



BURNSVILLE PLANNING COMMISSION MINUTES

MEETING OF OCTOER 13, 2003

MEMBERS PRESENT

Richard Dusterhoft
Michael Esch
Tim Ivers, Alternate
Skip Nienhaus, Chair
Nancy Nystuen
Mary Sherry

MEMBERS ABSENT

None

OTHERS PRESENT

Matt Brokl
Lonnie Fredrickson
Tina Goodroad
Brian Johnson
Ryan Peterson
Todd Rapp
Judy Tschumper

The meeting was called to order by Chair, Skip Nienhaus at 7:00 p.m.

CONSENT AGENDA

1. Adoption of Agenda.
2. Consider Approval of Minutes Previous Meeting of September 22, 2003.

With no changes forthcoming Nienhaus called for adoption of the Agenda and approval of the Minutes.

Sherry moved to approve. Dusterhoft seconded the motion. Ayes: Dusterhoft, Esch, Nienhaus, Nystuen, and Sherry. Nays: None. Motion passed.

3. Public Hearing – John Mahoney - Application for a Preliminary Plat Approval of an Eight Lot Subdivision to be Known as MAHONEY TOWNHOMES 2ND ADDITION and Concept and Development Stage Approval of a Planned Unit Development Amendment for Construction of Seven Townhomes to be Located South of Williams Drive East, of Penn Avenue South

Goodroad presented an overview of the application and advised that staff recommends that the Planning Commission recommend to the City Council approval of the application as conditioned.

Nienhaus called for questions of staff.

3. Public Hearing – John Mahoney – Continued.

Nystuen asked what was located between units 5 & 6. Goodroad responded that there are two guest parking spaces, as required. Nystuen asked if it was in the City's best interest that the density had been reduced by one-half. Goodroad advised that there is a combination of medium, high and single-family development within the area and she believes the proposed townhomes and density of the project is a good blend within the area.

Sherry asked if there would be a sidewalk linking to Williams Drive on Penn and Oliver Avenue. Goodroad said that was included as a condition of the first project and it would be provided.

Esch asked the location of the entrances. Goodroad replied that the entrances would be on Oliver and Penn. Esch asked where the park dedication fee in the amount of \$11,220 would be deposited. Goodroad advised that those dollars would go into the Parks Capital Fund.

Ivers asked what amount of guest parking is required. Goodroad said that .5 spaces per unit are required. Ivers asked if the landscaping along Williams Drive would create visibility issues. Goodroad indicated that overstory trees and the distance of the plantings from the curve would allow for the needed visibility.

Nienhaus asked about the location of the stop light. Goodroad said that the light would be one block to the east.

Ivers asked about the location of the trash collection area. Goodroad responded that trash cans would be collected from each driveway along the shared drive.

Nienhaus invited the applicant to speak. Goodroad advised that he was available to answer questions but otherwise did not wish to speak.

At 7:16 p.m. Nienhaus opened and closed the Public Hearing and opened discussion among the Commissioners.

With no discussion forthcoming, Nystuen moved to approve the Preliminary Plat and Concept and Development Stage Planned Unit Development with the following conditions.

1. Park dedication in the amount of \$11,220 shall be paid prior to the issuance of a building permit.
2. All other outstanding engineering issues shall be resolved prior to the issuance of a grading permit.
3. A cross access easement shall be recorded for the common driveway between the two projects.

3. Public Hearing – John Mahoney – Continued.

4. The second phase shall be incorporated into the Association of the Mahoney Townhomes First Addition.

Dusterhoft seconded the motion. Ayes: Dusterhoft, Esch, Nienhaus, Nystuen, and Sherry. Nays: None. Motion carries and will go to City Council on Monday, October 20, 2003.

4. Consider a Request for Variances at 363 Maple Island Road for Brian and Megan Caraway.

Goodroad presented an overview of the request and advised that staff recommends the Planning Commission recommend to the City Council denial of the application based on the issue of contiguous lots. She invited the Yung's attorney to address the Commissioners.

