

**MINNETONKA PLANNING COMMISSION  
MINUTES**

**DECEMBER 28, 2006**

**1. CALL TO ORDER**

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

**2. ROLL CALL**

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

Staff members present: Community Development Director Ron Rankin, City Planner Julie Wischnack, Planning Technician Jeff Thomson, and Minnetonka Planning Consultant Geoff Olson.

**3. APPROVAL OF AGENDA:** The agenda was approved as submitted with modifications provided in the change memo dated December 28, 2006.

**4. APPROVAL OF MINUTES:** December 7, 2006

***Dahl moved, second by Cheleen, to approve the December 7, 2006 meeting minutes as submitted with the following modification:***

- o Page 16:

***Adams moved, second by Dahl Schmitz, to recommend that . .***

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

**5. REPORT FROM STAFF**

Wischnack briefed the commission on land use applications considered by the city council at its meeting of December 18, 2006:

- o Adopted resolutions amending portions of the city code regarding building moves and working without a permit.
- o Adopted a resolution approving a conditional use permit amendment and site and building plan revision at 5235 Woodhill Road for West Suburban Alano.

- Adopted a resolution approving a preliminary plat for a two-lot subdivision, with variances, at 3140 County Road 101 for John and Ruth Reed.
- Adopted a resolution approving vacating public drainage and utility easements and preliminary and final plat approvals concerning the Schoen Addition plat at 11477 and 11405 Fetterly Road for Casey Schoen.
- Adopted an emergency ordinance establishing regulations for electronic signs.
- Adopted a resolution approving a 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.

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

**7. PUBLIC HEARINGS: CONSENT AGENDA**

Item 7B, approval of twelve-month extension of approvals for Glen Lake redevelopment LLC (05091.05a), was removed from the consent agenda for discussion and separate action.

***Dahl moved, second by Brandt, to approve Items 7A, approval of a twelve-month extension of variances to add a garage, kitchen and second story addition at 16930 Gray's Bay Boulevard for Chad Badiyan (04023.06a), and 7C, variance for a new garage at 10201 Lakeview Drive West for Colleen Remer (06070.06a), listed on the consent agenda as recommended in the respective staff reports as follows:***

- A. Approval of a twelve-month extension of variances to add a garage, kitchen, and second story addition at 16930 Gray's Bay Boulevard for Chad Badiyan (04023.06a)**

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

- C. Variance for a new garage at 10201 Lakeview Drive West for Colleen Remer (06070.06a)**

Adopt the resolution on pages A10–A12 of the staff report, which approves an aggregate side yard setback variance from 30 feet to 20 feet at 10201 Lakeview Drive. 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 existing house has a non-conforming side yard setback. Therefore, a variance would be required for any addition to the house which maintains existing building lines.
  - b. The applicant's property is substandard in total width; 110 feet of width is now required, the property is just 70 feet wide. While not unique in the immediate area, the substandard width is not common to every R-1 zoned property.
- 2) The variance would be consistent with the spirit and intent of this ordinance for the following reasons:
  - a. The proposed garage addition would meet front yard setback requirements. The resulting aggregate side yard setback would be similar to others in the area. As such, the garage addition would not alter the essential character of the neighborhood.

Approval is subject to the following conditions:

- 1) Before the city issues a building permit:
  - a. Submit proof of having recorded this resolution with the county before the city issues a building permit.
  - b. Erosion control and tree protection fencing must be installed for inspection by natural resources staff. These measures must be maintained throughout the course of construction.
- 2) This variance will end on December 31, 2007, unless the city has issued a building permit for the project covered by this variance or approved a time extension.

***Adams, Brandt, Britain, Cheleen, Dahl, Schmitz, and Hart voted yes. Motion carried and Items 7A, approval of a twelve-month extension of variances to add a garage, kitchen, and second story addition at 16930 Gray's Bay Boulevard for Chad Badiyan (04023.06a), and 7C, variance for a new garage at 10201 Lakeview Drive West for Colleen Remer (06070.06a), 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 the planning division within 10 days.

**8. PUBLIC HEARINGS**

**A. Approval of a twelve-month extension of approvals for Glen Lake Redevelopment LLC (05091.05a)**

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

Wischnack reported. She recommended approval of the application based on the findings.

Chair Hart confirmed with Wischnack that no changes were being made to the plan. Approval would grant a one-year extension to begin the project. Wischnack explained that a change in the height of the exchange building has been discussed, but would be reviewed at a future meeting.

