

**MINNETONKA PLANNING COMMISSION  
MINUTES**

**MAY 15, 2008**

**1. CALL TO ORDER**

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

**2. ROLL CALL**

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

Staff members present: Incoming Community Development Director Julie Wischnack, City Planner Loren Gordon, Planner Josh Metzger, Natural Resource Manager Jo Colleran, and City Forester Emily Barbeau.

**3. APPROVAL OF AGENDA:** The agenda was approved as submitted with additional comments provided in the change memo dated May 15, 2008.

**4. APPROVAL OF MINUTES:** May 1, 2008

*Adams moved, second by Walker, to approve the May 1, 2008 meeting minutes as submitted.*

*Blatz, Lehman, Schmitz, Sjeklocha, Walker, Adams, 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 May 5, 2008:

- Adopted a resolution approving items concerning Braeburn Woods, a 10-lot subdivision of the existing properties at 16400, 16408, and 16416 Hidden Valley Road.
- Continued discussion regarding items concerning an expansion of Groveland Cemetery to look into developing a tree preservation plan.
- Adopted a resolution approving items concerning demolition of the existing home and construction of a new home within the floodplain at 2504 Bantas Point Lane with a one percent deviation from the mcmansion policy.

Wischnack announced future events:

- A comprehensive guide plan open house will be held May 19, 2008 from 5 p.m. to 7 p.m. at city hall.
- A comprehensive guide plan coffee open house will be held May 28, 2008 from 7 a.m. to 8:30 a.m. in the boards and commissions room of city hall.
- An informational meeting on tax increment financing will be held from 5 p.m. to 7 p.m. on May 28, 2008 in the shady oak room.
- A joint comprehensive guide plan meeting will be held June 16, 2008 at 6:30 p.m.
- A special meeting for the planning commission will be held July 22, 2008 at 6:30 p.m. to consider the comprehensive plan.

**6. REPORT FROM PLANNING COMMISSION MEMBERS:**

Lehman reported that he attended a land use planning workshop. He received complements from presenters regarding Minnetonka's recently hired city planner, Loren Gordon. He shared information he gathered from the meeting regarding sustainable living guidelines and best practices as it relates to trees.

Chair Cheleen introduced Minnetonka's newly hired City Planner Loren Gordon. Wischnack accepted the position of Minnetonka's Community Development Director effective with Ron Rankin's retirement at the end of May.

**7. PUBLIC HEARINGS: CONSENT AGENDA**

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

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

- A. Conditional Use Permit and Site and Building plan review for development of a neighborhood park (Oakhaven Park) at 13608 Spring Lake Road.**

Recommend that the city council approve the resolution on pages A20–A23 of the staff report. This resolution approves a conditional use permit for grading in excess of 1,000 cubic yards at 13608 Spring Lake Road, Oak Haven Park. Approval is based on the following findings:

- 1) The proposal would meet the general conditional use permit standards as outlined in city code.
- 2) The proposal would meet minimum engineering and natural resources requirements.

Approval is subject to the following conditions:

- 1) 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.
  - a. The following must be submitted for the grading permit to be considered complete:
    - (1) Final grading, drainage and erosion control plans must be submitted for staff approval.
    - (2) Final plans must include a rain garden or infiltration swale to meet city stormwater quality standards, which requires the infiltration of one (1) inch of stormwater runoff off of the entire new impervious surface on the property.
    - (3) 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.
  - b. Prior to issuance of a grading permit:
    - (1) Install a temporary rock driveway, erosion control, and tree protection fencing for staff inspection. These items must be maintained throughout the course of construction.
- 2) A copy of this resolution must be recorded with Hennepin County.
- 3) Permits may be required from other outside agencies. It is the applicant's responsibility to obtain any necessary permits.
- 4) The applicant must comply with all monitoring requirements of other appropriate regulatory agencies.

- 5) The city council may reasonably add or revise conditions to address any future unforeseen problems.
- 6) 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.
- 7) The applicant must agree to the above conditions in writing.

**B. Jason and Amy Moeckel are requesting a conditional use permit amendment for the construction of a home addition at 9914 Minnetonka Boulevard.**

Recommend that the city council adopt the resolution on pages A23-A25 of the staff report. This resolution amends and replaces a conditional use permit amendment for a single-family dwelling in a B-2 Limited Business District. Approval is based on the finding that the proposal meets the required conditional use permit standards and is subject to the following conditions:

- 1) 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.
- 2) No future expansion of the home, beyond that allowed by this conditional use permit, shall be permitted.
- 3) The city council may reasonably add or revise conditions to address any future unforeseen problems.
- 4) 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.
- 5) The applicant must agree to the above conditions in writing.
- 6) This resolution repeals and replaces Resolution No. 95-9959 adopted on September 11, 1995.

