

**MINNETONKA PLANNING COMMISSION
MINUTES**

APRIL 15, 2004

1. CALL TO ORDER

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

2. ROLL CALL

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

Staff members present: Planning Director Geoff Olson, 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 with modifications listed in the change memo dated April 15, 2004.

4. APPROVAL OF MINUTES: April 1, 2004

Gallop moved, second by Maes, to approve the April 1, 2004, meeting minutes as submitted with the changes from the change memo dated April 15, 2004 and as follows:

Change the vote on page 9, concerning the Bantas Point variances, as follows:

Allendorf, ~~Britain~~ Bonoff, Gallop, Maes, and Hart voted yes. Periolat and ~~Bonoff~~ ~~Britain~~ voted no. Motion carried.

Allendorf, Bonoff, Britain, Gallop, Maes, 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 April 12, 2004:

- Adopted a resolution approving the preliminary and final plat to divide one lot into two lots at 15509 Excelsior Boulevard for Gary D. Bebeau.
- Approved the site and building plans for the public building and shelters at Gro Tonka Park at 3201 Beverly Place.

- Adopted a resolution approving a conditional use permit for an auto-related business at 17790 State Highway 7 in the Seven-Hi Shopping Center for a discount tire company.
- Adopted an ordinance rezoning 2201 Crosby Road from R-1, low density residential, to planned unit development, and adopting a master development plan with the following: wetland setback variances from 20 to 10 feet for the public street; wetland buffer variances from 50 to 30 feet from the preserve wetland, and from 25 to 10 feet for the driveway for Lot 21; and final site and building plans approving the proposed development of 25 single-family homes at 2201 Crosby Road (Cargill property) for Keith Waters & Associates, Incorporated. Councilmembers were impressed with the project's preservation of the environmental features of the area, were very supportive of the trail, and felt that the house placement was innovative.
- Adopted a resolution approving items concerning a 14-lot subdivision at 2511, 2531, and 2545 Crosby Road for Paragon Designers and Builders. There was a great deal of discussion on this item. Councilmembers favored a more creative plan to preserve trees. Legally, it felt obligated to approve the project. The approval included three different trail plans that the city would work with the applicant to implement the best one.

Olson encouraged commissioners to attend the upcoming land use/planning workshop and to contact the planning department to register.

Olson announced that a study session is scheduled for May 6, 2004 at 5:30 p.m. in the Gray's Bay Room with the city attorney.

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.

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

- A. Resolution approving a side yard setback variance from 7 feet to 2 feet for an addition over an existing garage at 17012 Gray's Bay Boulevard for Steve Erickson (04014.04)**

Adopt the resolution on pages A1–A3 of the staff report. This resolution approves a side yard setback variance from 7 feet to 2 feet at 17012 Gray’s Bay Boulevard, 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 small lot size of 5,817 square feet.
 - b. The existing home encroaches into the required side yard setback.
- 2) The variance would be consistent with the spirit and intent of this ordinance for the following reasons:
 - a. The addition would not encroach into the setback any further than the existing structure.
 - b. There would be no increase in impervious surface.

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 addition must be fire rated. A one-hour fire rating would include removal of the window.
- 3) 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.

B. Resolution approving a front yard setback variance from 35 feet to 29 feet for a garage and family room addition at 12929 Stanton Drive for Mark and Anne Tremel (04011.04a)

Adopt the resolution on pages A1–A3 of the staff report. This resolution approves a front-yard setback variance from 35 feet to 29 feet at 12929 Stanton Drive, based on the following findings:

- 1) Strict enforcement would cause undue hardship because of the following circumstances that are unique to this property:

- a. Lot functions as a corner lot, but does not qualify as one, receiving no exceptions to the setback rule.
- 2) The variance would be consistent with the spirit and intent of this ordinance for the following reasons:
 - a. There will be no adverse impact on neighboring properties.
 - b. If this were a corner lot, the setback requirement would be met.

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) 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.

C. Resolution approving a conditional use permit, with variance for a medical clinic, at 12455 Ridgedale Drive for the Rottenberg Companies, Inc. (04016.04a)

Recommend that the city council adopt the resolution on pages A1–A4 of the staff report. This resolution approves a conditional use permit to allow a medical clinic at 12455 Ridgedale Drive, and a variance to allow a medical clinic adjacent to residential property. Approval is based on the following findings:

- 1) With the exception of a medical clinic located adjacent to residential property, the proposal meets the required conditional use permit standards.
- 2) The proposal meets the required standards for a variance, because:
 - a. The applicant is proposing to use the property in a reasonable manner.
 - b. The variance would meet the intent of the ordinance because the existing building is located nearly 300 feet from the nearest single-family home, and is screened by mature trees.
 - c. There would be no impact on the adjacent residential property.

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) If parking becomes a significant problem, the 10 "proof of parking stalls" must be constructed.
- 4) 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.
- 5) The applicant must agree to the above conditions in writing.

