

**MINNETONKA PLANNING COMMISSION  
MINUTES**

**FEBRUARY 5, 2004**

**1. CALL TO ORDER**

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

**2. ROLL CALL**

Commissioners Bonoff, Britain, Gallop, Hart, Maes, and Egge were present. Allendorf was absent.

Staff members present: Planning Director Geoff Olson, Principal Planner Cary Teague, Planner Susan Thomas, and Environmental Coordinator Jo Colleran.

- 3. APPROVAL OF AGENDA:** The agenda was approved as submitted with the removal of item 7A, items concerning a 14-lot subdivision at 2511, 2531, and 2545 Crosby Road for Paragon Designers and Builders (03092.03a): preliminary plat; wetland alteration permit; wetland replacement plan; and wetland rezoning, to provide time to review the site for additional tree preservation. New public hearing notices will be sent when the date is set.

- 4. APPROVAL OF MINUTES:** January 15, 2004

*Britain moved, second by Hart, to approve the January 15, 2004, meeting minutes as submitted.*

*Bonoff, Britain, Gallop, Hart, Maes, and Egge voted yes. Allendorf was absent. Motion carried.*

**5. REPORT FROM STAFF**

Olson briefed the commission on land use applications considered by the city council at its meeting of January 26, 2004:

- Approved the preliminary plat, with variances, for a three-lot subdivision at 14593/14629 Lake Street Extension for Ruth Murman. All three lots were restricted to one curb cut and one driveway; a building plan location for all three of lots is required before a building permit is issued for any of the lots, to provide a uniform neighborhood configuration; and the front house was required to be removed.

Olson announced that the city council appointed Dick Allendorf and reappointed Sandal Hart to the planning commission. Allendorf was unable to attend the meeting due to an illness in the family and will be present at the next meeting.

Olson thanked Egge, on behalf of staff, for her years of service on the Planning Commission. He appreciated her leadership and taking over as Chair and wished her the best. Egge was happy to serve and to allow others to make a commitment to the community and join the Planning Commission. She thanked everyone for their support over the years.

**6. REPORT FROM PLANNING COMMISSION MEMBERS: None**

**7. PUBLIC HEARINGS**

The following item was postponed to allow time for the city to review additional tree preservation plans.

**A. Items concerning a 14-lot subdivision at 2511, 2531, and 2545 Crosby Road for Paragon Designers and Builders (03092.03a):**

- 1. Preliminary plat;**
- 2. Wetland alteration permit;**
- 3. Wetland replacement plan; and**
- 4. Wetland rezoning.**

**B. Items concerning a preliminary plat for four single-family lots at 600 Sunnyvale Lane and 665 City View Drive for Gonyea Development, LLC (03077.03a):**

- 1. Preliminary plat;**
- 2. Rezoning; and**
- 3. Vacation of existing right-of-way**

Chair Egge 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.

Gallop asked if the cul-de-sac length required a variance. Teague explained that the city council has the ability to allow a cul-de-sac longer than 500 feet under certain conditions. The conditions would be the same for a planned unit development or an R-1 District.

Maes asked Teague if moving the building pad of Lot 1 to the east would result in it being located too close to the road. Teague pointed out the trees that the recommended move was designed to save. It would be tight, but a twenty-five foot setback would be maintained.

Hart commented that the buildable area for Lot 1 would have an odd shape. She asked about the width of the buildable area. Teague stated that the width would be 100 feet. A planned unit development would allow a 90-foot width and an R-1 standard is 110 feet wide. The buildable area is 60 feet by 120 feet. Shifting the building pad ten feet would leave adequate room.

Chair Egge asked Colleran to discuss the trees that would be removed. Colleran stated that the trees behind Lots 2, 3, and 4 are an oak forest. It would benefit the trees to locate the homes as close to the street as possible. Lot 2 has a slope with oak trees. The house pad was shifted to the south to stay away from the oaks. The house pad was shifted to the east on Lot 1 in a similar effort. Once the house design is selected, there may be the potential to shift the residence further to provide as much protection for the trees as possible. The overall goal was to make the plan tight to require less grading and save the integrity of the woodland forest.

Gallop asked if the conservation easement should be part of the motion. Teague explained that it is included in the conditions of approval.

