

**MINNETONKA PLANNING COMMISSION  
MINUTES**

**NOVEMBER 17, 2011**

**1. CALL TO ORDER**

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

**2. ROLL CALL**

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

Staff members present: Community Development Director Julie Wischnack, City Planner Loren Gordon, Associate Planner Jeff Thomson, Natural Resource Manager Jo Colleran, and Water Resource Engineer Liz Stout.

**3. APPROVAL OF AGENDA:** The agenda was approved as submitted.

**4. APPROVAL OF MINUTES:** October 20, 2011

*Lehman moved, second by Daeges, to approve the October 20, 2011, meeting minutes as submitted.*

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

**5. REPORT FROM STAFF**

Gordon briefed the commission on a land use application considered by the city council at its meeting of November 14, 2011 which adopted a resolution approving construction of an addition for Redeemer Bible Church at 16205 State Highway 7.

Gordon noted that the next planning commission meeting will be held December 1, 2011.

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

**7. PUBLIC HEARINGS: CONSENT AGENDA:** None

**8. PUBLIC HEARINGS**

A. **Amendment of condition of development approval for Locust Hills (06030.11a)**

Acting Chair Adams 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.

Peter Pflaum, applicant, stated that:

- The proposal would not be noticeable. Changes would only occur on the interior. The square footage requirement would be modified on the second floor.
- He optioned the property in 2005. At that point, he presented concept plans to the City of Wayzata for a standard, single-family subdivision. There was concern that houses would be too large. He provided another concept plan that showed small-lot, cluster houses with 60 percent of the site as green space with a conservation easement over it. Vegetation would have been used to handle runoff. There were two approaches presented. He asked which one the Wayzata city council wanted. The 28 large, single lots would have been easier and less risky by far. The Wayzata Planning Commission and City Council favored the creative one.
- He got himself in this jam by trying to control the size of the houses. He came up with some principles. The principles include that the height cannot exceed 32 feet; the living unit and garage cannot be larger than 36,000 square feet; and the house would be viewed as 1.5 stories in the front and 2 stories from the rear. That was the way the mass would be controlled.
- He provided the site plan showing where the 6 lots in Minnetonka are located.
- The next slide shows the history of the second floor square footage. The concept was that 50 percent of the living area would be on the first floor and the same amount would be allowed on the second floor. The footprint limits the size of the residence.
- The project started in 2006 which was the start of the decline of the economy. He learned that the second story was too small.
- The City of Wayzata approved making the second story larger. Now he has learned that the limitations on the second floor need to be removed. The City of Wayzata has approved removal of the limitations the developer placed on his proposal. He is requesting the City of Minnetonka do the same. He is trying to react to the

homebuyers who want flexibility. The developer thought this would be a second home-buyer market and, therefore, the master bedroom would be on the main floor. What he found was that even empty nesters want the bedroom upstairs, not in the lower level.

- The project has been extremely well received, but the problem is the kind of buyer he is dealing with has a tremendous amount of options. The lack of flexibility is hurting him in sales.
- At the same time, the housing market went in the tank. He had to live through some very interesting experiences with the crash of Wall Street, the recession, and the worst housing market since the depression.
- In the first 5 years, 20 lots were sold. That might sound o.k., but it is really terrible. That means 4 lots were sold per year. There is no way he would option the site if he knew only 4 lots per year would be sold. A conservative estimate forecasted selling 10 to 12 a year and it would be a 4 to 5 year project. The project is in its fifth year, has sold 20 lots, and at this rate it will take 10 years which, obviously, is a disaster. That is why he is asking for flexibility. More flexibility with the second floor would attract family buyers who are interested in going out there. That would open up another segment of the market. That is why it is so critical.
- He provided a sketch that shows what would happen if the footprint is kept the same and the roof would be varied. That assumes that the first floor livable area would be 2,025 square feet.
- He described the types of roofs that would allow additional square footage without changing the footprint or height.
- He provided a slide of a homebuyer reviewing the plan. The exterior would not change one iota. The floor plan would allow a lot more square footage on the second floor.
- The most important thing is that the developer is still living with the original intent of a 3,600 square-foot footprint, 32-foot height, 1.5 stories in the front, and 2 stories in the rear. He felt the proposal would still live within its original intent, but allow more flexibility.

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

Acting Chair Adams visited the site and found it very impressive. Probably more impressive is how the builder has been able to hang on and stay in business in the current market.

*Sjeklocha moved, second by Magney, to adopt the resolution on pages A24-A26 of the staff report approving the request.*

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

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

**B. Amendments to the sign plan at Ridgedale Festival shopping center at 14100 Wayzata Boulevard (88085.11b)**

Acting Chair Adams 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.

A. Thomas asked if advertising written on glass is considered a sign. Thomson answered that window signs are not regulated by the ordinance.

Jason Vincent, architect and engineer for the applicant, stated that the proposal strives to unify the front elevation to match the entry sign. The backwards "R" is federally registered and 24 square feet in size. He was available for questions.

Acting Chair Adams asked if customers might think that sign is identifying another entrance. Mr. Vincent responded that there would be no operable doors at that location. The graphics steer customers toward the entrance. He did not want to confuse the customer. The signs would steer the consumer to the entry.

