

**MINNETONKA PLANNING COMMISSION
MINUTES**

AUGUST 7, 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, and Cheleen were present. Walker was absent.

Staff members present: Community Development Director Julie Wischnack, City Planner Loren Gordon, Principal Planner Susan Thomas, Planner Josh Metzger, Planning Technician Jeff Thomson, Natural Resource Manager Jo Colleran, and Assistant City Engineer Steve Lillehaug.

- 3. APPROVAL OF AGENDA:** The agenda was approved as submitted with changes and updates provided in the change memo dated August 7, 2008.

- 4. APPROVAL OF MINUTES:** July 17, 2008 and July 22, 2008

Lehman moved, second by Blatz, to approve the July 17, 2008 and July 22, 2008 meeting minutes.

Adams, Blatz, Lehman, Schmitz, Sjeklocha, and Cheleen voted yes. Walker 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 July 28, 2008:

- Adopted a resolution approving the rezoning of existing properties at 4639, 4647, and 4653 Shady Oak Road.
- Adopted a resolution approving the final plat approval of Ylitalo Acres.
- Adopted a resolution approving the final plat approval of Braeburn Woods.
- Adopted a resolution approving a conditional use permit for a juice bar at 12201 Minnetonka Boulevard.
- Adopted a resolution approving an ordinance regulating outdoor display standards for new automobile dealerships only.

- Adopted a resolution reversing the planning commission's denial of a sign plan review at 4350-4400 Baker Road for Welsh Companies. The city council approved a 42-square-foot sign.

6. REPORT FROM PLANNING COMMISSION MEMBERS

Chair Cheleen announced that Schmitz is moving to Minnetrista and has resigned from the planning commission. Chair Cheleen appreciated her legal background, ability to ask insightful questions, use of common sense, and fairness to applicants. Commissioners will miss her. Schmitz appreciated the great experience and encouraged residents to apply for the position.

7. PUBLIC HEARINGS: CONSENT AGENDA

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

Lehman moved, second by Adams, to approve the items listed on the consent agenda as recommended in the respective staff reports as follows and modified in the change memo dated August 7, 2008:

A. Sharon Hanna is requesting a variance to construct a detached garage at 4511 Crawford Road.

Adopt the resolution on pages A11-A14 of the staff report, which approves a front yard setback variance from 35 feet to 30 feet, and a side yard setback variance from 10 feet to 5 feet for a detached garage at 4511 Crawford Road. Approval is based on the following findings:

- 1) The proposed setbacks are reasonable and would meet the required standards for a variance, because:
 - a. **UNDUE HARDSHIP:** There is an undue hardship due to the narrow width of the lot. The lot is only 84 feet wide, and given the location of the house, there is limited space on the site to construct a detached garage to meet setback requirements.
 - b. **UNIQUE CIRCUMSTANCE:** The nonconforming lot width of 84 feet is a circumstance that is not common to every similarly-situated property.

- c. INTENT OF THE ORDINANCE: The variances would meet the intent of the ordinance that a two-car garage on single-family residential property is generally considered to be a reasonable use.
- d. NEIGHBORHOOD CHARACTER: The variances would not negatively impact the character of the neighborhood. Most of the homes in the neighborhood have nonconforming front and side yard setbacks. A 5-foot side yard setback and a 30-foot front yard setback would be similar to setbacks in the immediate area.

Approval is subject to the following conditions:

- 1) Prior to issuance of a building permit:
 - a. A copy of this resolution must be recorded with the County and a copy of the recorded document returned to the city.
 - b. Install a temporary rock driveway, erosion control, tree protection and wetland protection fencing as required by natural resources staff for inspection and approval. These items must be maintained throughout the course of construction.
 - c. The applicant must submit proof that the land owner approves of the building plans.
 - d. The garage must meet the fire protection standards required by the State Building Code.
- 2) The building materials and colors must be compatible with the materials of the existing house.
- 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. Thomas and Lynn Noll are requesting a front yard setback variance for a garage addition at 18540 Beaverwood Road.

Adopt the resolution on pages A10–A12 of the staff report, which approves the proposed front yard setback variance from 35 to 32 feet at 18540 Beaverwood 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:** Given topography west of the existing cul-de-sac, it is highly unlikely that a westward extension of Beaverwood Road would be constructed in the future. Requiring the applicants to meet front yard setback regulations from a right-of-way that may remain permanently unimproved constitutes an undue hardship.
 - b. **UNIQUE CIRCUMSTANCE:** A majority of the right-of way in front of the proposed addition is unimproved. This is a unique circumstance for an R-1 property fronting on right-of-way.
 - c. **NEIGHBORHOOD CHARACTER:** The existing home is located 55 feet from the edge of the cul-de-sac while the proposed addition would be located 80 feet from the cul-de-sac. Based on these setbacks, the proposal would not alter the character of the neighborhood.

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 and tree protection fencing as required by natural resources staff for inspection and approval. These items must be maintained throughout the course of construction.
 - 2) Any portion of the driveway that lies in public right-of-way must not be expanded.
 - 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.
- C. Paul and Kim Buechele are requesting a wetland and floodplain setback variance for the reconstruction of a screen porch for the property located at 3440 Larchwood Drive.**

Adopt the resolution on pages A16–A18 of the staff report, which approves the following variances at 3440 Larchwood Drive:

- Wetland setback variance from 35 feet to 26 feet.
- Floodplain setback variance from 20 feet to 7 feet.

