

**MINNETONKA PLANNING COMMISSION
MINUTES**

AUGUST 19, 2004

1. CALL TO ORDER

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

2. ROLL CALL

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

Staff members present: Principal Planner Cary Teague, Planner Susan Thomas, Environmental Coordinator Jo Colleran, Planning Intern Kyle Sobota, and Environmental Intern Aaron Schwartz.

- 3. APPROVAL OF AGENDA:** The agenda was approved with the removal of Item 7D, resolution approving a front yard setback variance from 50 feet to 20 feet for a shed at 3726 Farmington Road for Larry Sharpe (96055.04a), and changes to the minutes and resident comments provided in the August 19, 2004 change memo.

Britain arrived at the meeting.

- 4. APPROVAL OF MINUTES:** August 5, 2004

Allendorf moved, second by Periolat, to approve the August 5, 2004, meeting minutes as submitted with the changes from the change memo dated August 19, 2004:

Page 12, the second sentence in the second paragraph:

“Chair Hart asked if Deephaven’s medium density residential is comparable to Minnetonka’s 4.12 **4.1-12** units per acre **range** maximum.

Page 13, the references to Mr. Duffy should be changed to Mr. Devolis:

~~Mr. Duffy~~ **Mr. Devolis** clarified that the landscaping plan only illustrated the new trees.

~~Mr. Duffy~~ **Mr. Devolis** stated that those walls would be invisible to anyone other than someone on the property. She supported the

developer meeting with the neighbors to discuss adequate screening. Mr. Duffy **Mr. Devolis** explained that there would be a limited root area that would be taken into consideration.

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

5. REPORT FROM STAFF

Teague briefed the commission on the land use application considered by the city council at its meeting of August 9, 2004:

- Adopted a resolution approving a conditional use permit for a seasonal vegetable stand in the Westwind Plaza parking lot for Sever Peterson of Severs Farm Market with the conditions recommended by the planning commission.

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.

Bonoff moved, second by Maes, to approve the items listed on the consent agenda as recommended in the respective staff reports as follows:

A. Items concerning Knollway Park for Brauer & Associates, Ltd (04049.04a):

- 1) Resolution approving a conditional use permit for an impervious trail in a required wetland buffer; and
- 2) Site and building plan review.

RESOLUTION, CUP

- 1) *Recommend that the city council adopt the resolution on pages A1–A3 of the staff report, which approves a conditional use permit for recreational facilities in a wetland buffer area in Knollway Park for Brauer & Associates, Ltd. 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 following 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) Submit copies of Minnehaha Creek Watershed District approval of wetland buffers. The city may require revisions to the approved plans to meet the district's requirements.
- b. The trail must be developed and maintained in substantial compliance with the following plans:
 - (1) Overall Layout Plan date-stamped July 8, 2004.
 - (2) Overall Grading Plan date-stamped July 8, 2004.
 - (3) Overall Landscape Plan date-stamped July 8, 2004
- 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.

SITE PLAN REVIEW

- 2) *Recommend the city council approve the building plans for arbor-covered seating areas in Knollway Park, subject to the following conditions:*
 - a. The arbors must be developed and maintained in substantial conformance with the following plans, unless modified by the condition below:
 - (1) Overall Layout Plan date stamped July 8, 2004.
- B. Approval of a building plan for a picnic shelter in Woodgate Park at 5090 Highland Road for Brauer & Associates, Ltd (04050.04a)**

Approve the building plans for the picnic shelter in Woodgate Park at 5090 Highland Road for Brauer & Associates. Approval is based on the finding that the shelter would meet all building plan standards and is subject to the following conditions:

- 1) The following must be completed before starting any site work:
 - a. Install for staff approval erosion control and tree protection fencing. The fencing must be maintained throughout the construction process.
- 2) The shelter must be in substantial conformance with the following plans, unless modified by the conditions below:
 - a. Layout Plan date stamped July 8, 2004.
 - b. Building elevations dated August 10, 2004.

C. Resolution approving a front-yard setback variance for a porch addition at 12212 Westridge Lane for Juvland Homecare Inc. (04052.04a)

Adopt the resolution on pages A1–A4 of the staff report, which approves the proposed variance. This resolution is based on the following findings:

- 1) Strict enforcement would cause undue hardship because of the following circumstances that are unique to this property:
 - a. The hardship is caused by the existing location of the home, which was constructed at an angle to the front lot line.
- 2) The variance would meet the intent of the ordinance since:
 - a. The proposal would be a minor point intrusion into the required setback. There would still be adequate separation between the home and the street.
 - b. The proposed addition closely resembles an architectural feature, which may extend into the required setback by 5 feet.
 - c. The proposed addition will not affect neighboring properties.