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

**8. PUBLIC HEARINGS**

**A. Donald and Donna Kyllonen are requesting a side yard setback variance from 10 feet to 2.5 feet for the construction of a deck at 14440 Woodruff Road.**

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

Metzer reported. He recommended denial of the application based on the findings listed in the staff report.

Blatz asked who currently maintains the city outlot. Metzer explained that the area is maintained as lawn. He invited the applicant to comment. There are currently no plans to construct a trail within the outlot.

In response to Lehman's question, Metzer explained the location of the property lines and setback. A deck on the north and east would meet setback requirements. The dotted red lines represented the area where a deck could be constructed. Setback requirements relate to the footings and cantilevered portion of the deck.

Donald Kyllonen introduced himself and his wife Donna. They have resided in Minnetonka 26 years. Mr. Kyllonen stated that:

- An existing deck was removed to create living space.
- Staff overlooked a win-win situation in regard to the trail outlot.
- He provided photographs of the site.
- The northeast corner is quite narrow and has very little sun. During the morning hours, there may be sun within 6 to 8 feet of the wall, but there is not a lot of sun exposure. It is not a good location.
- Having the deck on the southwest side would mitigate sound from Interstate 494.
- There is 55 feet from his property and his neighbor's property. There is a 25-foot trail easement between them owned by the city.
- He calculated that 6.1 feet would be on the back side.
- He understood the need for the city to maintain easements for drainage and utility purposes.
- There is no potential development to the rear of his property because it is adjacent to a city-owned wetland.

In response to Mr. Kyllonen's question, Colleran confirmed that a boardwalk could be constructed in a wetland.

Mr. Kyllonen questioned what purpose the 7 ½-foot easement served. He questioned why the city would need to access the wetland by going through his or his neighbors' property when the city owns property that would provide access the site. Mr. Kyllonen spoke to Dean Elstad a year ago and he said that if a trail was ever built, it would be approximately 8 feet wide. There is a 25-foot wide plot of land. That would be ample space for the city to put in the utilities or whatever would be needed.

Wischnack explained that the 25-feet of property deeded to the city is not a trail easement. The trail and utility easement is the 7 feet on the applicant's and neighbor's properties that can be used for telephone, cable, gas, electric, and potentially a trail.

Mr. Kyllonen felt that when all aspects of the unique situation would be considered, the proposed project is reasonable. Granting the request would not jeopardize the city's access to the wetland area. In this case, enforcement of the variance standard is unreasonable toward the homeowner. He requested commissioners reject denial of the variance and approve the request.

Lehman asked if the applicants had considered wrapping the deck around the residence. Mr. Kyllonen said that they have not. More noise from the freeway would be heard in that location. The proposal would be the best location. He would be willing to reduce the deck's size a couple feet. He would like to have a usable space on the west side that can be accessed from the dining area.

Blatz asked for the layout of the house. Mr. Kyllonen explained the layout.

The public hearing was opened.

No testimony was submitted and the hearing was closed.

Lehman recognized the uniqueness of the situation. He saw room for flexibility, but not as much as what the applicant requested. His reaction was that it would be an ideal situation for a wrap-around deck.

Schmitz echoed Lehman. She did not support posts being located in the easement. She would consider a deck that size if it had no posts in the drainage and utility easement. The overhang of the deck would not be as much of a concern for her. She agreed that the wrap-around deck would be the ultimate answer.

Adams felt the proposal would be a great design, but he did not feel the hardship standard was met. There is no practical difficulty and there are several options to relocate the deck to meet ordinance requirements.

Blatz concurred with Adams. A wrap-around deck would still be adjacent to the dining room and kitchen. She supported staff's recommendation.

Walker asked where the existing utilities access the residence. Mr. Kyllonen responded. Walker was aware of the comprehensive guide plan's emphasis placed on connecting the trail system. The situation is not an undue hardship and the wrap-around porch would work architecturally.

Sjeklocha asked if the building permit issued in the fall of 2007 included a deck. Metzger explained that the building permit was for a home addition for interior living space. It provided for an expansion of the dining room and kitchen. There was no deck on the building permit. Sjeklocha agreed that the variance did not meet the practicality and hardship standards.

Chair Cheleen asked if a utility easement is usually 10 feet. Metzger explained that the utility easement is 7 feet in this case.

