

**MINNETONKA PLANNING COMMISSION  
MINUTES**

**MARCH 20, 2003**

**1. CALL TO ORDER**

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

**2. ROLL CALL**

Commissioners Maes, Gallop, Hart, and Wagner were present. Britain, Egge, and Knight were absent.

Staff members present: Principal Planner Cary Teague, Planner Susan Thomas, Environmental Coordinator Jo Colleran, Planning Intern Ed Davis, Environmental Intern Chris Robbins, and City Attorney Desyl Peterson.

**3. APPROVAL OF AGENDA**

The agenda was approved with the addition of Item 8C, an appeal of Jim and Luann Walters of the Planning Director's determination that certain objects on their property are prohibited signs. The original Item 8C, an ordinance amending the City's grading and erosion control ordinance (02039.03a), is now agenda Item 8D.

The following applications were tabled to the April 3, 2003 Planning Commission meeting because they require five votes to pass a motion and only four Commissioners were present:

- Item 7A, resolution approving a variance for a second freestanding sign for a limited tenant building under 100,000 square feet at 2301 Crosby Road for Damon Farber Associates on behalf of Cargill Incorporated (97092.03a); and
- Item 8B, site and building plan review with variance for building additions, an enclosed athletic practice field, and various site work at Hopkins High School at 2400 Lindbergh Drive for Hopkins School District 270 (91009.03a).

Item 8A, items concerning a proposed 60-unit condominium project at 408 Parkers Lake Road for Yellowstone Trail LLC (03001.03a), was removed from the agenda to allow time for additional review of the results of the wetland density calculation. The applicant requested the item's removal to allow time to submit a new plan. It was rescheduled to April 3, 2003.

**4. APPROVAL OF MINUTES:** March 6, 2003

*Hart moved, second by Maes, to approve the March 6, 2003, meeting minutes as submitted.*

*Maes, Gallop, Hart, and Wagner voted yes. Britain, Egge, and Knight were absent.  
Motion carried.*

**5. REPORT FROM STAFF**

Teague announced that the Sanctuary project has been postponed until the May 1, 2003, Planning Commission meeting. The Economic Development Authority will be comparing the long-term effectiveness of price indexing and land trusts to fund the affordable housing units included in the Sanctuary project at its April meeting. The applicant waived the 120-day rule.

Teague mentioned that the Planning Commission will meet once in the month of April, on the third.

Teague briefed the Commission on land use applications considered by the City Council at its meeting of March 17, 2003:

- Approved a three-lot preliminary plat, with lot area and lot width at the setback variances, at 3021 and 3113 Atwater Street for Joseph W. Jurusik, with the Planning Commission's recommendation.

**5. REPORT FROM PLANNING COMMISSION MEMBERS:**

Hart summarized the Economic Development Authority's (EDA) meeting regarding the Sanctuary project. Approximately thirty residents attended. Affordable housing guidelines were explained. The purchase price must be \$170,000 or less and the income must be between \$35,000 - \$62,000 a year, depending on family size. The EDA's target is to have all new projects include twenty percent of its units meet affordable housing qualifications. Price indexing and the West Hennepin Affordable Land Trust were discussed.

Maes attended a neighborhood meeting regarding the Sanctuary project. Fifty residents expressed the following concerns: safety issues caused by increased traffic, increased density, and a negative impact on the character of the neighborhood.

## 7. PUBLIC HEARINGS: CONSENT AGENDA

*Gallop moved, second by Hart, to postpone Item 7A, a resolution approving a variance for a second freestanding sign for a limited tenant building under 100,000 square feet at 2301 Crosby Road for Damon Farber Associates on behalf of Cargill Incorporated (97092.03a), to the April 3, 2003, Planning Commission meeting.*

*Maes, Gallop, Hart, and Wagner voted yes. Egge, Britain, and Knight were absent.  
Motion carried.*

## 8. PUBLIC HEARINGS

**A. Items concerning a proposed 60-unit condominium project at 408 Parkers Lake Road for Yellowstone Trail LLC (03001.03a):**

- 1) Ordinance rezoning the property from R-1 low-density residential, to PID planned I-394 district; and a master development plan, with final site and building plans; and an**
- 2) Ordinance approving a wetland rezoning.**

