providing swimming lessons and the instruction of students was limited to a certain time period which, when it expired, was relocated somewhere else.

Peterson recalled that that use was a home occupation. The current applicant was not a home occupation because its employees did not live at the residence.

Abry was not comfortable with the proposed sign, but she did feel there was merit to a more visible sign. She would consider something that would give more visibility for identification purposes only. She noted that the phone number was illustrated as being outside the 30 square feet. She opposed seeing the reader board part of the sign. She noted the school's small student population. Abry stated that most of the academy's visitors would be familiar with the school and that it did not host large sporting events. She favored a significantly smaller, lighted sign that would be used only for identification.

Gallop concurred.

Yearwood asked if people lived in the residence located at the site. Teague confirmed that

people resided in the home. Yearwood concurred with staff's report that the primary use of the home is for single-family, and she opposed the proposal. She recognized the unique use of the property.

Knight noted the dramatic difference in size between the proposed sign and the two-square-foot sign allowed.

Egge focused on the conditions of approval for Accell Academy. She is a proponent of alternative schools, but opposed the application as it was presented. Egge favored a revised proposal that would fit in the neighborhood better.

Mr. Kelly stated that the proposal was based on the City's ordinance standards, not with the intent to "push the envelope."

Chair Sodergren acknowledged that the sign would be on Highway 7, but the access would still be over a private drive. She would consider a small concession, but felt that concessions were already made at the time of the agreement.

Yearwood suggested working with the neighbors, since they would be affected. Mr. Kelly stated that he was not aware of any neighborhood meetings or complaints.

Lu Ann Walters, applicant, stated:

- she received no complaints regarding the proposal;
- she has received complaints from people who did not see the current sign;
- she received a letter from the City suggesting she get a 30-square-foot sign;
- the academy currently has 28 students and may add two more;
- they want a sign to provide direction to the school; and
- she would have liked a sign larger than 30 square feet.

Mr. Kelly supported continuing the hearing.

Knight stated that three neighbors expressed opposition to the proposal.

Yearwood asked if street safety standards would apply. Peterson suggested that the *Minnesota Department of Transportation's Manual of Traffic Standards* could be used for reference.

Yearwood requested more information regarding the hours and types of after school activities that take place at the site to help determine appropriate lighting.

Peterson noted that neighbors' input is welcome and taken into account, but the Commission makes its decision independently.

Abry questioned if the Minnesota Department of Transportation standards would apply. She felt the only mitigating factor to approve the variance hinged on the safety issue.

Chair Sodergren confirmed that the proposal would not be allowed for a business/office use without a variance.

Egge asked if there is a height restriction for a sign. She felt the slope of the hills might hinder the view of the sign. Teague stated there was no height restriction and the sign could be relocated on top of the hill.

Egge explained difficulties with accessing Linnea Lane that had nothing to do with signage.

Chair Sodergren discussed with Mr. Kelly and staff when materials needed to be submitted in order to continue the item to the next Planning Commission meeting.

Chair Sodergren favored notifying neighbors of a revised sign plan and when the item will be discussed again. Mr. Kelly agreed with the residents' right-to-know, but he favored continuing the public hearing until the next meeting without the need for publication.

Teague suggested sharing the revised plans with the three neighbors who expressed opposition to the proposal to obtain their feedback. Peterson suggested Mr. Kelly meet with staff the next day to collaborate on a plan to be submitted for review by the neighbors. Mr. Kelly agreed to meet with Teague.

Abry asked if the landscaping requirements described in the original 1994 application had been met in accordance with the site plan. Teague stated that the berm had been constructed and he will confirm that the other conditions had been met.

Yearwood concurred with Abry that the mitigating factor to allow the larger sign was the traffic safety concern.

*Yearwood moved, second by Gallop, to table item 8A, request for a 28 square foot sign size variance at 4626 Linnea Lane for Accell Academy (94036.01a), until the February 7, 2002, meeting to consider a revised proposal based on commission comments.*

*Gallop, Knight, Yearwood, Abry, Egge, and Sodergren voted yes. Clinton was absent. Motion carried.*

**B. An ordinance that would reduce the front yard setback requirement on neighborhood collector streets from 50 feet to 35 feet (01067.01a)**

Chair Sodergren introduced the proposal and called for the staff report.

Teague reported. He recommended approval of the application based on the findings and subject to the conditions listed in the staff report.

In response to Yearwood's question, Teague stated that the proposed ordinance would bring the ordinance into compliance with the Comprehensive Guide Plan.

The public hearing was opened. No testimony was submitted and the hearing was closed.

*Egge moved, second by Knight, to recommend that the City Council adopt the ordinance on pages A1–A5 of the staff report.*

*Gallop, Knight, Yearwood, Abry, Egge, and Sodergren voted yes. Clinton was absent. Motion carried.*

## 9. ADJOURNMENT

*Abry moved, second by Yearwood, to adjourn the meeting at 8:20 p.m. Motion carried unanimously.*

By: \_\_\_\_\_  
Bernadette H. Leaf  
Planning Administrative Assistant