The public hearing was opened.

Richard Stewart, 13910 Knollway Drive South, was not there to comment on the sign. He was there for the amendment to make sure that everything is "kind of going along." He is concerned with a buffer on the north side. Trees went down this summer. His wife talked to Colleran a while back. He indirectly represents Claudia Collantes, who resides at 13901, who is concerned with the trees going down and wiping out the buffer. The agreement from 1988 states that there would be 15-foot to 20-foot Norway pine trees planted. The Norway pines did not last long, but some other evergreens should be there. Maple and Basswood trees were the replacement. The trees are spindly. There is no buffer or screening. His front window looks out toward the wall which has 5 lights and there is no buffer. He requested the buffer be approved with the sign.

Acting Chair Adams explained that is not really linked with the application. He asked staff for a response. Gordon explained that trees blew down along the property line this summer. Staff spent a lot of time working with Kimco, the Toys R' Us property owner, and Dante Vargas, the resident most impacted by the blown-down trees. Colleran visited the site and determined that the existing vegetation had blown down. Kimco agreed to replace the screening with deciduous trees. Mr. Vargas agreed with the choice of screening. The trees were planted and are in the process of growing to provide screening. Mr. Vargas called staff and said that the screening is great and appreciated the city's help. Kimco is glad to have the item resolved.

Gordon reviewed the 1988 master development plan (MDP) which requires screening with Norway pines along the east side of the property and shrubs along the service road area. The trees that blew down were on the north side of the property. All of the conditions in place in 1988 that were reviewed with the MDP approval last year were met. There were a number of complaints received from the Stewarts at the last MDP review. Staff discussed 6 or 7 issues with Kimco to resolve complaints regarding garbage dumpsters, garbage, pond water elevation, and loading-dock gate noise and activity and all were corrected. If there is something else happening, then that needs to be looked into. It seems that all of the approvals have been satisfied.

Acting Chair Adams noted that screening requirements are not part of the sign plan. Gordon agreed.

Mr. Stewart stated that his copy said that 15-foot to 20-foot Norway pine trees would be planted on the north side of the fence. He questioned what is in effect today to make sure that everything goes forward. He would like to know that as well. Acting Chair Adams suggested he take that up separately with staff.

Wischnack clarified that there was a complaint made regarding the fallen trees. The trees were replaced and the matter closed. If Mr. Stewart is not satisfied with staff's answer, then he has the ability to appeal the decision to the city council. That is part of the ordinance and his right as a property owner. At this time, staff considers the matter closed.

Mr. Stewart stated that all of the other improvements have been taken care of which has been a good thing.

No additional testimony was submitted and the hearing was closed.

***Magney moved, second by Lehman, to adopt the resolution on pages A7-A20 of the staff report, which approves an amendment to Section IC, Subdivision 3 of the Ridgedale Festival Sign Covenants, as follows:***

Anchor tenants: The tenants occupying the spaces crosshatched on the site plan attached as Exhibit B are considered anchor tenants for purposes of these covenants. Anchor tenants are the major tenants of the shopping center, occupying much larger space than typical, and generally having a taller, more massive building than typical. Because of their size and significance, it is appropriate that anchor tenants have signs larger than typical and in keeping with the scale of their building. Each anchor tenant will be permitted one sign with a maximum letter height of 60". In no instance shall any anchor tenant sign exceed 250 square feet in area (measured in terms of the smallest four sided figure around the copy comprising the tenant's sign) or 50' in length. If a single tenant fully occupies two anchor tenant spaces, the tenant is allowed a second wall sign with a maximum height of 60" and a maximum size of 125 square feet. There shall be a maximum of three (3) anchor tenants.

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

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

## **9. OTHER BUSINESS**

### **A. Ordinances amending various environmental sections of city code**

Gordon reported. Staff requests the planning commission review the ordinances on pages A1–A61 of the staff report and provide comments and questions.

A. Thomas confirmed with Colleran that the last line of Section 14-15 is correct and should read "0.1 foot."

Sjeklocha asked staff to explain the major differences in the chart on Page 3 that the public would want to know or that would potentially impact anything a homeowner does. She asked if the planning commission had a recent item before it that would have been impacted by the proposed changes. Gordon responded that the public might be interested in the shoreline district proposed changes. The proposal would clarify what portion of a property is within 150 feet from a shore and what portion of a property is not within 150 feet of a shore. The change would not have a material impact on a property.

Gordon stated that the landscaping aspect would define when a tree is really dead. The public nuisance proposed language change would put the responsibility of cleaning up after a pet on whoever is with the pet. A frozen lake is an example of a location that would still require a responsible party to clean up after a pet.

In response to Sjeklocha's question, Colleran added that defining when a tree is dead relates to required landscaping from a commercial perspective where a landscaper plants the trees which are guaranteed for a year and the city requires a letter of credit or escrow to ensure that the trees are living a year from the planting date. After a year, if they are all alive, the money is released. The city may determine that a tree is dead, but the responsible party may argue that the tree is still alive. There is currently no definition in the ordinance that determines if a tree is dead or alive. The ordinance would establish that if 25 percent or more of a tree's crown does not have leaves on it, then the city considers that tree dead. That would also speak to long-term maintenance. It would allow the city to enforce conditions of approval.

