

**MINNETONKA PLANNING COMMISSION  
MINUTES**

**MAY 1, 2008**

**1. CALL TO ORDER**

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

**2. ROLL CALL**

Commissioners Adams, Blatz, Lehman, Schmitz, Sjeklocha, Walker, 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, Natural Resource Manager Jo Colleran, and City Forester Emily Barbeau.

**3. APPROVAL OF AGENDA:** The agenda was approved as submitted with additions and modifications provided in the change memo dated May 1, 2008.

**4. APPROVAL OF MINUTES:** April 17, 2008

***Lehman moved, second by Blatz, to approve the April 17, 2008 meeting minutes as submitted with the following modification:***

Page 18: ~~Lehman~~ Adams asked what percentage of trees would be removed.

***Adams, Blatz, Lehman, Schmitz, Sjeklocha, Walker, 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 21, 2008:

- Adopted a resolution approving items concerning Wesley Addition, a two-lot subdivision of an existing residential property at 12029 James Road.
- Adopted a resolution approving final approval of the Crest Ridge Corporate Center (previously known as "Crossroads Corporate Center") final plat at 10955 and 11055 Wayzata Blvd for Opus Northwest, LLC Crestridge.

- Introduced an ordinance to protect remnant woodland ecosystems, as well as protect trees that are of higher value and importance to particular sites.

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

**7. PUBLIC HEARINGS: CONSENT AGENDA**

No item was removed from the consent agenda for discussion or separate action.

***Adams moved, second by Schmitz, to approve the item listed on the consent agenda as recommended in the respective staff report as follows:***

- A. Stuart Larsen is requesting a front yard setback variance from 35 feet to 30 feet to construct an addition to the home at 3419 Arbor Lane. A similar variance was approved in 2006, but has since expired.**

Adopt the resolution on pages A11-A13 of the staff report, which approves a front yard setback variance from 35 feet to 30 feet for an addition to the house at 3419 Arbor Lane. 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 reasonable addition 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 match the building line of the house and would not extend any further into the required setback.
  - 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 the proposal would maintain the building line along Arbor Lane.

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 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.

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

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

## **8. PUBLIC HEARINGS**

**A. The Bennett Family Park Board is proposing three changes to site and building plans approved in May 2007. The proposal requires amendment to the previously approved site and building plans.**

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

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

Adams asked if the paving condition had been discussed with the applicant. Wischnack answered affirmatively. The applicant would have until 2010 to complete the paving. Adams felt the paving was needed but was concerned with the cost for a nonprofit organization.

Lehman asked why paving the parking lot was being required. He knew of city parks with ball fields that did not have paved parking lots. Wischnack explained that city ordinance requires parking areas to be paved; it would be necessary for drainage control; and it would provide for marked traffic circulation indicators and

striped parking stalls. The site would have the minimum number of parking stalls required.

Lehman asked if the applicant is being held to a different standard than the city. Wischnack stated that an improvement to the site would require noncompliance with city ordinances brought into compliance.

Sjeklocha asked for clarification of the removal of the easement buy-back provision. Wischnack explained the history of the park. The last request for improvement included lighting. The lighting was denied. Part of the previously approved conditional use permit included an option for the applicant to buy back the easement. The current approval would remove the easement buy back provision.

Sjeklocha asked in what order the new building would be built and the old building removed. Wischnack deferred the question to the applicant. She understood that the applicant wanted to start in July. The building on the east would be removed.

Sjeklocha asked what percent of the parking area would be paved now and how much in 2010. Wischnack explained that 30 percent of the parking area would be paved with bituminous. The remainder would keep its current bituminous-milling surface.

In response to Sjeklocha's question, Collieran explained that the proposed vegetation would be most shade tolerant and provide the look and height that the applicant wished to achieve.

Wischnack explained that the neighbors on the north provided input when selecting buffer vegetation.

John Williams, 4209 Tonka Road, Bennett Family Park Board Member, applicant, believed Wischnack covered everything. After receiving last year's approval, the board decided to change a few things. He thanked Wischnack, staff, and the neighbors for their cooperation. He was available for questions.

Adams asked Mr. Williams how he felt regarding the pavement condition. Mr. Williams stated that the board would love to have the parking lot paved. Fund raisers are underway now to complete the entire project. The lowest item on the priority list is paving the parking lot. He was pleased with the time extension to 2010. He would prefer not to have it as a condition of approval. The project would not increase the drainage on the site, but if that is a condition of approval, then

the board will strive to make it happen. Adams asked how the fund raising was going. Mr. Williams explained that the miracle league group is raising a portion and the Bennett Family Park is raising a portion. Businesses and in-kind donations are being requested.