**B. Site and building plan review with variance for building additions, an enclosed athletic practice field, and various site work at Hopkins High School at 2400 Lindbergh Drive for Hopkins School District 270 (91009.03a)**

*Hart moved, second by Maes, to postpone Item 8A, items concerning a proposed 60-unit condominium project at 408 Parkers Lake Road for Yellowstone Trail LLC (03001.03a), and Item 8B, a site and building plan review with variance for building additions, an enclosed athletic practice field, and various site work at Hopkins High School at 2400 Lindbergh Drive for Hopkins School District 270 (91009.03a), to the April 3, 2003, Planning Commission meeting.*

*Maes, Gallop, Hart, and Wagner voted yes. Britain, Egge, and Knight were absent.  
Motion carried.*

**C. Accell Academy Appeal: Appeal of Jim and LuAnne Walters of the Planning Director's determination that certain objects are prohibited signs.**

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

Teague reported. He provided the history of the Planning Commission's actions regarding the application. The City Council upheld the Planning Commission's denial of the application. The Walters challenged the denial by suing the City. The case is pending. The Walters have since erected structures along State Highway 7. Teague provided an illustration of the first structure, similar in appearance to a shed. Olson sent the property owners a letter stating that the shed constituted a sign and requested it be removed. The shed was moved out of the right-of-way and additional structures were added along the berm. The Walters also rented billboard space across from the site. The same figures appeared on the billboard that appeared on the structures. The billboard advertised the school and included a directional sign.

On March 3, 2003, the Planning Director sent a second correspondence that requested all of the structures be removed and stated that the City found that the structures constituted signage. The Walters are now appealing staff classifying the structures as signs. Teague explained the ordinance's definition of a sign. The structures are considered signs and are in violation of the City's ordinances because they are an attempt to circumvent the ordinance; the structures are brightly painted and lighted in a manner to be eye-catching and to direct attention to the school; the figures match the figures that are used on the billboard across the street and appear to be a school logo; and the structures are located on the side of the berm that is visible from State Highway 7 and not visible from the applicants' house.

In response to Gallop's question, Peterson explained that the conditional use permit was for the fill that was brought in to construct the berm and the site plan approval dealt with the configuration of the site.

Gallop asked if the property owner did not adhere to ordinance requirements, would the City have the option of revoking the conditional use permit and requiring the use on the site be discontinued. Peterson stated that since the sign limitation was a condition of the site plan approval and not a condition of the conditional use permit, the conditional use permit could not be revoked on those grounds. She stated that the City may enforce its ordinances.

Chair Wagner asked Peterson if the City defines the term "a work of art." Peterson answered in the negative.

Maes confirmed with Teague that if the structure was to be used as a shed, it should have been located closer to the residence.

Edgar Timberlake, 28 Farsdale Road, Minneapolis, represented the Walters as their power of attorney. On behalf of the applicants, he stated:

- The yard art is owned and displayed by Jim and LouAnn Walters personally, in their berm garden. The yard art does not belong to Accell Academy.

- The yard art is political speech, protected by the first amendment.
- Yard art is not commercial speech, a sign, a logo, or created to draw attention to anything other than itself. It will not be found on a web site, letterhead or brochures.
- The logo and insignia of Accell Academy was provided to the Planning Commission.
- There is a residence located on the property and the owner of the home has a right to political and non-commercial speech.
- The City cannot regulate aesthetics or ban works of art that are not commercial messages and they are exempt from the sign ordinance.

Mr. Timberlake stated he was not prepared to speak beyond the information he presented.

Hart stated that the same “art” appears on the billboard, that is a sign for Accell Academy, as was depicted on the structures facing State Highway 7. Mr. Timberlake declined to comment.

The public hearing was opened.

John Tuyree, 4638 Linnea Lane, neighbor to the applicant, stated:

- The structures are a part of a continuation of a technique that the Walters have excelled at.
- The Walters never received permission to construct the berm.
- The school has changed from its original conception. In 1994, approximately fourteen City ordinances were violated. He witnessed it happening.
- Considering the structures “yard art” is “such a stretch, it’s almost funny.”
- The structures are a logo.
- People approach him and comment on the signs. No one has provided him with a favorable comment regarding the structures or referred to the structures as “lawn art”.
- The structures are not appealing.
- The structures are not visible from the residence.
- He opposed the structures remaining.
- He is tired of a never-ending battle with the City and his neighbors.
- A meeting took place with the neighborhood with the premise of discussing the repair of Linnea Lane, but the bulk of the meeting centered on the Walters getting permission for the signs in exchange for funding a large amount of the cost of repairing the road. He considered that a bribe.

