

**MINNETONKA PLANNING COMMISSION  
MINUTES**

**DECEMBER 7, 2006**

**1. CALL TO ORDER**

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

**2. ROLL CALL**

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

Staff members present: Community Development Director Ron Rankin, City Planner Julie Wischnack, Principal Planner Susan Thomas, Natural Resource Manager Jo Colleran, Planning Technician Jeff Thomson, and Assistant City Engineer Steve Lillehaug.

- 3. APPROVAL OF AGENDA:** The agenda was approved as submitted. Wischnack reviewed modifications to the resolutions and additional comments provided in the change memo dated December 7, 2006.

- 4. APPROVAL OF MINUTES:** November 9, 2006.

***Cheleen moved, second by Adams, to approve the November 9, 2006 meeting minutes as submitted.***

***Adams, Britain, Cheleen, Dahl, Schmitz, and Hart voted yes. Brandt was absent. Motion carried.***

**5. REPORT FROM STAFF**

Wischnack briefed the commission on land use applications considered by the city council at its meeting of November 20, 2006:

- Adopted a resolution granting approval of the two-lot Sinkie addition plat at 4700 Eastwood Road for Wayne Sinkie.
- Tabled indefinitely a preliminary plat, with variances, for a two-lot subdivision at 3848 Haven Road for Lorraine J. Sorenson. The applicant requested the item be tabled. Only five council members were present.
- Made a negative declaration on the need for an environmental impact statement, because the project would not cause any significant environmental effects, and approved the following:

rezoning from I-1, industrial to PUD, planned unit development, including the adoption of a master development plan for the entire site, with several setback variances and a floor area ratio variance; final site and building plans for the first tower; preliminary plat to divide the property into two lots; held a public hearing on a vacation of a utility easement, and on a conditional use permit to move 1,000 cubic yards/acre or more of earth concerning the redevelopment of 9701 Data Park Drive with two, 10-story office towers for United Health Group.

Wischnack requested feedback from commissioners regarding improvements to staff's report style. Changes were being considered.

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

**7. PUBLIC HEARINGS: CONSENT AGENDA**

Jo Colleran addressed Dahl's question regarding construction complaints on Fetterly Road. The site had been out of compliance more than once. Staff inspected the site and the situations had been corrected. Staff is able to issue a stop work order and hold inspections until violations are corrected.

No items were removed from the consent agenda for discussion or separate action.

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

- A. Approval of a twelve-month extension of variances to build a garage and home addition at 4511 Crawford Road for Sharon Hanna. (05047.06a)**

Approve a 12-month time extension to end on December 31, 2007.

- B. Approval of a twelve-month extension of multiple variances to tear down and rebuild the home at 2425 Bantas Point Road for Craig R. Johnson. (05050.06a)**

Approve a 12-month time extension to end on December 31, 2007.

- C. Items concerning the Schoen Addition at 11405 and 11477 Fetterly Road for Casey Schoen. (04043.06a)**

- 1) Recommend the city council hold the public hearing and adopt the resolution vacating all drainage and utility easements originally shown on and dedicated in Lots 1 and 2, Block 1, Fetterly Road Addition.
- 2) Recommend that the city council adopt the resolution approving the preliminary and final plat known as Schoen Addition. This resolution is based on the findings that the plat meets the required standards and ordinances. Approval is subject to the following conditions:
  - a. The city must vacate existing drainage and utility easements.
  - b. Revise the final plat to insure 110-foot width at building setback line.
  - c. Prior to release of the final plat, submit title evidence for the city attorney's approval. The title evidence must be current within thirty days before release of the final plat.
  - d. Submit the following for city records:
    1. A copy of the recorded plat.
    2. A letter from the surveyor stating that the boundary and lot stakes have been installed as required by ordinance.
  - e. The final plat must be filed with the county within one year of approval or the approval will be null and void.

**D. Flag lot setback variance for a family room addition at 16531 Ringer Road for Sawhorse Designers & Builders. (06065.06a)**

Adopt the resolution on pages A1–A3 of the staff report which approves a flag lot setback variance from 25 feet to 10 to construct a family room addition to the house at 16531 Ringer Road. This resolution is based on the following findings:

- 1) There is a unique hardship to the property caused by:
  - a. The location of the existing house on the lot. The house has legal, non-conforming setbacks.
- 2) The variance would meet the intent of the ordinance since:

- a. The variance request is for a reasonable use of the property.
- b. The addition would not alter the character of the neighborhood since it would not be highly visible from adjacent properties and would be screened from the west by the existing topography and vegetation.

