

**MINNETONKA PLANNING COMMISSION
MINUTES**

AUGUST 4, 2011

1. CALL TO ORDER

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

2. ROLL CALL

Commissioners Lehman, Magney, A. Thomas, Adams, Daeges, and Cheleen were present. Sjeklocha was absent.

Staff present: Community Development Director Julie Wischnack, City Planner Loren Gordon, Principal Planner Susan Thomas, Planning Technician Stephanie Scott-Sims, Natural Resource Manager Jo Colleran, Water Resource Engineer Liz Stout, and Project Engineer Nate Stanley.

3. APPROVAL OF AGENDA: The agenda was approved as submitted with modifications provided in the change memo dated August 4, 2011.

4. APPROVAL OF MINUTES: July 21, 2011

Adams moved, second by Lehman, to approve the July 21, 2011, meeting minutes as submitted.

Lehman, Magney, A. Thomas, Adams, Daeges, and Cheleen voted yes. Sjeklocha was absent. Motion carried.

5. REPORT FROM STAFF

Gordon briefed the commission on land use applications considered by the city council at its meetings of July 11, 2011 and August 1, 2011:

- Adopted a resolution approving the final plat for Coyote Song.
- Introduced the Southwest Light Rail Transit Overlay Ordinance and Interim Use Ordinance.
- Adopted a resolution approving the vacation of drainage and utility easements for 3236 and 3254 Eldorado Trail to reconfigure a lot line.
- Reviewed a concept plan for Excelsior Boulevard and Shady Oak Road for CVS.
- Adopted a resolution approving the Clear Spring District Service Center expansion project.

- Adopted a resolution approving a request to remove a tree from a conservation easement for Crosby Cove with some mitigation.
- Adopted a resolution approving the master development plan for Opus.

Wischnack provided an update on a city council study session regarding the YMCA project and homeowner's improvement areas in the city. Financing and TIF pooling were discussed in regard to the YMCA project.

6. REPORT FROM PLANNING COMMISSION MEMBERS: None

7. PUBLIC HEARINGS: CONSENT AGENDA

The item was removed from the consent agenda for discussion.

Adams asked if the conditional use permit (CUP) is required because there would be more than one employee. Scott-Sims explained that a CUP is needed to allow for the use in the house and approval of a variance is needed to have more than one employee. Adams asked Scott-Sims to review the ordinance requirements of a home-based business. Scott-Sims reviewed the ordinance requirements.

Wischnack added that home-based businesses are one of the most often complaints received by staff. She advised residents to speak with planning staff regarding a proposal.

A. Thomas asked if the business had been out of compliance since 2006. Scott-Sims understood that is correct. A. Thomas asked how the city handles a violation. Wischnack explained that there are a number of repercussions available including requiring compliance, charging the offender with a misdemeanor, and removing items related to a home occupation in violation of the ordinance.

The public hearing was opened.

Donna Bloom, 5234 Mayview Road, was concerned with parking on Mayview Road because it is busy with pedestrian and vehicle traffic. She suggested having the workers park on Mayview Court which is a cul-de-sac just a house away. She did not mind the homeowner having the business, but she was concerned with traffic issues and safety. Chair Cheleen said that a condition of the CUP would require all vehicles to be parked in the driveway. Scott-Sims

agreed that the applicant would have to provide enough off-street parking for all employee vehicles.

Carolyn Dahlin, 5208 Mayview Road, applicant, stated that she has figured out a way to have the employees park in the driveway. When she spoke to Ms. Bloom, she was concerned with her kids' friends not being able to park on Mayview Road. Ms. Dahlin stated that employee vehicles would not be parked in the street.

Lehman moved, second by Adams, to approve the item listed on the consent agenda as recommended in the respective staff report as follows:

A. Conditional use permit to operate a transportation business at 5208 Mayview Road. (06042.11a)

Recommend that the city council adopt the resolution on pages A7—A11 of the staff report. This resolution approves a conditional use permit at 5208 Mayview Road for the operation of a medical transportation business, with a variance from the conditional use permit standard limiting the number of outside employees from one outside employee to two outside employees.

Approval is based on the following findings:

- 1) Aside from the requested variance, the proposal meets the required conditional use permit standards.
- 2) The proposal meets the required standards for a variance, because:
 - a. There are practical difficulties in complying with maximum of one employee requirement:
 1. **REASONABLENESS:** In compliance with state statute, licensed residential care facilities and community based residential care facilities for six or fewer persons are allowed as a permitted use within the R-1 single family residential district. These uses are allowed by right and do not require any special land use review by the city. These uses are similar to a home occupation use in that they operate out of a single family residence and the property owner employs outside employees to provide necessary care to the residents of the facility. City code does not regulate the number of employees that are allowed to work at these

facilities, their business hours, nor does it provide any parking standards for such uses. The applicants' requested use of property is less intensive than a residential care facility or community based residential care facility use that is permitted by right in a single family residential area under the city's code and should be allowed.

