

**MINNETONKA PLANNING COMMISSION
MINUTES**

DECEMBER 4, 2003

1. CALL TO ORDER

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

2. ROLL CALL

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

Staff members present: Principal Planner Cary Teague, Planner Susan Thomas, Environmental Coordinator Jo Collieran, Planning Intern Megan Kelly and Environmental Intern Chris Robbins.

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

4. APPROVAL OF MINUTES: November 20, 2003

Gallop moved, second by Egge, to approve the November 2, 2003, meeting minutes as submitted by the change memo dated December 4, 2003:

Page 3, paragraph 4:

Gallop questioned if the conditional use permit would be valid if the owner rented out the home accessory apartment.

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

5. REPORT FROM STAFF

Teague briefed the Commission on land use applications considered by the City Council at its meeting of November 24, 2003:

- Adopted a resolution approving a preliminary plat, with lot width variances, for a two-lot subdivision at 4401 Wilson Street for Angelina and Paul D'Amico as the Planning Commission recommended. The City Council recommended that the home on the lot without street frontage be shifted to the west, to avoid some of the mature trees. This would require a variance that the applicant may be applying for in the future.

- Adopted a resolution approving an ordinance amending the master development plan; a resolution approving a conditional use permit; and final site and building plans for a water treatment facility at 3391 Williston Road for the City of Minnetonka.
- Adopted a resolution giving preliminary approval of the two-lot Imperial Acres plat, with variances, at 3323 Shores Boulevard for Imperial Development Investors Group.
- Adopted a resolution approving a conditional use permit for more than 1,000 square feet of detached structures at 3676 Lakeview Place for Dan Hamman.

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.

Egge moved, second by Maes, to approve the items listed on the Consent Agenda as recommended in the respective staff reports as follows:

A. Sign plan review for The Maytag Store in West Ridge Market at 11300 Wayzata Boulevard for The Maytag Store (03073.03a)

Approve the proposed amended sign plan for West Ridge Market at 11300 Wayzata Boulevard, to allow a second 46-square-foot sign, no taller than 26 inches, for the north tenant of Building C. Approval is based on the following findings:

- 1) The size of the sign is consistent with the existing signs on the building.
- 2) The size of the sign is proportional to the size of the store and the building façade.
- 3) The sign would be allowed under city code.
- 4) The sign faces the main driveway entrance for this use.

B. Approval of a twelve-month extension of a front yard setback variance from 20 to 18 feet and a rear yard setback variance from 12 to 3 feet for a garage addition at 9722 Minnetonka Boulevard for Cliff and Carla Lambert (02010.02a)

Approve a 12-month time extension to end on December 31, 2004.

C. Minor amendment to the Willoughby master development plan and final site and building plan review at 407-519 Willoughby Way West for REC Inc. (98057.03a)

Approve a minor amendment to the Willoughby master development plan with the addition of a condition requiring the construction of proof of parking as proposed in 1988. This approval is based on the following findings:

- 1) The proposal would not negatively impact the surrounding area. It would not significantly increase density or traffic.

Approve the final site and building plans at 407-519 Willoughby Way West for REC Inc. Approval is based on the finding that the site and building plans meet standards as outlined in code. Approval is subject to the following conditions:

- 1) The site must be developed and maintained in substantial conformance with the
 - a. Site plan dated October 23, 1998.
 - b. Building planting plan dated October 2, 2003.
 - c. Building elevations dated October 2, 2003.
- 2) Construction must begin by December 31, 2004, unless the Planning Commission grants a time extension.
- 3) Proof of parking be constructed as originally proposed in 1988.

Chair Wagner confirmed with Thomas that the applicant agreed to construct the proof of parking originally proposed in 1988.

D. Floodplain setback variance from 35 feet to 14 feet for additions to the home at 5767 Vine Hill Road for Rob and Patti Juntunen (03080.03a)

Recommend that the City Council adopt the resolution on pages A1–A4 of the staff report, which approves a floodplain setback variance from 35 feet to 14 feet for additions to the home at 5767 Vine Hill Road for Rob and Patti Juntunen. This resolution is based on the following findings:

- 1) Strict enforcement would cause undue hardship because of the following circumstances that are unique to this property:
 - a. The existing home has a non-conforming floodplain setback; given the setback and existing floor plan, it would be difficult to add a functional addition to the home without a floodplain setback variance.
 - b. Approximately 72 percent of the subject property is encumbered by floodplain.

- 2) The variance would be consistent with the spirit and intent of this ordinance for the following reasons:
 - a. The proposed addition would be within the existing building lines of the home.
 - b. The proposed addition would have a greater setback than the existing home.

Approval is subject to the following conditions:

- 1) Submit proof of having recorded this resolution with the county before the City issues a building permit.
- 2) The building materials and color of the proposed addition must compliment the existing home.
- 3) Lowest floor elevation must be 936.5 or higher,
- 4) Erosion control fencing must be installed and maintained throughout the course of construction.
- 5) This variance will end on December 31, 2004, unless the City has issued a building permit for the project covered by this variance or approved a time extension.

Egge, Gallop, Knight, Maes, and Wagner voted yes. Hart and Britain were absent. Motion carried and the items on the Consent Agenda were approved as submitted.

8. PUBLIC HEARINGS

A. Wetland setback variance from 35 feet to 30 feet for a screened porch at 4270 Windwood Way (03075.03a)

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

Robbins reported. She recommended denial of the application based on the findings in the staff report.

Egge asked Robbins if staff preferred a plan that would reduce the point intrusion to two feet. Robbins explained that if the porch extended from the south line of the residence, the variance would be approximately three feet. The present application would require a variance eight feet in length.

Robbins confirmed for Chair Wagner that an uncovered deck's setback would be 25 feet.

Gallop asked if the proposal would cause any negative effects, being 27 feet from the wetland. Robbins explained that the increase in the amount of impervious surface would decrease the distance for runoff to be absorbed and that it would create more of an impact to the wetland.