Approval is based on the following conditions:

- 1) Submit proof of having recorded this resolution with the county before the city issues a building permit.
- 2) Install and maintain a temporary rock driveway, erosion control, and tree protection, as required by the city's natural resources staff.
- 3) The building materials and color of the addition must match the existing home.
- 4) The fireplace extension shown on the elevation drawings and floor plan is not permitted.
- 5) The low floor elevation of the addition must be a minimum of 934.5.
- 6) This variance will expire on December 31, 2007, unless the city has issued a building permit for the project covered by this variance or approved a time extension.

**E. Approval of a twelve-month extension for variances to build a house at 18 Westwood Circle for Lutz Construction. (01058.06a)**

Approve a 12-month time extension to end on December 31, 2007.

***Adams, Britain, Cheleen, Dahl, Schmitz, and Hart voted yes. Brandt was absent. Motion carried and the items on the consent agenda were approved as submitted.***

Chair Hart stated that an appeal of the planning commission's decision must be made in writing to planning staff within 10 days.

**8. PUBLIC HEARINGS**

**A. Parking variance for the existing Jimmy's Restaurant at 11000 Red Circle Drive for Three Putt, LLC. (87075.06b)**

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

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

Chair Hart confirmed with Thomas that the 124 parking stalls are all located on the applicant's property.

Walter Rockenstein, attorney with Faegre Benson, representing the applicant, informed the commission that Ann Jennings' home was damaged by fire on Thanksgiving and she requested that the application be postponed to a later meeting to allow more time for her to review staff's recommendation. There is some question as to whether the entrance condition is related to the parking layout. He presented a drawing that included the required number of spaces. He agreed with the condition that limited the amount of restaurant space. The applicant wanted to talk to True North and Minnetonka Crossings owners regarding the conditions. He requested a two week delay.

The public hearing was opened.

Chris Novak, True North Investments, stated that his site was forced to provide all of its own parking stalls. No compact stalls or aisle deviations were allowed. The issue is the access point. He has not been able to build Plan A because the neighbors objected to Plan A and Plan B.

Chair Hart and Mr. Novak discussed the existing and proposed accesses. Thomas explained that a private easement was discovered that provided access and impacts the development.

Cheleen asked if the cross-hatch easement was accepted by both sides, then would there still be a need for an easement between the properties. Thomas answered in the affirmative. The access drive is located on Mr. Novak's property. There is currently no parking easement.

Chair Hart confirmed with Thomas that the cross-hatched drive has been constructed. Chair Hart asked if the driveway was moved to the west, then where would the building be located. The location was pointed out on the illustration.

Mr. Novak stated that it was not fair that the rules applied to his application did not apply to the current project. If the restaurant is successful, it would need additional parking. The only place for them to park would be on the Minnetonka Crossing's site. He objected to the variance.

Chair Hart clarified with Mr. Novak that he wanted the private easement removed and a new one granted for the cross-hatch driveway. Thomas recalled that a setback variance for an outdoor patio and a parking setback variance from the north property line were approved for the north building. The parking lot setback variance allowed adherence with the existing parking setback.

Mr. Novak stated that the restaurant is operating. His building has not been built. His business is the only one harmed. Every day that action is delayed harms his business. He has been working for 18 months to get issues resolved.

Chair Hart asked Mr. Novak if leaving the driveway in the current position would decrease the number of vehicles from entering into his parking lot. Mr. Novak stated that the current location flows better and makes the site look integrated.

Cheleen summarized that if the driveway stays where it is, it would provide a better sight line for Jimmy's Restaurant. There is no cross-parking arrangement required. He did not understand the objection to accepting the Minnetonka Crossing project as it is now.

Mr. Rockenstein stated that the private entry easement would need to be eliminated. The Minnetonka Crossing's building could be built further south. There would be an intrusion into the sight line of the restaurant. There was a cross-parking requirement in the original plat for the two properties. No one ever assigned the easement, but it is part of the plat requirement.

Mr. Novak appreciated his neighbors' concerns regarding sight lines, but the difference would be 2 feet to 4 feet at an intersection 100 feet away.

Mr. Rockenstein stated that the drawing provided is inaccurate. He requested more time to resolve the issue.

Mr. Wrede apologized for the inaccurate drawing. He was unfamiliar with Photoshop. The September 18, 2006, black and white drawing is accurate.

No additional testimony was submitted and the hearing was closed.

Chair Hart reviewed the primary issues.

Britain felt enough information was provided to support a decision at this meeting.

Schmitz agreed that action should be taken at this time.