2. **UNIQUE CIRCUMSTANCE:** The subject property is located four parcels south from a residential care facility, which is a permitted use in the R-1 single family residential zoning district. It is also located five parcels south from a church, which is a conditionally permitted use in a residential district. Its location to such uses is unique and not common to most residential homes in the city. The applicants' requested use of property is less intensive than the residential care facility that is permitted by right in a single family residential area under the city's code and should be provided the same treatment.
 3. **CHARACTER OF LOCALITY:** The allowance of two outside employees will not change the residential character of the surrounding neighborhood. Additionally, the ability of a home occupation to have two outside employees is similar to what is allowed for similar, yet more intensive permitted uses within the R-1 single family residential zoning district.
- 3) The proposal is in harmony with the general purposes and intent of the zoning ordinance. The intent of the zoning ordinance restriction limiting the number of outside employees employed by a home occupation is to allow property owners the ability to operate a business from their home while ensuring that the residential character of the property and surrounding neighborhood is maintained. The proposed variance from the conditional use standards allowing a maximum of one outside employee to two outside employees is reasonable. The addition of one outside employee will not make the home occupation use a more intensive commercial use and will maintain the existing residential character of both the property and surrounding neighborhood.
 - 4) The proposed variance is consistent with the comprehensive plan. The property is guided for low density residential uses. The guiding principles in the comprehensive plan provide for maintaining, preserving and enhancing existing single family neighborhoods. The variance to allow two

outside employees will not make the home occupation use a more intensive commercial use and will maintain the existing residential character of both the property and surrounding neighborhood.

Approval is subject to the following conditions:

- 1) Prior to issuance of a building permit, record this resolution with the county. A copy of the recorded resolution must be returned to the city.
- 2) The business must operate in compliance with all standards as outlined in City Code §300.16 Subd. 3(g).
- 3) All vehicles parked on the property during the home occupation's business hours must be parked on the paved driveway only.
- 4) The city council may reasonably add or revise conditions to address any future unforeseen problems.
- 5) Any change to the approved use that results in a significant increase in traffic, parking, or a significant change in character of the home occupation would require a revised conditional use permit.
- 6) The applicant must agree to these conditions in writing.
- 7) This variance will end on December 31, 2012, unless the city has issued a building permit for the project covered by this variance or approved a time extension.

Lehman, Magney, A. Thomas, Adams, Daeges, and Cheleen voted yes. Sjeklocha was absent. Motion carried and the item on the consent agenda was approved as submitted.

8. PUBLIC HEARINGS

A. Conditional use permit for promotional carnival with a variance to allow for amplified music at 11400 State Highway 7. (90044.11a)

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.

Lehman asked if the date specified in the CUP would apply every year. Gordon appreciated the catch and suggested limiting the date to September 30, 2011. An interim use permit may be utilized in the future for an annual event.

Adams noted a typographical error in the change memo that staff would correct.

Dave Jetloff, representing the applicant, Lunds Holding Company, stated that the event is planned for this year only. He was available for questions.

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

Adams asked if the off-site, back-up parking area had been identified. Mr. Jetloff explained the perimeter parking.

Lehman moved, second by Magney, to recommend that the city council adopt the resolution on pages A6-A13 of the staff report with a modification provided in the change memo dated August 4, 2011 and addition of 2011 to the September 30th date. This resolution approves a conditional use permit for an outdoor special event for Lunds located at 11400 State Highway 7 with a variance to allow for use of outdoor speakers. Approval is based on the following findings:

- 1) Aside from the requested variance, the proposal meets the required conditional use permit standards.
- 2) There are practical difficulties in complying with the conditional use permit standard which prohibits the use of outdoor speakers:
 - a. REASONABLENESS: It is reasonable for an outdoor event to have a live band with amplified music so long as there are not any adverse impacts on surrounding properties.
 - b. UNIQUE CIRCUMSTANCE: The size of the shopping center and the distance from residential properties are circumstances unique to the property. Lunds is part of the Country Village shopping center which is a large, multi-tenant shopping center located on a 10 acre site. Furthermore, the site is located over 350 feet from the nearest residential structure and is separated by a trail and vegetated slope. These circumstances are not common to every commercial property in the city.

- c. CHARACTER OF LOCALITY: The use of outdoor speakers would not have an adverse impact on the character of the locality. The stage would be located approximately 400 feet from the single family homes to the west and the speakers would be oriented in the opposite direction of the homes. Additionally, the commercial properties located near the shopping center are mostly office uses which operate during the daytime and would not be impacted by the proposed event which would take place in the evening. This would ensure that the use of outdoor speakers would not have any adverse noise impacts to the surrounding neighborhood.
- 3) The proposal is in harmony with the general purposes and intent of the zoning ordinance. The intent of the ordinance is to prevent adverse noise impacts on surrounding properties. The significant distance from the surrounding residential properties, the orientation of the stage and speakers, and the surrounding office uses would ensure that the speakers are not a nuisance for surrounding properties.
 - 4) The proposed variance is consistent with the comprehensive plan. The site is located within the Highway 7/Hopkins Crossroad neighborhood village center. The comprehensive plan provides for increasing vitality in the village areas as an essential component to the village center concept. The proposed event and live band would be open to the community and would provide visibility for the commercial area. The proposal would be consistent with the comprehensive plan's strategy to increase vitality within the village centers.

