

**MINNETONKA PLANNING COMMISSION
MINUTES**

MARCH 18, 2004

1. CALL TO ORDER

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

2. ROLL CALL

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

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

3. APPROVAL OF AGENDA: The agenda was approved as submitted with the additions and modifications listed in the change memo dated March 18, 2004.

4. APPROVAL OF MINUTES: March 4, 2004

Allendorf moved, second by Maes, to approve the March 4, 2004, meeting minutes as submitted with the changes from the change memo dated March 4, 2004:

Maes, Allendorf, Bonoff, Britain, Gallop, and Hart voted yes. Periolat 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 March 15, 2004:

- Approved the ordinance amending the Interstate 394 zoning district standards to allow fast-food restaurants in shopping centers and to add requirements for outdoor restaurant seating.
- Approved the preliminary plat, with lot width at the right-of-way variance from 80 feet to 0 feet for Lot 2, for a two-lot subdivision at 13418 Excelsior Boulevard for Thomas L. Dyvig.
- Approved the site and building plan review; a resolution approving a conditional use permit, with parking variance, for a coffee bar/café; and a

resolution approving a variance to the master development plan requirement concerning Barnes and Noble Booksellers at Ridgehaven Mall, 13081–13185 Ridgedale Drive for Thrivent Financial for Lutherans.

- Approved an ordinance rezoning 11901 Minnetonka Boulevard from R-1 (low density residential) to PUD (planned unit development) and adopting a master development plan, with side yard setback variances, for 11907 and 11901 Minnetonka Boulevard; final site and building plans, with side yard setback variance for 11907 Minnetonka Boulevard; and a preliminary plat for 11907 Minnetonka Boulevard concerning Minnetonka Townhomes at 11907 and 11901 Minnetonka Boulevard for Dean Gannon and the City of Minnetonka.
- Approved a resolution vacating an existing right-of-way ordinance approving a rezoning and a preliminary plat for four lots concerning 600 Sunnyvale Lane and 665 City View Drive for Gonyea Development, LLC.
- Approved a preliminary plat, with multiple variances, for three single-family lots at 2081 Meeting Street for Bill and Lori Baron. The city council required hook up fees according to the policy and as was listed in the staff report.

Olson reviewed the events that took place at the first annual ECO Fair. The event was successful and hosted 300 residents. One of the most popular speakers provided a presentation on busting buckthorn. Olson thanked Colleran, Robbins, Dean Elstad, and Mark Simonson who organized the event.

6. REPORT FROM PLANNING COMMISSION MEMBERS:

Maes reported on a boards and commissions training session attended by herself and other commissioners. The session produced an agreement regarding best practices, including commissioners completing diligent homework prior to the meetings and demonstrating mutual respect for commissioners.

7. PUBLIC HEARINGS: CONSENT AGENDA

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

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

A. Items concerning GroTonka Park at 3201 Beverly Place for the City of Minnetonka (04007.04a):

- 1) Site and building plan review for public buildings; and**
- 2) Conditional use permit for recreational facilities in a wetland buffer area.**

1) *Recommend that the city council approve the site and building plans for the public building and shelters at Gro Tonka Park at 3201 Beverly Place, subject to the following condition:*

a. The site must be developed and maintained in substantial conformance with the following plans, unless modified by the conditions below:

- Overall Landscape Plan dated February 3, 2004.
- Building elevations dated March 1, 2004.

2) *Recommend the city council adopt the resolution on pages A1–A3 of the staff report. This resolution approves a conditional use permit for an impervious trail in a wetland buffer area at Gro Tonka Park. Approval is based on the finding that the proposal meets the required conditional use permit standards and is subject to the following conditions.*

a. The location of the trail, in relation to the wetland, must be maintained in substantial conformance with the Overall Layout Plan dated February 3, 2004.

b. A seed mixture acceptable to the city's environmental resources coordinator must be used on all non-impervious areas within 16.5 feet of the wetland.

c. The following work must be completed before starting any site work:

- (1) Install for staff approval erosion control and tree protection fencing. The fencing must be maintained throughout the construction process.
- (2) If required, submit copies of Purgatory Creek Watershed District and Department of Natural Resources approval of

the wetland buffers. The city may require revisions to the approved plans to meet the district's requirements.

- b. The city council may reasonably add or revise conditions to address any future unforeseen problems.
- c. 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.
- d. The applicant must agree to the above conditions in writing.

B. Site and building plan review for a picnic shelter at McKenzie Park at 14950 McKenzie Boulevard for the City of Minnetonka (04008.04a)

- 1) Approve the site and building plans for the picnic shelter at McKenzie Park at 14950 McKenzie Boulevard, subject to the following conditions:
 - a. The site must be developed and maintained in substantial conformance with the following plans, unless modified by the conditions below:
 - (1) Overall Layout Plan date stamped February 3, 2004.
 - (2) Building elevations dated March 1, 2004.