Chair Cheleen understood the situation and practicality. He asked how wide the deck could be if a post was not allowed in the easement. Metzger calculated that there is 9 feet from the edge of the residence to the south easement boundary. It widens to 11 feet on the north end of the deck from the edge of the residence to the drainage and utility easement. A variance of 3 feet would be required to allow a deck within 7 feet of the property line.

Mr. Kyllonen was willing to be flexible in regard to the size of the deck. The wrap-around deck would work. He questioned why there is a 7-foot easement and a 10-foot setback from the property line. He questioned if the posts could be put 6 feet from the residence and the deck extended out further. He would prefer that rather than do the wrap-around deck. Putting a post in front of the sliding-glass doors would also create an inconvenience for moving items into the house from a trailer. Chair Cheleen clarified that the ordinance prohibits any part of the structure from going into the setback.

Mr. Kyllonen wanted a resolution amicable to the applicant and the city. The city has ample access to the trail property. He did not feel the proposal was unreasonable.

Lehman saw three options: following ordinance requirements; recognize the unique situation and approve a 3-foot variance for a 7-foot setback; or accept the applicant's proposal. His initial reaction was to require the 10-foot setback. He would accept the 3-foot variance.

Walker suggested the deck being cantilevered 3 feet.

Schmitz was interested if staff had concerns with the 3-foot variance. Wischnack explained that she considers the worst-case scenario. There is a telephone line in that area. If equipment needed to access the area to reach a storm sewer, then the cantilever would impact the situation.

Mr. Kyllonen stated that five years ago Woodruff Road was torn up and reconstructed. New storm sewers and outlets were installed. A new one was located in front of his house. Ponding has disappeared. The issue with the storm sewers has been resolved. It is doubtful that there would be an additional need to add more storm sewers. The 25-foot trail easement sits at the low point of the property. Wischnack explained that in 20 years or 30 years the road may be rebuilt and maintenance of the storm sewer may be required.

***Adams moved, second by Sjeklocha, to adopt the resolution on pages A11–A13 of the staff report, which denies the proposed side yard setback variance from 10 feet to 2.5 feet for construction of a deck at 14440 Woodruff Road. Denial is based on the following findings:***

- 1) The proposal is not reasonable. It would not meet the required standards for a variance, because:
  - a. UNDUE HARDSHIP:
    - (1) The variance request is not based on any practical difficulty inherent to the property. Rather, it is based on the applicants' desire to construct a specifically-sized deck in a specific location.
    - (2) A 12-foot wide deck, nearly the same size as the 14-foot wide deck proposed by the applicants could be built on the northeast side of the home, meeting all required setbacks.
    - (3) There was previously a deck on the northwest corner of the home, which was removed by the applicants to

accommodate a living space addition. Lack of deck in applicants' desired location is, therefore, self-created.

- b. UNIQUE CIRCUMSTANCE: The noise impacts of Interstate 494 do not warrant the requested variance, as it is not a unique circumstance.
  - (1) There are several other properties along Woodruff Road that are significantly closer to the interstate.
  - (2) In the immediate area there are decks on the rear of homes which face the interstate. In fact the residential property immediately to the west of the applicants is one such site.
- c. NEIGHBORHOOD CHARACTER: The addition of proposed deck itself would not significantly alter the character of the immediate area. However, future similar requests may be prompted by approval of the applicants' proposal. Significantly reduce side yard setbacks all along Woodruff Road would in sum change the character of the neighborhood.

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

**B. JoAnne Liebler is proposing to reconstruct the existing detached garage at 17622 Ridgewood Road.**

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.

Lehman asked if non-conforming situations rectify themselves in time. Wischnack stated that staff tries to find an option to comply with ordinance requirements, but this case did not have a conforming location because of the topography behind the garage. Each situation presents different circumstances. The narrow lot width at the street frontage also restricted the options.

Lehman clarified that the proposal would be an expansion of an existing nonconforming use. He asked what would be the next possible expansion scenario. Wischnack stated that it would be difficult to expand the garage size further. It does have conforming side yard setbacks. If there was flat property on the north, then that would be a concern but there seems to be no expansion possibility.

Lehman's concern was setting a precedent. Wischnack thought of a variance that the city approved for an accessory building close to a property line. It also had height issues. It did not impact the neighborhood. Each variance is considered on its own merits. In this case, it was not found to be a problem. Each property is quite unique.

Chair Cheleen saw that there was no other realistic place to build a detached structure.