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 installation and maintenance of a temporary rock driveway, erosion control, tree protection and wetland protection fencing must be installed, subject to review by the city's environmental resources coordinator.
- 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.

D. Resolution approving a front yard setback variance from 50 feet to 20 feet for a shed at 3726 Farmington Road for Larry Sharpe (96055.04a)

Was removed from the agenda. The applicant no longer needed the variance and withdrew the application.

E. Resolution approving a wetland setback and aggregate side yard setback variance for an addition to the home at 12021 Mayflower Place for Alan and Michelle Yousha (04054.04a)

Adopt the resolution on pages A1–A3 of the staff report, which approves the proposed variance. This resolution is based on the following findings:

- 1) Existing setbacks would prevent building an addition to the home due to the presence of a large wetland covering most of the property.
- 2) The design of the addition meets the spirit and intention of the wetland ordinance for the following reasons:
 - a. The proposed addition should not alter the quality of the wetland.
 - b. Trees and shrubs surrounding the wetland would screen the addition from the neighbors on both sides and across the wetland to the west.
 - c. An attempt to shorten the front of the new addition to meet the side yard setback may create an irregular appearance.

Approval is subject to the following conditions:

- 1) The installation and maintenance of erosion control, tree protection and wetland protection fencing, subject to review by the city's environment resources coordinator.
- 2) The owner must place the existing 16.5 buffer around the Manage 2 wetland into a conservation easement.
- 3) Submit proof of having recorded this resolution with the county before the city issues a building permit.
- 4) 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.

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

Teague introduced Environmental Resource/Planning Intern Aaron Schwartz. His activities will include fieldwork, conducting site inspections, and preparing staff reports for the city.

8. PUBLIC HEARINGS

A. Preliminary plat and variance for a three-lot subdivision at 3634 Rainbow Drive for Capestone Builders Corporation (04042.04a)

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.

The applicant was not present.

The public hearing was opened.

Mary Ann Hannah, 3535 Lilac Lane, asked where the cul-de-sac was located on the plan. Chair Hart pointed out the plan that included the cul-de-sac. Ms. Hannah was on the Deephaven Planning Commission for 12 years. She listed her concerns in a letter to the city. She stated:

- A variance cannot be granted for economic reasons.
- A variance cannot be granted if a reasonable use can be found without a variance.
- She moved into the neighborhood with the knowledge that the lots were large.
- She would prefer to see a two-lot subdivision to fit with the character of the neighborhood.

Ms. Hannah asked if all of the setback requirements could be met. Chair Hart stated that the alternate plan submitted by the applicant would meet all R-1 ordinance requirements. Variances would not be necessary for this plan.

Ms. Hannah questioned if the high water level of the wetland had been determined. She asked if the plan adhered to the wetland setback. Chair Hart answered in the affirmative. Chair Hart stated that the plan would also adhere to the buildable area ordinance standard.

Ms. Hannah felt that the picture showed the residences further back. Chair Hart explained that the picture shows a photo of the plan that would meet setback requirements. The variance is being requested to save 31 trees on the property.

In response to Ms. Hannah's question, Chair Hart stated that Minnetonka's wetland setback is 35 feet. Ms. Hannah stated that Deephaven's wetland setback is 75 feet. Colleran explained that the city established its wetland ordinance in the 1980s. The most impact to the wetlands occurs during construction. A wetland buffer would be required in addition to the wetland setback. The proposed site would require a 25-foot wetland buffer. The proposal's conservation easement would extend 60 feet to 70 feet from the wetland up the slope. Colleran confirmed that, scientifically, 35 feet is an adequate distance to protect a wetland.

Ms. Hannah questioned if the proposed residences would appear closer to the street than existing residences. Chair Hart stated that the two new residences on Lots 2 and 3 would be located further back than the existing residence on Lot 1.

Ms. Hannah repeated Chair Hart's statement that the variance was being proposed to save 31 trees. Chair Hart agreed and pointed out the area that would be included in a conservation easement that would remain permanently with the land.