C. Items concerning Libb's Lake Beach at 16600 Park Lane for the City of Minnetonka (04009.04a):

- 1) **Site and building plan review for a public building;**
 - 2) **Resolution approving the multiple variances; and a**
 - 3) **Conditional use permit for concrete fishing platforms below the ordinary high water mark.**
- 1) *Recommend the city council approve the site and building plans for the public building at Libb's Lake Beach, subject to the following conditions:*
 - a. The site must be developed and maintained in substantial conformance with the following plans, unless modified by the conditions below:
 - Overall Layout Plan dated February 3, 2004.

- Building elevations dated March 1, 2004.
- b. The following work must be completed before starting any site work:
 - (1) Install for staff approval erosion control and tree protection fencing. The fencing must be maintained throughout the construction process.
 - (2) If required, submit copies of Minnehaha Creek Watershed District and Department of Natural Resources approval. The city may require revisions to the approved plans to meet the district's requirements.
- 2) *Recommend the city council adopt the resolution on pages A1–A4 of the staff report, approving the following variances:*
 - a. *A shoreland setback variance from 50 feet to 22 feet for a public building;*
 - b. *Floodplain setback variance from 35 feet to 11 feet for a public building;*
 - c. *Shoreland setback variance from 50 feet to 45 feet for the parking lot – north;*
 - d. *Shoreland setback variance from 50 feet to 45 feet for the parking lot – south; and*
 - e. *A Floodplain setback variance from 20 feet to 4 feet for the parking lot – north;*

Approval is based the following findings:

- a. Strict enforcement would cause undue hardship because of the following circumstances that are unique to this property:
 - (1) The city is proposing to use the property in a reasonable manner. The proposed improvements are consistent with the “park” designation of the property in the city’s comprehensive plan.
- b. The variance would be consistent with the spirit and intent of this ordinance for the following reasons:

- (1) The proposed improvements reduce existing non-conforming setbacks, increasing both shoreland and floodplain setbacks.
- (2) The proposed improvements decrease total hardsurface coverage on the site.

Approval is subject to the following conditions:

- a. The site must be developed and maintained in substantial conformance with the Overall Layout Plan dated February 3, 2004.
 - b. The following work must be completed before starting any site work:
 - (1) Install for staff approval erosion control and tree protection fencing. The fencing must be maintained throughout the construction process.
 - (2) If required, submit copies of Minnehaha Creek Watershed District and Department of Natural Resources approval. The city may require revisions to the approved plans to meet the district's requirements.
 - c. This variance will expire December 31, 2005, unless the city has issued permits for the project covered by this variance.
- 3) *Recommend the city council adopt the resolution on pages A5–A8 of the staff report. This resolution approves a conditional use permit for concrete fishing platforms below the ordinance high water mark at Libb's Lake Beach. Approval is based on the finding that the proposal meets the required conditional use permit standards and is subject to the following conditions.*
- a. Development must be in substantial conformance with the Overall Layout Plan dated February 3, 2004.
 - b. The following work must be completed before starting any site work:
 - (1) Install erosion control measures for staff approval. Erosion control must be maintained throughout the construction process.

- (2) If required, submit copies of Minnehaha Creek and Department of Natural Resources approval. The city may require revisions to the approved plans to meet the district's requirements.
- c. The city council may reasonably add or revise conditions to address any future unforeseen problems.
- d. 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.
- e. The applicant must agree to the above conditions in writing.

D. Resolution approving wetland setback variances for townhouses at 473, 535, and 597 Willoughby Way for Ron Clark Construction (98057.04a)

Adopt the resolution on pages A1–A3 of the staff report, granting setback variances from 35 feet to 17 feet for Lots 7 and 8, Block 1, Willoughby; and from 35 feet to 20 feet for Lot 10, Block 1 Willoughby. Approval is based on the following findings:

- a. Strict enforcement would cause undue hardship because of the following circumstances that are unique to the property:
 - (1) The buildable area is constricted by the location of the wetland and street.
 - (2) A site plan was approved for the construction of these buildings within the same footprint as proposed.
- b. The variance would be consistent with the spirit and intent of the ordinance for the following reasons:
 - (1) The natural vegetation of the wetland and buffer area will remain intact and there will not be a mowed yard area.
 - (2) The plans are consistent with the previously approved site plans.
 - (3) There will be no adverse impact on neighboring property.

Approval is subject to the following conditions:

- a. Submit proof of having recorded this resolution with the county before the city issues a building permit.
- b. The installation and maintenance of temporary rock driveways, erosion control, tree protection, and wetland protection fencing must be installed, subject to review by the city's environment resources coordinator.
- c. This variance will end on December 31, 2005, unless the city has issued a building permit for the project covered by this variance or approved a time extension.

