

**MINNETONKA PLANNING COMMISSION
MINUTES**

MARCH 16, 2006

1. CALL TO ORDER

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

2. ROLL CALL

Commissioners Brandt, Dahl, Frisque, and Adams were present. Britain, Cheleen, and Hart were absent.

Staff members present: Planning Director Geoff Olson, Principal Planner Cary Teague, Planner Susan Thomas, Natural Resource Manager Jo Colleran, and Assistant Engineer Jennifer Posma.

Frisque moved, second by Brandt, to elect Dahl to serve as acting chair of the March 16, 2006, planning commission meeting.

Brandt, Dahl, Frisque, and Adams voted yes. Britain, Cheleen, and Hart were absent. Motion carried.

- 3. APPROVAL OF AGENDA:** The agenda was approved as submitted. Olson noted that four-vote items would need three votes to pass a motion due to the absence of three commissioners.

- 4. APPROVAL OF MINUTES:** March 2, 2006

Adams moved, second by Brandt, to approve the March 2, 2006, meeting minutes as submitted.

Brandt, Adams, and Dahl voted yes. Britain, Cheleen, and Hart were absent. Frisque abstained. Motion carried.

5. REPORT FROM STAFF

Olson announced that the next planning commission meeting will be March 30, 2006.

6. REPORT FROM PLANNING COMMISSION MEMBERS: NONE

7. PUBLIC HEARINGS: CONSENT AGENDA: NONE

8. PUBLIC HEARINGS

A. Preliminary plat for a three-lot subdivision at 13533 Wentworth Trail for Earl Fischer (06002.06a)

Acting Chair Dahl 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.

Brandt asked how a temporary turn-around would work. Teague explained.

Adams questioned which plat drawing was being considered for approval. Teague explained that the staff drawing represented a plat in accordance with staff's recommendations. Each of the three lots would meet setback and minimum lot size, width, and depth requirements.

Dahl asked if a conservation easement would be a condition of approval. Teague explained that a conservation easement would not be required. If the property owner to the north chose to provide a conservation easement, then the street extension would not be needed.

Dahl asked if the cul-de-sac would remain. Teague provided an illustration that included a temporary turn-around. The property owner to the east would have to sell property to the applicant or dedicate an easement to provide the adequate right-of-way to construct a public street.

Adams asked where additional drainage would be directed. Posma explained that drainage on the site travels north to south. She described the drainage pattern along the street right-of-ways. The new public street would not significantly change the drainage patterns. Three new units would not require a storm water pond. Storm sewers would be installed with the new street, curb, and gutter.

Earl Fischer, 18025 County Road 6, Plymouth, applicant, requested approval of the plan he submitted instead of staff's recommendation. His plan would allow the existing house to be properly positioned on the cul-de-sac. His plan was partially dictated by the surrounding property owners. The project is an investment. The plan was worked on for quite some time. He would not add anything to the drainage system. The plan would alleviate some of the water that travels into the pond. Mr. Spillane, owner of the adjoining property, was unable to

attend the meeting, but agreed with Mr. Fisher's proposal. Mr. Spillane was apprehensive of staff's recommendation. Mr. Fischer was available for questions. Acting Chair Dahl asked about the catch basin locations. Posma stated that there would be two storm sewer issues with the proposal. Catch basins would have to be included in the proposed street, including at the intersection of the new street and Wentworth Trail. An outlet would need to be provided for a land-locked pond that exists to the north and east of Wentworth Trail. The city would work with the developer to share the cost.

In response to Acting Chair Dahl's question, Teague described an application received for the Choje property. It would have included a private drive off a proposed cul-de-sac. Staff recommended that a public street serve the lots rather than a private drive. The plans are being revised.

Acting Chair Dahl confirmed with Teague that the commission would vote on Mr. Fisher's plan. Staff recommended approval of the plan with conditions. If the applicant did not agree to the conditions, staff did not support the plan. Staff wanted right-of-way extensions on the north and south.