Approval is subject to the following conditions:

- 1) Prior to issuance of a building permit, record this resolution with the county. A copy of the recorded resolution must be returned to the city.
- 2) The following items must be submitted to the city for review and approval at least 14 days prior to the event:
 - a) A site plan detailing the location and layout of the event area. The area must be cordoned off with appropriate means to delineate the event area from the parking lot. The site plan must provide:
 - (1) Only the interior parking lot drive aisles may be blocked off. The perimeter drive aisles and the drive aisles on the west side of the bank building must not be blocked.

- (2) The stage must be oriented to the north towards the building.
 - b) An event management plan. The plan must provide contact information for the manager of the event that will be present during the entire event. The plan must be reviewed by the police department and must also provide:
 - (1) Overflow parking information indicating how the event will handle any parking should the parking lot exceed capacity.
 - (2) Safety and security information indicating to ensure alcohol consumption will be prohibited at the event.
 - (3) Setup and tear down schedule.
 - c) Evidence of liability coverage of at least \$300,000, with the city identified as an additional insured in a form acceptable to the city attorney.
 - d) Financial security acceptable to the city to insure compliance with the stipulations of approval and maintenance of the site shall be posted. The minimum amount of the financial security is \$5,000. Higher amounts may be required by the city if deemed appropriate based upon the size of the event and potential for problems in these areas.
- 3) The event is allowed on September 30, 2011 from 6:00 p.m. to 10:00 p.m. Only setup, cleanup, and teardown approved under the event management plan may occur outside of this time. Amplified speakers and any other noise created by the event is subject to Chapter 7030, Noise Pollution Control of Minnesota Rules.
 - 4) A fire protection permit is required from the fire department for the use of the tents. The tents must comply with the Minnesota state fire code.
 - 5) Compliance with sign limitations imposed by the ordinance for temporary signs is required.
 - 6) The retention of an off-duty police officer(s) is required if deemed necessary by the chief of police.

- 7) A food license is required from the community development department. The event must comply with applicable health, public safety, and building code regulations.
- 8) If a promotional carnival places an undue burden on the city or adjacent properties as evidenced by police responses or complaints, the city may deny future promotional carnival conditional use permits at that location.
- 9) The city council may reasonably add or revise conditions to address any future unforeseen problems.
- 10) 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.
- 11) The conditional use permit expires if normal operation of the use has been discontinued for 12 or more months.
- 12) The applicant must agree to these conditions in writing.

Lehman, Magney, A. Thomas, Adams, Daeges, and Cheleen voted yes. Sjeklocha was absent. Motion carried.

B. Ordinance amending the master development plan for Opus Corporate Center at 10350 Bren Rd West (97096.11a)

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 was surprised that the second addition was approved without adequate parking for a full-capacity building. He asked how that happened. S. Thomas explained that the amount of parking is in compliance with city ordinances. For an office space, the city requires 4 parking stalls per 1,000 square feet of building. Digital River averages 5 employees per 1,000 square feet, so the parking demand is greater than the ordinance requirement.

Adams asked when the parking standards were revised last. S. Thomas was unsure. Updating the parking requirements has been a goal for staff for some time. Staff has found that more parking is being required by the city's ordinances than traffic consultants are indicating would be necessary and in a case like this,

because of the unique type of business, the city may be requiring too few parking stalls.

Adams expected the standards for parking stalls might be lower due to the access to light rail as compared to another part of the city. He would like to see the parking ordinance revisited because there are many instances of too much parking area and there is too much impervious surface.

A. Thomas agreed with Adams' comments. He asked what could happen if light rail is constructed and there is no longer a need for so many parking lots. Wischnack said that was one of the main topics of a technical advisory meeting for SWLRT. Parking demand in and around light rail stations was discussed. In this case, another building is expected to be constructed in the future. The timing for that building and light rail may occur at about the same time. More will be known by that time of the parking needs for the area. Shared parking possibilities are huge for light rail and existing developments. Those types of relationships need to be built and what would work best needs to be determined.

A. Thomas felt that makes sense. He wants to make sure that is always considered. Wischnack noted that surface parking is easy to redevelop. The possibility of redeveloping surface parking lots was studied for Opus and found to be possible.

Adams asked how the building would be 17 feet above the surface, but would visually appear 10 feet above the surface. S. Thomas explained that the building code defines height based on the measurement of grade to ceiling or roof of a structure. The parking deck does not have a roof, so the parking deck height was measured from grade to the drivable surface of the deck which is 10 feet. The walls around the parking deck measure 17 feet in height from grade.

Matt Roundhorse, representing Opus Group at 10350 Bren Road West, had nothing to add to staff's complete report. He was available for questions. He introduced Dick Barber from Digital River.

Adams asked the height issue be addressed in front of the Opus east building. Mr. Roundhorse said that it would be similar in structural design. It would appear similar in height and in how it is clad on the outside.

Adams questioned if the existing building is below grade. Mr. Roundhorse agreed that, to some extent, it is below grade. At the northwest side, it is at grade. He described where grading would be done to provide drainage. Adams asked if

there would be excavation. Mr. Roundhorse answered in the negative. It would be built right on top of the existing parking lot.

