

**UNAPPROVED  
MINNETONKA PLANNING COMMISSION  
MINUTES**

**SEPTEMBER 4, 2008**

**1. CALL TO ORDER**

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

**2. ROLL CALL**

Commissioners Lehman, Sjeklocha, Walker, Blatz, and Cheleen were present. Adams 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, and Natural Resources Manager Jo Colleran.

**3. APPROVAL OF AGENDA:** The agenda was approved as submitted with a modification and additional comments provided in the change memo.

**4. APPROVAL OF MINUTES:** August 21, 2008

*Walker moved, second by Sjeklocha, to approve the August 21, 2008 meeting minutes as submitted.*

*Lehman, Sjeklocha, Walker, Blatz, and Cheleen voted yes. Adams 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 August 25, 2008:

- Adopted a resolution approving the 2030 Comprehensive Guide Plan. It will now be distributed to other agencies for review.
- Adopted a resolution approving items concerning ordinances regarding tree protection.

Wischnack announced a light rail meeting will be held in the near future. The dates and times will be posted on the city's and county's websites. Station area studies will occur in the next couple months.

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

**7. PUBLIC HEARINGS: CONSENT AGENDA:**

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

***Lehman moved, second by Blatz, to approve the items listed on the consent agenda as recommended in the respective staff reports and with a correction to 7C as follows:***

**A. Front yard setback variance for the construction of a deck at 16500 Creekside Circle for Ernest and Christine Denzer. (08038.08a)**

Adopt the resolution on pages A8–A10 of the staff report, which approves the proposed front yard setback variance from 35 feet to 18.6 feet at 16500 Creekside Circle. 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:** The existing home has a non-conforming set back 32 feet from the south property line. This is 3 feet less than the setback required for a deck. Based on the location of the home it would be impossible to construct a deck or any addition on the rear of the structure without a setback variance. This constitutes a unique circumstance and a practical difficulty.
  - b. **NEIGHBORHOOD CHARACTER:** The home currently contains a 208 square foot deck. The applicants are proposing to replace it with a 280 square foot deck. Given the relatively small increase in the size of the deck staff does not feel the proposal will alter the character of the neighborhood.
  - c. **NEIGHBORHOOD CHARACTER:** The proposed deck is screened from surrounding properties and public view by vegetation and topography; therefore, it will 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 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) 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 for the construction of a two-story home addition at 3745 Farmington Road for Mark and Lisa Weiss. (08040.08a)**

Adopt the resolution on pages A9–A11 of the staff report, which approves the proposed side yard setback variance from 10 to 8.5 feet at 3745 Farmington Road. 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:** The existing home has a non-conforming setback of 8.5 feet. Based on the location of the home it would be difficult to construct a full second story addition without a setback variance. This constitutes a unique circumstance and a practical difficulty.
  - b. **NEIGHBORHOOD CHARACTER:** With construction of the proposed second-story addition, just 83 square feet of living space would be located within the required setback. With exception of a 3.5 front porch addition, the foundation of the home would remain unchanged under the applicants' proposal. Given that the proposed addition will not encroach further into the side yard setback than the existing footprint, as well as the relatively small amount of living space within the required setback, the proposal would not negatively 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) 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. Front yard setback variance for a home addition at 16614 Bywood Lane for Feehan Design & Build, Inc. (08042.08a)**

Adopt the resolution on pages A13–A15 of the staff report which approves the proposed front yard setback variance from 35 feet to 27 feet for an addition to the house at 16614 Bywood Lane. Approval is based on the following findings:

- 1) The proposal is reasonable and would meet the required standards for a variance, because:
  - a. **UNDUE HARDSHIP:** There is an undue hardship due to the location of the house in relation to the front property line. The house has a non-conforming front yard setback of 27 feet, providing a practical difficulty in constructing an addition on the house to meet setback requirements.
  - b. **UNIQUE CIRCUMSTANCE:** The existing non-conforming front yard setback is a circumstance that is not common to every similarly-situated property.
  - c. **INTENT OF THE ORDINANCE:** The addition would match the building line of the house and would not extend any further into the required setback.
  - d. **NEIGHBORHOOD CHARACTER:** The proposed addition would not negatively impact the character of the existing residential neighborhood. Several of the homes in the immediate area have nonconforming front yard setbacks. The addition would maintain the setbacks and building line of the surrounding 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. Submit a grading plan with 2-foot existing and proposed contours. The existing drainage pattern from the east to Bywood Place on the west must be maintained along the north side of the property. Drainage must not be directed north onto adjacent properties.
  - c. Install a temporary rock driveway, erosion control, tree protection and wetland protection fencing as required by natural resources staff for inspection and approval. These items must be maintained throughout the course of construction.
- 2) 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.

***Lehman, Sjeklocha, Walker, Blatz, and Cheleen voted yes. Adams was absent. Motion carried and the items on the consent agenda were approved as submitted with a modification provided in the change memo dated September 4, 2008.***

## **8. PUBLIC HEARINGS**

### **A. Side yard setback variance for a new attached garage at 11500 Park Ridge Drive West for Richard Nelson. (08034.08a)**

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

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

Blatz asked what the difference in the size of the intrusion would be if the garage would be 24 feet in width. Thomson answered that the intrusion would be reduced 2 feet and the setback would be reduced by 2 inches.

Blatz recalled approving a garage in the Shorewood Forest area. Thomson estimated that garage was 26 feet wide, but not as deep. It met the standard 2-car garage size of 576 square feet. A 3-foot variance was approved to allow a 7-foot setback.

