

**MINNETONKA PLANNING COMMISSION  
MINUTES**

**MAY 20, 2010**

**1. CALL TO ORDER**

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

**2. ROLL CALL**

Commissioners A. Thomas, Adams, Lehman, Sjeklocha, and Cheleen were present.

Staff members present: Community Development Director Julie Wischnack, City Planner Loren Gordon, Principal Planner Susan Thomas, Planner Jeff Thomson, and Planning Technician Stephanie Scott-Sims.

**3. APPROVAL OF AGENDA:** The agenda was approved as submitted with additional items provided in the change memo dated May 20, 2010.

**4. APPROVAL OF MINUTES:** May 6, 2010

*Adams moved, second by Sjeklocha, to approve the May 6, 2010, meeting minutes as submitted.*

*A. Thomas, Adams, Lehman, Sjeklocha, and Cheleen voted yes. Motion carried.*

**5. REPORT FROM STAFF**

Gordon explained that four votes are needed to pass a motion by the five-person commission.

The next planning commission meeting will be June 3, 2010.

**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 A. Thomas, to approve the items listed on the consent agenda as recommended in the respective staff reports as follows:*

**A. Twelve month extension for a rear yard setback variance at 5750 Shady Oak Road. (09002.10a)**

Adopt the resolution on pages A11–A14 of the staff report, which approves the proposed rear yard setback variance from 40 feet to 28 feet at 5750 Shady Oak 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:** The proposed deck extension and porch addition are reasonable uses of the residential property.
  - b. **UNIQUE CIRCUMSTANCE:** The existing home is located 40 feet from the rear property line. The required rear yard setback is 40 feet, thus, any addition would require a variance.
  - c. **INTENT OF THE ORDINANCE:** The proposed deck extension and porch addition are consistent with the intent of the ordinance provisions for residential properties.
  - d. **NEIGHBORHOOD CHARACTER:** Given significant grade change and vegetation, the proposed deck extension and porch addition would not be seen by neighboring properties and are consistent with the character of the surrounding residential properties.

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, 2010, unless the city has issued a building permit for the project covered by this variance or approved a time extension.

**B. A conditional use permit for medical/dental clinic at Minnetonka Crossings, 6001 Shady Oak Road. (06006.10a)**

Recommend that the city council adopt the resolution on pages A5–A7 of the staff report. This resolution approves a conditional use permit for a 2,500 square foot medical/dental clinic in Minnetonka Crossings, 6001 Shady Oak Road. Approval is based on the finding that the proposal meets all required conditional use permit standards are outlined in City Code 300.21 Subdivision 3(e). Approval is subject to the following conditions:

- 1) Prior to issuance of a building permit, this resolution must be recorded with the county and a copy of the recorded resolution returned to the city.
- 2) The city council may reasonably add or revise conditions to address any future unforeseen problems.
- 3) 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.
- 4) The applicant must agree to the above conditions in writing.

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

**8. PUBLIC HEARINGS**

**A. Items concerning Minnetonka High School located at 18301 Highway 7. (97001.10b)**

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

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

Natural Resources Manager Jo Colleran joined the meeting.

Adams asked Thomson to clarify if the master plan needs planning commission action. Thomson answered in the negative. Since there is no zoning action proposed, there is no formal action needed by the planning commission or city council to adopt the master plan. Adams felt the site is already intensely

developed and the idea of adding another rink concerns him. Traffic problems, run off, and impact on natural resources could be created. He is not in favor of adding additional capacity for an athletic facility for the site.

Sjeklocha asked Thomson to address neighborhood comments submitted with the packet, what the areas of over grading may accommodate in the future, and parking. Thomson explained that the master plan is a tool for the school district to use for storm water purposes and the site in a larger context. Any project that would require site and building plan review in the future or grading associated with the project would be reviewed by the planning commission and city council. It is hard to tell which projects would require approval. It would depend on timing and which would be done together. The Pagel Center, for instance, would require review. The proposed projects fit within the site and do not impact sensitive areas.

Thomson stated that the minimum parking requirement is based on the number of students in the school. The school district well exceeds the minimum parking requirement. Even the small additions to the classrooms would not require more parking.

Sjeklocha asked if the proposed easement would be marked with signage. Thomson answered affirmatively. A condition of approval would require signs installed along the boundary of the conservation easement.

Sjeklocha noted a condition in the resolution that refers to a 48-hour notification of a violation of the construction management plan, other conditions of approval, or city code standards. Thomson clarified that that condition applies to the grading plan and is specifically used for enforcement of erosion control and grading requirements of the project. Due to the sensitive time-frame nature of those types of violations, the 48-hour time frame is warranted. It would not apply to other ordinance violations or conditions of approval.

Sjeklocha questioned what differences neighbors would see when viewed from their residences. Thomson stated that the aesthetics of the campus would appear the same from surrounding properties. All of the proposed facilities would be located within existing program areas. Tennis courts would be located where the discus and shot put areas are located now. Those would be relocated within existing fields and the tennis court would be made into a parking area.

