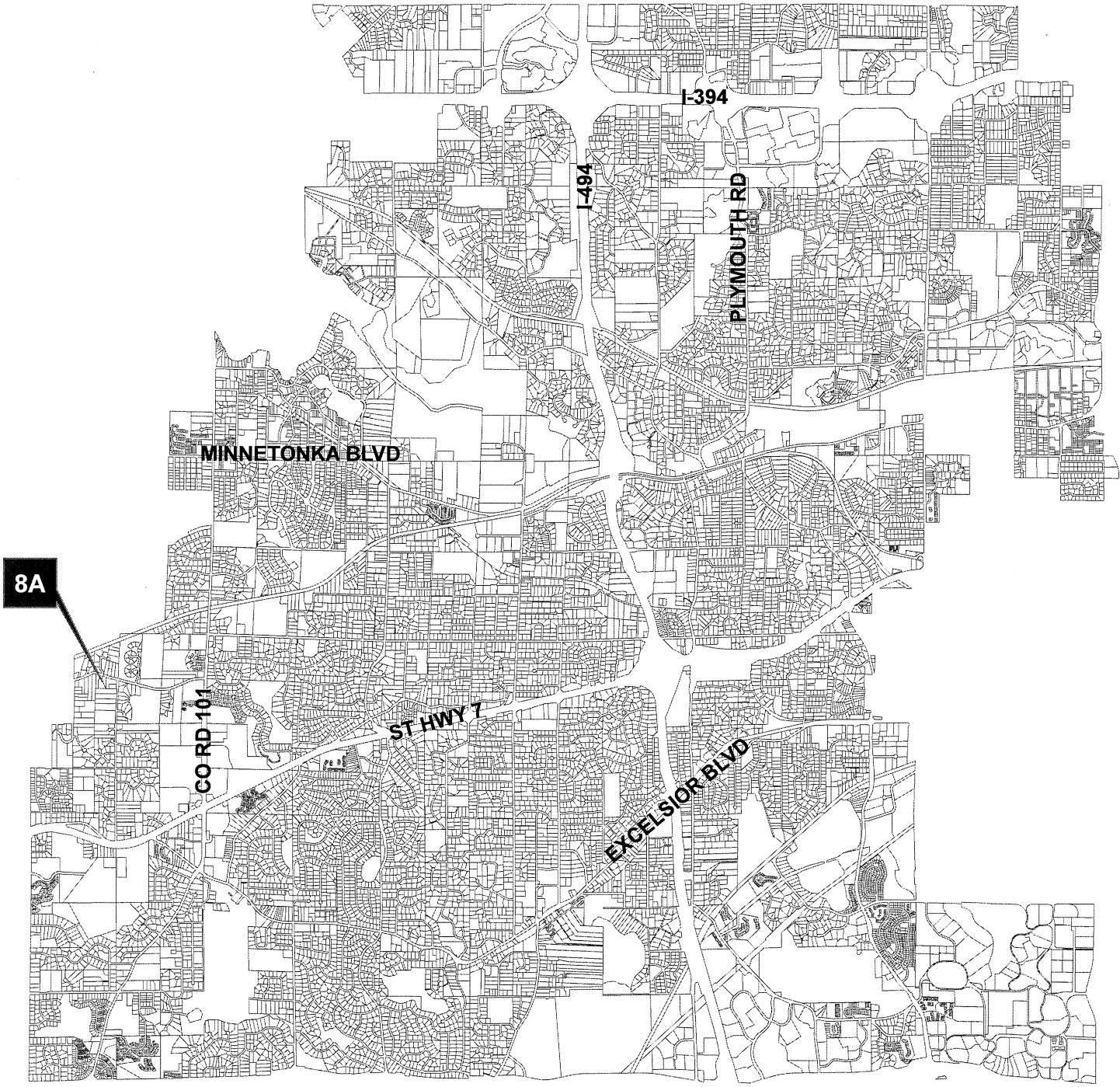




**APRIL 26, 2007  
PLANNING COMMISSION MEETING  
AGENDA**





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## PLANNING COMMISSION AGENDA

APRIL 26, 2007—6:30 P.M.

CITY COUNCIL CHAMBERS—MINNETONKA COMMUNITY CENTER

1. **Call to Order**
2. **Roll Call**
3. **Approval of Agenda**
4. **Approval of Minutes:** April 12, 2007
5. **Report from Staff**
6. **Report from Planning Commission Members**
7. **Public Hearings: Consent Agenda – None**
8. **Public Hearings: Non-Consent Agenda Items**
  - (4 votes) A. Conditional use permit to move over 1,000 cubic yards of earth at 18511 and 18517 Ridgewood Road for Rod Peterson. (Project 05041.07a)
    - Recommendation to City Council (Tentative Date: May 7, 2007)
    - Project Planner: Susan Thomas
  - (4 Votes) B. Ordinance amending the city code regarding non-conforming uses. (Project 07013.07a)
    - Recommendation to City Council (Tentative Date: May 7, 2007)
    - Project Planner: Desyl Peterson/Julie Wischnack
9. **Adjournment**

## PLANNING COMMISSION AGENDA

April 26, 2007

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### Notices

1. Please call the planning division at (952) 939-8298 to confirm meeting dates as they are tentative and subject to change.
2. Applications tentatively scheduled for the May 10, 2007, Planning Commission meeting:
  - a. (Tabled at the March 29, 2007) Lot-behind-lot setback variance from 40 to 14 feet for an addition to the house at 6016 Eden Prairie Rd for Jeff and Purita Edson (07009.07a) Josh
  - b. Minor amendment to the master development plan at 6001 Shady Oak Rd for Minnetonka Crossings (True North Investments) (06006.07a) Susan
  - c. Variance and a sign plan review for two monument signs at 17603 Minnetonka Blvd for Lindsay Can-Am LP (94014.07a) Susan
  - d. Side yard setback and aggregate side yard variances for an addition to the rear of the home at 4842 Valley Road for Roger and Jennifer Kraus (00011.07a) Jeff
  - e. Conditional use permit and site and building plan review for improvements at Wilson Park, 4230 Victoria St. for the city of Minnetonka. (07016.07a) Susan
  - f. Sign plan review for office condo at 1000 Twelve Oaks Ctr Drive for Nordquist Sign Company. (07008.07a) Jeff

## **WELCOME TO THE MINNETONKA PLANNING COMMISSION MEETING**

This outline has been prepared to help you understand the public meeting process. The review of an item usually takes the following form:

1. The chairperson of the meeting will announce the item to be reviewed and ask for the staff report on the subject.
2. Staff presents their report on the item.
3. The Commission will then ask City staff questions about the proposal.
4. The chairperson will then ask if the applicant wishes to comment.
5. The chairperson will open the public hearing to give an opportunity to anyone present to comment on the proposal.
6. This is the time for the public to make comments or ask questions about the proposal. Please step up to the podium, speak clearly, first giving your name (spelling your last name) and address and then your comments.
7. At larger public hearings, the chair will encourage speakers, including the applicant, to limit their time at the podium to about 8 minutes so everyone has time to speak at least once. Neighborhood representatives will be given more time. Once everyone has spoken, the chair may allow speakers to return for additional comments.
8. After everyone in the audience wishing to speak has given his or her comments, the chairperson will close the public hearing portion of the meeting.
9. The Commission will then discuss the proposal. No further public comments are allowed.
10. The Commission will then make its recommendation or decision.
11. Final decisions by the Planning Commission may be appealed to the City Council. Appeals must be written and filed with the Planning Department within 10 days of the Planning Commission meeting.

**UNAPPROVED  
MINNETONKA PLANNING COMMISSION  
MINUTES**

**APRIL 12, 2007**

**1. CALL TO ORDER**

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

**2. ROLL CALL**

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

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

- 3. APPROVAL OF AGENDA:** The agenda was approved as submitted with the removal of 8A, sign plan review, with variance, for the office condominiums at 1000 Twelve Oaks Center Drive for Nordquist Sign Company (07008.07a) per the applicant's request.

- 4. APPROVAL OF MINUTES:** March 29, 2007

***Brandt moved, second by Adams, to approve the March 29, 2007 meeting minutes as submitted with the following change:***

Page 4:

***Schmitz, Adams, Brandt, ~~Cheleen, Dahl, Lehman, and Hart~~ voted yes. Cheleen and Dahl were absent. Motion carried.***

***Adams, Brandt, Dahl, Lehman, Schmitz, and Hart voted yes. Cheleen 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 April 9, 2007:

- Adopted a resolution approving the final approval of The Exchange plat at 14400 Excelsior Blvd for Glen Lake Redevelopment Project, LLC.

- Adopted a resolution approving a preliminary plat for a four-lot subdivision at 13800 Spring Lake Road for Steve Lynch.
- Introduced an ordinance approving a master development plan for the General Mills Credit Union expansion project at 9999 Wayzata Boulevard.

Wischnack reminded commissioners of a board and volunteer recognition dinner to be held April 18, 2007 and a workshop regarding the billboard with electronic display ordinance on April 25, 2007.

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

**7. PUBLIC HEARINGS: CONSENT AGENDA**

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

***Schmitz moved, second by Adams, to approve the items listed on the consent agenda as recommended in the respective staff reports and change memo dated April 12, 2007 as follows:***

**A. Conditional use permit to operate a garden center at 11400 State Highway 7 (Country Village Shopping Center) for Linders Greenhouses, Inc. (90044.07a)**

Recommend that the city council adopt the resolution on pages A6-A11a of the staff report approving the Linder's Greenhouses' request for a conditional use permit to operate a flower mart at 11400 State Highway 7. Approval is based on the findings in the staff report and is subject to the following conditions:

1. Record this resolution with Hennepin County before operation of the flower mart.
2. The flower mart may be operated annually from April 15<sup>th</sup> through July 20<sup>th</sup> on a daily basis from 8:00 AM to 8:00 PM.
3. The flower mart, and its fencing perimeter, must be configured as shown on Page A11a, Exhibit A of this resolution. The drive aisle immediately west of the flower mart and all parking spaces accessible from that drive aisle must be completely enclosed in patio fencing.

4. The end parking space at the north and south ends of the subject drive aisle remain unobstructed by the flower mart. To prevent parking in the area, these four parking spaces shall also be marked off as shown on Page A11a, Exhibit A of this resolution.
5. Display of items must be arranged in as compact a manner as reasonably practicable.
6. Any change in proprietor, operator, location, or items sold at the flower mart renders this permit invalid.
7. Business operator shall secure all applicable licenses and approvals from the city, Hennepin County, or other appropriate jurisdictions.
8. This conditional use permit does not approve any signs at the site. A sign permit application must be submitted for staff review and approval. Any proposed sign must meet requirements outlined in city code.
9. No portable sanitation facilities are permitted on the site.
10. The city council may reasonably add or revise conditions of approval to address any future unforeseen problems.
11. 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.
12. The city council may revoke this conditional use permit if any future traffic, parking or public safety issues arise as a result of the flower mart use.
13. The site must be completely cleaned of all merchandise, equipment and debris within 3 days of the last day of operation.
14. The water supply for the market cannot be from a fire hydrant.
15. Violation of any these conditions of approval or conditional use permit standards outlined in the city code will result in immediate revocation of this conditional use permit.
16. The applicant must agree to the above conditions in writing.

**B. Sign plan review, with variances, for the new park and ride ramp at 11201 Wayzata Boulevard (I-394 and Hopkins Crossroad) for the Metropolitan Council. (05033.07a)**

Adams asked if the signs would be consistent with the metropolitan council's policy. Thomson answered in the affirmative. The signs would be similar to the ones located on the Plymouth and Eden Prairie parking ride ramps.

Approve the sign plan with variances for freestanding and wall-mounted signs at 11201 Wayzata Boulevard as shown on pages A5-A12 of this staff report. Approval is based on the following findings:

- 1) The proposed wall signs are reasonable:
  - a. The signs are appropriate to control vehicle and pedestrian traffic around the site.
  - b. The site has road frontage on all four sides.
  - c. The wall signs would be architecturally compatible with the principal structure and would maintain a high standard of aesthetics.
  - d. The use is distinct from other public institutions and allows special consideration.

Approval is subject to the following conditions.

- 1) The size and location of wall signs must conform to the staff recommended plans dated March 15, 2007.
- 2) The sign noting the hours and rules (shown as PR-4 on the sign plan) must be attached to the building and must not be freestanding.
- 3) Sign permits are required for the monument and wall signs.
- 4) All signs listed in the "Prohibited Signs" section of the code are prohibited.

***Adams, Brandt, Dahl, Lehman, Schmitz, and Hart voted yes. Cheleen was absent. Motion carried and the items on the consent agenda were approved as submitted with the change provided in the change memo dated April 12, 2007.***

Item 7A is tentatively scheduled to be reviewed by the city council on April 23, 2007. Item 7B may be appealed to the city council by providing notice to the planning division within 10 days.

**8. PUBLIC HEARINGS**

**A. Sign plan review, with variance, for the office condominiums at 1000 Twelve Oaks Center Dr. for Nordquist Sign Company. (07008.07a)**

This item was removed from the agenda.

**B. Site and building plan review, with variance, for a parking lot reconfiguration and building addition at 5500 Opportunity Court for OPUS. (07011.07a)**

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 asked if vacation of the right of way would eliminate the need for a variance. Thomas explained that Hennepin County owns the right of way. Hennepin County will not vacate the right of way, but has agreed to provide the applicant with a permit to allow the project.

Dahl asked if a landscaping plan had been submitted. Thomas explained that the landscaper for the project met with neighbors to discuss their vegetation preferences. A landscape plan would have to be approved by the city's natural resources division.

The applicant was present to answer questions.

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

Chair Hart confirmed with Thomas that the bus route would not change.

Chair Hart reviewed the primary issues.

Adams felt relocation of the loading docks was necessary and the best location was being proposed. It was unfortunate six neighbors would view them, but the location was reasonable.

Chair Hart lives in the neighborhood. The east parking lot is not safe as it is. The proposal would make the area safer.

Brandt understood that the applicant would work with the neighbors to provide screening. Thomas stated that the applicant's landscaper responded positively to neighbors' requests.

In response to Adams' question, Thomas stated that the meeting with the neighbors and the applicant's landscaper was held the Monday prior to the meeting. The vast majority of residents who attended the meeting were more comfortable with the project at the conclusion of the meeting.