Rick Nelson, 11500 Park Ridge Drive West, stated that a 26-foot depth would allow the plan to be tied in with an existing concrete sidewalk and be in line with the existing garage and back of the residence. All or a portion of the underground footings could be utilized. The proposal would also minimize the amount of digging needed near a large oak tree and allow the current gutter system to be used. A depth of 24 feet would require a separate down spout on the house and garage. Because of the way the garage and house are tied together, there is a 14 inch drop from the kitchen door to the garage. To comply with building code, a platform would have to be built which would reduce 3 feet from the garage's width. Ideally, he would extend the garage 3 additional feet, but that would reduce the setback to 4 feet as well as require removal of the concrete sidewalk on the side. In recognition of having to lose side square footage for parking, bringing the garage deeper would allow flexibility of how vehicles would be able to park.

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

Lehman was inclined to accept the applicant's request to allow the proposal to be aligned with the rear of the residence. He understood staff's recommendation, but he felt the situation is unique enough to justify the variance. It would be the most logical conclusion based on the existing situation.

In response to Sjeklocha's question, Thomson explained that the policy of allowing a standard two-car garage was staff's basis for the recommendation.

Blatz agreed with Lehman. She believed the circumstance is unique and the benefit of using the gutter system, footings, and concrete outweigh what would be gained by reducing the setback a few inches. A similar variance was approved in the area.

Walker concurred with commissioners. He supported the 26-foot width.

Chair Cheleen felt a 24-foot by 26-foot size garage would be reasonable in this situation. He understood that staff's recommendation is appropriate. The neighbor to the west is a distance away. It would not make much of a difference in the setback. It would make a big difference in how the garage would be able to

be used. He understood the landing that is needed. It is required by the building code. He felt enough reasons have been provided to approve a 24-foot by 26-foot garage.

***Walker moved, second by Sjeklocha, to adopt the resolution on pages A14–A16 of the staff report, which approves a side yard setback variance from 10 feet to 7 feet at 11500 Park Ridge Drive West. Approval is based on the following findings:***

- 1) The proposal is reasonable and would meet the required standards for a variance, because:
  - a. **UNDUE HARDSHIP:** There is a hardship due to the existing conditions of the site. Given the location of the house on the lot, a reasonably-sized two car garage could not be constructed on the west side of the home without the need for a side yard setback variance.
  - b. **UNIQUE CIRCUMSTANCE:** The location of the house and the existing undersized garage are circumstances that are not common to every property.
  - c. **INTENT OF THE ORDINANCE:** The proposed two-car garage on single-family residential property is a reasonable use of the property.
  - d. **NEIGHBORHOOD CHARACTER:** The garage would not adversely impact the character of the surrounding neighborhood. The properties directly to the west and east both have non-conforming side yard setbacks of four feet and seven feet, respectively. The garage would maintain the existing building lines in the area.

Approval is subject to the following conditions:

- 1) Prior to issuance of a building permit:
  - a. The site must be developed in conformance with the building plans date-stamped July 1, 2008.
  - b. A copy of this resolution must be recorded with the County and a copy of the recorded document returned to the city.

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

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

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

**B. A side yard setback variance for a home addition at 4546 Aspenwood Trail for Treffle and Joanne Daniels. (08036.08a)**

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

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

Sjeklocha asked if a patio needs a 15-foot setback. Thomson explained that a patio or deck that is 30 inches off the ground does not require a 15-foot setback.

Sjeklocha asked what role a homeowners association plays in regard to land use compared to city ordinances. Thomson responded that the Saddlewood community is governed by an association with its own independent set of regulations related to additions and architectural development that are not regulated by the city. It is separate from the city's review.

Sjeklocha asked if the homeowners association could prohibit the project even if the city approved the variance. Thomson responded affirmatively.

James Sheehy, attorney for the applicants, 247 Third Avenue South, Minneapolis, introduced Treffle and Joanne Daniels. Mr. Sheehy disputed the planner's interpretation of the requirements for a variance. He stated that:

- There are three main elements needed to obtain a variance. This is governed by Minnesota statutes. Minnesota courts have said that a city cannot enforce ordinances more broadly than the statute. The

elements are that there needs to be reasonableness; unique circumstances; and there cannot be an impact to the essential character of the locality. The Daniels' project meets the element requirements.

- He cited a case, Moehler versus city of St. Louis Park, where the court found the circumstances unique to the property. Staff concluded that the applicants' property is not unique simply because similar situations can be found. The circumstance relative to the property and location of the house is unique. The lot is irregular. That is causing the problem.
- The deck is adjacent to the living room. The addition would be located 5.5 feet from the property line. The uniqueness element is met.
- The reasonableness element is also met. The standard is not that if the proposal is denied and the property still maintains reasonable use than the property has reasonable use. That was stated by the planner and he disagrees.
- The proposal would not be overly obtrusive on the neighbors. There is already a variance in place for the 9.5 foot setback.
- The adjoining neighbor has a setback from the property of 25 feet to 30 feet. The use requested would be 30 feet to 35 feet from the neighbor's home.
- A fence is on the property line.
- The requested use would be a family room or living space. It would not be a recreation room, music room, or music studio. The applicants are sedentary, quiet, retired folks.
- The addition would result in less noise and light from reaching the neighbor's house.
- The use would be reasonable. The request is modest.
- The proposal would provide a view to the east and west from the residence.
- He disagreed with the character of the neighborhood stated in the report. The proposal would not change the essential character of the neighborhood. It would be a seamless addition and look like every other aspect of the home.
- A lot of homes are different.
- The addition would be in the rear and unobservable from the front of the residence.
- Mr. Daniels obtained the association's approval.
- The application meets the requirements for a variance.

Lehman asked if Mr. Sheehy had proof of the association's approval. Mr. Sheehy stated he would be happy to provide that at a later date, but the applicant did not have it with him.