Chair Hart requested that the ordinance basing the number of parking stalls on either square footage or number of patron seats be reviewed.

Rankin clarified that staff's recommendation included that the parking variance be approved subject to agreement of the access location and the cross-parking easement. The intent was to create a win-win situation where Jimmy's restaurant would have obtained a parking variance; the Minnetonka Crossing's owner would have the access issue settled; the public would be served by location A, which would be safer; and a cross-parking arrangement would be in place.

***Britain moved, seconded by Adams, to adopt the resolution on pages A1–A3a of the staff report, which approves a parking variance from 196 spaces to 124 spaces at 11000 Red Circle Drive. This resolution is based on the following findings:***

- 1) A restaurant has operated out of the existing building and used the existing parking lot for nearly 20 years. Changing either the size of the building or the size of the parking lot would present a practical difficulty.
- 2) The variance would meet the intent of the ordinance since:
  - a. The building has a large amount of storage or “non-restaurant” space relative to other restaurants. This space does not contribute to parking demand.
  - b. A parking demand study conducted for the property determined 124 spaces would be sufficient to meet demand. There would be 124 spaces available on the site.
  - c. The variance would not result in any physical change to the building or parking lot. It would not alter the essential character of the neighborhood

Approval is based on the following conditions:

- 1) The basement and mezzanine levels must remain office and storage space only. No restaurant space, including kitchen or seating areas, are allowed.
- 2) Three Putt, LLC, must agree to the relocation of the southerly entrance to the property from Red Circle Drive as shown on Exhibit B of this resolution and must agree with the adjoining property owner to sign a simple cross-access and cross-parking easement drafted by the city attorney.
- 3) The parking lot must be restriped in conformance with the applicant submitted, and staff revised, plan date-stamped November 22, 2006. All stalls must meet minimum city code standard for width and depth. Restriping must be done by May 31, 2007.
- 4) Submit proof of having recorded this resolution with the county within 30 days of the date of approval.

***Adams, Britain, Cheleen, Dahl, Schmitz, and Hart voted yes. Brandt was absent. Motion carried.***

Chair Hart stated that an appeal of the planning commission's decision must be made in writing to planning staff within 10 days.

**B. Preliminary plat for a two-lot subdivision, with variances, at 3140 County Road 101 for John and Ruth Reed. (06064.06a)**

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

Thomas reported. She recommended approval of the application based on the findings and subject to the conditions listed in the staff report and the modifications provided in the change memo dated December 7, 2006.

John Reed, 3140 County Road 101, applicant, agreed with staff's recommendation.

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

In response to Chair Hart's question, Thomas explained Hennepin County's right-of-way requirement.

In response to Dahl's question, Collieran explained the city's grading and erosion control measures. Stronger strides have been taken to control erosion and sediment on construction sites. A massive education campaign has been provided for developers and contractors. Escrow has been held to ensure compliance. Holding inspections and stopping work have also been effective tools. Water quality is a huge issue for staff and residents.

Chair Hart reviewed the primary issues.

***Adams moved, second by Cheleen, to recommend that the city council adopt the resolution on pages A1–A6 of the staff report and an addition provided in the change memo dated December 7, 2006, which approves the preliminary plat, with variances, at 3140 County Road 101 for John and Ruth Reed. This resolution is based on the following findings:***

- 1) Except for the variances, the proposal meets the required standards and ordinance for a preliminary plat.
- 2) The proposal meets the required standards for a variance, because:
  - a. Lot Width
    - (1) At 200 feet in width, the existing property is significantly wider than other lots on the west side of County Road 101. The proposed lot width variances would allow for creation of two lots more characteristic of the area.
    - (2) The property is 2.9 acres in size, with 1.36 acres of upland area, but has just 200 feet of frontage. The overall size of the property, relative to its frontage on a public street, is a unique circumstance not common to all R-1 properties.
  - b. Buildable Area
    - (1) The proposed north lot exceeds total area requirement. However, the lot is encumbered by shoreland, floodplain, and wetland setback requirements. These setbacks significantly impact the upland area of the lot.
    - (2) The north lot would have a 40-foot by average 36-foot rectangle within its buildable area. At 1,551 feet, the area is

just 49 square feet less than the required 40-foot by 40-foot square. This is a minor deviation from the code requirement.

- (3) Any home built on the site would be expected to meet all setback requirements. The city is under no obligation to approve setback variances.
  - (4) Prior to required right-of-way dedication, the proposed north lot would meet all buildable area standards.
  - (5) While not a unique requirement along county roads, the dedication of right-of-way is not a requirement applied to every R-1 zoned property.
- c. The area is characterized by single-family homes. The proposed plat with variances would result in an additional single-family home along County Road 101. This would not alter neighborhood character.

