

**MINNETONKA PLANNING COMMISSION
MINUTES**

JULY 26, 2007

1. CALL TO ORDER

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

2. ROLL CALL

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

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

- 3. APPROVAL OF AGENDA:** The agenda was approved as submitted with changes and additional comments provided in the change memo dated July 26, 2007.

- 4. APPROVAL OF MINUTES:** July 12, 2007

Adams moved, second by Lehman, to approve the July 12, 2007 meeting minutes as submitted.

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

5. REPORT FROM STAFF

Wischnack briefed the commission on land use applications considered by the city council at its meeting of July 23, 2007:

- Adopted a resolution approving a conditional use permit for a detached garage at 4915 Highland Road for Tim and Dawn Kraskey.
- Adopted a resolution approving a conditional use permit to move over 1,000 cubic yards of dirt from property adjacent to 601 Carlson Parkway for Carlson Real Estate Company.
- Adopted a resolution approving final approval of the Wentworth Woods plat at 3212 Wentworth Train for Avery and Horace Choep.

- Adopted a resolution approving a conditional use permit, variance, and site and building plan review for an expansion of the Mobil gas station convenience store located at 3864 Hopkins Crossroad for Croix Oil Company.
- Introduced changes to the shoreland ordinance and amendments to the park dedication requirements to be reviewed by the planning commission.

6. REPORT FROM PLANNING COMMISSION MEMBERS: None

7. PUBLIC HEARINGS: CONSENT AGENDA

Item 7B was removed from the consent agenda for discussion and separate action.

Adams appreciated Dean and Margaret Halverson working with staff to come to an agreeable project. Thomas explained the negotiation process.

Cheleen moved, second by Adams, to approve items 7A and 7C as listed on the consent agenda as recommended in the respective staff reports as follows:

A. Side yard setback variance for an additional garage stall at 4925 Arlington Drive, for Dean and Margaret Halverson. (Project 7006.07a)

Adopt the resolution on pages A12–A14 of the staff report, which approves a side yard setback variance from 10 feet to 3 feet for a garage addition at 4925 Arlington Drive. This resolution is based on the following findings:

- 1) The proposed use is reasonable for two reasons:
 - a) The applicants' current garage is substandard in total size. A standard two-stall garage could not be built in the location of the existing garage without a variance.
 - b) The garage would be over 30 feet from the closest neighboring building.
- 2) The existing house is not centrally located on the subject property, rather it is located on the west half of the property. The garage attached to the home is further located on the west side of the house. While not

uncommon to the Arlington Road neighborhood, this is a unique circumstance not common to every R-1 property.

- 3) There are homes in the Arlington Road area that do not meet side yard setback. Based on aerial photographs, substandard side yard setbacks in the neighborhood range from 0 feet to 8 feet. The applicants' proposal is not, therefore, uncharacteristic of the area.

Approval is subject to the following conditions:

- 1) Submit proof of having recorded this resolution with the county before the city issues a building permit.
- 2) Install erosion control and tree protection fencing for natural resources staff inspection. These items must be maintained throughout the course of construction.
- 3) This variance will end on December 31, 2008, unless the city has issued a building permit for the project covered by this variance or approved a time extension.

**C. Conditional use permit to install wireless telecommunications antenna and equipment on the existing telecommunications tower at 2863 Hedberg Drive, for Cingular Wireless/Hall Institute.
(Project 96046.07a)**

Recommend that the city council adopt the resolution on pages A13–A16 of the staff report, which approves a conditional use permit, with variance, for telecommunications antennas at 2863 Hedberg Drive. This resolution is based on the following findings:

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

Approval is subject to the following conditions:

- 1) Record this resolution with the county before the city issues a building permit.

- 2) The site must be developed and maintained in substantial conformance with the plans date-stamped June 29, 2007.
- 3) The exterior surface of the antennas and external coaxial cable must be painted to match the existing water tower.
- 4) The exterior of the equipment shelter must be painted to match the existing principal building.
- 5) Any trees removed for placement of the equipment shelter must be replaced. Three additional evergreen trees must be installed. The species and locations of the trees are subject to natural resources staff review and approval.
- 6) Antennas must comply with all building and electrical code requirements and must be designed and certified by an engineer.
- 7) No external messages or on-site employees are allowed.
- 8) The city council may reasonably add or revise conditions to address any future unforeseen problems.
- 9) The applicant must agree to the above conditions in writing.

Cheleen, Lehman, Schmitz, Adams, and Hart voted yes. Brandt and Dahl were absent. Motion carried and items 7A and 7C on the consent agenda were approved as submitted.

B. Conditional use permit to build a detached garage greater than 12 feet in height at 11900 Live Oak Drive, for Steven and Julie Freie. (Project 07036.07a)

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

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

Adams asked if the height of the garage would be altered. Metzer replied that the height would remain 13-feet tall.

The public hearing was opened.

