

PLANNING COMMISSION MINUTES - CITY OF INVER GROVE HEIGHTS

Tuesday, September 15, 2020 – 7:00 p.m.
REMOTE MEETING

Chair Maggi called the Planning Commission meeting to order at 7:00 p.m.

Commissioners Present: Joan Robertson
Elizabeth Niemioja
Annette Maggi
Brett Kramer
Dennis Wippermann
Pat Simon
Scott Clancy
Jonathan Weber
Kate Challeen

Commissioners Absent:

Others Present: Allan Hunting, City Planner
Heather Botten, Associate Planner

APPROVAL OF MINUTES

The minutes from the August 18, 2020 Planning Commission meeting were approved as submitted.

TITAN LAND – CASE NO. 20-24PUD

Chair Maggi advised that this item has been tabled to October 6, 2020.

ERIC AND JILL MORSE – CASE NO. 20-25V

Reading of Notice

Commissioner Simon read the public hearing notice to consider the request for a variance from the front yard setback on a corner lot to construct a fence 48 inches in height whereas 42 inches is the maximum height allowed, for the property located at 7605 Boyd Avenue. 5 notices were mailed.

Presentation of Request

Heather Botten, Associate Planner, explained the request as detailed in the report. She advised that the applicant is requesting a variance to allow a chain link fence 48 inches in height within the corner front yard setback whereas 42 inches is the maximum height allowed. The proposed fence would be located along the side and rear property lines, 15 feet from the corner front property line, and about 30 feet from the curb. The ordinance requires all fences within a front yard area be no taller than 42 inches. The reasons for the rule appear to be mainly for visibility for traffic and emergency vehicles along the street and driveways, and also for aesthetics. The applicant's property is in a developed residential neighborhood and the abutting property to the rear, most affected by the fence, sits higher in elevation and has tall bushes that would help screen the fence. The neighbor's driveway is also on the opposite side of the property and therefore there would not be issues with access or visibility. Staff believes the proposed fence would not be out of character of the neighborhood, is consistent with the comprehensive plan, is a reasonable use of the property, and does not appear to have an adverse impact on the neighboring properties. A practical difficulty can be found in the fact that the lot is a corner lot with two front yard setback requirements for fences, and the fence would be located about 30 feet from the road and not

affecting the visibility along the right-of way or neighboring driveway. Staff recommends approval of the request with the condition listed in the report. Staff did not hear from any of the surrounding property owners.

Opening of Public Hearing

Jill and Eric Morse, 7605 Boyd Avenue, advised they were available to answer any questions.

Chair Maggi asked the applicants if they read and understood the staff report.

The Morse's replied in the affirmative.

Chair Maggi closed the public hearing.

Planning Commission Recommendation

Motion by Commissioner Niemioja, second by Commissioner Weber, to recommend approval of the request for a variance from the front yard setback on a corner lot to construct a fence 48 inches in height whereas 42 inches is the maximum height allowed, with the practical difficulty and one condition as listed in the report, for the property located at 7605 Boyd Avenue.

Motion carried (9/0). This item goes to City Council on September 28, 2020.

JAMES POLAK – CASE NO. 20-26V

Reading of Notice

Commissioner Simon read the public hearing notice to consider the request to allow an accessory dwelling unit (ADU) to be 1,312 square feet whereas 1,000 square feet is the maximum size allowed, for the property located at 7346 Bancroft Way. 3 notices were mailed.