Approval is subject to the following conditions:

- 1) Complete the following before final plat approval:
  - a. Final drawings must be in plat format.
  - b. Show the following on the final plat:
    - (1) Dedication of 7 feet of right-of-way along County Road 101.
    - (2) Existing storm sewer easement along the north property line.
    - (3) Ten-foot-wide drainage and utility easements next to the new right-of-way and seven-foot-wide drainage and utility easements along all other lot lines.
  - c. Pay the city a park dedication fee of \$2,375.
- 2) The following items must be submitted to the city before the city releases the final plat:
  - a. An electronic CAD file of the final plat in microstation or DXF on a CD disk.

- b. The following documents for the city attorney's approval:
  - (1) Title evidence that is current within thirty days before release of the final plat.
  - (2) Conservation easements 16.5 feet upland from the delineated edge of the wetland and a drawing of the easements. The easements and drawings must be recorded with the final plat.
  - (3) A private driveway easement between the street right-of-way and the north lot. The easement must state the maintenance responsibilities of each owner.
  - (4) 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.

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

- c. Any other requirements included with final plat approval.
- 4) The following must be completed before the city issues a building permit:
    - a. Submit for review and approval:
      - (1) A grading and tree preservation plan for the north lot. The plan 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.
      - (2) A copy of the recorded resolutions, plat, easements, and covenants.

- (3) Sanitary sewer and water hook-up fees.
  - (4) A letter from the surveyor stating that boundary and lot stakes have been installed as required by ordinance.
  - (5) A copy of a driveway permit from the county. The driveway must be located to meet county and city engineering requirements.
  - (6) A construction management plan. The plan must indicate: how equipment will avoid roots of trees to be saved; location for stockpiling of earth and construction materials and equipment; and how contractors will prevent tracking of earth onto the street
- b. Install a temporary rock driveway, erosion control, tree protection and wetland protection fencing for staff inspection and approval. These items must be maintained throughout the course of construction.
  - c. No grading is allowed that would change the depth of the storm sewer in the area.
  - d. Minimum lowest floor elevation is 932.2.
  - e. A sewer pump is required for the lower level of the house.
  - f. The existing driveway on the south lot must be relocated at the time of issuance of a building permit on the north lot.
- 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.

- 8) Provide a driveway turnaround for the north lot before the house is occupied.
- 9) Any house built on the north lot is expected to meet all setback requirements. The city is under no obligation to approve setback variance(s).
- 10) 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.

***Adams, Britain, Cheleen, Dahl, Schmitz, and Hart voted yes. Brandt was absent. Motion carried.***

Chair Hart stated that the item was tentatively scheduled to be reviewed by the city council December 18, 2006.

**C. Conditional use permit to add 1,000 cubic yards of earth or more onto the properties at 15820 and 15810 Wood Knoll Lane for DC Weiss Homes Inc. (06063.06gb)**

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

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

Chair Hart asked if the amount of fill would be less than previously approved. Wischnack answered in the affirmative.

In response to Dahl's question, Wischnack described the proposed grading of the site. More grading would be required because the residence would have a walk-out basement.

Colleran was uncomfortable with the original proposal's amount of fill. She was comfortable with the current erosion control plan and escrow.

Lillehaug stated that the proposal would not impact the site's drainage issues. It would not impact the 100-year flood conditions. The current flooding problems have not been structural. The project would not fix the nuisance flooding problems, but it would not make it worse.

Dahl described the fill, grading, and slope of the site. There should be enough space for the water to travel and collect.

Cheleen asked if the proposed houses would be higher than the existing ones. Wischnack stated that the yellow house to the southeast would be comparable in height.

The public hearing was opened.

Diane Pederson, 15806 Wood Knoll Lane, was concerned with drainage. She stated that:

- She was not against building on the site, but she opposed adding fill to create a slope higher than her property.
- The street currently floods from the street into her driveway.
- The street is not wide and the trucks hauling fill would be right in front of her house.
- The site would be sloped to the south, which is her property. It would flood her property.

Lillehaug explained the watershed pattern for the area. The drainage pattern would remain the same. Water running off the houses would be captured in infiltration basins. A shallow ditch with a culvert would direct the water to a low, empty area on the east.

Ms. Pederson understood. She wanted to express her concerns. Wischnack explained the construction management plan that would address specific issues of the site during construction. It would be shared with neighbors.