Todd Rapp, 1516 Parson Hill Drive, Burnsville spoke on behalf of Joe and Georgiana Yung, Meghan and Brian Caraway, and Mike and John Caraway. He stated his appreciation for the accuracy of Goodroad's presentation and thanked staff for their assistance through this process.

Rapp displayed plans with revisions based upon the PNRD input regarding bringing impervious surface into compliance. He said that setbacks are in character with the surrounding properties. He provided the history of the initial lot and home and the subsequent purchase of the adjoining lots. He stated that lots 14 and 15 are jointly owned by Joe and Georgian Yung and that lot 16 is solely owned by Georgian Yung. He provided assessment information on the three lots prior to development of the Shoreland Ordinance. He indicated the Shoreland Ordinance requiring lots to be 20,000 sq. ft. minimum, adopted in 1984, did not address contiguous lots. He said the Yung's had no knowledge of the consequences of the Shoreland Ordinance adopted in 1994 prior to their building application. Rapp provided information on the proposed tax statements for lot 16 for 1991 (assessed at \$123K); 2000 (assessed at \$134K); 2001 (assessed at \$146.2K); 2002 (assessed at \$161.4K); and 2003 (assessed in excess of \$250K). He said that Yung's have paid all of their taxes, which over the past five years on lots 16 and 14 equaled approximately \$25K. He stressed that the City deems these lots as unsaleable and undevelopable. He said that strict enforcement of the ordinance catches the family unaware and has disastrous personal and financial consequences for them. He indicated that the proposed home is consistent with the surrounding area. He said the family is willing to agree to deed restrictions and other reasonable accommodations.

Nienhaus called for questions of staff.

4. Consider a Request for Variances at 363 Maple Island Road for Brian and Megan Caraway – Continued.

Nystuen questioned whether combining the lots would change the platting in terms of taxation. Brokl advised that assessments are dictated by the County but added that, even if combined, they may have separate identification numbers.

Nienhaus asked if the ordinance changes (in terms of taxation) would it be the County's responsibility. Brokl said that it would.

Nystuen asked what options the owners would have had if they'd been aware of the 1994 changes to the ordinance. Brokl said that they could have attended the Public Hearing to voice their concerns and they could have challenged the assessor. Nystuen asked if they could have sold the property to establish separate ownership. Brokl said that they could have done so before adoption of the ordinance. Nystuen asked why variances are allowed for setbacks, ordinary high water marks, impervious surface, etc., but not for contiguous properties. Brokl said that is not the case and advised that one of the applicant's requests is for a variance from the 20K sq. ft. requirement which is the same as a variance for the contiguous property.

Dusterhoft asked if the patio would be considered impervious surface. Goodroad said that anything that is water impermeable would be considered impervious surface. Dusterhoft asked if a permit is necessary to build a patio. Goodroad said that it is not. Dusterhoft noted that the lots were taxed as buildable. He said that if they'd had knowledge of the 1994 ordinance change, they could have deeded the property at that time to their children. He then asked if notice by publication is the legally accepted means of notice. Brokl said yes. Dusterhoft commented that because the ordinance doesn't apply to taxation the County doesn't have to recognize it.

Ivers referenced the DNR letter asking about the potential consequences of going against their recommendation. Brokl responded that he did not know what the DNR would do if their recommendation is not honored. He said that he is researching the DNR Legal Department's ruling but added that he believes it is their expectation that their recommendation be followed to the letter.

Nienhaus asked if the Burnsville ordinance mirrors the DNR's. Brokl said that the DNR has rules and statues that dictate what the City's ordinance must say; therefore, the ordinance mirrors the DNR and state law. He further indicated that the rules say what the City has to do, not what the DNR has to do, and does not address enforcement by the DNR.

Nystuen asked if variances are allowed on adjoining lots. Brokl said that he believed a variance could be approved for the lot requirement adding that, however, it would not be looked upon

4. Consider a Request for Variances at 363 Maple Island Road for Brian and Megan Caraway – Continued.

favorably by the DNR. Nystuen asked for clarification as to whether a variance could be allowed for contiguous property. Brokl advised that it could.