Presentation of Request

Heather Botten, Associate Planner, explained the request as detailed in the report. She advised that the applicant is requesting an accessory dwelling unit to be located in the lower level of an existing house on a property zoned R-1C, Single-family Residential. The proposed ADU would be 1,312 square feet in size whereas 1,000 square feet is the maximum allowed. The ADU ordinance was adopted in 2015 and was created to provide a secondary living space for a family member or a potential rental space. The City created the ordinance with a list of standard conditions, one being a minimum and maximum size to help keep the units subordinate and accessory to the principle use while providing a reasonable living space. In this case, the ADU would not have its own access, and would use the shared access on the main level of the house. The house was built in 1993 and has a footprint of 2,000 square feet. The applicant recently finished the lower level of the home after the ADU ordinance was created. Staff does not believe there is sufficient rationale to support the variance criteria as when they finished the lower level of the house it could have been finished off to comply with the 1,000 square foot maximum and approving the variance could set a precedent for other ADU's in the City. Staff therefore recommends denial. Staff did not hear from any neighbors.

Chair Maggi asked for clarification that ADU's are not required to have a separate entrance.

Ms. Botten replied in the affirmative.

Chair Maggi asked what the impact would be if this variance was denied.

Ms. Botten replied the applicant would not be able to have a complete kitchen on the lower level.

Commissioner Robertson asked if it would be considered an ADU if there were no kitchen.

Ms. Botten replied it would not. She advised they would be allowed to have a sink, dishwasher, refrigerator, etc. A second stove/oven is what the City believes makes it a complete kitchen.

Commissioner Kramer asked if a rental license was required if an immediate family member was living in the accessory dwelling.

Ms. Botten replied that a rental license was not required if a family member lived in the ADU. An ADU application would still be required, but there are no fees associated with that.

Commissioner Simon advised that the wording in the ordinance strongly states that in no case shall an ADU be more than 1,000 square feet in size. She felt it important that there was a second way out of the lower level, such as an egress window.

Commissioner Weber asked how the proposed ADU's square footage was calculated.

Ms. Botten replied it was based on the applicant's measurements.

Commissioner Weber asked if the homeowner would still have use of the lower level.

Ms. Botten stated that could be better answered by the applicant.

Commissioner Challeen asked if a variance of this type had been granted in the past.

Ms. Botten replied this was the first request received for a variance for an ADU.

Opening of Public Hearing

James Polak, 7346 Bancroft Way, advised that his daughter and her husband reside in the lower level of his home. He addressed each of the five variance review criteria listed in the report, stating 1) he disagrees with staff and believes the request is in harmony with the zoning ordinance and comprehensive plan as it is not going to be a rental property, it would still be single-family residential as his daughter is still part of his family, and he does not understand why adding a stove would make this inconsistent with the zoning code; 2) he does not agree that the livable finished space of the basement could be configured to accommodate the maximum size allowed. He stated that he used the outside walls as the perimeter, removed the storage areas, and questioned how it could be reconfigured without creating a dead space within the 1,312 square foot area; 3) he advised there was no such thing as an ADU in 1993 when he built his home; however, he disagrees that there was no intent of having an ADU in the lower level because they had bathroom plumbing and a fireplace stubbed in with the original construction of the house, 4) he agrees with staff's conclusion that this will not alter the character of the neighborhood. It is not going to be, nor could it be, a duplex without a separate entrance. 5) he stated that economic considerations are not the basis for this request. He asked for an explanation of the proposed condition that the site be developed in substantial conformance with the site plan on file with the Planning Division except as modified herein.

Ms. Botten clarified that would be the site plan submitted by Mr. Polak, unless there was some type of change or condition added that would affect the layout.

Mr. Polak stated that underneath that condition in the report it states 'Practical difficulty' with nothing after the colon.

Chair Maggi replied that being blank indicates that staff was not able to define a specific practical difficulty. If the Planning Commission were to recommend approval, they would have to identify a practical difficulty.

Mr. Polak stated in his opinion the practical difficulty is that given the original architect's layout there is no way to unfinish 300 square feet. He does not understand how he could reconfigure the space down to 1,000 square feet. It would be unfortunate if that was the only reason to deny his request. He does not think this would set a precedent because this property is unique in the way it was constructed and finished and should therefore stand on its own merit as a unique situation. He disagrees with staff's statement that a larger ADU appears to be a convenience to the landowner and not dictated by unique circumstances of the property. He believes it is unique, it was built and designed that way, and he is just trying to use it in the manner that it was originally intended. He also finds it difficult to understand why it is acceptable to have a microwave and hot plate, but not a stove. Unfortunately, he was halfway into his project before he was told he could not have a stove.