Mr. Fischer stated that his neighbors would not support staff's plan because of the location of the increased traffic.

Frisque asked if Mr. Fischer's plan would meet ordinance requirements. Mr. Fischer stated that his engineer found that his plan would meet ordinance requirements. Teague confirmed that Mr. Fischer's plan would meet ordinance size and width requirements; however, the additional right-of-way would require the reconfiguration of the lot lines. A condition of approval would be to reconfigure the lot lines.

Frisque asked if the properties to the north and south could be developed if Mr. Fischer's plan was completed. Teague stated that the south lot could be developed, but only with a private drive. It would not have access to a public street. The property to the north could develop with access to Forest Lane. The south half of the Campbell property would have to be accessed over a slope and through mature trees.

Olson pointed out a public right-of-way on the north portion of Dr. Campbell's property that connects to the street north of it; however, there is currently a private drive located on the public right-of-way. Dr. Campbell would need a public street extended down to his property. That would create impact concerns for the steep slope and trees. Staff recommended that the north half of Dr. Campbell's property be served by a street on the north, and the south half of Dr. Campbell's

property be served by Mr. Fisher's property with a cul-de-sac extending north to maintain the slope and trees in the middle. Mr. Fischer acknowledged staff's tough position.

Adams asked if Mr. Fischer agreed with staff's recommendation. Mr. Fischer agreed with staff's recommendations, but his neighbors did not. Mr. Spillane agreed with Mr. Fischer's original proposal, but felt that the street that staff recommends would increase traffic.

Adams asked what the total number of potential future lots could add up to. Teague stated that the Chope property could house approximately three lots and the Campbell property could sustain two or three lots, but no more than three.

Frisque asked what plan was given to residents to review with the public hearing notice. Teague answered that the applicant's original proposal was sent out with the public hearing notice.

Acting Chair Dahl asked if the city would consider acquiring the needed right-of-way from Mr. Spillane. Teague answered in the negative.

Mr. Fischer referenced the city restricting his plans to one lot and "taking" property because staff wanted the right-of-way to serve Dr. Campbell's property at some point. Then the setback requirements would not be met. Teague explained that platting an outlot was considered. Mr. Fischer could negotiate the sale of the outlot to serve as future access to the south, but would not have enough frontage on the cul-de-sac bulb and only be entitled to two lots with that scenario.

Olson stated that the drawing illustrated that if Mr. Fischer chose not to extend the street, he could plat the area as an outlot. The down side would be that he would lose one lot. It was done to illustrate one option to get around not acquiring the property from Mr. Spillane. The illustration was not being recommended by staff or proposed by the applicant.

The public hearing was opened:

Dennis Zylla, 3125 Holly Lane, Plymouth, real estate developer and former city manager representing Mr. Chope, stated that the Chopes need the application approved as it was submitted for the Chopes to go forward with their plan. Mr. Fischer has a purchase agreement with Mr. Spillane based on Mr. Fischer's plan. Mr. Spillane will not close on the sale if there is a street on the south side of his lot. There would be no project, unless the city acquires the right-of-way, since the

city wants a street extension to the north. Mr. Zylla met with all of the property owners. When that didn't work, he met with Mr. Eiden. Mr. Eiden obtained purchase agreements from everyone. At that point, there was a project, until staff recommended that access be provided to Dr. Campbell's property. He met with staff December 7, 2004 and was told that Forest Lane would not go through. He provided minutes that reflected that. At that same meeting, he was told that he did not have to worry about serving the property to the north.

Mr. Zylla provided a history of the land owned by the Chopes. Mr. Eiden was going to be the builder for the project. In 1965, the city approved a plat for West Eldorado Hills. He explained the established easements. Seven proposals have been submitted to the city. It is important for the Chopes to know that Mr. Fischer's application will be acted on before the Chopes move forward. They supported Mr. Fischer's proposal moving forward. He provided the purchase agreement for Mr. Spillane's property. There would be 50-feet of right-of-way and the proposal would meet all ordinance requirements.