Maes, Allendorf, Bonoff, Britain, Gallop, and Hart voted yes. Periolat was absent. Motion carried and the items on the Consent Agenda were approved as submitted.

Chair Hart announced that the city council was tentatively scheduled to review item 7C, items concerning Libb's Lake Beach at 16600 Park Lane for the City of Minnetonka (04009.04a), and item 7A, items concerning GroTonka Park at 3201 Beverly Place for the City of Minnetonka (04007.04a), on April 12, 2004.

8. PUBLIC HEARINGS

A. Appeal of the staff's approval to amend an existing grading permit to reconfigure the Hopkins High School campus ballfields, by Frank Sims (91009.04a)

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

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

Frank Sims, 11123 Mill Run, applicant, stated that staff's report accurately reflected his concerns. He originally voted in favor of the work being done. The information provided by the school district did not indicate that the grading or rearrangement of the ball fields would take place. He felt the school district misrepresented the proposal. He was opposed to moving the primary ball field and scoreboard within 70 feet of his property. He would not have a problem with expanding a classroom within 70 feet of his property, but it would be a basic ball

field. He met with the school district, but it decided to leave things as it was being presented. He was happy to answer questions.

Gallop asked Mr. Sims to list his specific concerns. Mr. Sims responded that the additional grading would make the slope unsafe, the noise and activity level would be elevated, and the visual site of the field and the scoreboard from his deck would be prominent. If the gate would be closed to prevent students from walking on the footpath, the students would have to cross Hopkins Crossroads that he felt that would be more hazardous to the students and motorists.

Chair Hart questioned if reconfiguration of the shot-put and discus areas was included in the school district's neighborhood notification. Mr. Sims stated that locating a soccer field where the primary baseball field is located and adding parking spaces was included in the notification, but nothing mentioned the remaining ball fields having to be rearranged. He provided the document that was mailed to him.

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

Allendorf asked what the city's authority is regarding the situation. Colleran stated that the school district's conditional use permit allows ball fields as a permitted use.

Allendorf clarified that since the city's authority is limited to the grading permit, the decision regarding the ball fields would be made by the school board. The city did not have the authority to thoroughly address Mr. Sim's concerns.

Britain asked if a study was done to determine if the noise level would be increased.

Colleran stated that the district advised the city that there would be no increase in noise. The field would only be used for varsity and youth events.

In response to Chair Hart's request, Colleran identified Mr. Sim's residence on the map.

Bonoff stated that since there would be no lights, the games are limited to after school and the fans are limited to the players' parents. The scoreboard would be very big and a focal point. She concurred with Colleran that there would be little additional noise.

Gallop clarified with Colleran that the field adjacent to Mr. Sim's property would be the varsity softball field. The other two softball fields, would not be designated for the varsity team.

Mr. Sims added that the school district advised him that lights were not planned at this time, but it would not rule out adding lights in the future. It also said that the fields would be open for city use. So, to suggest that games would not occur past 4 p.m. is not proper information. He felt that needed to be considered.

Gallop felt that the school district would not want its fenced in fields used during the evening. He felt it would be a controlled environment. Mr. Sims asked the school district specifically if the fields would be used outside of the school's uses and the school district replied that a request by another party to use the fields would most likely be granted.

Colleran clarified that the school district would restrict the use of the fields to youth groups only. The varsity field would be used only if the other two fields were occupied.

Maes asked about the management plan. She felt that the management plan would need to be amended to accurately reflect what would be taking place after school hours. Olson confirmed that the management plan primarily dealt with off site parking, students trespassing through surrounding properties, establishing a procedure for residents to voice concerns, and handling special events. Maes felt the situation would fit under that umbrella and that the school district should address the situation.

Britain asked if the school district would be required to submit an application to be reviewed by the planning commission to add light for the fields. Olson answered in the affirmative and recalled that the management plan regulated lighting for the site. Allendorf recalled as well.

Allendorf moved, second by Gallop, to uphold staff's decision to amend the existing grading permit.

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

B. 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.***

Chair Hart 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.

Britain confirmed with Teague that the site would meet all requirements to subdivide into 16 lots. Britain asked if the rough grading for the trail would be done now. Teague answered in the affirmative. Olson explained that since Crosby Road will be redone in 2005, the city would request the developer to rough grade the trail location, but not pave the road since it would have to be redone next year anyway. The trees would be removed either way.

Gallop asked if the litigation regarding Outlot A effected the planning commission's decision. Teague answered in the negative. Olson discussed the issue with the city attorney. The city attorney favored leaving the site platted, in case the court decided to rule in favor of the neighbor the court would order a subdivision for that part of the property. The court may have to decide if the conservation easement would still apply to the area.