***Dahl moved, second by Adams, to approve the final site and building plans, with variance, for a parking lot reconfiguration and building addition at 5500 Opportunity Court. Approval is based on the following findings:***

- 1) The proposal would meet the required standards and ordinances for a site and building plan approval.
- 2) The proposal would meet the required standards for a variance, because:
  - a. Several large oak trees and the property owner's desire to preserve them present a practical difficulty.
  - b. The right-of-way along Opportunity Court is oddly configured; it reflects the previous cul-de-sac design of the street. Though the addition would technically be 28 feet from the front property line, it would be 100 feet from the traveled portion of Opportunity Court. This is a unique circumstance not common to every similarly zoned property.

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 March 12, 2007.
  - Grading plan date-stamped March 12, 2007.
  - Landscaping plan date-stamped March 12, 2007.
  - Building elevations date-stamped March 12, 2007.

- 2) Prior to issuance of a grading permit, complete the following:
  - a. Install erosion control and tree protection fencing for staff inspection.
  - b. Submit final site, grading, drainage, utility and erosion control plans for staff approval. As required by the city engineer, the plans must:
    - (1) Include hydrologic analysis for the entire site verifying rate and volume controls are being met.
    - (2) Verify storm sewer sizing and designs, ensuring the existing and proposed systems meet the 100-year design.
    - (3) Disconnect existing and/or proposed storm sewer system from the existing roadway storm sewer as required by the city engineer.
    - (4) Include infiltration for new impervious area for the first 1-inch of rain over the area.
    - (5) Include an emergency overflow and appropriate calculations associated for the infiltration trench directed into the proposed storm sewer system.
    - (6) Provide an emergency overflow for the proposed pond.
    - (7) Include appropriate cross sections of the pond and cross section details of the outlet control structure.
    - (8) Total project cost and associated landscaping values. The landscaping values must meet the minimum standard as outlined in city code.
  - c. Submit a letter of credit or cash escrow for 150% of an estimated cost or 125% of a bid cost to comply with grading permit requirements and restore the site.
  - d. Submit a construction management plan for staff review and approval.

- e. Permits may be required from other outside agencies, including but not limited to Mn/DOT and the Minnehaha Watershed District. It is the applicant's and/or property owner's responsibility to obtain any necessary permits.
- 3) Prior to issuance of a building permit, submit the following:
    - a. A final landscape and irrigation plan for staff review and approval. The plan must include total project cost estimates and associated landscape values. The landscape value must meet the minimum standard as outlined in city code.
    - b. A final illumination plan for staff approval.
    - c. A letter of credit or cash escrow for 150% of an estimated cost or 125% of a bid cost of all required landscaping
  - 4) The property owner is responsible for replacing any required landscaping that dies.
  - 5) 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.
  - 6) Approval does not include the signs shown on the drawings. Separate permits are required from staff.
  - 7) Spaces shown as proof-of-parking may not be paved, unless approved by the city upon showing of a demonstrated need for these spaces. If proof-of-parking is required, additional screening of the new parking lot may be required if city staff deems it necessary.
  - 8) Construction must begin by December 31, 2008, unless the planning commission grants a time extension.

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

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

**C. Items concerning the proposed expansion of the General Mills Federal Credit Union at 9999 and 10001 Wayzata Blvd for HTG Architects. (03012.07a)**

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.

The applicants were present to answer questions.

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

Chair Hart commented on traffic in the area. Thomas explained that a transportation plan for the area would be considered during the comprehensive guide plan review process.

No additional testimony was submitted and the hearing was closed.

Chair Hart reviewed the primary issues.

Brandt asked how an underground retention system would operate. Thomas explained that the magnitude of the site would require it to have its own water quality treatment system. There would be little area to accommodate a storm water retention pond. Two underground retention systems currently operate in Minnetonka.

Chair Hart confirmed with Colleran that parking lot drainage would be directed to the storm drains which would run into an underground tank and slowly infiltrate the water into the groundwater. A maintenance agreement would be kept with engineering staff to make sure it would operate properly to protect the water quality. The tank would be large and solid. It would have the ability to infiltrate clean water.

Dahl asked if the lighting would change. Thomas stated that an illumination plan would be reviewed during the building permit process. Lighting ordinance requirements would have to be met.

***Dahl moved, second by Schmitz, to recommend that the city council approve items concerning the proposed expansion of the General Mills***

***Federal Credit Union at 9999 and 10001 Wayzata Boulevard for HTG  
Architects:***

***Preliminary Plat***

- 1) *Recommend that the city council approve the preliminary plat. Approval is based on the following findings:*
  - a. Complete the following before final plat approval:
    - (1) Show the following on the final plat:
      - (a) At least ten-foot-wide drainage and utility easements next to public street rights-of-way and at least seven-foot-wide drainage and utility easements along all other lot lines.
      - (b) A drainage and utility easement over storm sewer improvements. The easement must extend a minimum of 10 feet from the edge of the treatment system and required grit chamber. The easement must include access from the public roadway.
    - b. The following items must be submitted to the city before the city releases the final plat:
      - (1) An electronic CAD file of the final plat in microstation or DXF on a CD disk.
      - (2) The following documents for the city attorney's approval:
        - (a) Title evidence that is current within thirty days before release of the final plat.
        - (b) Provide restrictive covenants to be recorded against the property. The covenants must include conditions that have not been met as of the release of the plat.
  - 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.

***Master Development Plan and Final Site and Building Plan, With Variances***

2) *Recommend that the city council adopt the ordinance on pages A33–A38 of the staff report, which approves the proposed master development plan and final site and building plans, with variances. This ordinance is based on the following findings:*

- a. The proposal meets all minimum zoning ordinance requirements.
- b. The proposal would meet the required standards for a variance, because:
  - (1) The proposal is reasonable for two reasons:
    - (a) The existing, non-conforming northerly parking lot presents a practical difficulty from both a functional and aesthetic standpoint. Maintaining the existing setback line is reasonable.
    - (b) The westerly parking lot would follow the setback line of an existing drive aisle and would be adjacent to another parking lot. As such, the variance would have little to no impact on surrounding buildings.
  - (2) The Wayzata Boulevard area is characterized by office development and associated parking lots. The requested setback variances would not alter this character.
- c. The addition could be supported by the existing roadway system.

Approval of the site and building plans is 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 February 28, 2007.
  - Grading plan date-stamped February 28, 2007.
  - Building elevations date-stamped February 28, 2007.

The above plans are hereby adopted as the master development plan and as final site and building plans.

- b. Prior to issuance of a grading permit, the following must be completed:
  - (1) Submit the following for staff review and approval:
    - (a) Final site, grading, drainage, utility and erosion control plans.
      - (i) Plans must limit the driveway radii to 10 feet.
    - (b) A hydrology report for the entire site. Rate and volume must be less than existing conditions.
    - (c) Infiltration calculations.
    - (d) Calculations for the underground stormwater retention system verifying correct sizing based on added impervious surface and site soil type.
    - (e) Profiles for all watermain, sanitary, and storm sewer lines as required by the city engineer.
    - (f) A Stormwater Pollution Prevention Plan acceptable to the city engineer and natural resources staff.
    - (g) A maintenance agreement for the underground stormwater retention system.
    - (h) A construction management plan.
    - (i) Permits, including an NPDES permit, may be required from other outside agencies, including but not limited to Mn/DOT and the Bassett Creek Watershed District. It is the applicant's and/or property owner's responsibility to obtain any necessary permits.
    - (j) A letter of credit for 150% of an estimated cost or 125% of a bid cost to comply with grading permit requirements and restore the site.

- (2) Install a temporary rock driveway, erosion control and tree protection fencing for staff inspection. These items must be maintained throughout the course of construction.
- c. Complete the following prior to issuance of building permit:
  - (1) Submit a final landscape and irrigation plan for staff approval. The plan must include total project cost estimate and landscaping cost estimates. These estimates must meet minimum requirements outlined by city code. The plan itself must contain plantings meeting all minimum requirements outlined by city code or as required by natural resources staff.
  - (2) Submit a letter of credit or cash escrow for 150% of the estimated cost or 125% of a bid cost for all required landscaping.
  - (3) A final illumination plan for staff approval.
  - (4) Record this ordinance with the county.
- 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. Approval does not include the signs shown on the drawings. Separate permits are required from staff.
- g. Space presented as storage area on the plans must remain as such or additional parking would be required.
- h. Construction must begin by December 31, 2008, unless the planning commission grants a time extension.

***Appeal of the maximum trip generation***

- 3) *Recommend that the city council approve the applicant's appeal of the maximum trip generation outlined for the properties at 9999 and 10001 Wayzata Boulevard. Approval is based on the following findings:*
- (1) Though the development would generate more vehicle trips that outlined city code, no major traffic impacts are anticipated.
  - (2) The Ford Road/Wayzata Boulevard intersection would continue to operate at Level of Service A.
  - (3) New vehicle trips from the proposed development would not increase at the delay at any major intersection by more than four seconds.

***Conditional Use Permit***

- 4) *Recommend that the city council adopt the resolution on pages A39–A43 of the staff report, which approves the conditional use permit for a drive-up bank facility. This resolution is based on the finding that the proposal meets all conditional use permit standards. Approval is subject to the following conditions:*
- a. Public address systems must not be audible from any residential parcel.
  - b. Record this resolution with the county before the city issues a building permit.
  - c. The city council may reasonably add or revise conditions to address any future unforeseen problems.
  - d. Any change to the approved use that results in a significant increase in traffic or a significant change in character would require a revised conditional use permit.

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

Chair Hart stated that the item was tentatively scheduled to be reviewed by the city council at its April 23, 2007 meeting.

9. ADJOURNMENT

*Adams moved, second by Schmitz, to adjourn the meeting at 7:15 p.m.  
Motion carried unanimously.*

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

**Planning Commission Staff Report  
Meeting of April 26, 2007**

**Brief Description:** Conditional use permit to move over 1,000 cubic yards of earth at 18511 and 18517 Ridgewood Road for Rod Peterson.

**Recommended Action:** Recommend the city council adopt the resolution approving the request.

### **Introduction**

Rod Peterson, RP Properties LLC, is proposing to move approximately 4,750 cubic yards of earth onto two lots within the Ridgewood Heights development. (See pages A1–A2.) A conditional use permit is required for any grading work in excess of 1,000 cubic yards.

City code contains no specific conditional use permit standards for grading activity in excess of 1,000 cubic yards. Rather, the conditional use permit requirement is intended to give the city council an opportunity to review a project and impose any conditions it deems appropriate.

### **Background Information**

Ridgewood Heights is a three-lot subdivision that received preliminary and final plat approval in 2005. (See pages A3–A5.) The Ridgewood Heights property slopes downward from north to south. During initial review of the project, staff had great concerns about the slope of the property. The slope is visually quite dramatic. However, at less than 30 percent, it is not considered “unbuildable” by city code standards. As Ridgewood Heights met all minimum zoning requirements, the city was obligated to approve the development. Since the approval, erosion from the site has been an on-going issue.

Over the last year and a half, staff has spent an extraordinary amount of time, over 108 hours, reviewing and dealing with the development and the companies and persons associated with it. A full outline of staff action can be found in the “Supporting Information” section of this report.

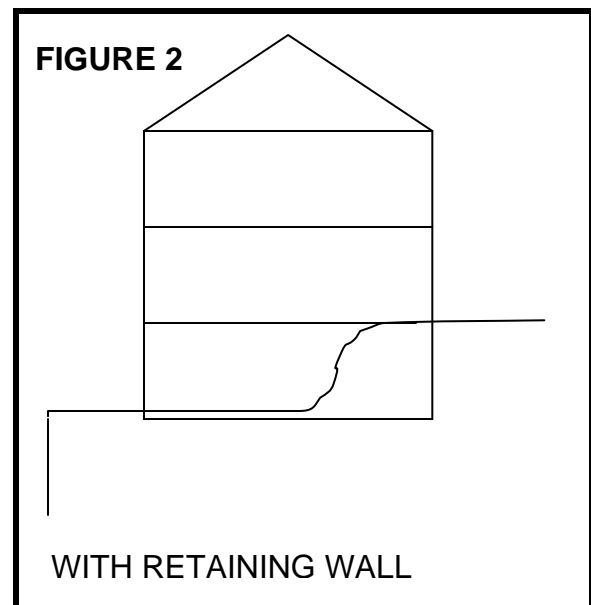
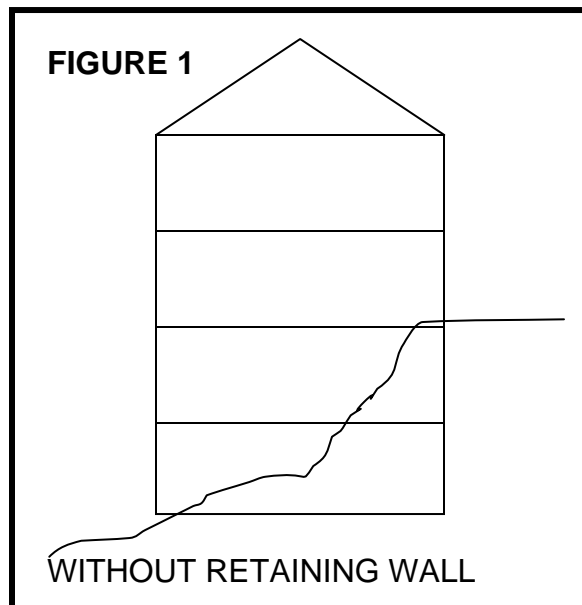
### Primary Questions

- **Is the proposed grading appropriate for the site?**

Yes. A general grading plan was reviewed during the preliminary plat review process. (See page A6.) Following the plat approvals, a grading permit was issued, which was for grading in substantial conformance with general plan.

Following issuance of the grading permit, the individual properties were sold from the original subdivider to a builder. Based on the existing grade of the properties and the approved grading plan, any home built on the property would have a front elevation of, at minimum, one exposed level and a rear elevation of, at minimum, three exposed levels. (See Figure 1.) Rather than construct houses of this design, the builder revised the proposed grading in conjunction with building permits submitted for the homes. The permits include retaining walls, up to 13 feet in height. (See pages A7–A13.) Through use of these retaining walls, exposed levels at the rear of the homes are reduced to a minimum of two. (See Figure 2)

The retaining walls and proposed grading neither increase nor reduce the visible mass of construction. Rather, the walls simply change what the visible mass in the rear would be from: (1) a minimum of three full stories of house; to (2) a large retaining wall and a minimum of two full stories.