Chair Cheleen noted that this would be one single deck, but asked if the next phase would include one or two more levels on the deck. Mr. Roundhorse answered affirmatively. It would be structurally designed to be able to build on top of the deck.

The public hearing was opened.

Alfred Bliss, 5645 Green Circle Drive, stated that when this project was approved years ago, a number of residents were assured by the planning commission and city council that there would not be an exit for vehicles to access Green Circle Drive. He wanted to make sure that would still be the case. S. Thomas stated that there would be no changes to the entrances or exits of any of the parking lots.

No additional testimony was submitted and the hearing was closed.

Adams was impressed by Digital Rivers' TDM to minimize automobile use.

Adams moved, second by Daeges, to recommend that the city council approve the ordinance on pages A14–A15 of the staff report, which amends the master development plan for Opus Corporate Center at 10350 Bren Road West, allowing for construction of a parking deck on the existing property. Approval is based on the following findings:

- 1) The proposed parking deck is consistent with the Ordinance 2007-24 which adopted a master development plan for this site.
- 2) The proposed parking deck meets all minimum site and building plan standards as outlined in City Code §300.27, Subd.5.

Approval is subject to the following conditions:

- 1) The site must be developed and maintained in substantial conformance with the following plans, unless modified by the conditions below:
 - Site plan date stamped June 30, 2011.
 - Grading plan date stamped June 6, 2007.
 - Landscaping plan date stamped June 6, 2007.
 - Building elevations date stamped June 6, 2007.

- Wetland and Flood Plain mitigation plans, as amended, July 3, 2007.

The above plans are hereby adopted as the master development plan and as final site and building plans.

- 2) Prior to issuance of a building permit:
 - a. Submit the following items for staff review and approval:
 - (1) A revised survey that includes all existing public and private easements.
 - (2) Final site plan. No parking stalls are permitted on the north side of the existing buildings.
 - (3) Final stormwater plans.
 - (4) Final landscaping and tree mitigation plans. These plans must meet minimum landscaping and mitigation requirements as outlined in ordinance. However, at the sole discretion of natural resources staff, mitigation may be adjusted based on site conditions
 - (5) A letter of credit or cash escrow for 125% of a bid cost or 150% of an estimated cost of all required landscaping.
 - (6) A construction management plan. This plan must be in a city approved format and outline minimum site management practices and penalties for non-compliance. If the builder is the same entity doing grading work on the site, the construction management plan submitted at the time of grading permit may fulfill this requirement.
 - (7) 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.

(8) An illumination plan for staff approval.

b. Record the ordinance with the county. A copy of the recorded ordinance must be returned to the city.

- 3) The property owner is responsible for replacing any required landscaping that dies.
- 4) Construction must begin by December 31, 2012, unless the planning commission grants a time extension.

Lehman, Magney, A. Thomas, Adams, Daeges, and Cheleen voted yes. Sjeklocha was absent. Motion carried.

C. Items concerning a 2-lot subdivision of existing properties at 12910, 12918 Rutledge Circle and a parcel with an unassigned address on Rutledge Circle. (04005.11a)

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

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

Lehman understood that the proposal would call for adding enough fill for the elevation to reach 921 or above. S. Thomas agreed. Lehman saw the conflict that the city attorney's memorandum stated that doing so would allow the property to be in conflict with the zoning map for the area. S. Thomas concurred. A floodplain alteration permit standing alone addresses any work done within the boundary of a floodplain. Whether that would be filling a little bit, but not above the boundary, or excavating to provide for additional water storage, both are floodplain alterations. Any time the floodplain boundary would change requires rezoning.

Lehman understood the advice of the city attorney which was against creating a conflict between the floodplain boundary and zoning map. S. Thomas noted that

the city attorney's memorandum states that the commission needs to act on both items. Lehman recognized that the two items are linked at the hip. If the land elevation would be allowed to be raised to 921, then the zoning map would have to be changed.

Curt Fretham, applicant, 15400 State Highway 7, stated that if commissioners are inclined to approve the floodplain alternation permit and rezoning he would sit down and not have anything else to say. If commissioners are not inclined to do so, then he did not get a chance to research what the ordinance says, but his staff has read it a number of times and he does not think there is anything in the ordinance that ties the two together or joins them at the hip. There is no specific language that he is aware of in the ordinance that ties them together. He invited someone to show him the language. There is no authority to enforce "that." Chair Cheleen read the comment from City Attorney Desyl Peterson's letter that states that, "Land may be removed from the floodplain district only by a zoning map amendment pertinent to the provisions of the section as stated." Chair Cheleen asked if a floodplain alteration permit would end up removing some of the land from the floodplain district or the elevation would end up higher than the established floodplain at the moment. Mr. Fretham responded that that is an interpretation. S. Thomas looked at the same ordinance. The city attorney gives staff advice on how to interpret the ordinance and the applicant's attorney will give him advice.