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

8. PUBLIC HEARINGS

A. Items concerning a five-lot subdivision at 4701 and 4717 Williston Road for Michael J. Leuer (04012.04a):

- 1) Rezoning from R-1, low-density residential to PUD, planned unit development; and**
- 2) Preliminary plat.**

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

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

Bonoff asked if the line of trees at the back of the site would be preserved. Olson explained that the back area would be a drainage swale. Grading would require the removal of the trees. The quality of the rear trees is not as good as the trees located in the front that would be preserved. Bonoff asked what the appearance

of the drainage pond would look like. Olson explained that the neighbors would benefit from the proposed drainage plan and decrease the amount of runoff.

Charlie Melcher, Quality Sight Design, Plymouth, stated that staff's report was accurate in regard to drainage and ponding. He described the drainage pattern. The runoff would be reduced by 50 percent.

Chair Hart clarified that the properties north of the site currently drain onto the proposed site, but the proposal would direct it to the retention pond. Mr. Melser agreed. The water quality, flood control, and release rate would equal what it does today.

Gallop asked if the proposed residences would be sized similar to the neighboring residences. Mr. Melcher's understanding was that the proposed residences would be similar in size and value.

The public hearing was opened.

Cynthia Lap, 4616 Williston Road, noticed that there is a tremendous amount of foot traffic on the west side of Williston Road where there is a sidewalk. It would be great if there would be a destination, like a park, for the pedestrians. If the proposed site was not possible, she favored locating a park behind Famous Dave's where the city owns land by the water tower.

Allendorf stated that that land is already designated as a passive city park. Ms. Lap supported the property being enhanced. Chair Hart encouraged Ms. Lap to share her suggestions with the Park Board.

John Clark, 14707 High Tower, indicated where the woods were located. He was pleased to hear that the revised plan would preserve woods on the perimeter. Chair Hart explained that the woods he indicated would be included in a conservation easement.

Mr. Clark stated that it appeared that most of the 40-foot wide woods would be preserved. Colleran indicated that 10 feet to 15 feet of the northern edge of trees would be removed.

Svetlana Madzar, 14618 Foxborough, stated that the current woods does not provide a good shield as it is right now. Colleran stated that the conservation easement would protect trees that are healthy and structurally sound. There is no buffer requirement between single-family residences. The trees on the south side

of the property are primarily box elder and elm trees. The southwest corner has a couple nice oak trees.

Ms. Madzar asked what construction workers would do to protect neighbors from the noise and mess. Olson stated that erosion control fences would be required and fences would be located around trees to be protected. Staff conducts inspections during construction.

Ms. Madzar stated that her residence is one story. She questioned the maximum height restriction. Olson responded that the maximum height allowed would be 35 feet for a single family home.

No additional testimony was submitted and the hearing was closed.

Allendorf asked to be reminded of the size of the property. Chair Hart stated that it is 3.3 acres. Olson clarified that the gross acreage is 3.3 acres. The net acreage is 2.7 acres to 2.8 acres. Allendorf reviewed comments that opposed the proposal unless it would consist of half-acre lots.

Chair Hart reviewed the primary issues.

Chair Hart felt the redesigned planned unit development was nicely done. It protected as much of the environmental features as possible while creating five nice lots.

Britain moved, second by Allendorf, to recommend that the city council approve items concerning a five-lot subdivision at 4701 and 4717 Williston Road for Michael J. Leuer (04012.04a) with the modifications listed in the April 15, 2004 Change Memo:

- 1) *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 4701 and 4717 Williston Road. This ordinance is based on the following findings:*
 - a. The rezoning would be consistent with the city's guide plan.
 - b. The rezoning would be consistent with the public health, safety, and welfare.
 - c. 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:

- a. The site must be developed and maintained in substantial conformance with the following plans, unless modified by the conditions below:
 - Preliminary Plat, dated March 22, 2004
 - Grading and Drainage Plan, dated March 22, 2004
 - Utility Plan, dated March 22, 2004
 - Tree Plan, dated March 22, 2004

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

2) *Recommend that the city council give preliminary approval to the Williston Glen plat, dated March 22, 2004. Approval is based on the following findings:*

- a. The proposal meets the required standards and ordinances for a preliminary plat.
- b. The proposal meets the required standards and ordinances for a planned unit development.

Approval is subject to the following conditions:

- a. Complete the following before final plat approval:
 - (1) Show the following on the final plat:
 - a) 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.
 - b) Utility easements over existing or proposed public utilities, as determined by the city engineer.
 - c) Drainage and utility easements over storm water ponds, as determined by the city.
 - (2) Pay the city a park dedication fee of \$7,125.