Ms. Hannah asked if there had been a problem with flooding in the area. Colleran stated that the engineering department concluded that there was no drainage issue with the site.

Ms. Hannah felt strongly against looking at three houses instead of one house from her deck. Ms. Hannah could not fault the applicant for wanting to save 31 trees. She commented that the trees may not always be there. Chair Hart reiterated that the trees would be in a conservation easement that would be recorded with the county and prevent all owners of the property from removing the trees.

Allendorf clarified that the existing home is farther back than the residence located closest to Rainbow Drive. Chair Hart agreed.

John Gonsiorek, 3514 Lilac Lane, disagreed with Teague's report. The proposal did not meet the criteria for a variance. It would change the character of the neighborhood. The density is low density and "the problem is being caused by the developer." He wanted the comprehensive plan enforced, to protect the quality of the existing homes. He felt the city was being blackmailed. The project "is ugly and destructive." He requested the planning commission deny the application.

Allendorf confirmed with Teague that the comprehensive plan guided the site for single-family housing.

Roger Anderson, civil engineer on the project, apologized for being late. A conforming plat could be done with no variance, but the proposal would save trees. He welcomed questions.

Bonoff understood that the city ordinances allow the site to be subdivided into three lots. She asked if Mr. Anderson had looked at making the site into two lots. Mr. Anderson answered in the negative. The site accommodates three lots, so there would be no rationale to restrict it to two lots. The ordinance requires 22,000 square feet, which would be a large lot. The developer does weigh economic issues. Three beautiful residences will be the result when the project is completed.

Britain asked if the applicant would proceed with the alternative site plan if the variance was denied. Mr. Anderson did not have the final authority to make that decision, but he believed so. He and the applicant feel the plan with the variance would be the best for the site to save its environmental features.

Allendorf asked if the plan that would not require a variance locate the building pads as shown and be in accordance with the steep slope ordinance. Teague stated that it would comply with the steep slope ordinance.

Shannon Burns, 3516 Rainbow Drive, stated that she had never seen "the other plan." Chair Hart explained that the alternative plan was presented to illustrate that the site could be subdivided into three lots and meet all ordinance requirements. Ms. Burns asked if the cul-de-sac would require a variance, similar to a driveway. Teague explained that regular driveways do not require a setback. The paved portion of the cul-de-sac would not abut the property line. Street right-of-way could extend to a lot line, however, paved portion of the street would likely be 10-15 feet from the lot line.

Ms. Burns wanted to know if a condition could be included in the conservation easement that would require the property owner to "take care of" the trees. She has basswood trees. Without proper trimming, basswood trees fall over. Teague stated that the conservation easement would require the property owner to maintain the trees and if a tree would become diseased, it would have to be removed. Ms. Burns stated that trimming the trees should be required. Chair Hart stated that a homeowner's association would be responsible for maintenance of common areas.

Charlie Burns, 3516 Rainbow Drive, stated that he and his wife spent \$1,000 last year on maintenance of their basswood trees. He felt leaving the responsibility to the developer would be a mistake. The proposal is an opportunity for the developer to make money. Mr. Burns stated that the property owner was behind on his property taxes.

In response to Mr. Burns' question, Teague explained that a single driveway does not require a setback, but a shared driveway requires a 7-foot setback. The setback of the driveway to the north property line would be approximately 20 feet.

Mr. Burns was confused regarding who owned the property where the cul-de-sac would be located. Chair Hart and Teague explained that the street right-of-way would be platted. The city would then own the cul-de-sac and provide its maintenance.

Mr. Burns opposed the cul-de-sac. He supported as much open land as possible. His concern with the three proposed houses was its adverse effect on its neighbors. He was pretty well insulated by his three and a half acres.

Allendorf recognized that it would be in the developer's interest to maintain the trees. He asked Colleran if a conservation easement could contain language regarding maintenance.

Colleran stated that arborists disagreed regarding the thinning of different types of trees. There are conservation easements that require maintenance and the city and the developer could negotiate the specific requirements.

Allendorf asked if Colleran was included in the 50 percent of arborists who supported thinning of trees. Colleran indicated that she was not. She agreed that basswood have the potential to lean and could fall over, but the anchoring system of the roots, and type of soil, determine if the tree would fall over.

Mr. Burns stated that he and his wife did their best to maintain the trees. Two of trees, that were not thinned, tipped over. The ones that had been taken care of on a regular basis are still standing.