In response to Lehman's question, Mr. Sheehy answered that the proposed addition would be modest in size.

Walker asked if a different configuration had been considered that could accommodate the addition without a variance. Mr. Sheehy understood that the wetland prohibited that option.

Treffe Daniels, 4546 Aspenwood Trail, stated that the proposal would increase the living space and area. At the present time, the deck is used occasionally. He wanted to be able to look east and west. He tried to conform his proposal to the association regulations and building code. The lot is unique. It was created by someone else. He invested time and money in the survey. Each application should be considered individually. He requested the variance be approved.

The public hearing was opened.

Muriel Johnson, 4542 Aspenwood Trail, was previously on the board and two board members were present. There has been no approval by the homeowners' association for the project. She was told that Mr. Daniels was told that he first needed approval for the variance from the city before the association would review the proposal. Ms. Johnson realized that the lots are strange. She realized that when she purchased her property. If she built a porch or addition to her house, the occupants of the two residences would be able to shake hands from the residences. The Daniels are delightful neighbors, but they will not always live there. A number of members of the association do not approve of the variance because it would set a precedent for the association. It would not improve the property value. It would be a problem for her to have someone living that close to her. The proposal would exacerbate the existing problem. The association tries to follow the rules that the City of Minnetonka has set. She hoped that the commission would adhere to the 15-foot setback requirement.

No additional testimony was submitted and the hearing was closed.

In response to Lehman's question, Thomson replied that staff considers the reasonableness of each variance application individually. The three standards outlined in the city's ordinance define reasonableness.

Blatz was conflicted. The property line created an undue hardship. The use would be fairly reasonable. A screened-in porch in Minnesota makes sense. It would likely reduce noise. The variance would be significant. The setback would be 5 feet. She was concerned with setting a precedent and that the association had not approved the proposal. She leaned towards denial of the request.

Walker stated that the applicant knew what the property consisted of when it was purchased. The neighbors are providing an overwhelming lack of support. If there was an approved document by the association, he did not understand why it would not be available.

Walker asked if the location of the wetland prohibited locating the addition on the west side of the residence. Colleran explained that the wetland is 42 feet away from the proposed porch. The wetland has gotten larger over time. A variance would be needed because a 35-foot setback would be needed from the wetland.

Walker supported staff's recommendation.

Sjeklocha concurred with Blatz and Walker. The neighborhood character would be negatively impacted by a 5-foot setback.

Chair Cheleen understood reasonable use to mean that the property maintains reasonable use if the application is denied. He did not follow Mr. Sheehy's logic. The Daniels will still have reasonable use of the property. Thomson agreed.

Chair Cheleen commented that the Daniels may not own the property in 25 years. He concurred with commissioners.

***Lehman moved, second by Sjeklocha, to adopt the resolution on pages A10-A12 of the staff report, which denies a side yard setback variance from 15 feet to 5 feet for an addition to the house at 4546 Aspenwood Trail. Approval is based on the following findings:***

- 1) The proposal is not reasonable and would not meet the required standards for a variance, because:
  - a. UNDUE HARDSHIP: The variance does not result from an undue hardship that is unique to the property.
  - b. UNIQUE CIRCUMSTANCE: The house is currently setback similarly from property lines as surrounding structures. Furthermore many surrounding properties have setbacks and side property lines

that are comparable to the subject property. As such, there is not a circumstance that is not common to other surrounding properties.

- c. INTENT OF THE ORDINANCE: Denying the variance would not deny reasonable use of the property.
- d. NEIGHBORHOOD CHARACTER: The proposed addition would impact the character of the surrounding neighborhood. All of the surrounding properties have side yard setbacks ranging from 10 feet to 25 feet. A five-foot setback would be out of character with the neighborhood and would impact surrounding properties.

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

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

**C. Items concerning a new automobile dealership at 15802 and 15810 Wayzata Boulevard for BMW. (98034.08b)**

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

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

Sjeklocha asked how the new tree ordinance applied to the proposal. Colleran explained the site's terrain. Many of the trees would remain. Significant trees would be mitigated inch for inch. There would be little impact to the tree area of the site.

Sjeklocha read that the property owner would be responsible for replacing any required landscaping that dies. She asked if that meant in perpetuity. Thomas answered affirmatively. Staff requires such replacement on a fairly regular basis.

In response to Sjeklocha's question, Gordon stated that the applicant informed him that the Minnesota Pollution Control Agency (MPCA) approved the proposal.

Sjeklocha asked if staff received complaints regarding test driving. She questioned if there are consequences for test driving in an inappropriate area. Gordon responded that complaints regarding test driving are received by the city for the entire area up and down the Interstate 394 corridor where dealerships are

located. The ordinance strives to put dealerships on notice that there needs to be better ways to test drive vehicles. BMW has a requirement that test drives only occur on legal routes, not through residential streets. There is no good way to monitor and enforce the condition. The protocol would, hopefully, minimize that from happening with the dealership representative being able to be held accountable by going on the test drive.

Sjeklocha asked if the test driving restriction would apply to only the BMW dealership or all dealerships. Gordon stated that staff's recommendation would apply to only the BMW dealership. An ordinance is in place that will apply to all new dealerships. Dealerships are more tuned into the situation now than previously.

Sjeklocha asked how close the building would be located to the nearest residence and how visible the building would be. Gordon referred to an illustration which showed that the property lines of the dealership and the residences to the north connect in the wetland. The BMW building would be over 700 feet from a structure. Gordon provided a photo that showed the view of the proposed building from near properties.

Walker asked if the applicant considered what would happen if the facility needed to expand. Gordon stated that expansion possibilities had not been discussed.