- (3) Submit evidence of watershed district approval. The city may require revisions to the preliminary plat to meet the district's requirements.
 - (4) If the developer is petitioning the city to construct the public improvements, the city council must order the improvements.
- b. The following items must be submitted to the city before the city releases the final plat:
- (1) An engineering/utility inspection fee.
 - (2) An electronic CAD file of the final plat in micro-station or DXF.
 - (3) 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.
 - (4) The following documents for the city attorney's approval:
 - a) Title evidence that is acceptable to the city attorney. Title evidence must be current within thirty days before release of the final plat.
 - b) Conservation easements over the tree protection areas, including a drawing of the easements for the approval of the city attorney.
 - c) 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.

- c. The following must be completed before the city issues a grading permit or any site work is started:
 - (1) 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 environmental resources coordinator.
 - (2) The items listed in the construction management plan must be installed and inspected by the city's environmental resources coordinator.
 - (3) 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.
 - (4) 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.

- d. The following must be submitted to the city before the city issues a building permit:
 - (1) A grading and tree preservation plan for each lot subject to staff approval.
 - (2) 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.

- (3) A copy of the recorded plat and any easements, covenants, and any other homeowners' document required to be recorded for the development.
- 4) All required hookup fees for sewer and water.
- 5) 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.
 - e. The floor area ratio and hard surface coverage each may not exceed 50% of the site area.
 - f. The conservation easements must be maintained in accordance with a conservation plan approved by the city.
 - g. During construction, the streets must be kept free of debris and sediment, and the tree protection fencing and erosion control fencing must be maintained.
 - h. All existing structures must be removed from the site.
 - i. All driveways must access the new street.
 - j. 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.
 - k. 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.
 - l. The applicant must arrange for the city to have access to the site prior to any site disruption to photograph the house.

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

- B. Items concerning a proposal to build a car wash at 3864 Hopkins Crossroad for LMV Corporation (86088.04a):**
- 1) Resolution approving a comprehensive guide plan amendment from O, office to C, commercial;**
 - 2) Ordinance approving a rezoning from B-1 Office to B-2 Limited Business;**
 - 3) Conditional use permit;**
 - 4) Site and building plan review with variances; and**
 - 5) Vacation of existing right-of-way.**

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

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

Gallop asked how the flow of traffic would affect the access. Olson explained how the drive would be connected to the drive of the Mobile station. The exit would be onto the Minnetonka Mills Road. The inflow would enter at the Hopkins Crossroad side.

Bonoff asked if the business community provided responses. Olson answered in the negative. He stated that one response in opposition to the project was received from a resident.

Gallop asked what restrictions would be implemented to prevent the noise from the car wash being heard by the townhouses on the north. Olson stated that County Road 73 probably creates more noise from the traffic than the car wash would. The Pollution Control Agency noise standards would be enforced and sound measurements may be taken. A condition of approval would require the car wash doors to remain closed during all cycles. Other car washes with that requirement have caused no problems.

Paul Malenberg, Croix Oil Company, the landowners of the property, applicant, provided a history of the site. When Minnetonka Mills Road was reoriented, it hurt the business. Hopkins Crossroads added a median that cut off the left-in traffic access and further damaged the access. So, over the last few years, he tried to come up with a plan to provide services to the loyal customers of the area. The type of car wash he selected would allow the doors to be closed during the entire process.

Mr. Malenberg stated that Olson correctly identified the entrance. He provided specific curb modifications and the traffic flow pattern.

Mr. Malenberg introduced Ron and Lydia Velandar, LMV Corporation, who own and operate the business, Kevin Koenig, from Croix Oil Company, the general contractor, and the car wash equipment person who were present to answer questions.

Ron Velandar, 301 Traverse Pass, Chanhassen, owner of Crossroads Mobile, stated that he and his wife, Lydia, own two stations in Minnetonka. He has a history in the gas station business since he was 16 years old. He owned an accounting firm that specialized in gas station business. He felt the proposal would improve the services provided at the proposed location.

Chair Hart asked when he anticipated beginning construction. Mr. Velandar stated that the construction schedule calls for demolition of the existing building on May 3, 2004.

Allendorf asked if the car wash would blend in visually with the Mobile station. Mr. Velandar answered in the affirmative. The car wash would have the same face brick to be architecturally compatible. Allendorf felt the proposal would be an improvement for the site. Currently, the little building sticks out on the corner. He was pleased to hear the two would be aesthetically improved.

Mr. Velandar stated that the brick would be tan. He provided a sample. A maintenance free paint would be used. The store would be painted to match the car wash.

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

Chair Hart reviewed the primary issues.