Hans Cederblad, 11820 Live Oak Drive, stated that he enjoyed the nature and seclusion the area provides. He admired how the applicant improved the main building on the property. He had strong concerns regarding the proposed garage. He opposed the project because of its height, depth, and proximity. The size would be excessive. The neighborhood standard for garage size is 24 feet by 24 feet. The proposed one would be 24 feet by 36 feet. The neighborhood was platted in the 1940s. The lots are typically three quarters of an acre, deep, and narrow. Most homes are one-story ramblers. The houses are close together. The area is sensitive to development. Most of the houses are aligned. The yards have mature trees. They provide a wilderness feel. His garage is a one-car garage. He found no other garages in the area larger than 24 feet by 24 feet. The proposal would obstruct the view from his property. He proposed reducing the size of the garage or changing its location.

Mr. Cederblad felt the intent of the staff report was good. Environmental and compatibility concerns are discussed. He disagreed with the interpretation of the concerns. The proposal would not be reasonable. It would be very visible. Its size would not fit the existing house. Life is too short to wait for the evergreens to grow large enough to provide screening. There would be a negative visual impact. The sensitivity of the site would be compromised. There would be a significant, negative impact. There may be an impact on his property value. He would discuss his concerns with the process with staff separately.

In response to Lehman's question, Mr. Cederblad estimated that his home is 10.7 feet from the property line at its closest and 17 feet at its furthest point.

Steve Freie, 11900 Live Oak Drive, applicant, located the proposed garage in the least invasive spot possible. It would have been easier to decrease the height by one foot and not go through the approval process, but he wanted the roof line to match the house and keep the aesthetics and curb appeal. The garage height would be three feet or four feet less than the height of the residence. It would be set well off the road. It would fit the property well. His lot is wooded and already provides privacy for his neighbor at 11820 Live Oak Drive. He would provide additional trees to cover the impact to the property. The windows of 11820 Live Oak Drive face north and south. The garage would be on the west side. The existing garage and proposed garage would not be visible from inside the house.

In response to Chair Hart's question, Metzger explained the definitions of permitted and conditional uses. Chair Hart reviewed that the application meets setback requirements.

Adams moved, second by Cheleen, to recommend that the city council adopt the resolution on pages A9–A12 of the staff report with a change provided in the change memo dated July 26, 2007, which approves a conditional use permit for a garage over 12 feet in height at 11900 Live Oaks Drive. This resolution is based on the finding that the proposal meets all conditional use permit standards as outlined in city code. Approval is subject to the following conditions:

- 1) Before issuance of a building permit:
 - a. Submit a revised survey. The survey must include existing and proposed elevations at the corners of the proposed garage.
 - b. Record this resolution with the county before the city issues a building permit.
 - c. Install tree protection and erosion control fencing for inspection by natural resources staff. This fencing must be maintained throughout the course of construction.
- 2) Seven conifer trees must be planted on the east side of the proposed structure to provide a vegetative screen to the neighboring property to the east of the subject property.
- 3) The applicant must comply with all standards required by electric utility service provider.
- 4) The city council may reasonably add or revise conditions to address any future unforeseen problems.
- 5) 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.
- 6) The applicant must agree to the above conditions in writing.

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

Chair Hart stated that the item was tentatively scheduled to be reviewed by the city council on August 6, 2007.

8. PUBLIC HEARINGS

A. Conditional use permit and variances to demolish an existing home and build a new home within the floodplain at 2504 Bantas Point Lane, for Kathleen Nelson. (Project 03091.07a)

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

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

Chair Hart confirmed with Metzer that the current house is not stable and does not meet setback requirements. Chair Hart asked if it would meet shoreland ordinance requirements. Colleran stated that the proposal would not meet the requirements of the proposed shoreland ordinance. There would be no difference from the variances requested now. The floodplain separation requirement would be the same.

Kathleen Nelson, 2504 Bantas Point Lane, appreciated staff's work. Metzer was easy to work with. She explained the reasons behind increasing the size of the proposed residence to exceed the McMansion policy by 48 square feet. This is the first application required to have a 10-foot shore line buffer dedicated in a conservation easement. She was sensitive to protecting the shoreland, but the requirement may be obsessive. Seven hundred square feet, located in the buffer, would equal 36 percent of the open space of the lot. It seemed like a lot. The residence is setback from the lake 22 feet. It would be half the distance between the home and the lake. She looked forward to building the new home soon.

Lehman asked what the applicant would do if the structure needed to be reduced by 48 square feet. Ms. Nelson answered that the house plan would have to be redesigned. She suspected that the size of the garage would be decreased. It currently would only have one stall, so it would be a small, one-stall garage.

Adams asked what she would do with the 10-foot buffer if she was not required to plant native vegetation. Ms. Nelson had no plan other than vegetation, but she questioned the need for the requirement for the easement to be recorded with Hennepin County.

In response to Chair Hart's request, Wischnack explained the concern with the applicant's proposed size exceeding the McMansion policy. It could cause an increase in the floor area ratio for the area. In regard to the conservation easement, when an application has over ten variances requested for one lot,

there are things that staff looks for to offset those allowances. Runoff is a major concern. The residence is very close to the lake shore. A strong connection exists between the conservation easement requirement and the need for so many variances.

Chair Hart commented that a conservation easement would restrict use of the land to native vegetation. Colleran explained that the easement could be written to allow a 15-foot wide access, i.e. for a dock. The natural buffer would afford the lake additional protections.