JoAnne Liebeler, 17622 Ridgewood Road, applicant, stated that her garage was constructed in the 1940s. It has a flat roof. It has leaked and needs a face lift. She hopes to keep a vehicle in it when it is improved. There is no family room in the house currently. The room above the garage could be a family room. She provided photographs. It is currently ugly and in pretty bad shape. The improvement would coincide with the trail being spruced up. One of the two neighbors who would be impacted supports the proposal.

Mr. Liebeler stated that the needs of the neighbors and public in general were taken into consideration when the plan was created. He spoke to his neighbor about not piling snow on the structure because it would be repaired, but the neighbor ignored his request. He understood the neighbor's objection and tried to incorporate the neighbor in creation of the plan, but the neighbor would have no part of it except to provide a written objection to the city. His objection was that the greenery and view would be obstructed. He has 40-foot tall trees on the Ridgewood Road side of his house. They eliminate the view of anything 15 feet away from his residence. The view he refers to is when he steps out his front door, onto his driveway, and looks across the flat roof at some dilapidated lilac bushes that the applicants have not attended to for the last couple of years because they knew they would be redoing the site. He believed the neighbor was opposing just for the sake of opposing. The applicants have spoke to a landscaper about incorporating shrubs that would complement the proposed structure. The view from the street would be improved by the project. Mr. Liebeler saw no legitimate objection.

Walker confirmed with Mr. Liebeler that he would be willing to deal with the drainage and buffer issue. It appeared to Walker that every attempt was taken to keep the scale of the structure as low as possible. Mr. Liebeler recognized that the structure could have been built higher, but the area would not have running water or amenities that would make it a living space. Heating and cooling may be added.

The public hearing was opened.

Paul Chamberlain, attorney for Beat Krummenacher, neighbor west of the applicants, stated that:

- The plan would not adhere to the hardship rule.
- The property can be put to reasonable use.
- The residence has a different garage.
- The storage place would be used as a foundation for a new structure that is 17 feet from the road and violates ordinance requirements.
- The space would be used as a yoga and craft studio.
- The proposal would affect the property west of the site because it would remove the view of greenery.
- He questioned the definition of living space. The addition would have heating and air conditioning. It would not be accessible to the garage.
- The property is 2.5 acres in size. An addition to the residence or using part of the existing house would be better.
- Using the height restriction is a flawed argument. It expands the size of the structure. The structure is obviously a nonconforming use that was grandfathered in. The grandfathering does not allow the site to become bigger. The mid-roof would be 10 ½ feet high.
- As a matter of law, the proposal would not be allowed. The court of appeals in 2002 in the Moeller case struck down the decision to approve a variance in St. Louis Park.
- A precedent would be set.

Dan McGinley, 17622 Ridgewood Road, stated that a precedent had already been set similar to the proposal. He stated that the neighbor's home east of the site is on top of a hill and the height of that garage is taller than the proposal. The application is not extraordinary or unusual for the area. The height is not an issue. He provided a photo of a pick-up truck, trailer, and snowmobile that had been stored in the garage. There was so much water entering the garage

through the roof that they could no longer be stored in it. The structure would be used as a garage once the improvements would be completed.

No additional testimony was submitted and the hearing was closed.

Lehman felt the need to improve the structure was being proposed in a way to greatly improve the aesthetics of the neighborhood. He had concerns regarding the expansion of a nonconforming property, but the proposal is a reasonable solution to the problem.

Schmitz had no problem granting a variance to allow a sloped roof. Living space could be created and still meet the height requirement. She saw it as improving a structure that needs improvement and would deteriorate without a change in the roof. She did not see the rationale behind punishing the applicants for admitting more than box storage would be done in the space above the garage. The plans improve the structure. The cited case dealt with a height variance. The proposal deals with putting a roof on a building that meets all height requirements. She supported staff's recommendation. She saw no problem. It would improve the structure itself.

Sjeklocha concurred with Schmitz. The physical constraints of the site; the height could go up to 12 feet, but the proposal is for 10 ½ feet; the square footage could be 1,000 and the proposal is for 861. It would be an improvement for the area. The proposal would enhance the exterior of the garage and comply with height and size ordinance requirements.

Chair Cheleen commented that the proposal meets the height and size requirements. He asked staff if a yoga or craft studio would violate a city ordinance. Wischnack answered in the negative.

***Adams moved, second by Schmitz, to adopt the resolution on pages A9-A12 of the staff report, which approves the proposed variance to allow an expansion of a non-conforming garage at 17622 Ridgewood Road. 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 an undue hardship due to the topography of the site, width of the lot, location of the driveway and existing vegetation.

