

**UNAPPROVED
MINNETONKA PLANNING COMMISSION
MINUTES**

APRIL 17, 2008

1. CALL TO ORDER

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

2. ROLL CALL

Commissioners Walker, Adams, Blatz, Lehman, Schmitz, Sjeklocha, and Cheleen were present.

Staff members present: Community Development Director Ron Rankin, City Planner Julie Wischnack, Principal Planner Susan Thomas, Planner Josh Metzger, Planner Jeff Thomson, and Assistant City Engineer Steve Lillehaug.

- 3. APPROVAL OF AGENDA:** The agenda was approved as submitted with additions and modifications provided in the change memo dated April 17, 2008.

- 4. APPROVAL OF MINUTES:** April 3, 2008

Adams moved, second by Schmitz, to approve the April 3, 2008 meeting minutes as submitted.

Walker, Adams, Blatz, Lehman, Schmitz, Sjeklocha, and Cheleen voted yes. Motion carried.

5. REPORT FROM STAFF

Wischnack briefed the commission on land use applications considered by the city council at its meeting of April 7, 2008:

- Adopted a resolution approving a conditional use permit for a Chipotle restaurant in Ridgedale Center.
- Adopted a resolution approving items concerning location of the Sharei Chesed Congregation in an existing office building at 1712 Hopkins Crossroad.
- Adopted a resolution approving a request for a one-year time extension of a Site Plan Approval at 9999 and 10001 Wayzata Boulevard for General Mills Federal Credit Union.
- Adopted a resolution approving a parking variance and conditional use permit for dentist office concerning The Exchange Building at 14403 Excelsior Boulevard in Glen Lake.

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.

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

A. Bob and Jan Guetschow are proposing to add an approximately 8-foot by 10-foot covered entry to the existing house at 15681 Woodgate Road. The proposal requires a front yard setback variance from 30 feet to 24 feet. (08012.08a)

Adopt the resolution on pages A9-A11 of the staff report, which approves a front yard setback variance from 30 feet to 25 feet for a front entry addition to the home at 15681 Woodgate Road South. Approval is based on the following findings:

- 1) The proposal is reasonable and would meet the required standards for a variance, because:
 - a. Undue hardship: There is a hardship due to the nonconforming front yard setback. A reasonably-sized front entry could not be constructed without the need for a variance.
 - b. Unique circumstance: The location of the home on the lot is a circumstance that is not common to every single-family property.
 - c. Intent of the ordinance: The addition would meet the intent of the ordinance since the zoning code allows for unenclosed porches to extend up to five feet into a required setback. The proposed addition would extend five and a half feet from the existing building line.
 - d. Neighborhood character: The entry addition would be consistent with the character of the surrounding neighborhood. Many of the surrounding homes have nonconforming front yard setbacks and similar unenclosed front entries.

Approval is subject to the following conditions:

- 1) Prior to issuance of a building permit:
 - a. A copy of this resolution must be recorded with the County and a copy of the recorded document returned to the city.
 - b. Install a temporary rock driveway, erosion control, tree protection and wetland protection fencing as required by natural resources staff for inspection and approval. These items must be maintained throughout the course of construction.
- 2) This variance will end on December 31, 2009, unless the city has issued a building permit for the project covered by this variance or approved a time extension.

B. Minneapolis Mart is proposing to hold a temporary outdoor market on its property at 10301 Bren Road West. (08007.08a)

Recommend that the city council adopt the resolution on pages A11–A14 of the staff report. This resolution approves a conditional use permit for temporary outdoor sales at 10301 Bren Road West. Approval is based on the finding that the proposal meets the required conditional use permit standards and is subject to the following conditions:

- 1) By July 1st of each calendar year, the applicant/property management must:
 - a. Submit confirmation of off-site parking and transportation agreements.
 - b. Come to a written agreement with the City of Minnetonka Police Department to provide a traffic control officer throughout the temporary market. The officer will be provided at the applicant's expense.

Lack of such agreements will render this conditional use permit null and void.

- 2) Temporary outdoor sales are limited to the five days in August. Any additional temporary outdoor sales will require city council review of this conditional use permit.

- 3) Temporary outdoor sales area is limited to that area illustrated on the applicant-submitted site plan date-stamped February 11, 2008. Any modification to the sales area which increases the total number of parking spaces occupied by the temporary outdoor sales will require city council review of this conditional use permit.
- 4) Through the temporary sale, the site must conform to all standards outlined in City Code 300.21.4(a) – *Outdoor Storage, Display, Sales, or Servicing*.
- 5) Any change to the property in terms of its use as a merchandise mark will render this permit invalid.
- 6) Any change to the approved conditional use that results in a significant increase in traffic or a significant change in character would require a revised conditional use permit. Should the city receive complaints regarding parking or traffic, the city may require the applicant to reappear before the city council. At that time, the city council may reasonably add or revise conditions to address any future unforeseen problems.
- 7) The applicant must agree to the above conditions in writing.
- 8) A violation of the terms and conditions of this conditional use permit will render this permit null and void.

Walker, Adams, Blatz, Lehman, Schmitz, Sjeklocha, and Cheleen voted yes. Motion carried and the items on the consent agenda were approved as submitted.

8. PUBLIC HEARINGS

- A. **Groveland Cemetery is proposing to expand the existing cemetery. As proposed, the existing house at 3228 Woodlawn Avenue would be removed and the property used for future cemetery plots. (08014.08a)**

Chair Cheleen 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.

Adams commented that the cemetery in the Opus area is full. Rankin explained that the cemeteries in Minnetonka are Groveland Cemetery, Saint Ann's, Shady Oak Cemetery, and the cemetery at Faith Presbyterian Church. The Shady Oak Cemetery is now operated by the city.

Lehman noted that the increase in size would make the cemetery closer to a cemetery's allowable minimum size. Thomas agreed that the proposal would decrease the cemetery's nonconformity. Lehman confirmed with Thomas that the proposal was an attempt to meet the city's size requirement.

Walker asked if the cemetery's long-term growth goal is known. Thomas referred that question to the applicant. She explained that the proposal would provide 600 grave sites.

Blatz asked if a berm would be required. Thomas explained that a berm was initially recommended, but would not be possible due to the sewer line easement.

In response to Chair Cheleen's question, Thomas explained that modification of the location of the road would require site and building plan approval. Chair Cheleen thought that would be avoided since it would take up plot space.