In response to Lehman 's question, Colleran stated that the proposed ordinance would require all shoreland district properties requesting a variance to have a 25-foot buffer. It would also allow substandard lots, platted prior to February 12, 1966, a reduction in buffer, which would be half of the building setback. The current application has a 22-foot setback. An 11-foot buffer would be required, but staff felt it would be reasonable to reduce the buffer by one foot. It balanced lake protection with increase impervious surface and lawn care practices.

Chair Hart noted that the 10-foot buffer is needed to infiltrate and mitigate the runoff before it enters the lake. Colleran answered affirmatively. Buffers filter nutrients; deter geese, which decrease the amount of phosphorus; filter pesticides; provide soil stabilization; provide wildlife habitat; and shade the shore so the water stays cool to provide a better habitat for fish.

Schmitz asked what type of plants would be allowed. Colleran stated that trees, shrubs, grass, wild flowers, gardens, and flowers would be allowed. She provided examples of current wetland buffers.

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

Chair Hart welcomed comments regarding the application exceeding the McMansion policy by 48 square feet and the conservation easement.

Adams was less concerned with allowing the 48 square feet than the request to waive the 10-foot buffer. The McMansion policy is a policy intended to keep buildings in scale with neighbors. The proposal would fit in well with homes in the area. He was concerned with buffering the lake. Staff did make a concession to reduce the buffer to 10 feet. He suggested allowing the 48-square-foot excess of the McMansion policy and requiring the 10-foot buffer.

Cheleen agreed with Adams. Ms. Nelson did have a rather large home previously. She scaled it down to 1 ½ stories and worked with staff to create the plan while the McMansion policy was being developed. He agreed with maintaining the 10-foot buffer. The buffer needed to start somewhere. It would be feasible and look decent.

Schmitz concurred. Waive the McMansion policy. She appreciated being able to see the specific house plan. It would be a minor deviation. She agreed with requiring the 10-foot buffer. Smaller lots have a wetland buffer.

Lehman concurred.

Chair Hart felt the 48 square feet represented a point intrusion. She agreed with waiving the McMansion policy and requiring the buffer. Nothing could be built without multiple variances. The residence has been scaled down significantly. All of the requirements have been met.

Cheleen moved, second by Adams, to recommend the city council adopt the resolution on pages A4-A10 of the staff report which approves a conditional use permit and variances for construction of a new house at 2504 Bantas Point Lane with a change to allow the square footage of the structure to exceed the McMansion policy by 48 square feet. Approval includes the following:

Lot variances:

- Lot area 15,000 square feet to 3,730 square feet
- Buildable area for a small lot:
- Minimum size from 2,400 square feet to 438 square feet
- Minimum dimension (length/width) of buildable area from 30 feet to 2 feet and 12 feet
- Lot width 110 feet to 65 feet
- Lot depth 125 feet to 64 feet.

Building variances:

- Front yard setback 20 feet to 7 feet
- Flood plain setback 20 feet to 0 feet
- Shoreland setback 35 feet to 22 feet and 25 feet to 18 feet
- Hard surface coverage 30% to 40.7 %

- Required low floor elevation from 933.5 to 932.25 for the attached garage
- Required elevation of driveway from 932.5 to 931.2

Approval is based on the following findings:

- 1) There are practical difficulties caused by the extremely small size of the lot and the presence of floodplain and a shoreland setback encroaching on approximately 50% of the lot. Together, these factors make construction of a home, which is compatible to the surrounding neighborhood, difficult.
- 2) The lot variances would be required to construct any new home on the site.
- 3) Numerous variances have been approved for various homes in the surrounding neighborhood, including similar front yard, shoreland, and flood plain variances.
- 4) The construction of a modern home would make the property more compatible with others in the surrounding neighborhood and would not alter the essential character of the neighborhood.
- 5) The existing structure's low floor elevation is not located at least two feet above the floodplain elevation of 931.5 as required by ordinance. The proposed home, with the exception of the attached garage, will meet ordinance requirements for low-floor elevation separation from floodplain, thus, eliminating a nonconforming situation on the subject property.
- 6) The principal structure shoreland setback is being increased from 17 feet to 22 feet, thus, reducing an existing nonconformity.

Approval is subject to the following conditions:

- 1) Submit/complete the following before the city issues a building permit:
 - a. Submit proof of having recorded this resolution with the county before the city issues a building permit.
 - b. Submit a construction management plan; this plan must outline parking and construction access and stockpile and material storage.

- c. Install temporary rock driveway, erosion control, tree protection and lake protection fencing, subject to review by the city's natural resources staff. These items must remain in place throughout the course of construction.
 - d. Submit a grading plan showing how the elevated garage floor will be achieved. The grading plan must also show that the proposed structure's crawl space can accommodate a compensatory volume of floodplain being filled.
 - e. The property owner must submit an emergency evacuation route from the structure directly to land above the designated 100-year flood elevation, subject to staff approval.
- 2) Proposed home may exceed the McMansion policy by 48 square feet in size.
 - 3) Pervious pavers must be used for the driveway and pathways.
 - 4) The existing storage shed must be permanently removed from the subject property.
 - 5) Maintain a low floor elevation above 933.5 for all new living space and a low floor elevation of 932.25 for the attached garage.
 - 6) Structure must be designed to comply with ordinance 300.24.9(j).
 - 7) Install and maintain a 10-foot buffer of native vegetation adjacent to the shoreline. A 10-foot conservation easement must be dedicated over the vegetative buffer and must be recorded with the county.
 - 8) Revegetate areas where demolished structures are removed.
 - 9) Permits may be required from other outside agencies, including but not limited to the United States Army Corps of Engineers, Minnesota Department of Natural Resources, Minnehaha Creek Watershed District and the Lake Minnetonka Conservation District. It is the applicant's and/or property owner's responsibility to obtain any necessary permits.