Tom Gonyea, representing Gonyea Development, LLC, the applicant, 50 Groveland Terrace, Minneapolis, 55403, stated that the goal was to save as many trees as possible. The site is heavily wooded. An old house and oil drums have been removed from the property. He stated:

- He supported the conservation easement located on the west boundary. He favored keeping trees on the perimeter of the entire site.
- Lot 1 would be narrow to move things up the hill and preserve the woods on the east side.
- The building pads would be workable. The buyer would purchase the property for the trees.

Hart asked if the wood fiber blanket would be visible. Mr. Gonyea stated that the wood fiber blanket would serve as a measure to keep things growing. Colleran added that it would prevent erosion and decompose as the vegetation grew through it.

The public hearing was opened.

Charles Bell, 17365 West 62<sup>nd</sup> Street, Eden Prairie, owned the property west of the site. His concern was to keep the proposed homes as far away from his as possible, which it appeared that the proposal would accomplish, and to keep as many trees as possible. He had no major objections. He asked if the proposal is the final plan. Teague answered in the affirmative.

No additional testimony was submitted and the hearing was closed.

Hart complimented staff and the developer for the plan. It was clear that a lot of time was spent in an effort to preserve trees. It fit well with the area and would be hidden by the trees unless a motorist drove into the cul-de-sac.

Maes echoed Hart's comments and looked forward to an outlot being included.

Bonoff concurred with Hart and Maes. The proposal maximized tree preservation. Sunnyvale Lane would not be compromised on the backside because of the location of the wetlands.

Britain felt the proposal was an example of good planning and a "slam-dunk."

Gallop supported the planned unit development for this proposal because it benefits the site and preserves its natural amenities, rather than to squeeze as many units as possible onto the site.

***Hart moved, second by Bonoff, to recommend that the city council approve the following items regarding four single-family lots at 600 Sunnyvale Lane and 665 City View Drive for Gonyea Development, LLC.:***

*A) Recommend that the city council adopt the ordinance on pages A1–A3 of the staff report. This ordinance approves a rezoning with master development plan for 600 Sunnyvale Lane and 665 City View Drive. This ordinance is based on the following findings:*

1. The rezoning would be consistent with the City's guide plan.
2. The rezoning would be consistent with the public health, safety, and welfare.
3. The rezoning would result in development of a PUD plat that would save more significant trees than a plat meeting R-1 standards.

The 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:
  - Preliminary Plat, date stamped December 22, 2003
  - Grading & Drainage Plan, date stamped December 22, 2003
  - Utility Plan, date stamped December 22, 2003
  - Street Plan, date stamped December 22, 2003
  - Tree Plan, date stamped December 22, 2003

The above plans are hereby adopted as the master development plan.

*B) Recommend that the city council give preliminary approval to the Gonyea site plat, date stamped December 22, 2003. 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 and ordinances for a planned unit development.

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 right-of-ways and at least seven-foot-wide drainage and utility easements along all other lot lines.
    - (2) Utility easements over existing or proposed public utilities, as determined by the city engineer. This would include widening of the easement over the storm sewer line from 20 to 30 feet.
    - (3) Drainage and utility easements over storm water ponds, as determined by the City.
    - (4) A 40-foot-wide outlot located north of the cul-de-sac right-of-way to the north property line.
    - (5) Conservation easements must not be show on the plat.
  - b. Pay the city a park dedication fee of \$4,750.

- c. Submit evidence of watershed district approval. The city may require revisions to the preliminary plat to meet the district's requirements.
  - d. If the developer is petitioning the city to construct the public improvements, the city council must order the improvements.
3. The following items must be submitted to the city before the city releases the final plat:
- a. An engineering/utility inspection fee.
  - b. An electronic CAD file of the final plat in micro-station or DXF.
  - c. If the developer is constructing any public improvements, the developer must submit a signed agreement with the City. This agreement must guarantee that the developer will complete all public improvements and meet all city requirements. This agreement must include an escrow to ensure that the developer completes all public improvements and complies with all city regulations. This escrow must be a letter of credit or cash deposit. The amount must be 150% of the estimated cost of the improvements or 125% of the cost if based on actual bids.
  - d. 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) Conservation easements over the tree protection areas around the perimeter of the site, including a drawing of the easements for the approval of the city attorney.
    - (3) Provide restrictive covenants to be recorded against the individual lots with the plat. The covenants must include the conditions below that have not been met as of the release of the plat. These covenants must first be submitted for the city attorney's approval.