Walker questioned if compressing the building to lower the parking had been discussed. Gordon noted that height discussions occurred early in the project.

Walker asked what type of finish would be used. Gordon described the flat finish.

Blatz noted that the property would allow the building to be moved east. Gordon agreed. Staff's evaluation favored the setback proposed on the east edge to save the aesthetic value.

Blatz commented on the neighbors' concerns regarding the proposal's height. She noted that there is no height requirement in a commercial district. Gordon agreed. The setback requirements would control the height.

Chair Cheleen asked where the berm and fence would be located. Gordon noted that the fence would be six feet tall and screen vehicles from view. Coniferous and existing trees would surround the wetland. Chair Cheleen and Gordon discussed the black top on the west side. Gordon pointed out the wetland, ditch, and green areas. Chair Cheleen noted that the area 10 feet higher than the rest would screen the mechanical equipment. Gordon indicated that the mechanical

equipment and a chiller for the air conditioning system would be screened by walls. These items would not be visible from surrounding properties.

Chair Cheleen asked staff to point out incidental wetlands. Colleran obliged. She described the types and locations of wetlands on the property. Colleran provided the history of the site. The Department of Natural Resources, Hennepin County Conservation District, and city staff determined the wetlands incidental.

Peter Coyle, of Larkin Hoffman, on behalf of the applicant, BMW, stated that he appreciated the thorough discussion and evaluation. Staff provided an excellent presentation. He stated that:

- The process began six months ago.
- The proposal fills the city's objective to see the site used productively.
- The proposal would be a compatible commercial use.
- The imposed standards will create an office use appearance.
- Minimization of the outside storage of vehicles was the idea of the applicant.
- The digital rendering of the structure represents the digital rendering of the proposed plans. They are as precise as modern engineering allows.
- The building is sized to provide for the long term. There is no expansion plan.
- He looked forward to moving ahead with the project.
- He had a copy of the Minnesota Pollution Control Agency approval document. The applicant would be proud to be a partner in cleaning up the site and putting it to a productive use.
- He gained good suggestions and comments from the neighborhood meeting. A number of changes were made to respond to the neighbors' concerns. The most notable one is the reduction in height. The exterior of the building was reworked and a tower was removed.
- Screening has been enhanced by the construction of a solid wall and interspersed landscaping to screen the rear of the site. A row of parking was removed to decrease the impact of the view of the parking lot.
- The exterior material is viewed to be a brick or better standard. It is an expensive product and would be attractive.

- He appreciated staff's recommendation of approval. He was available to answer questions. He complimented staff on their usual thorough evaluation.

Blatz asked if the applicant would agree with painting the rear of the building grey. Mr. Coyle stated that the rear of the building would not be visible and would also be in a shadow. The shadow would dampen the white reflection. The photo images provided in the package provide a true representation of what the shadow would look like. A grey north face depiction was provided, but the applicant did not feel it would be necessary. The architect and owner felt it would be more attractive with one unified color.

Sjeklocha questioned what is meant by white-hued block. Mr. Coyle explained it referred to white block with a white hue. The block and glass finish would create an office-like finish and provide a variety of materials to break up the appearance.

Sjeklocha asked how unloading inventory would occur. Mr. Coyle said that the proposal provides ample space for vehicles to be unloaded on site, not in the street. It would be a requirement. The goal is to get the vehicles inside the building as soon as possible. The unloading area would be on the west side. There is room for a number of trucks to be accommodated at the same time. Unloading would be allowed during business hours only.

In response to Walker's question, Peter Hasselquist, president of Twin Cities Automotive, owner and operator of the site, who built Motorworks BMW, stated that all employees would have a Nextel direct connect to page by telephones. There would be no overhead paging system.

Walker asked if the footings would be sized to allow for vertical expansion. Mr. Hasselquist answered in the negative.

In response to Lehman's question, Mr. Hasselquist reviewed the drainage pattern for the site.

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

The public hearing was opened.

Hubert Hafner, 311 Ranchview Lane South, stated that:

- His main concern was the view of the proposal from his property.

- It would be a huge, white building.
- He did not see much of a change since the neighborhood meeting.
- The fence would not cover the proposed 60-foot tall building.
- The berm would be small.
- The building would be nice from the front, but the back should be hid more.

Bob Shadley, 700 Gleason Acres Drive, stated that:

- He spoke for five of the seven residents that live on Gleason Acres Drive.
- He thanked Gordon and Thomas for their support. They listened to him and were fun to work with.
- His group has three concerns: the environment, architecture, and safety and security.
- Too much grading would occur on the site.
- The site is known as the demolition dump and has been a hazardous waste site for years. Previous attempts to build on the site have been deemed unfeasible due to environmental concerns. He read from the revised response action plan (RAP) and construction contingency plan.
- He requested an environmental impact statement be done for the commercial site which would be larger than 4,000 square feet in size.
- The variances tie in with architectural concerns.
- The architect felt the building would be a large white box and would be inappropriate in size for the site.
- The building could be lowered ten feet and not reach the water table.
- The height of the building is the effect. The cause is that BMW requires the owner to stock 596 automobiles. That equates to 3 months of sales. He agreed that the dealer ought to be able to have stock available, but it does not have to be all on site. Some of it could be kept at Fort Snelling.
- With some innovative thought, the height problem could be solved by changing the requirement.
- He understood that governments would receive \$600,000 in revenue a year from the proposed project. \$60,000 would go to the city. He recommended the city hire a police officer to enforce the no test-driving requirement full-time. He has seen motorists test driving

vehicles, with sales associates in the vehicle, driving very fast. There are small children in the area.

