

**MINNETONKA PLANNING COMMISSION
MINUTES**

JANUARY 11, 2007

1. CALL TO ORDER

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

2. ROLL CALL

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

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 Planning Consultant Geoff Olson.

- 3. APPROVAL OF AGENDA:** The agenda was approved as submitted with modifications and additions provided in the change memo dated January 11, 2007.

- 4. APPROVAL OF MINUTES:** December 28, 2006

Brandt moved, second by Dahl, to approve the December 28, 2006, meeting minutes as submitted.

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

5. REPORT FROM STAFF

Wischnack briefed the commission on a land use application considered by the city council at its meeting of January 8, 2007:

- Upheld the planning commission's approval of a parking variance for Jimmy's American Grill at 11000 Red Circle Road with the removal of the cross-parking agreement requirement. The cross-access easement requirement remained and confirmed that the east access would be the appropriate access.

Wischnack mistakenly reported at the last meeting that the Wilson Street subdivision approval was unanimous. There was one vote for denial.

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

7. **PUBLIC HEARINGS: CONSENT AGENDA:** None

8. **PUBLIC HEARINGS**

A. Conditional use permit for a recreational use within a wetland buffer, an amendment to a conditional use permit, and site and building plan review to relocate two existing softball fields and construct two new softball fields on the high school campus at 18301 State Highway 7 for Minnetonka Public Schools (97001.06b)

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

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

Colleran found the proposal acceptable given the small amount of buffer impact, the impact would be mitigated in excess, and the mitigated areas would be protected by conservation easements. There would be no additional tree loss due to the encroachment of the buffer. Three mitigation areas would be placed in conservation easements and would exceed the amount of impact that would be caused by the retaining wall on Field 3. Runoff would be pretreated by infiltration trenches and directed to rain gardens. Fields 3 and 2 would drain to the rain gardens on the west. Nutrients would be pretreated in the rain garden and discharged to the Department of Natural Resources wetland. The other fields' runoff would travel to the rain gardens on the east and discharge to the south lagoon. The Tamarack swamp is an area of concern for residents and staff. The proposal would not cause water to travel into the swamp.

Mike Condon, Minnetonka Public Schools representative, applicant, firmly supported the proposal as it has been worked out with staff. Roy Anderson, a consultant, was also present to answer questions. The proposal would be financed by youth program fees, not taxes.

Adams asked Mr. Condon if he was aware of noise concerns related to the existing facility. Mr. Condon stated that fall of 2006, a new announcing system was being tested and determined to be too loud. Another noise issue is created by vehicles' alarms.

Cheleen emphasized that the proposal would be funded by youth program fees, not taxes. He recommended that the public address system be modified to direct sound away from the surrounding houses.

Chair Hart recognized that the level of sound created by the facility would be included in the permit application review.

Adams asked what purpose the eight-foot-tall-chain-link fence would serve. Mr. Condon explained that the fences would provide security for the investment and give the softball fields space. The fence would prevent vehicles from driving on and damaging the fields. Adams asked if there are fields in the area not secured by a fence. Mr. Condon pointed out two fields that would not be secured. Neighborhood kids could use the fields to play a pick-up game.

The public hearing was opened.

Don Klassy, 5353 Ashcroft Road, spoke on behalf of the Ashcroft Town Home Association Board:

- He is a sports fan and spent 29 years in school district administration.
- He met with Olson and found staff very helpful in providing information.
- The neighborhood meeting on December 20, 2006 was difficult to attend due to its proximity to the holidays.
- There was concern regarding the number of special events and tournaments with non-Minnetonka residents involved. John Guy assured him there would only be a few.
- The school district does underwrite some of the front money until the funds are raised.
- There was concern regarding encroaching into the wetland buffer zone. It may be a want, but it is not a need.
- The standards are written very well.
- He appreciated the concerns regarding noise. He once heard every word spoken on the ball park loud speaker system from approximately 1,000 feet away.
- A precedent would be set by encroaching into a wetland buffer zone.
- If a few feet into the buffer zone would be allowed, then additional feet may be allowed.
- He has worked with John Headstrom of the high school to address the traffic issues for the road clearly marked, "private road."
- He was concerned with the city's plans for playgrounds that are being vacated. He hoped that the parks would not be liquidated.