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

4. The following must be completed before the city issues a grading permit or any site work is started:

- a. A construction management plan must be submitted for staff approval. The plan must include installation and maintenance of a temporary rock driveway, erosion control, and tree protection fencing for each lot. The plan is subject to review by the city's environment resources coordinator.
  - b. The items listed in the construction management plan must be installed and inspected by the city's environmental resources coordinator.
  - c. Final grading, drainage, and erosion control plans must be submitted for staff approval. If the developer is building the streets and utilities, the developer must submit final street and utility plans for staff approval.
  - d. Watermain from City View Drive must be connected to the line in Sunnyvale Lane to complete the loop. The city will cost participate in the extension beyond that required for this development. Costs will be determined by the city engineer.
  - e. A letter of credit or cash escrow for 150% of the estimated cost to comply with grading permit requirements and to 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, road, and grading have been completed according to the plans approved by the city.
5. 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 row of pine trees along the west lot line of Lot 1 should be preserved. There must be a minimum of 10 feet between the retaining wall and back of the house on Lot 1 to allow stormwater runoff to drain around either side of the house.
  - b. The installation and maintenance of a temporary rock driveway, erosion control, and tree protection fencing for each lot must be installed, subject to review and approval of the city's environmental resources coordinator.
  - c. A copy of the recorded plat and any easements, covenants, and any other homeowners' document required to be recorded for the development.
  - d. All required hookup fees for sewer and water.

- e. 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.
  6. The floor area ratio and hard surface coverage each may not exceed 50% of the site area.
  7. The conservation easements must be maintained in accordance with a conservation plan approved by the city.
  8. During construction, the streets must be kept free of debris and sediment, and the tree protection fencing, and erosion control fencing must be maintained.
  9. All existing structures must be removed from the site.
  10. Installation of a fire hydrant at the end of the cul-de-sac.
  11. The developer is responsible to remove the existing cul-de-sac and extend the driveway of 605 City View Drive to the new street.
  12. 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.
  13. 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.
- C. *Recommend that the city council vacate a portion of the City View Drive right-of-way that would not be used as part of this plat.*

Approval is based on the following findings:

1. There are steep slopes that would prevent connection of City View Drive with Sunnyvale Lane.
2. The petitioners are owners of the land abutting said easements, and therefore are proper petitioners.

3. The city no longer needs said easements.
4. Vacating said easements is in the public interest.

Approval is subject to the following conditions:

1. Retaining drainage and utility easement per the preliminary plat.

***Bonoff, Britain, Gallop, Hart, Knight, Maes, and Egge voted yes. Allendorf was absent. Motion carried.***

Chair Egge stated that the city council is tentatively scheduled to review the application at its February 23, 2004, meeting.

**C. Preliminary plat, with lot width at the right-of-way setback variances, wetland setback variance, and wetland buffer setback variance for three single-family lots at 2081 Meeting Street for Bill and Lori Baron (04001.04a)**

Chair Egge 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.

Lori Baron, 2081 Meeting Street, applicant, stated that:

- The conservation easement was very aggressive. She lived on the property for years. She plans to continue living there. The conservation easement would not allow a backyard for any of the lots.
- A normal wetland buffer is 25 feet. She was agreeable to do a deciduous tree easement, but a 25-foot setback would be very aggressive.
- The park dedication fee would be over \$4,700. The other properties on Meeting Street were not subject to such a harsh conservation easement and were not subject to as high of a park dedication fee.
- Many of the other homes in the area were not required to have sprinkling, but the proposed lots would be.
- Her engineer felt extending public utilities an additional 200 feet would serve no purpose.
- Thirteen landowners originally existed on Meeting Street. She was one of four of the original owners left. Her neighbor took the development of Meeting Street to the Minnesota Supreme Court. She and her husband remained

neutral. She settled with the city for \$30,000, which would not cover the current sewer and water hook-up fees.

- If Meeting Street had not been developed, she could have added on to her residence.
- She hoped that the city would consider covering the costs of extending the sewer and water to the site or allow her to hook up at the base where it is stubbed in already.

Bonoff asked if she had a recommendation for an alternative conservation easement. Ms. Baron stated that she proposed a 20-foot deciduous tree easement from the wetlands to prohibit any deciduous tree from being touch in that area, but grading and patios would be allowed. The Minnehaha Watershed District and Department of Natural Resources agreed that that would be sufficient for runoff into a wetland. She would like to provide some sort of backyard.