- His solution to the problems would be for the public hearing to be postponed and rescheduled in 180 days. During that period, he requested staff initiate all actions necessary and prudent to complete an environmental impact statement and worksheet. It would help cover people from possible future lawsuits.
- He requested BMW consider an alternate storage site for most of the vehicles so that the height of the building could be decreased.
- He saw nothing wrong with telling BMW that he loved their vehicles, but the building needs to be more architecturally similar to Lexus and Morries Cadillac.

Jan Anderson, 701 Gleason Acres Drive, agreed with Mr. Shadley. She asked if the approval from the Minnesota Pollution Control Agency was available for viewing. She was skeptical of the rendering of the view from her back yard. The dealership would have more vehicles on site than other dealers. There is already a problem with test driving being done in the residential area. She has approximately 50 vehicles a day turn around in her driveway. Many of them only have one test driver. The test driving policy is not being controlled right now. She understood that development needs to happen. She knew of a project in Wayzata where trees were clear cut. She was concerned how the project would be monitored.

Jeff Koblick, 351 Townes Road, attested to the fact that the metal being found on the site is from appliances, rubber, and chemicals. He stated that:

- The wetland was filled in with junk. The elevation of the site is not natural. It was created.
- The Wayzata Nissan was required to have its berm height tall enough to screen all of the business activity from the neighbors. The height was 10 feet to 11 feet above elevation. Trees 10 feet to 20 feet in height were required to be planted on top of the berm.
- The building was brought forward so the north neighbors would have less of a view.
- The representation does not reflect the impact to the neighbors on the north. It represents the farthest neighbors on the left and right, but not all the neighbors in the middle. He requested accurate photographs be taken.
- He agreed with Walker's idea of grading the property to the elevation of the properties to the left and right and the fill would be used to create a berm in the back to provide screening.

- If the building would be moved closer to Interstate 394, the impact would be minimized for the residential neighbors.
- The elevation should be lowered, the berm should be consistent with Wayzata Nissan, and the building should be moved closer to Interstate 394.
- He saw no reason for the extra 15 feet on the BMW logo wall.

Walker felt the buffering issue needs to be addressed. He suggested landscape buffering be provided at the residences to reduce the visibility. The test drive issue needs to be dealt with. Having a dealership employee in the vehicle during a test drive is a great start. It might be good to consider a different color for the rear of the building. Lowering the building would cost a lot of money. He appreciated that. The developer would be doing the community a big favor by removing the contaminated soil. It currently decreases the quality of the water. He suggested an environmental impact phase 1 study be completed and the results be made available. It would be respectful to the community to reduce the height of the logo. People respect the vehicle. Being more subtle would be appreciated.

Blatz asked if postponing the public hearing 180 days would prevent statutory deadlines from being met. Gordon stated that city council review needed to occur by November 20, 2008. Without an extension agreement from the applicant, that is the applications time deadline.

No additional testimony was submitted and the hearing was closed.

Sjeklocha asked what would happen to enforce the details of the conditions. Wischnack acknowledged the heart of any development is the follow up and implementation of what has been approved. The city monitors to see that conditions are being met for a number years. It takes several years for landscaping to be done, have screening installed, and have all structures completed. Once a project has been in place for five years, it is common for staff to receive a call when a tree dies and the city may enforce replacement at that time. Staff works with the owners of automobile dealerships to gain compliance with test driving locations. Morris Ford and Sears built a relationship between the homeowners and the managers of those sites to better the situation.

Sjeklocha thought sharing what would be in the plan to address environmental concerns would be beneficial or postponing action on the item would allow time for more conversation. She agreed with many of Walkers comments. The applicant has heard the neighbors' concerns and has made some changes. It

may be beneficial to work out the situation a little more. More berming and buffering would be a benefit.

In response to Lehman's request, Gordon pointed out the building footprint and the wetland edge. Lehman was troubled by the building being back further from the street. It would disrupt the continuity of the frontages. He was unsure if moving it forward would be the answer. He recalled that the amount of storage in front of the building was trying to be minimized. It struck him that not as much buffering was being required on the east and west as the surrounding neighbors have. He was not in favor of moving issues to other places, such as Fort Snelling, or to another part of the property. Gordon explained that automobile dealership uses must consider their impact on neighbors. Dealership activities mostly occur in the building for service and sales, but a large part of the inventory sits outside. The proposal keeps most of the activity closer to the road. The north area would have a 10-foot berm and trees that would potentially grow 30 feet in height.

In response to Chair Cheleen's request, Mr. Coyle stated that during the break he provided staff with a copy of the Minnesota Pollution Control Agency's (MPCA) approval of the phase one environmental assessment of the property. Every approval has been provided that needs to be done to move forward with the project except the application being reviewed currently. The document is a public document.

Wischnack clarified that the applicant had the phase 1 environmental review completed and is now in the volunteer investigation and clean-up phase of the program. That is different than an environmental assessment worksheet (EAW), which would be done if: (1) it met a mandatory threshold; or (2) the council approved a citizen petition for one to be done. The current project does not fall into the category of projects that requires a mandatory EAW. A petition of 25 signatures may be submitted to the MPCA to request an EAW be done. The council would then have discretion to either approve or deny the request for the EAW. The applicant is in compliance with the city's requirements as well as the MPCA's requirements.

Chair Cheleen asked if preparing the site would be safe. Dan Holte, Braun Intertec, stated that the soil that would be removed from the cut area to the fill area would be done in accordance with the requirements of the response action plan approved by the MPCA. As part of that plan, pretesting would be done.

Chair Cheleen asked if the site could be lowered ten feet. Sirish Samba, civil engineer with McCombs Frank Roos and Associates, representing the applicant,

stated that the existing soil limits what can be done. He explained the restrictions that minimize the impact to the wetland. The floor elevation must be at 957.