- He requested that a slight modification be made to negate the need for the encroachment into the wetland buffer.
- He appreciated the commission's time and the opportunity to voice concerns.

Chair Hart asked Mr. Klassy to describe the traffic issue on the private road. Mr. Klassy stated that Ashcroft Road is a private road. It is not an access road to the site. There is a problem with traffic related to the high school. Additional ball fields may increase traffic. Sometimes, motorists get antsy because they do not want to drive to the service road that connects to the high school. More and more often, he sees vehicles cutting through on Ashcroft Road to get to Delton Avenue.

Chair Hart asked Mr. Klassy to clarify the loss of playgrounds. Mr. Klassy was concerned with games being moved from other parks. Rankin stated that the city is not liquidating parks or subtracting facilities. It is experiencing the highest demand it has ever had for all kinds of athletic fields, for youth in particular. The recreation department and private associations are working together with school districts to maximize the availability of practice and game facilities in Minnetonka.

Mr. Condon explained that the three feet that would extend into the wetland buffer would be necessary to meet high school league requirements. The financing of the proposal has been facilitated by the Minnetonka Diamond Club. The school board approved the financial plan. The school district allows financing to go through the school district to utilize the district's bond rating, but the diamond club is responsible for all payments. There is a contract to ensure that happens.

Chair Hart acknowledged that a recreational use is a permitted use in a wetland buffer, provided that certain conditions are met.

No additional testimony was submitted and the hearing was closed.

Chair Hart reviewed the primary issues.

Cheleen understood the proposal would probably result in more trees on the site than it has now. His grandchildren play softball in Minnetonka. He concurred with Rankin that the fields are over-used now. School district representatives need to address the traffic issue for the area. Speed bumps or more police presence may be considered.

Britain concurred with Cheleen. The wetland buffer impact has been mitigated. Integrating the proposal with the high school's traffic management plan should be considered. The one negative aspect of the project is that it would create more traffic and bring more people to the site. Other than that, it is a great project.

Adams asked if the public address system permit is an annual application process. Thomson explained that regular, annual events would be covered under one permit, but a new event would require its own specific permit. A permit may be revoked if the site violated noise ordinance requirements.

Dahl moved, second by Adams, to recommend that the city council approve the following items for the high school campus at 18301 State Highway 7 for Minnetonka Public Schools with the modifications provided in the change memo dated January 11, 2007:

- 1) *Recommend that the city council adopt the resolution on pages A1–A5 of the staff report, which approves a conditional use permit for a recreational use within a wetland buffer area at 18301 State Highway 7. Approval is based on the finding that the proposal meets the required conditional use permit standards and is subject to the following conditions:*
 - a. Record this resolution with the county before the city issues a building permit.
 - b. The city council may reasonably add or revise conditions to address any future unforeseen problems.
 - c. Any change to the approved use that results in a significant increase in traffic or a significant change in character would require a revised conditional use permit.
 - d. A wetland buffer must be established and maintained 25 feet upland of the wetland. The buffer must be placed in permanent conservation easement.
 - e. Any wetland buffer vegetation impacted by the softball field must be replaced in a mitigation area.
 - f. The applicant must agree to the above conditions in writing.