Charles Sheleen, 15760 Tonkawood Drive, represented Groveland Cemetery, applicant, appreciated Thomas' report. He stated that:

- The north buffer would be 50 feet wide because there is a 25-foot buffer on the adjacent Star property as well.
- The intent of the board is not to expand the cemetery further than the current request.
- The proposal is not being made to get closer in compliance with the 5-acre property requirement.
- The intent is to maintain the property in a park-like setting. There would be no above-the-ground tombstones with a combination of a tall shrub line which would be put in an easement on the north side. There are existing trees which would be complimentary with the site lines.
- The traffic, due to the cemetery use, would not increase. The north bound traffic would not exceed or need to go any further than the cemetery.
- The encroachment of the property would be slow at the south boarder and proceed north as grave sites would be sold. It would be many years before any encroachment would be noticeable.

- The Groveland Cemetery Association Board is a voluntary board. The acquisition is to provide an important function to Minnetonka and the surrounding area. As indicated, the four existing cemeteries are full or near full. It is important to the local residents to not have to be forced to travel a long way to visit grave sites of family and other members.
- This is not about money in a negative sense. The board members have purchased grave sites in the existing cemetery. There is no possible financial gain for any board member.
- The organization is viable; able to support cemetery care through a limited investment.
- The board is attempting to purchase the property for future residents of Minnetonka because the board believes the obligation is a way that it can serve Minnetonka itself.

Adams asked how many plots are in the current cemetery. Mr. Sheleen estimated 1,800 plots. There are currently approximately 30 plots to 40 plots available. The proposal would provide an additional 640 grave sites.

Blatz asked when the home and garage would be removed. Mr. Sheleen was open to the structures being moved off the property to another site. The buildings would be removed within one year. The garage would not be used as an office.

Sjeklocha confirmed with Mr. Sheleen that above-ground tomb stones would not be allowed in the proposed area. Mr. Sheleen stated that above-ground tomb stones have not been allowed for several years in the existing cemetery. They are difficult to mow around.

In response to Sjeklocha's question, Mr. Sheleen explained the utility easement and buffer area. The adjoining properties each have a 25-foot buffer to equal a 50-foot buffer together.

The public hearing was opened.

Bill Hendrickson, 3204 Woodlawn Avenue, four residences away from the site, stated that:

- He purchased his residence 31 years ago in the dark. The next day, the cemetery was not visible from the residence.
- His house is valued at over \$500,000. A realtor told him that if he could view the cemetery from his residence it would decrease his property value by 10 percent.

- The cemetery would have been full a long time ago if people wanted to be buried there.
- He does not want to witness funeral ceremonies.
- People grieve and people die, "but I do not want to be part of that."
- Property in the area is so valuable.
- He was worried expansion would continue.
- The cemetery traffic is high during a holiday.
- Funerals create a large amount of traffic.
- He does not want to look at a cemetery.
- He saw no value being added to make the cemetery more like a park.

Lucy Star, 3216 Woodlawn Avenue, adjacent property owner to the site, stated that:

- Parking for the cemetery has been an issue.
- She opposed the cemetery being a main focus in the neighborhood.
- All of the residents on the block have lived there for years.
- She greatly feared the resale value of her home would be drastically changed.
- Another place for teenagers to hang out is not needed.
- Take a walk around the park and see how drastic the change would be.
- The entire neighborhood is her future.
- She is shocked and concerned that she would not be able to sell her home.
- A realtor told her that the expansion would have a negative impact on the marketability of her property. The reaction to a cemetery chills a buyer's enthusiasm for a residence.
- The Sodas, Hendricksons, and Swensons oppose the expansion.

No additional testimony was submitted and the hearing was closed.

Walker asked if additional parking was considered. Thomas responded that additional parking was not included in the current request.

Walker asked if staff researched the impact of a cemetery being located next to a property on property values. Thomas answered that the city assessor reviewed the application and determined that expansion of the cemetery, given that there is an existing cemetery on the road, would not adversely impact property values.

Walker asked what options would be available for burial in Minnetonka if the proposal was not approved. Thomas reiterated that the four cemeteries in Minnetonka are all at or near capacity. Thomas was unaware of an undeveloped 5-acre parcel in Minnetonka in a residential district.

Schmitz asked what plantings would be included. Thomas stated that existing trees are allowed to remain in the easement area. No new hardwood trees would be allowed. Shrubs would be allowed.

Adams confirmed with Thomas that a berm would not be added due to the location of a sewer line. Tall shrubbery is the current recommendation.

Chair Cheleen asked what the tax impact would be for the city. Wischnack explained that a cemetery is exempt from property taxation.

Lehman acknowledged that staff did a good job of laying out the conditions required to approve a conditional use permit. It is a straight forward decision-making process. The conditions have been met.

Adams understood the neighbors' concerns. He has resided in Minnetonka for 22 years. A lot of things have happened in his neighborhood that he would have preferred not happen. Certain amenities are necessary, including cemeteries. He felt that Groveland Cemetery is a very nice option for one who wishes to be buried in Minnetonka. Accommodations need to be made for the benefit of the community. He spoke to someone in real estate that day. He said the things that keep property value up are the schools, quality of the government, roads, and proximity to jobs. He supported the proposal.

Walker cherished life over death. He trusted the city's assessment of the financial factor. He understood the traffic issue on holidays and funerals. Cemeteries are part of communities. He supported the proposal.

Schmitz recalled recently approving a plan that located a parking ramp adjacent to a residential back yard. Change is difficult. There are enough conditions that minimize the impact. She favored not allowing headstones above ground level. The application meets the requirements for a conditional use permit. She understood the neighbors' frustration. She supported the request.

Blatz felt empathy for the neighbors, but felt the neighborhood had many amenities that would attract home buyers. She asked if the spruce would remain

on the west side. Mr. Sheleen said that no trees would be removed at this time. A tree could be worked around.

In response to Chair Cheleen's question, Mr. Sheleen stated that there is quite a bit of space between the Star house and the property line. Chair Cheleen agreed. Chair Cheleen asked how many years it would be before the first 2 or 3 rows would be used. Mr. Sheleen stated that it would take at least 4 years or 5 years to get 50 feet. Chair Cheleen felt a visual barrier would be beneficial for the Star property. Considering the public good, he had a hard time not supporting the proposal.

Sjeklocha concurred with commissioners. It is not an easy decision.

Adams moved, second by Leman, to recommend that the city council adopt the resolution on pages A8–A12 of the staff report. This resolution approves a conditional use permit, with minimum lot size variance from 5-acres to 3.9-acres, for the existing and expanded Groveland Cemetery at 3300 and 3328 Woodlawn Avenue.