Mr. Fretham reiterated his statement that "nowhere in the ordinance does it state that they are tied together." Without it, the city does not have the authority to do anything different. If it is not in the ordinance, it cannot be enforced. Just because somebody wants to or has an opinion does not matter. Chair Cheleen asked if Mr. Fretham agreed that if fill is added that the property would no longer be in the floodplain district. Mr. Fretham stated that may be the case, but that is not what the ordinance says.

Chair Cheleen stated that the ordinance states that land may be removed from the floodplain district only by a zoning map amendment. So, if fill is done, a zoning map amendment would be required. Mr. Fretham stated that "we did not take it out of the floodplain ord . . . of the zone. It's still in the zone." That was brought up last week. Added fill does not take it out of the zone. The floodplain zone is still in the same area. Mr. Fretham stated, "Just because you fill there doesn't take it out." S. Thomas agreed that filling itself would not take it out. Only the movement of the floodplain boundary allows the applicant to have buildable area. Staff fundamentally disagrees with the applicant.

The public hearing was opened.

Lori Reese, 13003 Stanton Drive, thanked commissioners and staff for their time and was sorry that the applicant chose to manipulate their time as much as he has. Ms. Reese has lived in Minnetonka 16 years and plans on living in her neighborhood until the day she dies. She stated that:

- She is frustrated that a non-member of her neighborhood thinks he has the right to impact her neighborhood.
- She noted that one lot was not assigned an address. She took that to mean that the city decided there should not be a residence there.
- She plans on being involved in the neighborhood for a long time. The applicant is not.
- She is a concerned citizen and the commission has said “no” to the applicant a number of times. He is like a stubborn toddler.

Chair Cheleen requested speakers relate their comments to land use issues.

Anne Winter-Tremel, 12929 Stanton Drive, noted the blue area that indicated where the water mitigation area would be located. She questioned how she could be assured that any alteration or amendment to the lot would not impact the property owners who reside downhill. There is a steep hill that goes down from the property to all of the properties below on Stanton Drive. Rutledge Circle is uphill from Stanton Drive. She is concerned with water that will be flowing into her area. Stanton Drive already floods every year. There are wetlands on each side of Stanton Drive and is impassable sometimes. She wondered where the water drainage would travel. She was also concerned with valuable trees that would be impacted and how they would be mitigated. The applicant would not live on the site or deal with the fallout. She would be impacted by the proposal. It would impact her property value and her view from her back deck. The proposed driveway would be located off of Stanton Drive. All of the construction vehicles would travel on Stanton Drive. The impact of the project falls upon the residents on Stanton Drive who do not benefit in any way. She is concerned.

Cynthia Devore, 12937 Stanton Drive, was concerned with flooding. The street does flood in the spring. She thanked the city for redoing the road and fixing the potholes. The road is starting to show wear and tear and cracks again. She liked to be able to sit on her deck or look out her dining room window and see right through the yard and see the deer. Her grandkids are visiting this week and they saw deer. That is a reason she moved there and a lot of people moved there. She is concerned with the increase in traffic. Residents who live on the block are hearing impaired and increased traffic would be dangerous. When the house on the end of Stanton Drive sold the neighborhood had to mount its own patrol

because the workers drove way too fast. She did not want to have to do that again. Residents parked vehicles in the street to make drivers slow down and zigzag around the vehicles. She did not want the additional driveway at the proposed location.

Mark Tremel, 12929 Stanton Drive, stated that the application calls for filling 150 cubic yards and removing 160 cubic yards. He was concerned that half of the residence would be below floodplain and a portion of the garage. In the July 21, 2011 meeting, staff's position said that any compensatory storage cannot result in the loss of trees. According to the proposal, there are two large trees that would be mitigated and an additional one where fill would be added. He did not know if that was an ordinance requirement or a comment in the notes. He would like to get to the bottom of City Ordinance 300.29, Subsection 6 that addresses if several properties are held conjointly and those lots are unbuildable and the lots are nonconforming, then could the applicant go to the county, combine the lots into one property and later on come back and apply to subdivide. He thought there was something incongruity that protects against that. He questioned if the elevation came in lower than 921 and the amount of buildable area on Lot B, which is the center one, is nonconforming, then would the ordinance still apply and prevent the lot from being developed.

Joe Steffel, 12936 Stanton Drive, thanked the commission for allowing him to comment. He loves the comprehensive plan because it shows vision. The 2030 plan shows what makes Minnetonka what it is. The proposal would be a house in his backyard. Stakes could be located right through the wetland to make two lots, but once it is there it is pretty hard to get rid of it. The commission has every right to deny the proposal and agree with planning staff to deny the application.

Justin Stine, 12801 Stanton Drive, supports his neighbors who oppose the proposal. He moved into the area for the pristine beauty. His primary concern is his view to the south and the negative impact to his residence's value that he just purchased. He hopes to stay in the area a long time and wants to enjoy the beauty.

No additional testimony was submitted and the hearing was closed.

Chair Cheleen asked if the mitigation would be done, then what kind of guarantee could be given. Stout explained that staff looks at the overall site and considers ways to maintain the existing drainage patterns. If a residence would be constructed on the property, then the city's storm water management rules would be applied. That would require volume control and runoff rate control.