- b. **UNIQUE CIRCUMSTANCE:** The non-conforming setback is a circumstance that is not common to every similarly zoned property.
- c. **INTENT OF THE ORDINANCE:** The improvements would not increase the footprint of the garage, and would comply with the zoning ordinance requirements for a detached garage for maximum height and size.
- d. **NEIGHBORHOOD CHARACTER:** The garage improvements would not alter the character of the neighborhood. The improvements would visually enhance the exterior of the garage. There is also a detached garage on the property to the east that is set back 17 feet from Ridgewood Road.

Approval is subject to the following conditions:

- 1) Prior to issuance of a building permit:
  - a. The stairs and landing accessing the back door of the garage must be reoriented as to not encroach on the existing driveway.
  - b. A copy of this resolution must be recorded with the County and a copy of the recorded document returned to the city.
  - c. 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) The garage cannot be used for any commercial activities.
- 3) The driveway must be paved from the garage to the access point along Ridgewood Road.
- 4) Submit a construction management plan addressing traffic, parking, access and hours of operation if garage construction is utilized for television production.
- 5) 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.

***Blatz, Lehman, Schmitz, Sjeklocha, Walker, Adams, 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.

**C. Continued public hearing regarding the tree ordinance.**

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

Colleran reported.

Adams asked for the motivation behind the changes to the ordinance. Wischnack explained that it had been studied for a couple years. Public testimony prompted the proposal. Minnetonka residents put value on its natural resources. The results of a community survey showed that residents ranked natural resources very high, including higher than public safety in some situations. The proposal would protect the character of a neighborhood. That was the motivator for city council to direct staff to initiate the process of updating the ordinance. The current ordinance relates more to tree replacement. The proposal would include tree preservation.

Adams asked what percentage the 2,300 affected parcels made up the total number of parcels in the city. Wischnack estimated 17, 500 parcels in the city. The tree preservation ordinance is an overriding ordinance that has jurisdiction over all properties in Minnetonka. The 2,300 residents notified reside in wetland preservation areas. The ordinance would apply to all property development, including subdivisions.

Wischnack clarified for Schmitz that any parcel with any part of a woodland preservation area on it was included in the notification. The size of each parcel or its ability to be subdivided was not looked at.

Blatz asked Wischnack to explain the aspect of the city taking property from residents as noted in the change memo dated May 15, 2008. Wischnack cited City Attorney Desyl Peterson's opinion and the League of Minnesota Cities property taking guidelines.

In response to Lehman's question, Colleran explained that the proposed ordinance in the packet was not updated since the last meeting because staff understood commissioners would have additional discussion. The proposal

would be amended after the commission finishes its review and prior to the city council's review.

Sjeklocha asked if buckthorn and garlic mustard removal had been considered as a part of the ordinance. Colleran responded that the city does not require the removal of buckthorn for individual properties. The city has buckthorn wrenches residents can borrow and Restoration Specialist Janet Larson gives seminars in October on Buckthorn removal. Now is the time to remove garlic mustard. The goal is to promote stewardship. The city is an advocate for removing it, but there is no requirement for residents to remove it.

Chair Cheleen appreciated the information he has received from the city promoting the removal of buckthorn. Colleran explained how buckthorn prevents flowers and trees from reseeding and may take over.

Chair Cheleen explained that only the woodland preservation area of a parcel would be required to have no more than 25 percent of the trees in the woodland preservation area removed. Colleran confirmed for Cheleen that an acre lot with a woodland preservation area could be subdivided if no more than 25 percent of the woodland preservation area would be removed.

Chair Cheleen asked how a planned unit development could be utilized. Wischnack explained that a planned unit development allows more flexibility to save the most important features of a site, including trees. Reducing a setback or changing the footprint of a structure to save natural features is an example.

Lehman asked if a property owner has the right to utilize planned unit development zoning. Wischnack explained that a property owner cannot be required to utilize planned unit development zoning, but incentives, such as increased density, may be provided as a trade-off. The density allowed by traditional R-1 zoning would be calculated and used as a guide line. Lehman wanted it clearly understood that a property owner does not have the right to create a planned unit development.

Chair Cheleen asked if an acre could be subdivided into two half acres and one half acre be a planned unit development and the other half acre be zoned R-1. Colleran understood that the site would need to be platted as a planned unit development.

Schmitz pointed out that an applicant would have the opportunity to mitigate removal of more than 25 percent of a woodland preservation area. Wischnack agreed.

The public hearing was continued.