A. Thomas asked if the Pagel Center conditions of approval have been satisfied. Colleran stated that all conditions have been met except that dead landscaping near the softball fields needs to be replaced. Upon today's inspection, the pond is

litter free and landscaping by the soccer fields and Pagel Center is alive and healthy. The buffer on the east fence is required to consist of 17 evergreen trees. When last inspected, those trees were healthy. The school district has replaced 5 of the trees over the course of time.

Adams asked if the turf area shown in the master plan would be pervious and how runoff would be handled. Colleran explained that the area was over excavated to address runoff a year ago. She was unable to address which surface would be more permeable.

Adams asked if an environmental impact statement would be required. Thomson replied that the minimum trigger for a mandatory review is 300,000 square feet for a use of this type. Also, state law exempts this project since it is an accessory to the primary use. Adams asked how density is defined. Gordon stated that the rules in this situation allow some expansion of the use of the property. An expansion is determined by the square footage of the building. The building is almost 500,000 square feet. An expansion to 800,000 square feet would require an environmental assessment worksheet (EAW). Expansion of a ball field as an accessory use would not trigger that requirement.

A. Thomas asked if the parking on Delton Avenue could be restricted if the proposal would be approved. Thomson stated that is not a condition of approval, but it could be added.

Chair Cheleen asked if the planning commission has the authority to include a condition that would require "no parking" signs. Thomson answered affirmatively. The commission could recommend that be done to the city council. The city council has the authority to install "no parking" signs.

Lehman asked if it would be appropriate for this condition to be placed on property not owned by the applicant. Thomson answered affirmatively. He provided Scenic Heights Elementary as an example. A condition of the elementary school's approval requires "no parking" signs be installed on Scenic Heights Drive. Thomson clarified that the "no parking" signs would be located on the right of way of the street. Wischnack stated that the city has control of installing "no parking" signs, so the city may require that condition as part of the approval. Lehman understood the distinction and appreciated it being explained.

Chair Cheleen asked if the baseball loud speakers have been removed. Thomson stated the speakers have been disconnected.

Chair Cheleen asked if the silt fence has been removed. Colleran answered affirmatively.

Paul Bourgeois, Executive Director of Finance and Operations for Minnetonka Public Schools, 5621 County Road 101, applicant, stated that the project would alleviate traffic, especially for drop-offs. It would have a positive impact on the campus. Adams' previous suggestion in 2009 to move parking to the lower area made a lot of sense. His ideas were incorporated into the plan.

Adams asked Mr. Bourgeois to explain how permeable the artificial turf would be and how drainage would be handled. Mr. Bourgeois stated that the turf would be designed to handle nine inches of rain per hour and drain it off. The master plan shows what theoretically would be possible. The district knows that a lot of those things may not make sense to happen. There are avid parents involved in soccer and hockey who have many ideas. School staff cautions the parents that the campus is reaching its maximum use of the site. The district, first of all, wants to make sure that there is appropriate classroom space. Run off would be handled by an underground system. If that capacity is never used, then that is fine. There would be drain tile located under the surface.

Adams asked about bus safety on the west side of the building based on the comment received from a bus driver. Mr. Bourgeois stated that the district is trying to manage the site as a one-way system to make the site safer. There is a way for buses with trailers to loop all the way around the building and exit out the east side. Directions are needed for buses coming from other schools. Adams asked if the plan is to have a one-way circulation system. Mr. Bourgeois stated that the drawing submitted does show traffic arrows indicating the one-way internal circulation. Adams asked if the circulation pattern would include the entire site. Mr. Bourgeois clarified that the circulation pattern would be within the west parking lot area. Adams preferred one-way circulation around the entire building, but approved of at least the west side.

Lehman asked if the school would support no parking on Delton Avenue. Mr. Bourgeois answered affirmatively due to safety issues of pedestrians crossing Excelsior Boulevard, especially in the dark. The intersection does not have good sight lines. Lehman asked what "no parking times" would be appropriate. Mr. Bourgeois suggested a mix of times, especially 6 a.m. to 9 a.m.

Sjeklocha asked what type of equipment is being stored along the trail. Mike Condon, Minnetonka School District Building and Grounds Supervisor, stated that athletic equipment and supplies are stored from time to time on the south end of the football field. He was unaware of other areas.

Sjeklocha asked about some of the creative parking solutions that were discussed at the last meeting. Mr. Bourgeois stated that district staff and the superintendent looked at options and discussed the pros and cons. Off-site options would be extremely expensive on an on-going basis. Space would have to be rented with funds from the operating fund and additional buses would be needed to run shuttles. Each bus costs \$36,000 for 173 days of busing per bus route which totals upwards of \$100,000 in operating costs. An investment in the tennis courts and parking area is a better option. The school district does not support having more than 2 students per vehicle. More than 2 students per vehicle causes a safety issue. Purchasing land east of the building is now being looked at. Delton Avenue homes adjacent to the school site would be considered for purchase if they become available.