Commissioner Weber asked the applicant how he calculated the square footage.

Mr. Polak replied that he submitted the original architects drawing with his building permit. It was extremely detailed, and staff thought it could be confusing. So he and his daughter did their best to scale a rough estimate for the site plan. He also took specific measurements of the spaces and added it up by hand.

Commissioner Kramer stated since the primary occupant upstairs would still have access to the furnace room and storage areas, you could argue that portions of the living room were not designated solely to the ADU, but rather it would be mutual space to the primary and secondary occupant in the ADU.

Mr. Polak agreed that the homeowner would need access to the furnace room which houses the water softener, electrical box, furnace, etc.

Commissioner Robertson asked if the work in the lower level was done in 2019 and 2020.

Mr. Polak replied in the affirmative, stating the original permit was pulled in April 2019.

Commissioner Robertson noted that at the time the applicant applied for the permit all the documentation regarding ADU's was readily available to him because the requirements had been in effect since 2015.

Mr. Polak replied it might have been available, but it was never communicated to him.

Chair Maggi stated the question might be if the applicant indicated they were planning to create an ADU at the time the permit was pulled.

Mr. Polak stated he did not even know what an ADU was when he applied for his permits. The Commission is presupposing he knew he was creating an ADU but that was not the case.

Commissioner Robertson appreciated that the applicant followed the proper process by pulling permits. What changes this from a very well-designed lower level space to an ADU is the complete kitchen. To be in compliance he could omit the stove.

Mr. Polak stated that seems like throwing out the baby with the bath water. He questioned why having a stove invalidates it, but it is okay to have a hot plate.

Chair Maggi stated that during the extensive discussions regarding the ADU guidelines she believes the presence of a kitchen was deemed to signify it as being a separate dwelling unit.

Commissioner Simon asked if there were any egress windows in the lower level.

Mr. Polak replied in the affirmative. He stated he could never turn this into a duplex, and he believes this situation is unique and does not fit the normal boxes that the ordinance pertains to.

Chair Maggi closed the public hearing.

Planning Commission Discussion

Chair Maggi stated this is the first variance request they have had in regard to an ADU and the challenge will be to find a practical difficulty.

Commissioner Niemioja stated she is an advocate for ADU's and likes the concept of having a more affordable option for younger people to stay with their parents. She is less concerned about the absolute ordinance language regarding the maximum size of 1,000 square feet, since all variances are in opposition of absolute language. She is more concerned about setting a precedent and cannot see a practical difficulty. However, in this case she would like City Council to consider this as an exception to the code and that if a separate entrance is not available perhaps these requirements would not apply.

Commissioner Weber stated if he chose to have one of his parents live in his lower level and if he chose to build a kitchen, he would not be allowed to because his space is over 1,000 square feet. It all seems to boil down to the square footage of someone's house. His understanding of the 2015 ADU discussions was that the ADU is the space utilized by just the individuals in that ADU. He would not have considered the common space to be included in the square footage used. He asked if the applicant could say that the living room is used by the general population of the house.

Chair Maggi stated the word accessory means it is not the main usage, and perhaps that was part of the spirit of the decision around the square footage. However, if the lower level of your house is the same square footage as the main level then is it really accessory or is it kind of a duplex without a separate entrance.

Commissioner Weber asked for clarity from staff as to why the entire basement is included in the ADU size calculations, including the common space.

Mr. Hunting replied that he did not recall common space being included in the original discussions. The idea was to be creating a separate unique area, and he thinks you could never come to a conclusion if you are trying to use common space because then everybody who has a finished basement could then put a kitchen in, call it an ADU, and claim only a portion of the space is where somebody lives. The intent of the ADU ordinance was to minimize the area of wherever it was going to be located and have all the components of a dwelling space be separately defined (bedroom, bathroom, kitchen, and living space).