Allendorf moved, second by Maes, to recommend that the city council approve the following items concerning a proposal to build a car wash at 3864 Hopkins Crossroad for LMV Corporation (86088.04a):

- 1) *Recommend that the city council adopt the resolution on pages A1–A2 of the staff report, which amends the guide plan from O, office, to C, commercial. This resolution is based on the following findings:*

- a. The guide plan change would be consistent with the adjacent land uses to the east west and south.
 - b. With the realignment of Minnetonka Mills Road, this property is now located on the south side of the road.
 - c. The land use pattern would be all commercial on the south side of Minnetonka Mills Road.
 - d. The guide plan change would be consistent with the public health, safety, and welfare.
- 2) *Recommend that the city council adopt the ordinance on pages A3–A5 of the staff report. This ordinance approves a rezoning from B-1, office, to B-2, limited business, at 11208 Hopkins Crossroad. This ordinance is based on the following findings:*
- a. The rezoning would be consistent with the city’s guide plan.
 - b. The rezoning would be consistent with the public health, safety, and welfare.
 - c. The rezoning would be consistent with adjacent land uses to the south, east and west.
- 3) *Recommend that the city council adopt the resolution on pages A6–A9 of the staff report. This resolution approves a conditional use permit to allow the car wash. Approval is based on the following findings:*
- a. The proposal meets the required conditional use permit standards.

Approval is subject to the following conditions:

- a. Record this resolution with the county before the city issues a building permit.
- b. The city council may reasonably add or revise conditions to address any future unforeseen problems.
- c. The car wash doors must remain closed during all cycles of the wash.

- d. A double row of spruce trees must be planted along Minnetonka Mills Road. Final landscape plan shall be subject to review and approval of city staff.
 - e. 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.
 - f. The applicant must agree to the above conditions in writing.
- 4) *Approve the site and building plans for the car wash, with front yard setback variances from 50 feet to 33 feet off Hopkins Crossroad and from 50 feet to 28 feet off Minnetonka Mills Road; and drive aisle setback variances from 20 feet to 1 foot and 20 feet to 10 feet variance. Approval is based on the following findings:*
- a. The proposal would meet the required standards and ordinances for a site and building plan approval.
 - b. The proposal would meet the required standards for a variance, because:
 - (1) There is a unique hardship to the property caused by reconfiguration of Minnetonka Mills Road, the utility easements located in the middle of the site, and Hennepin County have taken additional right-of-way for roadway improvements to Hopkins Crossroad.
 - (2) The variance would meet the intent of the ordinance because the proposed building would be setback further than the existing building.

Approval of the site and building plans is subject to the following conditions:

- a. Subject to staff approval, the site must be developed and maintained in substantial conformance with the following plans, unless modified by the conditions below:
 - Site plan dated February 2, 2004
 - Landscaping plan dated February 5, 2004
 - Building elevations date stamped February 9, 2004

- b. The following must be submitted to the city before the city issues a building permit:
 - (1) A final landscape and irrigation plan for staff approval. Plans must include a double row of spruce trees planted along Minnetonka Mills Road.
 - (2) Submit a final grading plan subject to review and approval of the city engineer. The plans must include on-site ponding in the green space area south of the car wash. Additionally, catch basins or trench drains must be located at the car wash exit.
 - (3) A letter of credit or cash escrow for 150% of the estimated cost of all required landscaping.
 - (4) An illumination plan for staff approval.
 - (5) All required hook-up fees.
 - c. The property owner is responsible for replacing any required landscaping that dies.
 - d. 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.
 - e. Approval does not include the signs shown on the drawings. Separate permits are required from staff.
 - f. Construction must begin by December 31, 2005, unless the planning commission grants a time extension.
- 5) *Recommend that the city council hold the public hearing and adopt the resolution vacating the public right-of-way, subject to retaining drainage and utility easements over the right-of-way to be vacated.*

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

Chair Hart stated that the city council is tentatively scheduled to review the application at its April 26, 2004 meeting.

C. Items concerning a proposed development of 6 single-family homes at the vacant property at the end of 34th Circle West for Curt Fretham (02018.03):

- 1) Rezoning from PURD, planned unit residential district to PUD, planned unit development, with a master development plan;**
- 2) Preliminary plat; and**
- 3) Right-of-way vacation of 34th Circle West.**

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

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

Allendorf asked for specifications regarding the requirements of the off site affordable housing requirement. Olson acknowledged that the city preferred affordable housing being created with new construction. There would be a concern that a moderate priced residence would be made into affordable housing and that the moderate priced residence would be lost in the trade off.

Allendorf pointed out that the developer would have an interest in making the affordable unit match the overall development. If the affordable housing requirement would be allowed off site, a developer could pick a substandard lot and construct a residence that would not be what it would have been had it been included in the proposed development. He understood that the economic development authority had jurisdiction over the economic aspect, but the planning commission has a responsibility to consider the impact imposed on the planning aspect.

Chair Hart agreed that it was an excellent point and favored making sure that the Economic Development Authority investigated the situation thoroughly and puts together a recommendation to address those issues. Olson explained that he attempted to keep the commissions borders separate and that he was not familiar with the negotiations that have already taken place.

Chair Hart preferred the affordable housing unit be located in the proposed development.

Maes asked Colleran if the wetland would continue to increase in size. Colleran explained that the storm water pond on the west side would help alleviate the drainage issues for the area. The wetland would not increase in size dramatically enough to effect the proposed development.