Charlie LaFever, 2714 Oakland Road, was planning to subdivide his property. He felt making the minimum lot size one acre would be disasterous. He stated that:

- Staff suggested that subdividing an acre could be done, but he does not think it can.
- It would be a severe hardship for retired property owners counting on subdividing property to fund retirement. It would be a huge loss in the value of the property.
- One-acre lots do not sell for \$600,000 to \$800,000. Half-acre lots do sell for \$300,000 to \$400,000.
- A half-acre lot is already a big lot compared to surrounding communities.
- Development costs do not change.
- The proposal would cost a lot of property owners 50 percent of the value of their property.
- It is not fair to put the hardship on the backs of the owners of woodland preservation areas.
- It does not impact the developer. It impacts the property owner.
- He has been a city attorney for nearly 30 years. Zoning is set up to protect a community. A planned unit development is a flexible planning tool. There can be other ways of achieving community values. Covenants can preserve trees and open space. That is a negotiated process by 2 willing parties. A planned unit development throws the rules out of the window. The city can look at the proposal and determine it does not meet the city's values. It also works because the landowner can go back to using R-1 zoning. The proposal would take away the bargaining position of the landowner. The staff report admits it would give the city more discretion to negotiate.
- He provided diagrams of 3 properties as examples illustrating that a ½-acre lot would not be able to be developed without 25 percent of the property. The road would take up 25 percent of the property. It assumes that the entire property is in a woodland preservation area.
- It is not a reasonable balance. It does not respect the property owners' rights.
- Seven percent, 3,000 square feet, of one acre would remain to be developed.

- A property large enough to have a road down the middle and an acre on each side would result in 16 percent of an acre to be developed and 84 percent trees.
- The proposal is not reasonable.
- There seems to be no limit on tree preservation easements.
- He questioned the right for the city to have sole discretion to require “houses that are clustered.”
- His property is not all woodland preservation. There are three strips of woodland preservation area. He questioned where the restriction would be imposed.
- The ordinance should be fair and reasonable. There would be no conclusive regulations for his property.
- A property owner could clear cut his or her property, but the landowner who wants to subdivide cannot do that.
- The proposal would not be fair or reasonable.
- He requested commissioners deny the application.

Chair Cheleen appreciated his comments.

Garret Gardner, 2953 Fairchild Avenue, is an arborist. He stated that:

- He supports the tree ordinance.
- He has seen stronger tree ordinances. The proposal focuses all its efforts on a small territory.
- The shoreland ordinance went away because of opposition.
- He felt sorry for Mr. LaFever because just some properties would be impacted.
- He questioned what would be done for commercial properties. He took down trees for commercial properties on Saturdays.
- Within the last 4 years, he has seen the removal of 100 mature oak trees near his home.
- He did not support taking away land owners’ rights, but he had called the city asking if something could be done to prevent a property owner from removing 20 oak trees because the owner did not like walking on acorns.
- There are cities that require a permit to take down a tree.
- Residents and commercial properties remove trees one at a time.
- He wanted the city to walk the walk and not just talk the talk. He questioned where the trees have gone that were along Minnetonka Boulevard. There is no buffer for the creek at the Burwell House.

- The city removed a tree because it had Dutch elm disease. Instead of replacing the tree, a sign was installed next to the stump.
- He questioned what would happen as roads get widened.

Bob Davidson, 1829 Timberline Trail, is an attorney and developer. He specialized in real estate development. He stated that:

- He favored doing everything possible in the development process to preserve trees.
- Much of what he was going to say has already been said by Mr. LaFever.
- No one understands how the proposed changes would impact various pieces of property.
- Staff should apply the proposal to specific parcels and present the results.
- The proposal could be named “the lawyer’s retirement tree of plenty” ordinance. The ordinance is too broad.
- A better understanding of the proposal’s impact on individual properties is needed.
- He will wait until the final draft to make further comments.

Adams asked Mr. Davidson what wording he would suggest. Mr. Davidson felt a planned unit development would allow discussion between staff and the property owner. That question is profoundly difficult to answer. He did not know. He did not agree with picking a percentage and laying it over an area. A planned unit development is controlled by the municipality because it is a conditional use permit. The city may add any conditions that it wishes. He compared the proposal to the city taking 50 percent to 60 percent of residents’ 401 K plans.

Walker asked if Mr. Davidson had examples of other ordinances. Mr. Davidson did not, but he would take the time to try and find some. Residents want trees and nature.

Chair Cheleen called for a 10-minute recess and reconvened the meeting.

