

**MINNETONKA PLANNING COMMISSION  
MINUTES**

**MARCH 7, 2002**

**1. CALL TO ORDER**

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

**2. ROLL CALL**

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

Staff Members Present: Principal Planner Cary Teague, Environmental Coordinator Jo Colleran, Associate Planner Virginia Finlayson, Planning Intern Susan Thomas, City Attorney Desyl Peterson, City Engineer Lee Gustafson, and Public Works Director Brian Wagstrom.

**3. APPROVAL OF AGENDA:** The agenda was approved as submitted.

**4. APPROVAL OF MINUTES:** February 7, 2002

*Abry moved, second by Yearwood, to approve the February 7, 2002, meeting minutes as amended in the March 7, 2002 Change Memo as follows:*

Page 6, third paragraph:

Abry asked if there would be an attendant on duty twenty-four hours a day. Gutoske stated that the attendant would not be on duty over night. Gutoske confirmed that access to the pumps ~~and the boat storage area~~ would be restricted to when an attendant was present. Gutoske explained that the lodge and access to launch a boat from a slip would be available twenty-four hours a day.

Page 9, eighth paragraph:

In response to Abry's question, about the availability of the shelter when the attendant is not on duty, Gustafson stated that the attendant building and center area of the attendant building would be locked if an attendant would not be on duty.

Page 9, tenth paragraph beginning "Chair Sodergren questioned..." should be moved to page 10 and inserted as a separate paragraph after the third paragraph.

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

## 5. REPORT FROM STAFF

Teague briefed the Commission on land use applications considered by the City Council at its meeting of February 25, 2002:

- Adopted a resolution approving a conditional use permit for a restaurant at 12915 Ridgedale Drive for Subway.
- Adopted a resolution approving a conditional use permit, site and building plans with variances, and floodplain alteration permit for the Gray's Bay Marina at 2831 County Road 101 for the City of Minnetonka. In accordance with the Planning Commission's recommendation, a lighting plan was reviewed by the City Council. The plan stated that all lighting levels would be less than allowed by Code. The light standards would match or be similar to those used on the new Gray's Bay Bridge. The marina parking lot and along the waterfront would be lit at night.

## 6. REPORT FROM PLANNING COMMISSION MEMBERS: None

## 7. PUBLIC HEARINGS: CONSENT AGENDA

No item was removed from the Consent Agenda for discussion or separate action

*Abry moved, second by Yearwood, to approve the item listed on the Consent Agenda as recommended in the respective staff reports as follows:*

### **A. Three-year conditional use permit to allow temporary nursery sales at 17501 Minnetonka Boulevard for Holasek Greenhouses (01008.02a)**

Recommend that the City Council adopt the resolution with attachment on pages A1–A5 of the staff report. This resolution approves a three-year conditional use permit for transient sales for Holasek Greenhouses at 17501 Minnetonka Boulevard. Approval is subject to the general and specific conditions of the ordinance plus the following conditions:

1. Record the resolution with the county within 30 days of City Council approval.
2. This three-year conditional use permit is only good during the last weekend in April through

the second weekend in June of each year.

3. The City Council may reasonably add or revise conditions to address any future unforeseen problems.
4. The location of the nursery must be in the area indicated on Attachment A.
5. The hours of operation will be from 9:00 a.m. to 8:00 p.m., seven days a week.
6. The water supply for the greenhouse and nursery materials may not be from a fire hydrant.
7. The temporary greenhouse must be made of flame retardant materials.
8. No smoking is allowed within the greenhouse and no smoking signs must be posted.
9. This conditional use permit will expire on June 14, 2004.
10. The applicant must agree to the above conditions in writing.

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

## **8. Other Business**

### **A. Elections**

*Egge moved, second by Yearwood, to elect Sodergren to serve as the Planning Commission Chair and Clinton to serve as the Planning Commission Vice-Chair for 2002.*

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

### **B. Annual approval of by-laws and policies**

Abry suggested modifying the bylaws to reflect that the Planning Commission Secretary is not an elected position. Teague concurred.