Approval is based on the following findings:

- 1) The proposal is reasonable and would meet the required standards for a variance, because:
 - a. **UNIQUE CIRCUMSTANCE and PRACTICAL DIFFICULTY:** A portion of the subject property is located in a wetland and floodplain. The rear of the existing home was constructed within 5 feet of the required wetland setback and within the required floodplain setback. Based on these site characteristics, it would be virtually impossible to construct an addition on the rear of the home without the need for wetland and floodplain setback variances.
 - b. **INTENT OF THE ORDINANCE:** There is a sufficient amount of vegetation existing at the rear of the property that will adequately buffer the wetland from the existing home and proposed porch addition.
 - c. **INTENT OF THE ORDINANCE:** With the removal of the angled deck the applicants would be improving the existing nonconforming floodplain setback and increasing the wetland setback of the property.
 - d. **NEIGHBORHOOD CHARACTER:** The rear of the subject property is visually secluded from surrounding properties and the proposed porch will be replacing an existing screened deck. Therefore, staff does not feel the proposal will alter the character of the neighborhood.

Approval is subject to the following conditions:

- 1) Prior to issuance of a building permit:
 - a. A copy of this resolution must be recorded with the County and a copy of the recorded document returned to the city.

- b. Install a temporary rock driveway, erosion control, tree protection and wetland protection fencing as required by natural resources staff for inspection and approval. These items must be maintained throughout the course of construction.
- 2) The applicant must dedicate a 16.5-foot wide conservation easement adjacent to edge of the delineated wetland. The conservation easement must consist of a legal description and exhibit produced by a licensed surveyor.
- 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.

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

8. PUBLIC HEARINGS

A. Items concerning Woolman Woods, a 9-lot subdivision of existing properties at 18601, 18617 and 18651 Woolman Drive.

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 how utilities would access the parcel. Thomas responded that utilities were available in surrounding roadways. Full-scale grading would not be necessary.

Adams asked if the developer would be responsible for culvert maintenance since it would be a private road. Thomas explained that the applicant would be responsible for the installation of a new culvert and maintenance of the existing culvert. The city does retain an easement over a private culvert to allow an inspection by the city to ensure that the culvert is functioning properly.

Lehman asked if the wetland would be divided into two wetlands. Thomas explained that a culvert would still connect the two wetlands.

In response to Lehman's question, Thomas stated that the new tree ordinance would allow a percentage of the trees to be removed within a subdivision except in the case of a planned unit development that percentage could be higher. The proposal would save a significant number of trees through the use of a conservation easement. Collieran explained that if the site would be divided into 15 lots, then an additional 29 percent of the woodland preservation area would be removed. She estimated tree loss for a few scenarios. Lehman wanted it noted that the use of a planned unit development has allowed the preservation of additional trees.

Lehman asked if decreasing the park dedication fee would be appropriate in lieu of the conservation easement. Thomas explained that a conservation easement continues to be privately held land. It cannot be used as a recreational area. Reductions in park dedication fees have been allowed in the past when a city improvement, such as a trail, were required within the development. No reduction has been made in park dedication fees in exchange for a conservation easement that continued to be privately held land.

Lehman asked for the deadline of when lots would have to be created and the deadline for the developer to act on development of one or all nine of the lots. Thomas explained that an applicant has one calendar year from the time a preliminary plat is approved to receive final plat approval. The final plat must be filed with Hennepin County within one year of its approval. Once construction has begun, the building permit allows 240 days for the exterior of the house to be completed.

Lehman stated that the developer has one year to evaluate market conditions before going ahead with the project. Gordon commented that a number of financial guarantees are provided to the city to secure performance of the project, including letters of credit and escrows, to ensure that the improvements that have been identified will be installed if the developer would be unable to perform. Improvements include basic grading, maintenance and stabilization of soils, and infrastructure.

Sjeklocha asked staff to provide highlights of the Minnetonka Wetland Protection Ordinance and Minnesota Wetlands Protection Act. Collieran obliged. Collieran confirmed that the proposal exceeds mitigation requirements.

In response to Sjeklocha's question, Collieran explained that the storm-damaged trees that fell onto other trees on the site and were removed or trimmed. This was a minimal percentage of the woodland preservation area.

Sjeklocha asked for the public property to be pointed out. She questioned when and why the city acquired it. Thomas pointed out the narrow strip on the east side. The area is designated for roadway purposes. When staff requested the applicant consider use of a public street, the applicant asked if part of the public property could be utilized for the public street. Staff felt that would be reasonable. If the proposal includes a private street, then allowing use of the public property would be reevaluated.

Sjeklocha asked if a private drive can be built on public property. Thomas responded that the city attorney would be consulted to determine if that would be appropriate for the project.

Sjeklocha asked for the definition of a "common area" and an explanation of why common areas would be beneficial for the project. Thomas explained that planned unit developments may include outlots that are owned jointly by property owners. The conservation easement would be considered a common area. The developer would determine how the conservation easement would be managed.

Sjeklocha asked if a trail had been developed in the city that did not meet trail standards. Thomas recalled a trail on the north side of Ridgewood Road. The grade was relatively flat in that situation. The current proposal has rolling topography. Colleran recalled Crosby Cove and Portico developments have trails that do not meet standard requirements.

Sjeklocha asked what the landmark recognition program entailed and if the log cabin could be preserved. Thomas explained that the recognition program provides for no historical protection of a structure. The previous owner applied for protection, but it did not meet the standard for protection. Developers typically allow photos to be taken in and around landmark homes. In this case, a neighbor, Mr. Hanson, has been contacting societies and museums in hopes that someone would move and preserve the cabin.