This variance will end on December 31, 2008, unless the city has issued a building permit for the project covered by this variance or approved a time extension.

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

Chair Hart stated that the item was tentatively scheduled to be reviewed by the city council on August 6, 2007.

B. Items concerning a proposed senior housing cooperative to be known as Applewood Pointe at 5709 Rowland Road, for United Properties Residential, LLC. (Project 07023.07a)

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 confirmed with Thomas the location of the lot on the aerial illustration. There are no surrounding structures.

Adams questioned how the number of units was reduced from 65 units to 61 units. Thomas explained that staff felt the proposed density was too much and the mass of the structure could be decreased by reducing the 4-story height. The height on the east and west wings were shortened and resulted in a more attractive building.

Cheleen confirmed with Thomas that no public trail was planned for the adjacent area of Lone Lake Park. The closest residential area was further than 1,000 feet away.

Adams asked what impact the proposed shoreland ordinance would have on the property. Thomas explained that the north part of the property would be included in the shoreland district due to its proximity to the creek. The height of the building and setbacks meet floodplain and shoreland ordinance requirements. The proposed 50-foot structure would meet the 50-foot height restriction.

Chair Hart asked how a cooperative would operate. Rankin explained that residents would purchase a share of the property which would allow them use of a unit. A proportionate share of common costs would be paid each month. There would be a purchase requirement and monthly payment.

Chair Hart asked if the developer would provide seed money. Rankin stated that would be determined by the developer.

Mark Nelson, United Properties, applicant, felt staff's report was detailed. He agreed with Rankin's description of a cooperative. He currently has 5 similar communities in the twin cities. He stated that:

- Housing and Urban Development financed Applewood Pointe communities.
- A 40-year fixed rate is utilized to keep monthly costs stable.
- Common area spaces would be emphasized. There would be a library and craft rooms.
- The residents select their own board to operate the community.
- The average age is 65 years of age to 75 years of age.
- It will benefit Minnetonka by providing housing for that demographic.
- A working capital fund is required by Housing Urban Development.
- The building and land is eventually sold to the residents and a management agreement is agreed upon.

Schmitz asked what the units would approximately cost. Mr. Nelson explained that there would be 4 tiers of cost. The down payment would be approximately 15 percent.

Adams asked when his first similar project was in operation. Mr. Nelson stated that a 94-unit project opened in 2004 in Roseville. There are also Applewood Pointes in Maple Grove, 74 units; Bloomington, 95 units; Woodbury, 76 units; and New Brighton, 120 units. Financing has not been an issue.

The public hearing was opened.

Sharon Johnson, 13611 Bellevue Drive, stated that the land originally belonged to her parents. Last summer, her parents gave the city the opportunity to purchase part of the property to be used as park, but the city did not have the funds. The city purchased a strip of land to accommodate the fire department parking lot. Her parents have moved out of the residence and reside in a senior assisted living facility.

No additional testimony was submitted and the hearing was closed.

Chair Hart reviewed the primary issues.

Lehman felt the issues had been addressed.

Adams felt the proposal would be reasonable. He was concerned with the density. He was glad to hear it was scaled back from the original plan. He asked if there would be significant tree removal from the heavily wooded lot. Colleran stated that 39 percent of the trees would be removed. Staff is currently working on a tree preservation policy. Only 3 trees on the site are high priority trees. The landscape plan would make up for the loss of trees.

Adams felt significant trees on the perimeter of the site would help screen the structure. Colleran agreed. The perimeter trees would remain. In general, the design is reasonable and would have little impact.

Cheleen stated that the proposal made good sense with the comprehensive plan. He asked if there was concern with runoff entering the lake. Colleran stated that the proposal would meet shoreland ordinance standards.

Schmitz felt the project would provide a unique service for the community. The design would be nice. The density fits the area.

Chair Hart's biggest concern was changing the comprehensive guide plan, but the property is out of character with the neighborhood. The old designation does not apply anymore. She was confident it would be changed in the new comprehensive guide plan.

Schmitz moved, second by Adams, to recommend that the city council approve items concerning a proposed senior housing cooperative to be known as Applewood Pointe at 5709 Rowland Road, for United Properties Residential, LLC.:

RESOLUTION APPROVING COMPREHENSIVE GUIDE PLAN AMENDMENT

- 1) *Recommend that the city council adopt the resolution on pages A22–A24 of the staff report, which approves the proposed guide plan amendment from low density to high density for the property to be known as Applewood Pointe. This resolution is based on the following findings:*
 - a. The proposal would meet several of the criteria which should be considered when amending the comprehensive plan:
 - (1) The amendment would not create an undue impact on the surrounding properties. The proposed development would be consistent with the physical character of the surrounding neighborhood.