The proposed grading meets minimum engineering standards.

- **Should stringent conditions be placed on the conditional use permit?**

Yes. Relative to other small development projects, staff has spent a disproportionate amount of time dealing with the Ridgewood Heights development following its approval. There have been numerous violations on the site including grading work done without an approved permit and lack of/poor erosion control resulting in significant amounts of sediment in area wetlands and on neighboring properties. Due to lack of cooperation, staff has issued citations of increasing amounts and stop-work orders on several separate occasions.

Staff continues to receive complaints from area residents about the disruption this project has caused. These complaints are reflected in many of the neighborhood survey responses received for this project. Staff acknowledges and, in many ways, shares the frustration of these residents. Nevertheless, denial of the requested conditional use permit would not correct problems created.

Staff finds that approval of the conditional use permit with stringent conditions would allow the development to be completed more quickly than it would be otherwise. Approval would also afford the city greater controls over work done on the site. Suggested conditions of approval include:

- A cash escrow in the amount of \$10,000.00 must be deposited with the city. This escrow must be accompanied by a document prepared by the city attorney and signed by the builder and property owner. The document will outline a procedure for notification of erosion and/or grading violations and compliance with city requirements. Upon notification of a violation the builder/property owner will have 48 hours to come into compliance. If compliance is not achieved the city will use any or all of the escrow dollars to correct any erosion and/or grading problems.
- Specific construction management plans for each lot outlining: hauling hours, hauling routes, erosion control plans, sweeping plans, and construction parking limits. Hauling hours will be limited to weekdays.
- Construction of retaining walls must begin before fill is brought to the site and before footing inspections for either home.

### **Staff Recommendation**

Recommend that the city council adopt the resolution on pages A14–A18, which approves a conditional use permit to move over 1,000 cubic yards of earth at 18511 and 18517 Ridgewood Road. This resolution is based on the following findings:

- 1) The proposal would meet the general conditional use permit standards as outlined in city code.
- 2) The proposal would meet minimum engineering requirements.
- 3) The conditional use permit, with stringent conditions, would allow the development to be completed more quickly than it would be otherwise.
- 4) The conditional use permit would give the city the opportunity to place greater controls over the work done on the properties.

Approval is subject to the following conditions:

- 1) Prior to issuance of a building permit, complete the following:
  - a. Submit a tree preservation plan for each property.
  - b. Submit a specific construction management plan for each property. This plan must outline erosion control measures, a street sweeping plan, construction parking, haul routes, and haul hours. Haul hours are limited to weekdays only.
  - c. Submit an erosion control escrow in the amount of \$10,000.
  - d. This escrow must be accompanied by a document prepared by the city attorney and signed by the builder and property owner. Through this document the builder and property owner will acknowledge: (1) the property will be brought into compliance within 48 hours of notification of a violation; and (2) if compliance is not achieved, the city will use any or all of the escrow dollars to correct any erosion and/or grading problems.
  - e. All property corner stakes must be reset for staff inspection.
  - f. Submit revised plans for the retaining wall, soils data, and any other information as required by the city's building official.
  - g. Record this resolution with the county and return a recorded copy of this resolution to the city.
- 2) Prior to final inspection of either house:
  - a. Submit an engineering report associated with the retaining walls, as required by the city's building official.

- b. Submit either one of the following:
  - (1) As-built plans that include the foundation, retaining walls, two-foot contours and any other item as required by the city engineer; or
  - (2) Cash escrow in an amount to be determined by the city engineer and natural resources staff. The escrow dollars will not be released until all required as-builts have been submitted.
- 3) Construction of retaining walls must commence before any fill is brought onto the site and prior to footing inspections for either house.
  - a. The retaining walls must meet all building code requirements.
  - b. Construction of the retaining wall must meet all other requirements of the city's building official and building plans reviewer. These may include, but are not limited to:
    - (1) An engineer on site during construction of the retaining walls.
    - (2) As required by the city's building plans reviewer, an engineering report must be submitted following installation of the walls.
- 4) As defined by natural resources staff, groups of trees adjacent to the Ridgewood Road must be protected during construction.
- 5) No tree removal is permitted within the wetland or the 25-foot wetland buffer.
- 6) A swale must be graded between the houses to direct overflow from the street.
- 7) The city council may reasonably add or revise conditions to address any future unforeseen problems.
- 8) 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.
- 9) The applicant must agree to the above conditions in writing.

Originator: Susan Thomas, Principal Planner  
Through: Julie Wischnack, AICP, City Planner

## **SUPPORTING INFORMATION**

### **Surrounding Land Uses**

The lots on all side of the subject properties are zoned and guided low-density residential.

### **Existing Site Features**

The Ridgewood Heights development is made up of three, single-family residential lots. The lots, which met all minimum zoning standards, slope dramatically downward from north to south. Though visually quite steep, the slope does not meet the code definition of a "steep slope." A large wetland is located on the southeast portion of the property.

A house is currently under construction at 18523 Ridgewood Road. A building permit was issued for this home as: (1) the house met all minimum setback requirements; and (2) the grading associated with the house did not require a conditional use permit.

### **Planning**

Guide Plan designation: Low-density residential

Zoning: R-1

### **Grading**

As proposed, approximately 3,000 cubic yards of fill would be brought to the 18511 Ridgewood Road property. Approximately 1,750 cubic yards would be brought to the 18517 property. This is approximately 430 dump trucks of earth.

The city engineer has reviewed the proposed grading plans submitted in conjunction with the building permits for each site. The plans meet engineering standards and are generally acceptable.

### **Retaining Walls**

Several area residents have requested that staff guarantee that the proposed retaining walls will not fail. The city does not provide such guarantees. However, a building permit and associated inspections are required for such construction.

## Tree Removal

Tree removal on the property was approved as part of the original grading plan. Under the current proposal, four additional trees would be removed. Three of these trees were previously approved for removal under the original grading plan; one of the trees is in poor condition.

As conditions of approval:

- A tree preservation plan would be required for each property.
- As defined by natural resources staff, groups of trees adjacent to the Ridgewood Road must be protected during construction.
- No tree removal is permitted within the wetland or the 25-foot wetland buffer.

## History

What follows is a full outline of staff time and actions associated with Ridgewood Heights since the preliminary plat approval in 2005.

October 25, 2007	Demolition permits were issued for the existing house on the site.
November 7, 2005	Demolition is completed.
December 7, 2005	Planning staff sent a letter to the property owner outlining the conditions of approval associated with the project but yet to be completed.
February 8, 2006	Staff received a complaint about grading occurring on the site. A site inspection revealed that several hundred (200–300) cubic yards of fill have been hauled in and spread throughout the site. No grading permit had been issued. A grading permit is required for any work in excess of 50 cubic yards or 5000 square feet.
February 10, 2006	Staff left a message for the property owner's engineer regarding the illegal fill.
February 17, 2006	Yet to receive a response from the property owner's engineer, staff contacted him yet again. He indicated he knew nothing of the fill.

- February 27, 2006 Staff inspection of the site revealed that more fill had been brought to the site. New signs had been placed on the properties associated with a home builder. Staff contacted the builder and ordered him to stop filling and install erosion control.
- February 28, 2006 Staff inspection of the site revealed yet more fill had been brought to the site. The builder was again contacted, ordered to stop fillings, install erosion control fencings, stabilize the soil and clean the streets. Staff indicated a citation would be issued on March 6 unless these directives were complied with.
- March 1, 2006 The builder contacted staff and indicated he would comply. However, a staff inspection later that day found a bobcat spreading yet additional soil on the site. Staff immediately directed the bobcat operator to leave the site. **A STOP WORK ORDER was posted on the site.**
- March 2, 2006 Staff left a message for the property owner regarding the violation.
- March 3, 2006 The property owner's engineer contacted staff and indicated that erosion control would be installed the following week.
- March 6, 2006 The property owner contacted staff and indicated that erosion control would be installed by March 8. However, there was no compliance by the previously established deadline, **a citation was issued.**
- March 7, 2006 A second day of non-compliance resulted **in issuance of a second citation. The fine was doubled.**
- March 8, 2006 Erosion control was installed. No grading permit was issued for the existing fill on the site.
- April 10, 2006 The property owner paid all outstanding citations.
- April 20, 2006 A grading permit was issued. Staff conducted a preconstruction meeting with the street contractor, utilities contractors and the property owner's engineer. Natural resources staff attended the meeting to address erosion issues. The contractor indicated the site work would be completed and the site stabilized within four to six weeks from the start date.

- May 17, 2006 Staff inspected the site. Approved tree removal had been completed.
- June 19, 2006 Staff inspected the site following a large storm event. Large amounts of sediment had washed from the slope into the wetland and onto the adjacent property. Sediment plumes were spotted over 200 feet into the wetland from the point of silt fence failure. An inspection notice was sent to the property owner's engineer.
- Staff met the owner's engineer on site and explained the extreme nature of the violation. This would not be permitted to reoccur. The engineer indicated that most of the grading was complete and that most of the slope would be stabilized within two weeks.
- June 29, 2006 Staff inspected the site. The major deltas of sediment had been removed from the wetland. However, staff determined that the majority of fine sediment located farther into the wetland could not be removed without causing additional negative impacts to the wetland. The erosion control had been temporarily repaired. The sediment on the adjacent property was removed by the neighboring property owner.
- August 21, 2006 Staff inspected the site following a major rain event. Large amounts of sediment had washed from the slope into the wetland and onto the adjacent property. The required storm sewer had been installed incorrectly. There had been no soil stabilization on the site.
- August 23, 2006 Staff received notice that the property owner's original engineer is no longer supervising the project.
- August 25, 2006 Staff inspected the site. No required corrections had been made.
- August 28, 2006 Staff reissued an inspection notice to the property owner's engineering firm and met on site with the engineer and contractor. Staff outlined all of the corrections that need to be made and the weekly maintenance that need to be preformed on all erosion control until the slope was stabilized. Staff again reiterated the extreme nature of the violations on the site and directed that all sediment washed into the wetlands needed to be removed without use of equipment other than hand tools.

- September 5, 2006 Staff inspected the site following weekend rains. Additional sediment had washed into the wetland and onto the adjacent property. Erosion control was inadequate. Heavy equipment tracks were evident in the wetland where sediment had, apparently, been removed by illegal means. **A STOP WORK ORDER was issued.** No additional work would be permitted on the site until all corrections had been made and the current owner, engineer, and city staff met together on site.
- Staff indicated that they must be informed and be on site with the new deposits of silt were removed from the wetland to ensure that only hand tools were used.
- September 8, 2006 Staff met on site with the current owner, engineer, and street contractor. Staff explained that LIMITED grading would be permitted to allow completion of the cul-de-sac and correction of the storm sewer, provided that the site were stabilized via mulch and seed within three weeks. Staff emphasized that NO sediment was permitted to wash beyond the approved grading limits. The property owner's engineer noted that three homes had been designed for the properties which would necessitate a revised grading plan.
- October 3, 2006 Staff received and reviewed the revised grading plan.
- October 6, 2006 Staff met with the current owner, engineer, and builder to discuss the revised grading plan. Major revisions were needed.
- November 6, 2006 Staff reviewed new grading plans. More revisions were required.
- November 22, 2006 Staff inspected the property. **A STOP WORK ORDER was issued** for various violations including intrusion into the wetland while attempting to correct the storm sewer. Staff noted the storm sewer was again installed incorrectly; it was too close to the wetland edge and again would need to be corrected.
- November 28, 2006 Staff inspected the site and notified the property owner of multiple violations. The site was still not stabilized.

November 30, 2006	Staff met the property owner's engineer and contractor on site to discuss and correct the violations.
December 6, 2006	Staff gave provisional approval to the revised grading plan, subject to the review and approval of the building permits associated with the three lots.
December 18, 2006	Staff inspected the site. The majority of violations from the November 28 inspection had been corrected.
December 19, 2006	Staff inspected the site. Further corrections had been made.
December 29, 2006	Staff inspected the site. All remaining violations from the November 28 inspection had been corrected.
January 5, 2007	Building permits for houses on all three lots were submitted.
February 20, 2007	As-built grading plans were received from the property owner's engineer.
March 6, 2007	Revised building permit surveys, with as-built topography, were submitted.
March 30, 2007	The building permit was issued for the house at 18523 Ridgewood Road.

### **New Policies**

Based on the Ridgewood Heights experience, staff has established two new plat requirements:

- Specific home types must be noted on preliminary plat drawings. For instance: walkout, split, or full basement homes must be designated. This designation allows staff to better evaluate possible future impacts and possibly suggest conditions of approval to deal with these impacts.
- For projects including public streets, private drives, or any non-custom grading, a cash escrow must be deposited and document establishing the city's right to use that escrow to correct unaddressed erosion and/or grading problems must be submitted.

**Previous Delays**

There have been numerous delays over the course of this project. For the most part, these delays have been due to plan revisions, inadequate information, incomplete site work, and incorrect documentation.

**Conditional Use Permit Standards**

City code outlines the following standards which must be met for conditional use permits to be approved:

- 1) The use is consistent with the intent and goals of the ordinance.
- 2) The use is consistent with the goals, policies, and objectives of the comprehensive plan.
- 3) The use does not have an undue adverse impact on governmental facilities, utilities, services or existing or proposed improvements.
- 4) The use is consistent with the city’s water resources management plan.
- 5) The use is in compliance with the performance standards specified in section 300.28 of this ordinance.
- 6) The use does not have an undue adverse impact on the public health safety or welfare.

**Neighborhood Comments**

We surveyed the property owners within 400 feet of this site. Out of 34 properties, we received 9 replies as follows:

<i>0</i> <b>Strongly Support</b>	<i>0</i> <b>Somewhat Support</b>	<i>1</i> <b>Neutral</b>	<i>2</i> <b>Somewhat Oppose</b>	<i>6</i> <b>Strongly Oppose</b>
-------------------------------------	-------------------------------------	----------------------------	------------------------------------	------------------------------------

**Neutral** - Eastwood Rd.

**Somewhat Oppose**

Somewhat Oppose - 4309 Ridge Ct.