Blatz asked if a traffic study is needed to construct a stop sign at the intersection of Woolman Drive and Timber Ridge Drive. Thomas responded that a traffic study would not be needed to add a traffic sign, but a certain number of accidents need to be noted at the intersection. Lillehaug stated that he had looked at the intersection. There had been an accident at the intersection within five years. It is common throughout Minnetonka to have limited sight lines. The intersection is a "T" intersection with low volume and vehicles that travel at fairly slow speeds. The accident that he researched was a failure to yield. A stop sign could be added, but many similar intersections are uncontrolled. Lillehaug will complete a formal evaluation of the intersection and compare safety data. The

development would add 7 residences which equals 70 additional trips in the neighborhood per day. On a local roadway, 70 trips is not a lot. If a traffic study were conducted it would report that the streets would be adequate for the proposal.

Chair Cheleen commented on the draft of the tree ordinance. The proposal would be under the allowable number of trees to be removed. Thomas agreed.

Chair Cheleen confirmed with Thomas that the “ponds” are infiltration basins. There should not be standing water in those areas very long. There would be an emergency overflow.

Chair Cheleen noted that a homeowners association is part of the proposal. He confirmed with Thomas that the private cul-de-sac would be maintained by the homeowners association. The developer would have to build and fund the private cul-de-sac.

Tom Gonyea, representing Estate Development Corporation, noted that the log cabin will be taken by the Hennepin County History Museum within the next month and reconstructed by the Minneapolis Institute of Arts. The city did not have a location for the cabin.

Mr. Gonyea said that an effort has been made to locate the proposed residences in a manner to save the most trees. The more trees that would be saved, the more desirable the lot would be. Many scenarios were considered. He would prefer a public road, but would work with a private road. The intent would be to develop right away and have something accomplished this fall.

Mr. Gonyea stated that a trail would not be practical where the path is located. The terrain is too sloped, it would serve only a few residents, and many trees would have to be removed.

Mr. Gonyea explained that soil borings have been done for the infiltration ponds. The soil is so sandy that water should absorb quickly. No water stands currently. A small berm along the creek and a pipe through the woods is all that would be needed. The natural topography and trees would remain. He has spent more time on this site than sites he has divided into 50 lots or 100 lots. The proposal is a good plan. The neighbor across Woolman Drive has a concern with headlights traveling toward his residence. He talked with engineering staff regarding increasing the inside radius and angling the street to invite motorists to be further on the right side. He would be agreeable to providing landscaping if the city would agree.

Adams was unable to locate the foot path, though he received numerous mosquito bites during his site visit. His concern was with the log cabin. He questioned if the Minnetonka Historical Society was contacted. Mr. Gonyea believed that the property owner contacted the city first. Clyde Hanson, a neighbor, is funding the disassembly, demolition, and restructuring. He was willing to provide Hanson's phone number to anyone interested in helping with the project. Adams asked if Mr. Gonyea had considered leaving the log cabin and positioning residences around it. Mr. Gonyea stated that the location of the log cabin would not make that feasible. Mr. Gonyea explained the natural features of the site.

The public hearing was opened.

Dirk Devries, 18600 Woolman Drive, has lived there 40 years and stated that:

- He supports the development of 9 lots.
- His concern was the cul-de-sac that would intersect Woolman Drive at a right angle. His house would become a "headlight house".
- The road rises as it approaches Woolman Drive which could cause the headlights to reach the second story windows.
- The traffic is relatively light on Woolman Drive currently.
- He provided a plan that illustrated that he wanted the intersection angled to the east so that headlights would not shine at his property, but on the property next to him. He talked with Mr. Gonyea who said the access could possibly be widened. He did not think that would work. He understood there may be objections to making the access road not perpendicular to Woolman Drive and he would have to accept the engineering standards, but there are numerous intersections in Minnetonka that are not right angles. The intersection would handle the traffic from his residence and one neighbor, so it would not be a big impact.
- Motorists would probably not turn left on Woolman Drive because there would only be half of a cul-de-sac.
- A stop sign would be a great solution.
- He appreciated staff's and the commission's time.

Deirdre Keller, 4730 Timber Ridge Place, stated that:

- To say that we are lucky to live in a city that values its parks, wetlands, trail systems and has a city council and planning

commission that takes its community responsibility seriously would be an understatement.

- She opposed the development of Woolman Woods.
- Seventy vehicles traveling through ones back yard would be a lot, but that would be her personal impact and she needs to concede to the greater good and community responsibility.
- The taxes and revenue that would be gained by the development would go to increasing and enhancing the parks and things residents hold valuable which includes the responsibility to ensure safe access to the trail systems and parks.
- She and her children use the foot path regularly. The kids who do not want to walk on Sparrow Road use the foot path. The informal trail has been there for years and provides safe access to the park.
- She understood that change is difficult.
- Sidewalks are planned for Sparrow Road in 2014. That would be too late for her 6-year-old daughter. There are a number of children in the same age group that use the foot path.
- The sloped grade is not that bad. The Marshes of Meadowoods has a steep grade. The kids are tough and can bike up the hill.
- She uses mosquito spray to handle the mosquitoes.
- She requested a traffic study be done. Sparrow Road is not a typical road. It is extremely hilly and has limited visibility. It is shared by strollers and bikers.
- Traffic travels very fast.

Adams asked Ms. Keller to point out the location of the foot path. Ms. Keller provided photographs. There are many trees that have fallen, but she moves them or walks over them.

Lynn Knoll, resident, requested that the private drive be maintained by the city because it is the only access she has to the rear of her residence. The back of her yard is tiered by retaining walls. The walking path goes through her woods. She suggested a location for a trail. Thomas explained that the public parcel along the east cul-de-sac would remain a publicly owned outlot. Lillehaug explained that the existing driveway would be replaced by a new, shared driveway for four of the properties.

Adams asked Ms. Knoll if she has an agreement with the property owner to allow access to her property. Ms. Knoll answered that the property is owned by the city. Ms. Knoll preferred that it continue to be a public street rather than a private drive. Lillehaug clarified that a public roadway would allow no more than a seven

percent slope. That would require retaining walls on each side of the roadway for approximately 200 feet. To eliminate the retaining walls and to minimize the impact, staff recommends utilizing a private street.