Walker asked how the conditions would be met if fundraising would come up short. Mr. Williams hoped that commitments would be made for the entire project prior to the start. The board does have a line of credit to help if it would be close. If the amount of funds is not close, then the project would be delayed. The planned timing would be to transfer the equipment from the old building to the new building in September of 2008.

In response to Walker's question, Mr. Williams stated that the baseball field land capacity would be exhausted. There are wetlands south and east of the large field and the property is land-locked from all sides.

Chair Cheleen confirmed with Mr. Williams that the new building and miracle field would be constructed in July. The fields are used almost constantly.

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

Adams supported the project. He was concerned with requiring paving of the parking lot by 2010, but he supported staff's recommendation. The condition could be reconsidered in 2009. Bennett Field is a great resource for the community.

Schmitz understood the reason for requiring paving of the parking lot. She would be comfortable with extending the deadline to allow more time for fundraising.

Lehman concurred with Schmitz. It would be more economical if the applicant could complete the paving through its own bidding and construction process. He supported giving the applicant even more time to complete the paving condition.

Chair Cheleen asked staff if there would be a reason to not extend the deadline. Wischnack selected 2010 partially so the condition would not be forgotten.

Walker asked if budget estimates had been calculated. Mr. Williams estimated that paving the parking area would cost \$150,000.

Walker liked finality, but agreed with extending the deadline. He understood the complexity of fund raising.

Blatz felt comfortable extending the deadline to 2011. She asked if the applicant could ask for an extension in 2009. Wischnack predicted that the city would complete the paving as required and assess the property owner to cover the cost.

Sjeklocha concurred with commissioners to extend the paving deadline to 2011.

Chair Cheleen stated that Bennett Family Park has existed a long time and has been a positive influence on the area. He would be comfortable with extending the paving deadline to 2011, but also believes that staff has a good point. The number of parking stalls barely meets the ordinance requirement. Paving and striped stalls would allow better accommodation of vehicles. It would maximize the number of vehicles in the lot in a safe way. The paving is necessary now because of the number of vehicles and safety.

***Adams moved, second by Schmitz, to approve the following site and building plan for property located at 3717 County Road 101 for the Bennett Family Park Board with the condition requiring pavement of all parking areas be done by 2011 :***

Approval is based on the following conditions:

- a. Prior to approval of a grading permit and building permit the following would need to be completed:
  - (1) Record this resolution with the county before the city issues a building permit.
  - (2) All plans must be approved by the city engineer.
  - (3) No grading activity may occur on any adjacent property.
  - (4) A construction management plan must be provided.
  - (5) The landscaping plan must be revised to reflect the change in lilacs to serviceberry.
  - (6) The new building location may only remove 6 trees and must not remove the cottonwoods in the area.
  - (7) The eastern building must be removed.

- b. Other general conditions include:
- (1) All parking areas must be paved with bituminous no later than 2011. If this is not completed, the city will arrange for the improvement and assess the property. A waiver of assessments must be signed.
  - (2) Construction must be in substantial compliance with the following plans:
    - Grading Plan – date stamped March 17, 2008
    - Building Plans – date stamped March 17, 2008
    - Buffering/Landscape plan, date stamped March 17, 2008.
  - (3) On all natural areas that exist on the property, vegetation will remain, excluding replanting areas identified northwest of field #5 and southwest of field #3.
  - (4) There would be allowance for replanting of native vegetation in the tennis court area and removal of buckthorn or other invasive species as part of a restoration plan as approved by staff.
  - (5) The applicant must agree to the above conditions in writing.
  - (6) Any additional permitting required from other agencies is the responsibility of the property owner.

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

**B. Introduction of the tree ordinance.**

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

Wischnack provided background information on the current moratorium. She stated that impervious surface and grading and erosion control reports would be

reviewed in the next month. Wischnack introduced Thomas, Colleran, and Barbeau.

Colleran explained the proposal. It would regulate tree mitigation standards while taking quality, age, diversity, and size of trees into consideration. Colleran explained the different types of forests in Minnetonka and recommended approval of the proposed ordinances.

Adams stated that Colleran's presentation was very good. He thought the proposed ordinance would impact developers more than individual home owners. He asked if developer feedback had been solicited. Colleran explained the public notification process. An open house was conducted in September. Many developers who work in town were notified directly by mail. Articles in the newspaper requested public feedback. Questions were received from developers, but no written comments.