Walker asked if saving money was a factor in not lowering the site an additional 10 feet. Mr. Samba stated that cost, desire not to excavate more than the already 25,000 cubic feet, and level of the ground water prevents any further decrease in elevation. Walker asked if it had been considered to lower the building a half story. Mr. Samba responded that it had been considered, but determined not feasible due to the storm water drainage pattern of the site.

In response to Chair Cheleen's question, Gordon confirmed that the new ordinance requires new dealerships to have an employee ride with a consumer on a test drive. If the requirement is not followed, it would be a violation of the dealership's conditional use permit. Mr. Coyle stated that that is already BMW's business practice.

Chair Cheleen confirmed with Gordon that BMW would have fewer vehicles outside than the current dealerships in the area.

Chair Cheleen reviewed that the traffic study showed that the area is already at an "F" traffic level. He asked if the intersection would qualify for a light. Gordon agreed that the level of service of a couple intersections in the area is failing. The proposal is a better use for the site than an office building which would peak in the morning and evening hours.

Chair Cheleen noted that moving the building forward would provide a better view from the rear, but the building would do better to serve as a buffer between the residences and activity in the front of the building. Gordon agreed and added that the front display area would have more lighting.

Chair Cheleen asked if the 85-foot wall height would be necessary. Mr. Coyle stated that the applicant felt the design would be appropriate for the building. It represents a substantial compromise from the original massed tower structure that was a source of much of the commentary from the neighbors. The plan was changed in response to those comments. He felt it would be an appropriate design. The city does not have a height limitation and it would not be regulated by a setback requirement. Chair Cheleen agreed that the current proposal is more architecturally pleasing without the tower.

Mr. Coyle stated that the dealership to the right is just as visible in the site line photos as the proposed building would be and residents have commented that that was acceptable. The screening intention was to protect the residential view

of the ground-level activity of the site. The landscaping plan meets the requirement of the ordinance. The fundamental premise of the ordinance change was to take the vehicles off the lots and put them into a building. The proposal would do that. The proposal was doing its best to fulfill the requirements of the ordinances. The berm and wetland would be protected and the landscaping would meet ordinance requirements.

Chair Cheleen reviewed the history of the proposal. The applicant met with staff, then neighbors, and then down-sized the building. He noted that the building could be slightly smaller but the same height and the project could proceed. He saw no reason to postpone action. It would be a recommendation to the city council. There would be another opportunity for residents to provide comments.

Walker felt the applicant did a good job addressing the issues, but the visual effect for the neighbors was a concern. He preferred more berming and a color that would help camouflage the building. Although, in the winter, white would be preferred.

Sjeklocha felt the developer listened to the neighbors. She concurred with Walker. She walked the property and understood the neighbor's concern with the north berm. A cedar fence would be added and the trees are staying. Thomas explained that storm water treatment and management of the wetland would regulate changes done to the berm. Sjeklocha supported the proposal.

Chair Cheleen felt providing a photograph of a white building in shade would be helpful for the city council to visualize the rear of the building. Thomas stated that could be done. She had been given a drawing that showed the area in shadow at different times of a year.

Mr. Coyle stated that an accurate depiction was included in the packet that represented what the shadow condition would be on the north face. It would appear grey.

Lehman appreciated Mr. Coyle stating that the application fulfills its requirements. Lehman saw no basis to deny the request.

Blatz agreed.

Chair Cheleen stated that the city council is tentatively scheduled to review the item at its September 15, 2008 meeting.

***Lehman moved, second by Blatz, to recommend that the city council approve the following items concerning a new automobile dealership at 15802 and 15810 Wayzata Boulevard for BMW:***

**PRELIMINARY PLAT**

- 1) *Recommend the city council approve the preliminary plat date-stamped August 25, 2008. Approval is based on the finding that the plat meets the required standards and ordinances and is subject to the following conditions:*
  - a. Prior to final plat approval, complete the following:
    - (1) Show the following on the final plat:
      - (a) A minimum 10-foot wide drainage and utility easements adjacent to the public right-of-way(s) and minimum 7-foot wide drainage and utility easements along all other lot lines.
      - (b) Utility easements over existing or proposed public utilities, as determined by the city engineer.
      - (c) Drainage and utility easements over wetlands, floodplains, and stormwater ponds, as determined by the city engineer.
    - (2) Pay a park dedication fee of \$129,600.
    - (3) If the developer is petitioning the city to construct the public improvements, the city council must order the improvements.
  - 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) Payment for traffic signs and installation, as required by the city engineer.

- (4) 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 the required wetland buffer 25-feet upland from the delineated wetland edge and a drawing of the easements. The easement may allow removal of hazard, diseased, or invasive species. The easements and drawings must be recorded with the final plat.
  - (c) Declaration and restrictive covenants over all mitigated wetland areas per the WCA.
  - (d) Restrictive covenants to be recorded against the individual lots within the plat. The covenants must include the conditions that have not been met as of the release of the plat.
  - (e) 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.

- (5) Any other requirements included with final plat approval.

#### **MASTER DEVELOPMENT PLAN**

- 2) *Adopt the ordinance on pages A72–A81 of the staff report, which approves the proposed master development plan, and final site and building plans for a new automobile dealership at 15802 and 15810 Wayzata Boulevard. Approval includes the following variances:*
  - a. Side yard setback variance from 70 feet to 60 feet.
  - b. Variance to allow use of composite metal panels as a primary building material.