Chair Cheleen asked if 159 new parking spaces would be added, then would 159 new parking permits be issued. He understood that parking is needed for students who spend parts of the day on and off campus. He felt the location of the proposed spaces would be advantageous for people attending sporting events because the parking would be close to the field. Mr. Bourgeois stated that the intention is to issue permits for the added stalls. The hope is to reduce the number of drop-offs to alleviate congestion and improve safety. The additional stalls would provide the potential to alleviate 6 out of 8 vehicle trips at the intersection. Parking in the lower area would be offered at a discount.

A. Thomas asked about the approved plans for the 2009 parking expansion. Mr. Bourgeois stated that the 29 spaces would be constructed after this school year ends.

Adams asked if the school is "up on green" for transportation. He viewed the website and saw that the school district is doing a lot to be up on green, except in regard to transportation. Adams commented that the accident rate is lower for school buses than teen drivers. He asked what the district is doing to promote the concept. Mr. Bourgeois stated that 27 bus loads of students arrive at the school each morning. Over 1,000 students take the bus, 1,000 students drive, and 800 students are dropped off. Flyers are sent to every student and parent each year listing the benefits of riding the bus. Bussing is free for students living more than two miles from school and a nominal fee is charged for those living within two miles. The school district tries to route buses close to capacity, but cannot mandate riding the bus.

Adams felt this would be a great learning opportunity for students to understand the environmental tradeoffs. Mr. Bourgeois understood his position. Minnetonka

High School has fewer drivers than the surrounding districts, even with the proposal.

Adams asked about the junk and trash by the Babe Ruth Field. Mr. Bourgeois stated that night staff is supposed to pick up outside debris. The field is for junior varsity ball and trash should be picked up. Adams stated that the campus is nice except for the perimeter adjacent to the neighbors.

Chair Cheleen stated that the pathway along the south is aesthetically unpleasing to people because of the weeds and equipment. Landscaping must be kept up and storing equipment in a building may be necessary. Mr. Bourgeois stated that quaking aspen and black hills spruce may need to be reconsidered for species of trees that would survive better in wet conditions. Colleran stated that quaking aspen trees are a wetland species, but need to be watered until established and protected from deer rub.

The public hearing was opened.

Charles Christian, 19013 Ashcroft Circle, stated that the conditions of the approval established in 2006 for Veterans Field require the speaker system not be audible past 500 feet from the speaker. That conditional use permit has been violated since the opening of the field in May of 2007 through the last violation he heard May 9, 2010. He wants the speakers removed, not just disconnected. The packet states that the district has agreed to disconnect the speakers for this year and if violations continue, the loudspeaker permit would be revoked. He has a notebook full of communications with the school district in regard to the violations, but so far nothing has changed. He asked commissioners to pay close attention to what was approved in 2006.

Charlie Kanan, 19715 Sweetwater Curve, Shorewood, stated that his son was lucky enough to graduate from Minnetonka High School. The one safety issue that was very apparent and still exists is the outside parking, particularly in the mornings. The number of accidents was high along Highway 7 over the years prior to the completion of the barrier. He asked the commission approve the district's request to allow students to get to campus safely. The proposal would help eliminate the safety issue.

Ron Kamps, 15759 Tonkawood Drive, Minnetonka, supports the proposed parking for the campus. Four of his children went to the school for education, extracurricular activities, and for work experience provided by the school and performed off campus. His four children were told that in order to drive, each one

had to be good students, participate in extracurricular activities, and work in the community. The additional parking would allow students to do that.

No additional testimony was submitted and the hearing was closed.

Chair Cheleen recalled that a lot of the field noise created by the outdoor speakers occurred on the weekends. The school district may be able to monitor the system on a weekend. It could help alleviate the problem if the speakers faced the stands. Gordon stated that the system has been monitored during the course of 2009 with testing in the fall of the year. The system has operating guidelines within the conditional use permit and operations conditions that allow two speakers to be used except for high school baseball. In that situation, four speakers may be used. The users of the equipment have been using all of the speakers. Last fall, city staff met with school district staff and visited the site. The sound level was tested and failed to meet volume restrictions. The system was recalibrated. Sound from the speakers cannot be audible 500 feet from the field. It needs to be tested again this spring.

Wischnack noted that a similar situation prompted the city to revoke the loud speaker permit at another location for one year. The city has not received a complaint since the year was over and the system has been back in use. Chair Cheleen noted that a condition of approval would restrict the maximum number of speakers to two and they would be required to face the stands for one year.

Sjeklocha asked if a condition of approval in 2006 addresses the management of materials and equipment and how appropriate it would be to require materials and equipment to be kept indoors. Colleran explained that part of the approval of the dome requires the containment of mulch, sand, and other materials. Thomson stated that there are no conditions regarding storage of athletic equipment.

Sjeklocha commented that it was mentioned that the proposed additional parking would decrease trip generation. Thomson stated that the use of the facility would be a better indication of trip generation than just the addition of parking stalls. Mr. Bourgeois previously explained how the additional stalls would provide the potential to alleviate 6 out of 8 vehicle trips at the intersection for each of the 159 stalls.