Chair Cheleen noted that would not guarantee that the flooding happening now would get better or worse. Stout agreed.

Chair Cheleen asked about the trees in the fill and mitigation areas. Colleran answered that trees are allowed to be removed in the compensation area only if approved by the city council. Chair Cheleen asked if the city council could require the trees be replaced someplace else. Colleran answered affirmatively.

Chair Cheleen understood the proposal would have the driveway access Rutledge Circle. S. Thomas agreed that the application located access on Rutledge Circle, but explained that staff would prefer a Stanton Drive access to decrease the amount of tree loss.

Chair Cheleen asked how it would be possible to combine the lots and build. S. Thomas explained that a property owner who owns two adjoining parcels where one of them is undeveloped has the right to combine the parcels by filling out a form at the county to create one lot. In this situation, there would not be enough buildable area to subdivide and create two conforming lots. Chair Cheleen asked how that works with the ordinance requirement regarding purchasing lots that are unbuildable remaining unbuildable. S. Thomas explained that requirement refers to construction developing on existing nonconforming lots. An applicant does not have the right to develop a nonconforming lot if that nonconforming lot is owned jointly with an adjacent conforming lot. Staff raised that issue in previous reports to point out what the applicant assumed to be his property rights. One buildable lot would equal one home location. Beyond that, the city attorney could better address the nonconformity issues at the city council level. Staff understands the applicant is not proposing to construct anything on the nonconforming lot in its current configuration.

Lehman asked staff what recourse would be available for residents having construction traffic issues. S. Thomas explained that when new construction occurs, the city requires a construction management plan to be submitted. It lays out where construction vehicles would be allowed to park, access the site, and where materials would be stored. The city engineer evaluates the condition of the public street prior to and following construction activities and if there is an impact on the street, then the developer must bring the street back into the condition it was at prior to construction.

Lehman asked what impact additional traffic would have on the neighborhood. S. Thomas stated that a traffic engineer assumes that one single-family residence would create 10-vehicle trips per day. In the scheme of a roadway, that amount is

considered fairly nonexistent and so traffic studies are not required for single-family residences in single-family residential neighborhoods.

Lehman noted the mitigation plan illustration. He asked about the imbalance. S. Thomas explained that the fill area is shown as 150 cubic yards and the mitigation area is shown as 160 cubic yards, so volume storage is increased which is better than decreasing.

Lehman asked S. Thomas to speak to residents' rights to an aesthetic view. S. Thomas explained that the city attorney has advised the commission many times that a property owner does not have an inherent property right to view someone else's property.

Magney confirmed with S. Thomas that the site plan is based on an elevation of 921 and could be changed considerably sometime in the future.

Lehman took the city attorney's memorandum into consideration and had no doubt she was advising commissioners properly. He was not prepared to authorize rezoning of the floodplain, so he opposed allowing fill.

A. Thomas agreed with Lehman. He thought there might be an opportunity, but would leave that for the attorneys to debate. Property values always increase in Minnetonka. He supported staff's recommendation to deny the application.

Adams concurred with commissioners. He sympathized with Mr. Fretham's frustration, but the commission is not in a position to change the boundary of the floodplain. On advice from the city attorney, the city should not allow a floodplain alteration at this point. It may come. The neighbors better be prepared. Construction does not stop the day someone moves into their residence. There is no right to a view or wildlife.

Magney sympathized with the developer and leaned toward approval of the floodplain alteration permit until he read legal council's advice. He will listen to the legal advice.

Chair Cheleen concurred with commissioners. The city must uphold the standard whether the Minnehaha Creek Watershed District is correct or not. Action needs to be done fairly throughout the entire city. Commissioners should not preempt the system that is in place. He supports staff's recommendation.

Lehman moved, second by Adams, to recommend the city council adopt the resolution on pages A27–A29 of the staff report, which denies the necessary floodplain alteration, floodplain rezoning, and preliminary plat.

Lehman, Magney, A. Thomas, Adams, Daeges, and Cheleen voted yes. Sjeklocha was absent. Motion carried.

D. Items concerning construction of a paved trail along the north and west sides of Greenbrier Road. (11019.11a)

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.

S. Thomas reported that Fred Johnson could not stay for the whole meeting, but asked S. Thomas to express his support for the trail. He lives in a condominium and wishes the trail had been in place 10 years ago.

Adams asked why the trail would be located on the north side rather than the south side. Stanley explained that due to the location of a culvert and a degree of separation being available on the north side, the north side was chosen. Either side would require a floodplain alteration permit. It is more practical to locate the trail on the north side from a mitigation stand point.

Chair Cheleen noted a letter from Mr. Madison who resides in Greenbrier who wondered about tree loss. Stanley stated that two small trees located in the right of way would be removed. The trail would be in the right of way near the Greenbrier properties. The trees may be relocated in an area that makes more sense than the right of way. The trees are very immature.

Chair Cheleen expressed Mr. Madison's concern regarding the garage entrance and the ability of vehicles to get in and out. Stanley explained that there would be no construction proposed across the driveways. Breaking the curb or a small amount of removal of the blacktop may occur. The radiuses and widths at the entrances would not change.