George Macgibbon, 11500 Timberline Road, thanked staff for putting his letter in the agenda packet and allowing him to address the commission again. He was happy to see some grey-haired commissioners. Part of his retirement was invested in his land. He likes trees as well as his neighbor who wrote a letter in favor of keeping Mr. Macgibbon’s trees. Mr. Macgibbon wanted to have a say on his trees. He stressed that a financial interest exists. Wetlands can be negotiated

just like trees. He worried that the government would be intruding more than he cared it to be able to do. Minnetonka is a beautiful city with trees, winding roads, and nice houses. The natural beauty of the city has not been abused except for the retail aspect. The trees come down when roads are widened. The speakers care about trees and have a real interest in the preservation of the value of the land.

Nancy Macgibbon, 11500 Timberline Road, read the results of a report that showed that residents value trees. Staff are nice people, but the report results did not indicate that a new ordinance should be written. It just said that residents like the way it is. She questioned what area of R-1 had been so badly abused that generated the need for a new ordinance. It seems to have been working pretty well. She requested a list of the properties that would have woodland protection areas. She strongly opposed the ordinance. It is an unnecessary ordinance. She wanted someone to point out where abuse occurred. Beautiful oak trees on the corner of County Road 73 and Interstate 394 were removed for condominiums.

No additional testimony was submitted and the hearing was closed.

Walker directed staff to provide a minimum of six examples of how the proposed ordinance would apply to six specific properties.

Lehman concurred.

Wischnack stated that specific properties had been looked at and it would be no problem to provide six examples.

Sjeklocha requested commercial land be included as an example as well as an outline of the implementation steps.

Lehman supported getting closer to the final draft in order to form a better opinion.

Blatz would also like examples of properties that would have benefited from the proposed changes being in place. She questioned what policy is in place to enforce current regulations. Wischnack explained that it would take time to create an example of properties that would have benefited from the proposed ordinance. In response to Blatz's second question, Colleran explained that commercial properties are required to follow a landscape plan or replant trees that were removed that were suppose to have been kept.

Blatz suggested clear-cutting cases be provided. Wischnack agreed.

Schmitz wanted to see what options would be available if the ordinance would allow for a driveway and 25 percent of the trees removed would allow for a residence to be built. The last thing she would want to see done would be for the restriction to be put on the landowner and the landowner to abide by it and manage to subdivide into 2 lots with smaller residences because the building pads would be smaller and then the new homeowner chops down trees and adds an addition to the residence. Now the homeowner has built the house that was not allowed the original property owner to construct.

Lehman asked staff to look into what would be perceived as a good tree ordinance and the balance between the property owner and the city.

Sjeklocha asked staff to comment on the link between widening Minnetonka Boulevard in light of the proposed changes to the tree ordinance.

Lehman requested feedback regarding the argument that there are many residents who consider their property as part of their retirement plan.

Chair Cheleen was concerned that the proposal be applied fairly. He suggested staff provide an example of a residence being constructed on a wooded lot to see how many trees could be saved.

Wischnack asked for feedback regarding the concept of tree classifications. Adams felt that classification makes sense. Some trees are more valuable than others.

Schmitz agreed. It is probably more of a headache administratively to inventory trees, but there is certainly a benefit to preserve trees that live longer and provide more shade. One of the benefits of Minnetonka is the canopy trees. Her biggest concern is how the proposal applies to properties with woodland preservation areas. Wetland preservation has been around long enough that residents are no longer upset by not being able to fill in the wetland and subdivide. The tree preservation area is a new concept so it will be difficult to define a preservation area. She did not want trees regulated to the extent that it does not give enough property owner rights.

Colleran stated that Egan's tree ordinance applied its tree removal requirements evenly to all properties except when it comes to mitigation. The removal of high quality trees requires more mitigation than removal of low quality trees. There is also an option for the property owner to pay the city for mitigation not able to be provided on the site. Colleran was looking for guidance.

Chair Cheleen felt the different species of trees should be kept. Property owners want the right to use his or her land in a meaningful way that is fair to the owner.

Walker understood that property with a woodland preservation area would be at a disadvantage from an investment stand point. Properties with woodland preservation areas need some flexibility.

Lehman commented that the wetland ordinance applies to every wetland. The proposed tree ordinance would apply to only projects located in woodland preservation areas where a variance would be required. It is inherently unfair that a property without a woodland preservation area adjacent to a property with a woodland preservation area would not be subject to the same requirements.

Chair Cheleen stated that the financial benefit to a property owner is not a factor in creating a tree ordinance. The issue is the fairness on whether or not the property may be subdivided.