Commissioner Robertson stated that common space means that it is not dedicated to anyone and the homeowner would be allowed to go into that space at any point in time, even if it was inconvenient for the people who live downstairs or was an invasion of privacy. She does not think that was the intent of an ADU; rather it is a dedicated space designed specifically for an individual or set of individuals and is secondary in every way to the primary space.

Chair Maggi asked if there was discussion regarding ADU's having a separate entrance.

Mr. Hunting stated the ordinance intentionally did not require a separate entrance because it was known that ADU's would primarily be used by family members.

Chair Maggi asked if anyone could define a practical difficulty.

Commissioner Challeen suggested the practical difficulty being that the home basement as it is constructed does not easily accommodate a limitation of 1,000 square feet and in dealing with the footprint available it is hard to comply unless the applicant falsely carves out 300 square feet.

Chair Maggi replied that she could not support that practical difficulty because the permits were pulled after the ADU requirements were in place.

Commissioner Niemioja questioned why more discussion around this issue did not take place in 2015 but she believes it was because they were more focused on detached structures. In her opinion having only one entrance creates a family accessory dwelling unit, which in her mind is different from a regular ADU. She would like to recommend that City Council address this situation as an exception. She does not think they can define a practical difficulty; however, it prevents the concern of having too many people living there and the associated increased traffic.

Commissioner Robertson stated in her recollection there was significant discussion in 2015 about the differences between an ADU that was detached versus part of the house. She is greatly concerned about precedent. Historically when the City has granted variances for various requests it creates a precedent and it is not long before someone comes in with an even greater request.

Commissioner Kramer stated in his opinion the Planning Commission will likely vote to deny due to lack of a practical difficulty but recommend to City Council that they look at this as an exception. Hopefully they can assist the homeowner because he is doing everything by the book with the exception of wanting to put a stove in his remodeled basement that his family member is going to live in.

Chair Maggi agreed that City Council had additional latitude and may vote in a different direction.

Planning Commission Recommendation

Motion by Commissioner Robertson, second by Commissioner Simon, to deny the request for a variance to allow an accessory dwelling unit (ADU) to be 1,312 square feet whereas 1,000 square feet is the maximum size allowed, for the property located at 7346 Bancroft Way, based on the lack of a practical difficulty and concern regarding precedent, and a suggestion that Council look at this in case it is a situation not adequately covered by code.

Motion carried (9/0). This item goes to the City Council on September 28, 2020.

Commissioner Simon commented that she did not recall any single dwelling having two kitchens in it.

Mr. Polak asked what the next steps were.

Chair Maggi advised that the Planning Commission, which is an advisory board, recommended denial of the request. This item will now go to City Council, who will make the ultimate decision. She advised that the City Council has more latitude than the Planning Commission.

Commissioner Niemioja noted that the Planning Commission also recommended that Council take a look at this as an exceptional property with only one entrance.

Mr. Polak asked if that comment would be put into the record.

Chair Maggi replied in the affirmative, stating it would be reflected in the minutes.

WATERMARK PROPERTIES – CASE NO. 20-27PUD

Reading of Public Notice

Commissioner Simon read the public hearing notice to consider the request for a rezoning of the property to R-1C, Single-Family PUD, R-3B, Multiple-Family PUD and R-3C, Multiple-Family PUD, a preliminary plat for a 120-unit single-family villa development and a 100-150 unit apartment, for the property located at the NE corner of South Robert Trail and 70th Street. 15 notices were mailed.