CONDITIONAL USE PERMIT AMENDMENT

- 2) *Recommend that the city council adopt the resolution on pages A6–A10 of the staff report, which approves an amendment of a conditional use permit for an educational institution and facilities in an R-1 zoning district at 18301 State Highway 7. Approval is based on the finding that the proposal meets the required conditional use permit standards and is subject to the following conditions:*
- a. Record this resolution with the county before the city issues a building permit.
 - b. The city council may reasonably add or revise conditions to address any future unforeseen problems.
 - c. Any change to the approved use that results in a significant increase in traffic or a significant change in character would require a revised conditional use permit.
 - d. Submit a Public Address System Permit Application for review and approval by the city's recreation department. Such permits may be issued for special events, including, but not limited to: high school athletic contests, special youth sports activities, opening day ceremonies, all-star and playoff games, and trophy presentations.
 - e. The applicant must agree to the above conditions in writing.

SITE AND BUILDING PLAN REVIEW

- 3) *Recommend that the city council approve the site and building review for softball fields at 18301 State Highway 7, subject to the following conditions:*
- a. Subject to staff approval, the site must be developed and maintained in substantial conformance with the following plans, unless modified by the conditions below:
 - Site plan date stamped November 30, 2006.
 - Grading plan date stamped November 30, 2006.
 - Landscaping plan date stamped November 30, 2006.
 - Storm water management plan date stamped November 30, 2006.

- b. Before starting any site work or obtaining a grading permit, complete the following work:
 - (1) Submit the following information to the city:
 - a. Recorded copies of resolutions approving the conditional use permit and amendment to the conditional use permit.
 - b. Final site, grading, drainage, utility and erosion control plans for staff approval.
 - c. Construction management plan for staff approval.
 - d. Conservation easements and drawings for approval of the city attorney over the following areas:
 - (1) Twenty five (25) feet upland from the edge of the adjacent wetland and up to the retaining wall and fence of field three.
 - (2) Twenty five (25) feet upland from the edge of the mitigated wetland approved in the 1997 Wetland Conservation Act mitigation plan.
 - (3) Managed planting areas that will mitigate for the wetland buffer impact for field 3.
 - e. Revised storm water management plan for staff approval, including the following information:
 - (1) Construction of a filtration trench along the perimeter of field 3 to divert the storm water runoff to a rain garden.
 - (2) Storm sewer plan.
 - (3) Calculations of proper sizing of existing water quality structure in the parking lot. If not properly sized for added impervious area, an additional treatment facility is required.

- (4) Maintenance agreement for rain gardens and filtration trench areas.
 - (5) Outlet controls for drain tile for rain garden on the west side.
 - (6) Calculations to show that rain gardens are properly sized to infiltrate 1" rainfall event.
 - (2) Install and maintain a temporary rock driveway, erosion control, tree protection, and wetland protection fencing subject to review by the city's natural resources staff. These items must be maintained throughout the course of construction.
 - (3) Submit a letter of credit or cash escrow for 150% of the estimated cost to comply with grading permit requirements and restore the site.
- c. The following must be submitted to the city before the city issues a building permit:
 - (1) A revised landscape and irrigation plan for staff approval. The landscape plan must include the following information:
 - a. Detailed plantings, invasive species removal, tree preservation plans, and management plan for wetland buffer areas.
 - b. Additional native plantings in managed planting areas.
 - c. A wetland buffer mitigation area to the south and west of the existing soccer fields.
 - (2) A letter of credit or cash escrow for 150% of the estimated cost of all required landscaping
- d. The property owner is responsible for replacing any required landscaping that dies.
- e. All rooftop and ground-mounted mechanical equipment, and exterior trash and recycling storage areas, must be enclosed with

materials compatible with the principal structure, subject to staff approval. Low profile, self-contained mechanical units that blend in with the building architecture are exempt from the screening requirement.

- f. Construction must begin by December 31, 2008, unless the planning commission grants a time extension.

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

B. Ordinance changing the setbacks and variance standards for lots-behind-lots. (99047.06a)

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

Olson reported. He recommended approval of the application based on the findings.

In response to Adams' question, Olson stated that approximately 1,000 properties in Minnetonka could potentially be subdivided to create a lot-behind-lot.