*Abry moved, second by Egge, to approve the by-laws and policies for 2002 with a change to indicate that the Planning Commission Secretary is not an elected position.*

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

## 9. PUBLIC HEARINGS

### A. Setback variances to construct a new house at 18 Westwood Circle for Lutz Construction (01058.01a):

- 1) Floodplain setback variance from 35 feet to 25 feet
- 2) Wetland setback variance from 35 feet to 10 feet
- 3) Front yard setback variance from 30 feet to 15 feet

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

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

Gallop asked why the proposal was changed. Thomas stated that the second plan maximized the separation between the proposed home and the floodplain. The modified plan located the proposed house ten feet closer to the front property line.

Humberto Alarcon, applicant, stated:

- He resided at 18 Westwood Circle until 1983; after that he rented-out the property.
- His neighbor put posts on his property. His neighbor was present to explain the conflict.
- His neighbors called the police to 18 Westwood Circle several times.
- The house was condemned and he wants to rebuild.
- He hired a professional developer who was unable to attend the meeting.
- He stated the developer has a good history. He promised the developer would do a good job.

The public hearing was opened.

Jim Branch, 14 Westwood Circle, lived at his residence ten years. He stated:

- The property was unable to support a one-story rambler.
- He did not understand how the property could sustain the proposed three-story walk-out.
- The front of the proposed residence would be only one foot above the flood elevation. The rear of the proposed house would be below the flood elevation.
- He asked if a deck could be constructed if the fifteen-foot front setback was approved.

- He questioned what would happen if the road was widened.
- The garage of the previous residence was used as a commercial storage facility.
- He questioned if the siding and roofing colors of the house and garage would match.
- He opposed a garage larger than a two-car garage.
- He was concerned of the precedence set for the other vacant lots.
- He was concerned with run-off onto his property.
- The property is in violation of the nuisance ordinance. It has never and is still not properly repaired or maintained.
- The City should enforce the setback and nuisance ordinances.
- He supported the City purchasing the lot.

Thomas and Teague stated that a twenty-five foot setback from the wetland would be required to construct a deck. The proposal has a ten-foot setback, so a deck would not be allowed without a variance.

Abry asked if the absence of a railing or other safety precaution would be required at the time the permit is pulled for the patio doors by the building code or if it needed to be addressed now. Teague stated that would be a building code that could be checked into. Clinton stated the specific building code requirement.

Finlayson explained that a current soil report would be required with the building permit application.

Thomas explained that fill would be brought in to raise the elevation to 893 feet. Abry reviewed the elevation plans. Thomas stated that the grading plan had not yet been submitted. Teague clarified that a condition of approval requires the elevation to be above 893.5.

Mr. Branch felt the drainage would run into the neighbors' properties. Teague explained where the previous residence was located and how much fill would be added.

Mr. Branch questioned why the lowest level was covered by dirt in the front, but visible in the rear.

Abry questioned the maximum allowable height. Thomas stated that the maximum allowable height is 35 feet to the mid-point of the roof and that the proposed project would be 32 feet in height.

Knight asked if soil tests would determine if the proposed residence could be sustained by the ground. Thomas explained that most homes in the area were built in the 1970s. Soil compaction tests would be required to determine if pilings would be required in the foundation.

Mr. Branch questioned why the samples were not taken before the meeting. Chair Sodergren explained that before the funds were spent to complete the required tests, it would make sense to determine what plan, if any, was allowed. Teague confirmed that all of the conditions listed would have to be completed before applying for a building permit.

Abry stated it was important for the applicant to have approval for the project before spending the funds for the soil test.

Egge asked for clarification regarding if the previous garage received a variance. Thomas stated that the garage was issued a building permit. No variance was applied for or approved. Teague stated that no site plan was located to determine what setbacks were presented at the time the building permit was issued.

Mr. Branch called the City when he first moved into his residence and was told that his neighbor's garage did not exist.

Gallop asked Peterson to explain what position the City would be in if the Planning Commission denied the variances. Peterson explained that if the City took action to deny the property owner all reasonable use, the City may be required to purchase the property. The owner's failure to maintain the property may have deteriorated certain rights as a property owner, but because the lot existed before the current regulations were in place, reasonable use of the property must be allowed.

Gallop questioned if a one-story residence would be reasonable living space. Peterson explained that those determinations were made on a case-by-case basis. She stated that the Commission could deny the variance and request changes be made and resubmitted.