- (2) The amendment would be consistent with the goals and objectives or other elements of the Comprehensive Plan and the city's Strategic Framework.
 - (3) The amendment would not create an adverse impact on public facilities and services that could not be mitigated with proposed improvements. Public facilities and services include roads, sewers, water supply, drainage, schools, and parks.
 - (4) The amendment would help the city meet its life-cycle and affordable housing goals.
- b. The proposed amendment would be consistent with several land use planning principals.
- (1) The proposed guide plan amendment would result in a development similar/compatible to area land uses.
 - (2) The proposed amendment would allow for a high-density use to be located on a road with high levels of service.
 - (3) The proposed amendment would provide a housing stock choice to area residents.

***REZONING, MASTER DEVELOPMENT PLAN, AND
FINAL SITE AND BUILDING PLANS WITH VARIANCE***

- 2) *Recommend that the city council adopt the ordinance on pages A25–A31 of the staff report, which approves the proposed rezoning and final site and building plans. Approval includes the following variances:*
- a. Side yard setback variance from 50 feet to 22 feet.
 - b. Front yard setback variance from 50 feet to 45 feet.

This ordinance is based on the following findings:

- a. The rezoning would be consistent with the public health, safety, and welfare.

- b. The rezoning would have little impact on area roadways or intersections.
- c. The rezoning would have little impact on the character of the surrounding area, which includes a variety of land uses: single-family houses, several medium density residential projects, and an office/industrial park.
- d. The rezoning is consistent with the purposes of the PUD district, particularly the provision of affordable housing, and sensitive development in transitional areas located between different land uses and along significant corridors within the city.
- e. The proposed variances associated with the development are reasonable and appropriate:
 - (1) There are several practical difficulties impacting reasonable development of the site:
 - (a) Though providing a visual and environmental benefit, the wetland and floodplain on the site present a practical difficulty. The property is 3.27-acres in total size. However, the buildable area of the property is less than 1-acre, 30 percent of the total site area.
 - (b) The requested side yard setback variance is required due to the PUD zoning classification. This PUD zoning is required during the current development moratorium. If a standard residential zoning category were used, no variance would be required.
 - (c) The requested front yard setback variance is for a point intrusion; 336 square feet or less than 0.3 percent of the total square footage of the building. From Rowland Road, there would be little to no visual difference between the required 50-foot setback and the proposed 45-foot setback.
 - (2) The Applewood Pointe is bounded by unique properties, none of which are in constant and/or consistent use. As

such, the situation of the applicant's property is unique and not common to every R-1 or PUD zoned property.

- (3) There are no structures on the properties immediately adjacent to subject property. As such, the front yard setback variance would have little to no impact on area site lines or area standards.

The rezoning, master development plan, and final site and building plans are subject to the following conditions:

- a. The site must be developed and maintained in substantial conformance with the following plans, unless modified by the conditions below:
 - Site plan date-stamped June 13, 2007
 - Grading plan date-stamped June 13, 2007
 - Landscaping plan date-stamped June 13, 2007
 - Building elevations date-stamped June 13, 2007
 - Utility plan date-stamped June 13, 2007
- (1) The utility plan must correctly identify existing conditions, as well as proposed conditions. Water must be wet taped in the same area as the sanitary sewer connection.
- b. A grading permit is required. Unless authorized by appropriate staff, no site work may begin until a complete grading permit application has been submitted, reviewed by staff, and approved.
 - (1) The following must be submitted for the grading permit to be considered complete:
 - (a) Final site, grading, drainage, utility and erosion control plans for staff approval.
 - (b) A stormwater pollution prevention plan for staff review and approval.
 - (c) A letter of credit or cash escrow for 150% of the estimated cost or 125% of a bid cost to comply with grading permit requirements and restore the site.

- (d) A construction management plan. The plan must indicate: (1) how equipment will avoid roots of trees to be saved; (2) location for stockpiling of earth and construction materials and equipment; and (3) how contractors will prevent tracking of earth onto the street.
 - (2) Prior to issuance of a grading permit:
 - (a) Install a temporary rock driveway, erosion control, tree and wetland protection fencing for natural resources staff inspection. These items must be maintained throughout the course of construction.
 - (b) The final plat must be released by the city and filed with the Hennepin County for recording.
 - (3) Permits may be required from other outside agencies, including but not limited to Nine Mile Creek Watershed District. It is the applicant's and/or property owner's responsibility to obtain any necessary permits.
- c. Prior to issuance of a building permit, the following must be submitted:
- (1) A park dedication fee of \$144,875
 - (2) A final landscape and irrigation plan. The final plan must meet minimum value as outlined in city code and is subject to the review and approval of natural resources staff.
 - (3) A letter of credit or cash escrow for 150% of the estimated cost or 125% of a bid cost of all required landscaping.
 - (4) An illumination plan for staff review and approval.
 - (5) All required hook-up fees.
 - (6) Submit proof of having recorded 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. The existing trail must be maintained through the driveways.
- g. Stop signs must be installed at the drive exit.
- h. Curbing must be replaced upon removal of the existing driveway.
- h. Approval does not include the signs shown on the drawings. Separate permits are required from staff.
- j. Construction must begin by December 31, 2008, unless the planning commission grants a time extension.