Scott Whitworth, 15838 Wood Knoll Lane, stated:

- He limited the height of his basement to meet ordinance requirements. It is an uninhabitable basement. The applicant could do the same.
- The project would not fit in with the neighborhood.
- There are no culverts and drainage ditches on Wood Knoll Lane. They would not fit the character of the neighborhood.
- The proposal would create additional water that would add to the flooding of the road.
- The building pads are wider than what was originally approved.
- The new proposal is confusing and distracting. He does not understand what would be built.

- The footprints are exactly the same.
- The fill would cause over 230 truck deliveries. The street damage would not be covered by \$5,000.
- He questioned when the fill would be delivered.
- A house on Excelsior Boulevard was a shell for a long time because of soil problems. It ended up being torn down.
- The retention ponds would not help. He asked if the calculations were based on a one-inch or two-inch rain fall.
- He invited everyone to drive down Wood Knoll Lane.

Chair Hart asked if the driveways would be sloped to control the drainage pattern. Lillehaug explained the infiltration system and drainage pattern. The proposal would not change the drainage pattern for the area.

In response to Chair Hart's question, Wischnack pointed out building plans included in the packet. The builder initially submitted the wrong plans. From the front, the residence appears to be a one-story rambler. The basement is a walk out. The footprint meets setback requirements. The houses would be similar.

No additional testimony was submitted and the hearing was closed.

Chair Hart reviewed the primary issues. The amount of fill would be less than originally proposed.

Britain asked if the driveway would promote water draining to the side. Wischnack stated that that would be considered.

Cheleen asked if as much fill would be required if a two-story residence, without a basement, was constructed. Wischnack speculated that not as much fill would be required.

Britain questioned if the street escrow amount should be raised. Wischnack stated that the \$5,000 escrow would provide some reassurance that the street would be repaired if necessary. It would not be used to do the work, but would be released when the street is found to be in satisfactory condition. Chair Hart noted that the applicant would not be required to fix the street, but to repair any additional damage caused by construction.

Dahl felt the proposal is a better option than previously approved, but he still felt it could be improved. The amount of fill could be decreased. He trusted staff, but the runoff would be increased. He did not support the proposal.

Schmitz asked if a regular basement, with no walk out or look-out windows, would decrease the amount of fill and runoff significantly. Andy Lapalme, applicant's engineer with RLK, 6110 Blue Circle Drive, explained that since the elevation cannot go below 948 feet, it would not be possible. Four feet of fill would have to be added because of the street's low elevation. The driveway would be pitched to the side to minimize drainage.

Chair Hart stated that the proposal was reviewed by the planning commission because the fill requires a conditional use permit. No variances are needed. The proposal was revised prior to the commission's review.

Colleran described the contours and elevations of the site. A slab on grade home would still require fill. The proposal would require the amount of fill to make the drainage work. A different house design would change the amount of fill, but the current application must be reviewed on its own merits.

Britain saw Dahl's point. He agreed it is not an ideal situation. The number of changes regarding drainage and the driveway does allow for a reasonable project. The issues have been addressed. It is an approvable project.

Chair Hart stated that it is not within the commissioners' jurisdiction to dictate house styles. The proposal needs to be approved on its own merits.

Cheleen's biggest concern was the trucks turning around and delivering the fill. He trusted staff to handle the problem. He had lived in a slab house and it fit the neighborhood. If the location of the house, slopes, and landscaping is done carefully the project should work out.

***Adams moved, second by Schmitz, to recommend that the city council adopt the resolution on pages A1a–A1d of the staff report and the modifications provided in the change memo dated December 7, 2006, which approves the proposed conditional use permit. This resolution is based on the following findings:***

- 1) The applicant has prepared a detailed drainage plan which addresses minimum floor elevations, site drainage, erosion control, infiltration areas and final grade information.
- 2) The addition of fill to this property will not create additional negative impacts on surrounding drainage patterns if mitigation measures are followed.

- 3) Measures which address erosion, final grade, and construction management will mitigate any potential impacts, which are created by fill.