In response to Chair Cheleen's question, Thomas explained that the location and paving of the street would be determined as the plans are finalized. The area that is designated as Timber Ridge Court is a small sliver of property. It is publicly owned. Ms. Knoll may have used the parcel in the past to access her property. The driveway itself is on private property. Chair Cheleen confirmed with Thomas that a private maintenance access agreement could be developed between Ms. Knoll and the developer.

Michael Zucker, 4730 Timber Ridge Place, questioned when the last traffic study was done on Sparrow Road. Lillehaug responded never. Mr. Zucker asked where he could obtain data regarding Sparrow Road. Lillehaug has the information available any time.

Mr. Zucker asked for clarification of Chair Cheleen's statement regarding the amount of trees to be removed. Chair Cheleen explained how the planned unit development would save more trees than following R-1 district regulations. Mr. Zucker asked if there would be a surplus of tree allocation. Chair Cheleen did not think it would be looked at from that angle. There is no surplus in trees. As many trees as possible should be saved.

Mr. Zucker provided photographs that showed the clear outline of the dirt path. Neighbors told him that the dirt path had been used for an extended period of time.

Mr. Zucker asked when Reich Park was established. He believed that the city could claim adverse possession if the path has been used as a trail for over 15 years. He asked if Schmitz was familiar with adverse possession. Schmitz referred the question to the city attorney. Gordon provided that the situation is not a case of where adverse possession could be used. The property is clearly a privately-owned piece of property that has been used by the neighbors in a manner different than what would be considered a public use.

Mr. Devries asked what would happen now. Gordon explained that the engineering department would accept canting the intersection up to 5 degrees or 7 degrees, but not 15 degrees. Lillehaug explained the safety issues. Lillehaug recommended Mr. Devries request the developer provide screening for his property.

Mr. Devries asked what would happen with the application next. Chair Cheleen explained the recommendation to city council process. Wischnack invited Mr. Devries to meet with staff and the developer to discuss options. Mr. Devries stated that he met with Mr. Gonyea and he mentioned widening the road. Chair Cheleen suggested he meet with Mr. Gonyea and staff once more.

Wischnack clarified that there is a difference between engineering specifications and what the planning commission can and cannot recommend. If Chair Cheleen and the commission feel that the design is not appropriate, then a change may be recommended. She highly doubted that staff would change its position regarding the safety aspect of the angle of the intersection. It is out of consideration for the city council to hear all of the perspectives and forward them to the city council to make the final decision.

Ms. Keller clarified that the trail would not have to be located where the current dirt path is located. She supported an access to the park that would preserve trees and be less difficult to maintain.

Chair Cheleen understood that certain standards must be met to construct a trail. The site would be too steep and not accommodate the necessary width. The developer has proposed a project that staff considers commendable. As many trees as possible would be saved. He suggested that staff, the developer, and Mr. Devries meet, but that would occur outside of tonight's planning commission's meeting. Gordon agreed with Chair Cheleen that adding a trail might cause unintended consequences to lot sizes and setbacks. Gordon suggested the parks and trail staff meet with the developer to consider what options would be available prior to staff's recommendation to the city council. Chair Cheleen noted that the planning commission could make a motion to recommend that the city council approve the proposal with the suggestion that the developer meet with Mr. Devries and the park and trail staff to explore options. Gordon concurred.

No additional testimony was submitted and the hearing was closed.

Lehman asked if the homeowners association could allow a path where it is currently located once the development is completed. Mr. Gonyea explained that the proposal locates a residence real close to where the current path is located. He would prefer not to have the path. It should not be held against the Fermans that they allowed people to walk through their property. Mr. Gonyea now owns the property and the next property owner has the right to restrict access to his or her property. He suggested the park dedication fee be spent to speed up completing the Sparrow Road trail.

Lehman confirmed with Mr. Gonyea that he opposed maintaining the current foot path location.

Lehman asked if a conservation easement would require a path. Thomas explained that a conservation easement may be written to allow certain things. For example, the conservation easement would need to allow creation of the infiltration basins. Thomas noted that a conservation easement could not require that something be constructed. Colleran agreed that a conservation easement may allow things such as play structures, trampolines, and hand grading, but things cannot be required.

Schmitz understood the need for a trail, but she was concerned with mandating a trail through private property. Her recommendation was to extend the strip of land the city owns to create a trail or speed up the process for the trail on Sparrow Road. She recommended the motion include direction to staff to evaluate ideas on how to provide access to the park sooner than 2014.

Adams stated that private agreements between property owners are not the city's jurisdiction. A neighbor asks a neighbor if he or she needs to go onto the other's property. One would hope the neighbor would be reasonable. Including a subdivision requirement or condition of the conservation easement would not be reasonable and possibly not legal. He supported staff's recommendation.

Lehman and Sjeklocha concurred. Sjeklocha noted that Reich Park does not have a lot of parking. Sjeklocha supported staff meeting with the developer and Mr. Devries.

Chair Cheleen concurred with Lehman and Adams. The proposal saves many trees. He did not support a provision about the path. There are liabilities involved with allowing people to walk through private property.

Adams moved, second by Schmitz, to recommend that the city council adopt a resolution approving the following items for Woolman Woods with the modification to require a private street and include the reasoning for the private street provided in the change memo dated August 7, 2008:

REZONING FROM R-1 to PUD

- 1) *Recommend that the city council adopt the ordinance on pages A28–A29 of the staff report, which approves the proposed rezoning from R-1, low-*

density residential, to PUD, planned unit development. This ordinance is based on the following findings:

- a. The rezoning would be consistent with the city's guide plan; and
- b. The rezoning would be consistent with the public health, safety, and welfare.