The public hearing was opened.

Dave Beaker, contractor for the applicant, was present with the applicant, Tim Lesmeister. Mr. Beaker explained that the outside space is unusable because of mosquitoes. The applicant had a delineation done by a builder that went out of business. The applicant believed that that delineation would have allowed the proposal without a variance. He recognized that delineations can change over the years as vegetation grows and spreads. The structure would be off the ground. Footings and stilts would be used. It would not encroach on neighbors or impede a neighbor's view. The real question is would the proposal hurt the wetland. The applicant felt that protection of the wetland is important, but questioned if the delineation boundaries were subject to interpretation.

Mr. Lesmeister stated that his delineator stated that the proposal would cause absolutely no impact to the wetland. He stated:

- The porch was designed to maintain the integrity of the residence, but keep the land in the backyard in its natural state.
- Pictures of the site showed that the front yard is small and the sides and back consist of natural vegetation.
- His neighbors to the south and north planted grass.
- The builder was originally supposed to include a porch on the residence, but the builder filed bankruptcy.
- The wetland delineation was much farther away from the house.
- The golf course has over drained much of the wetland, forcing it towards his house.
- As the golf course is developed, his wetland will return to its former state. In a couple years, he would not need a variance to construct the porch.
- He showed how the plan would match the house and would be aesthetically pleasing.
- If the ordinance is designed to protect the wetland, he should be given the variance. If the proposal is not approved, he would probably cut down trees, plant grass, and install a swing set and a deck.
- The proposal may actually do the wetland some good because it would give the drainage the ability to go towards the wetland rather than down one side. The proposal's effect would "not be much."

- He questioned if the variance was denied in order to protect the wetland or just because the City thinks the porch is too big. There is no usable space in the backyard, since he wants to leave it natural.
- The decrease in size would be ten feet by ten feet. The whole integrity of the porch would be lost.
- The neighbors supported the proposal.
- Several similar permits had been granted in the neighborhood.

Maes asked when the design was drafted. Mr. Lesmeister stated that it was a year old. Originally, the applicant planned on a deck on the north side and screened-in porch on the south side. The truth is, a deck would be worthless because of the mosquitoes.

Mr. Beaker stated that the applicant wished to be able to have a large family gathering in the screened-in porch. He and his wife come from large families. They hope to accommodate their families and grandchildren.

Knight asked why the south wall could not be moved in five feet to be flush with the wall. Mr. Lesmeister stated that the plan would match the off-set. Only five feet would be decreased from the extension into the wetland setback, but 108 square feet would be lost from the porch.

Knight asked if Mr. Lesmeister would be agreeable to a condition that would require the property to be maintained as a wetland buffer; allow no impervious surface under the porch; and install gutters. Mr. Lesmeister agreed to the conditions.

Gallop asked how a wetland is delineated. Colleran explained the process. Certain soils, vegetation and hydrology need to exist to be classified a wetland. Colleran spoke to Ms. Jeffries, Mr. Lesmeister's original delineator at the site. Ms. Jeffries referred to a past photo and determined that the wetland had not changed. Wetlands do change over time depending on the flow of water up and downstream. Delineations are valid for three years, because it can change. Mr. Lesmeister stated that delineating wetlands is very subjective. The line could be moved two or three feet in either direction based on who it is that is doing the delineation and how the property is treated. He felt the variance could go either way.

No additional testimony was submitted and the hearing was closed.

Maes asked Colleran how the proposed Meadowwoods development might be expected to affect the other side of the wetland. Colleran explained that the Meadowwoods project would restore 10.36 acres of wetland directly east of the proposed site. A condition of approval of the Meadowwoods project prohibited the development negatively impacting the wetland. Colleran described the quality of the wetlands. A year from now, she would predict Mr. Lesmeister's wetland to look very similar to what it does now.

Chair Wagner asked if the vegetation currently in Mr. Lesmeister's backyard is preferable to others. Colleran stated that it is not the most desirable partly because it is not diverse, the cattails and canary grass are very good competitors resistant to change. It would be advisable to leave it as it is since the effort to change it would not equal the benefit.

Knight asked if Mr. Lesmeister's was correct when he said that his own actions might have created more wetland and what the environmental impact difference is between what he was proposing and staff's recommendation. Colleran stated that any time impervious surface is increased, more water runs into the wetland and it would get bigger. Removing the buffer and planting grass would create a pollutant impact from lawn care practices. Grass clipping and fertilizer runoff would pollute the wetland. He would not be allowed to fill the wetland unless he went through the permitting process and had a valid reason. The reduction of 108 square feet from 522 square feet would leave 414 square feet. Staff felt this would provide reasonable use. From a planning and zoning perspective, minimizing the variance is the goal.

Chair Wagner acknowledged that if the property owner sold the property the current buffer could be removed. Robbins stated that if the applicant were agreeable to creating a permanent wetland buffer, it would be a permanent solution. The reason why staff recommended denial was to enforce the ordinance that required the best effort is made to minimize the variance.

Knight asked staff to explain the practical difficulties standard. Teague explained that the proposed screened-in porch is considered an accessory use, not living space. That determination along with the proposed size of the porch led staff to their conclusion.

Chair Wagner reviewed the primary issues. He stated that the Planning Commission must be mindful of setting a precedent.

Egge understood the applicant's desire to maintain the aesthetic look of the residence. She usually did not have trouble with minor point intrusions and considers the design of the residence. In this case, she felt that staff did a good job of providing information to determine that the variance has not been minimized enough. She supported staff's recommendation. Installation of a lawn would be unfortunate, she commended the applicant for maintaining the buffer, but she felt there were other options. The proposal would not be primary living space.

Knight was inclined to approve the variance. He did not see a large environmental impact. He felt the applicant was diligent in considering environmental issues and the applicant was agreeable to conditions that would make Knight comfortable with the proposal. Considering the standards and the design of the house, he did not see the proposal as that big of a deal.