Approval is based on the following findings:

- 1) The proposal meets the required conditional use permit standards.
- 2) The proposal meets the required standards for a variance, because:
 - a. Undue hardship: The existing cemetery is a non-conforming 3-acre size. This existing and long-standing non-conformity presents a practical difficulty.
 - b. Unique circumstance: There is an existing, non-conforming cemetery on one of the subject properties. The proposed expansion would create an overall larger cemetery, decreasing the existing non-conformity. This is a unique circumstance not common to every R-1 zoned property.
 - c. Intent of the ordinance: The intent of minimum cemetery size is to ensure: (1) such land uses have adequate area of growth; and (2) consolidation of such land uses. Expansion of an existing cemetery, rather than creation of a new cemetery, meets this intent.
 - d. Neighborhood character: Woodlawn Avenue is a unique roadway surrounded by a variety of land uses, including: a public park,

cemetery, residential properties, and to the west a church and school. The existing cemetery and its proposed expansion would not alter this unique character

Approval is subject to the following conditions:

- 1) This resolution must be recorded with Hennepin County and a copy of the recorded resolution must be returned to the city prior to any site work or any cemetery use of the 3328 Woodlawn Avenue property.
- 2) A landscape plan must be developed to provide an adequate buffer between the cemetery site and the residential property to the north. This plan may not include any large hardwood trees; tall shrubbery is acceptable. The plan is subject to review and approval of city staff.
- 3) All required plantings associated with the landscape plan must be installed prior to use of any cemetery plots within 75 feet of the north property line
- 4) Groveland Cemetery association or any subsequent property owner is reasonable for replacement of any required planting that does not survive.
- 5) No plots or roadway connection are allowed within the existing Metropolitan Council sanitary sewer easement.
- 6) The sanitary sewer easement must be physically demarcated to ensure no future encroachment within the easement, other than approved landscaping.
- 7) The plat drawn for submission to the state must first be submitted to the city for staff review and comment.
- 8) The plat submitted to the state must clearly note all existing easements.
- 9) The city council may reasonably add or revise conditions to address any future unforeseen problems.
- 10) 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.
- 11) The applicant must agree to these conditions in writing.

Walker, Adams, Blatz, Lehman, Schmitz, Sjeklocha, and Cheleen voted yes. Motion carried.

Chair Cheleen stated that the city council is tentatively scheduled to review the item at its May 5, 2008 meeting.

B. Kathleen Nelson is requesting a conditional use permit, multiple lot and building variances and relief from McMansion policy requirements to demolish the existing home and construct a new 1.5-story home within the floodplain at 2504 Bantas Point Lane. (03091.08a)

Chair Cheleen 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.

In response to Lehman's question, Wischnack explained that the application is a whole new application.

Kathleen Nelson, 2504 Bantas Point Lane, applicant, explained the background of her proposal. She stated that:

- The planning commission made a unanimous recommendation to approve the resolution and the variances with the removal of the requirement that the home be reduced by 48 square feet. The item was then placed on the consent agenda for city council with staff's recommendation which included the requirement to remove 48 square feet. She has never seen an item placed on a consent agenda when the recommendation was contrary to the recommending body's approval.
- She removed 304 square feet from her design in an effort to meet mcmansion policy requirements. She exceeds the policy by 1 percent, 48 square feet.
- It was not appropriate to use a consent agenda to overrule a unanimous decision of another body. It was very disrespectful. It should cover only routine and administrative matters. Staff's recommendation to overrule the planning commission's recommendation was not routine or administrative.
- She has final construction drawings. She would like to go forward with building the residence. None of the facts have changed since 2007.

- Every variance would be required no matter what would be built on the property. Staff's decision is based on the number of variances requested. The variances are required because of the size of the lot.
- The home, as proposed, does comply with the mcmansion policy because it states that the policy allows exceptions where the proposed residence is in an isolated location and the city council approves a specific plan. A specific plan has been provided. It has been determined in the staff report that it would be compatible with the neighborhood.
- Staff has refused to use any flexibility with the policy.
- The policy states that the city may waive or modify the floor area requirement where the applicant submits a specific house design and the city determines that the home or addition would not adversely affect the neighborhood character.
- She could remove 48 square feet out of the design which would cost her a lot of money in design fees and delay the process. She could add 6 inches to the height of the ceilings and add 800 cubic feet of mass. Her proposal is more in accordance with the mcmansion policy and the intent of limiting the mass of the residence.
- She requested the planning commission's same unanimous recommendation that eliminated the removal of the 48 square feet requirement. She will track the item when it goes to the city council.

Walker walked Ms. Nelson through the time line of events. Wischnack provided that the mcmansion policy was adopted in January. Ms. Nelson stated that the house plans were created August of 2006. Walker asked if the architectural contract has an obligation for the plans to comply with current regulatory requirements. She was unsure. It was in compliance at the time. Walker stated that architects are usually bound to comply with regulations at the start and completion of plans. Ms. Nelson stated that her architect was not aware of the mcmansion policy.

Adams confirmed with Ms. Nelson that she was present at the August 6, 2007 city council meeting. Adams asked why she did not address the city council at that time. Ms. Nelson works with government agencies as part of her job. Since her application was on the consent agenda she thought the approval was in accordance with what the planning commission unanimously recommended. It is contrary to Robert's Rules of Order. She looked through the report and missed the one sentence. She was told it would not be reconsidered unless she reapplied.

Sjeklocha asked Ms. Nelson to describe the character of the neighborhood. Ms. Nelson stated that her proposal would be consistent with two recent tear down and rebuilt residences. Her proposal would be one percent larger than the floor area ratio of those two houses.

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

Adams recalled voting in favor of waiving the mcmansion policy. The design fits with the neighborhood and is a wonderful design. He supported sending it to the city council again even though he felt the odds of the city council approving it are not good. He requested it not be placed on the consent agenda. The proposal merits discussion and clear direction from the city council.

Schmitz had reviewed her comments from the last time. She was more in favor of waiving the 48 square feet requirement when the buffer was required, but she would make the same recommendation.

Lehman was also present at the last review of the application. He agreed with staff recommending strict adherence to the mcmansion policy. It is appropriate for staff to continue to do so. It is each commissioner's decisions whether to detour from the policy. He supported waiving the removal of 48 square feet. The location is fairly isolated. The lots around the lake are unique in many ways and the number of variances that go along with those are a fact of life. He tried to look at situations where, if the variance was not needed, the mcmansion policy would not come into play. He felt the mcmansion policy could be legitimately waived in this situation. The city council has its own view on the mcmansion policy as well.

Blatz was not present at the last review of the proposal. She had concerns with granting relief from the mcmansion policy. She found that the house would be very close to other houses and is not isolated. The lot size is very small, 3,730 square feet. Other small houses in the area may be developed and she supported applying the mcmansion policy. She also wanted to follow the direction set by the city council.

