

**MINNETONKA PLANNING COMMISSION
MINUTES**

JUNE 19, 2008

1. CALL TO ORDER

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

2. ROLL CALL

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

Staff members present: Community Development Director Julie Wischnack, City Planner Loren Gordon, Principal Planner Susan Thomas, Planner Josh Metzger, and Planner Jeff Thomson.

- 3. APPROVAL OF AGENDA:** The agenda was approved as submitted with additional comments and modifications provided in the change memo dated June 19, 2008.

- 4. APPROVAL OF MINUTES:** June 5, 2008

Sjeklocha moved, second by Adams, to approve the June 5, 2008 meeting minutes as submitted.

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

5. REPORT FROM STAFF

Gordon briefed the commission on land use applications considered by the city council at its meeting of June 9, 2008:

- Adopted a resolution approving an amendment to an existing conditional use permit for a home addition at 9914 Minnetonka Boulevard.
- Adopted a resolution approving a request to vacate utility, drainage, right-of-way, irrigation, landscape, sump, maintenance easements at 14414 Stewart Lane, 14403-14421 Excelsior Boulevard for The Exchange.
- Adopted a resolution approving a conditional use permit for grading in excess of 1,000 cubic yards for Oakhaven Park.

- Continued discussion of an ordinance regulating retail sales in residential districts to the June 30, 2008 city council meeting.
- Introduced items concerning Tonka Town Commons: rezoning from R-2 to B-3 and a guide plan amendment from low-density residential to commercial.
- Adopted a resolution approving items concerning an expansion of Groveland Cemetery
- Discussed the public process for development review of Minnetonka Mills/Burwell Drive area.
- Introduced an ordinance for outdoor displays.

Gordon announced that an extra planning commission meeting will be held July 22, 2008 to conduct a comprehensive guide plan public hearing.

6. REPORT FROM PLANNING COMMISSION MEMBERS:

Sjeklocha attended two land use seminars in May: Land Use Basics and Beyond the Basics. She found them very helpful.

7. PUBLIC HEARINGS: CONSENT AGENDA:

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

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

A. Variance to reconstruct a shed on the property at 5701 Vine Hill Road for Darrell Kvasager.

Adopt the resolution on pages A9-A11 of the staff report, which approves the proposed variance to allow an expansion of a non-conforming shed at 5701 Vine Hill 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 and the proximity of the adjacent floodplain and wetland.

- b. **UNIQUE CIRCUMSTANCE:** The non-conforming setback is a circumstance that is not common to every residentially zoned property.
- c. **INTENT OF THE ORDINANCE:** The proposal would meet the intent of the ordinance since it would not create any new adverse impacts on adjacent properties.
- d. **NEIGHBORHOOD CHARACTER:** The shed would not alter the character of the neighborhood. The improvements would visually enhance the exterior of the garage and would be architecturally consistent with the principal structure.

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 Hennepin 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) The shed cannot be used for any commercial activities or as a dwelling unit.
 - 3) 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. Side yard setback variance from 10 ft to 5 ft and an aggregate side yard setback variance from 30 ft to 20 ft. for the construction of a home and garage addition at 3618 Moorland Road for Joshua Hinz.**

Adopt the resolution on pages A8–A11 of the staff report, which approves the proposed home and garage addition at 3618 Moorland Road which requires the following:

- Side yard setback variance from 10 feet to 5 feet.

- Aggregate side yard setback variance from 30 feet to 20 feet.

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:** Given the small size of the lot and the proximity of the existing home to the north side property line (27 feet) and the front property line (37 feet) it would be virtually impossible to construct an attached two-stall garage without the need for a side yard setback variance. The lack of an attached two-stall garage constitutes an undue hardship.
 - b. **UNIQUE CIRCUMSTANCE:** The lot size (10,800 sq. ft.) and lot width (90 feet) are unique circumstances for an R-1 zoned property.
 - c. **INTENT OF THE ORDINANCE:** The proposal meets the intent of the ordinance by reducing an existing nonconformity and giving the applicant reasonable use of the property through construction of an attached two-stall garage.
 - d. **NEIGHBORHOOD CHARACTER:** The proposed use of the property will continue to be residential and the proposed home meets McMansion Policy standards. Therefore, the essential character of the neighborhood will not be altered.