Gordon stated that the proposed changes would provide a definition for pool setbacks from floodplain districts. There have been a few cases in the past year where a homeowner wants to construct a pool in a lower area in the yard that is in the floodplain. The proposal would set a consistent setback in relation to the water's edge from the floodplain boundary. Colleran clarified that if someone requested a conditional use permit to be in the floodplain for a limited area and received approval, the pool could be located in the floodplain. If the applicant did not submit an application for a conditional use permit, then a setback must be met. The proposed language would clarify the inconsistency.

Colleran explained that the proposed changes would clarify standards if someone wished to alter the floodplain. The current ordinance does not have standards to address how an application relates to floodplain alteration. There are a few additional items added to clarify what types of things should be looked at in consideration of the request. The final language tries to reorganize the ordinance. The ordinance is hard for people to understand. The changes would make the ordinance clearer in regard to removal of land from the floodplain.

Sjeklocha asked what was debated that was not included in the proposal. Gordon explained that the philosophy behind standards was discussed by staff and the city council. The city council discussed policies as part of the introduction of the proposed ordinance changes. Staff spent quality time reviewing procedural items. Staff has not spent as much time reviewing the policy realm. The philosophy behind the proposed ordinance changes is pretty consistent. Wischnack added that city councilmembers wanted to have more discussion, but

ran out of time because some of the changes need to be done by the end of the year. It did not allow time for a study session to discuss each topic in depth. Staff had already proposed changes that are not in the proposal tonight. The city council is not ready to go forward with them until they have a longer discussion.

Acting Chair Adams asked if some of the proposed changes related to FEMA were federally mandated. Colleran explained that FEMA is in the current ordinance. FEMA regulates floodplain. The city has to receive approval from the Department of Natural Resources (DNR) for any changes made to the existing floodplain ordinance. The proposed ordinance speaks to FEMA and other 100-year flood areas that are regulated in addition to FEMA. Underlined words are additions to the ordinance and stricken words delete portions of the ordinance. In some sections this was done to reorganize the current ordinance.

Acting Chair Adams asked if “other regulated floodplains” refers to FEMA floodplain or city-designated floodplain. Colleran explained that FEMA floodplain normally surrounds the city’s creeks and lakes. The wetland areas and low-lying basins are normally city, 100-year flood elevations. Those are non-FEMA areas. Acting Chair Adams confirmed with Colleran that those fall under “other regulated floodplains.”

Acting Chair Adams questioned if Page 25 deals with regulation of silt fences. Colleran answered affirmatively. Once there is permanent ground cover and stabilization and funds are escrowed, then the silt fence would be removed. The proposed language would require removal of the silt fence after 30 days of permanent stabilization.

Acting Chair Adams recalled a discussion regarding making the McMansion Policy a city ordinance. He asked if that had been discussed. Gordon explained that would be in a different section of the ordinance. The McMansion Policy is not as much of an issue as it used to be, but staff still talks about it. At some point in the future, it may become an ordinance. It is a policy already. Its application is still the same.

A. Thomas said that there is silt fence lying down and covered by brush located south of Highway 7 where a residence is being built. He asked if the language will cover maintaining the silt fence. Colleran stated that the current ordinance’s language is appropriate. It states that erosion and sediment control measures must be maintained. The difficulty is with enforcement. The building inspectors are on site and talk to the contractors. She has one full-time person who monitors all of the development projects. Engineering staff monitors roadway projects. One seasonal person is the silt-fence inspector and he checks every site. A property owner is given two days to remove sediment and stand a silt fence up. If

it is done, staff can be back on that site the next day because the plumber ran over the silt fence. It is a constant hamster wheel. Enforcement is difficult when it comes to grading and erosion control. She is proud of the City of Minnetonka because it is one of the few cities that has a comprehensive program. Employees do inspect the sites. Many cities have these ordinances in place and do not have the staff or personnel to respond more than on a complaint basis. By that time, the silt is washing down the street and into the neighbor's front yard.

Sjeklocha asked if the proposed changes would only apply going forward. A. Thomas asked if current conditions would be grandfathered in. Colleran explained that the proposed changes would be implemented going forward, but silt fence violations would not be grandfathered. The project A. Thomas referred to was a project where the silt fencing was installed, the grading was completed, and the lots stabilized with the assumption that the lots would be sold. The project is not complete. It is in an interim development stage. It is a development with no houses. Staff has not approached the developer to request removal of the silt fence because once the lots start selling, the silt fence would be put back up to commence with building the houses. How to handle an inactive property for a certain amount of time is something for staff to discuss. There would be no grandfathering of silt fence violations.

Sjeklocha asked staff to consider what the city would be able to do to enforce the ordinance changes.

Gordon stated that the planning commission will hold a public hearing on the ordinances on December 1, 2011.

## 10. ADJOURNMENT

***Lehman moved, second by A. Thomas, to adjourn the meeting at 7:45 p.m. Motion carried unanimously.***

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