Knight asked if a three-car garage would be allowable. Peterson acknowledged that it was difficult to know what happened with the garage without the records. The garage, alone, is nonconforming with the ordinance since there was no principle structure. She was uncomfortable requiring the garage be destroyed or reducing the size to two stalls since it was unknown what happened during its approval process.

Knight asked if requiring the house and garage to have the same colored siding and roofing was reasonable. Peterson answered in the affirmative.

Mr. Branch favored the City purchasing the proposed site. He referred to a letter he received from the City stating that the lot would be cleaned-up before it could be developed.

Peterson explained that Mr. Branch could request the City Council purchase the proposed site, since they would have the authority to do so. She stated that specific criteria have been established to determine if a site is appropriate to be purchased with open space funds. She felt the site would not meet all of the four criteria, but acknowledged that the site maintained environmental features worthy of protection.

Edge stated that the nuisance violations would need to be cleaned-up before the application could proceed, but she questioned what steps could be taken if it again occurred after the work was started and/or completed. Teague stated that when the Community Development department receives complaints and works with the property owner to get them resolved. Teague agreed with Chair Sodergren that compliance with the nuisance ordinance may be required prior to the approval of the grading permit rather than prior to the issuance of the building permit.

Mr. Branch provided photographs illustrating items on the site that violated the nuisance ordinance. Peterson encouraged staff to determine if the garage was being rented as a commercial business, which would be in violation of the ordinance. Mr. Branch stated that the City has removed junk cars from the property after several complaints were submitted.

Ruth McGoff, 15 Westwood Circle, concurred with Mr. Branch's comments and was particularly concerned with the garage. She stated:

- The building permit was issued in 1991, but the garage was not constructed until a few years ago. The previous permit was not for the garage that was constructed.
- The garage is too close to the street, it looks bad, and there is no driveway.
- She wants the site to be consistent with the rest of the neighborhood.
- The houses were built in the late 1940s and early 1950s.
- When the house was sold it was in pretty-good shape. The current owner let the house be neglected. When the house was condemned, there were holes in the floor, dogs were being raised in the house, and the tenants were never allowed to use the garage on the lot.
- She was concerned with the property owner taking care of the property. She questioned why a permit would be issued and the same events being allowed to take place.

Peterson stated that predictions of future events may not be taken into consideration, but she stated that current use of the garage could certainly be looked into and the ordinances enforced. Peterson acknowledged that building permits expired after a certain period of time.

Ms. McGoff opposed leaving the current garage as it was. Chair Sodergren clarified that the Commission could not require the existing garage to be torn down.

Knight pointed-out the City's ability to condemn a residence in noncompliance of the nuisance ordinance. Peterson explained that the situation would need to be very serious before the City would require a residence to be torn down, but acknowledged that condemnation is an enforcement tool that the City may use.

Mr. Alarcon added to his previous comments:

- He felt when the building permit for the garage was issued was irrelevant and malicious.
- The soil was tested at the time the garage was constructed.
- I.D.S. construction obtained the building permit for the garage.
- Requiring the house and garage to be the same color would be ridiculous.

No additional testimony was submitted and the hearing was closed.

Knight wanted the nuisance violations corrected before the application was approved. Knight would not support the proposal unless the garage and house would be required to be the same color and made from the same materials.

Abry stated that requiring garages to match the principle structure is a common requirement. She felt increasing the square footage from the original 2,000 square feet to the proposed 2,900 square feet would be too much of an increase in size. Abry favored a proposal that did not increase the intensity of use on the site.

Gallop was concerned with the proposed front fifteen-foot setback. While he was satisfied with the other two variances, he felt the proposal would be an overuse of the property.

Egge concurred with Gallop. She felt the curve in the road added to the appearance of the proposed residence being located right on the road. She felt the garage was in poor shape for a structure only a couple years old. She favored a similar, in-kind structure. She did not support the proposal as presented.

Clinton agreed with the other Commissioners' comments. He favored allowing a couple feet more for the front setback. He reviewed the elevations and felt a two-level residence would be more appropriate. He was comfortable with requiring the siding of the proposed house and existing garage matching and the proposal going forward with the condition that all nuisance violations be cleaned-up before the grading permit would be issued.