Adams asked Lehman if he proposed that any property with a tree be covered by the proposed ordinance. Adams stated that there are cities that do regulate every tree. Lehman was not in favor of regulating every tree. Lehman said the difficulty would be the perception that adjacent property owners would be treated differently.

Wischnack encouraged residents to watch the city's website at [eminnetonka.com](http://eminnetonka.com) or call the planning division for updates on when the changes to the tree ordinance would next be discussed.

**D. The city will be considering changes to its retail sales ordinance to identify regulations for sales within residential areas.**

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

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

Blatz asked how the proposal would be enforced. Wischnack explained that enforcement would be provided on a complaint basis.

Adams asked if there is a permitting process for garage sales. Wischnack answered in the negative. Staff would not be aware of a resident having more than two garage sales unless a neighbor complained.

Walker received no parking signs for one side of the street on two occasions when he had a large number of people driving to his residence to prevent a public safety issue. He asked if the Optimist Club's sales during the softball season would be a similar situation. Wischnack explained that the club's sales would fall under solicitation guidelines.

Schmitz assumed one of the major complaints is the parking issue. She asked if there was a difference between regulating a garage sale and the parade of homes. Wischnack stated that the city has received complaints that the proposed ordinance would address.

Lehman asked if a permit to allow a garage sale could be accessed via the internet. Wischnack stated that a permit would not be necessary.

Sjeklocha asked if complaints would be logged. Wischnack answered affirmatively. There is a higher rate of complaints in the spring. The complaint may be received by the police department as a traffic complaint.

Sjeklocha asked if it would apply to non-profit organizations that conduct sales. Wischnack explained that if the sale was conducted in a residential district, then the ordinance would apply.

In response to Sjeklocha's question, Wischnack will check with the city attorney regarding the factors to be considered when determining the reasonableness.

The public hearing was opened.

Allen Miles Albrecht, attorney, stated that the ordinance was fatally defective because it would not be constitutional. He proposed that many people who own property in Minnetonka are not residents because they also own property elsewhere and live somewhere else for parts of the year. The fix would be to add "or owner" in the ordinance wherever the word "residence" is used.

Wischnack said that any wording change would have to be reviewed by the city's attorney.

Lehman noted that that would prohibit renters from having garage sales. Mr. Albrecht said that renters have been allowed to have garage sales. Chair Cheleen said that if a person is living in the residence, then he or she is the resident. Mr. Albrecht said that "and renters" may need to be added also.

Gayle Anderson, 13117 Lone Oak Drive, felt "occupant" might be a good word to use. She asked how the proposal would impact sample sales or a Pampered Chef party.

Wischnack stated that the ordinance would specifically regulate garage sales, estate sales, or any sales on residential property. Sample sales would be under the ordinance's jurisdiction if in a residential property. If retail sales are consistently being conducted out of a house, then it may be applied. Chair Cheleen noted that the sales described in the ordinance are of personal property. A sale of retail items is not personal property. Schmitz commented that if the products are purchased first by the homeowner, then the items could be considered personal property.

Wischnack explained that solicitation ordinances would apply for sales by cub scouts and other organizations. If the city receives a complaint, then the situation would be evaluated.

Ms. Anderson is the mother of five and foresees many garage sales in her future. She felt two was reasonable. She struggled with the regulation of what items, such as items with tags still on them, could be sold.

Maxine Dixon, 4769 Spring Circle, questioned how consignment or resale could be enforced. It would be limiting. Antique dealers have complained about garage sales. Recycling is a positive thing. Nobody should care where items were obtained from. She questioned where the city was going with this. She enjoyed the sales. Restricting the number of sales to two a year was reasonable, but she felt regulating what can be sold could get sticky.

No additional testimony was submitted and the hearing was closed.

Adams commented that no one disagreed with the restriction of two a year. It was reaching to describe the items that could be sold. He suggested those references be deleted. It would be consistent with surrounding communities and decrease the number of complaints.

Chair Cheleen supported the city attorney reviewing Mr. Albert's suggestion.

Adams suggested that sales that did not create a nuisance would not have to be restricted.

***Adams moved, second by Blatz, to recommend approval of the ordinance found on pages A1-A9 of the staff report with the removal of the phrase***

*requiring the property offered for sale to be that solely of the owner of the residence and encouraged staff to review the proposal one more time.*

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

9. ADJOURNMENT

*Lehman moved, second by Adams, to adjourn the meeting at 10:57 p.m. Motion carried unanimously.*

By:



---

Lois T. Mason  
Planning Secretary