Approval is subject to the following conditions:

- 1) Complete prior to grading permit application:
  - a. Gain approval by city staff, for a construction management plan which must include at a minimum:
    - (1) Hours of operation compliant with City Code.
    - (2) Truck turning movement and routing plan.
    - (3) Signage for hauling.
    - (4) Correction of road damage and escrow.
    - (5) Designated parking areas for construction workers.
  - b. Submit necessary escrows as required by city engineering department for repairing road.
  - c. Submit \$2,000 escrow to ensure compliance with grading and erosion control plan dated November 29, 2006.
  - d. Record this resolution with the county before the city issues the grading permit.
  - e. The city council may reasonably add or revise conditions to address any future unforeseen problems.
  - f. The applicant must agree to the conditions in writing.
  - g. The applicant must submit an additional \$5,000 escrow to compensate for any road damage as a result of construction.
- 2) Complete prior to certificate of occupancy for the structures:
  - a. Plans must indicate lowest floor to be no less than 948.1.
  - b. Infiltration areas must be properly planted and seeded as noted in applicant's letter dated November 29, 2006.
  - c. All permanent vegetation must be established.

- d. Any road or drainage repairs would be required to be completed by the applicant.

***Adams, Britain, Cheleen, Schmitz, and Hart voted yes. Dahl voted no. Brandt was absent. Motion carried.***

Chair Hart stated that the city council was tentatively scheduled to review the item at its December 18, 2006, meeting. She suggested engineering staff consider using the driveways to direct drainage toward the street.

Chair Hart called a ten-minute recess and reconvened the meeting.

**D. Preliminary plat, with lot width at right-of-way variances, for a five-lot subdivision at 4404 and 4412 Wilson Street for Lake West Development. (06051.06a)**

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

Thomas reported. She recommended approval of the application with the conditions listed in the staff report.

In response to Adam's question, Thomas explained the easements for the site.

Thomas Fretham, 4930 Baker Road, applicant, stated that the \$10,000 escrow seems excessive. The entire site would have silt fences and tree protection built for less than \$3,900. In addition to the escrow, a letter of credit or cash deposit would also be required to cover 150 percent of the estimated cost of the required grading and site restoration. He requested the escrow be reduced to somewhere between \$3,000 and \$4,000.

Chair Hart confirmed with staff that a letter of credit or cash escrow for 150 percent of the estimated grading and site restoration costs is standard. Chair Hart recalled a project that required a \$2,000 escrow for one lot, which would be similar to the current requirement. Colleran stated that the slopes and retaining walls for the site justify the escrow amount. As soon as the retaining walls would be constructed, the escrow amount could be reduced. She apologized to Mr. Fretham. She understood \$10,000 to be the amount discussed. Many of the problems for other sites could have been prevented by construction of the retaining walls first.

Adams asked if the retaining walls would be permanent. Colleran answered affirmatively.

Cheleen asked if four houses would be allowed on the private drive. Thomas explained that two of the residences would have frontage on Wilson Street so there would be just three houses in the private drive.

The public hearing was opened.

Robert Schmidt, 16001 Tonkawood Court, stated that the highest elevation is in his backyard. The sanitary sewer installation would be installed on his property line. He was concerned that the lift station would flood his basement. He asked what the city would do if that happened and if he should tear up his carpeting now. Lillehaug stated that the city would verify that the line would be adequate to handle the sanitary sewage.

Chair Hart stated that an easement exists between the properties. Lillehaug explained that no trenches would be needed. It would not be an obtrusive installation. No trees would be impacted. Two pits would be dug, one in the middle of the cul-de-sac and one east of the property corner. The applicant would need to obtain a drainage and utility easement for the sanitary sewer access area. Mr. Schmidt was concerned because his lot is downhill and things tend to run downhill.

In response to Dahl's question, Lillehaug stated that those issues would be worked out before the building permit would be granted.

David Muhs, 16051 Tonkawood Court, was concerned with the lift station during power outages. That is what caused the sewage to back up into a basement in the past. Power generators need to be provided sooner. The capacity of the lift station pumps may have to be changed. He was concerned additional runoff would travel into the swamp on Tonkawood Court. He was unable to construct a third stall for his garage because of this situation. The swamp now has exposed sand instead of water.

Thomas explained that a retention pond would be located in the corner. It would drain to the northwest. Lillehaug stated that the storm water pond would maintain the rate of runoff into the existing wetland. No additional flooding would be created. Capacity of the lift station would be checked by public work's staff.

Rodney Revsbech, 4329 Wilson Street, stated that the development does not own 4404 and 4412 Wilson Street. Mr. Fretham stated that he does have a purchase agreement for the properties subject to approval of the plans.

Tom McMahon, 4409 Wilson Street, was present at the last meeting. He stated that there were several denials at the last meeting. Chair Hart explained a drawing that illustrated how the property could be divided into five lots without any variances, so it would be approved. Mr. McMahon thought it was part of the proposal. Chair Hart explained that the proposed plan would save more trees by having a private drive rather than a public road and there would be a conservation easement and tree protection line that would not be required by the five-lot plan.