PRELIMINARY PLAT

- 3) *Approve the preliminary plat date-stamped April 24, 2007. Approval is based on the finding that the plat meets the required standards and ordinances and is subject to the following conditions:*
 - a. Complete the following before final plat approval:
 - (1) Submit proof-of-ownership of the railroad property or application signature of an authorized Canadian Pacific Railroad representative.
 - (2) Show the following on the final plat:
 - (a) At least ten-foot-wide drainage and utility easements adjacent to Rowland Road.
 - (b) Drainage and utility easements over the 100-year storm elevation, as determined by the city engineer.

- (c) A drainage and utility easement for city inspection purposes over the underground stormwater treatment facility. 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 acceptable to the city attorney. Title evidence must be current within thirty days before release of the final plat.
 - (b) A 25-foot wide conservation easement upland adjacent to and upland of the delineated edge of the wetland.
 - (c) Easements over all trails or common spaces that will be open to the public, as determined by staff. This may include on-site trails.
 - (d) Documents establishing a homeowners' association. The association must be responsible for maintaining any common areas, common drives, the required drainage pond and any other required drainage improvements approved by the city. Maintenance will include, but not be limited to, the periodic removal of sedimentation at the base of the pond and any adjacent drainage ditches, keeping a vegetative cover within the ditches and pond, and removing any blockage of the swale or culvert that may impede the drainage of the site, as approved with the building permits.

- (e) Provide restrictive covenants to be recorded against the individual lots with the plat. The covenants must include the conditions that have not been met as of the release of the plat. These covenants must first be submitted for the city attorney's approval.

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

- (3) Any other requirements included with final plat approval.
- c. 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.

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

Chair Hart called for a 10-minute recess and reconvened the meeting. Lehman recused himself from discussion of the next two agenda items due to a conflict of interest.

C. Ordinances amending the shoreland ordinance and other associated ordinances, for the city of Minnetonka. (Project 05099.07a)

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

Colleran reported. She recommended approval of the application based on the findings listed in the staff report.

Schmitz asked how bridges would be treated. Colleran explained that a bridge could not interfere with navigation of a water way. It would have to be suspended and the footings set beyond the top of the channel.

In response to Cheleen's question, Colleran stated that, in most instances, most properties have far less hard surface coverage than 50 percent. The Department of Natural Resources would allow up to 75 percent. Cheleen noted that residents could still apply for a variance. Commercial uses may have impervious surfaces of up to 85 percent under the current ordinance. Pervious pavers may be used instead of bituminous to decrease the hard surface coverage. Existing properties with no change of use of the land would not be required to do anything. The

ordinance would not be retroactive to existing properties. A change that would require a conditional use permit, variance, site and building plan review, or tearing down and rebuilding of an existing home would require the site to follow the shoreland ordinance regulations.

Adams guessed that a substantial number of nonconforming structures would be created with the adoption of the shoreland ordinance. Colleran explained that the lake standard would actually be relaxed. Creek areas often do not have a top bank. In those cases, the floodplain may be the ordinary high water level. Those properties would be considered legal, nonconforming uses. She did not foresee a flood of variances. It would create some, but the proposal is a Department of Natural Resources requirement.

Colleran received verbal approval of the proposed ordinance from the Department of Natural Resources. Adams asked if neighboring communities have adopted similar ordinances. Colleran stated that most other communities have adopted the Department of Natural Resources' ordinance. Many did in the 1990s. Wishnack commented that ordinances in other cities do not allow as much as 75 percent of impervious surface. That is the biggest change staff was able to achieve.

Chair Hart clarified with Colleran that residential properties do not currently have an impervious surface restriction unless it is located within 150 feet of the ordinary high water level in the current shoreland zoning district. That area is restricted to 30 percent of hard surface coverage. Colleran explained that the first 150 feet would be restricted to 30 percent, but between 150 feet and 1,000 feet, the restriction would be raised to 75 percent.

Chair Hart reviewed that commercial properties may have up to 85 percent hard surface coverage. Chair Hart asked if Opus met the requirements. Wischnack stated that Opus was quite a bit under the maximum impervious surface allowed.

Adams asked if there are private boardwalks in the city. There are none to Colleran's knowledge.

The public hearing was opened.

Jerry Green, 5409 Highland Road, felt Colleran did a good job. He stated that:

- Wing Lake is greener this year than it was last year.
- Something needs to be done to protect the water quality.
- The water needs to get back to being clear.

- The lake will become a swamp.
- He and his wife have lived there 40 years. The first 15 years, there was never a weed in the lake.

Adams asked if Mr. Green supported the buffer around the lake shore. Mr. Green responded absolutely.