Gallop asked Knight what he would add as conditions. Knight listed: require a wetland buffer; prohibit no impervious surface under the porch; and install gutters if needed. Colleran recommended not having gutters on the residence. Gutters would channel the water flow and be detrimental in this situation.

Egge asked Colleran to comment on the other two conditions being considered. Colleran stated that a buffer would be within the 35-foot setback. A permanent buffer would be beneficial to ensure the buffer would be maintained no matter who owned the property.

Chair Wagner asked the potential precedent-setting impact and rationale for deck setbacks being 25 feet and screened-in porch being 35 feet. Colleran explained how the grading and actual construction is normally the greatest environmental impact. The environmental impact would be minimal. The proposal would be on stilts. The rationale is that a screened-in porch may be similar to a deck if the ground underneath it is not impervious. The other reason for the 35-foot setback is to keep the wetland aesthetics for the neighboring properties. The big buildings with the big rooflines are kept further back from the wetland to allow neighboring properties to still have the view of the wetland. Robbins explained that the primary structure has a different setback so that a deck may be added to it. But, a porch, it is easy to turn a screened porch into a three-season porch and then into living space. That may be a reason why a porch has the same setback as the primary structure.

Knight asked if the applicant would have a stronger case if the request were for primary living space. Robbins stated that an accessory structure does not constitute as much of a hardship as an addition to the primary living space.

Gallop leaned in favor of granting the variance. The environmental impact would be minimal; there would be no effect on the neighbors; he was concerned with setting a precedent.

Maes did not support the proposal. She agreed with staff. In Minnetonka, preservation of the wetlands is important. She was concerned with a precedent being set and affecting future Planning Commissions. She felt it went too far. There are other options to build the structure. It would be sad if the site was made into grass, but she did not want to risk the precedent.

Chair Wagner saw some gray area. A point intrusion could be justified with the inclusion of Knight's conditions. Willingness of the applicant to work with the size, but setting an eight-foot variance is a large one. He could not support it. He recommended the applicant work with staff for a modified proposal.

Knight felt setting a precedent was a good point.

Egge moved, second by Maes, to deny the variance, based on the following findings:

1. Strict enforcement would not cause undue hardship because of the following circumstances:
 - a. The porch could be made smaller or relocated, reducing or eliminating the need for a variance.
 - b. A screen porch is an accessory structure that does not merit the same consideration as principal living space.
2. The variance would not be consistent with the spirit and intent of the ordinance for the following reasons:
 - a. The ordinance establishes a setback and contains provisions for encroaching into that setback if it is necessary to allow a reasonable use of the property. The proposed size of the porch does not indicate an attempt to minimize the variance.

Egge, Maes, and Wagner voted yes. Gallop and Knight voted no. Britain and Hart were absent. Motion carried.

B. Preliminary plat, with variances, for a three-lot subdivision at 14593/14629 Lake Street Extension for Ruth Murman (03076.03a)

Chair Wagner 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.

John Hagerman, with Coldwell Banker Burnett, speaking on behalf of the applicant who was ill, stated:

- The applicant is amenable to the proposed changes.
- He acknowledged that a number of neighbors strongly opposed the project. Misunderstanding may have caused some of the opposition.
- The applicant acknowledged that there is a history of the property not being property maintained.
- The property is currently for sale. The plan was to divide it and sell the lots. He spoke to the neighbors on Lake Street Extension and Redwood Circle.
- Once the residents understood that the applicant would not develop the property, that it would be sold, and that single-family homes would be constructed instead of apartment buildings, they then supported the project. Mr. Hagerman provided staff with residents' signatures who previously opposed, but now do support the proposal.

- There is a 99.5 percent chance that the existing house near Lake Street Extension would be removed.
- The applicant will address maintenance and care of the property.
- The time frame would hinge on the buyers' intentions.
- The applicant is looking for one builder buying all three lots and developing all three of them. It would assure all three lots being developed with quality homes.

Gallop asked what the cost and style of the residences would be. Mr. Hagerman could not speak specifically since the buyer was not determined. He estimated a two-story style residence with an estimated \$600,000 price range based on the value of the property. Housing values in the area go up to the \$800,000 range. Mr. Hagerman mentioned that there are several box elder trees on the property that are considered undesirable trees. The residence would be located to save the desirable trees.

The public hearing was opened.

Kevin and Diane Cody, 14608 Richards Drive, opposed a house being located on lot three. Ms. Cody stated:

- A flag-lot would not fit in with the rest of the neighborhood.
- The proposed residence would be higher priced than the homes in the area, causing it to stick-out like a sore thumb.
- The roof pitch would dwarf the surrounding buildings.
- The removal of trees would negatively impact their lack of privacy.
- The proposal would increase the water damage their residence sustains because it is the lowest property in the area.
- She wanted to know who would be responsible if they experienced water problems.
- There is currently standing water in that area that mosquito control has treated.
- Ms. Cody stated that she and her husband had the understanding that the signatures Mr. Hagerman received were in support of the site being cleaned.

Mr. Cody explained the drainage pattern of the area. He favored restricting the roof height.

Knight asked Mr. Cody what he envisioned the residence would look like.

Teague addressed the drainage issues.

Gallop asked who would be responsible if there was water damage caused by the proposal. Teague stated that the subdivision would not cause the problems. The city engineer would review the plan to ensure no negative impact on the adjacent properties.

Ms. Cody stated that the residence on Lot 3 would be placed on top of a hill and would block their view.

Todd Rosengren, 14703 Richards Drive, stated that the elevation coming down the hill is pretty significant. He liked the proposed placement of the residence as opposed to where it was before. He felt drainage would need to be created around the residence, creating a two-channel system. Teague stated that the Planning Commission was looking at the plan for the preliminary plat and that a drainage plan would be reviewed by the city engineer. Drainage would be contained on the property. Rosengren liked the fact that a lot of the trees would be kept. The new location is better for him, but impacts the two other residences. He asked if a buffer could be added to maintain the privacy. Chair Wagner stated that screening between two residential properties is not required. Teague pointed out the location of the driveway is to avoid impact on the existing oak trees.