Adams stated that the proposal is better than last year's plan. He is never happy with adding additional surface to any property. Other school district property should be used for additional fields in the future. The school district has not been a good neighbor and needs to be more conscientious towards its neighbors in

the future. Delton Avenue should be signed “no parking.” He supported staff’s recommendation.

Lehman agrees that off-site parking should not be looked at. There should be two separate motions to the city council on this project. He is o.k. with “no parking” for school visitors, but business patrons should be able to park on the street.

Sjeklocha stated that this is a better project than last year’s proposal. She also favored “no parking” on Delton Avenue after a public hearing is held and input received. The school district should make a good faith effort to store athletic equipment, but did not want to make it a condition of approval of this project. She supports the project.

A. Thomas stated that determining the hours of “no parking” is not a problem. The school district does not have a problem with prohibiting parking on Delton Avenue. The only way he would support the project is with a condition requiring “no parking” signs be installed on Delton Avenue in front of the school for school visitors. A public hearing or city council resolution would be fine.

A. Thomas thinks that the school district’s master plan should include property acquisition. During his 16 years in working with the school district as a city representative, the district is always out of compliance with something. He would recommend that the city council check for compliance of the conditions of approval, especially in regard to the speaker system. The school district should be a good neighbor.

Chair Cheleen noted that an area for outdoor storage of sports equipment could be mowed and maintained to be semi out of sight. That can be done if one is a good neighbor. He liked the comment regarding education, extracurricular activities, and work program. He is cognizant that there are students who leave during the day. He suggests that students on work release programs be given priority for the parking permits. He supports staff visiting the site and checking the volume of the speakers with the meter to check compliance. He agreed with Lehman and Adams’ suggestion that the businesses provide input regarding restricting parking on Delton Avenue. He supports staff’s recommendation.

Gordon explained that engineering staff will make a recommendation with options to the city council as to what would be a good parking situation for the street and community.

***Adams moved, second by Sjeklocha, to recommend that the city council adopt the resolution on pages A21-A30 of the staff report, which approves***

***the site and building plan review and conditional use permit for a parking lot expansion, eight new tennis courts, and relocated shot put and discus fields at 18301 State Highway 7. Approval is based on the findings that the proposal would meet all site and building plan review and conditional use permit ordinances and standards.***

- 1) Subject to staff approval, the site must be developed and maintained in substantial conformance with the following plans, unless modified by the conditions below:
  - Demolition and erosion control plans date-stamped April 8, 2010
  - Grading and drainage plans date-stamped April 8, 2010
  - Layout and striping plans date-stamped April 8, 2010
  - Lighting plans date-stamped April 8, 2010
  - Impervious surface and drainage plans date-stamped April 8, 2010
  
- 2) 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.
  - a. The following must be submitted for the grading permit to be considered complete.
    - (1) Final site, grading, drainage, utility, erosion control, and stormwater plans must be submitted for staff approval.
      - There can be no additional run off directed to the adjacent tamarack swamp.
      - The shot put concrete pad must be relocated to meet the 25-foot setback requirement. To verify the setback is met, the wetland can either be re-delineated or the pad must be located a minimum of 30 feet from the wetland edge indicated on the submitted plans.
    - (2) A landscaping and tree mitigation plan. The plan must meet minimum landscaping and mitigation requirements as outlined in the ordinance.
    - (3) A final illumination plan for staff approval.

- (4) Conservation easement 25-feet upland of the wetlands adjacent to the project area, and a drawing of the easement area. This easement must be prepared by an attorney knowledgeable in the area of real estate and is subject to the review and approval of the city attorney. The easement and drawing must be recorded with the county.
  - (5) 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.
  - (6) Submit cash escrow in an 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:
    - 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
    - If compliance is not achieved, the city will use any or all of the escrow dollars to correct any erosion and/or grading problems.
  - (7) Individual letters of credit or cash escrow for 125% of a bid cost or 150% of an estimated cost to comply with the 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.
- b. Prior to issuance of a grading permit:
- (1) The chain link fence at the south side of the dome must be repaired, the old silt fence on the north side of the stormwater pond must be removed, and all garbage and litter on the site must be picked up.

- (2) The landscaping required for previous projects that have died must be replaced.
  - (3) Confirm that the existing sediment pond is functioning as designed, and clean out pond as required by the city engineer.
  - (4) This resolution must be recorded with the county and a copy of the recorded resolution must be submitted to the city.
  - (5) Install a temporary rock driveway, erosion control, tree and wetland protection fencing for staff inspection. These items must be maintained throughout the course of construction.
- 3) Permits may be required from other outside agencies including, but not limited to, MnDOT, Hennepin County, Riley-Purgatory-Bluff Creek Watershed District. It is the applicant's and/or property owner's responsibility to obtain any necessary permits.
  - 4) The property owner is responsible for replacing any required landscaping that dies.
  - 5) Construction must begin by December 31, 2011, unless a time extension is granted.