Ms. Baron stated that installation of city sewer and water the distance of the proposed road off of Meeting Street would create a high cost. One lot would need to be sold to cover the cost. The cost of installation of city sewer and water lines and sprinkling systems and the conservation easement are encumbrances that other Meeting Street residents did not have to bear. Meeting Street residents locate jungle gyms and sport courts in the front yard because there is no room in the rear yards.

Thomas stated that public utilities need to meet city specifications determined by engineering. The Fire Marshall recently began requiring lots without frontage on a public street to have sprinkling systems when a residence is a certain distance from a fire hydrant. The park dedication fee was recently changed. Olson empathized with the applicant. The fee was previously \$550 per single family home, but was increased to \$2,375 per single family home. The reason for the change was in response to the results of a survey that found that Minnetonka was significantly behind similar cities. The park dedication fee is still in the middle range of park dedication fees charged by similar cities. The park dedication fee is an ordinance requirement, so the planning commission has no discretion to modify it.

Colleran understood the applicant's frustration with the conservation easement. The topographic constraints of the site lend it to restrictions. Colleran agreed with Ms. Baron's comments regarding the Minnehaha Creek Watershed District and the Department of Natural Resources requirements. The wetland buffer's purpose is to protect the quality of the wetland. A twenty-five foot wetland buffer is required. The existing upland forest buffer on the property would be required to be included in a conservation easement. In addition to the wetland buffer, staff is recommending additional areas be included in the conservation easement to protect the slopes and the trees on the slopes. Where the residence currently is located, the areas are

relatively flat. But, if larger residences would be located on the site, there would not be enough room to have a flat back yard. It would be a slope.

Thomas affirmed for Hart that the sprinkling systems would not be required if public utility lines and a fire hydrant were extended to the residences.

Britain recognized the large size of the proposed lots. He asked if it would be possible for a property owner to subdivide a proposed lot. Thomas explained that the majority of the property consists of steep slopes and wetland areas. The far, east side of Lot 3 may have enough area. Olson stated that a lot division would require a front setback variance. Colleran pointed out that the back half of the proposed lots would consist of wetland. To subdivide the lots further, they would also need to fill in the wetland, which is not usually looked upon favorably.

Gallop asked if the proposal would allow a patio in the twenty-foot area. Thomas explained that the twenty-foot area beyond the building pad is a steep slope, but is not proposed by staff to be included in the conservation easement. This area would allow for grading and building construction. Some grading may be required to accommodate a patio in this area, but patios and gazebos may be allowed.

The public hearing was opened.

No testimony was submitted and the hearing was closed.

Hart asked if the applicant preferred to table action on the item or continue with a vote as the proposal was presented with staff's recommendation.

Ms. Baron stated that the conservation easement is extremely difficult and aggressive. The major developers, including Striker, who received approval in 2002, and Dana, that was done in 2001, were not subject to the same conditions. She is an individual citizen who resides on the street. She plans to live there for the rest of her life. The land is important to her. She wanted to have it very well done and she wanted Colleran to have it the way she wanted, but there are homes 600 feet away that do not have to have a sprinkling system.

Ms. Baron stated that a private driveway is restricted to three residences and would eliminate future development.

Ms. Baron stated that there are situations where it would not be worth to develop, but she is on her second well and the septic is failing. She has to hook-up to the City's sewer line. The cost to hook up is huge. She asked to be treated the same as everyone else on the street.

Chair Egge stated that some of the ordinances had changed and the planning commission had no authority to deviate from them. Ms. Baron stated that the conservation easement is not required. The wetlands and trees would be protected. It was important to Ms. Baron. A patio with a small amount of flat area should be allowed around a house. Ms. Baron agreed with a deciduous tree easement.

Britain stated that the Commissioners must act on the plan before them. He asked if Ms. Baron wanted the planning commission to vote on the plan or if she preferred to withdraw the plan. Ms. Baron wanted the plan to go through the process in a timely manner. She felt it was sad that landowners had no voice in regard to requiring a conservation easement on their own property. She stated that she did not want the plan approved with staff's conditions.

Colleran stated that the conservation easement would save the integrity of the woodland area and continue to protect the wetlands. She understood Ms. Baron's frustration. The topography of the property would not allow a flat, open area. The north lot's building pad would have the ability to be moved to the east to allow a backyard area. The south lot would also allow a backyard area. The narrow point of the middle lot would have the most constraints because of the size of the residence, required setbacks, and the apex.