Robert Warner, 14555 Lake Street Extension, asked if the proposed change would be called a "development." Chair Wagner explained that the Planning Commission was reviewing a lot split application. He was concerned that there are numerous trees on the west side that lean over his property. A development would allow the trees to be cut down without being replaced. He was concerned with removal of the trees causing damage to his residence. There was a pit dug in the rear of his lot to accommodate a lot of rain. A change in the property level of Lots 1 or 2 would cause the overflow to go into his basement. He bought his lot 30 years ago. His wife said that she did not want to live next to a horse pasture.

Susan Sundell, 14660 Lake Street Extension, was pleased that the property was going to change hands. She respected her neighbors and asked that Mr. Warner's wishes be considered. She welcomed a replacement that could better the neighborhood.

Jacob Peterson, 14608 Lake Street Extension, initially emphatically opposed the project. He felt more comfortable knowing that a reliable contractor would develop the property. He asked if the existing house would be sold or torn down. The property has been quite a shambles for many years. The proposal would increase the value of the surrounding property and be beneficial to his area. There are valid concerns some of the neighbors have. But, he is essentially pleased.

Chair Wagner stated that a condition of approval would require all debris to be removed and it would be subject to approval of the Community Development Department.

Nick Reynolds, 4215 Williston Road, moved into his house two months ago. The existing residence is an eye sore as viewed from his rear yard. He agreed with building two new homes on the proposed site, but felt that three residences would be tight. The original location of the houses would be better for drainage. His residence was not close to costing \$600,000. He did not want a 35,000 square foot residence either.

Gallop asked Mr. Reynolds if he could see the existing house from his back yard. Mr. Reynolds answered in the affirmative.

Mr. Hagerman agreed that the existing house and site are not attractive. The applicant is open to locating the residences and driveways where they need to go, but the decision would be left to the builder. The lots would be over 22,000 square feet. They are big lots. The proposal would put something of better quality where the existing house currently is.

No additional testimony was submitted and the hearing was closed.

Chair Wagner pointed-out the part of staff's report that addressed Lot 3's setbacks. Since there are a number of existing lots without frontage in the area, Chair Wagner felt a precedent has been set and there are no other similar sites. He supported staff's recommendation.

Knight believed the proposal would be an improvement. He supported two lots, but not three. He felt the variances did not meet the uniqueness and character requirements. He was concerned with setting a precedent and that five other lots could be subdivided in the area.

Maes echoed Chair Wagner's comments regarding Lot 3. What helped her support the application was the fact that the existing house already gives the appearance of a lot without frontage. She favored a one-story rambler be constructed on Lot 3.

Egge supported staff's recommendation for the same reasons. The Planning Commission may not dictate size of a future home and an existing house may be expanded if the requirements are met. She understood where the neighbors are coming from. The distance between the proposed homes and the remaining trees would result in a better site than the existing one. She saw more benefits than negative aspects of the proposal. She supported staff's recommendation.

Gallop was undecided when he left the site. He did not feel it would be a big change going from two lots to three lots. One of the concerns he had was drainage to the east of the property. Additional hard surface area would not help. The owner has not been cooperative with the City and the neighbors. He questioned if the City would be rewarding a property owner that is not deserving of being rewarded. He could argue the issue both ways. Gallop said that if he would have known the outcome of a similar setback application on Highwood that he voted in favor of, he would have voted no. He thought moving the residence to the west side of Lot 3 would make him not be in favor of the project. He did not generally support flag lots, but there are times when they make sense. He was not sure if this was one of them.

Maes stated that while supporting a bad habit may be wrong, the proposal would benefit the neighborhood that has put up with an eyesore. Redevelopment would help the neighborhood. She saw Gallop's point, but favored bettering the neighborhood for the residents who lived there 30 years.

Gallop stated that two lots could still be redeveloped. He questioned what benefit was gained by allowing the variance.

Knight saw both sides of the issue. He did not feel that enforcing the clean up rules would be considered a great benefit to approve a variance. He was most concerned with the precedent issue and the character of the neighborhood being changed by six additional flag lots. He questioned why road frontage requirements existed. He did not see a reason to stray from the rules. He found nothing unique with the scenario and it did not meet the hardship standard.

Egge moved, second by Maes, to recommend the City Council approve the three-lot preliminary plat with lot width at the right-of-way variance from 80 feet to 0 feet, and a lot width at the required setback variance from 110 feet to 109 feet for Lot 3. Approval is based on the following findings:

- 1) The proposal meets the required standards and ordinances for a preliminary plat.
- 2) The proposal meets the required standards for a lot width at the right-of-way variance in Section 300.10, Subdivision 5(h)(2)(b).

Approval is subject to the following conditions:

- 1) Complete the following before final plat approval:
 - a. Show the following on the final plat:
 - (1) At least ten-foot-wide drainage and utility easements next to any existing or proposed public street rights-of-way and at least seven-foot-wide drainage and utility easements along all other lot lines. A 10-foot drainage and utility easement must be established over the east lot lines for Lots 2 and 3 for a future storm sewer outlet.
 - (2) Utility easements over existing or proposed public utilities, as determined by the City Engineer.
 - b. Pay the City a park dedication fee of \$2,375.
 - c. If the developer is petitioning the City to construct the public water and sewer

improvements, the City Council must order the improvements.