Bonoff questioned how many trees exist on the border of Crosby Road, how many would be "impacted," and how many would be removed. Colleran stated that it is difficult to calculate the number of trees that would be lost because they are bunched so close together. Colleran pointed out the grouping that would be impacted, but would probably not have to be removed. The trees were planted too close together and resulted in thin, unhealthy trees. Colleran indicated an area where the grade sloped and trees would need to be removed and a retaining wall installed. Approximately 40 trees along the road would need to be removed, but they are currently located very close to each other.

In response to Chair Hart's question, Colleran stated that the plan is to expand the road from 24 feet in width to 26 feet in width. Colleran stated that there is a distance of 10 feet to 12 feet from the fence to the existing roadway. That is the area where the new trail would be located. The rising grade of one area would create a higher potential for tree loss in that area. Seven trees would definitely be removed. Three of the seven are structurally unsound and should be removed anyway.

Gallop asked where the trail would be located. Teague showed where the eight foot wide trail would be located adjacent to Crosby Road on the south side.

Maes asked Colleran to explain what it means when staff says that some of the trees are not in good shape. Colleran stated that most of the trees on the site are spruce. The row of trees in the middle of the site are so tightly packed that it is difficult to determine each one's species. The edge trees on the west and east appear healthy from the outside, but on the inside the branches are dead. Colleran described the quality of the trees in each numbered area of the site.

Allendorf asked what the tree loss would equal if the 16-unit plan was utilized. Colleran stated that the 16-unit plan would cause the removal of more trees.

Svi Leibovitch, 3550 Fairview Lane, was present with his planning consultant and architect to answer questions. He did not intend to propose the 16-lot plan. It was submitted to show that the applicant did his homework prior to proposing the 14-lot subdivision. The 16-unit plan was not used in order to save trees.

The public hearing was opened.

Jason Lichtie, 2526 Crosby Road, compared the site to protected parks and historical landmarks. The property is special to the neighborhood. He was designated the neighborhood spokesperson. He listed the neighbors he represented. The neighbors are in favor of development; however, they favor one that is within the character of the neighborhood and the city's values and mission. They would like to find a creative plan that benefits everyone. Ninety-three percent of residents who responded to the city's survey opposed the plan. He read the city's mission statement. The city's ordinances are meant to be a guide, not the law. Mr. Lichtie asked if the city ordinances are ever changed.

Chair Hart answered in the affirmative.

Mr. Lichtie stated that the ordinance changes in unique situations. They believed that the site was a special situation. He presented a proposed plan for 10 lots that would be financially viable. His plan would use the existing driveway to save trees.

Allendorf stated that the planning commission must respond to the applicant's plan. Neighbors should talk to the developer with regard to an alternative plan.

Mr. Lichtie stated that increasing the number of units from 14 to 16 would not be in the best interests of the community. Allendorf explained that Mr. Lichtie was

making a point, but that commissioners are not allowed to comment on another plan.

Mr. Lichtie stated that the McKnight foundation supported preservation.

Mr. Lichtie requested a traffic study. Chair Hart confirmed with Olson that the traffic level would not increase and that a traffic study was not warranted for a single-family subdivision of the proposed size. Mr. Lichtie stated that the development on the north would increase the already busy traffic level of the area.

Mr. Lichtie asked how construction would be handled to keep noise and the disruption to a minimum. Olson invited Mr. Lichtie and neighbors to review the construction management plan and provide comments.

Mr. Lichtie and his representatives were concerned with strangers and dogs traveling through the area on the trail. He noted that the intersection is dangerous already.

Mr. Lichtie asked how the city concluded that the project would be in character with the neighborhood. Chair Hart stated that the 13-acre site is currently not in character with the surrounding single-family residences. Mr. Lichtie stated that the existing neighborhood has no monuments. Chair Hart explained that the monuments would be included in a separate permitting process. Teague stated that the monuments would be allowed as long as they met ordinance regulations.

Mr. Lichtie stated that the house size to lot size ratio would be dramatically different than the surrounding properties. When he put an addition on his residence, he made it look like the existing house. Last year, the Mullens were not allowed to reside their garage because it would not be in character with the neighborhood.

Mr. Lichtie referenced John Gunyou's article in the Minnetonka Memo regarding the importance of protecting natural resources. He stated that the article is 110 percent correct. He favored a different plan.

Britain appreciated Mr. Lichtie's comments. Britain resides one and a half miles from the site. Britain would love the site to be a park, but he noted that the developer has the right to develop the site. The commission must act within the bounds of city ordinances. The developer has the right to subdivide the property into 16 lots. A plan with 14 lots and decreased tree loss would be preferable to 16 homes and more tree loss.