Walker asked what the deviation from the mcmansion policy was approved previously. Chair Cheleen recalled 84 square feet. Walker asked what kind of ramifications would occur if too many homes were approved with waivers from the mcmansion policy. Wischnack acknowledged that the policy is new. It is applied on a project by project basis and only applies to applications that require a variance. Staff has a concern regarding deviations because it takes away from

the integrity of the intention and that is to protect square footage allowances on small lots particularly when they have major variance requests. Not only in this case, but as the mcmansion policy continues, staff will probably continue to recommend that the city council adhere to the strict standards. It is harder to guide an applicant through a process if the planning commission or city council has not clearly indicated what would be supported.

Walker looked at the plan and 48 square feet could easily be removed. He was not present during the first review of the application. He believed in the mcmansion policy and understood that a standard needs to be set. He was disappointed that the professional she hired did not do what he or she should have done.

Ms. Nelson appreciated those comments. She wanted the opportunity that was taken away from her last year to have the discussion with the city council. She was happy with the action of the planning commission last year. She felt the process and use of the consent agenda was abused by staff. She wanted her opportunity with the city council. The mcmansion policy itself states that it should be flexible and broad. That is what she is requesting.

Sjeklocha asked Metzger if there would be additional runoff issues since the buffer is no longer required. Metzger stated that there would be less hardcover and less impact on the water runoff with the reduction of 48 square feet. The first and second floors may each remove 24 square feet so the hard surface removed would equal 24 square feet. He was unsure if that would impact staff's recommendation.

Sjeklocha recalled that the mcmansion policy variance that was approved previously cited its isolation and neighborhood character as reasons for its approval. She concurred with Blatz. The proposal would not be isolated.

Sjeklocha noted that the property would have to have an emergency evacuation plan because it is within a floodplain. She asked what triggered the requirement. Lillehaug explained that the floodplain ordinance required the emergency evaluation plan. Thomas stated that residents are encouraged to consider putting together an emergency evacuation plan. Sjeklocha read about the flammable materials that could not be stored on the property. Metzger explained that flammable materials could not be stored below the floodplain elevation. They could be stored on a shelf in a garage.

Chair Cheleen recalled other Bantas Point properties that were required to have emergency evacuation plans and be built to be floodable. Wischnack explained

that the current proposal would have no setback from the 100-year flood elevation.

Chair Cheleen stated it was unfortunate that Ms. Nelson did not address the city council even though the item was placed on the consent agenda. The mcmansion policy is working quite well. There was one other house similar to the proposal and there would likely be others in the neighborhood that would also want to expand. Chair Cheleen was concerned with "size creep." Each time the mcmansion policy is deviated from, that leaves open the possibility that someone in the future will use that for a reason to deviate a little more. While he did not like the one percent deviation, he questioned when the plan started and finished. He wanted resolution for the entire issue. Staff did a good job.

Schmitz moved, second by Adams, to adopt the resolution on pages A25-A31 of the staff report which approves a conditional use permit and variances for construction of a new house at 2504 Bantas Point Lane with the elimination of the removal of 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) Practical difficulties:
 - a) 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) Unique circumstance:
 - a) The lot variances would be required to construct any new home on the site.
- 3) Neighborhood character:
 - a) Numerous variances have been approved for various homes in the surrounding neighborhood, including similar front yard, shoreland, and flood plain variances.
 - b) 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.
- 4) 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.
- 5) 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) Because of the number of variances requested, the proposed home must be redesigned to reduce the overall square footage from 1,988 square feet to 1,940 square feet in order to comply with McMansion policy.~~
- 23) Pervious pavers must be used for the driveway and pathways.
 - 34) The existing storage shed must be permanently removed from the subject property.
 - 45) 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.
 - 56) Structure must be designed to comply with ordinance 300.24.9(j).
 - 67) Install vegetation in areas where demolished structures are removed.
 - 78) 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, 2009, unless the city has issued a building permit for the project covered by this variance or approved a time extension.

Walker, Adams, Lehman, Schmitz, and Cheleen voted yes. Blatz and Sjeklocha voted no. Motion carried.

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

C. Cory and Heather Lepper are proposing to subdivide three existing properties on Hidden Valley Road into a total of ten lots. The proposed development would be known as Braeburn Woods. (08006.08a)

Chair Cheleen 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.

In response to Adams' question, Thomas explained that two access points would increase impervious surface and diminish the preservation of trees.

Lehman asked where the closest neighborhood trail connection would be located. Lillehaug stated that there is a connection on the west end of Hidden Valley Road.

Lehman asked if access to the regional trail from the neighborhood trail was considered. Thomas stated that staff would consult the city's trail manager to see if that would be possible.

In response to Lehman's question, Thomas explained that if a plat meets all requirements, the city council could not legally deny the plat regardless of staff or city council member sentiments.

Lehman asked what percentage of trees would be removed. Thomas explained that staff included proposed grades that may impact the critical root zone of trees. The applicant's total included trees that would have to be removed.

Blatz asked for an explanation of inch for an inch tree replacement. Colleran explained that high priority trees located in an area that would not be allowed for tree removal would require the applicant to replant the same amount of tree trunk

circumference. One tree with a 14-inch circumference could be replaced by 7 trees with 2 inch circumferences.

Chair Cheleen asked if the tree replacement requirement applies because the application is a planned unit development. Colleran stated that the requirement is based on a draft tree ordinance that will be introduced to the city council April 21, 2008. Thomas added that there are certain areas where trees are allowed to be removed such as the footprint of the building and the perimeter around the footprint.

Schmitz clarified that the residences were located closer together to save the trees. Thomas confirmed that the cul-de-sac would have a reduced front yard setback of 25 feet. That would not apply to the residences on Hidden Valley Road.

Sjeklocha asked if the accesses could go to Pine Street or Hidden Valley Road if it would be zoned an R-1 district. Thomas answered in the affirmative.

Walker asked if less impervious surface would be created if the curvature was reduced. Thomas agreed and explained that the curve allows for frontage which is required for each lot.

In response to Chair Cheleen's question, Lillehaug explained that the proposal would include two catch basins and storm drain inlets on the roadway. That would mitigate any erosion problems that are currently being experienced. In addition to enhancing the erosion issues, the infiltration basin and storm water pond would improve the storm water quality and treatment of that area as well. The project and improvements being made would enhance the treatment of storm water in the area.

Chair Cheleen asked if the water would travel down Pine Street, into the catch basin, and then into either the culvert or down a swale that would lead to a larger storage place. Lillehaug explained the drainage pattern. The location of the existing cul-de-sac would be the approximate low point of the new street. Storm water would travel to that point, enter the storm water system, and flow into the storm pond.

Schmitz asked if the use of pavers had been considered. Thomas explained that the city would construct a standard street; however, the applicant was willing to consider pavers for driveways.