The public hearing was opened.

Grace Sheely, 14325 Grenier Road, disputed the fact that the project would not impact the neighboring properties. She asked the commissioners to reconsider the one-year extension. The area looks in disarray now and it would be disrespectful to the community to allow it to remain for one year. While she understood the need for an increase in time, a year would be too long. She suggested it be reviewed in six months. She understood the project was a package deal. The extension would allow time for the change to the height of the building to be considered. It would cause emotional distress. The issue with the Gold Nugget and tree loss would become a problem. The neighborhood is adversely impacted by the project.

Richard Urban, 5625 Eden Prairie Road, felt the developer required a "shorter leash." A 12-month extension would allow too much time for the developer to make little or no progress. He should have known a month or two months ago that sales were not going to support breaking ground as early as December 31, 2006. Given some of the violations that the project has had so far, the nature of the work that still needs to be done, and the fact that there are new plans to be considered, a shorter leash seems well within the city's discretion and prudent in this case. The project can not wait until next winter.

Anne Malm Hossfeld, 14616 Glendale Street, asked if "neighboring properties," in regard to the ordinance that allows a time extension if there is no adverse

impact to neighboring properties, referred to the community around the site or just the immediate neighbors. Wischnack stated that it could be applied subjectively. It would require some thought to the extension and how it would impact the neighbors. Ms. Hossfeld considered herself a neighbor, even though her property was not adjacent to the site. She would be impacted by the extension. The land has been leveled and there is nothing there. The impact on the community, as a whole, needs to be considered.

Ms. Hossfeld asked what would constitute an adverse impact. She asked what the impact would be and why it was not considered adverse. Chair Hart explained that Ms. Hossfeld was reading the original proposal, as it was written before. Wischnack explained that because the project was largely contentious, staff's opinion would be to approve the time extension and then have a meeting in January to discuss the exchange building. Nothing in the application has changed. Rankin clarified that the developer sent out 1,200 notices to neighbors alerting them that he plans on applying for a change to the exchange building on Excelsior Boulevard. The proposal would change the use of the top floors from condominiums to apartments and a 4<sup>th</sup> story would be added. A neighborhood meeting will be held January 9, 2007, at 7:00 p.m. at Immaculate Heart of Mary church. Twelve months is the standard amount of time for an extension.

Chair Hart asked what would happen if the time extension was denied. Rankin stated that the commission could not act on the application, deny it, or approve a shorter time period. The concern is for construction to proceed as soon as it reasonably can. The neighbors, surrounding businesses, and city as a whole do not benefit from the property remaining vacant.

Rankin related that the Kinsel Point condominium building has had adequate presales for that building to achieve its construction financing and allow a spring 2007 construction start. The time extension only relates to the exchange building on Excelsior Boulevard, sites B and C.

Chair Hart reviewed that denying the extension would not significantly alter a possible future modification proposal. Rankin agreed. Staff has discussed the project with Ms. Sheely and other neighbors recently. He acknowledged that a number of things have to be accomplished before the city would issue a building permit for any of the structures. The tree cutting on Kinsel Point has been resolved through payment of the penalty and plantings. Relocation of the Gold Nugget restaurant and a number of other items need to be accomplished.

Chair Hart noted that the time extension would allow things to proceed in an orderly fashion.

Ms. Hossfeld thanked staff for the clarifications. She stated that a 12-month time extension would be too long. She wondered what commitments would require start of the development. She wanted a greater commitment to what was being approved, at a minimum a guarantee of breaking ground. She requested qualifications be added to the 12-month extension.

Tom Wartman, 14400 Excelsior Boulevard, applicant, explained the market change that initiated the proposed change in the project. No one would be happier to break ground on the project than he would. He had no issue with a six-month extension. He fully intended to break ground within six months.

Ivan Fox, 6008 Pinewood Lane, stated that he has been adversely impacted by the project. The project needs to be scrapped and started over. Chair Hart explained that such discussion was not part of this evening's consideration.

Mr. Fox stated that the developer has purposely violated the redevelopment plan three ways: tearing down buildings before relocation, willfully destroying the shoreline, and purchasing Gold Nugget restaurant with a suspect promise to reopen. He requested that the time extension be denied and the city council make the decision. Chair Hart explained that the recommendation would go to the city council.