PRELIMINARY PLAT

2) *Recommend that the city council give preliminary approval to WOOLMAN WOODS, date-stamped July 28, 2008. Approval is based on the following findings:*

- a. The proposal meets the required standards and ordinances for a preliminary plat.
- b. The proposal minimizes tree loss.

Approval is subject to the following conditions:

- a. Prior to final plat approval, complete the following:
 - (1) Show the following on the final plat:
 - (a) Full 100-foot right-of-way on both proposed cul-de-sacs.
 - (b) 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.
 - (c) A minimum 20-foot drainage and utility over all existing or proposed public utilities.
 - (d) Drainage and utility easements over the 928.1 elevation associated with the existing and created wetland on the north side of the site.
 - (e) Drainage and utility easements over 100-year elevations.

- (2) Pay a park dedication fee of \$5,000 per newly created lot, for a total of \$30,000.00.
 - (3) If the developer is petitioning the city to construct the public improvements, the city council must order the improvements.
 - (4) Drainage and utility easements and maintenance agreements for the wetland, infiltration basins, and any other stormwater mitigation facilities.
 - (5) Existing right-of-way must be vacated in conjunction with final plat approval.
 - (6) The wetland zoning overlay must be removed/rezoned from that part of the existing wetland filled to accommodate construction of a private roadway. Required first reading of an ordinance for this rezoning must take place prior to city action on the final plat.
 - (7) Rename "Timber Ridge Court".
- b. The following items must be submitted to the city before the city releases the final plat:
- (1) An engineering and administration fee.
 - (2) An electronic CAD file of the final plat in microstation or DXF.
 - (3) The following documents must be prepared by an attorney knowledgeable in the area of real estate and must be submitted for the city attorney's approval:
 - (a) Title evidence that is current within thirty days before release of the final plat.
 - (b) Conservation easements over wooded areas in substantial conformance with the preliminary utility/conservation easement plan, date-stamped July 28, 2008, and a drawing of the easements. The easement may allow:

- (i) Removal of hazard, diseased, or invasive species.
 - (ii) Hand grading in those areas labeled as such on the preliminary utility/conservation easement plan, date-stamped July 28, 2008. No tree removal or root disturbance is allowed in conjunction with this hand grading.
 - (iii) Location of a monument sign, public utilities, including ponding areas, and creation of wetland mitigation area.
- (c) Conservation easement 25-feet upland of the edge of all delineated and created wetlands and a drawing of this easement.

The easements and drawings must be recorded with the final plat.

- (d) Documents establishing a homeowners' association. The association must be responsible for maintaining any common areas.
- (e) 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.
- (f) A development agreement in a form acceptable to the city attorney.

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

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

- (1) The following must be submitted for the grading permit to be considered complete.
 - (a) Final street, utility, grading and drainage, site plan, and tree mitigation plans as required by the city engineer must be submitted for staff review and approval. The city engineer will provide the developer with a formal memorandum outlining all items and details which must be provided on the submitted plans. These include, but are not limited to:
 - (i) The site plan must include 25-foot wetland buffers upland from the delineated edge of all existing and created wetlands. No grading is permitted in the required wetland buffers except as needed in areas of proposed wetland impact and mitigation.
 - (ii) Detail regarding construction of the mitigated wetland.
 - (iii) A soils recommendation by a qualified soils engineer verifying that the Minimum Standard Street is adequate. The recommendation must be based on soil borings. Borings must include infiltration rates of site soils.
 - (iv) Retaining wall at wetland culvert under westerly cul-de-sac must be minimized with use of additional grading.
 - (v) All retaining walls must be field stone.
 - (vi) Storm sewer pipe must be directionally-drilled from the northerly to southerly ponding areas.
 - (vii) Watermain installed on the east side of the development must be directionally-drilled.
 - (viii) Pretreatment structures (grit chambers) are required.

- (b) A Stormwater Pollution Prevention Plan must be submitted for staff review and approval.
- (c) Individual letters of credit or cash escrow for 125% of a bid cost or 150% of an estimated cost to comply with grading permit. The developer may submit one itemized letter of credit, if approved by staff. The city will not release or reduce the letters of credit or cash escrow until work has been completed according to the plans approved by the city.
- (d) If the developer is constructing any public improvements, the following must be submitted for staff review and approval:
 - (i) Final street and utility plans.
 - (ii) A signed agreement with the city. This agreement must guarantee that the developer will complete all public improvements and meet all city requirements.
 - (iii) A letter of credit or cash escrow in the amount of 125% of a bid cost or 150% of an estimated cost of the improvements.
 - (iv) The city will only reduce or release the letter of credit or cash escrow upon receipt of as-built drawings and a letter certifying that the streets and utilities have been completed according to the plans approved by the city.
- (f) A construction management plan. The plan must be in a city approved format and must outline minimum site management practices and penalties for non-compliance. The management plan must be accompanied by a cash escrow, in the amount to be determined by city staff, and a waiver document prepared by the city attorney and signed by developer. Through this document the developer 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.

- (2) Ponding areas, public utilities, and associated grading and facilities must be located to maximize tree preservation. Staff may require adjustments in locations of these improvements in order to do so. Inch-for-inch mitigation is required for high-priority trees removed in conjunction with required ponding.
 - (3) Prior to issuance of a grading permit:
 - (a) Install all measures in accordance with the SWPP for staff inspection. These items must be maintained throughout the course of construction.
 - (b) The final plat must be released by the city and filed with Hennepin County for recording.
 - (c) A copy of approved MPCA NPDES, MPCA sanitary sewer extension, and MN Department of Health watermain extension permits. The city engineer and natural resource manager may also require submission of approved permits from other regulatory bodies.
 - (4) The stormwater ponding areas must be constructed prior to commencement of grading work and any public improvements. Upon project completion, all accumulated sediment must be removed. A certified as-built of the pond contours is required for final acceptance.
- d. Prior to issuance of a building permit for any of the lots within the development:
- (1) Submit the following documents:
 - (a) A recorded copy of the rezoning ordinances.