Cory Lepper, 16408 Hidden Valley Road, applicant, stated that he would keep his presentation brief since Thomas was so eloquent. He stated that:

- He and his wife have lived in their house for 5 years and have worked hard to improve it.
- He was happy to see 2 homes being built on the street and homeowners investing and reinvesting in their homes.
- He purchased the property in order to create a plan that would have the least impact on the natural resources. His intent is to protect the integrity of the site.
- He provided an R-1 conforming plan. He would submit an application with the R-1 plan once the moratorium is lifted if the current plan is not successful. The lot count would remain the same. Custom grading would become mass grading. The amount of impervious surface would double and the pond size would increase.
- The Hidden Valley Road versus Pine Street discussion is tenuous, but either way residents would be impacted.
- In response to Walker's question, an access off of Pine Street would cause the removal of two stands of large, mature trees.
- The current proposal would have an average lot size of 23,517 square feet. It would save over 63 percent of the trees. The R-1 plan would save only 28 percent.
- Staff has been very thorough. The conservation approach is in the best interest of the property and reflects the greater natural resource goals of the city. He understood the concerns.

Schmitz asked what type of houses would be built. Mr. Lepper envisioned the price of the houses would be in the \$700,000 to \$1,000,000 range. The home footprints would constrain the house on the site and preserve the trees. An architectural review board would be in place to ensure consistency with the neighborhood.

In response to Adams' question, Mr. Lepper stated that he had not considered the possibility of connecting the neighborhood trail with the regional trail. There is an access on Hidden Valley Road.

Blatz asked if the height of the houses would be included in restrictive covenants. Mr. Lepper believes the city's ordinance would regulate the allowable height. Blatz acknowledged comments that were concerned that the proposed residences would not fit with the existing neighborhood. Mr. Lepper felt the mcmansion policy makes sense and it would be used as a guide by the

architectural review board. He had no problem adhering to it what-so-ever. The maximum height is 35 feet tall.

Blatz questioned if the fire pit had been deleted from the plan. Mr. Lepper answered affirmatively.

Sjeklocha asked what the buffer would look like. Mr. Lepper stated that no trees would be removed on the east buffer. The north and west side buffers would be located in conservation easements and range from 20-foot to 40-foot buffers.

Chair Cheleen asked if architectural standards could be included in the planned unit development's conditions of approval. Thomas stated that the city has not required an architectural design standard for a planned unit development. The city has supported developers setting architectural standards for Meadowwoods and Portico developments. A maximum footprint size is a condition of approval.

Walker asked if residents of Pine Street could be on the architectural review board. Mr. Lepper would consider it.

The public hearing was opened.

Bonnie Mcdonald, 3913 Avondale Street, asked where the highest point of the property is located. Thomas pointed out the knoll in the center of the proposed development area. There is also a high point where the residence sits. Ms. Mcdonald asked if a knoll is an elevated area and if water would flow down from an elevated area. Thomas answered affirmatively.

Ms. Mcdonald wanted to see a drawing of Hidden Valley Road. Staff obliged. She stated that there are already homes on the west that are very expensive. Very expensive residences are being built in the area now.

John Bifocal, 16310 Pine Street, stated that:

- The majority of trees that would be removed have impact on the Pine Street properties. The majority that would be saved are on the back side of the development.
- The end of Pine Street ends at a 14-foot tall embankment. The proposed entry way is at the highest point to the property.
- The most straight-forward way into the property would be next to the applicant's current residence.
- A 32-foot high house on top of a 15-foot elevation would stand 47 feet above Pine Street.

Leah Erickson, 16216 Hidden Valley Road, moved off of Tonkawood to live in an area with less traffic. There is an access to the trail off of Hidden Valley Road that is fantastic. She was sad that a rift has been created in the neighborhood. She will not make any attacks on her neighbors. She stated that:

- She knew the development would occur. She knew some day it would be developed.
- She was glad to see that there is a beautiful plan in place.
- The property owners live on the street and have more of a vested interest than just developing land for residences.
- She was excited to share her quality of life with the new families that would move into the neighborhood. She looked at the positive side of the development.
- There would be no winner when it comes to access. Every street has kids that walk to bus stops. As parents and a good community we continue to watch out for the kids. She sympathized with everyone on all the streets.
- Hidden Valley Road is a straight shot, but vehicles travel at high rates of speed. She understood the curve in the Pine Street access as well.
- She thanked staff, commissioners, and the city council for listening to everyone's concerns. Mr. Lepper has experience with the situation. She trusted that the best decisions would be made.
- Long-term for her would be 20 more years in her house. She appreciated everything the city has done to further the education system and housing.

Debra Burns, 16317 Pine Street, stated that there are not many who do not know that the property would be developed. The concern is that it should be done in a way to minimize the impact to the existing neighborhood. She stated that:

- Having the access off of Pine Street would save 15 trees.
- Staff's recommendation is placing a higher priority on saving trees than it does on the feelings expressed by the letter received from residents of Pine Street.
- The Pine Street neighborhood would be disproportionately affected.
- The cul-de-sac that would be created off of Hidden Valley would be 465 linear feet in length.
- The R-1 development would require the developer's lot to be shortened more than the proposed lot.

- The proposal is not a proposal from a neighbor who wants to develop his property as much as a proposal from a developer who happens to live in the neighborhood. As a professional in his field, the developer understands and leverages things like the R-1 development on a regular basis.
- The location of the houses in the R-1 plan may be better and prevent the feeling of being in a fish bowl.
- She was disappointed that staff's report recommended almost exactly what was recommended by the developer. She was disappointed that issues were not addressed up front.
- In a situation with more than one viable option, the government should err on the side of following citizen input.

Dave Gudarian, 16417 Hidden Valley Road, stated that:

- It does not make sense to create another cul-de-sac since it creates plowing difficulties. That does not seem to make sense.
- After the moratorium is over, the R-1 development will take place.
- A developer who resides in the neighborhood would have a better feel for the neighborhood.
- The preservation of trees is a benefit.
- He lives in a rambler built in 1948. He loves seeing a brand new, beautiful house being built in the area. It is better to own a home on the low end of the value of houses in the area versus the top value in the neighborhood. The new houses will raise property values.

Ms. McDonald stated that:

- She backs down her driveway and slides across the road. The neighbors across the street cannot navigate their driveway. The neighborhood is one driveway after another.
- Seven new homes would create a danger.
- An epileptic child lives in the area.
- She is not opposed to the development. She opposed adding traffic to Pine Street. It is a safety issue which is more important than removing trees.
- An open corridor exists where a street could be located.
- Nonimpervious materials could be used.
- Mr. Ringsted currently has flooding in his back yard.
- The drainage needs to go west and south.
- There are two options.