Chair Hart asked if the two storm water ponds would improve the quality of the wetland. Colleran stated that the nutrient and sediment loading would decrease, but the quality might not improve. It would depend on the internal loading that is currently occurring. The amount of external loading would be diminished, but the internal quality might not be improved. Chair Hart confirmed with Colleran that the wetland's quality would, at least, not become worse.

Britain asked why staff recommended approval of the proposal when five of the six lots do not meet the 15,000-square-foot minimum lot size requirement for a planned unit development. Olson stated that six lots were previously approved in 1978, so the site has the approval to create six lots.

Bonoff asked Olson to review the sizes of the lots. Olson stated that the lot sizes ranged from 11,000 square feet to 21,000 square feet. He invited the applicant to provide the specific measurements. Bonoff reviewed each lot's size. She questioned if the approval in 1978 was for the same type of housing. Olson stated that the other plan approved two twin homes, but the feedback from the neighborhood indicated a preference for the single-family residences.

Bonoff understood why removal of some of the trees would be allowed to provide a view of the golf course.

Gallop asked if the size of the garages compared to the size of the residences was a concern. Olson answered in the negative. He welcomed commissioners' input. Gallop was a little concerned that three-car garages would appear dominant compared to the residences, but he understood that three stalls would allow for storage of items that would otherwise be kept outside. Olson stated that two of the lots would have side-loaded garages that would minimize the view. He agreed that the lots would be small, but that would also be a reason to provide more storage. Gallop agreed.

Dan Kelly, 220 South 6th Street, Minneapolis, attorney for Curt Fretham, thanked Olson and staff for working hard to put the presentation together. He stated:

- The site was buildable in a manner not preferred by the neighborhood, the developer, or the city.
- A plan was negotiated to be a win for the developer, neighborhood, and city.
- There would be an affordable housing component with the proposed plan, but there would not be one with the plan approved in 1978. The choice would be to locate the affordable housing component on another site or not have one at all. It would be a newly constructed unit.
- The proposal would be a win for tree conservation and improve the current drainage issues.
- The affordable housing specifications would be developed prior to the city council meeting. The developer would appreciate a definition of what the affordable housing unit would entail as well.
- One building permit would be retained to make sure that one lot would be available if the developer would be unable to locate the affordable housing unit on another site. At the end of a two-year period, if the new affordable housing unit has not been offered to the city or its designee, the remaining lot would be turned over to the city to be used for an affordable housing unit.
- He felt the requirement allowing only one certificate of occupancy before a purchase agreement for the affordable housing site is entered into would be overkill. He felt that clause might have the effect of postponing construction on the entire development.
- He requested the planning commission approve the proposal with the recommendation that some alternative method of securing the affordable housing unit be used, rather than withholding the certificate of occupancy.
- The developer hoped to begin construction as soon as possible.
- From a practical standpoint, it would be difficult for a lending institution to approve a construction loan if the certificate of occupancy would be held up.

Allendorf acknowledged that the commissioners and Olson were not involved in the negotiations regarding the affordable housing unit. He was aware that the city councilmembers would view the planning commission meeting and discuss the issue with the pertinent entities.

Chair Hart stated that the economic development authority and the city council were handling the affordable housing aspect of the proposal.

Mr. Kelly felt that the materials included a good description of the affordable housing negotiations. He felt the commission should consider the affordable

housing aspect because it does impact what the economic development authority does. The timeliness of the completion of the plan is appropriately before the planning commission. If there had been something done that impacted the timeliness of the completion it would be appropriate for the commission to address it in its recommendation. He requested that the planning commission ask that the provision restricting the issuance of the certificate of occupancy be looked at.

Chair Hart stated that the planning commission reviews a proposal as it is presented and tries hard not to make recommendations regarding areas where it does not have all of the information.

Gallop concurred with Allendorf. He felt the requirement would be a strong incentive for the developer to take action to complete the affordable housing unit. He supported the requirement.

Maes agreed with Gallop.

The public hearing was opened.

Chris Novak, 10327 West 34th Circle, the neighbor immediately to the north on the west side of the proposed development, stated that he met with the developer and felt he has been quite good. The plan that could have been built was not terribly exciting. He preferred six single-family units. He had no understanding of affordable housing, but he felt the area had enough multiple family housing and that the affordable housing would be incongruent with the large, new residences.

Maes stated that an affordable housing unit would be sold for \$170,000. The developer would make the unit look like the other units as much as possible. The amenities would not be quite the same, but it would not be subsidized housing. Chair Hart stated that the new met council guidelines qualified affordable housing to be priced at \$190,000.

Mr. Novak felt the neighborhood was "questionable" already. His house has 700 square feet.

Maes thanked the developer and neighbors for working together to agree on a proposal that would work best for the neighborhood. Mr. Novak said it had been a good process so far.

No additional testimony was submitted and the hearing was closed.

Chair Hart reviewed the primary issues.

Britain was not a fan of lots smaller than 15,000 square feet, but certainly the history of the project and the character of the neighborhood would indicate that it would be justified. The affordable housing would be a benefit. He supported the project.