Mr. McMahon stated that 136 trees would still be removed. Thomas explained that 136 trees would possibly still be removed, but that the grading would be done in phases to allow for more flexibility to save trees. The maximum number of trees removed would be between 136 and 140. Chair Hart understood Mr. McMahon's sense of loss caused by the trees removal. She explained the rights of the property owner.

In response to Mr. McMahon's question, Chair Hart explained the easements. Mr. McMahon requested that extending the road and feeding it from the west be considered. It would decrease the loss of the forest and allow traffic to travel in two directions. He had been in commercial construction 26 years and knew anything could happen.

Audrey Manka, 15803 West Oaks, asked if the steep grade would require fill. She did not understand the process to approve the footprint and variances. She wanted to know what the development would look like. She was relieved with the conservation of the trees. She did not want McMansions in her backyard. She was concerned for the wildlife. It would be similar to development around the metropolitan area. She strongly objected to the proposal. Chair Hart explained that the size of the residence is not being considered, but the location of the footprint is being considered. Grading, retaining walls, and location of the driveways is included in the review.

Ms. Manka opposed a house being located so close. She did not understand the need for the drainage pond. She was worried the swamp would dry up without the drainage. Chair Hart explained that the plan would take additional runoff from the increased impervious surface and direct it to the drainage pond. Lillehaug agreed. Chair Hart was sympathetic that the woods would no longer exist, but it is a large piece of property that could be subdivided into five lots with a public road and without a conservation easement. The proposal attempts to make the project less intrusive than it could be. The tree preservation areas and conservation area were pointed out. Thomas explained that a small portion of the conservation area meets the steep slope definition.

Diane Muhs, 16051 Tonkawood Court, asked how the sewage would be handled. She did not understand why the lift station would be located on Tonkawood Court. There is a current problem with sewage backup. Chair Hart trusted public utilities staff to address the problems.

No additional testimony was submitted and the hearing was closed.

Chair Hart reviewed the primary issues. Significant improvements have been made to the plan. Engineering and public works would need to address the sewage concerns.

Cheleen agreed with Chair Hart that the proposal would be the best one possible. There are a lot of options for the sewer line, but he trusted public works and engineering staff to make that final determination.

Britain was in the same situation where a wooded area adjacent to his property was removed for a development. Development should be done in a manner to protect the natural aesthetics of the trees. A subdivision done without variances would not be the best situation. The proposal is an acceptable plan. Staff must watch the development closely since it has so many issues.

Dahl asked what would happen if the developer is unable to secure the easements. Thomas responded that the conditions of approval would not be met and the proposal would return to the city council for consideration.

***Dahl made a motion, Cheleen seconded, to recommend the city council adopt the resolution on pages A1–A7 of the staff report, approving the preliminary plat known as Hopaca Hollow date-stamped November 27, 2006 with the modification provided in the change memo dated December 7, 2006. 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 right-of-way variance in Section 300.10, Subdivision 5(h)(2)(b).

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 proposed public utilities, as determined by the city engineer.
    - (3) Drainage and utility easements public storm water ponds, as determined by the city engineer.
  - b. Pay the city a park dedication fee of \$9,500.
  - 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. An electronic CAD file of the final plat in microstation or DXF on a CD disk.
  - c. If the developer is constructing any public improvements, the developer must submit a signed agreement with the city. This agreement must guarantee that the developer will complete all public improvements and meet all city requirements. This agreement must include an escrow to ensure that the developer completes all public improvements and complies with all city regulations. This escrow must be a letter of credit or cash deposit. The amount must be 150% of the estimated cost of the improvements or 125% of the cost if based on actual bids.
  - d. The following documents for the city attorney's approval:
    - (1) Title evidence that is current within thirty days before release of the final plat.

- (2) Conservation easements as depicted on the Tree Protection plan date-stamped November 27, 2006, and a drawing of the easements. The easement and drawing must be recorded with the final plat.
- (3) Tree Preservation Easement as depicted on the Tree Protection plan date-stamped November 27, 2006, and a drawing of the easement. The easement and drawing must be recorded with the final plat.
- (4) Documents establishing a homeowners' association. The association must be responsible for maintaining common areas, common drive, 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 4. The easement must state the maintenance responsibilities of each owner. The easement must be at least 32 feet wide. The minimum driveway width must be as required by the fire marshal.
- (6) Drainage and utility easements over proposed sanitary sewer lines as required on properties adjacent to the subject property.
- (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.