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. The property must be surveyed by a licensed surveyor. The survey must include:
 - (1) All property lines.
 - (2) Existing and proposed structures with setback dimensions.

- (3) Existing trees in the front yard and at the north property line.
 - 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.
 - d. As part of the building permit application submit an erosion control plan showing grading stockpiles and tree protection fencing.
- 2) All trees along the north property line and the two ash trees in the front yard must be preserved.
- 3) 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.

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

8. PUBLIC HEARINGS

A. Variance to construct a new pylon sign on the property at 3500 County Road 101 for Evergreene Jewelers.

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

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

Lehman asked how the five-foot setback was determined. Thomson explained staff's intent to keep the setback comparable to others in the area. The five foot setback would center the sign within the striped area and would be similar to setbacks along County Road 101.

Lehman noted setbacks as narrow as 2 feet on County Road 101. Thomson described the uniqueness of different setbacks in the area.

Gerry Greene, 5409 Highland Road, applicant, thanked the city and its citizens for supporting his business. He thanked Thomson for working diligently with him. He provided illustrations of the area where the sign would be located. It would be safer to locate the sign further away from the driveway. Decreasing the setback would improve the presentation of the sign and help handle the truck traffic. Adams asked why trucks would visit the site. Mr. Greene noted that UPS and other delivery trucks visit the site. He did not want the sign to be run over.

Lehman asked if the post would be located at the setback requirement and the overhang would extend to the road. Mr. Greene agreed that the sign overhang would extend to the end of the grass. Lehman understood that the setback would have to be a zero-foot setback to allow the sign to overhang to the street. Mr. Greene requested a variance to allow the setback to be at zero feet.

Chair Cheleen was concerned with the sign encroaching on the handicap stall.

Walker asked if a curb would prevent trucks from cutting the corner and running over the sign. Mr. Greene was not sure a curb would fit the area. A curb may also cause motorists to drive further away from the side of the drive.

The public hearing was opened.

Gerry Greene, 3608 Tonkawood Road, Highland Management Group, manages the property. He wanted a nice sign, but was concerned with the safety issue. A large truck has a tendency to swipe into things. He has had enough signs and canopies that have been hit. A curb is a good idea, but the whole site is pretty tight and may cause a hardship for the parking lot layout. He favored pushing the sign back to decrease headaches down the road.

No additional testimony was submitted and the hearing was closed.

Cheleen confirmed with Thomson that a five-foot setback would position the post for the sign seven feet from the pavement. A two-foot setback would locate the post four feet from the pavement.

Sjeklocha confirmed with Thomson the applicant's request and staff's recommendation.

Lehman noticed sight line issues when he visited the site that would be improved by decreasing the setback requirement. He leaned more towards a two-foot setback.

Adams saw visibility and traffic flow as issues. He was not troubled by a zero-foot setback. The pylons would be two feet from pavement. He saw no real rationale for moving it back further.

Sjeklocha concurred with Adams. A zero-foot setback would fit the sightlines of the area.

Adams moved, second by Sjeklocha, to adopt the resolution on pages A6-A8 of the staff report, which approves a sign setback variance from 10 feet to 0 feet for a new pylon sign at 3500 County Road 101. Approval is based on the following findings:

- 1) A 0-foot setback is reasonable and would meet the required standards for a variance, because:
 - a. UNDUE HARDSHIP: The existing conditions of the site present an undue hardship in complying with the setback requirement.
 - b. UNIQUE CIRCUMSTANCE: The right-of-way acquisition and location of the existing parking lot are circumstances unique to the property.
 - c. INTENT OF THE ORDINANCE: The signs would provide appropriate and reasonable site identification and way-finding.
 - d. NEIGHBORHOOD CHARACTER: The sign would not impact the character of the surrounding neighborhood. The sign would comply with size and height restrictions, and would be set back similarly to other commercial signs in the vicinity.

Approval is subject to the following conditions:

- 1) Building and sign permits are required for the pylon sign. The following must be completed prior to issuance of any permits:
 - a. A copy of this resolution must be recorded with the Hennepin 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) Every line of copy and graphics in the sign must be at least nine inches in height.
- 3) This variance will end on December 31, 2009, unless the city has issued a building and/or sign permit for the project covered by this variance or approved a time extension.