Lehman complimented staff for the work done on the proposal. He felt it would be a challenge for residents to understand the ordinance and know how to stay in compliance. He asked how residents would be informed. Colleran explained that a single-family property owner can remove trees on his or her property. If an addition is being built, the property owner would apply for a building permit. The building permit review would include staff contacting the property owner and explaining the rules and regulations of the tree ordinance. A redevelopment or development on an existing vacant parcel of land would trigger the same opportunity to explain the proposed ordinance regulations during the building permit process.

Wischnack explained that staff felt it would be helpful to have an ordinance that would outline what is of ecological value to the city when reviewing applications for subdivisions and redevelopment, which is not currently the case.

Lehman questioned if a property owner would consider clear cutting a parcel two years prior to development in order to subdivide without risk of having to comply with the proposal. Colleran did not believe that would happen because there is a basic tree removal area that would allow a property owner to build a house, even in a woodland preservation area. Woodland areas have a higher monetary value. A property with no trees would decrease the potential profit of a developer. Development is balanced with property owner rights while protecting neighborhood integrity and character. The ordinance is written to try not to penalize property owners and still recognize the benefits that trees offer.

Lehman asked if she saw any problem with enforcing the two-year look back regulation. Colleran stated that neighbors value each others' trees. Colleran's office gets the calls when a neighbor is cutting trees down. She provided an example of a resident who cut oak trees down to provide a flat surface for his children to play. Staff received four phone calls from neighbors in regard to him removing his oak trees. The current and proposed ordinance would allow him to do just what he did. It was an opportunity for staff to look at the species and sizes of the trees and make a record for the future.

Colleran stated that surveys show that residents place importance on keeping a neighborhood's integrity. Trees are a large part of a neighborhood's character and integrity.

Sjeklocha asked if the proposal had been in place two years ago, then what would have been done differently in recent subdivisions. Colleran explained that the current ordinance allows the same basic tree removal. More high-priority trees would have been saved. A few subdivisions touched the edge of woodland preservation areas, but had less than 25 percent removal. The change is the mitigation standard, which would be an inch for an inch mitigation standard for high priority trees versus the current ordinance that requires one 2-inch tree for every tree removed regardless of size. A 20-inch oak currently could be replaced by one 2-inch tree. The proposed ordinance would require ten 2-inch trees, for a total of 20 inches.

Sjeklocha mentioned the examples of other tree protection ordinances. Barbeau reviewed the examples provided in the packet. Wischnack stated that a mathematical formula was used rather than the woodlands/ecosystem approach when selecting similar cities.

In response to Sjekocha's question, Barbeau stated that one city requires the developer to hire a forester to review and enforce the city's ordinance. That could lead to a conflict of interest. Many cities use a formula relating inches lost and inches replaced. Colleran added that having different classifications of trees identifies areas to be preserved. In woodland preservation areas, the goal would be to save 75 percent of the trees. Minnetonka is more wooded than many neighboring communities.

Sjeklocha asked who would enforce the ordinance. Colleran explained that Natural Resource Specialist Aaron Schwartz and seasonal staff visit sites to verify compliance with the conditions included in the approval of the application. Prior to issuance of any grading or building permit, tree protection fencing must

be installed and maintained. The Natural Resources Division inspects the sites and works closely with planning staff.

Sjeklocha asked what the average cost is for a tree inventory and what skills are needed to complete one. Barbeau stated that anyone who can identify trees can do a tree inventory. A developer usually will hire a consultant to do the tree inventory. The cost would vary according to the size and number of trees on the site. The cost is typically between \$700 and \$1,000.

Schmitz asked if the proposal would decrease the ability to grade a site to allow a basement walkout. Colleran provided an example of a residence that was purchased with the intent to tear down the existing house and rebuild with a walkout basement. The grading required the removal of 7 oak trees. Colleran received 5 phone calls from neighbors when the cutting of the trees began. If the proposed ordinance had been in place, the city could have required the house be built closer to the street, since it was 75 feet to 100 feet from the roadway, and the trees could have remained.

Walker noticed that other cities require a one-year or two-year warranty for trees. He asked why the proposal would require a three-year warranty. Colleran explained that the three-year warranty would be required for tree of larger sizes and certain species because they are more prone to transplant shock and the decline would not be seen until the third year or later.

Walker asked how the proposal would relate to the comprehensive guide plan allowing high density for Ridgedale and Opus Headquarters. Wischnack explained that Opus and Ridgedale do not have woodland preservation areas.

Walker asked how the proposal would tie into LEED certification and Green Building Council standards. Colleran explained what factors were taken into consideration.