- 2) The following items must be completed before the City releases the final plat:
 - a. The following documents for the City Attorney's approval:
 - (1) Title evidence that is acceptable to the City Attorney. Title evidence must be current within thirty days before release of the final plat.
 - (2) Provide a 34-foot private driveway easement between the street right-of-way and Lot 3 that is acceptable to the City Attorney. The easement shall state the maintenance responsibilities of each owner. The minimum driveway width shall be as required by the fire marshal.
 - (3) A private utility easement across Lot 1 to provide services to Lot 3.
 - b. All buildings on Lots 1 and 3 must be removed, or a cash deposit must be made to the City ensuring the removal of the buildings within a period agreed upon by staff.
 - c. All junk vehicles and debris must be removed from the site, subject to review and approval of the Community Development department.
- 3) The following must be submitted to the City before the City issues a building permit:
 - a. A grading and tree preservation plan for each lot, subject to staff approval. The plans must be in substantial compliance with the agreed building areas as required with the final plat. The sewer and water services must be shown to minimize impact to the significant trees.
 - b. Grading plans must show that the existing drainage pattern running east to west across Lot 1 would be maintained. This would include a culvert under the driveway for Lot 3. Grading plans would be subject to review and approval of the City Engineer.
 - c. All trees to be preserved must be fenced and erosion control measures must be installed for staff approval.
 - d. No grading or storage of dirt may occur on the northern 70 feet of Lot 1 to preserve the mature trees.
 - e. Hook up fee. Estimated at \$12,174.22

- f. The installation and maintenance of a temporary rock driveway, erosion control, tree protection and wetland protection fencing for each lot must be installed, subject to review and approval of the City's Environmental Resources Coordinator.
 - g. a copy of the recorded plat and any easements or covenants required to be recorded.
 - h. A letter from the surveyor stating that boundary and lot stakes have been installed as required by ordinance. If the grading for proposed streets has not been completed, the planning director may approve a time extension to this requirement.
 - i. A new home on Lot 3 must be provided with a fire protection sprinklering system, subject to the fire marshal's approval.
 - j. The new home on Lot 3 must maintain at least a 40-foot setback from the south lot line; 115-foot setback from the east lot line, and 25 feet from the west and north lot lines.
 - k. The new home on Lot 1 must maintain at least a 90-foot front yard setback.
 - l. The driveway serving Lot 3 should be located on the east half of the driveway easement to help preserve mature Oaks on Lot 1.
- 4) Before the City makes a final inspection of the house on Lot 3, the drive must be paved from the street to the house. A driveway setback of at least seven feet must be maintained from the side lot lines. The City may approve a time extension if weather prevents paving of the drive.
 - 5) The City must approve the final plat within one year of preliminary approval or receive a written application for a time extension or the preliminary approval shall be void.
 - 6) During construction, the streets must be kept free of debris and sediment, and the tree protection fencing, and erosion control fencing must be maintained.
 - 7) Trees must be planted to compensate for significant trees removed from each site that would be outside of the building pad and driveway area. The trees must be primarily species native to the area. They must be at least 2 1/2 inches in diameter for deciduous trees and 6 feet tall for coniferous trees. The property owner or original developer must replace the required trees if they die within one year after installation.
 - 8) The City must approve the final plat within one year of preliminary approval or receive a written application for a time extension or the preliminary approval will be void.

Egge, Maes, and Wagner voted yes. Knight and Gallop voted no. Hart and Britain were absent. Motion carried.

Chair Wagner called a five-minute recess.

C. Items concerning a three-story, 64-unit senior assisted living facility at 18605 Old Excelsior Boulevard for Sunrise Inc, (03069.03a):

- 1) resolution amending the guide plan from Office to Institutional;**
- 2) ordinance rezoning from B-1, Office, to PUD, planned unit development, and adopting a master development plan, with final site and building plans and setback variances; and**
- 3) resolution approving a conditional use permit, with a parking stall variance to allow an institutional use within a PUD zoning district.**

Chair Wagner 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.

Laura Hester, representing the applicant, Sunrise Inc., stated that the seniors like to be in the most active part of the facility. Some residents are able to walk on their own; others need to be escorted. Installing a decorative fence on the perimeter facing Highway 7 to provide safety for the residents was being considered.

Gallop asked if the residents had their own cooking facilities. Ms. Hester stated that the cooking facilities are limited to the common area. The residents have a small refrigerator, but no cooking or heating appliances for cooking. The focus of the Sunrise program is socialization. Meal times are very important. Socialization equals wellness. Isolation is a signal that something is wrong.

The public hearing was opened.

Doug Schmidt, 18430 Highpath Lane, stated that assisted living is wonderful, but he questioned if the site would be the appropriate place. He stated:

- He was fearful that if the proposal happened, the building would appear too large for the site.
- He did not agree with comparing the proposal to the worst-case scenario.

- The existing zoning creates some self-discipline. The B-1 zoning has requirements that would not be adhered to.
- The neighbors love the proposed architecture. They like the idea of what would be going on with the property.
- Sunrise is a huge, national corporation that charges a lot of money for this type of a facility.
- The footprint of the proposed facility is humungous.
- He preferred taking his chances with an average-sized office building.
- The planned unit development could become a runaway excuse to abandon the overall plan and structure of the City's ordinances.
- The applicant is asking for a variance down to 1.7 acres. He conceded that there is an exception to the five-acre rule in the ordinances. He questioned the justification for the variance.
- The proposal is similar to putting an elephant into a dog kennel sized property.
- He would not have an objection with a 40 to 50-unit facility.
- Elder Homestead is different because it abuts a commercial area.
- He referred to regulations regarding the number of parking stalls required for assisted living facilities and nursing homes.
- The building would be too large for the property.
- He saw no justification for such a radical departure from the ordinances.
- He referred to a project that was denied at the intersection of Interstate 394 and Hopkins Crossroads to construct a 70 unit assisted living facility because of the parcel size requirement of five acres for a planned unit development.
- Within a six-mile radius of the proposed site, there are over 1,600 senior housing units. Most facilities have vacancies.

Knight asked Mr. Schmidt the specific things he wanted changed. Mr. Schmidt stated that the footprint is too big and he preferred a two-story building. He agreed that an office building would increase the traffic load at peak times worse than the proposal would, but an office building would be quiet at night and on the weekends.