Sjeklocha, Walker, Adams, Blatz, Lehman, and Cheleen voted yes. Schmitz was absent. 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. Items concerning a three-lot subdivision of existing properties at 12117 Hilloway Road (Northern Pines).

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 Adams' question, Metzer responded that the slope is at 20 percent. The elevation is 946, with a 30-foot drop.

Chair Cheleen noted neighbors' concerns with the size of the lots. Chair Cheleen saw similar-sized lots in the area. Metzer pointed out lots and their sizes in the area.

Blatz asked how many trees would be lost if Lot 1's driveway was not co-located with the neighboring lot. Metzer answered five trees.

James McKenna, 2430 Meeting Street, applicant, stated that he was required to propose where the houses would be located on the lots. He stated that:

- He felt it was important to plan things so that light would reach the inside of the residences.

- As the owner of a corner lot, he has the right to access either road for his driveway. He wished to maintain that flexibility and right. The existing stubs are located on Hilloway Road.
- The utility lines may be accessed on Hilloway Road without much tree loss. Three trees would be removed, one of which is a Locus and one 9-inch pine.
- Staff calculated that the tree loss for the entire project would equal 22 percent to 23 percent.
- He wanted a plan he could be proud of.
- He did not like the standard conservation easement form. He wanted to do reasonable things with the property. The basin is a 36 acre enclosed basin. It is full of wildlife. He wanted to keep it that way, but he wanted to allow a vegetable garden or flower garden, play house, gazebo, swing set, and/or removal of objectional trees.
- He supported a covenant that would protect the north woods setting.
- He requested staff allow him to maintain Lot 1's right to access Byrnes Road or Hilloway Road.

Adams was concerned with the building pad on Lot 3. The driveway would be very steep. Mr. McKenna explained that fill would be brought in between the house and the existing higher elevations on the north side. One neighbor has a privacy fence and pool. The good trees would be maintained and limit a gazebo size to 150 square feet. He wanted property owners to have a reasonable use of the property.

The public hearing was opened.

Bob Stine, neighbor south of the property, felt the former owner of the site would be unhappy with the proposal. He stated that:

- It is a special area with 50-foot-high pine trees.
- He was concerned with changing the area.
- Metzger was helpful in explaining the situation.
- He questioned why the rush to get it approved if nothing would happen right away anyway.
- The owner may be violating code already by removing trees.
- The Minnesota Natural Heritage Information System takes 3 weeks to respond to data regarding if there is any protected nesting sites or habitat on the site.

- The property is in a flood plain. His home in Edina had four feet of water in his basement.
- He favored taking more time to consider the facts.
- Building three houses with additional hard surface would increase the water runoff.
- The wildlife needs to be protected and thought through carefully. It is a wetland area.
- A preliminary plat dated April 14th was being considered already and was being acted on quickly.
- He wanted the proposed tree ordinance to be applied to the proposal.
- The proposal would seriously change the character of the neighborhood. The most affected neighbors should be given time to have professional evaluations done.
- His house is setback 105 feet from Byrnes Road. A 30-foot setback would not fit the area.

Susan Einspar-Wayne, 12105 Hilloway Road, was concerned with the same things as Mr. Stine. She stated that:

- She requested more time to research the impact of the proposal to her residence.
- She was concerned with the increased water flow.
- She recently had drains put in on her property and the backyard regraded because hard rains filled her pool with the garden.
- The proposal may have a significant flooding impact on her home.
- The proposal would change the character of the meadow. She opposed gazebos and gardens being added. She saw a deer in the meadow.
- Every surrounding homeowner would be impacted.
- Buses pick up and drop off kids on Hilloway Road and short setbacks obscure the visibility of parents.
- Once the proposal is approved, what would prevent the structure from being put anywhere on the property and additional structures from being added.

Dr. Jennifer Biglow, 12010 Hilloway Road West, noted the density of the canopy of the trees in the area as compared to Hilloway Park. Dividing the site into three lots would significantly reduce the number of trees. There should be no cutting until the "green" issues are solved.

Elliott Kohne, 2451 Byrnes Road, stated:

- He needed a variance when he built his house in 1985.
- The meadow use to be a wetland.
- The area is a treasure.
- The proposal would diminish the quality of the area.
- Three houses would be over zealous. There should be two at the most to maintain the character of the area.
- He respected the rights of the property owner.
- He asked how removing the trees could be stopped before it gets worse.