I would not like it if they want to build three or four castles like the one across the street.

Somewhat Oppose - 18625 Ridgewood Rd.

Is Rod Peterson requesting to "move" the earth offsite or to a different location on the lot? It looks as though a lot of earth has already been moved. If he plans to move the earth into the wetlands, we would be opposed."

### **Strongly Oppose**

Strongly Oppose - 18416 Ridgewood Rd.

My purpose of opposition is that Ridgewood Road is already in dire need of a major overhaul. The property in question has already brought a numerous amount of fill in, and then had to be removed with new fill coming back. Now they want to remove an excessive amount of fill out again and I am assuming that they will need to bring material in to create an engineered building site. My estimation is that dump trucks can haul between 10 to 20 yards per load which calculates to be somewhere in the range of 240 to 475 truck loads. As I mentioned at the beginning of this letter, Ridgewood Road needs help. Will this be part of the plan after the work is completed? And are they (the developer) willing to pay for the road or will I be assessed for it in my tax increases?

Strongly Support - 18600 Ridgewood Rd.

I welcome the new houses and neighbors. I feel he should be able to build on his property as he sees fit.

Strongly Oppose - 4409 Eastwood Rd.

This is an attempt to respond to the letter dated April 3, 2007, and the related information included with the letter. Unfortunately, the letter contains hardly any helpful information, and the type size on the grading plan is so small as to be unreadable with a magnifying glass. As a nearby owner, here is what I would like to know: (1) The letter says the conditional use permit is "to move" about 4,750 cubic yards of earth on two lots. First, what does this mean? Is dirt being brought onto the properties or removed? If removed, then where will the dirt end up? Will it be dumped off site? Will it be dumped in other aresa on the two lots? Will it be dumped on other near-by lots? Will it be dumped down the hill in back near the wetland? This critical information is missing; (2) Whether the dirt is being added or taken away on the lot, the key issue is how will drainage in the neighborhood be affected? Will there be more runoff down the hill in back and onto the roads? Will there be less? What is the net effect on drainage? And especially, what is the effect on the wetland down the hill?; (3) How will traffic in the area be affected? Will roads be closed? Which ones? For how long?, and (4) Will the project generate lots of dust, noise, or other pollution problems? While I appreciate and applaud your effort to gather information from area residents, you have fallen far short of the mark with the (lack of) information you provided. Someone at the city needs to ask what the residents of the area would want and need to know before they express an informed opinion. And then that is the information that should be provided. Without any answers to these critical questions, I have no option but to state that I "strongly oppose" the project.

Strongly Oppose - 4432 Sparrow Rd.

I can't imagine that anyone in the neighborhood would be in favor of this proposal to add a wall and yards of earth. It appears to me that since a good part of the property is wetlands, the lot is suitable for only one or two houses---not three houses (or four houses as was originally proposed). The concrete turn-around, placed as far back as it is, has left less room for houses, making it even less suitable for more than two houses. How come nobody noticed this before the turn-around was put in? I know you will say something like "this proposal meets all minimum zoning ordinance standards". However, I view it as an ugly intrusion into the surrounding wetlands. Besides, who in the world would want to live in a house built on fill being held up by a wall? Not me. How big are these houses supposed to be anyway? McMansions? From the beginning, this developer has made a mess in a pretty neighborhood. He shouldn't be allowed to make the eyesoe he created even worse. I strongly oppose this project.

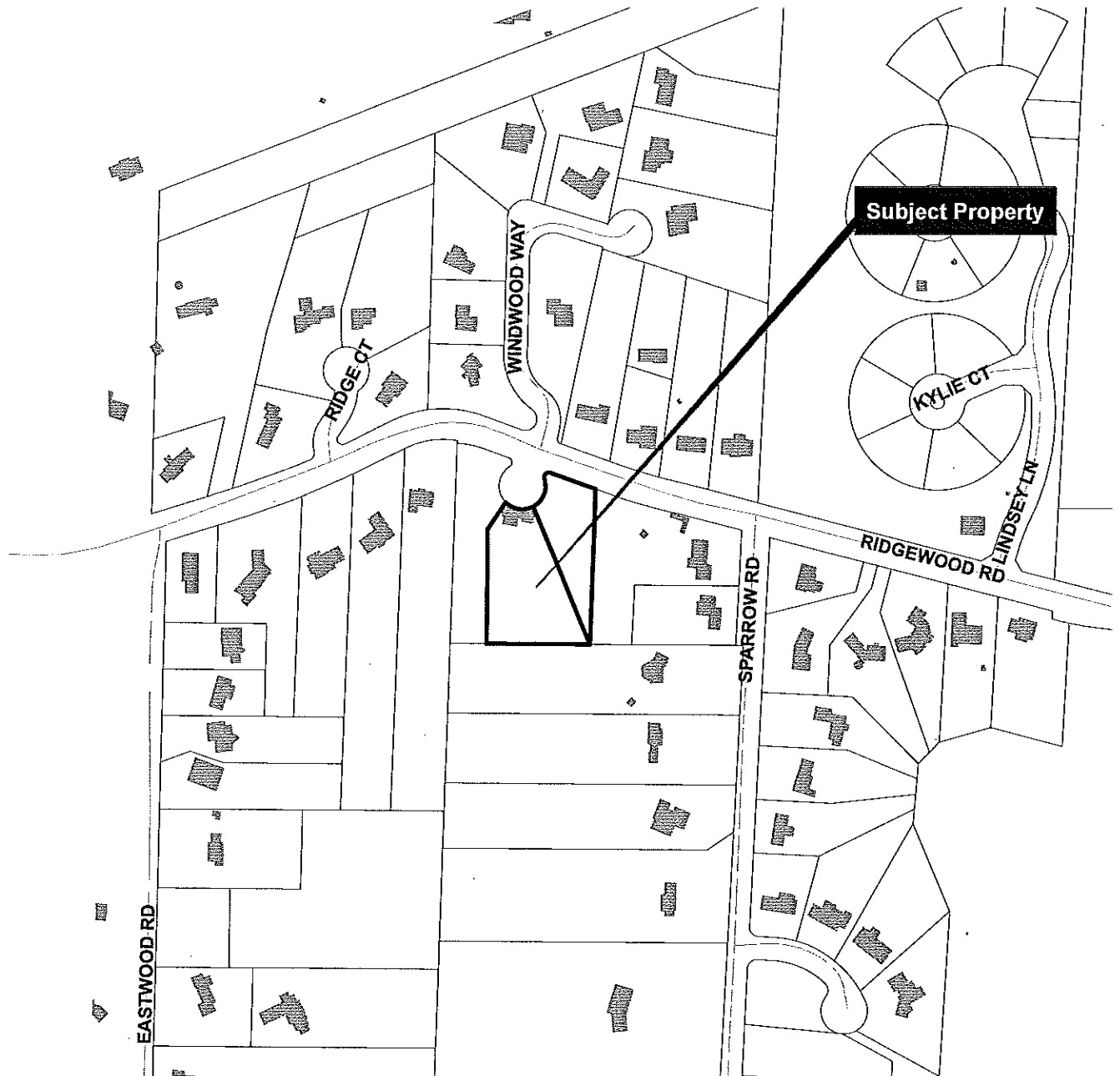
Strongly Oppose - 4400 Sparrow Rd.

See the attached letter on pages A13a–A13b.

Strongly Oppose - 4416 Sparrow Rd.

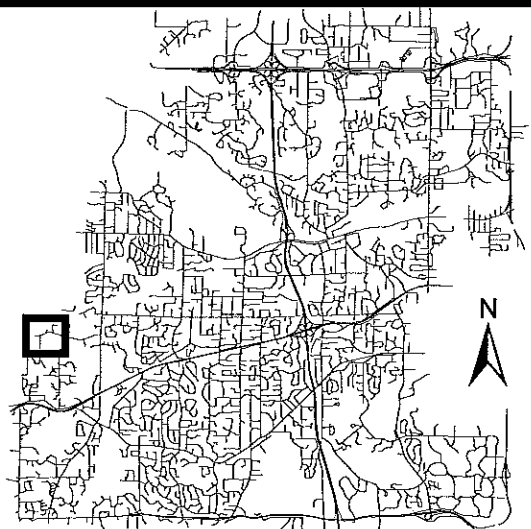
We totally agree with the (4400 Sparrow Road) letter and are strongly opposed to any more allowances to change the property. The city has already given enough to the developer/builder. Just because they paid too much for the property to begin with does not give them the right to ruin everyone else's property around them. The property is already an embarrassment to the city. Do you really want to continue? Our house shakes every time they dump a load of dirt and no one at the city cares how it impacts us (as we have already voiced our opinion). The developer never could fit three houses on the property to begin with. Now, let's let him make the footprints bigger?

**Deadline for a city decision: July 20, 2007**



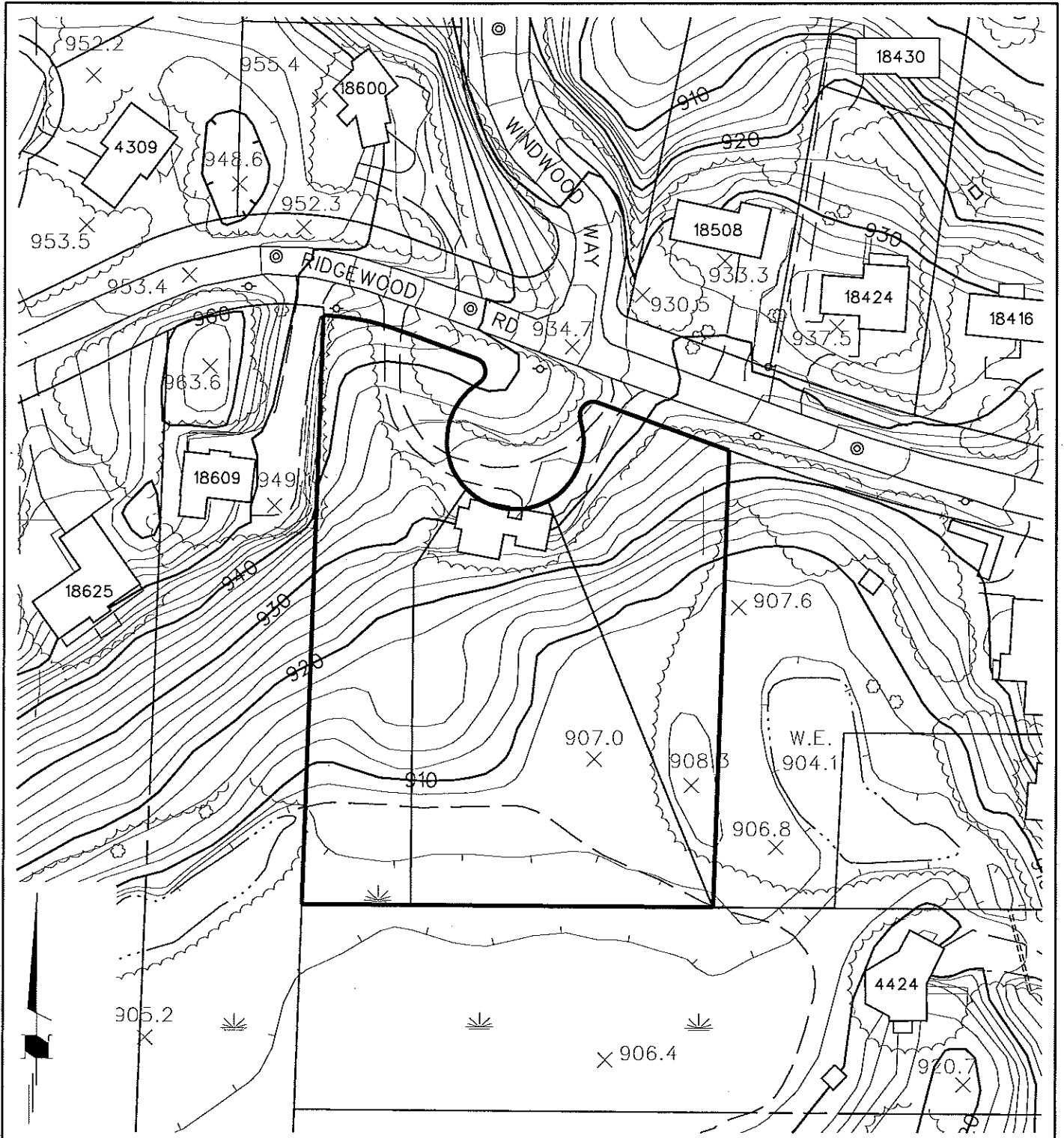
**LOCATION MAP**

Project: Ridgewood Heights  
 Applicant: Rod Peterson  
 Address: 18511 & 18517 Ridgewood Rd  
 (05041.07a)



This map is for illustrative purposes only.

AI



PATH: 18511\_18517\_RidgeWood\_Rd.dgn  
 PLOTTED BY: E.yang

NOTES		LEGEND	
PROPERTY LINES	--- BRIDGES	--- GUARDRAIL (BEAM)	○ SPOT ELEVATION
ROW CENTERLINES	--- CURB & GUTTER	--- GUARDRAIL (CABLE)	○ INDEX CONTOUR (10')
ROW RADIAL LINES	--- EDGE OF PAVEMENT	--- WALKS & PATIOS	□ INDEX DEPRESSION
SECTION LINE (FULL)	--- GRAVEL TRAIL EDGE	--- SIGNS	--- INDEX APPROXIMATE
SECTION LINE (1/4)	--- DRIVEWAYS	--- TRAFFIC SIGNAL	--- INTERMEDIATE CONTOUR (2')
BUILDINGS	--- RAILROAD	--- POLES, STREETLIGHTS	--- INTERMEDIATE DEPRESSION
BLDGS (CONST)	--- FENCE	--- UTILITY BOX	--- INTERMEDIATE APPROXIMATE
SHEDS & DECKS	--- RETAINING WALL	--- POSTS	--- COORDINATE GRID CROSS
		--- MANHOLES	○ WETLAND
		--- WATER HYDRANTS	--- SHORELINE, STREAMS
		--- CATCHBASINS	--- WATER ELEVATION W.E. 938.1
		--- CULVERT	--- BELOW GROUND BG
		--- TREES	--- ABOVE GROUND AG
		--- SHRUBS, BUSHES	--- ORNAMENTAL LIGHT LO
		--- TREE GROUP EDGE	
		--- STUMPS	

500 FOOT GRID BASED ON HENNERIN CO. COORDINATE SYSTEM  
 VERTICAL DATUM - 1929 MEAN SEA LEVEL DATUM  
 CONTOUR INTERVAL - 2'  
 DATE OF PHOTOGRAPHY - 1990

**DISCLAIMER**  
 This drawing is not a legally recorded plat or an accurate survey. It is intended to be only an approximate representation of information from various government offices and other sources. It should not be used for a purpose that requires exact measurement or precision. People who use this drawing do so at their own risk. The City of Minnetonka is not responsible for any inaccuracies contained in the drawing. The City of Minnetonka provides no warranty, express or implied, about the correctness of the information.