Pat Alexander, 16540 Grays Bay Boulevard, stated that:

- Grays Bay boat launch and marina launches as many as 450 boats a week.
- Locust Hills added 35 to 46 boat slips.
- Millions of dollars are spent purchasing houses along the creek at the same time the lake is getting lower and the damn will not be closed because of recreational uses.
- Boats create much more prop turn.
- He is a concerned lakeshore owner.
- He is being told that the grassland proposal should be done to protect the lake. It was not long ago that boulder walls were the standard.
- What reassurances are there that the “grassland/mosquito breeding grounds” would not be on the outs if a West Nile outbreak occurs or a new study shows boulder walls are better again.
- He was confused regarding the concern for the lake by adding ugly, mosquito breeding grounds while, at the same time, city and state government officials readily allow additional boats in the congested bay, up to 36 feet in length, that have plenty of prop churn. He knows because he has a 36-foot boat.
- The Locus Hills slips are located behind low-water buoys. There is a spawning area in the middle. The Department of Natural Resources’ regulations prohibit docks to be built over spawning areas.
- The “concern for the lake” seems to be more easily forgotten if there is more tax revenue involved or “back-door politics” of one sort or another.
- One Lake Minnetonka Conservation District representative, who visited the site, switched his vote after seeing how congested the area was.
- The Department of Natural Resources is a joke. It pushes for unsupervised boat launches which are the biggest threat to the lakes by inviting foreign invasive species.

- Unless government bodies start being consistent and fair with major rulings, more and more mistrust will be created.
- He requested action be tabled to allow time for further study.

Wischnack explained that the Lake Minnetonka Conservation District regulates the boat slips and permitting for them.

Colleran explained that the Department of Natural Resources allows rip rap. Rip rap helps prevent damage from ice scours. Buffer vegetation roots extend 5 feet to 6 feet into the ground to prevent erosion and damage from ice scours.

Cheleen had seen Department of Natural Resources personnel at the Grays Bay Dam on the weekends. Colleran agreed that during busy times, normally the weekend, Department of Natural Resources staff educates boaters. A city staff person may be present to help with congestion and other duties.

Schmitz asked if a video camera was installed at Grays Bay Dam. Colleran answered affirmatively.

Genevieve Koontz, 16524 Grays Bay Boulevard, stated that she was concerned with the decrease of impervious cover. Colleran explained the change and the maximum impervious cover for a conditional use permit. Thomas explained how that section only applied to a use that required a conditional use permit.

Ms. Koontz asked if the buffer and conservation easement would appear legally on the title of her property. Chair Hart answered affirmatively. Wischnack explained that the conservation easement would only be required if a variance from the city ordinances was being requested for a change. There would be a relationship between what the applicant requests and what the city requires.

Ms. Koontz stated that her residence is 30 feet from the lake. Many of the lots are worth more than the homes in the area. If she wanted to remodel her house without expanding the footprint of her residence, then she would be required to have a shoreland buffer. Colleran defined redevelopment. Ms. Koontz asked what market value would have to do with it. Thomas explained the market value and 50 percent destruction requirements in relation to the state statute. If a homeowner guts the inside of a residence, it would not matter how much money the homeowner spent improving it. The redevelopment ordinance refers only to removal of 50 percent of the value of the structure. Ms. Koontz felt "market value" could be removed. Wischnack understood the issue. Wischnack will request the city attorney review that language again.

Schmitz suggested referencing the state statute for the definition of market value. Ms. Koontz would like to read that statute. Wischnack stated that the exact market value language is used.

The taking of her property for no money was a problem for Ms. Koontz. The removal of undesirable plants probably would not impact her, but it could impact her. It is not her job to weed the buffer, since she does not want it there in the first place.

Chair Hart asked staff to address her comments. Thomas explained the state statute regarding reconstruction.

Ms. Koontz stated that:

- The buffer would be a fire hazard. Her sprinkler system would not be located in it.
- She would not go into a buffer to clean up after her pets. That would cause more waste matter to go into the lakes and streams.
- A 15-foot wide area to get to a dock is not very much of 100 feet of lake shore that homeowners are paying very high taxes on.
- She was bothered by following the Department of Natural Resources because they have not been very good stewards of the lakes and streams in Minnesota.
- The invasion of Mille Foil in Lake Minnetonka was mishandled by the Department of Natural Resources. The launch area has a lot of impervious surface. Many trees were cut down. It does not matter if it is a good tree or a bad tree.
- She requested action be tabled.

In response to Chair Hart's request, Colleran explained the buffer infiltration process and its stabilization benefits.

Schmitz asked staff to explain what benefit easements provide. Wischnack explained that easements ensure that the buffer will continue with the life of the property. Management would remain continuous. It would benefit the city as a whole. The city maintains the right to check the buffer area, but the property owner still owns the property. The easement is used to protect a natural feature.

Barry Keltner, 5245 Dominick Drive, appreciated staff's work on the ordinance. He asked if he could put a dock on Shady Oak Lake. Colleran stated that docks are a permitted use. It would be allowed.

Mr. Keltner questioned how the particulars are created for the ordinance. Chair Hart clarified that the Department of Natural Resources provided a model and the Department of Natural Resources needs to approve the proposal. Colleran provided examples of how staff negotiated with the Department of Natural Resources to modify its standards to fit Minnetonka and the Metropolitan Council's standards.

Rob White, 16744 Grays Bay Boulevard, questioned what the water quality for Lake Minnetonka is right now and what the primary concern is. He stated that:

- He understood that the lake's quality has improved over the years as septic systems have gone to city sewer and the boats no longer discharge into the water.
- The Department of Natural Resources has been unable to address Mill Foil on Lake Minnetonka.
- His neighborhood has a lot of geese and raccoons already. A buffer may be nothing more than a nesting area for geese, raccoons, and ducks.
- Aesthetics are not improved by fences on the lake line. A chain link fence is an industrial product. Maintaining fences and gazebos over a 10-year period of time requires washing and painting that would have some adverse impact.
- He has rip rap. The ice has pushed them around. He did not believe that a native grass could hold up to the wind, ice, and water action that occurs on Grays Bay. If no one can prove to him that the native grass would hold up, he should not be required to do it.