Jim McKenna provided the name and phone number of the landscaper who he hired to clean up dead trees. He hired him to remove the leaners and trim up the trees that encroach on the driveway areas. This spring has been the wettest in 20 years. There is no wetland or standing water. Water is not an issue. He opposed privacy fences, but not fences to protect gardens. His objection was to visible impediments. Mr. Stine has a lot for sale. It would be impossible not to remove 50 percent of the trees on Mr. Stine's lot to construct a residence. His proposal would remove 22 percent of the trees.

No additional testimony was submitted and the hearing was closed.

Chair Cheleen asked Colleran to explain what trees the applicant may remove at this time. Colleran explained the current ordinance. Based on Colleran's inspection last week, the site was in compliance with tree removal requirements.

Metzer explained the elevations and drainage pattern of the area. Since there is no outlet, the applicant submitted calculations that illustrate what would happen if 2 back-to-back 100-year storm events occurred to determine the floodplain elevation.

Chair Cheleen asked if an environmental assessment is necessary. Wischnack explained that no petition has been submitted at this time.

Metzer addressed the process to calculate allowable hard surface coverage and what would be done if an issue occurred in the future.

Chair Cheleen asked how the proposed tree ordinance would impact the proposal. Colleran stated that it would be in compliance. No mitigation would be

required. Approximately five additional trees would be removed to have a driveway off of Hilloway Road instead of Byrnes Road. Colleran stated that staff considers root zones, grading, and worst-case scenarios when calculating potential tree loss.

In response to Blatz requesting that the “rush” of the application be addressed, Metzger explained the applicant review process and Minnesota statute timeline requirements for the city to act on an application.

Sjeklocha asked for staff to comment on the city’s role for final plat approval. Metzger obliged.

In response to Adams’ question, Metzger explained that conservation easements may be drafted to allow certain items. The city cannot require the proposal to have a conservation easement.

In response to Adams’ inquiry, Metzger responded that any amount of fill would not be allowed if it would threaten protected trees. Over 50 cubic yards of fill requires a grading permit and over 1,000 cubic yards of fill requires a conditional use permit.

In response to Lehman’s question, Metzger explained that tree preservation was the prime reason for requesting co-location of the driveway and utilities. Metzger confirmed for Lehman that the property owner has the right to choose which street his driveway would access, but the approval process of the preliminary plat would allow the city the opportunity to direct the decision of which way the driveway would access.

Lehman confirmed with Metzger that the conditions of approval do not require a conservation easement. Staff would encourage the preservation of as many trees as possible and the use of a conservation easement.

Lehman asked if a playground, gazebo, or garden would be considered part of a residence or accessory structure footprint. Metzger explained the standards for an accessory structure to be considered part of the principle structure’s footprint or it having its own footprint.

Metzger pointed out the elevations in response to Lehman’s request. Infiltration of storm water and drainage would need to be kept on the property. Colleran reviewed the location of the floodplain boundary. The floodplain ordinance changed in 2004. The city’s 100-year flood elevation ordinance regulates for

what the land can and cannot be used. Historically, the area was a wetland area in the 1960s. A wetland delineation concluded that the meadow does not meet the requirements to be classified as a wetland.

Lehman noted that the applicant, as the property owner, could currently remove all the trees on his property if the site is not being reviewed for subdivision. Colleran answered affirmatively.

Walker asked Mr. McKenna for the time table. Mr. McKenna said that two lots would be sold right away. His son would keep the third lot until he is ready to build a residence.

Chair Cheleen asked why the conservation easement requirement was removed. Colleran responded that she and staff support conservation easements. Property owner rights are an important issue also. Staff continually strikes a balance with guidance from the city council for each application.

Chair Cheleen asked if covenants could be created for the lots by the developer. Metzger answered affirmatively.

Chair Cheleen asked if a proposed steep slope ordinance would apply to the application. Colleran responded that the proposed amendments to the steep slope ordinance would require stricter erosion control measures for slopes greater than 20 percent.

Adams had problems with the proposal. He had issues with the tree loss, lack of a conservation easement, density, and runoff of Lot 3. Two lots would be acceptable, but not three.

Lehman recognized that the application meets subdivision requirements. He agreed with city council's interpretation of property owners' rights. He supported staff's recommendation.