Walker felt that educating professionals with the city's requirements is important. Wischnack said that the city has received attention for its ordinance changes. Once ordinance changes have been approved, developers are notified by mail.

Walker asked if there would have been a difference in the Glen Lake situation if the proposed ordinance had been in place. Colleran stated that a higher financial penalty may have been required.

Chair Cheleen asked who would determine woodland ecosystems. Colleran explained that the Minnesota land cover class system would identify woodland

ecosystems. If a property is not covered by that system, then the vegetation species would be looked at to see if it met that classification. If buckthorn had taken over the woodland, the ecosystem would be considered degraded. An area could have high priority trees, but not be a woodland preservation area. Sites are individually looked at. Certain parameters identify what a woodland ecosystem should look like.

In response to Chair Cheleen's question, Colleran walked through the process of reviewing an application for a subdivision. Staff would review for woodland preservation areas similarly to how staff checks for wetland and floodplain areas.

Chair Cheleen asked if staff would tell applicants the best time to remove trees in the building pad. Colleran explained that between April 15<sup>th</sup> and July 4<sup>th</sup> oak wilt can be spread if a tree is trimmed or removed. A homebuyer and contractor would be informed of that regulation.

In response to Chair Cheleen's question, Colleran explained that if a site plan showed development in a specific area, then the non-specified area would not need to be inventoried.

Blatz asked for an example of reasonable use that would allow the removal of a protected tree. Colleran stated that the greater public good would potentially justify the removal of a protected tree to complete a trail. The trees would be mitigated elsewhere.

The public hearing was opened.

Bill Denton, 13531 Wentworth Trail, stated that:

- He has 2 acres and a residence. He considered an acre of his land his financial "backup." He was troubled that that option might not be available.
- He was comforted by how reasonable staff seemed.
- He has met with staff before to check things.
- It is too expensive to have surveys done and redone.
- His neighbor did not receive the public hearing notice. Each resident should be treated fairly.
- The presentation made staff sound extremely reasonable, but he did not believe it. Most of the people who live in the community are nice people. He would be happy to get together with staff and talk about his situation instead of as if, "the city rules, now what do you have to say?"

- There is a need for staff to look at the citizens as good people to start off with.
- He considered the public hearing an invitation to a hanging. He changed his mind. There might be nice staff.
- He questioned how many properties would be in his position. It seems like the “tree huggers” have an advocate. He wanted an advocate for residents in his position.
- He has maintained his woods for 31 years. He is considering removing buckthorn. He is worried that the woods would prevent him from being able to subdivide his property.
- Give residents supporting nature a break. Inch by inch replacement is overkill.
- Having a plat done is expensive. The buyer should pay for the plat when the sale is complete. It is an industry that is being promoted rather than common sense.

Chair Cheleen noted that having a plat done prior to the sale of a property is done for the protection of the buyer and seller. He suggested Mr. Denton meet with staff to review the potential of subdividing his property for free.

George Macgibbon, 11500 Timberline Road, lived in Minnetonka more than 50 years. He stated that:

- He likes trees and the swamp next to his house. His house is not the best in the area.
- He has many oak trees. It bothers him that the ordinance would tell him what to do with his trees when he has been taking care of them for 50 years. He has survived 2 oak wilt infestations. He paid to have 15 diseased elm trees removed.
- He questioned why the existing ordinance had not been enforced.
- The city should be helping him with his land. He likes birch, Norway pines, and white pines. He has done a better job with what he has than the city would have.
- The proposal would be an intrusion on what he has paid taxes on.
- The city should purchase the land and not “hammer” the resident.

Chair Cheleen stated that the proposal would help him preserve his property and help the future property owner preserve the property. He encouraged him to speak with Colleran.

Kelly Kuntz, works at 26105 Wild Rose Lane, Shorewood, stated that she is a consultant for a project that tried to implement the proposed tree ordinance. She stated that:

- She questioned when a woodland preservation area is not identified by the cover class system, then at what point would it be identified.
- Adding language on how to lay out the boundary on the ground would make the ordinance more user-friendly.
- The understory trees greater than 2 inches in diameter can open up issues regarding priority of preservation. Give examples of potential exceptions.
- A 15-foot coniferous species is not equivalent to the minimum 8-inch requirement of a deciduous tree.
- Coniferous species are not a component of any of the woodland communities.
- Wording should clarify that 75 percent would be the preservation goal for the area within the site.
- The size of the preservation area and number of stems could be taken into consideration.

Chair Cheleen thanked her for her helpful comments. Ms. Kuntz is working on a site that is 8 acres or 9 acres in size and currently zoned an R-1 district.