Keith Weigel, 14209 Glen Lake Drive, was surprised that the multi-million dollar project that is being partially funded with tax increment financing needed a time extension. The project is not going to go forward in the same manner if a time extension is not approved. Chair Hart stated that it would go forward, in some manner, whether the extension was granted or not. The citizens had concerns and he requested the time extension be denied. He would like to see the project move forward without an extension. Rankin explained that tax increment financing is handled in the developer's agreement. That is not implemented until the buildings are constructed and produce property taxes. The benefit to Mr. Wartman does not begin until the very end of the project. Chair Hart reiterated that extending the time limit does not impact the tax increment financing. Mr. Wartman is better served completing the project earlier. The tax increment financing district is in place for 16 years regardless of when Mr. Wartman begins receiving a benefit.

Rankin stated that the developer has closed on property purchased, demolished buildings, had a sales office for the condominiums for most of 2006, and was proceeding with the expectation that construction would begin fall of 2006. In this

case, staff sees steady steps that have been taken to move forward with the project.

Mr. Weigel felt there had to be something that is not being discussed, that the public does not know about, to explain why the developer would need an extension on December 18, 2006. Mr. Weigel did not think a time extension was needed for the project to move forward.

Mr. Urban asked if sites A, B, and C were connected. Wischnack answered affirmatively. Chair Hart and Rankin explained the approval requirements of the phasing of the sites.

Mr. Urban reiterated the need to keep the project on a short leash. Site C should not be started and site B continued for another year without any construction being started.

Ms. Sheely stated that not giving an extension would make the tax increment financing another aspect of the project that is not in compliance. She recommended that the time extension not be longer than six months. Rankin acknowledged that the developer's agreement was intended to track with the physical completion of the project. If the time extension is not granted, work would not be able to proceed. Building permits would not be approved without a time extension.

James Hiller, 5638 Glen Avenue, felt the time extension is a normal part of business, but it should be considered for the approved project only. A possible modification to the plan should not be included. He was concerned with the change to be discussed at the January 9, 2007 neighborhood meeting.

Ms. Hossfeld felt approving the time extension until the January 9, 2007 meeting should be considered. There are other routes to bring the time extension and proposed change before the city council. The intent should be considered as to whether the time extension would allow the developer more time to change the proposal.

Dr. Joan Hiller, 5638 Glen Avenue, stated that a time extension for a changed plan should go through a different approval process. Chair Hart explained the process. The developer sending out the letter regarding the neighborhood meeting confused residents. The city has not received a proposal to change the plan. The planning commission is considering a time extension for the project as it was originally approved. Dr. Hiller questioned how the sites would be

completed as a package. Dr. Hiller requested limiting the extension to April 1, 2006 and monitoring the project closely.

No additional testimony was submitted and the hearing was closed.

Chair Hart reviewed the primary issue.

Britain agreed that the rumored changes to the plan can not be included in the review of the time extension. With regard to the time extension, the neighbors do have legitimate concerns, but the developer was being reasonable in requesting six months. He favored granting a six-month time extension.

Cheleen asked if the time extension was not granted, then would the developer be required to submit a new proposal. Rankin answered affirmatively. Permits can not be issued to proceed with construction unless the terms of the resolution approving the project are in compliance. The December 31, 2006 deadline has not been met. It must be changed in order to proceed. Cheleen was aware of trouble with the market conditions for condominiums. Cheleen supported a six-month time extension.

Adams commented on how real estate conditions impact the community. He supported the six-month time extension. Stopping the project would not serve the community.

Brandt had no problem with the 6-month time extension. He questioned if Site C was started, then would some development have to occur on site B. He understood the neighbors' concerns. Rankin agreed that no one wanted the site to remain vacant. The approved proposal did not control phasing of the sites.

Rankin confirmed for Chair Hart that all of the sites had to have been started in December for no extension to be necessary.

Brandt asked if the possibility existed for Sites C and A to be completed, but Site B delayed or not completed if a plan modification was not approved. Rankin stated that all three of the sites would need to be started by the time extension deadline or there would be a penalty and the project would not be in compliance with the conditions of approval and developer's agreement.

Chair Hart asked if the item could go to the city council without the planning commission's recommendation. Rankin appreciated some type of motion to forward to the city council.