Paul Rustad, 2532 Crosby Road, asked why the seven maple trees to the right of area seven on the tree plan were not included as high quality trees. Colleran stated that area seven was intended to designate the maple trees. She disagreed that those maples are the best trees on the site. The nicest trees on the site are the oak trees in area two, basswood trees in area three, white pine in area four, and trees along Crosby Road to provide a buffer.

Mr. Rustad stated that the neighborhood was strongly opposed to the trail because it would add bike and pedestrian traffic to a dead-end street. He thought it would create safety issues. He realized that the city council handled trail issues and he would take the issue up with the city council.

Bruce Malkerson, attorney for the applicant, stressed that under Minnesota law, the zoning code is not a guide. It is the city's laws. If an applicant meets the standards, the application has to be approved. The code also provides protection for the property owners. The proposed plan exceeds ordinance requirements. The applicant reduced the number of lots that the site could be subdivided into and proposed to plant an additional 100 trees. He was not required to do either of those things. Mr. Malkerson pointed out that Mr. Lichtie's plan used a connection to the private drive, which the applicant does not have the right to use. Mr. Malkerson reserved the right to raise his hand and speak if he disagreed with the facts as presented or a point of law to preserve the record.

No additional testimony was submitted and the hearing was closed.

Chair Hart reviewed the primary issues. She stated that the proposal met and exceeded tree preservation and lot size requirements.

Gallop concurred with Chair Hart. He stated that the developer had done a good job of keeping high quality trees. The developer's proposal to add 100 more trees was a strong plus.

Britain concurred with Gallop. The developer looked at the site carefully and realized that no one would like the area to change. The developer went the extra mile to add trees.

Maes applauded the developer for removing the application from the agenda previously and working to improve the plan.

Chair Hart reviewed the primary issues.

Gallop acknowledged that people are scared of change. He felt that the lot sizes would be compatible with the area. He supported the proposal.

Bonoff stated that the ratio of the home size to lot size would not be in keeping with the neighborhood. She was concerned with a homeowners' association creating a division within the neighborhood. She supported the most creative way to preserve trees, but felt the proposal would not be in character with the neighborhood. She preferred a compromise.

Britain acknowledged that the lot sizes could be smaller, so the proposed lots are acceptable. None of the proposed residences would directly connect to Crosby Road, as would happen with the 16-lot plan. He supported the application with staff's recommendation.

Chair Hart noted that the association would be the steward of the outlot and the entire conservation easement. Olson confirmed that the city council would finalize the homeowners associations' duties.

Britain supports trails, but noted that the proposed trail could have been built 10 or 12 years ago, but the city did not. Britain did not want the rough grading to occur before a final determination that the trail would be installed. He requested a separate vote regarding the trail. Olson stated that the city council would review the plat and the trail in April.

Allendorf stated that separate action could be taken regarding the trail to make a specific point. He asked what damage would be done if the trail location was rough-graded. He reviewed that the trail would be eight feet wide. Colleran stated that six trees would for sure be removed with a high potential of the loss of seven more where the grade would need to be lowered to match the road. Allendorf confirmed with Colleran that the trees would need to be removed because of the installation of the trail, not because of the road. Three of the six trees that would be removed are structurally unsound; the seven trees that may be die because of the grading to the slope are all high-quality trees.

Gallop asked if the six trees removed to complete the rough grading would act as a buffer for the proposed homes. Colleran explained the location of the six trees. Three of the trees could possibly collapse on their own, because they are structurally unsound. The additional seven trees are not a deep buffer. Colleran described groupings of trees in the area.

Chair Hart mentioned that the developer would be planting an additional 97 trees in the area. Colleran explained how the developer worked with the forester to better position the trees.

Gallop asked if a six-foot trail would save more trees. Teague stated that an eight-foot trail is the standard.

Chair Hart reviewed the final primary issues.

Maes stated that, in the past, rather than having a separate motion, the commissioner has included wording that explained its departure from staff's recommendation. She understood both options.

Britain moved, Gallop seconded, to approve items concerning a 14-lot subdivision at 2511, 2531, and 2545 Crosby Road for Paragon Designers and Builders (03092.03a) with the exception of the trail rough grading being done prior to the city council's approval of the trail being completed.

Allendorf suggested voting on the trail separately.

Bonoff concurred with Allendorf.

Britain withdrew his motion.