Chair Cheleen asked if large, mature trees on the west could be saved. Stanley explained that three trees would be removed in front of the bank. The property owner requested those trees be removed. The city offered to replace them and the owner said he would think about it. There should be no significant impact to

the trees adjacent to the strip center. The trees are fairly well established around the existing street.

Chair Cheleen asked if there would be a crosswalk added across Cedar Lake Road. Stanley responded that there is an existing crosswalk at that intersection. The trail would be aligned with the crosswalk. There would be a count-down timer. The striping will be fully restored this fall.

Lehman noted this application is different than the previous one discussed because it would be for the public good. It would benefit the city as a whole. He requested staff express the rationale. S. Thomas agreed that the specifics of the application are vastly different. This proposal is for a public improvement that would benefit the entire traveling public of Minnetonka and provides pedestrian safety. The city does not deny floodplain alteration permits to create buildable area where there previously was none on an already developed lot.

Adams asked what the surface would be paved with. Stanley answered a concrete sidewalk. Adams was concerned with the trail ending at County Road 73 without a marked crosswalk. He has seen unsafe conditions there. He asked if the city could petition Hennepin County to locate a marked crosswalk there. Stanley said that could be discussed with county personnel.

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

Lehman moved, second by Magney, to approve the following items concerning a paved trail along the north and west sides of Greenbrier Road:

Wetland and Floodplain Alteration

- 1) *Recommend that the city council approve the resolution on pages A7–A10 of the staff report, which approves a wetland and floodplain alteration permit to accommodate a pedestrian trail along Greenbrier Road. Approval is based on the following findings:*
 - a. Compensatory wetland and floodplain area will be provided.
 - b. The proposed alterations would not negatively impact the aesthetic or hydrologic function of either the wetland or floodplain areas.

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 applicant has been submitted, reviewed by staff, and approved.
 - (1) The following must be submitted for the grading permit to be considered complete:
 - (a) Final grading, drainage and erosion control plans must be submitted for staff approval. These final plans must be in substantial compliance with plans date-stamped July 1, 2011.
 - (b) 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.
 - (2) Prior to issuance of a grading permit:
 - (a) Install erosion control and tree and wetland protection fencing for staff inspection. These items must be maintained throughout the course of construction.
- b. Permits may be required from other outside agencies including the Minnehaha Creek Watershed District. It is the applicant's responsibility to obtain any necessary permits.
- c. Comply with all monitoring requirements of other appropriate regulatory agencies.

Wetland and Floodplain Rezoning

- 2) *Recommend that the city council approve the ordinance on pages A11–A13. This ordinance approves a wetland and floodplain rezoning associated with the requested wetland and floodplain alteration permits. Approval is based on the following findings:*
 - a. The removal of areas from the overlay districts, and addition of new areas, would not compromise the public health, safety, and welfare.

- b. The removal of areas from the overlay districts, and addition of new areas, would be consistent with the intent of the code and the comprehensive plan.
 - (1) While Greenbrier Road provides reasonable space for vehicular travel, it does not provide for appropriate pedestrian access. The proposed trail would provide such access.
 - (2) Re-creation of the impacted wetland and floodplain would ensure the natural and hydrologic resources provided by wetlands and floodplain would remain in the same general area.

Conditional Use Permit, with Variances

- 3) *Recommend that the city council approve the resolution on pages A14–A17. This resolution approves a conditional use permit, with variances, for construction of a pedestrian trail adjacent to Greenbrier Road. Approval include the following variances:*

- Variance from the wetland buffer requirement; no new buffer would be created.
- Wetland setback variance from 20 feet to 6 feet.

Approval is based on the following findings:

- a. The proposal would meet the general conditional use permit standards as outlined in City Code §300.26 Subd. 3.
- b. The proposal would meet variance standards as outlined in §300.07 Subd. 1.
 - (1) REASONABLENESS: Pedestrian trails are a valuable component of the city's transportation system. The location of the proposed trail relative to the existing wetland is the least impactful of alternative locations explored.
 - (2) UNIQUE CIRCUMSTANCE: Greenbrier Road has non-conforming setback from existing wetlands on both the north

and south sides of the roadway. This location relative to wetlands is not common to all roadways in the community.

- (3) CHARACTER OF LOCALITY: Given the existing, non-conforming setbacks and the proposed fill and compensation, the trail would be set back further from the wetland edge than the existing roadway. As such, the requested variances would have little impact on the character of the immediate area.

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 applicant has been submitted, reviewed by staff, and approved.
 - (1) The following must be submitted for the grading permit to be considered complete:
 - (a) Final grading, drainage and erosion control plans must be submitted for staff approval. These final plans must be in substantial compliance with plans date-stamped July 1, 2011.
 - (b) 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.
 - (2) Prior to issuance of a grading permit:
 - (a) Install erosion control and tree and wetland protection fencing for staff inspection. These items must be maintained throughout the course of construction.
- b. Permits may be required from other outside agencies including the Minnehaha Creek Watershed District. It is the applicant's responsibility to obtain any necessary permits.
- c. Comply with all monitoring requirements of other appropriate regulatory agencies.