***A. Thomas, Adams, Lehman, Sjeklocha, and Cheleen voted yes. Motion carried.***

***Adams moved, second by Lehman, to recommend that the city council restrict parking on Delton Avenue for students.***

***A. Thomas, Adams, Lehman, Sjeklocha, and Cheleen voted yes. Motion carried.***

**B. Items concerning a new restaurant at West Ridge Market at 11544 Wayzata Boulevard. (08055.10a)**

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

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

In response to Lehman's question, Thomson stated that the setback refers to an outdoor seating area. Lehman confirmed with Thomson that an enclosed addition would not be in violation of setback requirements.

Lehman asked for the definition of an "outdoor seating area." Thomson explained that staff interprets one to be a patio with outdoor amenities for gathering outside regardless of service occurring or not.

Sjeklocha asked if the reduction from 800 square feet to 400 square feet would change the amount of footage for the variance from 200 feet to 190 feet. Thomson responded that it would change, but it would still not meet the 200-foot setback requirement.

Sjeklocha referred to the rendering of the front patio. In response to Sjeklocha's question, Thomson explained that the applicant has submitted an application for a liquor license. A liquor license would require the front patio to be enclosed. A condition of approval would require the area to be fully enclosed to enter the area. The sidewalk would still provide pedestrian access adjacent to the patio area.

Adams asked if the site plan represents the revised patio of 400 square feet. Thomson pointed out that the plans for the revised 400-square-foot patio are included in the change memo. The setback variance would be needed from a property line, not an adjacent structure.

A. Thomas requested staff comment on a neighbor's concern regarding potential rodent infestation. Thomson commented that the restaurant would require a food license from the city which involves annual inspections by public health inspectors. The restaurant would have a garage housing the garbage dumpster.

Chair Cheleen asked if delivery times would be regulated. Thomson answered that the original conditional use permit for the restaurant space allows deliveries to the site from 7 a.m. to 10 p.m. That restriction is also included in staff's recommendation. The restriction does not apply to other tenants in the building, but the city's noise ordinance does.

John Farier of CSM Corporation, Minneapolis, representing the applicant, thanked staff for being great to work with. He stated that:

- The site has been vacant for two years. He is excited about the project partly because of the owner and operator, Dean Vlahos, who is a legend in the restaurant business in the twin cities area.

- He created the Champs franchise and Red Stone bar and grill. He is confident the restaurant would be in very capable hands.
- He agreed with most of the conditions. The rear outdoor patio would not have food served on it. It would be an overflow space for the banquet area. The enclosure would improve the neighborhood character by blocking the view of smokers and decreasing noise levels. It would be more of a courtyard than patio space.
  - The proposal would improve the overall design of the restaurant and the entry would be moved away from the residential area as well.
  - The wetland setback would be met.
  - The sidewalk in front of the patio is 6 feet wide.

Lehman asked for more of an explanation of what type of use the courtyard would accommodate. Dean Vlahos, Deephaven, the owner of the business, stated that two couches and two chairs would be located outside of the rear door to allow smokers to take a break during banquets. It would look like Sherwood Forest from neighboring properties when he is done with the site; similar in appearance to Red Stone. It would be a nice amenity for the private dining room. There would be no music outside and no food or beverage served on the rear courtyard. An awning may be placed over the 15-foot wide by 20-foot long area. It would be half of the size of the area that was previously approved.

Lehman noted that the issue relates to outdoor seating. Mr. Vlahos does not want to put a roof over it. There would be no food or drink service on the rear courtyard. Couches would be provided. Mr. Vlahos asked for the definition of "seating." It would be a nice amenity. It is not fair to say there would be no tables or chairs. Best judgment must be used.

Sjeklocha confirmed with Mr. Vlahos that the users of the courtyard would only be those who are attending an event being held in the banquet room. The banquet area would seat approximately 35 people. The outdoor patio would be brick over sand.

Chair Cheleen understood that constructing a roof over the courtyard would not be practical. He favored an awning of a decent size that would cover the whole thing to provide a sound barrier. In response to Chair Cheleen's question, Mr. Vlahos stated that vegetation outside of the walls would be as tall as the wall. It would look like Sherwood Forest and be beautiful. The previous patio had three quarters of a roof.

Colleran provided that the patio would not meet the wetland setback if it would have a roof because a patio is defined as an “uncovered” structure. A fence or railing on the side is allowed. If a patio extends 14 feet from the existing structure and has a roof, then it would be considered covered and be required to have a 35-foot setback from wetland. The proposal would meet a 25-foot setback without a roof. Chair Cheleen asked what a canvas awning is considered. Colleran was unable to provide a definitive answer. Thomson noted that provisions of the Minnesota Clean Indoor Act would be required to be followed.

Adams asked if the previous patio was surrounded by a fence. Thomson responded that it was surrounded by a short, concrete wall. Wischnack explained that there is no height requirement. State law requires the area be fully enclosed contiguously.