Ivers referenced Rapp's letter and the mention of deed restrictions. Brokl advised that the deed restrictions were offered to show the Yung's legitimacy of familial matters. Ivers asked if deed restrictions could be enforced. Brokl said yes.

Sherry commented that the issue is really impervious surface.

Esch questioned why the Yung's purchased only two lots when there are three children. The response was that the third child would get the Yung's home while the other two would get lots.

Dusterhoft noted that granting variances requires proof of hardship. He said that tax payments on lots intended for the Yung children which now cannot be sold or given to the children seems to constitute a hardship.

Ivers asked if the payment of three separate tax assessments on three separate PID's automatically imply three lots. Brokl said that he didn't believe that it did under the ordinance.

Dusterhoft reiterated that this is the City's ordinance and is not enforced to the detriment of the County. He said that the County has not recognized the ordinance. Brokl said that it appeared that they have not. Dusterhoft pointed out that the County didn't know, the Yung's didn't know, and according to Mr. Rapp, even the City didn't realize the implications of the Shoreland Ordinance for these three lots.

Esch asked what the assessment on one giant lot vs. the three lots might be. Rapp stepped forward and advised that the tax valuations exceed \$250,000 for lot 16, and \$300,000+ for lot 14, means that the County has valued these lots for their residential vacant lot development potential. He asked where the City's responsibility lay and noted that a substantial fraction of the taxes collected went to the City. He said that the real estate taxes paid could not be recaptured but, rather, are irretrievably gone. He said that the DNR cannot tell the City when and how to enforce its ordinance and, when obtained, he'd like to be advised of the DNR's position.

Esch asked the difference between the Bluebill Bay property and this property. Brokl advised that the Bluebill Bay property entailed other issues dealing with purported transfers by deed, etc. He said additionally some of the factors presented regarding the taxes paid by Yung's and the availability of sewer and water to the properties were not applicable to the Bluebill property. Comparison is not apples to apples.

4. Consider a Request for Variances at 363 Maple Island Road for Brian and Megan Caraway – Continued.

Ivers asked if the City acted properly in its compliance with legal notification requirements. Brokl said that the City did act properly.

Dusterhoft asked if the intent of the Shoreland Overlay Ordinance is to mitigate effects to the lake – he asked if that essentially referred to impervious surface effects on the lake. Brokl advised that it also includes septic systems and the availability of sewer and water. Esch noted that the septic and sewer are in place. Dusterhoft said that sewer has been provided for the lots so the issue targets the impacts that development of the smaller lots would have on the lake. He said the changes made to the proposal before them brings the applicant within a couple percent of the impervious surface requirement. Goodroad advised that they also stated they would do the required mitigation to allow the impervious surface to meet or exceed the 25% requirement. Dusterhoft asked if a variance to impervious surface would be needed if they reached the 25%. Goodroad said that because there is no buffer plan and proof, she would recommend a variance be approved with a condition added that staff works with the applicant. Nienhaus noted that once a mitigation plan exists it negates the need for a variance.

Nienhaus asked Goodroad to address the comment that ‘initially staff was not aware of the problem concerning the three lots’. Goodroad responded that the initial meeting with the Yung’s did not include background information so it was only after further review that staff realized the problem associated with the contiguous lots.

Tschumper stepped forward to address what transpired regarding an alternative offered to the applicants. She indicated that staff conferred with legal counsel and the City Manager to develop a compromise consisting of averaging three lots into two parcels. She said that the applicants did not find this compromise acceptable.

Nystuen moved that the Planning Commission recommend to the City Council approval of the proposed variances using the revised plans as submitted.

Esch seconded the motion.

Nienhaus: “As much as it pains me because I am typically a landowner’s advocate, I will be voting against the motion. A lot has been made about the communications process, but I am certain that the landowners did not receive a letter from the City but, I’m equally certain that the City published all of their legal notices, including all of the notices for the meetings. I’m also aware that the Crystal Lake Homeowner’s spearheaded ... and backs this ordinance and was in communication with their members via newsletter ... on this ordinance. I get a lot of things ...