Colleran stated that the water quality on Lake Minnetonka is average. Glen Lake and Shady Oak have the best water quality. The Lake Minnetonka Conservation District actively harvests Mill Foil. When it becomes a nuisance population, it impedes use of the lake. A pilot project in conjunction with the Department of Natural Resources at the Locust Hills development is experimenting with different ways to try to control Mill Foil. It is a problem.

Colleran clarified that the Department of Natural Resources' regulations are a state statute that the city is required to adhere with.

Colleran explained that a 25-foot buffer is not a large enough nesting area for geese. It actually acts as a deterrent because geese like to eat young grass and geese are wary of predators hiding in tall grass areas. The bigger the buffer, the bigger the deterrent. Mallards may nest in the buffer. They also nest in the front bushes of her residence. Raccoons usually nest in hollows of trees.

Adams stated that Brookview Park in Golden Valley was full of geese up until two years ago when the city planted native vegetation around it.

Colleran stated that a fence that does not obstruct the view of the lake and is a maximum of six feet in height could be located in the buffer. A privacy fence or a fence taller than six feet would have a required setback of 35 feet.

Colleran stated that woodland settings in many northern Minnesota and Wisconsin lakes do not have erosion because the vegetation has not been removed. Rip rap replaces where all of the vegetation has been removed. The ordinance would not require residents to remove rip rap. The goal is to soften the hard scape. Vegetation could be added above the rip rap. Before the ordinance is reviewed by the city council, staff will add guidance regarding rip rap.

Kevin Maas, 5631 Woodland Road, was shocked that it took the city 13 years to negotiate with the Department of Natural Resources. He was embarrassed knowing how far ahead other cities are. He suggested that every parcel in the city adhere to the ordinance since the water eventually reaches a stream or lake. It would move Minnetonka from an ordinary community concerned about the environment to a leading community dealing with the environment.

Colleran explained the city council's directive to consider regulations for impervious surfaces in every zoning district. The ordinance will not be rushed through, but will continue considering all aspects of the implications of the proposal.

Mr. Maas' primary issue of concern was the impervious surface. He stated:

- He questioned how it would impact the properties.
- No one will begin to understand the shoreland ordinance to make a decision for or against it. He did not understand how the Department of Natural Resources decided on 1,000 feet.
- A resident across the street would be able to do something while another person would have to go through a long city process. There is a fairness and reasonableness issue.
- He questioned if the Department of Natural Resources would negotiate.
- He questioned what assessments would be based on.
- The main problem in his neighborhood is phosphorus from the road system traveling into the water bodies.

- An analysis of the local hydrology is needed for residents to understand what is going on.
- There has not been enough neighborhood education.
- A report that showed the results of the proposed ordinance on Woodland Hills would be of great interest to him.
- His lot is 100 feet by 150 feet. His impervious surface coverage is not even close to 30 percent.
- He does not think his neighbors realize the impact of the proposed ordinance and changes being proposed for other ordinances.

Wischnack explained the intent of the restricted development moratorium. The shoreland ordinance is a priority. Technically, the Department of Natural Resources could take away the city's jurisdiction to manage shorelands. It probably would not happen as long as a solution is being worked on, but it could happen.

Mr. Maas felt all of the property owners should be treated the same instead of singling out 3,400 residents.

Adams asked what public education has taken place. Colleran provided that information was included in the *Minnetonka Memo*, the city's web site, and most affected property owners were mailed an explanation of the rules.

Colleran stated that Mr. Maas does not live on a lake. He resides approximately 500 feet away. Residents who do not reside on a lake have a maximum impervious surface coverage of 75 percent. She agreed that everyone should be accountable. A future ordinance will look at maximum impervious surface coverage on all zoning districts. She agreed that a tutorial on the city's ordinances is needed to understand how the ordinances fit with each other.

Chair Hart suggested continuing discussion and the public hearing until the August 30, 2007 planning commission meeting.

Wischnack invited residents to contact staff to discuss each parcel individually.

Cheleen suggested more information regarding impervious coverage, buffer zones, and the realistic costs associated with creating and maintaining a buffer be provided at the August 30, 2007 meeting.

Schmitz moved, second by Adams, to continue the public hearing and discussion until the August 30, 2007 planning commission meeting.

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

D. Ordinance amending the city zoning code to increase the park dedication fee, for the city of Minnetonka. (Project 07040.07a)

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

Rankin reported. He recommended approval of the application.

Schmitz asked if the 10-percent-land-donation option would stay the same. Rankin answered in the affirmative. That is part of state law. The city usually does not exercise that option.

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

Rankin clarified for Cheleen that only plats that have never been platted before pay a park dedication fee.

Adams moved, second by Cheleen, to recommend that the city council adopt the ordinance.

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

Lehman rejoined the meeting.

9. ADJOURNMENT

Adams moved, second by Schmitz, to adjourn the meeting at 10:15 p.m. Motion carried unanimously.

By: _____
Lois T. Mason
Planning Secretary