Adams noted that noise complaints were received in regard to the previous restaurant. Mr. Vlahos acknowledged that he would not be required to add screening, but he would for aesthetics and to decrease noise.

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

Adams liked the concept. He had concerns regarding the patio, but his issues have been alleviated by the reduced size and the enclosure. He visited the site and witnessed substantial vegetation on the west side of the pond. Given the reduced size of the patio, he did not have a problem with the 190-foot setback. He supported the proposal.

Lehman concurred with Adams. He was willing to approve the request for the second courtyard because its intended use would not be outdoor dining. He felt it would be reasonable.

Sjeklocha felt it would be reasonable. She favored including compliance with the Minnesota Clean Air Act as a condition of approval.

A. Thomas and Chair Cheleen concurred. Chair Cheleen suggested finding out what would work as a weather protector. Mr. Vlahos stated that the courtyard would be able to function with no cover. Chair Cheleen directed Mr. Vlahos to check with staff before utilizing any type of cover.

Thomson asked for direction regarding hours of operation. The previous business allowed operation of the patio until 10 p.m. Lehman felt 10 p.m. would be a reasonable closing time for the back courtyard.

***Lehman moved, second by Adams, to recommend that the city council approve the following items concerning a new restaurant at West Ridge Market at 11544 Wayzata Boulevard modified to approve the setback variance for the back patio and require closing of the rear patio by 10 p.m.:***

**CONDITIONAL USE PERMIT**

- 1) *Adopt the resolution on pages A39-A44. This resolution approves a conditional use permit and setback variances for an 8,500 square-foot restaurant with outdoor seating at 11544 Wayzata Boulevard, based on the following findings:*
  - a. The restaurant with outdoor seating meets the required conditional use permit standards.
  - b. The rear outdoor seating area meets the required standards for a variance, because:
    - (1) **UNDUE HARDSHIP:** The location of the building, existing outdoor seating area, and adjacent wetland provide a hardship in locating the patio expansion to meet the setback requirements.
    - (2) **UNIQUE CIRCUMSTANCE:** West Ridge Market was developed as part of a mixed use project which integrates retail, service commercial, restaurant uses with the surrounding residential developments. The mix of land uses is a circumstance not common to other retail centers in the city.
    - (3) **INTENT OF THE ORDINANCE:** Although the seating area is located 194 feet from a residential property line, it is over 265 feet from the actual building. This meets the ordinance intent to provide adequate spacing between the two uses.
    - (4) **NEIGHBORHOOD CHARACTER:** The outdoor seating area would not negatively impact the character of the surrounding neighborhood. It would not be highly visible from surrounding properties, and would be buffered by the adjacent wetland and vegetation.

Approval is subject to the following conditions:

- a. The property must be development and maintained in general compliance with the following plans:
  - Site plan date-stamped April 8, 2010
  - Landscape plan date-stamped April 8, 2010
  - Floor plans date-stamped May 27, 2010
- b. Complete the following prior to issuance of a building permit or beginning any site work:
  - (1) Record this resolution with the County. A copy of the recorded resolution must be returned to the city.
  - (2) The adjacent wetland must be delineated and the floodplain elevation staked in the field to verify setback requirements. If necessary, city staff can administratively approve adjustments to meet the setback requirements provided the front patio expansion does not exceed 1,100 square feet, and does not extend any closer to the property lines.
  - (3) Submit a detailed landscaping plan for staff review and approval which complies with the zoning requirements for minimum landscaping.
- c. The fountain shown on the plans within the adjacent wetland is not permitted.
- d. Delivery and garbage hauling hours are limited to 7:00 a.m. to 10:00 p.m. daily.
- e. Music or audio paging systems must not be audible from surrounding properties.
- f. The patio must be fully enclosed with a knee wall or railing acceptable to the city. Access to the patio must be through the principal building only. All emergency exits from the patio must be equipped with self-closing and self-latching gates.
- g. The north side of the front patio and all sides of the rear patio must be enclosed with an 8-foot tall opaque fence as indicated on the approved plans.

- h. The patio on the back of the restaurant must be used as an outdoor lounge and seating area only. There must be no regular table service provided on the rear patio. The rear patio can only be used in connection with a private dining room reservation.
- i. Use of the outdoor patio on the back of the building must cease by 10:00 p.m. each day.
- j. The outdoor seating area must be equipped with refuse containers and patrolled daily for litter pick-up.
- k. The City Council may reasonably add or revise conditions to address any future unforeseen problems.
- l. 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.
- m. The applicant must agree to these conditions in writing.