- (b) The preliminary plat, all required easements, and restrictive covenants.
 - (c) A letter from the surveyor stating that boundary and lot stakes have been installed as required by ordinance.
 - (d) A letter of credit or cash escrow in the amount of 150% of an estimated cost or 125% of a bid cost to complete required tree mitigation. Individual letters of credit are required for each lot.
 - (e) Certified as-built drawings in mylar, PDF, and CAD formats.
 - (g) As-built topography survey for infiltration basins, mitigated wetland areas, and all utilities in CAD format.
- (2) For each building permit, submit the following items for staff review and approval:
- (a) A construction management plan. This plan must be in a city-approved format and outline minimum site management practices and penalties for non-compliance.
 - (b) Final grading, drainage, and tree preservation plan for the lot. The plan must:
 - (i) Comply with the preliminary grading plan as depicted on the preliminary plat.
 - (ii) Preserve trees designated for preservation at the time of preliminary plat approval;
 - (iii) Show sewer and water services to minimize impact to any significant trees. No trees may be removed for installation of services. One set of new services must be installed.

- (vi) Staff may require adjustments in the location of the proposed house, driveway, grading and utilities to maximize tree preservation.
 - (c) A tree mitigation plan. Mitigation must be provided for trees removed beyond a 20-foot perimeter to the proposed building footprint, and a 10-foot perimeter of the proposed driveway. Inch-for-inch mitigation is required for Woodland Preservation Areas and High-Priority Trees removed outside of these perimeters and in all infiltration and ponding areas. Significant trees removed outside of these areas must be mitigated tree for tree.
 - (d) Submit cash escrow in the amount to be determined by city staff. This escrow must be accompanied by a document prepared by the city attorney and signed by the builder and property owner. Through this document the builder and property owner will acknowledge: (1) the property will be brought into compliance within 48 hours of notification of a violation of the construction management plan, other conditions of approval, or city code standards; and (2) if compliance is not achieved, the city will use any or all of the escrow dollars to correct any erosion and/or grading problems.
- (3) For each building permit, the following items must be completed:
- (a) Schedule and hold a preconstruction meeting with engineering, planning, and natural resources staff.
 - (b) Proof of subdivision registration and transfer of NPDES permit.
 - (c) Install a temporary rock driveway, erosion control, tree protection and wetland protection fencing for each lot. These items must be maintained throughout the course of construction.

- (d) Install heavy-duty fencing, which may include chain-link fencing, at the conservation easement. This fencing must be maintained throughout the course of construction.
 - (e) Pay a hookup fee for sanitary sewer and water.
- e. Notwithstanding the requirements outlined above, all lots and structures within the development are subject to the following:

- (1) Minimum setbacks for principal structures:

	MINIMUM SETBACK
Front	25-feet
Side	10-feet interior to PUD
	15 feet exterior to PUD
Rear	20% of lot depth or 40 feet, whichever is less

- (2) House type and location must be in substantial conformance with the preliminary grading plan date-stamped July 28, 2008.
- (3) Pool and/or other accessory structure location must be in substantial conformances with the preliminary grading plan date-stamped July 28, 2008.
- (4) Lot 9 must take driveway access from the easterly cul-de-sac.
- (5) Construction on Lots 1, 5, and 6 must incorporate techniques to mitigate for hardsurface runoff, subject to the approval of the city engineer.
- (6) Pools or other similar accessory structures may be built at the time of house construction if such structure is indicated on the preliminary grading plan, date-stamped July 28, 2008. Pools or other similar accessory structures may be built at the time of house construction if not shown on the preliminary grading plan, date-stamped July 28, 2008, if

such structure would have no greater tree impact than that shown on the grading plan and if that structure is outside of the required conservation easement.

- (7) Minimum lowest floor elevation is 2 feet above the 100-year elevation as determined by the city engineer.
 - (8) Maximum floor area ratio within the plat is 0.5. Individual lots may exceed this standard. However, the total floor area ratio of the subdivision may not.
 - (9) Maximum hardsurface coverage is 50%. Individual lots may exceed this standard. However, the total hardsurface coverage of the plat may not.
 - (10) All portions of first-story walls as measured by an approved route around the exterior of the house must be within 150 feet of the street. If access requirements cannot be met, the house must be protected with 13D automatic fire sprinklers.
- f. During construction, the streets must be kept free of debris and sediment.
 - g. The city must approve the final plat within one year of preliminary approval or receive a written application for a time extension or the preliminary approval will be void.

WETLAND ITEMS

- 3) *Recommend that the city council adopt the ordinance on pages A30–A32 of the staff report, which modifies the boundary of a Wetland Overlay District. This ordinance is based on the following findings:*
 - a. The rezoning would be consistent with the purpose of the Wetlands Protection Ordinance.
 - b. The rezoning would be consistent with the city's water resources management plan and the goals and policies of the city's comprehensive guide plan; and
 - c. The rezoning would not negatively impact public health, safety, and welfare.