4. Consider a Request for Variances at 363 Maple Island Road for Brian and Megan Caraway – Continued.

I'm sure things are not read but there is nothing we can do ... so I don't see the communication issue as being that important. I certainly sympathize with the taxation issue but I believe that's between the land owner and the County. We've already had a somewhat similar situation like this on another property that we've denied. The City is spending \$25,000,000 over the next ten years to clean up the lakes, the ordinance was passed to assist in that ... I don't see going along with the ordinance. I think the compromise offered by the staff is a reasonable compromise. It's not a compromise that will totally solve the problem. Mr. Rapp even indicates in his letter that the possibility exists that the Caraway's may move away again within five years due to job relocation so ... we have two lots and two kids left in town at that time. So, that's my only comments. If anyone else has any ... if not, we'll call for a vote."

Sherry: "I didn't think I was going to be supporting this however I do feel this is a case of unintended consequences and I think that I would be looking at this very differently if there were no houses on this ... but there is one ... and it's in the middle. To me that is something I just can't get around and I'd feel ... I did ask Tina today to look and see if there are other property owners on our lakes that might be in a similar bind. Possibly there are none but I just feel that to render these lots technically useless is unfair for all of the reasons that we've discussed."

Nienhaus: "And, I would not feel that we've rendered them useless. We obviously can have two lots there that would be two very nice lots."

Esch: "Is it possible to keep three lots but ... "

Nienhaus: "No – reshift the house?"

Esch: "How close is the house to the lot?"

Nienhaus: "It sits right in the middle."

Dusterhoft: "It just seems to me that a variance is ... the idea of a variance is designed exactly for this situation. These property owners have owned ... have lived there since the 60's ... and they purchased these other lots with the specific intention, apparently, all along to do exactly what they want to do now. At some point, that opportunity was taken from them by the government. And, I think that it was taken ... that opportunity was taken from them by one branch of government but another branch of government, the County, has never recognized that and has continued to charge them as though they'd always had and would continue to have the opportunity. I think it's interesting that, if they owned a piece of property two doors away from

4. Consider a Request for Variances at 363 Maple Island Road for Brian and Megan Caraway – Continued.

this lot ... in other words their lot was separated by one other lot ... we wouldn't be having this discussion. I think to treat them the way the strict enforcement of the ordinance would treat them would be unfair. That's why a variance is needed in this situation and I think that's what a variance is for."

Nienhaus: "My only comment to that would be that we should not grant variances when the problem is of your own making and I would say not knowing about the ordinance change in and of itself is of its own making."

Dusterhoft: "If I can just respond to that. I agree with you. But, I think that, again, it's interesting that different branches of government can recognize this and other ones don't."

Ayes: Dusterhoft, Esch, Nystuen, and Sherry. Nays: Nienhaus. Motion passed and will go to Council on Monday, October 20, 2003.

5. Consider Request for a Variance at 1805 Lacota Lane for Brian Paul Johnson.

Goodroad presented an overview of the application and advised that staff recommends the Planning Commission recommend to the City Council approval of the application as conditioned.

Nienhaus called for questions of staff.

Sherry asked for clarification of the location of the steps in the back. Goodroad reviewed the plan and the location of the steps.

Bryan Johnson, 1805 Lacota, advised that the stairs had been repositioned.

Nystuen asked if the roof line would be higher than the party wall. Johnson said that it would.

Dusterhoft asked if consideration of the setback amendment included R-2 properties. Goodroad advised that staff had only considered R-1 zoning when they reviewed the amendment.

Nienhaus asked if staff had any contact with the condominium owners to the rear. Goodroad said there had been no contact.

5. **Consider Request for a Variance at 1805 Lacota Lane for Brian Paul Johnson – Continued.**

Sherry moved that the Planning Commission recommend to City Council approval of the proposed variance.

Esch seconded the motion.

Ayes: Dusterhoft, Esch, Nienhaus, Nystuen, and Sherry. Nays: None. Motion passed.

6. **Adjournment.**

Nystuen moved to adjourn. Dusterhoft seconded the motion. Ayes: Dusterhoft, Esch, Nienhaus, Nystuen, and Sherry. Nays: None.

Motion passed and the meeting adjourned at 8:45 p.m.

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