Yearwood appreciated the Commissioners' comments. She commended the applicant for trying to improve the situation. She felt three stories would be maximizing the site. She favored a comparable size replacement and requiring the garage and residence to match.

Abry pointed-out that the proposal indicated there would be less than twenty feet between the garage and the property line on the south side. Thomas explained that a detached, accessory structure has a required ten-foot side yard setback.

Chair Sodergren pointed-out that 150 square-feet of buildable area exists on the property. Holding the proposal to the size of the original residence seemed to be the majority opinion of the Commission.

Peterson presented the Commission's options of either denying the application and listing the reasons why, including intensification of the nonconforming use, or asking the applicant if he wished the application be continued in order to give him time to submit a different set of plans. She opposed an open-ended continuance.

Knight felt there were issues that the Commission could influence regarding requiring the garage and proposed residence to match, restricting the proposal to two levels, and decreasing the front setback. He would like to see the nuisance violations and commercial rental of the property abated before the next review of the application.

Abry felt the structure could be turned to increase the front yard setback.

Yearwood preferred tabling action on the item rather than denying approval of the application. She was less concerned with the front setback than encroaching on the wetland.

Clinton opposed encroaching on the wetland itself, but would consider encroaching on the wetland setback.

Chair Sodergren preferred that the applicant work with staff to see if the concerns of the Commission could be addressed. Teague stated that the applicant waived the 120-day deadline.

Mr. Alarcon stated that the architect and builder said to forget about the old house and encouraged him to build a large house on the lot. He was flexible to responding to the Commissioners' comments. Chair Sodergren reviewed the issues identified by the Commission.

Mr. Alarcon supported not building in the wetland. He said he agreed with the Commission and that the Commission was helping him.

Gallop asked if it was necessary to specify the date the item would next be discussed. Peterson favored tabling action to a specific date or renotifying the community.

Abry favored allowing the applicant ample time to work with staff and renotifying the neighborhood at that time.

*Gallop moved, second by Egge, to table action on Item 9A, concerning a resolution regarding three variances: floodplain variance from 35 feet to 25 feet, wetland setback variance from 35 feet to 10 feet, front yard setback variance from 30 feet to 15 feet, and buildable area variance from 3,500 square feet to 150 square feet at 18 Westwood Circle, to allow the applicant and staff time to research further neighbors' and the Commissions' comments regarding abatement of the nuisance violations, commercial use of the garage, matching the appearance of the garage and proposed residence, restricting the size of the proposed residence to what previously existed, and placement options of the proposed structure to reduce the setback variances.*

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

The Commission recessed for a short break.

**B. Items concerning a water tower at 4537 Williston Road (Tower Hill Park) for the City of Minnetonka (01063.01a):**

- 1) Conditional use permit**
- 2) Site plan review**

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.

Knight asked what the cost of the various options would be including the cost of an underground facility. Teague stated that an underground system would cost approximately \$100,000 more. Teague reiterated that the fire marshal determined the above ground system would be more reliable. Peterson stated that the interim ordinance adopted by the City Council listed cost as a specific factor to be considered.

Abry asked for the definition of a "maintenance free zone". Teague stated that a maintenance free zone would be established to provide the necessary area to perform maintenance on the water

containment system including painting and cleaning. No permanent structures would be allowed to be built in the maintenance free zone. Mr. Norton stated that the two structures illustrated on the plan represented potential telecommunications buildings for a spheroid-style water tower. Abry asked if native species of vegetation could be allowed, rather than grass, which would have to be maintained. Teague stated that could be considered.

The public hearing was opened.

Thomas Downs, 14813 Lloyds Drive, spoke on behalf of the Williston Neighborhood Coalition. He stated that the proposal violated five conditions listed in the conditional use permit:

- The site's natural state has not been preserved. 500,000 cubic feet of soil, every tree, and every shrub has been removed from the site.
- A thirteen-story water tower has no harmonious relationship with the surroundings.
- The proposal would not provide a sense of order and would not minimize the disruption of the natural environment.
- The proposed water tower would be incompatible with the neighborhood.
- The proposed tower would not be screened from view, would block light, and would block the view of four residences.
- The City has spent over \$400,000 on the property already, which is not a judicious use of tax funds.
- He encouraged the Commission to not go along with the City Council's decision.
- He and the neighborhood favored the site being used as a park.
- He favored the Baker Road site instead.
- He requested that the Commission deny the application.