#### **SIGN PLAN AMENDMENT**

- 2) *Recommend that the city council adopt the amendment to the West Ridge Market sign plan and criteria on pages A35-A38 of the staff report. This amendment allows a 48-square foot blade sign on the southeast corner of the building in lieu of the allowable wall signs for the restaurant tenant at 11544 Wayzata Boulevard. Approval is based on the findings that the proposal would meet all ordinances and standards for sign plan review.*

**A. Thomas, Adams, Lehman, Sjeklocha, and Cheleen voted yes. Motion carried.**

**C. Items concerning a 2-lot subdivision of existing properties at 14802 and 14814 Timberhill Road. (08052.10a)**

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

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

Lehman asked staff to compare the proposal with using a conservation easement or donating the property to the city. Scott-Sims explained that a conservation easement would require staff to monitor and maintain the area. Wischnack said that all of the options would provide for conservation. There are differences in the types of active and passive activities that each option would allow and in who would provide maintenance for the site. The watershed is interested in purchasing the property and is a responsible party. There is no city interest at this time.

Scott-Sims agreed with Lehman's statement that the proposal would meet the city's objectives to conserve the property.

Adams noted the property's commercial potential. Scott-Sims explained that the property is zoned R-1 and would need to be rezoned to allow a commercial use.

Adams asked if the property has developable value. Scott-Sims stated that the property is buildable, even with wetland and shoreland restrictions. The lots could potentially be subdivided.

Mark Broin, 14814 Timberhill Road, applicant, stated that he has been trying to find a way to conserve the property. The watershed district worked with him to provide an economic solution for all parties while preserving a beautiful area. He strongly supports approval of the application. It is the right thing to do as far as the citizens of the community are concerned and anyone using the Minnehaha Creek corridor for recreational enjoyment.

Ellen Heine, of the Minnehaha Creek Watershed District, stated that the watershed district is really interested in preserving the land because it is adjacent to the creek. It is a good opportunity to protect something that is visually next to the creek. The watershed board and staff have expressed interest with working with the city on future uses that would work well for both organizations.

Chair Cheleen noticed a building located in the outlot. He asked if it would be removed. Mr. Broin stated that he would be dismantling the building the best he can and watershed staff would assist with its removal.

Adams felt that the proposal is a fantastic opportunity for the city to preserve a prime piece of property. He appreciated Mr. Broin working to preserve the property and his other generous acts that benefit the residents of Minnetonka.

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

***Adams moved, second by A. Thomas, to recommend that the city council adopt the resolution on pages A8–A10 of the staff report, which gives preliminary and final plat approval to the Broin Creek Addition, date-stamped April 1, 2010. Approval is based on the finding that the plat meets the required standards and ordinances. Approval is subject to the following conditions:***

Approval is subject to the following conditions:

- 1) Prior to final plat approval, complete the following:
  - a. Show the following on the final plat:
    - (1) A drainage and utility easement extending over Outlot A in its entirety.
- 2) The following items must be submitted to the city before the city releases the final plat:
  - a. An electronic CAD file of the final plat in microstation or DXF.
  - b. The following documents must be prepared by an attorney knowledgeable in the area of real estate and must be submitted for the city attorney's approval:
    - (1) Title evidence that is current within thirty days before release of the final plat.
    - (2) An access easement extending over the existing utility easement located along the east property line of 14802 Timberhill Road and a drawing of the easement. The easement may allow removal of hazard, diseased, or invasive species. The easements and drawings must be recorded with the final plat.

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

- (3) A deed giving "any and all interest" in Tract R to the city.
- (4) Removal of pole barn located on Outlot A.

- (5) Removal of all fencing located on Outlot A.
  - c. Any other requirements included with final plat approval.
- 3) The final plat must be released by the city and filed with Hennepin County for recording.

***A. Thomas, Adams, Lehman, Sjeklocha, and Cheleen voted yes. Motion carried.***

**D. Variances to display decorative banners at Immaculate Heart of Mary church and school, located at 13505 Excelsior Boulevard (00013.10a)**

Lehman recused himself from discussion and action of this item.

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

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

Adams asked if locating the signs on the building would change the recommendation. S. Thomas stated that the sign ordinance prohibits the ongoing display of banners not intended as decoration or visible from a street. She used banners attached to city hall that are not visible from the street and are decorative in nature as an example.

Bill Dornbach, representing Immaculate Heart of Mary church and school, applicant, provided renditions of the proposed signs. He stated that:

- First Bank has banners in its parking lot.
- Any banners on light poles would be a fire hazard, so an alternative was researched.
- The locations of the flag poles would be within the easements and setbacks. They would not be visible from east-bound Excelsior Boulevard. The only time the signs would be visible would be when one would be looking straight at the church.
- West-bound traffic would not see the other banner.
- He provided visual images of the proposal.
- The parish did not want to do a digital display.
- The purpose is to support what the school and church is doing.

- The school entrance is on the east side and the church entrance is on the west side. There is no common ground for the church.
- He provided a rendition of where 37 feet would be and where the banners would be placed. The row of trees would impede the view from west-bound Excelsior Boulevard.
- The presumption is that the flags would be located within the internal boundaries of the school and church.
- The concept stresses celebrating together.
- He provided a brief history of meetings with staff since February. Due to the school's fiscal year, action needs to be taken on the application soon.

The public hearing was opened.