Olson confirmed for Schmitz that the ordinance could apply to a situation where an existing residence is located in the rear of a lot split and a new residence was being proposed to be constructed on the newly created front lot. Olson clarified that the ordinance could influence the location of the lot line between the residence in the rear and the setbacks and placement of the proposed residence. Olson recalled a similar situation on Ford Road.

Cheleen asked if the ordinance would restrict the height of a proposed residence. Olson answered in the negative. It was considered, but controlling floor area ratio would provide more flexibility.

The public hearing was opened.

Steve Hedges, 12700 Anderson Lakes Parkway, Eden Prairie, spoke on behalf of Jim Gilbert who was unable to be present. Mr. Hedges referenced a letter written by Mr. Gilbert in the agenda packet. He represented David Priebe and Karen Cucci, residents at 1900 Yorkshire. He expressed concerns regarding:

- o The slide represents the lot as it was in 1995.

- The main concern is that the setback requirements could limit what could be done and have an economic impact on the value of the lot.
- Inverse condemnation could occur where a regulatory body causes a significant economic impact that interferes with a party's reasonable investment expectations. He was not sure that was the case in this instance.
- There are potentially 1,000 lots that could be subdivided and built on.
- His recommendation is that if the ordinance is adopted, that it be made applicable to future requests for subdivisions.
- Imposing new requirements on an existing subdivision could result in inverse condemnation.
- It would be appropriate to make the ordinance applicable to future requests for subdivisions and variances.

Britain asked for the square footage of the lot Mr. Hedges' discussed. Olson stated that it is approximately 30,000 square feet. Mr. Hedges stated that the total before the subdivision was 2.6 acres. The subdivision occurred 11 years ago.

Jack Bolke, 1724 Ford Road, asked whether an existing residence would be affected by the proposed ordinance in regard to expanding the size of the house. Olson stated that the proposed setbacks would affect an addition. Sprinklers would be required only for new construction.

Chair Hart reviewed that side yard setbacks have been changed in the last ten years. The procedure would be to apply for a variance and be considered on a case by case basis.

No additional testimony was submitted and the hearing was closed.

Chair Hart reviewed the primary issues. Chair Hart felt the conditions discussed at the commission's last meeting were well incorporated.

In response to Schmitz's question, Olson explained that the front house would be considered the same as a normal house with frontage. The front house would not have to meet the proposed setback requirements. Olson stated that the rear lot would indirectly impact the front lot. It would impact where the rear lot line, of the front house, would be located. It could not be within 40 feet of the rear house.

Britain moved, second by Schmitz, to recommend that the city council adopt the ordinance on pages A1–A5 of the staff report.

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

C. Policy on McMansions. (06033.06a)

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

Olson reported. He recommended approval of the policy based on the findings.

Adams asked if the policy would have been applied to the Lewis Avenue development, then would anything have been different. Olson stated that the Lewis Avenue residence had a floor area ratio of .16. The residence with the largest floor area was .17. The residence would have met the policy requirements. The floor plan was designed to fit in the neighborhood.

Brandt felt the change from 400 feet to 100 feet would be drastic. He asked if a condition could take into consideration a residence's visibility. Olson stated that one of the reasons a policy was being considered was because of the variety of neighborhoods. He was unsure if a policy would be created that would reflect every situation. The surrounding area would be used to choose the standard floor area ratio. Selection would also be visually oriented. Four hundred feet would include adjacent streets which would not be affected. Olson was open to suggestions of what distance to use. It would need to be flexible. The policy would allow removal of a residence with the largest floor area ratio if it is not visually part of the neighborhood. Chair Hart pointed out 400 feet on an illustration. It definitely seemed too large of an area.

Britain supported the 100-foot circle for the policy. Perhaps disallowing a residence that does not seem to be visually part of the neighborhood and having the ability to add a residence that does seem to be visually part of the neighborhood should be considered.

Olson clarified for Cheleen the wording regarding an addition. The floor area ratio calculation would include the existing residence with the addition included.