Knight asked, if the water tower was constructed, if Mr. Downs would prefer the narrow or wide tower. Mr. Downs had no preference regarding width or color. He stated the Coalition was in favor of a water tower due to the water pressure and shortage issues, but they favored the use of the Baker Road site. Mr. Downs felt the financial cost reasons were bogus. He stated that either site would be a viable site.

Gallop clarified that the excavation work done at the site was in no relation to the proposed application. The work was done in regard to relocating the service road to the north.

Brian Day, 14527 Lloyds Drive, asked why the site was chosen. Chair Sodergren explained that the Commission was to review the design and the site plan. She encouraged Mr. Day to address that question to the City Council. Mr. Day asked:

- what the ratio was between the amount of water in the water towers versus what was used by the residents; and
- if a moratorium to construct new buildings would be adopted.

Chair Sodergren explained the Planning Commission's and City Council's review process. Mr. Day stated, "You can tell by all the people here that we're not going to allow this thing to be built here."

Leslie Goedken, 14810 Lloyds Drive, stated:

- The site has not been reviewed by the state Archeological Society to determine if the land has Native American burial remains or historical information.
- She presented a map illustrating where burial grounds were located in Minnetonka.
- 95 percent of new archeological finds are due to urban sprawl development excavation.
- Investigation of the site should be done before the site plan is approved.

Gustafson explained that significant excavation had been done on the site and if an artifact had been discovered, the state archeologist would have been contacted.

Yearwood asked what conditions would trigger the need to do an archeological review. Gustafson stated that the City is aware of the designated Native American burial grounds in Minnetonka and that careful consideration and site inspections were used when determining development of a site.

Dan Getkin, 14810 Lloyds Drive, stated:

- The access road on the map was not depicted accurately.
- The illustration was meant to deceive how big the water tower would be.
- The proposed site is the highest location in Minnetonka and is a probable location as Native American burial grounds.
- There was agreement at the neighborhood meeting to locate the tower at the Baker Road site. The Baker Road site is less residential than the proposed site and would be less expensive.
- He asked if the underwater tower had proven to be less reliable.

Gustafson explained that an elevated water tower would not rely on power for pressure. An underground water storage tank would rely on electricity for pressure. He stated that a water tower was needed.

Mr. Getkin said that the access road was currently graded and was not aligned with Lloyds Drive. Gustafson explained that the final excavation had not been completed and that the access road would be aligned with Lloyd Drive when completed.

Mr. Getkin requested further information regarding the procedure that would be done to verify that no Native American artifacts existed on the proposed site. No additional testimony was submitted and the hearing was closed.

Chair Sodergren clarified that the Planning Commission's role was not to determine if the proposed site would be appropriate. She asked if the City had the funds to complete the proposed project, in lieu of the City's budget constraints. Wagstrom stated that the project was fully funded. The City Council authorized the issuance of bonds for the project. He explained that the deficit existed in the City's general fund budget. The water tower would be funded by the Water, Sewer and Utilities Enterprise Fund, which generates its income from fees charged for water and sewer services.

Abry asked if the costs involved were relevant to the site plan. Peterson stated that cost could be discussed with respect to the options available on the proposed site.

Knight requested input regarding what type of water tower the residents favored. He requested more information regarding an underground water containment system.

Abry asked how the site would look with an underground reservoir, how much excavation would be needed, and what type of generator would be required. Mr. Norton stated that an underground water containment system could not be located at the site. He explained how the water system operated in the City. Significant expense would have to be spent to repipe water treatment plant number fourteen and adding more pumps at the Tower Hill booster station.

Abry confirmed with Mr. Norton that placing an underground water containment system was not an option for the proposed site because of engineering/operation reasons. He explained the distribution system.

Yearwood asked what would happen to the existing underground storage containment system if the proposal was approved. Mr. Norton explained that it would continue to be used as part of the normal pressure zone.