**City of minnetonka**  
 14600 MTKA BLVD, MTKA, MN. 55345 PH: 952-939-8200

SCALE:  
 1" = 100'  
 DATE:  
 4/4/2007

18511 & 18517 RIDGEWOOD DR.

A2

F. Preliminary plat for a three-lot subdivision at 18517 Ridgewood Road for Rod Peterson.

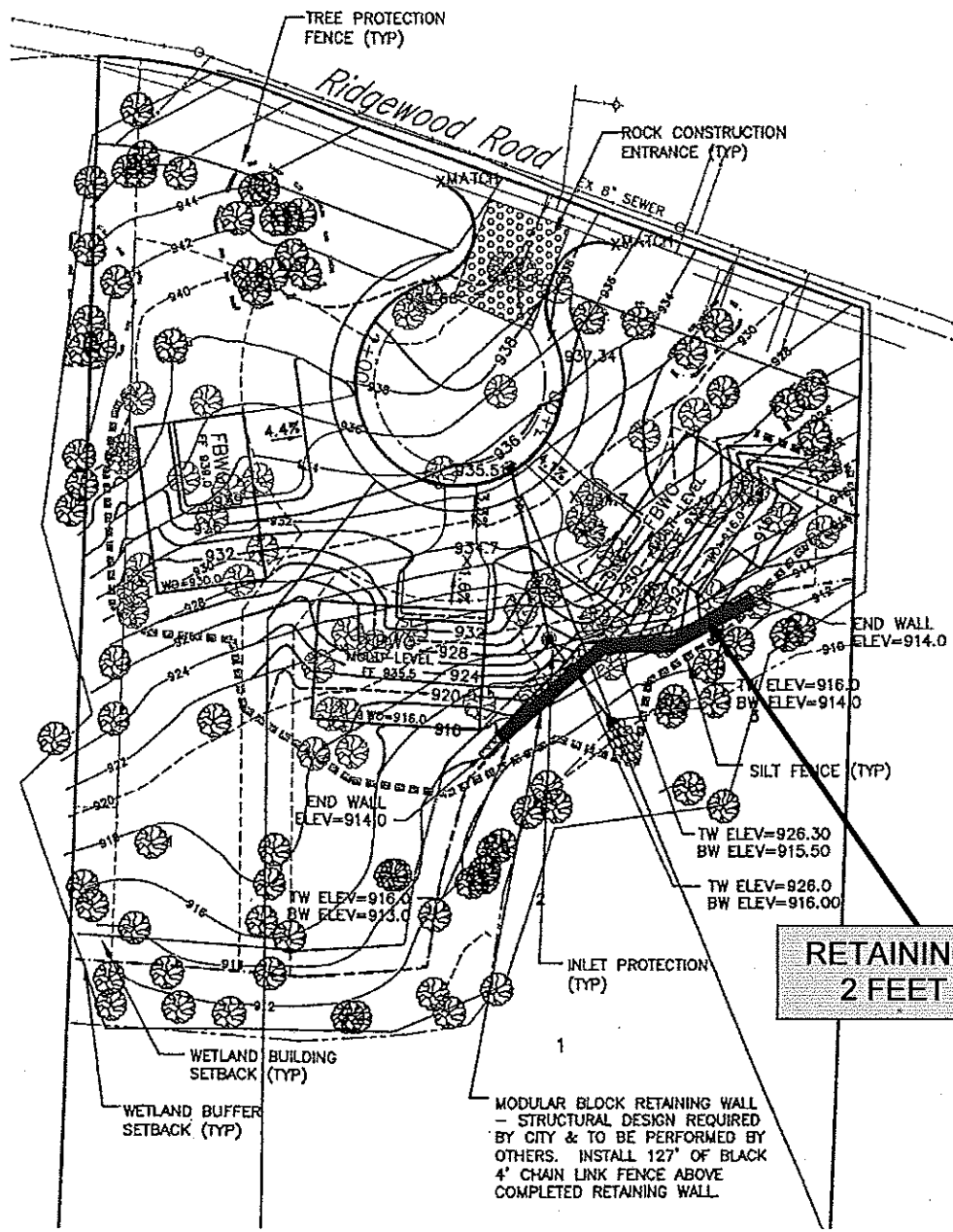
Wagner moved, Thomas seconded a motion to give preliminary approval to Ridgewood Heights plat, date-stamped July 29, 2005. Approval is based on the finding that the plat meets the required standards and ordinances. Approval is subject to the following conditions:

- 1) Complete the following before final plat approval:
  - a. Show the following on the final plat:
    - (1) At least ten-foot wide drainage and utility easements next to any existing or proposed public street rights-of-way and at least seven foot-wide drainage and utility easements along all other lot lines.
    - (2) The frontage at the right-of-way for Lot 2 must be revised to be at least 65 feet.
    - (3) A drainage and utility easement must be established over the 907.4 elevation.
  - b. Pay the city a park dedication fee of \$4,750.
  - 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 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 acceptable to the city attorney. Title evidence must be current within thirty days before release of the final plat.
    - (2) 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.
    - (3) Conservation/buffer easement 25 feet from the edge of the delineated wetland and a drawing of the easement for the approval of the city attorney. The easement and drawings must be recorded with the final plat and a drawing of the easement must be attached to the easement deed.
  - c. Any other requirements included with final plat approval.

- d. Payment for traffic signs and installation, as required by the city engineer.
  - e. 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 of must be 150% of the estimated cost of the improvements or 125% of the cost if based on actual bids.
- 3) The following must be completed before the city issues a grading permit or any site work is started.
- a. Final grading, drainage and erosion control plans must be submitted for the city engineer's approval. If the developer is building the streets and utilities, the developer must submit final street and utility plans for the city engineer's approval.
  - b. A letter of credit or cash escrow for 150% of the estimated cost to comply with grading permit requirements and restore the site must be submitted to the city. The city will not release the letter of credit or cash escrow until the developer submits as-built drawings and a letter certifying that the utilities, driveway and grading have been completed according to the plans approved by the city.
  - c. All trees to be preserved must be fenced and erosion control measures installed for the planning director's approval.
  - d. A construction management plan must be submitted for the planning director's approval.
  - e. If required, submit evidence of the watershed district approval. The city may require revisions to the preliminary plat to meet the district's requirements.
- 4) The following must be submitted to the city before the city issues a building permit:
- a. A grading and tree preservation plan for the new lot, subject to staff approval. Plans must include the construction of the driveway. The plans must be in substantial compliance with agreed building areas as required with the final plat.
  - b. A copy of the recorded plat and any covenants required to be recorded.

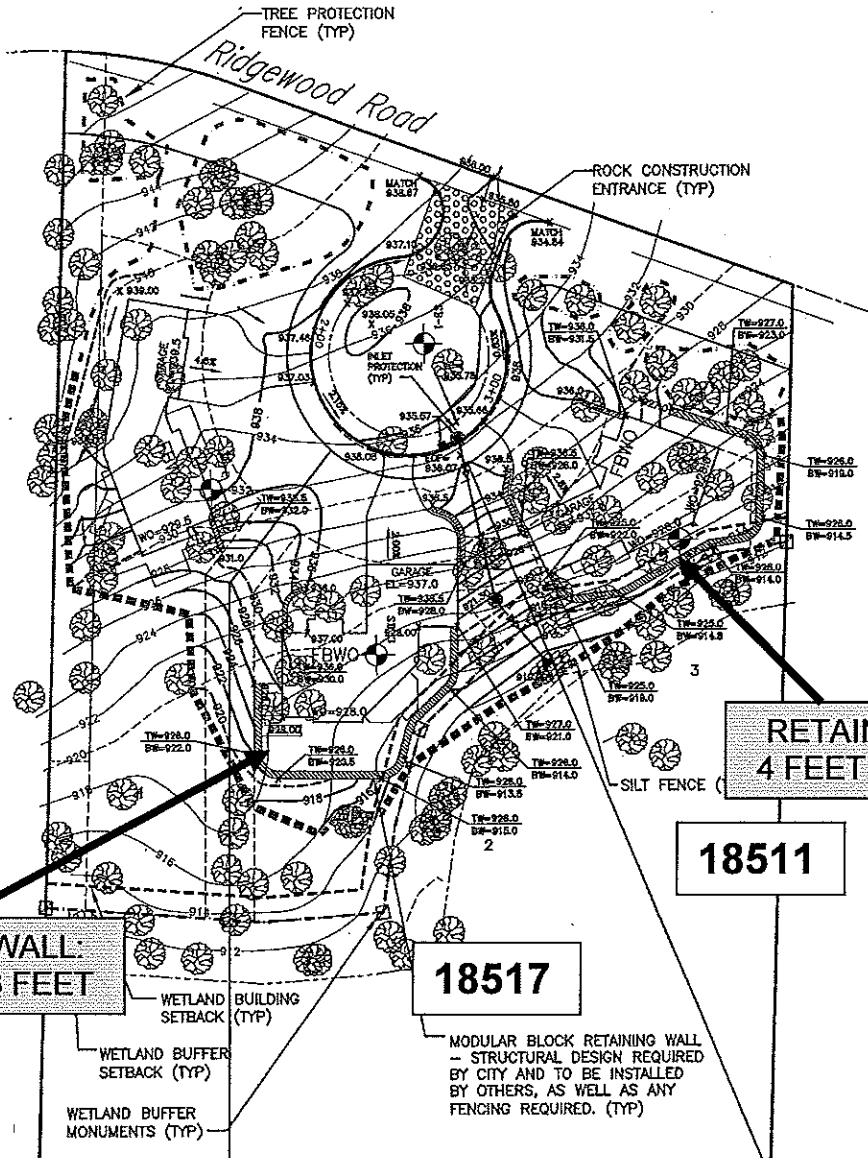
- c. A hookup fee for sanitary sewer and water.
- d. A letter from the surveyor stating that boundary and lot stakes have been installed as required by ordinance. If the grading for proposed streets has not been completed, the planning director may approve a time extension to this requirement.
- e. Minimum low floor elevation must be 909.4.
- 5) During construction, the streets must be kept free of debris and sediment, and the tree protection and erosion control fencing must be maintained.
- 6) Trees must be planted to compensate for significant trees removed from each site that would be outside of the building pad and driveway area. The trees must be primarily species native to the area. They must be at least 2 ½ inches in diameter for deciduous trees and 6 feet tall for coniferous trees. The property owner or original developer must replace the required trees if they die within one year after installation.
- 7) The city must approve the final plat within one year of preliminary approval or receive a written application for a time extension or the preliminary approval will be void.

Wagner, Wiersum, Schneider, Callison, Thomas and Anderson voted "yes." Ellingson was absent. Motion carried.



AL0

ORIGINAL GRADING PLAN



**RETAINING WALL:  
4 FEET TO 13 FEET**

**RETAINING WALL:  
4 FEET TO 12 FEET**

**18511**

**18517**

MODULAR BLOCK RETAINING WALL  
- STRUCTURAL DESIGN REQUIRED  
BY CITY AND TO BE INSTALLED  
BY OTHERS, AS WELL AS ANY  
FENCING REQUIRED. (TYP)

# Certificate of Land Survey

PROPOSED RESIDENTIAL BUILDING 18517 RIDGEWOOD ROAD

I hereby certify that this survey was prepared by me or under my direct supervision. I am a duly registered land surveyor under the laws of the State of Minnesota.

Frank R. Cardarelle, L.S. Date  
 Registration No. 6508  
 Drawing revised 01/17/15

**PROTECTIONS**

Inlet protection must be installed in the two catch basins by the proposed drive. Silt socks, road drains, or other drop-in device with an emergency overflow and acceptable to the City must be installed under the grate to capture sediment and silt. Silt must be installed in the curb opening unless the device provides built-in curb protection.

Heavy duty silt fence must be installed to prevent erosion onto adjacent property and into wetland and buffer.

Retaining wall must be completed before framing begins. Retaining wall must not be constructed inside wetland buffer.

**LAND PARCEL SURVEYED**

Lot 2, Block 1, RIDGEWOOD HEIGHTS according to the recorded plat thereof in Hennepin County, Minnesota.

**NOTES**

- Surveyor's Iron Monument Found in Ground
- Surveyor's Iron Monument To Be Set in Ground Marked 15 5508

Elevations are according to NVD 929. Site benchmark is manhole cover in cul-de-sac opposite Lot 1 (937.20-feet).

Retaining wall proposed location and elevations (TW, BW) are according to grading plan revision of 12-28-06.