Sjeklocha concurred with Lehman. She was comfortable with leaving the option for the driveway to access either road.

Chair Cheleen noted that boring would be required to minimize tree loss if the road without utility access was chosen.

Walker preferred the driveway access Hilloway Road.

Blatz concurred with Walker. She supported staff's recommendation.

Chair Cheleen agreed with Lehman, Walker, Blatz, and Sjeklocha.

Lehman moved, second by Walker, to recommend that the city council give preliminary approval to the Northern Pines plat, date-stamped April 14, 2008, with the modifications provided in the change memo dated June 19, 2008. Approval is based on the finding that the plat meets the required standards and ordinances. Approval is subject to the following conditions:

- 1) Prior to final plat approval, complete the following:
 - a. Show the following on the final plat:
 - (1) Dedicate Outlot A as right-of-way to be included with Byrnes Road.
 - (2) 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.
 - (3) Utility easements over existing or proposed public utilities, as determined by the city engineer.
 - (4) Drainage and utility easements over back-to-back 100-year storm elevation of 944.31 and as determined by the city engineer.
 - b. Pay a park dedication fee of \$10,000.
- 2) The following items must be submitted to the city before the city releases the final plat:
 - a. An engineering/utility inspection fee.
 - b. An electronic CAD file of the final plat in microstation or DXF.
 - c. 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:

- (1) Title evidence that is current within thirty days before release of the final plat.
- (2) 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.

- d. Any other requirements included with final plat approval.
- 3) Prior to issuance of a building permit for any lot within the development:
- a. Submit the following items for staff review and approval:
 - (1) A construction management plan. This plan must be in a city-approved format and outline minimum site management practices and penalties for non-compliance.
 - (2) Water and sewer service location and depth must be field verified. Location of basement floor elevation is dependent on depth of water and sewer services.
 - (3) Stormwater ponding and infiltration facilities must be incorporated into this development to meet stormwater management requirements for quality, infiltration, and quantity. Final plans and supporting hydraulic and hydrology calculations certified by a licensed engineer in the State of Minnesota demonstrating that minimum design criteria are met must be provided for evaluation and approval by the city engineer.
 - (4) Final grading, utility and tree preservation plan. The plan must:
 - (a) indicate that each lot will be custom graded at the time of building permit. Only grading for utilities and driveway improvements will be permitted prior to issuance of a building permit;

- (b) show that Lot 1 will gain sewer and water service, and driveway access from Hilloway Road;
 - (c) indicate trees designated for preservation at the time of preliminary plat approval;
 - (d) show sewer and water services to minimize impact to any significant trees. Sewer and water services must be collocated with proposed driveways in order to minimize tree loss. One set of new services must be installed for Lot 3. Location of services for Lot 3 must be shown on the utility plan.
- (5) 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.
- b. Submit the following documents:
 - (1) A recorded copy of the preliminary plat, all required easements, and restrictive covenants.
 - (2) A letter from the surveyor stating that boundary and lot stakes have been installed as required by ordinance.
 - c. Schedule and hold a preconstruction meeting with engineering, planning, and natural resources staff.
 - d. 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.

- e. Install heavy-duty fencing, which may include chain-link fencing, at the conservation easement. This fencing must be maintained throughout the course of construction.
 - f. Pay a hookup fee for sanitary sewer and water.
- 4) Notwithstanding the requirements outlined above, all lots and structures within the development are subject to the all R-1 zoning standards. In addition:
- a. Minimum floor elevation is 946.31.
 - b. All structures must maintain a 20-foot horizontal setback from the 942.0 floodplain elevation.
 - c. All three lots must be custom graded at the time of home construction. The location of houses must be in substantial conformance with the plans date-stamped April 14, 2008.
 - d. The only trees permitted to be removed from the property are those located within the footprint of a proposed home, within 20 feet of the proposed footprint and within 10 feet of the proposed driveway. All other trees must be preserved during construction.
 - e. 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.
- 5) During construction, the streets must be kept free of debris and sediment.
- 6) 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.

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

C. Items concerning a 2-lot subdivision of existing properties at 10323 34th Circle W (Fretham Tenth Addition).

Gordon removed this item from the agenda in response to the applicant's request.

Chair Cheleen invited anyone present for the public hearing to speak.