Presentation of Request

Allan Hunting, City Planner, explained the request as detailed in the report. He advised that the property is located on the northeast corner of 70th Street and Highway 3. The project includes 120 single-family detached homes and a future 100-150-unit apartment building. This project is similar to the Hannah Meadows development that received preliminary plat and preliminary PUD approval in 2015. The rezoning would be in three parts. The larger lot single-family in the northeast corner would be zoned R-1C, the narrower single-family lots would be zoned R-3B, and the future apartment area would be zoned R-3C. The natural area/open space has been calculated and meets or exceeds requirements. The project complies with the minimum and maximum densities allowed in the Northwest Area. The applicant is proposing three flexibilities from setbacks, including 1) 8- and 10-foot separation between units whereas 20 feet is required. Since all the units will be rentals and not owned there should be no future requests for building additions. Staff supports this request. 2) The applicant is proposing a 20-foot setback for front and side yards to collector street. The project is proposed with all garage access onto the private roads that act like alleys, with the fronts of the houses being on the opposite side. Based on the unique design of the project, staff would support the request. The NWA overlay district requires 30-foot rear yard setbacks. The applicant is proposing 20 feet. Staff would support this on all lots, with the exception of Lots 6-14, Block 1 since their rear yard setbacks are a project perimeter setback. Outlot G (formerly Outlot F) is anticipated to be deeded to the city for a future park. They are also working towards construction of a trail in the pipeline easement if feasible. The Street Plan shows a collector street which was identified in the 2012 Collector Street Plan. The balance of the streets in the project would be private roads and are proposed at 20-foot widths with no parking on either side. They have agreed to provide guest parking spaces throughout the neighborhoods. Staff recommends that the developer provide a public street connection to the property to the east. The plans have been sent to Dakota County and MNDOT and the City has not received any comment to date. The plan meets the landscape and tree preservation requirements. There are three wetlands on the site. A portion of Wetland 1 in the southeast corner would be impacted. Wetland 2 in the northwest corner would not be impacted. Wetland 3 in the eastern half of the site would be impacted. A wetland mitigation plan will be required as part of the final PUD. Engineering and its consultants have not yet finished their review and staff suggests that this item be tabled to October 6, 2020.

Chair Maggi asked staff to address impervious surface.

Mr. Hunting advised that the impervious surface is below the overall allowed by code if you combine all the neighborhoods like Council did with the Blackstone developments.

Chair Maggi asked if a traffic study was planned for this development.

Mr. Hunting replied there has not been a request from any agency at this point for a traffic study, likely because the County has already looked at the access point on Allen Way and the general traffic counts, and the fact that 70th Street and Highway 3 are high-volume streets. The County would be looking at that more as they do their upgrades to 70th Street on the east side of Highway 3.

Chair Maggi noted that the reference in the conditions to Outlot F needs to be changed to Outlot G.

Mr. Hunting agreed that he had inadvertently forgotten to change the condition in the report after the outlots were re-alphabetized.

Chair Maggi asked if the packet included a layout of the actual homes proposed on the 30-foot wide lots and questioned how they could realistically fit a two-car garage on those lots while maintaining an 8-foot setback.

Commissioner Simon replied that Map 7 showed typical building pads on the 30-foot lots as being 22' x 60', with a 4-foot setback on each side of the building pads.

Commissioner Niemioja asked if the Housing Committee had reviewed this project.

Mr. Hunting replied that they were informed of the project but did not provide a specific recommendation.

Commissioner Robertson asked who would be responsible for maintenance of the private alleys that the garages open onto.

Mr. Hunting replied that could be answered best by the applicant.

Commissioner Robertson asked if the outlot for the park could potentially be removed to create a right-of-way for the property to the east should it be determined that the proposed right-of-way location was not viable.

Mr. Hunting stated it was his understanding that a road connection for the property to the east would most likely occur in the southern part of the plat as there were too many elevation changes in the northern portion for a public street.

Chair Maggi asked how large Outlot G was because generally they wanted a minimum of 5-6 acres for a park.

Mr. Hunting replied the intent was to acquire additional land in this particular area for a park; Outlot G was not intended to serve as a park on its own.

Commissioner Simon asked why they used the 2003 NRI rather than an updated one.

Mr. Hunting replied that it has not had any updates since 2003.