Knight confirmed with Mr. Schmidt that he preferred the proposal to a maximum sized office building.

Elaine Barber, resident for 40 years, initially felt that the proposal would be too large, but she likes the architecture and design. The lack of green space troubled her in the beginning. Her fear is that there would not be a size of land able to accommodate an assisted living or nursing home facility anywhere else in Minnetonka. A neighbor of hers had to go to Hillcrest because the proposal was not available across the street. As she looked at it, she would prefer a park, but provided her affirmation for a very strong plan.

Francine Christianson, 18441 Highpath Lane, agreed with Mr. Hester that the structure would be too big. It would be a beautiful structure and nice for the neighborhood if it was smaller. She commended the applicant for working with her to provide additional screening. She questioned if the residents would be affected by the smog from Highway 7. She did not like the facility being busy twenty-four hours a day, seven days a week. She stated that the removal of trees for the construction of the TSP building caused the rain to run down the hill and stream down Old Excelsior Road. She wanted to make sure the drainage was addressed. She confirmed the setbacks with Teague. She said it would be a great building. She could see a lot worse things being located on the site.

Jack Smith, 18516 Old Excelsior Boulevard, stated that he has 30 years working as a technical illustrator. His knee-jerk reaction was that the building would be too large for the site. Proportionately, the structure needs to be compressed in all directions. Then it would be very suitable. Highway 7 has a central barrier and traffic will only get busier. Eventually, a barrier wall could be constructed. He was fairly impressed with how staff worked with the public. He lived next to a Sunrise Facility in Edina for three years and had nothing bad to say regarding how the facility was run.

No additional testimony was submitted and the hearing was closed.

In response to Maes' question, Ms. Hester stated that the air quality is a consideration when determining a location and that the setbacks required by the Minnesota Department of Transportation are designed to protect residents' air quality.

In response to Knight's question, Teague explained that part of the third story is the roof itself, so the height of the building did not change. It could be considered two and a half or three stories. Teague stated that a single-family residence's height requirement is 35 feet to the midpoint of the roof in an R-1 District. A nursing or convalescent home is a permitted use in an R-1 District.

Chair Wagner confirmed with Teague that density was not an issue. Teague explained that the rooms are not defined as dwelling units in the building code. If each room would be converted into a rental dwelling unit it would need a rezoning and a guide plan change. All hard surface requirements would be met.

Chair Wagner reviewed the primary issues.

Gallop was agreeable with changing the Comprehensive Guide Plan. He supported the senior assisting living facility. It would be a beautiful building, but it would be too big for the size of property.

Edge did not have a problem amending the Guide Plan. She has first hand experience having had relatives in a Sunrise facility in Connecticut. The scale and impact of the facility is much less than imagined from the plans. Mr. Schmidt knew of a Sunrise facility and described it as a "low profile facility." The Presbyterian Home in the Glen Lake area where she lives is large, possibly four stories with approximately 100 units. When she moved into the neighborhood the property had single-family residences. After a year or two, she did not even notice the Presbyterian Home. She challenged Commissioners to congratulate Minnetonka on a quality project. Sunrise, Inc. is the top leader for how the elderly population will be treated in the future. This would be the type of facility she would like to be able to have available to live in. She understood Gallop's and the neighbors' concerns, because it is a unique piece of property, but she hoped that consideration could go beyond that to recognize the benefit the facility would serve the community.

Knight was not convinced the site was appropriate for the facility. He agreed with the benefit of the use for traffic flow. He saw no basis for a hardship to allow the variance. He felt requiring as much landscaping as possible and making it as tall as it can be would be a plus. He was now comfortable with the number of parking stalls. He felt there was a trust issue with TSP not gaining the type of neighbor it had been expecting. Knight looked at the worst-case scenario. He was undecided.

Maes was comfortable with the Comprehensive Guide Plan change. She felt it would be acceptable and there is a need for the senior facility. She acknowledged that the proposal would serve as an attractive buffer. She was pleased that Sunrise, Inc. worked with TSP to accommodate possible overflow parking on the weekends. She understood the neighbors' concerns with increased traffic, but most likely it would be the neighborhood going to the building rather than the residents driving out of the facility. It would serve the immediate community members, including possibly her parents. She did not have a problem with the proposal.

Chair Wagner agreed with modifying the Comprehensive Guide Plan. He felt the facility would be more like an institutional home, where the residents would not drive. The parcel would require only one variance from 38 feet to 25 feet on the west property line if the line would be positioned at a slant. Life cycle housing is a goal of the City. He lived by a Sunrise facility and stated it was well run and a great neighbor. He supported the project. It would be large for the site, but the structure could be four stories high. The proposal would serve the greater good. The requested variances are reasonable.

Knight agreed that life cycling housing is important. He focused on the ordinance. The architecture is well designed and there is a need, but it would be too big for the site.

The second public hearing was opened.

Ms. Hester provided an illustration, with accurate elevations and height provided by a surveyor, which showed that the building would not tower over the other buildings in the neighborhood. Under the planned unit development standards, the application meets all of the height requirements. The footprint, hard surface, and parking requirements have been met. If the building would be brought into compliance on the west property line thirteen feet, the conditional use permit would be in conflict with the planned unit development. She offered that the west side be brought into compliance if that would help the discussion.

Mr. Schmidt asked if Ms. Hester proposed that the building be shifted or made smaller. Chair Wagner stated that it would shrink the structure thirteen feet and the rooms would be made smaller to accommodate the difference. He suggested that tinted glass for each room to help darken the windows at night. Tall deciduous trees would provide a nice buffer.

Mr. Schmidt stated that if TSP expanded on the west that would decrease the amount of parking spaces. Chair Wagner stated that TSP would need to have an addition reviewed by the City and the Sunrise facility would only require additional parking in the evening and weekends. She worried about someone getting hurt.