- Hidden Valley already has construction going on. It would be more congruent and safe.
- The birch and spruce trees get needle drop and could be removed.
- Make the ethical choice that would maintain the character of both neighborhoods and provide safety for the residents by having the access on Hidden Valley Road.

Mark Kelsey, 16300 Pine Street, stated that:

- His child has epilepsy.
- His biggest issue is safety and the corner. The area is a “blind u-turn”.
- He applauded Mr. Lepper’s efforts at making an environmentally friendly development.

Ron Gunderson, 3837 Pine Lane, stated that:

- He has lived in Minnetonka since 1954.
- He asked for an explanation of the inch for inch tree replacement policy. Colleran provided an informative response.
- He questioned if the property included 5 acres. Thomas explained that the existing lot area is 5.9 acres as shown on one of the plans. There would be some right-of-way dedication, wetland area, and floodplain. During the moratorium, properties smaller than 5 acres may be considered for a planned unit development because of the benefit of negotiating aspects regarding preservation of natural resources. There is no minimum for an R-1 standard plat.
- The city did not have a good track record with protection of trees in reference to Crosby Cove and the Glen Lake development.

Ann Kilgore, 16306 Pine Street, asked if flag lots had been considered off of Hidden Valley Road. Mr. Lepper did not consider flag lots. It would not be appropriate for a property of its size. Thomas reviewed some of the numerous regulations regarding flag lots. Flag lots require variances because frontage is required on a street for each lot. A maximum of 3 lots is allowed off of a private driveway. The fire department prefers a public road for development of a large, open space.

Bill Binger, 3921 Avondale, stated that the street is dangerous in the winter. Vehicles slide around in the winter.

Marlys Binger, 3921 Avondale, stated that her driveway is a blind driveway. Accidents have nearly happened. She parks her car on the hill. The safety feature should be considered.

Connie Menard, 16523 Hidden Valley Road, appreciated the variety of houses in the area. The commission needs to consider if all of the same types of residences built in the same area is a good thing. She favored a variety of lot sizes and home styles.

Karen Margolis, 3916 Avondale Street, asked how children would get to the school bus access. Hidden Valley Road would provide a more direct route for emergency vehicles.

No additional testimony was submitted and the hearing was closed.

Schmitz stated that the curved access to Hidden Valley Road is awful and she would not support that at all. It makes no sense to have two cul-de-sacs with a strip of land between. It would be poor planning. The curved road would be necessary due to topography. Thomas explained that even a straight route would double the amount of impervious surface. The trees that would be removed for the Hidden Valley Road access include trees in the roadway and the pond area that would become necessary due to double the amount of impervious street coverage. Whether the road is curved or straight, staff would find the Pine Street access more appropriate. Schmitz acknowledged the existing drainage problems in the area. Thomas stated that the developer would be required to control the runoff on the development's property. The pond would be larger and cause removal of trees.

Walker asked Mr. Lepper how many times he met with neighbors. Mr. Lepper met with neighbors numerous times and conducted a neighborhood meeting. Mr. Lepper located the access west of Pine Street once he received staff's direction.

In response to Walker's question, Mr. Lepper responded that he has not done any height studies of the area.

Walker asked if he would be willing to reduce the number of homes. Mr. Lepper would consider selling the property and that developer go forward with an R-1 district conforming plan.

Sjeklocha reviewed the neighbor comments and read 14 issues. In response to construction concerns, Thomas explained applicable building code requirements and city ordinances.

In response to the safety issue, Thomas received a report generated by the police department that indicated that since 2004, the police department has logged 3 parking complaints and 1 speeding complaint on Pine Lane; 1 parking complaint on Pine Street; 2 speeding and 1 parking complaint on Hidden Valley Road; and no complaints on Avondale Street. The police department has no reported accidents occurring on those streets or at those intersections.

In regard to wild life, Colleran explained that development would impact habitat and creatures in the area. A mini-urban forest would remain. The proposal would not totally impede warbler or other birds' migration patterns. Sjeklocha noted that there is no protection of wildlife as there is of trees. Colleran concurred.

In regard to who would own the land if the cul-de-sac would be moved, Thomas explained that the area would still be considered street right-of-way even if the pavement would be removed.

In regard to school buses and emergency vehicles having access, Thomas responded that the street would meet city engineering standards. Buses and emergency vehicles would be able to turn around in the cul-de-sac.

Adams knew that behind the scenes staff worked with the developer closely for some time. Looking at the different options, the extension off of Pine Street makes the most sense. He understood that rerouting to Hidden Valley Road would be preferable for some people, but that would create another cul-de-sac. He was averse to any plan that would create an additional cul-de-sac as well as flag lots. He strongly recommended that Avondale residents speak to the engineering department regarding safety concerns. It is rescheduled to be paved in 2011. There could be options considered at that point. He agreed there is a sharp turn at the bottom of Avondale Street intersecting with Pine Street. The property owner could vacate a piece of his property to allow the city to make the turn safer. Adding 42 trips a day would not make much of a difference. The proposal would be an upgrade for the neighborhood. The neighborhood may be surprised at how the project would improve the perception of the neighborhood and improve property values. It is gratifying to see a development proposed where the developer plans to live. It is a very rare occurrence. Mr. Lepper is sincere and trying to do the best to meet community standards. It would be a positive development for the neighborhood.

Blatz liked the development. It would be good for the neighborhood. She would prefer one or two less residences, but this is the proposed plan and it could be done with six houses with R-1 standards. She struggled with the safety concerns.

She questioned the possibility of a road looping onto Pine Street and having it circular so there would be two accesses.

Walker heard and respected safety concerns. He asked Mr. Lepper to consider talking to the neighbors on Pine Street and think of a way to help with the safety issue. Walker disagreed with staff in regard to the entry point off of Hidden Valley Road. The concern for trees and the amount of impervious surface is nullified by people not having safety in the neighborhood. The development being built by R-1 standards takes control away from the city council. He was torn.

Schmitz appreciated residents attending the meeting and expressing concerns. She understood the benefits of having the access off of Hidden Valley Road. She struggled with a long road to reach houses. An extension of Pine Street makes more sense. She understood the safety concerns. She slid out of her driveway in the winter. She encouraged residents to let the city know and consider options to improve the situation. She supported the project as staff proposed. A development that would follow R-1 requirements does not take into consideration the residents' values. The city just conducted a survey that indicated that trees, access to trails, and open space are an important part of the community. All of the trees would be removed. The planned unit development allows for more creative design and tree preservation. That is a benefit for the entire neighborhood. She supported staff's recommendation. Sharp angles and turns are a concern, but having a long road end in a cul-de-sac seems like it would cause more problems for impervious surface and trees. Residents should be upset with an R-1 development, but would have no opportunity to even address issues. Staff has done a good job thinking the project through to make it the best that it can.