Commissioner Simon asked if the report included comments from the Fire Marshal.

Commissioner Niemioja replied that it was attached to the report, just not identified as being from the Fire Marshal.

Commissioner Simon asked what the setbacks were from the pipeline.

Mr. Hunting replied that there were no setbacks from the 100-foot wide pipeline easement; you just could not construct any buildings in the easement.

Commissioner Simon noted that the pipeline easement went through many of the backyards of the proposed homes.

Mr. Hunting advised that lots can be over an easement, just not buildings.

Commissioner Simon asked if the people renting the units would be advised of the pipeline.

Mr. Hunting suggested that the applicant address that question.

Commissioner Simon noted that the plan shows trees being planted in the undisturbed/open space areas.

Mr. Hunting advised that trees are allowed in the undisturbed areas.

Commissioner Simon stated that area has been disturbed consistently over the years as crops were planted there.

Mr. Hunting advised that they do not look at how the land was used before; all the City can do is prohibit the developer from disturbing the land.

Commissioner Challeen asked how the timing of the upgrades to 70th Street related to the feasibility of the proposed development.

Mr. Hunting stated they were not dependent upon each other and, in fact, when Hannah Meadows was approved there was nothing known about the upgrades to 70th Street. The existing volumes of traffic, plus the potential additional traffic from this development, would still be far below any of the existing capacity constraints.

Commissioner Weber asked for clarity on the proposed retaining walls, stating some of them appeared to be excessive in size.

Mr. Hunting replied that retaining walls were being proposed on the lots along the north line, east line, and the southeast corner.

Commissioner Weber stated he did not see any fencing on top of the retaining walls and asked if they were considered impervious surface.

Mr. Hunting replied they were not counted as impervious surface because the city considers the flat space, not the height.

Commissioner Weber noted that the retaining wall on the east side looked very thick in certain areas.

Mr. Hunting suggested the applicant address the width of that retaining wall.

Commissioner Clancy asked how the density capacity for this quadrant of 70th Street and Highway 3 was determined.

Mr. Hunting replied that it was based off studies done when the State and County were

researching the design for the roundabout. The City's 2030 Comprehensive Plan looked at this area as mixed use and hoped there would be some type of loop road construction; however, after further clarification of the State's spacing and separation requirements the loop road was no longer viable. Also, the only entrance point the County would allow was at Allen Way. The hope for a right in/right out disappeared with the ultimate design of the roundabout.

Commissioner Robertson referred to concerns expressed in emails from the neighbors regarding traffic. Considering the potential population density of this development, she suggested perhaps requesting a traffic study.

Chair Maggi asked if the Planning Commission had the authority to recommend a traffic study be done.

Mr. Hunting replied in the affirmative.

Commissioner Wippermann asked if the applicant provided the City with a rendering of the proposed homes on the 30 and 50-foot-wide lots.

Mr. Hunting replied in the affirmative.

Chair Maggi asked if the City could take any action if the developer never completed the apartment building planned for Phase 3.

Mr. Hunting replied the City cannot force any landowner or private developer to do their project beyond perhaps public improvements, such as streets or sewer and water.

Opening of Public Hearing

Ian Peterson, Watermark Equity Group, 4000 Shoreline Drive, Spring Park, advised he was available to answer any questions.

Chair Maggi asked the applicant if he read and understood the report.