Marcie Novak, 10327 West 34th Circle, supported staff's recommendation to deny the application.

The public hearing was closed.

Thomas explained that neighbors will be renotified when the item will be reviewed by the planning commission.

D. Conditional Use Permit and Site and Building Plan Review for a fast food restaurant at 6001 Shady Oak Rd (Minnetonka Crossing).

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 asked why the application was being reviewed without an identified tenant. Thomas explained that the applicant wants to make the site available.

Chris North of True North Investments, applicant, agreed the proposal is a tenant driven application. Mr. North thanked staff for their work.

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

Sjeklocha moved, second by Adams, to adopt the resolution on pages A16–A18 of this report. The resolution approves a minor amendment to the existing master development plan to reallocate restaurant use within the Minnetonka Crossings development at 6001 Shady Oak Road. Approval is based on the following findings:

- 1) The proposal would not change the approved tenant mix within the Minnetonka Crossings development.
- 2) The proposal would not increase parking requirements. Minnetonka Crossings would continue to meet minimum parking standards.

Approval is subject to the following conditions:

- 1) The tenant mix within the Minnetonka Crossings development is limited as follows:
 - OFFICE SPACE: 12,302 square feet
 - RETAIL SPACE: 8,129 square feet
 - FAST FOOD RESTAURANT SPACE: 5,060 square feet
- 2) City staff may administratively approve a change to the uses as described in the above condition if code-required parking requirements continue to be met.

- 3) The applicant must obtain all necessary building and associated permits from the city's Community Development Department, including permits from the Environmental Health Division.
- 4) Prior to issuance of any necessary building and/or associated permits, this resolution must be recorded at the county and a copy of the recorded resolution returned to the city.
- 5) Construction must begin by December 31, 2009, unless the planning commission grants a time extension.

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

E. Items concerning ordinances regarding tree protection.

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

Gordon, Colleran, and Thomas outlined the tree ordinance amendment and provided numerous examples of how the proposed ordinance would be applied in a variety of scenarios. Staff recommended commissioners recommend that the city council adopt the resolution approving the ordinance amendment based on the findings listed in the staff report.

Lehman asked for the rationale behind a one-acre minimum lot size. Colleran explained that every site is different.

In response to Lehman's questions, Thomas stated that if no trees would be removed, two residences could be built on an acre of land if all ordinance requirements have been met. Colleran added that one acre, traditional R-1 zoning, and planned unit developments are all options. The Hilloway Road plat meets standards for R-1 zoning and the proposed tree ordinance so it would be in compliance under traditional zoning and the minimum of one lot per acre would not be required.

Lehman asked if staff had encountered situations that would not work. Gordon said that the examples provided were good. There would not be a great amount of clearing of the site right away. Staff's observations of the proposed ordinance found it would work to preserve trees during the initial creation of a lot, but lost its protection of trees capability years later.

Colleran added that the ordinance would require due consideration be given to property site planning to reduce the amount of tree removal. Twenty-five percent removal is a given. Removal of more than 25 percent would require mitigation. The proposed ordinance recognizes needed infrastructure and house pad areas.

A 10-minute recess was held.

Adams and Colleran discussed in what situations the proposed ordinance would have jurisdiction. Residents value trees and want them protected, but residents also voted in favor of being able to remove a tree to construct an addition or an accessory like a sport court.

Adams asked if other communities issue permits for tree removal on existing developed properties. Colleran answered affirmatively and provided examples. City council directed staff to not consider requiring permits for individual tree removal on existing developed properties.

Gordon reviewed changes in the wording of the proposal from what was included in the agenda report. The changes included allowing subdivision of land into two or more lots under traditional zoning if the proposed ordinance tree protection requirements would be met.

Lehman found additional differences. Gordon agreed. The comparison was provided for planning commissioners' consideration. Wischnack stated that changes were inserted in the staff report so that commissioners could see the changes.

Lehman asked which draft would be acted on. Gordon explained the process. Thomas pointed out the only change from the May 2008 proposed ordinance. Lehman understood.

Chair Cheleen confirmed with Thomas that the city attorney will review the ordinance change.

Gordon confirmed changes made to the proposal for Adams regarding planned unit developments and subdivisions.