Olson clarified that the city is allowed by ordinance to require a conservation easement to ensure that selected areas of significant trees are not destroyed after development has been approved; to protect development of steep slope areas; and/or to preserve areas not intended for development. There are subjective decisions regarding where the line ought to be drawn, but staff did base its recommendation on the city's ordinance.

Ms. Baron referred to the summary page where staff acknowledged that several developments were not subject to the same conditions. She stated that developments within the past one and a half years were not held to the same conditions. She felt that a 50-foot buffer would be pretty good for a backyard. The house pad (would be 125 feet in some areas and 80 feet in other areas from the wetlands. The Striker Addition, in 2002, was only subject to a 25-foot buffer from the wetland. In 2001, Dana, had to keep 35 feet from the wetland buffer.

Hart asked if the other two developments had similar topography to the proposed site. Thomas indicated that Ms. Baron was correct regarding the conservation easements. The Dana Addition had a 35-foot conservation easement along the wetland. There are no steep slopes on the Dana Addition property. Colleran agreed. Thomas confirmed that the Striker Addition's slopes were not the same as the Baron

property. Hart clarified that the Baron property is unique. It has a 20 percent to 26 percent grade and a large number of trees that continue down to the wetland. She asked if the reason staff recommended the conservation easement would be because the wetland would not be protected without it. Colleran stated that once a slope is graded, it would be difficult to control the erosion of the site. The tree roots keep the slope in place. So, in addition to the wetland protection, the slope and woodland character of the lots would be protected by the easement.

Britain was confused why the applicant would want to withdraw the plan. Olson explained that the applicant does not want the proposal approved if the conditions are included. Britain confirmed with Olson that the applicant was aware of the conditions prior to the meeting.

Bonoff sympathized with the applicant, but understood that a problem may be created if the conservation easement would not be in place. She asked if there could be a compromise. Colleran stated that the plan used the minimum size of building pads. Homes in the area are considerably larger than the building pads illustrated in the plan. The applicant provided a plan that illustrated larger building pads. The lots on the north and south would have ample room for a rear yard if the building pads were shifted to the east. The contractors need at least twenty feet to construct a residence. The middle lot would be the most difficult to work with. Colleran stated that staff worked with the applicant, but that there was a difference of opinion.

Bonoff asked Colleran what the north and south lots would gain if the building pads would be shifted. Colleran stated that the topographic constraints are pretty tight. Another ten or fifteen feet might be gained.

Gallop acknowledged the applicant's emotional connection with the site, but stated that the Commissioners would not be moved any more than they already are by a developer. He sympathized with Ms. Baron's concerns. He asked if it would be worth tabling the item to allow time for staff to meet with the applicant.

Ms. Baron stated that she respected Colleran's opinion, but she received other expert opinions that stated that, given the distance from the wetlands, a forty-foot or fifty-foot buffer would not affect the wetland. She agreed to the 50-foot buffer behind the residence. That would be more than any of her neighbors. Her request was reasonable. If all of the conditions had to be met as presented, she preferred to discuss the conservation easement issue further. If staff was not willing to budge, there would be no reason to discuss it further.

Britain asked if the planning commission could take action now and negotiation take place before the city council reviews the item. Egge stated that it was an option and the applicant's decision.

Gallop asked staff if the item would be worth tabling to consider a compromise. Colleran proposed that staff meet with the applicant on the site, stake the areas, and determine the grading limits. The findings would then be looked at and put on a survey to see if the field analysis yielded a difference from the topographic analysis. Colleran stressed that a conservation easement is different than a wetland area buffer. A conservation easement would be utilized to protect the entire area.

In response to Egge's question, Ms. Baron indicated that she wished to participate in the field analysis and table action on the application. Thomas stated that the city council has until April to act on the application.

Olson explained the timeline for tabling the item, and noted that Colleran would not be present at the February 19, 2004, planning commission meeting.

***Gallop moved, second by Maes, to table action on item 7C, a preliminary plat, with lot width at the right-of-way setback variances, wetland setback variance, and wetland buffer setback variance for three single-family lots at 2081 Meeting Street for Bill and Lori Baron (04001.04a), until the February 19, 2004 meeting.***

***Bonoff, Britain, Gallop, Hart, Maes, and Egge voted yes. Allendorf was absent. Motion carried.***

## 8. ADJOURNMENT

***Hart moved, second by Maes, to adjourn the meeting at 8:05 p.m. Motion carried unanimously.***

By: \_\_\_\_\_  
Lois T. Mason  
Planning Secretary