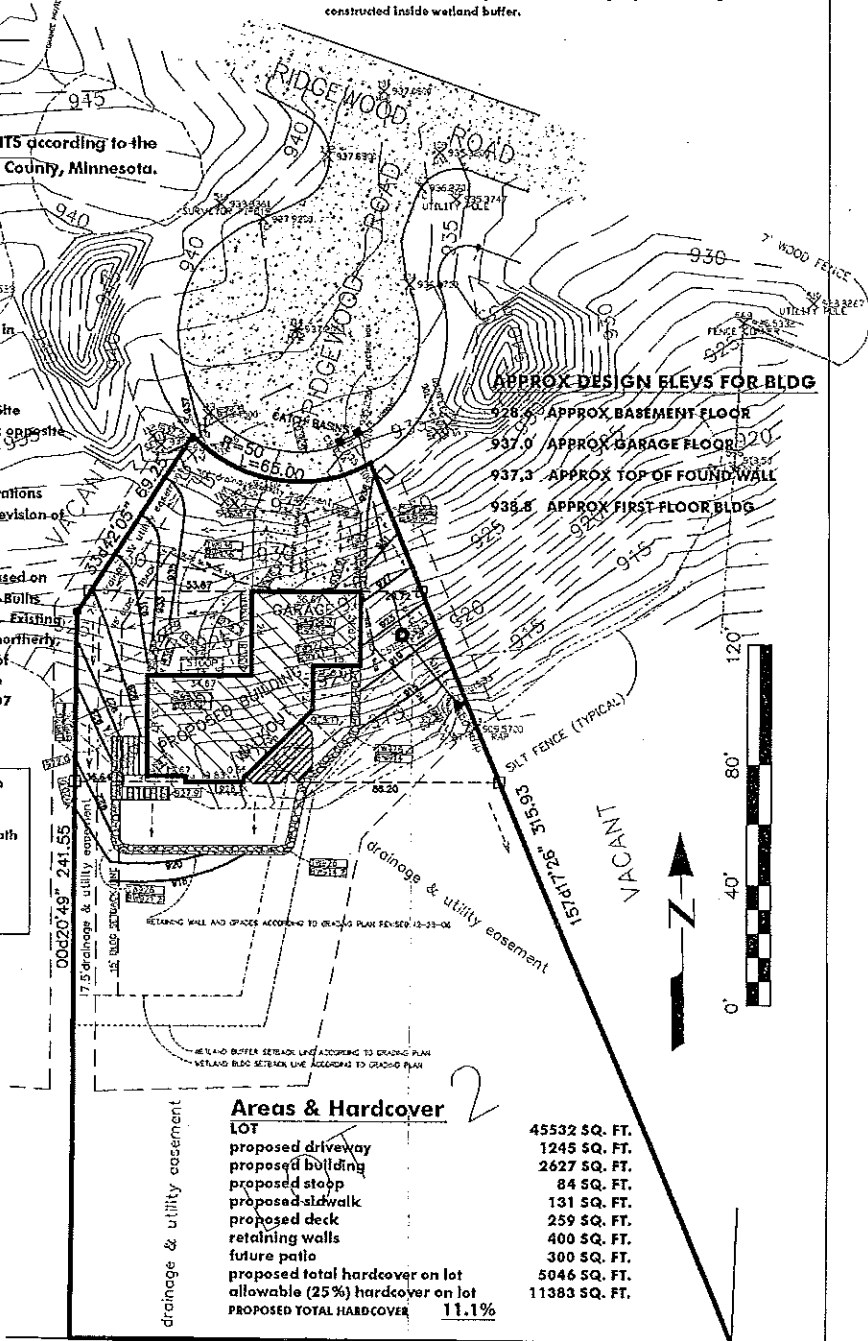
Existing topographic mapping shown is based on Demars-Gabriel Land Surveyors Utility As-Builts provided to Cardarelle in February, 2007. Existing topographic mapping shown in the most northerly, most westerly and most easterly portions of Ridgewood Heights is based on Cardarelle mapping of such area on February 26, 2007 (added to Demars-Gabriel mapping).

1007.53	existing ground spot elevation
x1000.0	design ground spot elevation
-5%	suggested design drainage path
□	building offset stake
1008	suggested design contour
1003	existing contour

**Prepared For**

Sunnybrook Homes Inc.  
 6750 Barberrry Lane  
 Eden Prairie, MN 55346  
 952-906-2585

Frank R. Cardarelle  
 Land Surveyor, Inc.  
 6440 Flying Cloud Drive  
 Eden Prairie, Minnesota 55344  
 ph 952-941-3031 fax 952-941-3030



**Areas & Hardcover**

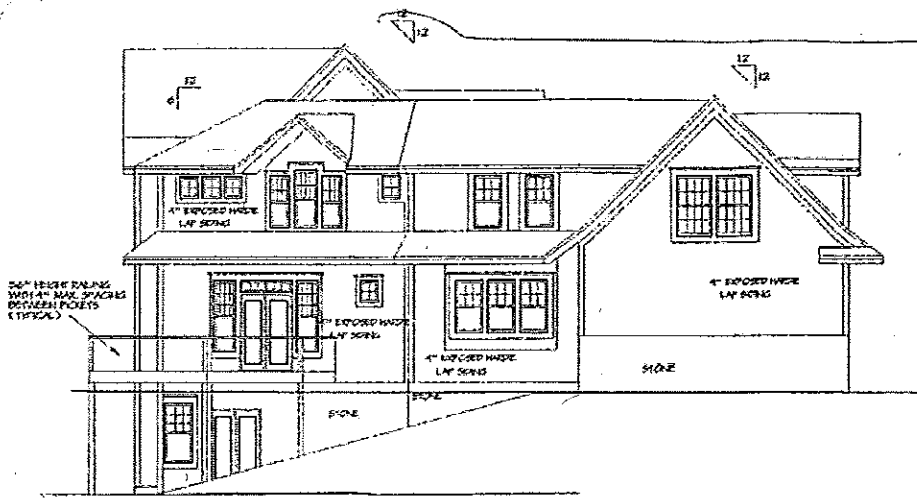
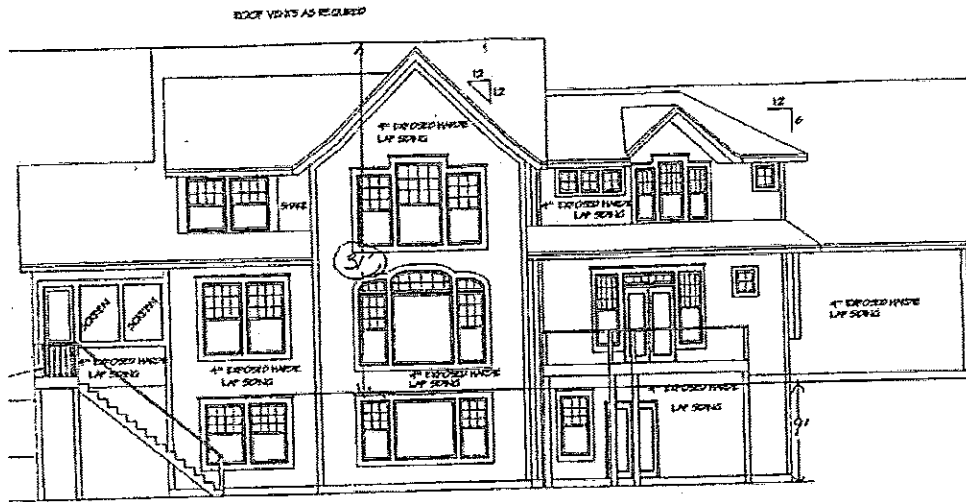
LOT	45532 SQ. FT.
proposed driveway	1245 SQ. FT.
proposed building	2627 SQ. FT.
proposed stoop	84 SQ. FT.
proposed sidewalk	131 SQ. FT.
proposed deck	259 SQ. FT.
retaining walls	400 SQ. FT.
future patio	300 SQ. FT.
proposed total hardcover on lot	5046 SQ. FT.
allowable (25%) hardcover on lot	11383 SQ. FT.
PROPOSED TOTAL HARDCOVER	11.1%

AS

A9



18517 RIDGEWOOD ROAD



A10

18517 RIDGEWOOD ROAD

# Certificate of Land Survey

PROPOSED RESIDENTIAL BUILDING 18511 Ridgewood Road

I hereby certify that this survey was prepared by me or under my direct supervision. I am a duly registered land surveyor under the laws of the State of Minnesota.

## LAND PARCEL SURVEYED

Lot 3, Block 1, RIDGEWOOD HEIGHTS according to the recorded plat thereof in Hennepin County, Minnesota.

Frank R. Cardarelle, L.S.

Date

Registration No. 6508

Drawing revised on \_\_\_\_\_

## Areas & Hardcover

LOT	25433 SQ. FT.
proposed driveway	1488 SQ. FT.
proposed building	2470 SQ. FT.
proposed stoop	72 SQ. FT.
proposed sidewalk	42 SQ. FT.
proposed deck	45 SQ. FT.
retaining walls	604 SQ. FT.
future patio	300 SQ. FT.
proposed total hardcover on lot	5021 SQ. FT.
allowable (25%) hardcover on lot	6358 SQ. FT.
PROPOSED TOTAL HARDCOVER	19.7%

## PROTECTIONS

The existing tree north of the planned building must be preserved and protected during construction.

Inlet protection must be installed in the two catch basins by the proposed drive. Silt sacks, roaddrains, or other drop-in device with an emergency overflow and acceptable to the City must be installed under the grate to capture sediment and bioties must be installed in the curb opening unless the device provides built-in curb protection.

Heavy duty silt fence must be installed along the east property line to prevent erosion onto adjacent property and into wetland and buffer. Existing bioties on the site may be relocated along the east lot line in place of heavy duty silt fence, provided that erosion control (e.g. adequate until groundcover is established).

Retaining wall must be completed before framing begins. Retaining wall must not be constructed inside wetland buffer.

## APPROX DESIGN ELEVATIONS FOR BLDG

- 928.7 APPROX BASEMENT FLOOR
- 937.0 APPROX GARAGE FLOOR
- 937.5 APPROX TOP OF FOUND WALL
- 938.9 APPROX FIRST FLOOR BLDG

x 1007.53	existing ground spot elevation
358.4	design ground spot elevation
-5% →	suggested design drainage path
□	building offset stake
1008	suggested design contour
1003	existing contour



## NOTES

- Surveyor's Iron Monument Found in Ground
- Surveyor's Iron Monument To Be Set in Ground
- Marked LS 6508

Azimuth along the easterly line of Land Parcel Surveyed is assumed as 01d48'13"

Elevations are according to NGVD 1929. Site benchmark is manhole cover in cul-de-sac opposite Lot 1 (937.20 feet).

Retaining wall proposed location and elevations (TW, BW) are according to grading plan revision of 12-28-06.

Existing topographic mapping shown is based on Demars-Gabriel Land Surveyors Utility As-Builts provided to Cardarelle in February, 2007. Existing topographic mapping shown in the most northerly and easterly area of Lot 3 is based on Cardarelle mapping of such area on February 26, 2007 (added to Demars-Gabriel mapping).

## Prepared For

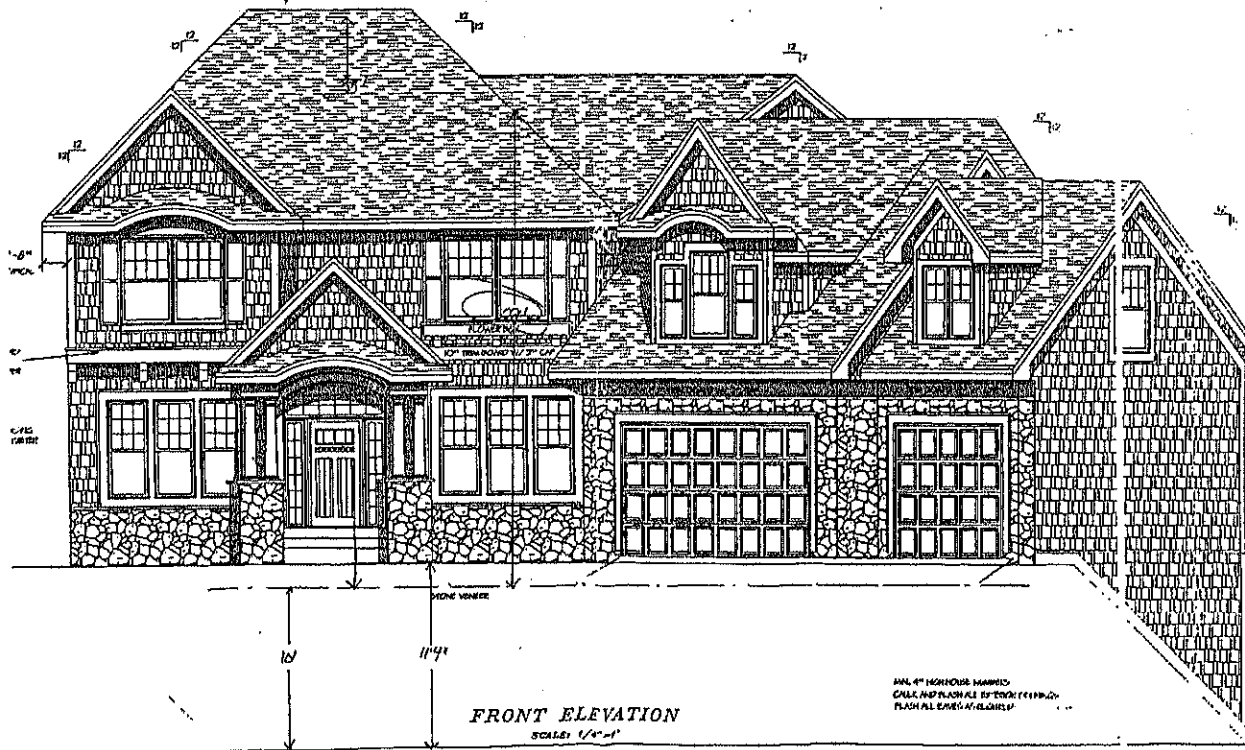
Sunnybrook Homes Inc.  
6750 Barberrry Lane  
Eden Prairie, MN 55346  
952-906-2585