Sjeklocha asked how the ordinance changes would be implemented. Gordon explained the communication tools that would be used including the city's website, *Minnetonka Memo*, public hearings, mailings, and staff contact with

applicants. Sjeklocha felt it would be important to inform residents of the changes so it would be correctly understood.

Blatz suggested a list of replacement trees be listed on the city's website. Blatz asked how a tree inventory plan would be different with the proposed ordinance than the current ordinance. Colleran explained.

Chair Cheleen saw the effort to balance a property owner's rights with tree preservation. Chair Cheleen asked if the city has the right to turn down a planned unit development. Gordon explained planned unit development requirements and the city's discretion. Colleran directed Chair Cheleen to page A24 which listed the physical characteristics. Mitigation was also a more usable option with the proposal.

The public hearing was opened.

Charlie LaFevere, 2714 Oakland Road, had not seen the new language before. He stated that:

- He understood the intent, but pointed out a conflict in the wording that allowed 25 percent tree removal in an area that would allow 100 percent tree removal.
- He questioned if the one-acre standard was in place.
- The 25 percent per lot requirement concerned him. One eighth of an acre would be allowed to be removed. It would be an unreasonable requirement.
- One acre would accommodate the 25 percent removal, but there would not be a lot of room left over. It would not be reasonable.

Chair Cheleen understood that 25 percent could be used for driveways, public roads, and utilities and an additional 25 percent for building pad and setbacks. Gordon agreed that would be the intent of the ordinance. Gordon provided an example. Colleran walked through an example where the site would be allowed 25 percent removal for infrastructure and each lot would be allowed 25 percent removal for building pad and driveway.

Lehman assumed that if a property was 100 percent woodland preservation area, the proposed ordinance "would not work." It could not be divided, similar to a property that is 100 percent wetland.

Wischnack directed the planning commission to create an ordinance that would promote tree preservation. She recommended the chair table action if time is needed to provide staff with a list of questions for staff to answer. The second option is to make changes to the proposal and recommend it to the city council. Every situation that one might contemplate may be beyond the scope of the ordinance.

Lehman concurred with Wischnack. He agreed every case could not be solved. What he saw was a significant improvement. He did not support the one-acre minimum requirement. He was more comfortable with it now than he was prior to the meeting.

Adams commended staff in responding to commissioners' concerns. He suggested "basic tree removal area" needs be defined and Section 2 should replace "within the width of required areas" to "for required areas." Colleran pointed out the definitions, which include "basic tree removal area," on page A17.

Walker asked if the proposal would provide flexibility for each specific situation. Wischnack felt that flexibility would exist for the commission and the city council just like any other ordinance.

Chair Cheleen understood the intent would be to save half of high priority tree areas and woodland preservation areas. He asked if language could be included to state that variances could be used to save half of the trees in high priority tree or woodland preservation areas. Gordon felt that was a good question. Gordon explained the wording used to establish thresholds.

Chair Cheleen commented that mitigation could also be used if the city council deemed it appropriate.

Lehman felt the intent was a minimum of 50 percent and up to 75 percent of tree preservation.

Chair Cheleen asked Mr. LaFevere to comment. Mr. LaFevere said his property could probably be subdivided with the proposal, but his neighbor's could not because the houses would have to be too small and there would not be enough area to mitigate. He suggested staff look at how many unsubdivided parcels are woodland preservation areas.

No additional testimony was submitted and the hearing was closed.

Lehman provided a hypothetical situation that illustrated that a property owner could cut down all trees and subdivide three years later.

Chair Cheleen understood the point of the ordinance to save at least 50 percent of the trees in a high priority or woodland preservation area. Colleran agreed. Chair Cheleen stated that administering the ordinance in a few situations would be difficult. Gordon felt the proposal would measure an existing proposed condition without looking into the future for improvements that may be done in the future. The proposed tree ordinance would have jurisdiction over a current application only.

Adams felt the proposal should have jurisdiction over additional trees and properties. It would be a baby step for tree protection. He supported moving forward with it. He suggested tabling action until all of the modifications can be combined. The proposal would affect a small number of properties. Staff is on the right track.

Adams moved, second by Walker, to table action of the tree ordinance until the July 3, 2008 planning commission meeting.

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

9. ADJOURNMENT

Adams moved, second by Sjeklocha, to adjourn the meeting at 11:00 p.m. Motion carried unanimously.

By: _____
Lois T. Mason
Planning Secretary