Gallop moved, second by Bonoff, to recommend that the city council approve the following items concerning a proposed development of six single-family homes at the vacant property at the end of 34th Circle West for Curt Fretham (02018.03) with the modifications listed in the change memo dated April 15, 2004:

- 1) *Recommend that the city council adopt the ordinance on pages A1–A5 of the staff report, which approves the proposed rezoning (to Planned Unit Development) and the master development plan. This ordinance is based on the following findings:*
 - a. The proposed use is consistent with the existing land uses on adjacent properties.
 - b. The rezoning is consistent with the guide plan designation.
 - c. Under specific conditions the plans protect wetlands on the site, and would provide tree protection through permanent conservation easements.
 - d. The proposed development would not have an adverse impact on neighborhood traffic or property values.

This rezoning and master development plan is 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:
 - Site plan date-stamped December 23, 2003
 - Grading plan date-stamped December 23, 2003
 - Utility plan date-stamped December 23, 2003
 - Preliminary Plat date-stamped December 23, 2003

- b. The following must be completed before the city issues a grading permit or before starting any site work:
 - (1) The installation and maintenance of a temporary rock driveway, erosion control, and tree and wetland protection fencing for each lot, subject to review by the city's environmental resources coordinator.
 - (2) Final site, grading, drainage, utility, and erosion control plans must be approved by city staff. Final plans must include the following revisions:
 - a) Building pads must be outside the required conservation easements to protect the trees along the west lot line.
 - b) The driveways relocated on Lots 1 and 2 of Block 2 to avoid the large oak tree in the front yard. This tree must be preserved and protected during construction.
 - c) Low floor elevation must be 2 feet above the high water elevation.
 - d) A swale with its centerline a minimum of 10 feet away from each of the three homes west of 34th Circle, to direct drainage along the rear and side yards into the stormwater retention areas.
 - (3) Submit stormwater calculations, and revise plans accordingly, to provide adequate water quality treatment in the stormwater retention areas per the requirements of the Water Resources Management Plan.
 - (4) Submit a letter of credit, cash escrow, or other form acceptable to the city attorney for the estimated cost to comply with grading permit requirements. 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 grading has been completed according to the plans approved by the city. The amount must be 150% of the estimated cost of the improvements or 125% of the cost if based on actual bids.

- (5) Submit a letter of credit or cash escrow, or other form acceptable to the city attorney for the estimated cost to maintain or restore the wetland buffer. The amount must be 150% of the estimated cost of the improvements or 125% of the cost if based on actual bids.
 - (6) Fence all trees and vegetation to be preserved and install erosion control measures for staff approval.
 - (7) Submit a construction management plan for staff approval.
 - (8) If required, submit copies of the watershed district permit, NPDES permit, and county permits for driveways and utility connections. The city may require revisions to the approved plans to meet these agencies' requirements.
 - (9) All delinquent utility bills must be paid.
 - (10) Submittal of the wetland delineation report, subject to review and approval of staff.
- c. The following must be completed before the city issues a building permit:
- (1) The installation and maintenance of a temporary rock driveway, erosion control, and tree and wetland protection fencing for each lot must be installed, subject to review and approval of the city's environmental resources coordinator.
 - (2) A hookup fee for sanitary sewer and water.
 - (3) 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.
 - (4) A copy of the recorded plat and any easements or covenants required to be recorded.

- d. A restrictive covenant in a form acceptable to the city attorney providing that one housing unit, to be located within the City of Minnetonka, must be built and sold to the city or an affordable housing organization designated by the city. The unit would be sold at a cost not exceed the Metropolitan Council's definition of affordable housing, as it exists at the time of offering. If the unit is not sold to the city or affordable housing organization it must be subject to resale indexing covenants approved by the city council. This unit must be built and sold within 2 years from the date of final plat approval, or if not, one lot within this development will be automatically transferred to city ownership. The city must approve specifications for the construction of the affordable unit. No building permit will be issued for one of the lots, until the off-site affordable unit is built and sold to the city or an affordable housing organization designated by the city. Only one certificate of occupancy may be issued for this development before a purchase agreement for the affordable unit is executed.
 - e. Minimum floor elevations must be 2 feet above the high water elevation.
 - f. The floor area ratio and hard surface coverage each may not exceed 50% of the site area.
 - g. Construction must begin by December 31, 2005, unless the planning commission grants a time extension.
 - h. During construction, the streets must be kept free of debris and sediment, and the tree protection fencing, and erosion control fencing must be maintained.
- 2) *Recommend that the city council give preliminary approval to the Curt Fretham plat, date-stamped December 23, 2003.*

Approval is subject to the following conditions:

- a. Complete the following before final plat approval:
 - (1) Show the following on the final plat:
 - a) 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.