The second public hearing was closed.

Gallop stated that the property appeared to drop off five to seven feet. Ms. Hester confirmed that that is how the property currently sits, but she explained how the grading plan would modify the elevations.

Knight asked if tinted windows would be used. Ms. Hester stated that the lighting is incandescent and would not be an issue for bleed or trespass lighting. It would be the residents' own lamp lighting in each room.

Knight favored decreasing the length by thirteen feet and increasing the landscaping.

Gallop asked if the Planning Commission could act on a motion to approve the project with a condition to decrease the length by thirteen feet. Chair Wagner answered in the affirmative.

Knight felt comfortable with staff approving the landscape plan and working with neighbors.

Knight moved, second by Maes, to approve items concerning a three-story, 64-unit senior assisted living facility at 18605 Old Excelsior Boulevard for Sunrise Inc, (03069.03a,) with a thirteen foot shift on the west side and increased landscaping.:

A) Recommend that the City Council adopt the resolution on pages A1–A2 of the staff report, which amends the guide plan from Office to Institutional use. This resolution is based on the following findings:

- 1) The guide plan change would provide special needs senior housing, which is needed in the city.
- 2) The change in land use would result in less traffic to and from the site than from an office building.
- 3) The guide plan change would be consistent with the public health, safety, and welfare.

B) Recommend that the City Council adopt the ordinance on pages A3–A8 of the staff report, which rezones the site from O, office to PUD, planned unit development and adopts a master development plan with final site and building plans, including a parking lot setback variance from 20 feet to 10 feet, and structure setback variances from 50 feet to 25 feet to the west lot line and from 50 feet to 38 feet to the north lot line. This ordinance is based on the following findings:

- 1) The rezoning would provide special needs senior housing, which is a housing need in the city.
- 2) The change in land use would result in less traffic to and from the site than from an office building.
- 3) The rezoning would be consistent with the public health, safety, and welfare.
- 4) The rezoning would be consistent with the proposed guide plan designation.
- 5) With the exception of the requested variances, the proposal would meet the required standards and ordinances for a site and building plan approval.
- 6) The proposal would meet the required standards for a variance, because:
 - a. There is a unique hardship to the property caused by the pie shape and narrow depth of the lot, along with the comprehensive plan requirement to zone assisted living facilities as Planned Unit Developments.

This rezoning is 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 September 16, 2003
 - Grading and Utility plan dated August 5, 2003

- Landscaping plan dated August 28, 2003
 - Building elevations dated August 27, 2003
- 2) The following work must be completed before the City issues a grading permit or before starting any site work:
- a. The installation and maintenance of a temporary rock driveway, erosion control, and tree protection fencing for each lot must be installed, subject to review by the City's Environmental Resources Coordinator.
 - b. Submit final site, grading, drainage, utility and erosion control plans for staff approval.
 - c. A letter of credit or cash escrow for 150% of the estimated cost to comply with grading permit requirements and restore the site must be submitted to the City. The City will not release the letter of credit or cash escrow until the developer submits as-built drawings and a letter certifying that the utilities, driveway and grading have been completed according to the plans approved by the City.
 - d. Submit copies of the watershed district permit and County permits for driveways and utility connections. The City may require revisions to the approved plans to meet these agencies' requirements.
 - e. All trees and vegetation to be preserved must be fenced and erosion control measures must be installed for staff approval.
 - f. A construction management plan must be submitted for staff approval.
 - g. If not already recorded, record a private drainage easement over the existing drainage pipe from the TSP property to the proposed underground storage tank.
- 3) The following must be completed before the City issues a building permit:
- a. An illumination plan for staff approval. Exterior lighting must be designed and arranged to limit direct illumination and glare upon or into any contiguous parcel. Reflected glare or spill light shall not exceed five-tenths (.5) foot-candles as measured on the property line when abutting a residential parcel.
 - b. A final landscape and irrigation plan for staff approval. The revised plan must include a revision that would replace the proposed deciduous trees along Old Excelsior Boulevard with evergreen trees. The number of trees along Old Excelsior Boulevard must be increased by at least 20 trees, and the size of the evergreen trees must be a

variety of 8-14 feet tall. Additionally, trees numbered 2, 3 and 4 on the proposed landscape plan must be included in the protection area.

- c. A hookup fee for sanitary sewer and water.
 - d. A letter from the surveyor stating that boundary and lot stakes have been installed as required by ordinance.
 - e. A sprinkler system and fire alarm system must be included in the building plans, per approval of the fire marshal.
- 4) The property owner is responsible for replacing any required landscaping that dies.
 - 5) All rooftop and ground-mounted mechanical equipment, and exterior trash and recycling storage areas, must be enclosed with materials compatible with the principal structure, subject to staff approval. Low profile, self-contained mechanical units that blend in with the building architecture are exempt from the screening requirement.
 - 6) Construction of the trail is subject to approval of the Environmental Resources Coordinator and the Fire Marshal.
 - 7) During construction, the streets must be kept free of debris and sediment, and the tree protection fencing and erosion control fencing must be maintained.
 - 8) Construction must begin by December 31, 2004, unless the Planning Commission grants a time extension.
 - 9) The developers must pay a reasonable share of the costs to improve the Vine Hill/Old Excelsior Boulevard intersection. The amount shall be negotiated between the affected parties.
 - 10) The building must be setback a minimum of 38 feet from the west lot line.
- C) *Recommend that the City Council adopt the resolution on pages A9–A11 of the staff report, which approves a conditional use permit, with a parking stall variance from 83 to 39 spaces, to allow an institutional use in a PUD zone. Approval is based on the following findings:*
- 1) With the exception of the parking stall variance, the proposal meets the required conditional use permit standards.

- 2) The proposal meets the intent of the ordinance, which is to ensure that there are enough on-site parking stalls.
- 3) The zoning ordinance has a conflict when regulating the parking standards for this type of use. Section 300.28.12.c.2.e. is the most practical standard to apply to this request since very few of the residents drive.