Roley Burlard, Immaculate Heart of Mary Business Administrator, 13505 Excelsior Boulevard, represented the parish administration in support of the proposal. The administration feels it is important for people to know the organization's presence in the community and provide a chance to invite everyone to worship and education. It would be a great benefit to the parish.

Suellen Lindsay, 12929 Maywood Lane, is part of the marketing committee for the school. She stated that the school and church only have one sign. A number of parents and motorists who drive by are unaware that the organization exists. It is important to have more of a presence.

Michael Sparks, 14834 Timberhill Road, went to Immaculate Heart of Mary (IHM) as a child and is a parishioner of IHM as well. He commented on the city's neon sign. He viewed that as an impediment and did not see how denying the proposal would be fair.

No additional testimony was submitted and the hearing was closed.

Sjeklocha asked, in terms of the sign ordinance and banners, if the issue is more how many feet the sign is from the road or if it is more about what motorists see or both. S. Thomas explained that commercial properties are allowed temporary banners up to 30 square feet in size to announce a sale or grand opening. The banner must be located on the building façade itself. Banners are not allowed in a parking lot or boulevard area. Uses allowed with a conditional use permit in a residential district are allowed banners for specific events with city council approval for a specified period of time. The code does not indicate where the banners may be located. In this situation, staff traditionally recommends that banners be attached to the building façade.

S. Thomas explained that signs, generally, need to be at least 10 feet from a property line. The sign ordinance's intent is to promote the safety of the traveling public, minimize roadside clutter, and promote a high aesthetic.

Adams did not see a hardship for a variance from the sign ordinance. In his experience, everyone knows where IHM is located. The existing sign may be undersized compared to what is allowed now. As much as he is not a fan of dynamic displays, it would be an attractive option. The proposal does not meet the way-finding criteria for a hardship. He supported staff's recommendation.

A. Thomas concurred with Adams. He did not see a hardship. People in the community know where it is located. The option is to upgrade the existing sign. He is strict on the sign ordinance and he does not vote for variances of the sign ordinance. He has driven through too many communities that look too cluttered and too junky. Adding the flags would not help the situation.

Chair Cheleen noted that First Minnetonka Bank in Glen Lake has banners on light poles. His take on those is that they are illegal. To use an illegal precedent is not a basis to add more. He sympathized with wanting people to notice the school and get the message out, but there are better ways than having permanent poles and banners that do not meet ordinance requirements. He supported staff's recommendation.

***Sjeklocha moved, second by Adams, to adopt the resolution on pages A21–A24 of the staff report. This resolution denies a variance for display of banners at Immaculate Heart of Mary (IHM) Church and School at 13505 Excelsior Boulevard. Denial is based on the following findings:***

- 1) The proposed banners are not specifically allowed by city code.
  - a. City Code 300.30 Subd.2 defines a sign as “any writing, pictorial presentation, number, illustration or decoration, flag, banner or other device that is used to announce, direct attention to, identify, advertise, or otherwise make anything known.”
  - b. City Code 300.30 Subd.2 defines a temporary sign as “a sign which is designed or intended to be displayed for a short period of time and is not permanently installed. This includes items such as banners, pennants, flags of other than a political jurisdiction, beacons, sandwich or curb signs, balloons or other air or gas filled figures.”

- c. City Code 300.30 Sub.3(a)4 outlines the permanent signs that are allowed on properties occupied by conditionally-permitted religious, educational, or public institutional uses: monument signs, wall signs, and athletic scoreboard signs.
  - d. City Code 300.30 Subd.3(b) outlines that temporary signs are allowed on properties occupied by religious or education uses only with city council approval, only for special events and only over a specified duration of time.
  - e. The proposed banners are neither permanent signs allowed by city code nor temporary signs associated with a special event to be displayed over a specified period of time.
- 2) The proposed display of banners does not meet the variance standards as outlined in City Code 300.07:
- a. **UNDUE HARDSHIP:** The variance request is not based on any undue hardship inherent to the property. Rather, the request is based on the applicant's desire to display a specific type of sign.
  - b. **UNIQUE CIRCUMSTANCE:** The variance request is not based on circumstance unique to the subject property. The location of the subject property, and its improvements relative to a public roadway, is similar to the majority of conditionally-permitted religious uses in the city.
  - c. **INTENT OF THE ORDINANCE:** The variance request does not meet the intent of the sign ordinance. Several of the proposed banners would be placed on new flag poles north of the building, specifically located to be visible to the traveling public. Such location:
    - (1) Would contribute to roadside clutter;
    - (2) May contribute to the obstruction of views of oncoming traffic, creating a hazard to drivers and pedestrians; and
    - (3) May adversely impact the logical flow of information.

***A. Thomas, Adams, Sjeklocha, and Cheleen voted yes. Lehman abstained.  
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.

Lehman joined the meeting.

**9. ADJOURNMENT**

***Lehman moved, second by A. Thomas, to adjourn the meeting at 9:32 p.m.  
Motion carried unanimously.***

By: \_\_\_\_\_  
Lois T. Mason  
Planning Secretary