- d. The city council may reasonably add or revise conditions to address any future unforeseen problems.
- e. 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.
- f. The applicant must agree to the above conditions in writing.

Lehman, Magney, A. Thomas, Adams, Daeges, and Cheleen voted yes. Sjeklocha was absent. Motion carried.

Chair Cheleen noted that the city council is tentatively scheduled to review the item at its August 22, 2011 meeting.

E. SWLRT Overlay Ordinance and Interim Use Ordinance. (11018.11a)

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

Gordon reported. He recommended approval of the ordinances as included in the staff report.

Lehman wondered how the two proposed ordinances would fit together and if other ordinances would be necessary to make the Interim Use Ordinance functional. Gordon explained that the SWLRT Overlay Ordinance specifically calls out the new Interim Use Ordinance so they are referenced in anticipation of being adopted together. An example of an interim use in the southwest area would be a business that is not allowed today, but could be allowed as an interim use for a specific period of time. Interim uses may be applied in commercial and industrial districts as well as the SWLRT area. Lehman asked if modifications need to be done to the commercial and industrial district ordinances to apply to the SWLRT area. Gordon explained that is already included in the proposal. Wischnack noted that the city attorney wrote the ordinance.

Adams questioned how the B2 and B3 Districts relate to the Interim Use Ordinance. Gordon explained that the Shady Oak Station has two different business district zones and industrial district zones so there are three classifications. Opus is zoned B2 and the condominiums along Bren Road are zoned industrial. Adams reviewed businesses not allowed in those districts. A lot of those businesses are already operating in the southwest. He asked what the proposed ordinances would mean for existing businesses. Gordon explained that restrictions would only apply to future uses. Wischnack noted that was an issue

with rezoning properties. The proposed ordinances would allow the temporary situation to continue without becoming a nonconforming use. That is the beauty of the proposed ordinances rather than rezoning the properties.

Adams asked how the proposed ordinances would impact an application from CVS for a drive through in the SWLRT area. Gordon described the hypothetical options.

Adams noted the ordinance that would limit improvement of a site to 50 percent of the property's value. He asked how that would impact an application from CVS. Gordon stated that may cause reuse of a building rather than building a new building. The intent of the ordinances is to prevent significant investments in the area that might not be consistent with the future vision. Adams understood, but wondered how to apply it to a real project. Wischnack explained that is why a new ordinance is being considered to accommodate development, but provide for a long-term public good.

In response to Adams' question, Gordon described the master development plan and planned unit development used in redevelopment of the Glen Lake area.

Adams asked if the proposed ordinances have been shared with property owners. Gordon said that the owner of the proposed CVS site has been informed of the proposed ordinances and a mailing was sent out.

A. Thomas asked for examples of the seasonal-in-nature interim ordinance such as having a corn stand. Gordon said that fruit stands, flowers, and seasonal uses would be addressed with the interim use permit.

Chair Cheleen asked what uses would meet the definition of "transit friendly." Gordon said it would encompass a number of things in the transit areas. Page two of the ordinance identifies some of the things that would be evaluated in an application. Building placement, orientation, façade, use, layout, consideration of bikers, and pedestrian connections are the more significant. How the uses would connect to adjacent properties and sidewalks would be looked at closely.

The public hearing was opened for the SWLRT Overlay Ordinance. No testimony was submitted and the hearing was closed.

The public hearing was opened for the Interim Use Ordinance.

Jane McNaughton, Minneapolis resident, was concerned that the MTC bus system has diminished service to the Hopkins and Minnetonka areas. She has

been to many public meetings with the transit authority and light rail. She was concerned with diminishing public service of buses once light rail is established. A bus currently runs on Excelsior and Shady Oak Road four times a day. She was hoping that public transportation could be included in the ordinances and encourage greater funding to be provided so that the transit routes are not diminished further. The Karen Lane neighborhood has been impacted by non-resident vehicles being parked in the neighborhood and wanting to use the bike trail and access the lake rather than utilize Shady Oak Lake parking. She is concerned with parking problems near light rail stations and plowing. More paths, heated facilities, and better lighting should be encouraged.

No further testimony was submitted and the hearing was closed.

Wischnack invited Ms. McNaughton to contact her or visit Minnetonka's website, *eminnetonka.com*, to provide input and attend meetings that will occur this fall related to bus service to Minnetonka.

Adams moved, second by Daeges, to recommend that the city council adopt the ordinance regarding SWLRT Overlay Ordinance on pages A1-A23 of the staff report.

Lehman, Magney, A. Thomas, Adams, Daeges, and Cheleen voted yes. Sjeklocha was absent. Motion carried.

Adams moved, second by Lehman, to recommend that the city council adopt the ordinance regarding the Interim use Ordinance on pages A1-A23 of the staff report.

Lehman, Magney, A. Thomas, Adams, Daeges, and Cheleen voted yes. Sjeklocha was absent. Motion carried.

Chair Cheleen noted that the city council is tentatively scheduled to review the item at its August 22, 2011 meeting.

9. ADJOURNMENT

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

By: _____
Lois T. Mason
Planning Secretary