Egge asked what other sites were considered for undergrounding. Mr. Norton stated that there was no need to look for an underground water containment site if it was pumped using the Tower Hill booster station.

In response to Knight's question, Mr. Norton confirmed that an underground system would cost \$100,000 more to create the pressure.

Gallop questioned why the underground system was not an option. Mr. Norton explained how the water system operated. He stated that water treatment plant fourteen would be piped over to the normal pressure zone or a ground water containment system with pumps and back-up generator to allow the water from the reservoir to pump the water back into the distribution system and service zone. Mr. Norton said he could design such a system, but that was not what the City was considering. In response to Gallop's questions, he guessed that new water storage reservoirs cost over one dollar a gallon, which would equal at least a \$750,000 increase in cost to be included in the approximate \$1,000,000 in additional cost. Mr. Norton stated that all design and operational possibilities had been investigated and considered in the 1997 report and discussed by the City Council.

Abry asked if the existing underground water storage tank could be pressurized. Mr. Norton explained how the water towers and booster stations operated. Abry stated that some water storage was necessary to supplement the system. Mr. Norton confirmed that Forest Hills and the Fingerhut/Baker Road tanks would no longer be used if the proposal was approved.

Yearwood summarized that if an underground tank was used, it would affect the entire south service zone system. A booster water tower constructed on the proposed site would solve the water containment shortage. Chair Sodergren directed that the water tower was the site plan the Planning Commission was required to review and act on.

Knight thought an underground containment system was an option. Teague agreed.

Abry favored reviewing the costs and site plan for an underground water containment system. She felt residents would rather pay extra than have a water tower. Abry opposed the current application at that time because she was not clear if an underground containment system was an option.

Wagstrom provided the missing piece of information. He explained that an underground pressure system was an alternative. The reason that staff and the consultant did not recommend that alternative was because the City had a pressure system in the past. It served the north high-pressure zone. It was replaced by the Plymouth Road water tower because there were complaints, dissatisfaction from the residents, operational problems, and it was not a reliable source of water. A pressure system relies on pumps to turn on, apply pressure, and valves snapped in residents' houses and pipe noises occurred. The City Council, in response to residents' complaints, removed the pressure system and erected the Plymouth Road water tower. The staff, consultants, and City Council members aware of what occurred in the past were not in favor of going through it again.

Chair Sodergren questioned when the north water system was taken out of service. Wagstrom stated that the pressure system took water from the Ridgedale water tower and pressurized it for the north high-pressure zone. He recalled the use of it was discontinued in the 1980s. Peterson concurred it occurred in the late 1980s.

Chair Sodergren asked if technological advancements had been made to resolve the problems created by the pressurized system. Wagstrom answered that it was a possibility. He stated that the tower operation would be more secure, knowing it would provide water to its users without having to rely on power and machine reliability.

Abry asked for a definitive clarification indicating if the underground, pressurized system would be an option or not. Wagstrom stated that an underground system was not an option for the proposed site. It would be an alternative for the south-high pressure zone.

Abry asked what position the Planning Commission could take if it favored an underground system, but were only able to consider the proposed site. Peterson explained that the City Council narrowed the options to the proposed site after receiving information from the task force. The Planning Commission did not have the option of considering another location.

Egge asked if the task force included residents. Peterson responded in the negative.

Knight was not comfortable with voting at that time. He was not convinced that the proposed site could not be handled by an underground containment system. He wanted more information. He favored tabling or denying the application.

Egge was willing to make a motion to table the item to allow more information regarding an underground water tank, reliability issues, and advances in technology to be provided.

Chair Sodergren felt getting more background would be helpful.

Gallop was concerned if it was the Planning Commission's role to discuss an underground containment system. Peterson outlined the information provided to Commissioners at the meeting: that an underground system was not an option at the proposed site and that asking the applicant to choose a different site was not an option. She understood the Commission's request to learn why an underground system was not an option.

Gallop stated that the Commission should be considering the type of water tower, instead of the costs.

Yearwood distinguished an underground storage tank from an underground system. She recognized the Commission's role in determining if the proposal met the standards for a conditional use permit. She stated that the proposed water tower would be one piece of a total system.