Maes asked Teague to explain the process involved with creating the current proposal. Teague stated that the applicant submitted an application for the three-lot subdivision with a shared drive. Staff then requested justification for the variance, including the preparation of a plat that met all ordinance requirements. The applicant submitted a plat that met all ordinances; staff then began negotiations with the applicant with the intent to save trees.

Bonoff asked Teague to identify which trees would be saved by the proposal. She saw a big difference, almost all of them. Plus, the proposal would include a conservation easement.

David Vogel, 3537 Comet Lane, felt there was a "shell game" going on. The plan showed wooded areas around the proposed residences. He pointed out where the water flowed. He discussed the site's topography. The current topography prevents the site from erosion. He did not believe some of the trees would be saved that the plan indicated would be saved. The trees are huge. One or two residences would be comparable to the neighborhood's density. The most valuable trees would be removed. The plan with the cul-de-sac has smaller sized houses. The "plans" would be a detriment to the neighborhood, the houses would be quite large, and the density would be different. Both plans would have to "basically clear cut the area with the most trees." There have been no problems with flooding. The proposal would have a negative impact on the potential for flooding. He questioned why three houses would be allowed.

Chair Hart stated that the city's ordinance sets the minimum lot size at 22,000 square feet as long as setback and other zoning ordinances are adhered to. The site is large enough to be subdivided into 3 lots. Mr. Burns saw how the area was calculated, but it would be very high density and not in keeping with the neighborhood.

Maes asked the size of lots located on Comet Lane. Teague estimated that the lots on Comet Lane are smaller than the proposed lots. Maes noticed that the houses are located close together.

Mr. Vogel felt that the technical application of the zoning ordinance was in direct conflict with the comprehensive plan. He challenged the planning commission to take the comprehensive guide plan seriously. The project did not protect the quality of the existing housing. Chair Hart stated that the comprehensive plan does matter and is taken seriously. The area is designated as single family, residential housing. The city ordinance defines single family, residential housing as a minimum lot size of 22,000 square feet. Mr. Vogel stated that the proposal would be profoundly, radically different than the existing neighborhood.

No additional testimony was submitted and the hearing was closed.

Brian Harju, with Capestone Builders, apologized for missing the beginning of the meeting. He stated that:

- Creating three lots was the only way to make the project financially feasible.
- The sellers' private information is no one's business. No funds have been transferred between the developer and the seller.
- The lots on Comet Lane are smaller than the proposed lots.
- A variance would eliminate the need for a cul-de-sac and allow the project to be similar to the neighborhood. The cul-de-sac would become a nuisance for the neighborhood.
- If the lot would be subdivided into two lots, the extent of tree loss would be just as great as three lots because the footprints would be much larger. He tried to keep the residences relatively small instead of two huge residences. Capestone Builders are very tree conscience.
- He agrees with the conservation easements to preserve the natural feel.

Chair Hart asked how large he anticipated the residences would be. Mr. Harju estimated the footprints to be between 1,400 square feet and 1,600 square feet.

Allendorf asked if Mr. Harju would be agreeable to work with staff to create a requirement regarding maintenance of the trees located in the conservation easement. Mr. Harju was willing to meet with staff to discuss a requirement in the homeowner's agreement to maintain the trees.

The public hearing was reopened.

Ms. Burns asked why Colleran was allowed to determine proper tree maintenance. She disagreed with Colleran's stance on trimming trees. Allendorf was confident that the city's staff operates on a rational, educated basis and he trusts staff's judgment. Colleran suggested that the association be required to hire an arborist to assess the trees' health and then the association, working with that arborist, determine the best maintenance strategy for the land.

Colleran clarified that the two circles on both sides of the middle lot would not be included in a conservation easement. The builder would provide preventative measures to minimize grading and try to stay out of the drip line of the trees. The two circles closest to the slope have been added to the conservation easement.

The public hearing was closed.

Perolat assured the residents that commissioners listen to their comments, read the letters, and visit the site. A great deal of time is spent considering the proposal prior to the start of the meeting. The planning commission's job is ultimately to uphold the city's ordinances, not to make developers' whole or benefit economically. If the application with the conservation is denied, she believed that a less beneficial development would be implemented. It is unfortunate that residents view the system as a "shell game" or "black mail". It is the right of each property owner to develop his or her property provided that it is done within ordinance regulations. The developer made a generous offer to put the property into a conservation easement and save the trees. It is the right of the property owner to subdivide the property into three lots. The proposal would be the best use of the property.