## Frank R. Cardarelle Land Surveyor, Inc.

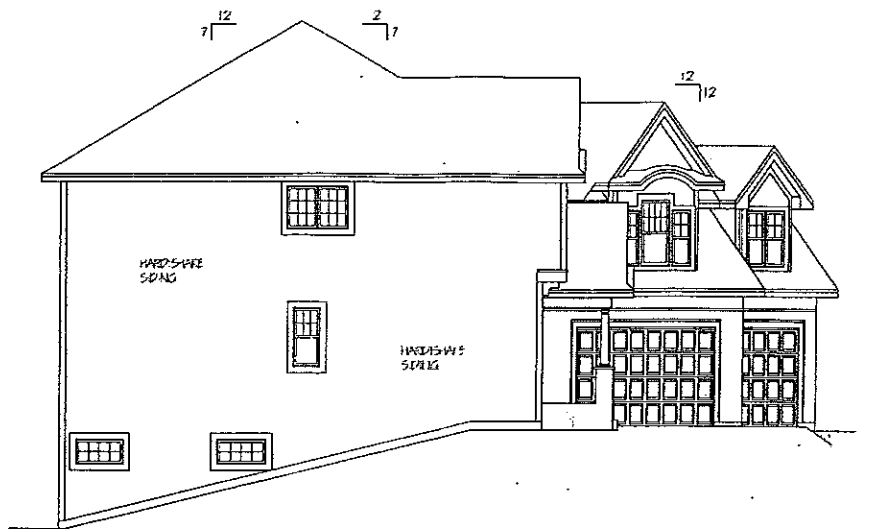
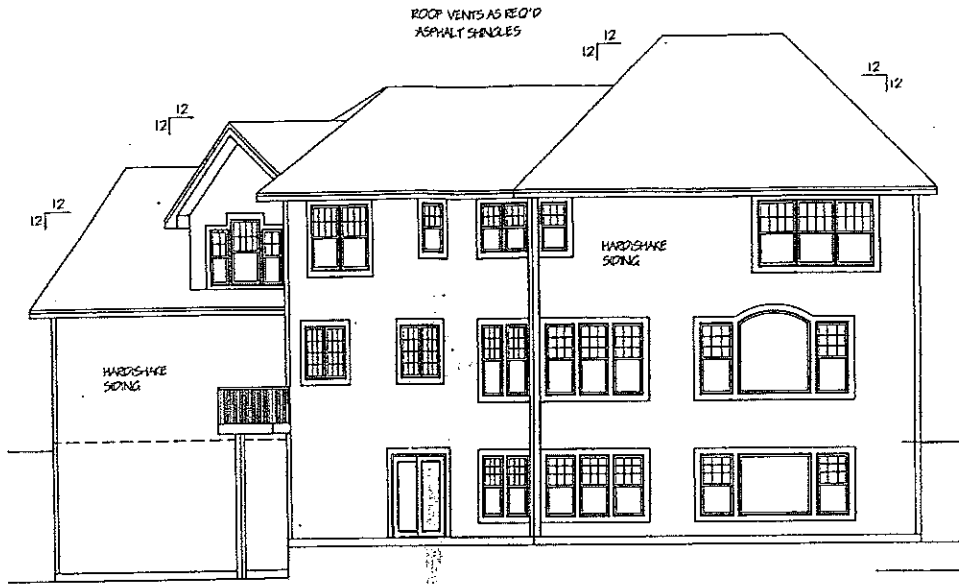
6440 Flying Cloud Drive  
Eden Prairie, Minnesota 55344  
ph 952-941-3031 fax 952-941-3030

All

A12



18511 RIDGEWOOD ROAD



A13

18511 RIDGEWOOD ROAD

APR 16 2007

We strongly oppose the request for a conditional use permit brought forth by the CITY OF MINNETONKA developer.

We have questions for the city.

1. Why do the developers need more excessive amounts of fill brought into this property? Supposedly new builder, new plans, no double basements on homes. The builder needs more surface area to allow for a bigger footprint. I have seen much negative press concerning the city of Mtka allowing oversized houses not conducive to surrounding neighborhoods. (McMansions) Stop this trend now.

2. Do they need to haul in this amount of fill and do you actually know how much they have already hauled in? After strip-mining the land of its natural beauty, this developer has already hauled in thousands of yards of fill thus changing the elevation of this entire property. (3 to 10 ft in many areas) I have photos of the property before they brought in the fill to date. Limit the amount of fill they are requesting to bring in.

3. Can a retaining wall withstand all acts of nature and hold all that fill in? Over half of this property borders wetlands and once had a natural slope flowing into these wetlands. Are you confident a retaining wall can be constructed to withstand this weight? Our property is adjacent to this development and has been flooded three times as has the wetlands. Sand and clay was over 6'' deep in a large area. There is currently runoff from this property in the wetlands and has not been cleaned up. Our pond which receives water from the same wetlands has a silt issue that we have not seen before.

4. Will the retaining wall be constructed properly? I have found the city to be reactive and not proactive when it comes to this property. On two separate occasions I had someone from the city come out and inspect a drain system to handle run off. Each time the system was removed and reconstructed. I have been told by city officials that this property is used as an example of what not to do in the future. We feel the city should inspect and reinspect to make sure things are done correctly and to code the first time. It's bad enough we have to live with constant construction but when it has to be done 2 or more times, that is ridiculous!

5. Who will view this 13 foot retaining wall? Not the future owners of the new houses being built. They will be perched high up over the surrounding properties. They will view our properties and the natural beauty of the wetlands that we have restored and maintained but we the surrounding neighbors will view a 13 foot wall that will extend for hundreds of feet. This developer has cut down every tree he could, left none except for a few up by the road and in the wetlands. He has totally changed the natural flow of the wetlands. Now he wants to add a keystone wall of 13 feet or more around the entire perimeter of the property. Help us out here. How is this maintaining the natural beauty of the wetlands and the surrounding property? We not only have to worry about landslides now but until one happens, we will look at a towering cement wall that will span hundreds of feet.

In closing, you should not grant the conditional use permit. This property is practically half wetlands and you the city have done a poor job of maintaining the natural beauty and health of this land. The developer simply wants to maximize his profits at the expense of Mtka wetlands and the surrounding residents. Stop acting like you have no control over this property. You do have the ability to get this under control. Take action. Preserve the

A13a

wetlands and what's left of the natural beauty of this property. This is what Minnetonka should continue to be known for but sadly the city is not staying true to its beliefs. Please respond to Deb or Dave Stehlik 4400 Sparrow Rd Mka 952-401-8864  
Thank you

A13b

**RESOLUTION NO. 2007-**

**RESOLUTION APPROVING A CONDITIONAL USE PERMIT TO MOVE OVER 1,000  
CUBIC YARDS OF EARTH AT 18511 AND 18517 RIDGEWOOD ROAD**

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BE IT RESOLVED by the City Council of the City of Minnetonka, Minnesota, as follows:

Section 1. BACKGROUND.

1.01 Rod Peterson, RP Properties LLC, is requesting a conditional use permit to move over 1,000 cubic yards of earth (Project 05041.07a).

1.02 The properties are located at 18511 and 18517 Ridgewood Road. They are legally described as follows:

Lot 3, Block 1, Ridgewood Heights  
Lot 2, Block 1, Ridgewood Heights

1.03 On \_\_\_\_\_, 2007, the Planning Commission held a hearing on the application. The applicant was provided the opportunity to present information to the Planning Commission. The Planning Commission considered all of the comments and the staff report, which are incorporated by reference into this resolution. The Commission recommended that the City Council \_\_\_\_\_ the permit.

Section 2. GENERAL STANDARDS.

2.01 City Code Section 300.21, Subdivision 2, lists the following general standards that must be met for granting of the permit:

1. The use is consistent with the intent of this ordinance;
2. The use is consistent with the goals, policies and objectives of the comprehensive plan;
3. The use does not have an undue adverse impact on governmental

facilities, utilities, services or existing or proposed improvements;

4. The use is consistent with the city's storm water management plan;
5. The use is in compliance with the performance standards specified in Section 300.28 of this ordinance; and
6. The use does not have an undue adverse impact on the public health, safety or welfare.

Section 3. FINDINGS.

- 3.01 The proposal meets the conditional use permit standards.
- 3.02 The proposal would meet minimum engineering requirements.
- 3.03 A conditional use permit with stringent conditions would allow the development to be completed more quickly than it would be otherwise.
- 3.04 The conditional use permit would give the city the opportunity to place greater controls over the work done on the properties.

Section 4. CITY COUNCIL ACTION.

- 4.01 The above-described conditional use permit is approved, subject to the following conditions:
  1. Prior to issuance of a building permit, complete the following:
    - a) Submit a tree preservation plan for each property.
    - b) Submit a specific construction management plan for each property. This plan must outline erosion control measures, a street sweeping plan, construction parking, haul routes, and haul hours. Haul hours are limited to weekdays only.
    - c) Submit an erosion control escrow in the amount of \$10,000.
    - d) This escrow must be accompanied by a document prepared by the city attorney and signed by the builder and property owner. Through this document the builder and property

A15

owner will acknowledge: (1) the property will be brought into compliance within 48 hours of notification of a violation; and (2) if compliance is not achieved, the city will use any or all of the escrow dollars to correct any erosion and/or grading problems.

- e) All property corner stakes must be reset for staff inspection.
  - f) Submit revised plans for the retaining wall, soils data, and any other information as required by the city's building official.
  - g) Record this resolution with the county and return a recorded copy of this resolution to the city.
2. Prior to final inspection of either house:
- a) Submit an engineering report associated with the retaining walls, as required by the city's building official.
  - b) Submit either one of the following:
    - 1) As-built plans that include the foundation, retaining walls, two-foot contours and any other item as required by the city engineer; or
    - 2) Cash escrow in an amount to be determined by the city engineer and natural resources staff. The escrow dollars will not be released until all required as-builts have been submitted.
3. Construction of retaining walls must commence before any fill is brought onto the site and prior to footing inspections for either house.
- a) The retaining walls must meet all building code requirements.
  - b) Construction of the retaining wall must meet all other requirements of the city's building official and building plans reviewer. These may include, but are not limited to:

Alv

- 1) An engineer on site during construction of the retaining walls.
- 2) As required by the city's building plans reviewer, an engineering report must be submitted following installation of the walls.
4. As defined by natural resources staff, groups of trees adjacent to the Ridgewood Road must be protected during construction.
5. No tree removal is permitted within the wetland or the 25-foot wetland buffer.
6. A swale must be graded between the houses to direct overflow from the street.
7. The city council may reasonably add or revise conditions to address any future unforeseen problems.
8. 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.
9. The applicant must agree to the above conditions in writing.

Adopted by the City Council of the City of Minnetonka, Minnesota, on 2007.

\_\_\_\_\_  
Janis A. Callison, Mayor

ATTEST:

\_\_\_\_\_  
David E. Maeda, City Clerk

ACTION ON THIS RESOLUTION:

Motion for adoption:

Seconded by:

Voted in favor of

A17

Voted against:  
Abstained:  
Absent:  
Resolution adopted.

I hereby certify that the foregoing is a true and correct copy of a resolution adopted by the City Council of the City of Minnetonka, Minnesota, at a duly authorized meeting held on \_\_\_\_\_, 2007.

---

David E. Maeda, City Clerk

SEAL

**Planning Commission Staff Report  
Meeting of April 26, 2007**

**Brief Description:** Ordinance amending non-conforming use sections of city code

**Recommended Action:** Recommend that the city council adopt the ordinance

**Introduction**

The city attorney is recommending some fine-tuning of the city code sections regulating non-conforming uses. The proposed ordinance:

1. adds definitions for expansion and improvement;
2. adds a definition, and creates new requirements, for a legal non-conforming land use (a use no longer allowed):
  - a. allows it to be replaced to exactly match the pre-existing conditions without any land use approval, if it qualifies for replacement under the ordinance;
  - b. requires any improvement to a legal non-conforming land use to be allowed only by conditional use permit; and
  - c. requires that a variance to allow expansion may only be approved by the city council;
3. adds a definition, and creates new regulations, for a legal non-conforming development (a use that does not meet dimensional standards):
  - a. allows it to be replaced to exactly match the pre-existing conditions (with exceptions for internal improvements and improved materials for a roof, siding, windows, or doors) without any land use approval, if it qualifies for replacement under the ordinance;
  - b. requires improvements that bring the structure into compliance with the building code to first receive approval from the planning director;
  - c. requires other improvements to first receive site plan approval; and
  - d. requires that a variance to allow expansion may be approved by the planning commission;

4. requires that variances are needed (a) for expanding into any non-conforming area even though the footprint of the use is made more conforming and (b) for improvements that reduce the extent of the variance but still do not meet ordinance requirements;
5. adds that the reconstruction, improvement or expansion of a use in a floodplain area must comply with eligibility requirements for National Flood Insurance Program;
6. provides that a non-conforming vacant lot may not be developed if it is in common ownership with adjacent property;
7. provides that a non-conformity created by an eminent domain action is not subject to the restrictions placed on non-conforming uses; and
8. provides that the burden of proof for an applicant is "clear and convincing evidence."

### **Primary Issues**

- **Should the definitions be added to the ordinance?**

Yes. A few years ago the state law was amended to allow non-conforming uses of all kinds to be replaced and improved but not expanded if they met certain conditions. The law did not provide definitions for the terms "replaced," "improved" and "expanded." This has created confusion for residents and city staff as they try to determine exactly what is allowed. The city attorney created definitions for "improved" and "expanded" based on various court decisions. This should help all parties understand what is and is not allowed.

Definitions are also added to distinguish between non-conforming land uses, which are uses that are no longer allowed, and non-conforming developments, which are permitted uses that do not meet ordinance standards such as size, depth, etc. These definitions are important because the two categories are treated differently regarding replacement and improvement.

- **Should non-conforming land uses be treated differently than non-conforming developments?**

Yes. Because non-conforming land uses are uses that are no longer allowed, it is appropriate that greater constraints be placed on them, with the intent of encouraging their eventual elimination. The ordinance would allow replacement only if the resulting construction matched exactly the pre-existing conditions. Any improvements would require a conditional use permit, which would provide the opportunity to impose conditions to protect the public health, safety, and welfare,

which is allowed by state law. Any expansion would require a variance that could be granted only by the city council.

In contrast, non-conforming developments have primarily dimensional problems. The uses themselves are allowed. Therefore, lesser scrutiny appears appropriate. The proposed ordinance would allow replacement to match pre-existing conditions but would give exceptions for internal improvements and for improved materials to replace roofs, siding, windows, and doors. Other improvements would need site plan approval, except that the planning director could give administrative approval for improvements that bring the structure into compliance with building code requirements. Expansion of non-conforming developments could be allowed through a variance granted by the planning commission.

- **Should the other miscellaneous provisions be adopted?**

Yes. The requirement to comply with the National Flood Insurance Program was recently added to the state statute and should be added to the city ordinance to be consistent.

A new paragraph would provide that a non-conforming lot does not have a right to be developed if it is in common ownership with adjacent land at any time after the non-conformity was created. This is a provision already established by the courts and just codifies authority that the city already has.

The ordinance would also change the status of a non-conformity created by eminent domain, such as a reduced front setback in a road project. Currently the code provides that the resulting non-conformity is subject to the non-conforming use limitations. The proposed ordinance would provide the opposite. This change will reduce property acquisition costs for public agencies. Under the current ordinance, the city has had to grant a variance for the non-conformity in order to avoid additional expense.