Lehman echoed Schmitz. He reemphasized that staff did a commendable job working through the planned unit development process to get as much value for the community as possible. He defaulted back to the fact that the developer has the right to continue with an R-1 plat. Staff did a great job extracting as much as possible from the developer. Having the access off of Pine Street makes the most sense to make a good addition to the City of Minnetonka.

Sjeklocha supported the planned unit development rather than the R-1 standards. She hoped that any developer would continue an on-going dialogue with neighbors of a site. Safety issues could be worked on right now. A stop sign could be considered on Pine Street and Avondale Street.

Chair Cheleen saw no winner other than the fact that the city and the community will win in the long run. It makes sense to approve the planned unit development.

He believed that Mr. Lepper has the best of intentions to do a good development. He encouraged a trail access be considered. It is a good idea. The proposal would improve drainage. Safety is an issue now and will continue. A stop sign would be a good idea to slow down traffic. Mr. Lepper would custom grade the properties so they would look good during construction. Since the R-1 standard development would come along in a few months anyway, the Pine Street access seems to make the most sense.

Schmitz moved, second by Adams, to recommend that the city council approve the following items for the proposed development known as Braeburn Woods.

REZONING

- 1) *Recommend that the city council adopt the ordinance on pages A46–A48 of the staff report, which approves the proposed rezoning. This ordinance is based on the following findings:*
 - a. The rezoning would be consistent with the city's guide plan; and
 - b. The rezoning would be consistent with the public health, safety, and welfare.

PRELIMINARY PLAT, WITH EXTENDED CUL-DE-SAC LENGTH

- 2) *Recommend that the city council give preliminary approval to Braeburn Woods, date-stamped April 4, 2008, with cul-de-sac in excess of 500 feet. Approval is based on the following findings:*
 - a. The proposal meets the required standards and ordinances for a preliminary plat.
 - b. The proposal minimizes tree loss.
 - c. The pattern of existing development requires that the only practical method of providing public access to the site is a long cul-de-sac.

Approval is subject to the following conditions:

- a. Prior to final plat approval, complete the following:
 - (1) Show the following on the final plat:

- (a) A minimum 10-foot wide drainage and utility easements adjacent to the public right-of-way(s) and minimum 7-foot wide drainage and utility easements along all other lot lines.
 - (b) Utility easements over existing or proposed public utilities, as determined by the city engineer.
 - (c) Drainage and utility easements over the 920.0 elevation, the stormwater pond and infiltration basin areas.
 - (2) A roadway easement on the 16333 Pine Street property, dedicated to the applicants, must be re-dedicated to the city. The easement must be 25-feet from the centerline of Pine Street.
 - (3) Pay a park dedication fee of \$5,000 per newly created lot, for a total of \$35,000.00.
 - (4) If the developer is petitioning the city to construct the public improvements, the city council must order the improvements.
 - (5) Drainage and utility easements and maintenance agreements for the storm pond, infiltration basins, and any other stormwater mitigation facilities.
- b. The following items must be submitted to the city before the city releases the final plat:
- (1) An engineering/utility inspection fee.
 - (2) An electronic CAD file of the final plat in microstation or DXF.
 - (3) The following documents must be prepared by an attorney knowledgeable in the area of real estate and must be submitted for the city attorney's approval:
 - (a) Title evidence that is current within thirty days before release of the final plat.

- (b) Conservation easements over wooded areas in substantial conformance (Page A13) and a drawing of the easements. The easement may allow removal of hazard, diseased, or invasive species. The easements and drawings must be recorded with the final plat.
- (c) Documents establishing a homeowners' association. The association must be responsible for maintaining any common areas, common drives, required drainage ponding 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, removing any blockage of the swale or culvert that may impede the drainage of the site and yearly reporting to the city, as approved with the building permits and as prescribed in the drainage and utility easement maintenance agreement.
- (d) 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 documents must be recorded with the final plat, and a drawing of any easement must be attached to the easement deed.

- (4) Any other requirements included with final plat approval.
- c. A grading permit is required. Unless authorized by appropriate staff, no site work may begin until a complete grading permit applicant has been submitted, reviewed by staff, and approved.
- (1) The following must be submitted for the grading permit to be considered complete.

- (a) Final street, utility, grading and drainage, and site plans as required by the city engineer must be submitted for staff review and approval.
- (i) The street plans must include:
- Roadway alignment, profile, and cross sections.
 - B612 curb and gutter on reconstructed streets.
 - B612 curb and gutter with appropriate curb cuts adjacent to infiltration systems on the newly constructed street.
 - Standard 80-foot diameter cul-de-sac within standard 100-foot diameter right-of-way. A median island is not permitted.
- (ii) The utility plan must include:
- Extension of the Pine Street stormwater system to the proposed pond.
 - Sump pump drain tile for properties along the south side of the Pine Street extension.
 - Adjustment of existing roadway storm drains to the new road edge. An additional catch basin must be installed at the low point of the roadway.
 - Lots 1 and 2 must use existing sewer and water services.
 - Profiles for all public utilities.

- Fire hydrant as required by the fire marshal.
 - Additional drainage calculations and exhibits as required by the city engineer.
- (iii) The grading plan must include:
- Infiltration systems shown on private property, rather than public right-of-way.
 - Removal of the existing cul-de-sac and restoration of adjacent yards.
- (iv) The site plan must include:
- Permanent roadway easement area on 16333 Pine Street.
- (b) A Stormwater Pollution Prevention Plan must be submitted for staff review and approval.
- (c) Individual letters of credit or cash escrow for 125% of a bid cost or 150% of an estimated cost to comply with grading permit. The developer may submit one itemized letter of credit, if approved by staff. The city will not release or reduce the letters of credit or cash escrow until work has been completed according to the plans approved by the city.
- (d) If the developer is constructing any public improvements, the following must be submitted for staff review and approval:
- (i) Final street and utility plans.
 - (ii) A signed agreement with the city. This agreement must guarantee that the developer will complete all public improvements and meet all city requirements.

- (iii) A letter of credit or cash escrow in the amount of 125% of a bid cost or 150% of an estimated cost of the improvements.
 - (iv) The city will only reduce or release the letter of credit or cash escrow upon receipt of as-built drawings and a letter certifying that the streets and utilities have been completed according to the plans approved by the city.
 - (e) A temporary construction easement for grading on the property at 16333 Pine Street. This easement must be acquired by the applicant.
 - (f) A construction management plan. The plan must be in a city approved format and must outline minimum site management practices and penalties for non-compliance.
 - (g) A recorded copy of the conditional use permit.
- (2) Ponding areas, public utilities, and associated grading and facilities must be located to maximize tree preservation. Staff may require adjustments in locations of these improvements in order to do so. Inch-for-inch mitigation is required for high-priority trees removed in conjunction with required ponding.
- (3) Prior to issuance of a grading permit:
 - (a) Install all measures in accordance with the SWPP for 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 Hennepin County for recording.
 - (c) A copy of approved MPCA NPDES permit.
- (4) The stormwater pond must be constructed prior to commencement of grading work and any public improvements. Upon project completion, all accumulated

sediment must be removed. A certified as-built of the pond contours is required for final acceptance.