Bonoff thanked Perolat for summarizing her thoughts. She concurred.

Allendorf felt the cul-de-sac would change the character of the neighborhood. He supported the proposal without the cul-de-sac and with the conservation easement.

Britain agreed with Periolat. By denying the proposal, it would be developed without a conservation easement. Every single tree on the property could be removed. He agreed that a cul-de-sac would be out of character with the area. The application provides the best proposal.

Maes moved, second by Allendorf, to recommend that the city council give preliminary approval to the Rainbow Drive Plat, date-stamped June 2, 2004, with a lot width at the right-of-way variance from 80 feet to 0 feet for Lot 3, and the inclusion of a condition with wording to be determined by staff to require the homeowner's association to provide proper maintenance for the trees in the conservation easement. Approval is based on the following findings:

- 1) The proposal meets the required standards and ordinances for a preliminary plat.
- 2) The proposal meets the required standards for a lot width at the right-of-way variance in Section 300.10, Subdivision 5(h)(2)(b).
- 3) The site could be developed with a public street to meet all minimum zoning ordinance standards; however, under that plan 31 mature trees would be removed.

Approval is subject to the following conditions:

- 1) Complete the following before final plat approval:
 - a. Show the following on the final plat:
 - (1) At least ten-foot-wide drainage and utility easements next to any existing or proposed public street rights-of-way and at least seven-foot-wide drainage and utility easements along all other lot lines.
 - (2) A 10-foot road easement over Lot 1, as shown on page A6 of the staff report.
 - (3) Utility easements over existing or proposed public utilities, as determined by the city engineer.
 - b. Pay the city a park dedication fee of \$4,750.00.

- 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 microstation or DXF.
 - c. The following documents for the city attorney's approval:
 - (1) Title evidence that is acceptable to the city attorney. Title evidence must be current within thirty days before release of the final plat.
 - (2) Conservation easements over the trees to be protected on the east and north side of the property and a drawing of the easements for the approval of the city attorney. Easement locations subject to review and approval of staff. The easements and drawing must be recorded with the final plat.
 - (3) Conservation easement over the wetland buffer area. Final easement location shall be subject to review and approval of staff. The easement and drawing must be recorded with the final plat.
 - (4) 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.
 - (5) A private driveway easement between the street right-of-way and Lot 3. The easement must state the maintenance responsibilities of each owner. The minimum driveway width must be as required by the fire marshal.
 - (6) A private utility easement across Lot 2 to provide services to Lot 3.

- (7) Provide restrictive covenants to be recorded against the individual lots with the plat. The covenants must include the conditions that have not been met as of the release of the plat. These covenants must first be submitted for the city attorney's approval.
- (8) The homeowner's association will be required to properly maintain the trees included in the conservation agreement. Staff will determine what proper maintenance entails. The Association must implement the maintenance plan on a continuing basis in accordance with its provisions.

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

- 3) The following must be submitted to the city before the city issues a building permit:
 - a. A grading and tree preservation plan for each lot, subject to staff approval. The plans must be in substantial compliance with the agreed building areas as required with the final plat. The sewer and water services must be shown to minimize impact to the significant trees.
 - b. The installation and maintenance of a temporary rock driveway, erosion control, tree protection and wetland protection fencing for each lot must be installed, subject to review and approval of the city's environmental resources coordinator.
 - c. A copy of the recorded plat and any easements or covenants required to be recorded.
 - d. If required, submit evidence of the watershed district approval. The city may require revisions to the preliminary plat to meet the district's requirements.
 - e. A hookup fee for sanitary sewer and water.
 - f. 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) During construction, the streets must be kept free of debris and sediment, and the tree protection fencing, and erosion control fencing must be maintained.
- 5) 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.
- 6) Before the city makes a final inspection of the house, the drive must be paved from the street to the house on Lot 3. A driveway setback of at least seven feet must be maintained from the side lot lines. The city may approve a time extension if weather prevents paving of the drive.
- 7) 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.

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

9. ADJOURNMENT

Maes moved, second by Periolat, to adjourn the meeting at 7:45 p.m. Motion carried unanimously.

By: _____

Lois T. Mason
Planning Secretary