- b) Utility easements over existing or proposed public utilities, as determined by the city engineer.
- (2) Submit evidence of watershed district approval. The city may require revisions to the preliminary plat to meet the district's requirements.
 - (3) All delinquent utility bills must be paid.
 - (4) Submittal of the wetland delineation report, subject to review and approval of staff.
- b. The following items must be submitted to the city before the city releases the final plat:
- (1) An engineering/utility inspection fee.
 - (2) An electronic CAD file of the final plat in microstation or DXF.
 - (3) The following documents for the city attorney's approval:
 - a) Title evidence that is acceptable to the city attorney. Title evidence must be current within thirty days before release of the final plat.
 - b) 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.
 - c) Conservation easements must be recorded over the area identified on page A20 of the planning staff report. This easement would prevent trees along the west lot lines from being removed, unless they are dead or diseased. With the exception of the trees circled on page A20a of the planning staff report; Lot 1 may remove an 3 additional trees within the easement; Lot 2 may remove 2

additional trees within the easement; and Lot 3 may remove 3 additional trees within the easement. Property owners must contact city staff before removal of any tree within the conservation easement area; this will enable staff to keep track of the number of trees removed.

- d) Conservation easements must also be recorded over the wetland buffer area 25 feet out from the wetland on Lot 3, Block 2. The easement must require this area to be left in the natural condition; lawns would not be permitted in this area.

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

- (4) A restrictive covenant in a form acceptable to the city attorney providing that one housing unit, to be located within the City of Minnetonka, must be built and sold to the city or an affordable housing organization designated by the city. The unit would be sold at a cost not exceed the Metropolitan Council's definition of affordable housing, as it exists at the time of offering. If the unit is not sold to the city or affordable housing organization it must be subject to resale indexing covenants approved by the city council. This unit must be built and sold within 2 years from the date of final plat approval, or if not, one lot within this development will be automatically transferred to city ownership. The city must approve specifications for the construction of the affordable unit. No building permit will be issued for one of the lots, until the off-site affordable unit is built and sold to the city or an affordable housing organization designated by the city. Only one certificate of occupancy may be issued for this development before a purchase agreement for the affordable unit is executed.
 - c. 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.
- 3) *Recommend that the city council vacate 34th Circle West right-of-way.*

Approval is based on the following findings:

- a. There is no need for a street connection to the property to the east.
- b. The petitioners are owners of the land abutting said easements and, therefore, are proper petitioners.
- c. The city no longer needs said easements.
- d. Vacating said easements is in the public interest.

Approval is subject to the following conditions:

- a. Retaining drainage and utility easement per the preliminary plat.

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

D. Items concerning 12918, 12910, and an unaddressed property on Rutledge Circle for Thomas and Patricia Harris (04005.04a):

- 1) **Request to relocate an existing sanitary sewer line; and**
- 2) **Preliminary plat with the following variances:**

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

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

Jeff Martino, 201 East Lake Street, Wayzata, represented Tom and Patricia Harris, applicants, and stated that the site does have existing hardships. He stated that:

- Tom and Patricia Harris live in the existing house. Patricia's sister has rheumatoid arthritis.
- The adjacent property owner approached the Harris' and stated that if the properties were combined a home site could be created.
- Staff told the Harris' that the sewer line could be relocated, at the Harris' expense.

- The property was surveyed and it was determined that the property could be built on without a variance if the sewer line was moved. The sale of the land was closed.
- He hoped that a solution could be reached that would include tree preservation and restoration of vegetation.
- Soil testing would be done and the wetland would be protected.
- He was surprised that staff made a recommendation to deny the proposal.
- The proposal was not being done for profit. It was being done to create housing for a property owner that has done their homework.
- It is not a fair shake to say that the proposal would not fit with the neighborhood. The lines do not illustrate the open spaces that would remain.
- He requested that the planning commission provide favorable insight as the application goes to the city council and that there might be a possibility of tabling the item to give staff time to revisit the application. He had not seen a recommendation for denial before. He always worked with applicants to complete their homework and he felt that the Harris' did that.

Chair Hart asked Mr. Martino if he wanted to withdraw the application to allow time for him to meet with staff. Mr. Martino stated that he had had numerous conversations with Teague, who he really respects, and he thinks the world of the planning staff, but he was unsure if there was much room left for negotiation. He hoped that there would be a favorable outcome. He did not want to waste the planning commission's time, staff's time, and the applicant's time.

Maes asked what the hardship is for the site. Mr. Martino stated that the applicants have a need for a family member who needs one level housing. The property was purchased based on statements the applicants received by doing their homework. He hoped the planning commission and city council would consider that hardship.

Gallop appreciated the problem, but he was unsure if that qualified as a hardship for a variance. Olson explained that the property itself had to have the hardship, not oriented to individual circumstances. Gallop empathized with what happened, but it would not meet the legal hardship requirement.

Allendorf stated usually such purchases of property are contingent on the city approving the use. To receive comments from one or two staff members and then make a monetary commitment is taking a risk.