Allendorf moved, second by Gallop, to recommend that the city council approve items concerning a 14-lot subdivision at 2511, 2531, and 2545 Crosby Road for Paragon Designers and Builders (03092.03a) with the elimination of the requirement to rough grade the trail location:

A. *Recommend that the City Council give preliminary approval to the Crosby Cove plat, dated December 18, 2003. Approval is based on the following findings:*

1. The proposal meets the required standards and ordinances for a preliminary plat.

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.
 - (3) Drainage and utility easements over storm water ponds, as determined by the City.
 - b. Pay the City a park dedication fee of \$26,125.00.
 - 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.
 - e. Resolution of the gap and overlap of existing legal descriptions on the property must be resolved subject to approval of the City right-of-way specialist
2. 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 will 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 generally located over the perimeter trees outside the grading limits, and over the trees on Outlot A. Exact location to be negotiated by staff prior to city council review. The easements and drawings must be recorded with the final plat.
- (3) Documents establishing a homeowners' association. The association must be responsible for maintaining any common areas, common drives, the required drainage pond and any other required drainage improvements approved by the City. Maintenance will include, but not be limited to, the periodic removal of sedimentation at the base of the pond and any adjacent drainage ditches, keeping a vegetative cover within the ditches and pond, and removing any blockage of the swale or culvert that may impede the drainage of the site, as approved with the building permits. The homeowners' association is also responsible for snow removal of all driveways and the southerly cul-de-sac
- (4) 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.
- (5) Provide declaration and restrictive covenants over all mitigated wetland areas per the WCA.

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 items listed in the construction

management plan must be installed and inspected by the City's environmental resources coordinator.

- b. Submit a letter of credit or cash escrow, or other form acceptable to the City Attorney for the estimated cost to restore the wetland. The amount must be 150% of the estimated cost of the improvements or 125% of the cost if based on actual bids.
 - 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. The street and utility plans must include the following:
 - (1) Addition of 4-foot sumps at catch basin 103 and 101.
 - (2) All homes to be served off new sewer and water lines in Crosby Cove. (The new street.)
 - (3) All existing unused services must be abandoned.
 - (4) Redesign of the street to include a 50-foot tangent between the reverse curves.
 - d. 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, road, and grading have been completed according to the plans approved by the City.
 - e. Fence all trees and vegetation to be preserved and install erosion control measures for staff approval.
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.
 - 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. All structures must meet the minimum setback and height requirements. Lowest floor elevation of all of the homes must be 935.0 in Block 1 and 933.5 in Block 2.
 7. The proposed retaining wall at Lot 2, Block 1, must be constructed outside of the right-of-way.
 8. Grading activity associated with home construction on Lot 5, Block 2, must not impact the critical root zones of the oak trees to the east. A retaining wall may need to be installed to protect these trees from grading activity associated with home construction.
 9. The conservation easements must be maintained in accordance with a conservation plan approved by the City.
 10. During construction, the streets must be kept free of debris and sediment, and the tree protection fencing, and erosion control fencing must be maintained.
 11. All existing structures must be removed from the site.
 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. Any docking of boats in the wetland is subject to the Lake Minnetonka Conservation District.
 14. If the homeowners' association abandons the snowplowing service for the individual driveways and cul-de-sac, the cul-de-sac must be removed and restored to a standard 26-foot right-of-way at the expense of the homeowners' association.
 15. 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.
- B. Recommend that the City Council adopt the ordinance on pages A1–A3 of the staff report, which approves the proposed change in the wetland overlay district boundaries. This resolution is based on the following findings:*
- 1) The proposed fill will require the overall restoration and quality enhancement of the wetland.
 - 2) The wetland will ultimately have a higher function and value.

Approval is subject to the following conditions:

- 1) Obtain a grading permit as part of the wetland restoration.
 - 2) Must be developed per the plans dated December 18, 2003.
- C. Recommend that the City Council approve the Wetland Conservation Act replacement plan and adopt the resolution on pages A4–A5 of the staff report, which approves the proposed wetland alteration permit. This resolution is based on the following findings:*
- 1) The proposed fill will require the overall restoration and quality enhancement of the wetland.
 - 2) The wetland will ultimately have a higher function and value.

Approval is subject to the following conditions:

- 1) Obtain a grading permit as part of the wetland restoration.

- 2) Must be developed per the plans dated December 18, 2003.
- 3) The plan meets the criteria required by the WCA.
- 4) Obtain approval from all appropriate agencies, including the Technical Evaluation Panel (TEP), as assigned by the Wetland Conservation Act; and meet any conditions that would be required.

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

Allendorf moved, Gallop seconded, to recommend that the city council not require the rough grading of the trail until the city council has determined that the trail will be installed in regard to items concerning a 14-lot subdivision at 2511, 2531, and 2545 Crosby Road for Paragon Designers and Builders (03092.03a).

Allendorf withdrew his motion.

Allendorf moved, second by Gallop, to recommend that the city council approve rough grading the trail location at the same time items concerning a 14-lot subdivision at 2511, 2531, and 2545 Crosby Road for Paragon Designers and Builders (03092.03a) are completed.

Maes, Allendorf, and Hart voted yes. Bonoff, Britain, Gallop, voted no. Periolat was absent. Motion failed.

Chair Hart called for a short recess.

Chair Hart reconvened the meeting.