- d. Wetland area will be created compensatory to the amount filled.
- 4) *Recommend that the city council adopt the resolution on pages A33–A36 of the staff report, which approves:*
- *Wetland and Floodplain Alteration Permits for temporary impact to 2,987 square feet of an existing wetland.*
 - *Wetland setback variance from 25 feet to 0 feet for construction of a public street.*

This resolution is based on the following findings:

- a. The proposed public streets are with the general location of an existing driveway on the site.
- b. The proposed public streets have been located to minimize impact on the existing wetland and floodplain.
- c. The proposed area of fill is minimal at just 189 square-feet.
- b. Compensatory wetland and floodplain area in the amount of 500 square feet will be created.

Approval is subject to the following conditions:

- a. Prior to issuance of a grading permit:
 - (1) Document the existing conditions of the area of temporary impacts, as outline in the Wetland Conservation Act Rule 8425.0520 subpart 5, including ground elevations, contours, inlet dimensions, outlet dimensions, substrate, plant communities, and hydrologic regime.
 - (2) Obtain approval and comply with the requirements of the Wetland Conservation Act.
 - (3) Obtain approval from all other appropriate agencies.
 - (4) Submit a letter of credit for 150% of the estimated cost or 125% of the actual bid for the wetland and floodplain

replacement to be constructed. The letter of credit will be reduced based on establishment

- b. Complete restoration of those areas proposed to have temporary wetland impact must be completed within six months of issuance of a grading permit.
- c. Wetland monitoring reports must be provided annually by the developer, for a period of five years or until the city accepts the mitigated wetland.
- d. The developer must submit a cash escrow or letter of credit in the amount to be determined by natural resource staff to ensure compliance with the wetland monitoring schedule.

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

B. Items concerning the existing properties at 15306 and 15400 State Highway 7, and 15401 and 15409 Highwood Drive (Tonka Town Commons)

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

Thomas reported. She recommended denial of the application based on the findings listed in the staff report.

Thomas clarified for Lehman that economic considerations are not part of the review of a variance and do not constitute an undue hardship. Lehman asked what type of use would work in the site. Thomas stated that staff would support an application that reduced or eliminated the need for variances, rezoning, and a comprehensive guide plan amendment. A proposal that would minimize the deficiencies and nonconformance would be favored.

Blatz asked Thomas to discuss parking standards. Thomas explained that city ordinances set the parking requirement. Since the parking variance was one of many variances and issues, the Institute of Transportation Engineers report was not enough to justify a variance for the project. Lillehaug explained that a comparison between city ordinance requirements and institute of transportation engineering standards for parking have been done for many projects. In this case, a comparison between similar types of office, retail, and fast-food uses

would provide a better comparison. Relying solely on the Institute of Transportation Engineers average would not take the variation into consideration.

Chair Cheleen asked if the project was contingent on the frontage road. Thomas answered affirmatively. Lillehaug stated that funding had been secured from the Minnesota Department of Transportation for the frontage road project. It is scheduled for construction in 2009.

Chair Cheleen asked if the fast-food restaurant would have a drive-up window and, if so, would there be enough room for a stacking lane. Thomas stated that the applicant had not requested a conditional use permit for a drive through. The applicant has stated that there is no intention of having a drive through.

Kathy Anderson, President of Architectural Consordia, represented the developer and landowner. She stated that:

- The applicant tried to deliver what the steering committee requested: one cohesive-master-plan development.
- The new building would tie in with the existing buildings.
- The building would provide a buffer for the neighborhood. It would decrease sound and provide a visual barrier.
- The site circulation would be clear.
- The site provides serviceability for the first floor retail.
- The site is unusual which creates hardships. The two existing buildings are in fine shape and create variance issues.
- The traffic expert study clearly states that the correct amount of parking would be provided.
- The amount of green area requirement is exceeded.
- A neighborhood meeting provided clear feedback that buffering was wanted. A retaining wall, berm, coniferous trees, and fence would screen the site.
- The trip generation would remain at Level A.
- The design is strong and solid.
- First floor neighborhood goods and service-type uses would be included, not a fast-food restaurant with a drive through. A deli, Chipotle, or Panera-type restaurant would be welcome.
- Interest has been expressed for the offices.
- There would be extensive landscaping.
- She provided 3-D images of screening and how it would look in 3 years.

Adams questioned why the one residence would be retained. It constricted the circulation around the proposed buildings. Ms. Anderson explained how the land exchange would work. That particular residence is not an option. The developer does own the adjacent lot. Not owning the remaining residence is a hardship.

Ms. Anderson explained that the parking ramp would be heated and would be similar to ramps approved by the city council. The proposal would not create a "headlight situation."

Sjeklocha confirmed with Ms. Anderson that the fast-food setback would be 38 feet rather than 100 feet. Ms. Anderson noted that the proposal would have a retaining wall, fence, berm, and trees. Ms. Anderson commented that the previous city planner did not want the proposal to be a planned unit development. She felt a planned unit development would eliminate variances.

Chair Cheleen noted that the lot adjacent to the residence not owned by the developer would be rezoned to R-3, medium density residential district. He asked how many units could be constructed on the half acre site. Thomas agreed that medium density constitutes 4 units to 12 units per acre; however, there is a minimum lot size requirement. She suspected that only one unit could be constructed. It could be a twin home.

Curt Fretham, 15400 Highway 7, explained that the original application proposed a twin home for the site. He commented that the fast food restaurant setback variance is not opposed by the neighbors (of which he is one).

Chair Cheleen asked if he looked into the viability of a building that would meet setback requirements, except for the fast-food-restaurant-setback variance. Ms. Anderson stated that the guiding of the residential lots fluctuated. Mr. Fretham listed variances that would be needed regardless of the type of structure constructed. Ms. Anderson said that providing a straight common entry drive; the location of green setbacks; and flow of all properties together would be better served by a planned unit development.