Chair Sodergren concurred, but questioned if the Commission was given enough information to include costs in its decision. Yearwood concurred that additional information regarding cost could be a benefit.

Abry noted that the Commission was reviewing the conditional use permit and site and building plan only. Abry stated that the cost would be moot if the proposed site was unable to maintain an underground containment tank. Abry felt the conditional use permit standards had been met. Other water towers exist in residential neighborhoods. She was not comfortable tabling the item to obtain more information regarding costs. She supported the proposal because it was a preferable site plan. It put the water tower closer to the commercial area, it shortened the length of the access road to minimize impervious coverage, and allowed for more landscaping on the site. She did not have a strong preference regarding style of the tower, but suggested that the hydro pillar style would eliminate the possibility of additional buildings being constructed on the site.

Chair Sodergren acknowledged the importance of an archeological assessment and confirmed with Gustafson that staff would meet with the state and ensure that proper procedures would be followed.

Gallop concurred with Abry, except that he preferred the spheroid style of tower because of its narrow base. He felt it would not be as obtrusive as the hydro pillar.

Knight favored the spheroid style. He was not convinced that an underground storage tank was not an option, so he would not vote in favor of staff's recommendation.

Clinton concurred with Yearwood and Gallop. He understood that the selection process was done without their knowledge. He believed that the system involved was done appropriately. He understood the neighbors' concerns, but also understood that the tower would be serving the immediate, relatively small geographic area. He favored the hydro pillar design to prevent buildings from being constructed. He encouraged the residents to provide the City Council with input regarding their preference of water tower style.

Chair Sodergren confirmed with Teague that staff's recommendation did not designate which style of water tower it preferred. She mentioned the Commission could approve staff's recommendation with an interjection regarding the archeological assessment.

Yearwood supported staff's recommendation. She understood the difficulties involved for such a large structure. She identified that the public safety and public welfare issues outweighed the visual interference. She felt staff had done its best to mitigate the adverse aesthetic impact. She concurred with Abry regarding a preference for native landscaping and supported the condition to check with the state preservation office to gain information regarding archeological importance of the site. Chair Sodergren reviewed the City Council's role and the Planning Commission's role in relation to the application.

***Abry moved, second by Gallop, to recommend the City Council adopt the resolution approving a conditional use permit and approve the site plans concerning a water tower at 4537 Williston Road (Tower Hill Park) with the additional conditions that the landscaping plan be revised to include native plant species and less maintained materials planted randomly and that the proper procedures be followed to check the cite for archeological significance for the City of Minnetonka.***

- A. Recommend the City Council adopt the resolution on pages A1–A4 of the staff report. This resolution approves a conditional use permit to erect a 110-foot-tall water tower at 4537 Williston Road. Approval is based on the finding that the proposal meets the required conditional use permit standards and is subject to the following conditions:
1. Record this resolution with the county within one year of approval date of this resolution.
  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. Compliance with the approved site and landscape plans.
  5. The applicant must agree to the above conditions in writing.
- B. Approve the site plans for the water tower at 4537 Williston Road, subject to the following conditions:
1. The site must be developed and maintained in substantial conformance with the following plans, unless modified by the conditions below:

Site plan dated November 15, 2001  
Grading plan dated November 15, 2001  
Landscaping plan dated November 15, 2001  
Structure elevations dated August 25, 1992

2. The following work must be completed before the City issues a grading permit or before starting any site work:
  - a. Fence all trees to be preserved and install erosion control measures.
  - b. Submit copies of the watershed district permit if required.
  - c. Submit final site, grading, drainage, utility and erosion control plans for staff approval.
  - d. Submit a letter of credit or cash escrow for 150% of the estimated cost to comply with grading permit requirements and restore the site.
  - e. Submit a construction management plan for staff approval.
3. A final landscape plan must be prepared, subject to the review and approval of the City Forester and Environmental Resources Coordinator.

*Yearwood, Abry, Clinton, Gallop, and Sodergren voted yes. Egge and Knight voted no. Motion carried.*

**C. Request for an 18-square-foot sign size variance at 4626 Linnea Lane for Accell Academy (94036.01a) (Tabled January 17, 2002)**

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

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

Mark Kelly, attorney for the applicant gave the presentation arguing the merits to permit the application. He stated:

- The current two-square-foot sign was not legible in the evening.
- Seventeen neighbors did not object to the proposal.
- The Woodland Hills Bible Church supported the application.