Schmitz concurred with Britain to allow a lot to be added or removed depending on its visual affiliation with the applicant's neighborhood.

The public hearing was opened.

Theresa Elsbernd, 5880 Minnetonka Drive, Shorewood, built the Lewis Avenue lot subdivision that was the subject of the newspaper article from the previous day. She was not opposed to a mcmansion policy. She and staff accomplished a successful situation on Lewis Avenue without having a mcmansion policy in place. There would be a lot of flexibility and subjectivity built into the policy to the point that she wondered why a policy would be necessary. She met with the mayor and city council twice to develop plan designs and accept restrictive covenants that were placed on the two properties.

Chair Hart thanked Ms. Elsbernd for her common sense used during the Lewis Avenue lot subdivision.

Bruce Boeder, 11919 Hilloway Road, stated that he is a real estate attorney speaking as a resident:

- He lives next door to a “mcmansion.”
- He stated that Olson is an excellent planner.
- He was concerned that the policy would not, necessarily, address mass.
- The houses next to his are nearly all single-floor ranch houses. There are several story-and-a-half residences. Within 1,000 feet of Hilloway Road, there are no 2-story residences. The residence built next to him is a 1-story residence; however, unlike the other residences, it has a 9-foot or 10-foot basement built on an existing slab and a 12-foot ceiling on the first floor. The “mcmansion” towers over a story-and-a-half house near it. When viewed from the street, the neighboring “mcmansion” appears to have a much larger mass.
- He suggested a volume area ratio be used, the floor footage times the height, to find the volume and use it to determine the ratio.
- He applauded the idea of the policy. It is a serious neighborhood issue related to livability.

Rich Spielberg, 5428 Glenavon Avenue, was concerned what type and size of residences would be constructed in the Minnetonka Highlands development. Four residences would have to be tall and thin to fit on a cul-de-sac. Chair Hart stated that there is a 35-foot height restriction for residences. If the residence fit within the current ordinance standards, then it would be allowed. The mcmansion policy would apply when a variance would be required.

Joy Ferwin, 2820 East Road, Woodland, stated that her neighborhood hoped to refer to the mcmansion policy. Her neighborhood is made of small, cottage-type homes. A two-story-walk-out residence was approved at the top of a hill. The

mass of the residence is so large that the neighbors facing it have a huge "arc" for a view. The residence's foundation size and setbacks meet ordinance requirements. Chair Hart explained that it would be a combination of the foundation size and volume.

Ms. Elsbernd supported the policy because there are a lot of builders with bad taste. Some method of incorporating homeowners, neighbors, and city councils should be implemented to come up with the best solution. What scared her about the policy is that it would give false hope. The proportion of the residence on the lot is an issue. Using common sense and working together to find a balance would be the right approach.

No additional testimony was submitted and the hearing was closed.

Chair Hart reviewed the primary issues.

Britain agreed with the 100-foot distance. He suggested adding, "The city may add any existing lot that the city determines is part of the applicant's neighborhood" after the wording, "disallow any existing lots."

Adams asked if using volume area ratio was considered. Olson agreed that including the height of each story would be helpful, but not practical when obtaining information for each property from the tax assessing data base. Many homes are irregular in shape and not easily calculated. The definition of floor area includes an additional floor for every additional 15 feet of building height. A 30-foot tall residence would be assumed to be 2 stories. The square footage would be included in the calculation, even though it would be floor to ceiling space with no actual floor. The policy would be improved over the next few years.

Brandt and Cheleen concurred with Britain.

Schmitz moved, second by Brandt, to recommend that the city council adopt the proposed mcmansion policy with the addition of: "The city may add any existing lot that the city determines is visually part of the applicant's neighborhood."

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

9. ADJOURNMENT

*Cheleen moved, second by Dahl, to adjourn the meeting at 8:45 p.m.
Motion carried unanimously.*

By: _____
Lois T. Mason
Planning Secretary