Mr. Fretham noted there would be a cross-easement in the parking agreement. The front yard setbacks for the parking lots would be the same as Davanni's, McDonald's, and continue all the way to Taco Bell. He stated that a only kiosk could be located in the center of the property without a variance

Mr. Fretham pointed out the properties on a map. The proposal would improve the existing residence. The homeowner of 15401Highwood Drive agrees the proposal would be an improvement to the existing conditions by providing more

space on the side of the residence to allow a garage on the side and it would remove the situation of having someone else's garage behind the house. He pointed out the unique shape of the lots.

The public hearing was opened.

Robert Speeder represented 30 families listed in the staff report. He stated that:

- He appreciated staff's hard work.
- The 30 families he represents agree with staff's recommendation. He urged the commission to approve staff's recommendation.
- Staff has addressed most of his concerns. He emphasized traffic, parking, and berming as issues.
- A structure requiring 218 parking spaces would be too significant for the site. The residential neighborhood is already challenged by access. The commercial area especially.
- The traffic study did not address the likely problem spots.
- Motorists traveling east must do a U-turn at Williston Road and come back or turn on Tonkawood Road.
- The structure does not need to be that large to have an economically viable project.
- Zoning ordinances show what is appropriate for a particular lot size. Given the access and related traffic issues, this is not a good site to grant a variance so that a project can be larger than the lots would support by ordinance. This is not the place to use institute of transportation engineering standards. This is the place to use the city ordinances.
- The parking study is outdated. There is no proof of parking or place to add more parking. There is no contingency plan. The overflow parking would park on Highwood Road.
- The 23-foot barrier would not be sufficient. The developer has listened and gone a long way to utilize the barrier, but it would still be minimal to separate the proposal from the residential houses.
- He encouraged the city to be specific with the dimensions of the size of berm, retaining wall, and fence required.
- The proposal is way too ambitious for the size of the parcel, access issues, and parking constraints.

David Lui, 4698 Chantrey Place, stated that:

- The property does need updating.

- A development that is too aggressive would take value away from the neighborhood and create a problem for the community. The character of the area would be impacted. It would set a nasty precedent south of Highway 7 as well as north.
- The plans show that it would maximize the return. It would be mostly paved with a little green space. The buildings that are setback further add beauty to the area. The proposal would be a parking lot.
- The proposal was more similar to “California” property than “Minnesota” property.
- He objected with the parking access, traffic flow, lack of harmony, signage, and lighting.
- He was thrilled that staff acknowledged the south side of Highway 7 as well as the north side.
- The project would be too dense, too aggressive, not balanced, and the setbacks are important. The developer does not understand the issue. Instead of reducing the size of the building, he reduced the amount of parking.
- He encouraged staff to extend the polling of comments to residents south of Highway 7.

Jim Marvy, 4533 Timber Woods Lane, stated that the proposed site would be superb for daylight harvesting. It faces south and there are no trees in front of it.

No additional testimony was submitted and the hearing was closed.

Schmitz asked if the city council is required to act on the application by August 21, 2008. Thomas confirmed that the planning commission needs to act on the item for the city council to meet its statutory 120-day time limit to act on an application without a waiver from the applicant.

Adams was impressed with the proposal attempting to provide cohesiveness between the buildings. He was concerned with the intensity of the site and specifically the variance for parking. He understood that variances would be needed for the site no matter what took place. The proposal would not address the 2030 comprehensive guide plan. It would not be comprehensive enough. It would not incorporate neighboring properties as well as it should. It has the right idea, but too intense. He preferred it incorporate surrounding properties and be consistent with the comprehensive guide plan. He thought the city council would deny it. He supported staff's recommendation.

Schmitz agreed with Adams. It reminded her of the elderly housing facility on Williston Road that had a lot of good points. It would be cohesive and be an improvement to the property, but would be overly intense and not meet the requirements in the comprehensive guide plan. Not meeting the 50-foot setback from the Highwood Road property line concerned her. The intent is to increase the setbacks from Highway 7 so it would look more consistent with a rural atmosphere. Additional properties could make it work. She did not support it in its current form. She mentioned the applicant waiving the statutory requirement to consider changing the proposal. She supported denial of the project.

Sjeklocha concurred with Adams and Schmitz. Buffering and substantial buffering cannot be overstated. The difference between 23 feet and 50 feet is major. The proposal would be an improvement of the property, but the intensity would be too great for the site.

Lehman was conflicted. The 50-foot buffering requirement from Highwood Road and front setback would be needed for any structure. He felt the fast food restaurant should be allowed since the commission approved a variance allowing a 100-foot setback for an auto repair facility. He questioned what would work on the site and not have the same issues. The proposal went a little too far and he agreed with the commissioners.

Blatz agreed with the commissioners. The property is unique and would require variances no matter what. The biggest issue she had was with the parking flow.

Chair Cheleen stated that the auto repair proposal is not similar because it is one little piece of property in the midst of green space located right next to a trail and the proposal is a piece of commercial property adjacent to a highway. His concerns were with the lack of parking and opportunity to do something more consistent with the setbacks and green space of the bank and condominium office space down the road. The proposal would prompt similar setbacks for the future and would not be appropriate for the site. He agreed with staff's recommendation.

Lehman asked if the applicant wanted to waive the time deadline. Mr. Fretham would consider it. He wanted specific comments.

Chair Cheleen favored more green space and a scaled down proposal with less intense parking. He explained the applicant's options to continue with the vote and city council review of the application or to sign a waiver of the 120-day rule.

Mr. Fretham agreed to waive the 120-day rule.

Lehman moved, second by Adams, to table action on items concerning the existing properties at 15306 and 15400 State Highway 7, and 15401 and 15409 Highwood Drive (Tonka Town Commons).

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

9. ADJOURNMENT

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

By: _____
Lois T. Mason
Planning Secretary