This ordinance is based on the following findings:

- a. The proposal would meet the required standards and ordinances for a site and building plan approval.
- b. The proposed setback variance associated with the development is reasonable.
  - (1) PRACTICAL DIFFICULTY. The location of an existing wetland on the east side of the building and the applicant's desire to adequately buffer this wetland constitute a practical difficulty. The setback variance could be eliminated by a 10-foot shift of the location of the proposed building. However, such shift would merely move the building 10 feet away from existing paved area on an adjacent auto dealership site and 10 feet closer to the existing wetland.
  - (2) UNIQUE CIRCUMSTANCE. The setback requirement is based on the 70-foot height of the proposed building. However, just 1.3 percent of the proposed building is 70-feet in height. The vast majority of the building would be 60 feet or less in height and meet the setback requirement. The articulated height of the proposed building is a unique circumstance not common to every commercial building within the PID district.
  - (3) NEIGHBORHOOD CHARACTER. Any redevelopment of the currently vacant site will change the visual character of the property. However, the 10-foot setback variance itself would not.
- b. The proposed building materials variance associated with the development is reasonable.
  - (1) PRACTICAL DIFFICULTY. The proposed composite metal panels would have many of the same characteristic as polished stone or glass panels. The discrepancy in city code which would allow for polished stone or glass panels, but not allow for similar composite panels that have as high of material quality constitutes a practical difficulty.

- (2) UNIQUE CIRCUMSTANCE. The metal panels would comprise no more than 55 percent of any one façade of the proposed building. Though clearly more than an accent material, the panels would not make up an overwhelming majority on any façade. This breakdown of building materials is a unique circumstance not common to every commercial building and property.
- (3) NEIGHBORHOOD CHARACTER. Any redevelopment of the currently vacant subject site will change the visual character of the property. The building materials variance itself would not.

The master development plan, and final site and building plans are subject to the following conditions:

- a. This master development plan repeals and replaces Ordinance No. 98-19 adopted on September 14, 1998.
- b. Subject to staff approval, the site must be developed and maintained in substantial conformance with the following plans, unless modified by the conditions below:
  - Site plan date-stamped August 25, 2008.
  - Grading plan date-stamped August 25, 2008.
  - Landscaping plan date-stamped August 25, 2008.
  - Building elevations date-stamped August 25, 2008.
  - Utility plan date-stamped August 25, 2008.
  - Illumination plan date-stamped August 25, 2008.

The above plans, as modified by the conditions below, are hereby adopted as the BMW master development plan and as final site and building plans.

- c. A grading permit is required. Unless authorized by appropriate staff, no site work may begin until a complete grading permit application has been submitted, reviewed by staff, and approved.
  - (1) The following must be submitted for the grading permit to be considered complete.

- (a) Final site, grading, drainage, utility and erosion control plans must be submitted for staff 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.
- (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, landscaping requirements, and to restore the site. 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) 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 the 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.
- (e) One of the following:
  - (i) Escrow dollars, in amount to be determined by natural resources staff, to contract with an erosion control inspector to monitor the site throughout the course of construction; or

- (ii) Evidence that an erosion control inspector has been hired to monitor the site through the course of construction. This inspector must provide weekly reports to natural resource staff in a format acceptable to the city.
- (2) Prior to issuance of a grading permit:
  - (a) Submit a seed mix proposal for the infiltration area and adjacent slopes. This mix must be of natural and native species and is subject to review and approval of natural resources staff.
  - (b) Install all measures in accordance with the SWPP for staff inspection. These items must be maintained throughout the course of construction.
  - (c) The final plat must be released by the city and filed with Hennepin County for recording.
  - (d) Permits may be required from other outside agencies including, but not limited to Hennepin County, the Minnehaha Creek Watershed District, and the MPCA. It is the applicant's and/or property owner's responsibility to obtain any necessary permits. Copies of all required permits must be submitted to the city.
- (3) 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:
  - (1) Submit the following documents:
    - (a) A recorded copy of the ordinance.
    - (b) A recorded copy of the conditional use permit resolution.

- (c) Recorded copy of the final plat, all required easements, and restrictive covenants.
  - (d) A letter from the surveyor stating that boundary and lot stakes have been installed as required by ordinance.
  - (e) 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.
  - (f) Certified as-built drawings in mylar, PDF, and CAD formats.
  - (g) As-built topography survey for infiltration basins and all utilities in CAD format.
- (2) Submit the following plans for staff review and approval:
- (a) A final site plan. This plan must:
    - i. Designate fire lanes. These lanes must be acceptable to the fire marshal.
    - ii. Designate customer parking spaces.
  - (b) A final landscaping plan. The plan must:
    - i. Include an estimate of the proposed cost of the work and must meet minimum landscaping requirements as outlined in ordinance.
    - ii. Must substitute another species of evergreen trees for Colorado spruce shown on preliminary plans.
  - (c) 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 the 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.

- (d) 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.
  - (e) 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.
- (3) 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) Pay all required hookup fees.
- e. This ordinance does not approve any signs. A separate sign plan review and sign permits are required.
- f. The property owner is responsible for replacing any required landscaping that dies.
- g. All rooftop and ground-mounted mechanical equipment, and exterior trash and recycling storage areas, must be enclosed with materials compatible with the principal structure, subject to staff approval. Low profile, self-contained mechanical units that blend in with the building architecture are exempt from the screening requirement.
- h. Construction must begin by December 31, 2009, unless the planning commission grants a time extension.