C. Conditional use permit for an accessory structure over 12-foot height at 3911 Colgate Avenue for Christopher and Maria McLinn (03090.03a)

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

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

Gallop asked how the construction was done without a building permit. Thomas stated that construction was started without a permit. The city received a complaint from a resident. Staff investigated and issued a stop work order.

Gallop questioned if the applicant did not apply for a permit because the applicant knew the structure would not meet ordinance requirements.

Allendorf asked if the application included a site and building plan review. Thomas answered in the affirmative. Approval of the site and building plan review is a condition of approval listed in the conditional use requirements.

Chair Hart asked how high the structure was currently. Thomas stated that the structure is 19 feet tall from the ground to its midpoint. The peak of the roof is taller. The conditional use permit would require the midpoint of the roof to be no higher than 17 feet. The roofline would be changed to a pitched roof.

Bonoff asked if a structure 12 feet tall would require a conditional use permit. Thomas answered in the negative.

Maria McLinn, 3911 Colgate Avenue, spoke on behalf of herself and her husband. She apologized for not getting a permit. They were surprised by their neighbors' opposition to the project. They were unable to reach a compromise to please everyone in the neighborhood. The applicants will abide by the planning commission's decision. If the permit is denied, they will submit plans for a structure not higher than 12 feet. They met with a structural engineer and presented a plan different from staff's recommendation. Changing the roofline to meet the staff recommendation would result in more work and, therefore, more noise to the neighborhood. They preferred the gambrel roof, but realized that it would be the biggest gambrel roof structure in the neighborhood. She reviewed staff's recommendation.

The public hearing was opened.

Rich Johnson, 3822 Brown Lane, spoke on behalf of the immediate neighbors. He stated:

- All of the neighbors are vehemently opposed to the building.
- The construction was done without a building permit from April to October of 2003.
- The building is over 640 square feet. That is three times larger than the average size detached storage in the area. It is too big.

- Reducing the height of the proposed structure by three feet and four inches would not cause a subjective difference in the height of the structure. It would prevent the use of a second story.
- Mr. Johnson stated that the landscape plan is unrealistic because of the dense shade.
- Neighbors to the south of the McLinn's property put their home up for sale. The realtor advised the homeowner that the McLinn's building decreased their property value by \$20,000. It deprived the neighbor of the privacy of their backyard and sunroom.
- Neighbors are concerned with light and noise caused by a possible future hot tub.
- Mr. Johnson provided pictures of views of the porch from 3941 Colgate Avenue, 3904 Brown Lane, 3834 Brown Lane, and the view from his residence at 3822 Brown Lane. It still appeared massive.
- Even with the revision, the height of the structure is unacceptable.
- It created a negative impact on the neighborhood.
- Twenty-six households opposed the project. One neighbor supported property owners doing what they wanted with their own property.
- Allowing the structure would set a precedent for allowing illegal structures.

Allendorf asked what took so long for the neighbors to contact the city. Mr. Johnson stated that tarps covered the structure from his view. Some neighbors thought it was a tree house.

Britain clarified with Mr. Johnson that a 12-foot high structure would be in compliance with city ordinances. Mr. Johnson stated that he would be fine if the structure met all ordinance requirements.

Maes asked Mr. Johnson to show a photograph of the structure in relation to houses in the neighborhood. Mr. Johnson stated that the structure is as tall as the houses in the area. The structure is closer to the neighbor's house adjacent to the south side of the applicant's than it is to the applicant's house.

Ina Newman, 3904 Brown Lane, south of the site, stated that she was told it would be a child's playground. In August, she commented to Chris McLinn that it was getting pretty big and he agreed. She commented again on a third occasion, but she was never informed it would be anything but a playground. It was hard to see the structure in the summer because of the leaves on the trees.

Phil Kirkagard, 3941 Brown Lane, is a contractor. He noted that the conditional use permit would allow a loft area that would only be four feet to five feet tall in

the upper level. The area would create a fire hazard and violate the building code. Only the first floor would be useable. He felt it would be silly to allow the structure to remain since it has caused so many problems and would not be able to be used for its original intent.

Britain asked for Teague's response to that comment. Teague stated that all building code requirements would have to be met. The upper level would not be included as floor area if there is less than 7 feet of clearance. There are a couple similar structures in the city that obtained conditional use permits. When asked, Thomas stated that the city has approved a few accessory structures with "upper level" storage area.

Gallop asked if a building inspector had visited the site. Thomas stated that a building inspector visited the site, but an inspection would not take place until a building permit application is received.

Ms. Zahedi, 3927 Colgate Avenue, stated that the McLinn's told her that they would have a neighborhood meeting regarding the project. There was never a meeting. The neighbors assumed that the McLinns had a permit. The building is too close to her three-season porch and bedrooms. She put her house on the market to explore her options. People viewing her residence stated that the structure was too close to her property. It decreased the value of her house and others.