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.

Egge, Knight, Maes, and Wagner voted yes. Britain and Hart were absent. Gallop voted no. Motion carried.

Chair Wagner stated that the City Council is tentatively scheduled to review the application at its January 5, 2003 meeting.

D. Items concerning a proposed bank/office building at 10653 Wayzata Blvd for Red Stag Properties LLC (98054.03a):

- 1) ordinance amending a master development plan and approving final site and building plans with variance;**
- 2) resolution approving a conditional use permit; and**
- 3) an amendment to the water resources management plan.**

Chair Wagner 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.

Chair Wagner and Thomas agreed that the Wendy's and the Credit Union were the only other properties in that area that had speakers.

Chair Wagner asked if the two businesses had received variances to allow the speakers. Thomas stated that the businesses had conditional use permit's, but she was unsure if staff caught the provision during their reviews.

Tom Morris, architect for the developer and applicant, stated that he is a planning commissioner in Chaska. The requirements are met. The wetland issue was worked-out. He was available for questions.

Chair Wagner asked Mr. Morris to provide the height of the proposed building. He stated that the mid-point would be 36 feet.

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

Chair Wagner looked forward to the empty lot being developed.

Egge moved, second by Knight, to recommend the City Council approve items concerning a proposed bank/office building at 10653 Wayzata Blvd for Red Stag Properties LLC (98054.03a):

A) Recommend that the City Council adopt the ordinance on pages A1–A5 of the staff report, which approves a master development plan and final site and building plans with variance at 10653 Wayzata Blvd for Red Stag Properties, LLC. This ordinance is based on the following findings:

- 1) The proposal is appropriate for the site. Aside from the proposed outdoor speaker system, the proposal meets all city code standards.
- 2) The proposal meets the required standards for a variance, because:
 - a. hardship is caused by conflicting sections of the zoning ordinance.
 - b. the proposal meets the intent of the ordinance; the proposed drive-up teller facility would be over 600 feet from the nearest residential building.

Approval is 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:
 - a. Site plan dated 10-20-03.
 - b. Grading plan dated 10-20-03.

- c. Utility plan dated 10-20-03
 - d. Building elevations dated 10-20-03.
- 2) The following must be submitted for staff review and approval before the City issues a grading permit or any site work is started:
- a. Final grading, drainage, and erosion control plans. These plans must include final drainage calculations acceptable to the City Engineer.
 - b. A revised site plan, reducing the width of the Tonka Terrace access to two lanes.
 - c. A revised utility plan indicating proposed hydrant locations along Wayzata Boulevard. The salvaged hydrant may not be reused; the hydrant must be delivered to the City's Public Works Facility.
 - d. A revised landscape plan including native wetland plants within the required 25-foot wetland buffer area. Minimum landscaping must meet the total value requirements as outlined in code.
 - e. Copies of watershed district permit. The City may require revisions to the approved plans to meet the district's requirements.
 - f. A letter of credit or cash escrow for 150% of the estimated cost to comply with grading permit requirements and to restore the site.
 - g. A construction management plan.
 - h. A drainage and utility easement below the 903.5 elevation.
- 3) The following must be submitted for staff review and approval before the City issues a building permit:
- a. A temporary rock driveway, erosion control, tree protection and wetland protection fencing must be installed, subject to review by environmental staff. These erosion control measures must be maintained throughout the course of construction.
 - b. A fire protection plan for the proposed building and roof, indicating the use of automatic fire sprinklers or non-combustible material. No equipment may be enclosed within the roof structure.
 - c. An illumination plan.

- d. A letter of credit or cash escrow for 150% of the estimated cost to comply with landscaping requirements and to restore the site.
 - e. A hookup fee for sanitary sewer and water.
- 4) The following must be completed before the City grants a certificate of occupancy.
- a. Submit proof of having recorded with the County a 25-foot wide conservation easement adjacent to the delineated wetland edge of the property's "Manage-I" wetland.
 - b. A wetland buffer acceptable to the City's Environmental Resources Coordinator must be installed.
- 5) During construction, the streets must be kept free of debris and sediment.
- 6) All rooftop or ground mounted mechanical equipment must be either:
- (1) enclosed with materials compatible with the principal structure; or
 - (2) be low profile, self-contained units that blend in with the building architecture.
- 7) All exterior trash and recycling storage must be enclosed with materials compatible with the principal structure.
- 8) The property owner is responsible for replacing any landscaping that dies.
- 9) Construction must begin by December 31, 2004, unless the City approves a time extension.
- 10) This approval does not include any signs. Separate sign permits must be submitted for staff review and approval.
- B) Recommend that the City Council adopt the resolution on pages A6–A9 of the staff report, which approves a conditional use permit for drive-up teller facilities at 16053 Wayzata Boulevard for Red Stag Properties, LLC. This resolution is based on the following findings that the proposal meets conditional use permit standards.*

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.
- C) *Amend the Water Resources Management Plan to classify the wetland on the subject property as "Manage-1" wetland. This amendment is based on the finding that the wetland receives, and will continue to receive, off-site drainage.*

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

E. Ordinance revising certain planning fees. (03081.03a)

Chair Wagner 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.

Chair Wagner asked if the City Council made a distinction of residential properties versus commercial properties in regard to the fee for a variance with a conditional use permit. Teague stated that he was not aware of any distinction.

In regard to Knight's question, Teague stated that the actual fees do not come close to covering staff time and associated costs.

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

Gallop moved, second by Egge, to adopt the ordinance on pages A1–A14 of the staff report, which approves the proposed fee increases.

Chair Wagner stated that an appeal of the Planning Commission's decision must be made to the Planning Director within ten days.

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

9. ADJOURNMENT

Maes moved, second by Egge, to adjourn the meeting at 10:54 p.m. Motion carried unanimously.

By: _____

Lois T. Mason
Planning Secretary