Dahl asked if there were enough sales to start the Kinsel Point building. Mr. Wartman confirmed that purchase agreements have been executed with earnest money submitted. He is anticipating breaking ground in early May. It would be difficult for him to not start Site B when starting Site A because he has existing tenants and leases to relocate. He has had no sales for the type of condominiums marketed for Site B. Therefore, he is looking at a plan that would keep the same site plan with a minor change for additional parking and another story. Chair Hart appreciated his comments, but directed him to save them for the appropriate meeting. She explained that a permit cannot be issued without construction financing and construction financing cannot be issued without a certain percentage of sales.

Schmitz concurred with Britain. She appreciated the neighbors' concerns and supported a 6-month time extension. She supported the original plan. If change was proposed, then it would be dealt with at that time.

***Britain moved, second by Brandt, to approve a 6-month time extension to end on June 30, 2007. Recommend the city council approve the resolution contained on pages A24-A26 of the staff report with a modification to approve a 6-month time extension.***

Brandt asked if a requirement could be added that would require landscaping be added to Site B if construction was not started by a certain date. Rankin suggested that requirement be reconsidered at the end of the 6-month time extension.

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

Chair Hart stated that the item was tentatively scheduled to be reviewed by the city council at its January 8, 2007 meeting.

**B. Conditional use permit for telecommunication tower and equipment cabinets at the southwest corner of 494/394 Intersection for Sprint Spectrum/Hall Institute (06068.06a)**

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.

Adams asked how the equipment would be screened. Wischnack provided an illustration of the cabinets on a concrete slab enclosed by a chain link fence. Adams noted residents' request for landscaping. Wischnack stated that a landscaping plan would be required to ensure adequate screening.

Steve Trueman, project manager for the applicant, stated that he would comply with the city's landscape recommendation. He described the structure that would house the equipment.

The public hearing was opened.

Karen Martenson, 1627 Brightwood Drive, and her husband, George Caswell, opposed the tower. Her research found that while it has not been proved that health problems are related to similar towers, it has not been disproved. She was concerned for their health and the level of radio frequency. She requested it be moved closer to an area without houses, south of the site.

Mr. Caswell stated that his house would be less than 400 feet away from the proposed tower. When he rides his bike close to the tower, he receives a shock if his foot touches the pedal. It emits a huge amount of pollution already.

Ms. Martenson stated that it has been proven that the proposal would lower the value of her home.

Mr. Trueman clarified that the type of emission would be different. He clarified that location and access were primary considerations. The equipment at the base of the tower would not emit radiation at all. The antennas, located at the top of the tower, emit the only signal. There would be no signal under the tower, it would be directed up at a slant. The energy used would be comparable to a 100-watt light bulb.

No additional testimony was submitted and the hearing was closed.

Chair Hart reviewed the primary issues. The federal government has jurisdiction related to health issues related to emissions.

***Adams moved, second by Brandt, to recommend that the city council adopt the resolution on pages A9–A13 of the staff report with the modification provided in the change memo dated December 28, 2006, which approves a conditional use permit for telecommunications antennas and associated equipment at the southwest corner of 494/394 Intersection. This resolution is based on the following findings:***

- 1) The city code recognizes telecommunications facilities as valuable public resources.
- 2) The proposal meets all of the conditional use permit standards.

Approval is subject to the following conditions:

- 1) Prior to issuance of a building permit:
  - a. Record this resolution with the county before the city issues a building permit.
  - b. Submit a landscape plan for review and approval of natural resources staff. Landscaping must screen equipment cabinets from off-site views with specific emphasis on screening from the trail.
- 2) The site must be developed and maintained in substantial conformance with the plans date-stamped November 21, 2006.
- 3) The exterior surface of the antennas must be painted to match the existing structure.
- 4) Antennas must comply with all building and electrical code requirements and must be designed and certified by an engineer.
- 5) No external messages or on-site employees are allowed.
- 6) The city council may reasonably add or revise conditions to address any future unforeseen problems.
- 7) The applicant must agree to the above conditions in writing.

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

Chair Hart stated that the item was tentatively scheduled to be reviewed by the city council at its January 8, 2007 meeting.

**C. Conditional use permit for telecommunications antennas at 4525 Williston Road for Cingular Wireless/Hall Institute (05011.06a)**

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.

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

Chair Hart commented that the equipment would be kept inside the base of the tower. The antenna would be located below the bulb of the tower.