Mr. Martino believed that calculated risks are necessary at times. The applicants were in a position where they had done their homework. They talked to city staff

and sought out the people who engineer the sewer lines. He has been in the real estate business for 27 years. He understood and agreed with Allendorf wholeheartedly, but he was surprised to learn that moving the sewer line was non-negotiable. He instructed the applicants to meet with a surveyor to make sure a residence could be constructed without a variance and they did. In reality, there is only so much time one can act on contingency until one has to make good on the purchase. The applicants felt that moving the sewer line was the issue that would not be a problem. After meeting with engineering, completing a wetland delineation and wetland verification, having a couple meetings with Teague, and completing another meeting with the city engineer regarding the sewer line, they felt confident to making the purchase. He asked if there would be a way the item could be revisited and supported by the city.

Allendorf did not see the sanitary sewer line as the big issue. The application requires three variances. Lot 1 would require a big lot size variance from 22,000 square feet to 13,660 square feet. The sanitary sewer line was not an issue for him. He felt too much was being proposed for a property with not enough buildable area.

Mr. Martino stated that the applicant presented a plan that would not require any variances to staff. Staff said that the first proposal met all of the criteria, but suggested the changes. He did not blame staff. There were a lot of stops on the way.

Chair Hart asked if an accessory apartment was considered rather than a separate residence. Mr. Martino stated that other options had not been explored.

Bonoff asked if he had found a plan that would make it possible to locate a residence on the lot that would not require any variances and would not require the sewer line to be moved. Mr. Martino answered in the negative.

The public hearing was opened.

Cynthia Devore, 12937 Stanton Drive, stated that she and her husband bought their house in October of 1999. They lived in Minnetonka for one year prior to purchasing the residence to try to determine where they wanted to live. They picked the area because of its wetland and wildlife character. She favored preserving the wetlands and the trail along the Harris' property. In the event of an emergency, the trail would serve as a road. Her street ends in a cul-de-sac. She wanted to know if a new path would be installed.

Chair Hart confirmed with Thomas that the wetland would not be changed. All the requirements to protect the wetland would be met. Thomas stated that there is no trail easement for the path.

Ms. Devore stated that the sewer line would require maintenance if it would be moved. She received a settlement from a sewer pipe that broke because it had not been maintained properly in Ohio. She did not want to see that happen again.

Chair Hart clarified that the path is not an official trail. The city has no authority over the path. It exists on private property.

Ann Tremel, 12929 Stanton Drive, was sympathetic to the Harris' situation, but the residence would be located adjacent to her backyard. She questioned what would happen when the residences were sold and who would move in. She preferred the lot stay the way that it is. She preferred adding onto the existing residence.

No additional testimony was submitted and the hearing was closed.

Chair Hart reviewed the primary issues.

Britain agreed with Allendorf viewing the size of Lot 1 as the biggest problem with the proposal. The neighborhood does not have small lots. It was not acceptable. An accessory apartment would make the most sense to help a relative. As a project, he agreed with staff's recommendation.

Allendorf agreed with Britain. Allendorf stated that an accessory apartment has a special definition in the building code. The expansion of the residence could happen without any accessory apartment restrictions; would not need a variance; and would make use of the newly acquired property. He felt the applicant had other options rather than needing a variance and moving the sewer line. He supported staff's recommendation.

Maes concurred with Allendorf. An accessory apartment would require a conditional use permit. It would be an easier process to expand the residence. The new lots added to the original would provide a lot of buildable space. The variances bothered her the most.

Gallop moved, second by Maes, to recommend that the city council deny the items concerning 12918, 12910, and unaddressed property on Rutledge Circle for Thomas and Patricia Harris (04005.04a):

- 1) *Recommend that the city council deny the request to relocate an existing sanitary sewer line. Denial is based on the following findings:*
 - a. The grading necessary to relocate the sewer line would result in tree and vegetation removal.
 - b. The proposed relocation would move the utility line closer to the site's wetland. Soil correction to accommodate the line may negatively affect the hydrology of the wetland.
 - c. The proposed bends in a utility line would create potential maintenance problems and would increase overall maintenance costs.
 - d. Allowing the relocation of a public utility may establish a precedent for future similar requests.

- 2) *Recommend the city council deny the preliminary plat with variances at 12918, 12910, and an unaddressed property south of 12910 Rutledge Circle. Denial is based on the following:*
 - a. The requested variances do not meet the hardship standards.
 - (1) Denial of the variances would not deny reasonable use of the property. The existing buildable lot with the existing house constitutes reasonable use.
 - (2) The requested variances are self-created. They are based on an attempt to distribute existing buildable area between two lots
 - (3) There is a relatively consistent development pattern in the Rutledge Circle neighborhood. The applicants' proposal would change this pattern, placing an additional home site between existing development existing development and the area wetland.

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

Chair Hart stated that the city council is tentatively scheduled to review the application at its May 10, 2004 meeting.

9. ADJOURNMENT

***Allendorf moved, second by Bonoff, to adjourn the meeting at 8:40 p.m.
Motion carried unanimously.***

By: _____

Lois T. Mason
Planning Secretary