The ordinance would also provide that the burden of proof for an applicant is "clear and convincing evidence" which is the standard that the city of St. Paul has in its ordinance and which has been recognized by a court decision.

### **Staff Recommendation**

Recommend that the city council adopt the ordinance on pages A1-A9.

Originator: Desyl Peterson, City Attorney  
Through: Julie Wischnack, AICP, City Planner

ORDINANCE NO. 2007-

AN ORDINANCE AMENDING CITY CODE SECTIONS 300.07 AND 300.29  
REGARDING NON-CONFORMING USES

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The City of Minnetonka Ordains:

Section 1. City code section 300.07, Subd. 4 is amended as follows:

4. Decisions.

Following the public hearing or any continuance ~~which that~~ is not appealed by the applicant, the planning commission ~~shall~~must decide the matter before it. Appeals from orders, requirements, decisions or determinations of an administrative officer ~~shall~~must be decided by the planning commission by vote of a simple majority of those present. The planning commission may grant a variance only upon an affirmative vote of two-thirds of its full membership. The planning commission may impose conditions in granting variances to effect the intent of this ordinance and to protect adjacent properties. The planning commission ~~shall~~must accompany its decision to deny a variance with a statement of its findings and ~~shall~~must serve a copy of its decision upon the applicant by mail. The planning commission action will be final action subject to the right of appeal, except:

- a) if the application is for a variance from the provisions of section 300.29, Subd. 3(1) with respect to expansion of a non-conforming land use (but not a non-conforming development) or section 300.29, subd. 3(g) and (h) (i) with respect to the time limit for amortizing non-conforming land-uses; or
- b) if the variance is an integral part of another land use application ~~which that~~ requires city council action.

In those circumstances, the planning commission action will be a recommendation to the city council, and action by the planning commission will require only approval of a majority of its full membership. Approval of the variance by the city council will require an affirmative vote of two-thirds of its full membership.

Section 2. City code section 300.29 is amended as follows:

SECTION 300.29. NON-CONFORMING USES.

1. Purpose.

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The stricken language is deleted; the underlined language is inserted.

It is the purpose of this section to accomplish the following:

- a) recognize the existence of uses which were lawful when established but which no longer meet all ordinance requirements;
- b) discourage the enlargement, expansion, intensification or extension of any non-conforming use or any increase in the impact of a non-conforming use on adjacent properties; ~~and~~
- c) regulate the repair, replacement, restoration, and improvement of non-conforming uses to prevent and abate nuisances and to protect the public health, safety, or welfare; and
- ed) encourage the elimination of non-conforming uses or reduce their impact on adjacent properties.

## 2. Definitions.

For the purposes of this section, the following terms and phrases have the meanings given to them.

- a) "Legal non-conformity" or "non-conforming use" ~~–means any land use, structure, physical form of land development, lot of record or sign legally established prior to before the effective date of this ordinance or subsequent amendment to it which that would not be permitted by, or is not in full compliance with, the regulations of this ordinance. A~~ non-conformity or non-conforming use is one of two types: non-conforming land use or non-conforming development.
- b) "Non-conforming land use" means an activity using land, buildings, and/or structures for a purpose that was legally allowed when established but that is not currently allowed as a use in the zoning district in which it is located. In addition, the use must have been in compliance with all land use regulations at the time the non-conformity was created.
- c) "Non-conforming development" means a legal non-conformity other than a non-conforming land use, that complied with ordinance standards at the time it was established but that does not currently conform to an ordinance standard such as height, setback, or size. In addition, the development must have been in compliance with all land use regulations at the time the non-conformity was created.
- d) "Expansion," "enlargement," or "intensification" means any increase in a building dimension, size, area, volume, or height, any increase in the area of use, any placement

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The stricken language is deleted; the underlined language is inserted.

of a structure or part thereof where none existed before, any addition of a site feature such as a deck, patio, fence, driveway, parking area, or swimming pool, any improvement that would allow the land to be more intensely developed, any move of operations to a new location on the property, or any increase in intensity of use based on a review of the original nature, function or purpose of the non-conforming use, the hours of operation, traffic, parking, noise, exterior storage, signs, exterior lighting, types of operations, types of goods or services offered, odors, area of operation, number of employees, and other factors deemed relevant by the city.

e) "Improvement" means making the non-conforming use better, more efficient, or more aesthetically pleasing, including any change that does not replicate what pre-existed, but does not include an expansion, enlargement, or intensification.

### 3. General Standards.

~~No~~A non-conforming use may ~~must~~ be used except in conformance with the following:

a) ~~There may be no expansion, enlargement, or intensification, or relocation of any use or any site element of any non-conforming use except to make it a permitted use. Normal building maintenance and repair are excepted from this requirement.~~Expansion, enlargement or intensification of conforming aspects of a non-conforming use are excepted from this requirement. For example, if a structure has a non-conforming front setback, it may be expanded on the sides that do meet setback requirements as long as the expansion itself meets ordinance requirements.

b) A nonconforming use may be continued, including through repair, replacement, restoration, maintenance, or improvement, but not including expansion, only in compliance with the provisions of this section. ~~No~~A non-conforming use may be resumed if normal operation of the use has been discontinued, or if a non-conforming building has been removed and not replaced, for a period of 12 or more months. Time will be calculated as beginning on the day following the last day in which the use was in normal operation and will run continuously thereafter. Following the expiration of 12 months, only uses that are permitted by this ordinance are allowed to be established.

c) Full use of a non-conforming use may not be resumed if the amount of land or floor area dedicated to the use is lessened or if the intensity of the use is in any manner diminished for a period of 12 or more months. Time will be calculated as beginning on the day following the last day in which the non-conforming use was in full operation and will run continuously thereafter. Following the expiration of 12 months, the non-conforming use may be used only in the manner or to the extent used during the

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The stricken language is deleted; the underlined language is inserted.

preceding 12 months. For the purposes of this section, intensity of use will be ~~measured by~~ determined by a review of the original nature, function or purpose of the non-conforming use, the hours of operation, traffic, parking, noise, exterior storage, signs, exterior lighting, types of operations, types of goods or services offered, odors, area of operation, number of employees, and other factors deemed relevant by the city.

d) ~~Removal or destruction of a non-conforming use to the extent of more than 50 percent of its estimated market value by fire or other peril, excluding land value and as determined by the city assessor, terminates the right to continue or replace any non-conforming use, except if a valid and complete building permit application has been submitted to the city within 180 days after the property was damaged. Reconstruction that is allowed under these circumstances is subject to site and building plan approval pursuant to section 300.27 or, in the case of R-1 properties, section 300.10 of this ordinance. As part of the site and building plan review, the city may impose reasonable conditions upon the building permit to mitigate any newly created impact on adjacent property.~~

e) ~~If replacement, reconstruction, or restoration of a legal non-conforming land use is allowed, it may occur without any land use approval from the city if the resulting use does not create any new adverse impacts on adjacent property and matches exactly the conditions that existed before the work was undertaken or before the use was damaged or destroyed. Work that would not meet this requirement and any work that would be an improvement to a non-conforming land use may not be undertaken unless a conditional use permit has been issued for the property. The city may impose conditions in a conditional use permit to mitigate any newly created impacts on the public health, safety, or welfare, or on adjacent property.~~

f) ~~If replacement, reconstruction, or restoration of a legal non-conforming development is allowed, it may occur without any land use approval from the city if the resulting use does not create any new adverse impacts on adjacent property and matches exactly the conditions that existed before the work was undertaken or before the use was damaged or destroyed, except for internal improvements and improved materials used to replace roof surfaces, siding, windows, doors, and similar components. Work that would not meet this requirement or any other improvement to a non-conforming development may not be undertaken unless the appropriate approval required below has been granted for the property. The city may impose conditions in its approval to mitigate any newly created impacts on the public health, safety, or welfare, or on adjacent property.~~

1) ~~Work that brings a structure into compliance with building code requirements requires approval from the director of planning. The planning~~

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The stricken language is deleted; the underlined language is inserted.

director may choose, in his or her sole discretion, to require site plan approval instead of administrative approval.

2) All other improvements require site plan approval notwithstanding any other provision of this ordinance to the contrary.

g) Work that constitutes an expansion of any non-conforming use may not be done without first obtaining a variance. Expansion of a non-conforming land use may be approved only by the city council after receiving the advice of the planning commission. Expansion of a non-conforming development may be approved by the planning commission. A variance is also required if

1) the use occupies any space within a non-conforming area that was previously not occupied both vertically and horizontally. For example, a variance would be required if a second floor area is expanded into the non-conforming setback even though the non-conformity of the first floor setback dimension is reduced.; or

2) the non-conforming aspect of a use is reduced but still does not comply with current ordinance standards.

eh) Notwithstanding the prohibitions contained in the foregoing paragraphs of this subdivision, if approved by the city council a non-conforming use may be changed to another non-conforming land use of less intensity if it is in the public interest. In all instances the applicant has the burden of proof regarding the relative intensities of uses proving that the proposed land use is less intense than the exiting nonconforming land use.

fi) If a non-conforming use is superseded or replaced by a permitted use, the non-conforming status of the premises and any rights which arise under the provisions of this section terminate.

gj) Notwithstanding the foregoing paragraphs of this subdivision, all non-conforming sexually-oriented businesses and sexually-oriented uses, as defined in section 300.33, subd. 3, which were made non-conforming by the zoning ordinance or an amendment to it must be discontinued no later than three years after the adoption of the provision creating the non-conformity.

k) Notwithstanding the foregoing paragraphs, a non-conforming use or structure in a floodplain area may only be repaired, replaced, maintained, improved, or expanded to the extent that it would qualify for eligibility in the National Flood Insurance Program, would not increase flood damage potential or increase the degree of obstruction to flood

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The stricken language is deleted; the underlined language is inserted.

flows in the floodway, and would comply with the provisions in section 300.24, subd. 14.

#### 4. Non-Conforming Sign.

A non-conforming sign that is an imminent danger to life or property or that may not be replaced under this ordinance must be removed immediately at the expense of the owner.

#### 5. Non-Conforming Utility Pole.

For a non-conforming utility pole that exists on the effective date of the ordinance, the pole and wires may be replaced in the event that it is damaged as the result of circumstances beyond the owner's control, but only if the height of the pre-existing pole and its lines are not exceeded and the voltage of the pre-existing wires is not increased. The height and voltage may be exceeded only if this is required by other governmental agencies or by applicable safety codes. In addition, the height may be exceeded temporarily if the owner does not have a conforming pole available, but only on the condition that a permanent replacement which does not exceed the pre-existing height is installed as soon as practical.

#### 6. Non-Conforming Lot.

A lot or parcel of land that is non-conforming and that is not improved with a principal use is not entitled to be developed with a principal use if it has been in common ownership with adjacent land, including land that is across a street, or of it has been part of a larger parcel of land, at any time after adoption of the standard that causes the lot or land to be non-conforming.

#### 67. Creation of Non-Conformities By Public Action.

~~Where there exists as of the date of adoption of this ordinance a conforming land use, lot of record, sign or development and a subsequent~~if a taking by a governmental body occurs under eminent domain or negotiated sale which renders such a land use, lot of record, sign or development in violation of one or more provisions of this ordinance, such land use, lot of record, sign or development shall does not become a legal non-conformity and may be used thereafter only in accordance with that is subject to the provisions~~limitations~~of this section as a result of the acquisition.

#### 78. Burden of Proof.

A person who wishes to take advantage of the rights granted to a legal non-conformity has the burden of proving the status as a legal non-conformity by clear and convincing

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The stricken language is deleted; the underlined language is inserted.

evidence.

Section 3. A violation of this ordinance is subject to the penalties and provisions of Chapter XIII of the city code.

Section 4. This ordinance is effective immediately.

Adopted by the city council of the City of Minnetonka, Minnesota, on

\_\_\_\_\_  
Janis A. Callison, Mayor

ATTEST:

\_\_\_\_\_  
David E. Maeda, City Clerk

ACTION ON THIS ORDINANCE:

Date of introduction:

Date of adoption:

Motion for adoption:

Seconded by:

Voted in favor of:

Voted against:

Abstained:

Absent:

Ordinance adopted.

Date of publication:

\_\_\_\_\_  
The stricken language is deleted; the underlined language is inserted.

A7

CERTIFIED COPY:

I certify that the foregoing is a correct copy of an ordinance adopted by the city council of the City of Minnetonka, Minnesota, at a meeting held on

---

David E. Maeda, City Clerk

---

The stricken language is deleted; the underlined language is inserted.

AS

ORDINANCE NO. 2007-

AN ORDINANCE AMENDING CITY CODE SECTIONS 300.07 AND 300.29  
REGARDING NON-CONFORMING USES

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The City of Minnetonka Ordains:

Section 1. City code section 300.07, Subd. 4 is amended as follows:

4. Decisions.

Following the public hearing or any continuance which ~~that~~ is not appealed by the applicant, the planning commission ~~shall~~ must decide the matter before it. Appeals from orders, requirements, decisions or determinations of an administrative officer ~~shall~~ must be decided by the planning commission by vote of a simple majority of those present. The planning commission may grant a variance only upon an affirmative vote of two-thirds of its full membership. The planning commission may impose conditions in granting variances to effect the intent of this ordinance and to protect adjacent properties. The planning commission ~~shall~~ must accompany its decision to deny a variance with a statement of its findings and ~~shall~~ must serve a copy of its decision upon the applicant by mail. The planning commission action will be final action subject to the right of appeal, except:

- a) if the application is for a variance from the provisions of section 300.29, Subd. 3(1) with respect to expansion of a non-conforming land use (but not a non-conforming development) or section 300.29, subd. 3(g) ~~and (h)~~ (i) with respect to the time limit for amortizing non-conforming land-uses; or
- b) if the variance is an integral part of another land use application which ~~that~~ requires city council action.

In those circumstances, the planning commission action will be a recommendation to the city council, and action by the planning commission will require only approval of a majority of its full membership. Approval of the variance by the city council will require an affirmative vote of two-thirds of its full membership.

Section 2. City code section 300.29 is amended as follows:

SECTION 300.29. NON-CONFORMING USES.

1. Purpose.

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The stricken language is deleted; the underlined language is inserted.