Mr. Zylla stated that staff's recommendation is not the proposal the applicant submitted. His client needs the Fischer plat to be approved and, as recommended by staff, 15 feet of additional right-of-way dedicated across Lot 1 because staff wants the street extended. With that, Mr. Denton would get 2 extra lots and Mr. Chope would get 3 lots and there still would be no access for Dr. Campbell. The applicant's proposal would allow Mr. Fischer reasonable use; finish the right-of-way for West Eldorado; and clear-up a legal issue for the city regarding Mr. Fischer closing on the residence when he thought the proposal was satisfactory. The residence has a private agreement with the city to use the public right-of-way as a public drive. The city attorney stated that the city would honor the agreement, but that the agreement would dissolve if it became all public right-of-way. Mr. Zylla felt that the city would not approve Dr. Campbell's 6-lot plan.

Mr. Zylla provided a letter regarding drainage. He was concerned with storm sewer pipe requirements.

Horace Chope, 748 Madison Street NE, Minneapolis, owner of the property to the south, felt it was ironic that his mother was previously the township clerk and helped establish the planning commission and large lot sizes. He knew Mrs. Burwell when he was a boy. His brother and he own the property. His parents helped pioneer the city from its township days. He explained the history and location of freeway and street easements. The situation is a puzzle, but with common sense, intelligent give and take, and fair play this situation may be

resolved. He and his brother strongly support Mr. Fischer's proposal. The Wentworth pond has never exceeded where it is now. He loves the land.

Dr. Ronald Campbell, 3100 Forest Lane, owner of the property north of the site, stated that he has owned the property for 25 years. He was impressed by everyone's effort to sort out the options. His major issue was access roads. He supported staff's recommendation. A future street from the north crossing the slopes and trees in the middle would be a much less attractive option.

Acting Chair Dahl asked if Dr. Campbell's property could have a private road access at Forest Lane. Teague stated that the city would require a public street to develop the north half of the Campbell property. Additional homes on the private driveway would require variances.

Mike Daily, 15379 Wentworth Trail, noted a low spot that caused a drainage problem from the Campbell property to the east. Development of the Campbell property would add to that problem. The building that's on the Fischer property now has its access from the Spillane property driveway. He was not for or against the proposal.

No additional testimony was submitted and the hearing was closed.

Brandt would hate to approve a proposal that would eliminate options for surrounding property owners to develop. There was no perfect solution to make everyone happy. He was hoping that the residents could agree on a common solution.

Adams walked the site on Sunday. Topography complicates the plans. He agreed with Dr. Campbell and staff that accessing the Campbell property solely from Forest Lane would create a major issue and be more invasive to trees and the slope. He recognized Mr. Spillane's issue with that. Staff's recommendation best serves the interests of the area.

Frisque saw the application as an opportunity to create the best plan for the overall area, even though it would not make individual property owners happy. She encouraged all of the owners to get together before city council reviews the plan to see if a general consensus could be reached. She supported staff's recommendation.

Frisque moved, second by Adams, to recommend that the city council give preliminary approval to the Fisher Subdivision, date stamped February 1,

2006. Approval is based on the finding that the plat meets the required standards and ordinances.

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) Utility easements over existing or proposed public utilities, as determined by the city engineer.
 - (3) Drainage and utility easements over wetlands, floodplains, and public storm water ponds, as determined by the city engineer.
 - (4) Plat a 50-foot right-of-way to the north to ensure that Lot 3 has at least 80 feet of frontage on the right-of-way. (See page A13 of the staff report.) This right-of-way would not have to be platted upon submittal of a conservation easement over the south half of the lot to the north, stating it would never be developed.
 - (5) Plat 15-feet of right-of-way along the east lot line for future road extension to the property to the south. (See page A13 of the staff report.)
 - (6) Revise the lot lines between lots 2 and 3 to reflect the new right-of-way and both lots must meet all minimum zoning ordinance standards. (See example on page A13 of the staff report.)
 - b. All lots must meet minimum zoning ordinance requirements including the required extended right-of-way.
 - c. If the developer is petitioning the city to construct the public improvements, the city council must order the improvements.