Charlie LeFevre, 2714 Oakdale Road, questioned how many lots could be made from 4 acres of woodland preservation area. The ordinance would preserve 75 percent of the woodland preservation area, not 75 percent of the trees. Wischnack agreed that as the proposal is worded now, 75 percent of the woodland preservation area would be preserved. Mr. Lefever stated that, according to the proposed ordinance, the tree removal area of his property would be down to a quarter of an acre for each acre. The city would also determine where the structure would be located. That is not a good balance between land owner rights and the public interest.

Chair Cheleen appreciated his astute comments.

Colleran explained that the woodland preservation extends off Mr. LeFevre's property on the north. Staff struggled with the boundary of the three classifications of trees on Mr. LeFevre's property.

Chair Cheleen appreciated Mr. LeFevre's comments. The proposed changes to the ordinance are still being clarified.

Schmitz asked if the proposal would save 75 percent of the trees. Thomas explained that 75 percent of the site is woodland preservation area. Mr. LeFevre has been working with staff to revise the plans to save an increasingly larger number of trees. The last plan would save over 60 percent of the trees on the site.

Chair Cheleen asked if a planned unit development would allow for more than one lot per acre. Thomas found that the wording of the proposed ordinance does not match staff's intent. If the site is in a woodland preservation area, then no more than 25 percent of the woodland preservation area may be removed. That can be done in 3 different ways: 1 unit per acre, straight R-1 zoning, or rezoning to a planned unit development with a 75 percent preservation of the woodland preservation area. Staff will reword the ordinance to correspond to the intent.

Mr. LeFevre stated that his two-acre lot would be reduced to one eighth of an acre of usable land. His plans have been rearranged to reduce the impact to trees as much as reasonable. That has resulted in small interior lots and one large exterior lot. If the whole area is in the woodland preserve, then the city has taken three fourths of an acre. That would be a lot and a half.

Chair Cheleen appreciated his comments.

Tom McMahon, 4409 Wilson Street, stated that:

- He was glad he came to the interesting meeting. He owns five eighths of an acre. There is a development going in across from his house.
- The city planner, principal planner, and natural resources manager all did an excellent job. He was proud of them. He was glad he had a commission who would listen to the planners.
- He recommended listening hard to the first and last speakers.
- Land in Minnetonka is gold. The lot north of his property sold for \$260,000 five 5 years ago.
- Sometimes buyers are willing to pay a very good price for an acre.
- One home per acre will result in decreased amount of roadways, erosion, grading, and tree removal.
- Property across the street from him has been purchased by a developer. The parcel is four acres with many oak trees. If the proposal would save those trees he was all for it.

Mark Broin, owns nine acres in Minnetonka. He congratulated staff on their clarifying presentation. He stated that:

- He has gained a sense of confidence that staff is trying to reasonably preserve natural resources.
- He questioned why the minimum lot size was increased to an acre. Proper placement of a residence to respect neighbors' privacy could be reached with half an acre.
- He requested a definition for "an area of more consideration."
- He asked if it would be possible to get a map specific to the types of designations.
- He questioned if an area is not designated, then would the property owner be free to do whatever.
- He was not sure if it is easier to sell a one-acre lot than two half-acre lots that are positioned in an area that has a lot of trees and a lot of beauty.
- The issue of "taking" residents' property is very complex. The state of Minnesota is focusing on the rights of individuals to use their property in a more decisive manner than some municipality's desire.
- He cuts trees down to allow other trees growing space. He has no intent to subdivide his property. He suggested the two year look back rule include some flexibility concerning residents' circumstances.
- Staff has done a great job. If the ordinance would preserve land rather than trees, then that would be an issue for him on principle, even though he is a strong conservationist.

Wischnack stated that specific site maps are available for residents.

John Knight, 13511 Minnetonka Drive, questioned if the ordinance would apply to commercial property. He felt it should. He felt that the free market encourages the preservation of trees. Wooded lots are valued. There is also pressure to make as many lots as possible. There can be a good balance between the city and property owners. He supports the one-acre minimum lot size for significant wooded areas. More grading, access to the street, imprint for the residence, and tree removal would be needed for two lots than for one lot.

No additional testimony was submitted and the hearing was continued to the May 15, 2008 planning commission.

Chair Cheleen appreciated the informative comments.

**9. ADJOURNMENT**

***Adams moved, second by Schmitz, to adjourn the meeting at 9:15 p.m.  
Motion carried unanimously.***

By: 

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Lois T. Mason  
Planning Secretary