No additional testimony was submitted and the hearing was closed.

Chair Wagner identified the main issue of whether the structures meet the ordinance’s definition of a sign. He invited discussion from the Commissioners.

Hart stated that the billboards, that included directional arrows, matched the design of the structures exactly. She felt the structures were logos.

Gallop agreed with Hart. As a lay person, he considered the structures to be logos, constructed to attract attention to Access Academy. He also questioned why they were located where they were not visible from the residence.

Chair Wagner agreed strongly with Hart and Gallop. He felt that they were obviously signs, designed to draw attention. He acknowledged that the applicant provided additional logos that the school uses. The structures met the ordinance's definition of signs as described in 300.02 and 300.03.

Maes agreed and expressed remorse that the applicants were unable to be present to clarify ownership of the structures. She concurred that the structures are logos, designed to draw attention, and that they are in violation of the ordinance.

*Hart moved, second by Gallop, to uphold the Planning Director's determination that the structures erected on the berm adjacent to Highway 7 at 4626 Linnea Lane are signs and are prohibited by the City's zoning ordinance for the following reasons: the structures are an attempt to circumvent the ordinance; the structures are brightly painted and lighted in a manner to be eye-catching and to direct attention to the school; the figures match the figures that are used on the billboard across the street and appear to be a school logo; and the structures are located on the side of the berm that is visible from State Highway 7 and not the applicant's house.*

*Maes, Gallop, Hart, and Wagner voted yes. Britain, Egge, and Knight were absent. Motion carried.*

Chair Wagner confirmed with Teague that the applicant may appeal the Planning Commission's decision to the City Council by providing written intent to the Planning Director within ten days.

**D. Ordinance amending the City's grading and erosion control ordinance (02039.03a)**

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

Colleran thanked Robbins for her hard work on the project and gave her staff report. She recommended approval of the application based on the findings and subject to the conditions listed in the staff report. The proposed ordinance would formalize the policies and practices already used by the City. The proposed ordinance would require a grading and erosion control plan, compliance to the plan, and financial security from the applicant to ensure compliance would be followed-through. Colleran or Robbins would meet with applicants

during the building permit process to educate and assist with creating the erosion control plan.

Colleran and Robbins made a presentation of the proposed ordinance to 165 builders and received numerous favorable comments from the builders.

Chair Wagner and Hart thanked Colleran and Robbins for “a job well done.”

Hart acknowledged that the requirements in the proposed ordinance have been and are currently being required, but that the proposed ordinance would formalize, unify, and include the requirements in one place. Colleran answered in the affirmative, with the exception that the financial security and enforcement component would be added requirements.

Chair Wagner asked when the deadline was for NPDES (National Pollutant Discharge Elimination System) Phase II permit compliance. Colleran explained that the City was expected to write its own permit and submit it to the Minnesota Pollution Control Agency. The deadline was March 10, 2003, but it was extended. The City of Minnetonka already submitted a plan that included six minimum control measures dealing with education and management of storm water and storm water run off. The plan may be amended annually until 2007, based on the City’s expectations and accomplishments.

In response to Chair Wagner’s question, Colleran confirmed that the proposed ordinance complies with the NPDES Phase II’s goals.

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

Chair Wagner reviewed the primary issues and welcomed Commissioners’ comments. He deduced the Commissioners concurrence that the ordinance was a positive step for the City.

Peterson suggested the following modification of the proposed ordinance:

- Page 8, (d), “. . . written notice **of the non-compliance** has been sent to the permittee . . .”

***Gallop moved, second by Maes, to recommend that the City Council adopt the ordinance on pages A1-A9 of the staff report with the modification to Page 8, (d), to read: “written notice **of the non-compliance** has been sent to the permittee . . .”***

***Maes, Gallop, Hart, and Wagner voted yes. Britain, Egge, and Knight were absent.  
Motion carried.***

**9. ADJOURNMENT**

*Hart moved, second by Gallop, to adjourn the meeting at 7:30 p.m. Motion carried unanimously.*

By: \_\_\_\_\_

Bernadette H. Leaf  
Planning Administrative Assistant