- 2) The following items must be submitted to the city before the city releases the final plat:
 - a. An engineering/utility inspection fee.
 - b. Payment for traffic signs and installation, as required by the city engineer.
 - c. An electronic CAD file of the final plat in microstation or DXF on a CD disk.
 - d. 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.
 - e. 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) A notice recorded against individual lots that the stub street may be extended to provide access to the adjacent property.
 - (3) 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.
 - (4) A temporary access easement to the city of Minnetonka for the turn-around at the north and south end of the required public street. Construction of the temporary turn-around shall be subject to review and approval of the city engineer.

- (5) Public right-of-way or easement over 13535 Wentworth Trail to provide necessary right-of-way to build the public street.
- (6) A trail easement to provide a connection from the property to the north to the property to the south. Final trail location and size would be determined by the city council.

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

- f. Any other requirements included with final plat approval.
- 3) The following must be completed before the city issues a grading permit or any site work is started.
- a. Approval of final grading, drainage, and erosion control plans by the city engineer. The developer must submit final street and utility plans for the city engineer's approval. The following changes must be included on the utility plans:
 - (1) Catch basins and a storm sewer must be added in the new street at the intersection with Wentworth Trail.
 - (2) A storm sewer outlet must be added from the landlocked area on the north side of the new street.
 - (3) A sump catch basin must be added at the downstream-most point in the street.
 - (4) Sewer lines must be 8 inches and the water lines 6 inches.
 - (5) Existing public sanitary sewer must be lowered to serve the property to the south.
 - (6) Storm sewer design and installation must include provisions for pond outlet from existing pond basin on Wentworth Trail, per the city's water resources management plan.
 - b. The maximum street grade may be 7 percent.
 - c. A letter of credit or cash escrow for 150% of the estimated cost to comply with grading permit requirements and restore the site must

- be submitted to the city. The city will not release the letter of credit or cash escrow until the developer submits as-built drawings and a letter certifying that the utilities, driveway, and grading have been completed according to the plans approved by the city.
- d. All trees to be preserved must be fenced and erosion control measures installed, as approved by the city.
 - e. Approval of a construction management plan by the planning director.
 - f. If required, submit evidence of the watershed district approval. The city may require revisions to the preliminary plat to meet the district's requirements.
 - g. Fire hydrants shall be subject to staff approval.
 - h. Public right-of-way or easement must be established over 13535 Wentworth Trail to provide necessary right-of-way to build the public street.
- 4) The following must be completed before the city issues a building permit:
- a. City approval of a grading and tree preservation plan for each lot. The plans must be in substantial compliance with the building pads shown on the preliminary plat and must preserve trees designated for preservation at the time of preliminary plat approval. The city may require adjustments in the house pad location to maximize tree preservation. The sewer and water services must be shown to minimize impact to any significant trees.
 - b. City approval of the installation of a temporary rock driveway, erosion control, tree protection and wetland protection fencing for each lot.
 - c. Submit a copy of the recorded plat and any easement or covenants required to be recorded.
 - d. Pay a hookup fee for sanitary sewer and water.
 - e. Submit 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.

- f. A fire flow test must be conducted on the new water main; if the fire hydrant flow is less than the minimum NFPA fire flow requirement of 2750 GPM, homes must be built with a sprinkler system.
- 5) During construction, the streets must be kept free of debris and sediment, and the tree protection fencing, and erosion control fencing must be maintained.
- 6) 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 ½ 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.
- 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.

Brandt, Frisque, Adams, and Dahl voted yes. Britain, Cheleen, and Hart were absent. Motion carried.

9. ADJOURNMENT

Frisque moved, second by Adams, to adjourn the meeting at 8:00 p.m. Motion carried unanimously.

By: _____
Lois T. Mason
Planning Secretary