- d. Prior to issuance of a building permit for any of the lots within the development:
 - (1) Submit the following documents:
 - (a) A recorded copy of the rezoning ordinance.
 - (b) The preliminary plat, all required easements, and restrictive covenants.
 - (c) A letter from the surveyor stating that boundary and lot stakes have been installed as required by ordinance.
 - (d) A letter of credit or cash escrow in the amount of 150% of an estimated cost or 125% of a bid cost to complete required tree mitigation. Individual letters of credit are required for each lot.
 - (e) An electronic CAD file of certified as-built drawings microstation or DXF.
 - (2) For each building permit, submit the following items for staff review and approval:
 - (a) A construction management plan. This plan must be in a city approved format and outline minimum site management practices and penalties for non-compliance.
 - (b) Final grading, drainage, and tree preservation plan for the lot. The plan must:
 - (i) Comply with the preliminary grading plan as depicted on the preliminary plat.
 - (ii) Preserve trees designated for preservation at the time of preliminary plat approval;

- (iii) Show sewer and water services to minimize impact to any significant trees. No trees may be removed for installation of services. One set of new services must be installed.
 - (iv) Grading on Lots 2 and 5 must minimize drainage onto 16333 Pine Street
 - (v) Grading on Lots 2 must maximize preservation of existing conifers, including a large tamarack at the front of the lot, and prevent impacts to the large oak in the southeast corner.
 - (vi) Staff may require adjustments in the location of the proposed house, driveway, grading and utilities to maximize tree preservation.
- (c) A tree mitigation plan. Mitigation must be provided for trees removed beyond a 20-foot perimeter to the proposed building footprint, and a 10-foot perimeter of the proposed driveway. Inch-for-inch mitigation is required for high-priority trees removed outside of these perimeters.
- (d) Submit cash escrow in the amount to be determined by city staff. 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 of the construction management plan, other conditions of approval, or city code standards; 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.
- (3) For each building permit, the following items must be completed:
- (a) Schedule and hold a preconstruction meeting with engineering, planning, and natural resources staff.

- (b) Proof of subdivision registration and transfer of NPDES permit.
 - (c) Install a temporary rock driveway, erosion control, tree protection and wetland protection fencing for each lot. These items must be maintained throughout the course of construction.
 - (d) Install heavy-duty fencing, which may include chain-link fencing, at the conservation easement. This fencing must be maintained throughout the course of construction.
 - (e) Pay a hookup fee for sanitary sewer and water.
- e. Notwithstanding the requirements outlined above, all lots and structures within the development are subject to the following:
- (1) The house “type” for each lot (walk-out, full-full basement, look-out) is restricted to the “type” detailed on the preliminary grading plan date-stamped April 4, 2008.
 - (2) The maximum structural footprint allowed on each lot, which includes house and garage, is restricted to 2,800 square-feet.
 - (3) Minimum setbacks for principal structures:

	Pine Street Properties	Hidden Valley Road Properties
Front	25-feet	35-feet
Side	10-feet interior to PUD	30-feet aggregate, with no one side less than 10-feet
	15 feet exterior to PUD	
Rear	20% of lot depth or 40 feet, whichever is less	20% of lot depth or 40 feet, whichever is less

- (4) Minimum lowest floor elevation is 922.0
- (5) Minimum site lines must be maintained on Lot 10 as per city engineer exhibit date-stamped April 10, 2008.

- (6) All portions of first-story walls as measured by an approved route around the exterior of the house must be within 150 feet of the street. If access requirements cannot be met, the house must be protected with 13D automatic fire sprinklers.
- f. During construction, the streets must be kept free of debris and sediment.
- g. 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.

CONDITIONAL USE PERMIT

- 3) *Recommend the city council adopt the resolution on pages A49–A51 of the staff report, which approves a conditional use permit for construction of a stormwater pond below the 100-year flood elevation within BRAEBURN WOODS. This resolution is based on the following findings:*
 - a. The proposed pond would not diminish floodplain storage. Rather, the pond would increase storage capacity.
 - b. The proposed pond would not negatively impact the existing wetland on the site.
 - c. The proposed pond would provide for infiltration and sediment control prior to release of water into the wetland. This would improve existing stormwater discharge and treatment conditions in the area.

Approval is subject to the following conditions:

- a. Permits may be required from other outside agencies including, but not limited to, Purgatory Bluff Creek Watershed District, Army Corp of Engineering, and Minnesota Department of Natural Resources. It is the applicants responsibility to obtain all necessary permits.
- b. Prior to issuance of a building permit, record this resolution with the county. A copy of the recorded resolution must be returned to the city.

- 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.
- e. The applicant must agree to the above conditions in writing.

FLOODPLAIN ALTERATION PERMIT

4) *Recommend the city council adopt the resolution on pages A52–A54 of the staff report, which approves a floodplain alteration permit for construction of a stormwater pond below the 100-year flood elevation within Braeburn Woods. This resolution is based on the following findings:*

- a. The proposed pond would not diminish floodplain storage. Rather, the pond would increase storage capacity.
- b. The proposed pond would not negatively impact the existing wetland on the site.
- c. The proposed pond would provide for infiltration and sediment control prior to release of water into the wetland. This would improve existing stormwater discharge and treatment conditions in the area.

Approval is subject to the following conditions:

- a. Permits may be required from other outside agencies including, but not limited to, Purgatory Bluff Creek Watershed District, Army Corp of Engineering, and Minnesota Department of Natural Resources. It is the applicants' responsibility to obtain all necessary permits.

Adams, Lehman, Schmitz, Sjeklocha, and Cheleen voted yes. Walker and Blatz voted no. Motion carried.

Chair Cheleen stated that the item was tentatively scheduled to be reviewed by the city council at its May 5, 2008 meeting.

D. The Bennett Family Park Board is proposing two changes to site and building plans approved in May 2007. The proposal requires

**amendment to the previously approved site and building plans.
(90029.08a)**

Lehman moved, second by Sjeklocha, to table action until the May 1, 2008 planning commission meeting to allow public hearing notification of the neighbors.

9. ADJOURNMENT

***Adams moved, second by Schmitz, to adjourn the meeting at 10:31 p.m.
Motion carried unanimously.***

By: _____
Lois T. Mason
Planning Secretary