**CONDITIONAL USE PERMIT FOR OUTDOOR DISPLAY,  
SALES, AND STORAGE**

- 3) *Recommend that the city council approve the resolution on pages A82–A89 of the staff report which approves a conditional use permit for outside storage and display at 15802 and 15810 Wayzata Boulevard. Approval is based on the following findings:*
  - a. The proposal meets conditional use permit standards as outlined in the city code.
  - b. The proposed setback variance associated with the development is reasonable.
- (1) PRACTICAL DIFFICULTY. The location of an existing wetland on the east side of the building and the applicant's desire to adequately buffer this wetland constitute a practical difficulty. The setback variance could be eliminated by a 10-

foot shift of the location of the proposed building. However, such shift would merely move the building 10 feet away from existing paved area on an adjacent auto dealership site and 10 feet closer to the existing wetland.

- (2) UNIQUE CIRCUMSTANCE. The setback requirement is based on the 70-foot height of the proposed building. However, just 1.3 percent of the proposed building is 70-feet in height. The vast majority of the building would be 60 feet or less in height and meet the setback requirement. The articulated height of the proposed building is a unique circumstance not common to every commercial building within the PID district.
  - (3) NEIGHBORHOOD CHARACTER. Any redevelopment of the currently vacant site will change the visual character of the property. However, the 10-foot setback variance itself would not.
- c. The proposed building materials variance associated with the development is reasonable.
- (1) PRACTICAL DIFFICULTY. The proposed composite metal panels would have many of the same characteristic as polished stone or glass panels. The discrepancy in city code which would allow for polished stone or glass panels, but not allow for similar composite panels constitutes a practical difficulty.
  - (2) UNIQUE CIRCUMSTANCE. The metal panels would comprise no more than 55 percent of any one façade of the proposed building. Though clearly more than an accent material, the panels would not make up an overwhelming majority on any façade. This breakdown of building materials is a unique circumstance not common to every commercial building and property.
  - (3) NEIGHBORHOOD CHARACTER. Any redevelopment of the currently vacant subject site will change the visual character of the property. The building materials variance itself would not.

Approval is subject to the following conditions:

- a. Subject to staff approval, the site must be developed and maintained in substantial conformance with the following plans, unless modified by the approved master development plan:
  - Site plan date-stamped August 25, 2008.
  - Grading plan date-stamped August 25, 2008.
  - Landscaping plan date-stamped August 25, 2008.
  - Building elevations date-stamped August 25, 2008.
  - Utility plan date-stamped August 25, 2008.
  - Illumination plan date-stamped August 25, 2008
- b. Fire lanes must be designated on the plans submitted for building permit review. These lanes must be acceptable to the fire marshal.
- c. Customer parking spaces must be designated on plans submitted for building permit review.
- d. All inventory and display vehicles located outside of a building or structure must be at finish grade level. No jack stands, risers, or other mechanisms may be used to elevate any vehicle for display purpose.
- e. Class II motor vehicle sales (used car sales) are allowed only as an accessory part of the new car sales.
- f. The sale of vehicles may occur during the times and days allowed by state law.
- g. At no time may vehicles be displayed in any yard area, drive aisle, or fire lane.
- h. Parking lot and site security lighting must comply with section 300.31(7)(c) and in addition, the following requirements:
  1. Maximum of 450 watts per fixture.
  2. Maximum height of light standards is 30 feet in outdoor display areas as defined in 300.31 Subd. (4)(a)(3)(b) and 25 feet in all other outdoor areas.

3. Maximum of 1 watt per square foot surface parking area.
4. The lighting plan shall be designed to have 0.0 foot-candles at residential property lines with the understanding that ambient light from other sources may spill on the property and influence actual on site measurements.
  - i. The customer parking spaces must be clearly signed and may not be used at any time for inventory vehicle parking.
  - j. All pickups and drop offs of vehicles must occur on site and off public streets.
  - k. All loading and unloading of vehicles must occur on site and off public streets.
  - l. Customer testing of vehicles may occur only on non-residential streets and only with a store employee.
  - m. No loudspeaker paging system may be used.
  - n. All rooftop equipment must be fully screened from ground level view of adjacent properties.
  - o. All signs must be consistent with this code or any future sign plan approval.
  - p. All trash and recyclable materials must be screened from public view.
  - q. The property owner is responsible for replacing any required landscaping that dies.
  - r. The city council may reasonably add or revise conditions to address any future unforeseen problems.
  - s. Any change to the approved use that results in a significant increase in traffic or a significant change in character would require a revised conditional use permit.
  - t. The applicant must agree to these conditions in writing.

- u. Prior to issuance of a building permit, this resolution must be recorded with the county and a copy of the recorded resolution must be returned to the city.

**CONDITIONAL USE PERMIT FOR GRADING**

4) *Recommend that the city council approve the resolution on pages A90–A93 of the staff report. This resolution approves a conditional use permit for grading in excess of 1,000 cubic yards at 15802 and 15810 Wayzata Boulevard. Approval is based on the following findings:*

- a. The proposal would meet the general conditional use permit standards as outlined in city code.
- b. The proposal would meet minimum engineering requirements.

Approval is subject to the following conditions:

- a. A grading permit is required. Unless authorized by appropriate staff, no site work may begin until a complete grading permit application has been submitted, reviewed by staff, and approved.
  - (1) The following must be submitted for the grading permit to be considered complete.
    - (a) Final site, grading, drainage, utility and erosion control plans must be submitted for staff 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.
    - (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, landscaping requirements, and to restore the site. 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) 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) 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) Permits may be required from other outside agencies including, but not limited to Hennepin County, the Minnehaha Creek Watershed District, and the MPCA. It is the applicant's and/or property owner's responsibility to obtain any necessary permits. Copies of all required permits must be submitted to the city.
  - (3) 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.

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

9. ADJOURNMENT

*Lehman moved, second by Sjeklocha, to adjourn the meeting at 10:15 p.m.  
Motion carried unanimously.*

By: 

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Lois T. Mason  
Planning Secretary