***Cheleen moved, second by Brandt, to recommend that the city council adopt the resolution on pages A10–A12 of the staff report, which approves a conditional use permit for telecommunications antennas at 4525 Williston Road. This resolution is based on the following findings:***

- 1) The city code recognizes telecommunications facilities as valuable public resources.
- 2) The proposal meets all of the conditional use permit standards.

Approval is subject to the following conditions:

- 1) Record this resolution with the county before the city issues a building permit.
- 2) The site must be developed and maintained in substantial conformance with the plans dated November 21, 2005.
- 3) The exterior surface of the antennas must be painted to match the existing water tower.
- 4) Antennas must comply with all building and electrical code requirements and must be designed and certified by an engineer.
- 5) No external messages or on-site employees are allowed.
- 6) The city council may reasonably add or revise conditions to address any future unforeseen problems.
- 7) The applicant must agree to the above conditions in writing.

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

Chair Hart stated that the item was tentatively scheduled to be reviewed by the city council at its January 8, 2007 meeting.

**9. OTHER BUSINESS – DISCUSSION ITEMS**

**A. Policy on “McMansions” (06033)**

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

Olson reported. He updated commissioners on the history of the issue and requested commissioners provide comments to be forwarded to the city council.

Britain felt the ideas were very sound and well thought out. He supported it as it was.

Schmitz asked if the floor plan of the residence would be considered, for example, if it would have a walk-out or look-out basement. Olson stated that a below-ground basement would not be included in the floor area calculation because it would be located below grade and not visible. Half of a walk-out or look-out basement would be included in the floor area calculation since it would be half visible.

Adams applauded Olson’s efforts. He was concerned with the huge houses not fitting in the neighborhood. He asked if a garage is included in the floor area ratio. Olson stated that it would be if it is attached.

Chair Hart wanted the flexibility to disallow a residence if it does not attach itself to the neighborhood. Wischnack stated that multiple versions of the policy would be considered. Chair Hart felt the policy is needed. It will happen more frequently in the future.

Olson recalled 11 years ago when discussion focused on the redevelopment of lake lot homes. The neighbors complained about the view of the lake being blocked. Councilmembers then asked what could be done. Chair Hart acknowledged that the issue has spread significantly.

Brandt was concerned that one would build a large garage one foot from the residence to provide for the maximum floor area ratio for the residence. Chair Hart considered that if the lot would be that wide, it would probably be large

enough to sustain the desired size residence. Olson acknowledged that there really is no such thing as a perfect policy, but variances and discretion are available to commissioners and the city council. In general, the policy would be self-enforcing. The detached accessories are usually located in the rear yard and garages are preferred to be attached.

In response to Schmitz's question, Olson explained the benefits of using a floor area ratio to control the three-dimensional volume of a residence.

Wischnack commented that the lot coverage requirement is another tool to provide some regulation of the size of structures on a property.

In response to Chair Hart's question, Olson explained how each neighborhood would define its own maximum floor area ratio.

Cheleen confirmed with Olson that the policy would have jurisdiction over residences that would require a residence or lot variance. The same scenario would apply to a lot where a house was being demolished and rebuilt as well as for subdivisions.

Adams asked Olson to comment on the feedback received that stated that the market should decide and a policy is not needed. Olson explained that if no variances are needed, then the free market would have the right to determine the size of the residence. When a variance is needed, a deviation from the city's standards is being requested. The city has the right to require the structure to fit in the neighborhood.

**B. Ordinance changing the setbacks and variance standards for lots-behind-lots (99047)**

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

Olson reported. He updated commissioners on the history of the ordinance and requested commissioners provide comments to be forwarded to the city council.

In response to Chair Hart's question, Olson stated that the ordinance would apply to a subdivided, vacant lot. There would be no grandfathering of the lot that would provide exclusion from the ordinance.

Chair Hart whole-heartedly supported the sprinkler requirement. Schmitz concurred.

Schmitz liked the proposal and the aspect that the variance could be restricted where it may set a precedent. She favored being able to deny an application if it was warranted.

Brandt suggested alerting fire and police personnel if an address being responded to would be a lot behind a lot by adding a letter to the house number. Chair Hart said that could be considered for future addresses. Olson would research the possibility.

Chair Hart supported adopting the ordinance. Britain concurred. The standards need to be tougher for a lot located behind another lot.

#### 10. ADJOURNMENT

***Schmitz moved, second by Brandt, to adjourn the meeting at 9:05 p.m.  
Motion carried unanimously.***

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