No additional testimony was submitted and the hearing was closed.

Chair Hart reviewed the primary issues.

In response to Chair Hart's question, Thomas confirmed that, under the current plans, the structure would meet the setback requirement.

Gallop felt that the structure is inappropriate. He felt it caused an adverse aesthetic and economic impact on the neighbors and would, therefore, not meet the conditional use permit standards of approval. He did not support it.

Allendorf stated that the worst cases are where there is a neighborhood dispute or where one neighbor disregards the concerns of other neighbors. He felt it was out of place now and would be at 17 feet tall. It did not meet site and building plan review requirements because it is not harmonious on the property in relation to the existing house. The building may be taller than the house. He viewed the site from Brown Lane. He felt it infringed on the neighborhood's light, air, and

ambiance. The conditional use permit cannot be approved because it would not meet the requirements of a site and building plan review criteria.

Britain agreed with Gallop and Allendorf. He viewed the structure as if it had not been built. He would not have supported staff's recommendation to approve the conditional use permit, if the structure had not already been built.

Maes concurred with Britain. A proposal to construct the structure at 17 feet tall would have had issues. She did not believe that any landscaping could screen the structure. The structure would not meet the site and building plan review criteria. She did not support the application.

Bonoff and Hart concurred.

Britain moved, second by Maes, to recommend that the city council deny the resolution on pages A1–A4 of the staff report, which approves a conditional use permit for an accessory structure over 12 feet in height at 3911 Colgate Avenue due to the proposal not meeting the site and building plan criteria of being harmonious on the property in relation to the existing house; the adverse aesthetic and economic impact caused on the neighborhood; the inadequate ability of landscaping to hide the view of the structure; and the structure's blockage of light, air, and ambiance to the adjacent property owners.

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

Chair Hart stated that the city council is tentatively scheduled to review the item at its April 12, 2004 meeting.

- D. Items concerning the Discount Tire Store at 17790 State Highway 7 in the Seven-Hi Shopping Center for Discount Tire Company (90042.04a):**
- 1) Conditional use permit for an auto-related business; and a**
 - 2) Minor amendment, with site and building plan review, to the Seven-Hi Shopping Center master development plan**

Chair Hart 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.

Rich Sommer, 20225 North Scottsdale Road, Scottsdale, Arizona, applicant, was present to answer questions.

Allendorf asked what the elevation would be on the west side and what would happen there. Mr. Sommer stated that the wall would be repaired and made to look nice. All deliveries occur in the front. The tires are stored inside. There would be no reason for activity in the rear of the building.

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

Allendorf moved, second by Britain, to recommend that the city council approve items concerning the Discount Tire Store at 17790 State Highway 7 in the Seven-Hi Shopping Center for Discount Tire Company (90042.04A):

- 1) *Recommend that the city council adopt the resolution on pages A1–A5 of the staff report. This resolution approves a conditional use permit for an auto related business at 17790 State Highway 7. Approval is based on the finding that the proposal meets required conditional use permit standards.*

Approval is subject to the following conditions:

- a. No unlicensed and inoperable vehicles may be stored on premise.
- b. All repair, assembly, disassembly, and maintenance of vehicles must be conducted within the closed building.
- c. There must be no public address system or business related noise audible from adjacent residential property lines.
- d. No sales, storage, or display of used automobiles may occur on the site.
- e. A separate sign permit application must be submitted for staff review. Any proposed sign must meet conditions outlined in the Seven-Hi sign covenants.
- f. Record this resolution with the county before the city issues a building permit.
- g. The city council may reasonably add or revise conditions to address any future unforeseen problems.

- h. 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.
- i. The applicant must agree to the above conditions in writing.
- 2) *Recommend that the city council approve the minor amendment to the Seven-Hi master development plan, with site and building plan review for an auto-related business at 17790 State Highway 7. Approval is based on the finding that the proposed façade change meets all site and building plan standards.*

Approval is subject to the following conditions:

- a. Construction and development must be in substantial conformance with the following plans unless modified by the conditions below:
 - Site Plan dated stamped February 4, 2004
 - Building Elevations date stamped January 20, 2004
 - Floor plans date stamped January 20, 2004
- b. Building materials and colors must compliment the existing building.
- c. A separate sign permit application must be submitted for staff review and approval. Any proposed sign must meet the conditions outlined in the Seven-Hi sign covenants.

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

9. Other Business

- A. Review of planning commission by-laws and policies.

Maes moved, Allendorf seconded, to readopt the attached bylaws and policies, with any changes.

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

10. ADJOURNMENT

*Britain moved, second by Gallop, to adjourn the meeting at 10:05 p.m.
Motion carried unanimously.*

By: _____

Lois T. Mason
Planning Secretary