- The sign would not be located at the entrance to Linnea Lane. It would be in the center of the lot, fronting State Highway Number Seven.
- He indicated that three neighbors would not be able to view the sign from their residences.
- The sign would be one-third the size of the Woodland Hills Bible Church sign.
- The applicant was not a home occupation.
- The use was legally permitted.
- The request was reasonable.
- The plight of the owner was unique to the circumstances of the property.
- The sign was not illegible in the early morning and evening hours.
- It would not cause a precedent or change the uniqueness of the neighborhood.

Chair Sodergren requested the Planning Commission vote on whether to continue the meeting past 11:00 p.m.

*Yearwood moved, second by Gallop, to continue the meeting past 11:00 p.m.*

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

Knight commented that if “Accell Academy” was the only wording on the sign, the letters could be enlarged to be legible. Mr. Kelly agreed that the logo could be removed and the font size increased. Mr. Kelly stated that he would leave that for the applicant to consider.

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

Egge noticed that the Linnea Lane Street sign was smaller in size and white. Teague stated that Linnea Lane is a private street. The City could install the new, larger street sign, but the residents on the street would have to agree to fund the cost.

Egge questioned why the sign was not located closer to the house, to provide easier identification. Mr. Kelly stated it could be located near the parking lot.

Chair Sodergren focused on the issue that granting a variance would set a precedent. She suggested he consider proposing a specific ordinance to address the type of use Accell Academy is, located in a residential neighborhood, and located on a major collector street.

Mr. Kelly felt convincing the City Council that the entire regulatory system needed to be changed was an even greater burden and could involve modifying the comprehensive plan and repeated hearings. Chair Sodergren stated that she was unable to predict the outcome, but she noted that it had happened in the past.

Chair Sodergren understood the uniqueness of Accell Academy, but then recognized its similarity to other institutions. Mr. Kelly appreciated her comments.

Clinton leaned toward the issue of precedent. He questioned if a residence schooling up to twelve students would fall into the same category as Accell Academy. Teague confirmed that each project would be considered on an individual basis, including if the applicant resided on a collector street, but that they would be considered as similar uses.

Knight commented that the goal was reasonable. He felt the current sign was inadequate when driving on State Highway Number Seven. He felt the arguments made sense, but opposed the application because it was not reasonable.

Gallop was concerned with motorists being able to read the sign from State Highway Number Seven. He felt the proposal exceeded what was necessary.

Yearwood supported staff's recommendation. A hardship was not proven. Staff made a reasonable suggestion that the applicant work with the Minnesota Department of Transportation to identify it on its sign. Reflective wording may be considered. The applicant would have reasonable use of the accessory use. The sign standard was a condition of approval and while she would consider an alternative, she did not support the current proposal.

Abry concurred with Yearwood. She added that the original approval was a negotiated settlement. State Highway Seven and Linnea Lane are the same now as they were when the original agreement was established. She felt working with the Minnesota Department of Transportation would provide alternatives to address the safety and identification issues. The City's sign ordinance strives to reduce the size of signs overall and reduce clutter.

Clinton concurred with Yearwood and Abry. The applicant selected the location and negotiated the conditions of the conditional use permit.

***Egge moved, second by Knight, to deny the proposed 18-square-foot sign size variance request for Accell Academy at 4626 Linnea Lane based on the following findings:***

1. The property does not contain any unique physical characteristics to justify a hardship for the variance.
2. The applicant has reasonable use of the property with the current single-family home and school operated as an accessory use.

3. The increased sign size would not be in character with the neighborhood for the reasons stated in the staff report.
4. The property cannot be compared with other Minnetonka or Hopkins schools, because the principal use of this site is a single-family home.
5. Granting of the variance may set a precedent for similar variances.

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

Chair Sodergren informed the applicant and Mr. Kelly that the item could be appealed, in writing, to the Planning Director within ten days.

## 10. ADJOURNMENT

*Abry moved, second by Yearwood, to adjourn the meeting at 11:20 p.m. Motion carried unanimously.*

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