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

- e. 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. Submit the following:
    - (1) Final grading, drainage and erosion control plans for review and approval of the city engineer. If the developer is building the streets and utilities, the developer must also submit final street and utility plans.
      - (a) Sanitary sewer not located under the private street must be directionally bored.
      - (b) Any new manholes must be precast or as approved by public works staff.
    - (2) A letter of credit or cash escrow for 150% of the estimated cost or 125% of a bid 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.
    - (3) A construction management plan for review and approval of the city planner.
    - (4) Cash escrow in the amount of \$10,000.00. The escrow must be accompanied by a signed document, to be drafted by city staff, stating that, if an erosion problem is not resolved within 48 hours of notification of that problem, the city could use the escrow dollars to resolve the issue.
    - (5) Evidence of watershed district approval.
  - b. All trees to be preserved must be fenced and erosion control measures installed, as approved by the city.
- 4) The following must be completed before the city issues a building permit:
  - a. Submit the following:

- (1) A grading and tree preservation plan for each lot for staff review and approval. The plan 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.
  - (2) A copy of the recorded plat and any easement or covenants required to be recorded.
  - (3) A hookup fee for sanitary sewer and water.
  - (4) 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 city planner may approve a time extension to this requirement.
- b. Installation of a temporary rock driveway, erosion control, and tree protection fencing for staff inspection and approval. These measures must be maintained throughout the course of construction.
  - c. All houses must be protected with 13D automatic fire sprinkler systems.
- 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) Before the city makes a final inspection of the house, the drive must be paved from the street to Lot 4. 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.

- 8) 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.

***Adams, Britain, Cheleen, Dahl, Schmitz, and Hart voted yes. Brandt was absent. Motion carried.***

Chair Hart stated that the proposal was tentatively scheduled to be reviewed by the city council at the December 18, 2006, meeting.

**E. Conditional Use Permit Amendment and Site and Building Plan Revision at 5235 Woodhill Road for West Suburban Alano. (06020.06b)**

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

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

In response to Chair Hart's question, Wischnack explained the landscape plan. Staff wanted more security regarding dates that plantings would be completed.

Adams asked if the height of the roof would be affected. Wischnack answered in the negative.

Chris VanHauser, property manager for West Suburban Alano, stated that the roof change did not save the project money, so it did not matter which style the project went with. Postponing the planting of the lower level would allow time for donations to be collected and save them approximately \$10,000. He described the completion time table.

Wischnack stated that the façade treatment is a requirement, but "roof line" may be removed from the condition.

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

Chair Hart recognized that the landscape plan was agreed to with the understanding of the neighbor on the north side.

Schmitz asked how significant a portion would be delayed. Wischnack detailed the landscape plan and the proposal's request. Money could be saved by removing some of the more aesthetic plantings.

Chair Hart reviewed the primary issue. Chair Hart found staff's recommendation reasonable.

***Cheleen moved, second by Britain, to approve the changes to the site and building approval and conditional use permit to allow changes in the building façade treatment as depicted on the building plans received November 20, 2006. Deny any delay in plantings along the northern property boundary and approve a delay of the remaining property landscaping with the exception of trees indicated in plans dated August 16, 2006. Approval is based on the following findings and the modifications provided in the change memo dated December 7, 2006:***

- 1) The changes received for the ~~roof line~~ and façade treatment are not significant in that the effect upon the public is minimal.
- 2) Changes to the landscaping details were an integral portion of the original approval for this project; therefore, commitment to the installation is crucial.

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

- 1) 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 date stamped August 25, 2006.
  - Grading plan date stamped August 25, 2006.
  - Landscaping plan date stamped August 25, 2006.
  - All northern plantings would be installed simultaneously with the new construction. The trees on the remaining portion of the property would be installed with the new construction. All remaining plantings indicated on the plan would be installed no later than August 31, 2008. Stabilization of the soils of future planting areas is also required.
  - Building elevations received November 20, 2006.
- 2) All other approval documents related to this application continue to be in

effect, as this approval would be considered an amendment to Resolution No. 2006-068.

- 3) Construction must begin by December 7, 2007, unless the planning commission grants a time extension.
- 4) The applicant must sign an agreement with the city which documents that the property will be assessed if the landscaping is not installed.

***Adams, Britain, Cheleen, Dahl, Schmitz, and Hart voted yes. Brandt was absent. Motion carried.***

Chair Hart stated that the proposal was tentatively scheduled to be reviewed by the city council at the December 18, 2006 meeting.

## 9. ADJOURNMENT

***Britain moved, second by Adams, to adjourn the meeting at 9:45 p.m. Motion carried unanimously.***

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