Mr. Peterson replied in the affirmative. Mr. Peterson provided additional information and answered questions posed by Commissioners. He advised that Outlot F, in the northeast corner of the site, has been changed to Outlot G and is 2.88 acres in size. The Parks Commission intends to acquire additional land to make that park 5 acres or more. Because they are donating land for a public park, they may request some relief from park dedication fees. They can agree to providing 30-foot rear yard setbacks for Lots 6-14, Block 1. The pipeline easement is a 100-foot wide corridor. The desire was to have a bituminous pedestrian trail along that corridor; however, over 30% of the topography throughout that corridor is greater than 8% and typically no more than a 5% grade is desired for a trail. Because it is a gas pipeline, they are very limited in grade changes they can make over that pipeline. They will continue to work with the City and the gas company as it relates to potentially building a trail through that corridor, but it is unlikely it will materialize. He advised that the previous Hannah Meadows plat did not have public right-of-way going to the east, and it is not their desire to do so either. However, they did provide a concept today. There is over 97 feet in topographical grade change on the site overall, and they are further limited by South Robert Trail and 70th Street, a 44 foot wide main collector street, nearly two acres of wetland, and the 100-foot gas pipeline. It is a very difficult site to design and develop. He advised that they submitted their plans on August 17 and he is disheartened that Engineering does not yet have their comments ready for tonight's September 15 Planning Commission meeting. He proposed that Commissioners look at this project from a planning and land use standpoint tonight, take a vote and then address the engineering comments at the City Council meeting. He advised that they handle all snow removal on the private streets and driveways. If needed, they will haul snow

offsite. The wetlands were formerly delineated and approved on June 8. The retaining wall in the middle of the plat is significantly thicker because that will be 16 feet tall. The taller the wall the more step backs you have to do, and they have not yet decided if they will go with modular blocks or a boulder wall. As noted by Commissioner Weber, there was no fencing shown on top of the wall. They will add that and it will be part of the building permit for the retaining walls. He displayed renderings of the proposed homes.

Commissioner Simon stated that the proposed connection to the east looked like it erased some of their parking.

Mr. Peterson replied that the parking for the clubhouse facility would be pushed north so those parking spaces would still be there. He advised that the homes on the 30 foot lots were essentially row townhomes that had been pulled apart. They were all alley loaded with the garages being on the private streets. There are sidewalk connections in the front, and they have two car garages and additional parking spaces for two cars in the driveway as well.

Chair Maggi asked the applicant to address square footage and the rental cost.

Mr. Peterson advised that square footage on these units ranged from 875 to 2,100 square feet. The more traditional home product ranged from 1,550 to 3,000 square feet. The rents average about \$3,000 a month, which includes all lawncare, irrigation, trash, furnace filter changing, water softener filling, etc. He showed a rendering of the clubhouse, including a workout room, swimming pool, and club room.

Chair Maggi asked Mr. Peterson his affiliation to this project.

Mr. Peterson advised they are the developer and the owner/operator as well.

Commissioner Wippermann asked what demographic they anticipated renting these units.

Mr. Peterson replied that typically projects such as this have a third split; a third are 55 and older, a third are millennials, and the other third are 40-somethings.

Commissioner Wippermann asked if the future apartment building would also have access to the clubhouse facility.

Mr. Peterson replied at this point they do not anticipate that.

Commissioner Weber noted that most of the homes were slab-on-grade and asked if this development would have a storm shelter.

Mr. Peterson replied it did not.

Commissioner Kramer asked if the homes could potentially be converted from rentals to owner-occupied.

Mr. Peterson replied they do not contemplate that.

Commissioner Robertson suggested that the availability of storm protection be further investigated. She asked for clarification of the homes shown in the rendering.

Mr. Peterson explained that the massing difference was somewhat because of a one-story home surrounded by two story homes.

Paul Cotterman, 1271 – 70th Street East, stated the proposed development had more units than the previously approved Hannah Meadows so the traffic patterns established with that project should not be compared to the Watermark proposal. He questioned how neighbors could socially distance in the homes with only a four-foot setback on each side, stating both neighbors would likely have to have a shoulder against the house to avoid meeting in the middle. He questioned if these were ADA compliant since most of them seemed to be built vertically and asked if any of them were low income or subsidized, stating \$3,000 a month rents was a significant rent for the average person. He noted that Outlot G, which is designated as a public park, is on a private road with no parking.

Keith Vorderbruggen, 7477 Cahill Avenue, stated his biggest concern is removing any of the wetlands as they are very important to the communities drinking water.

Commissioner Robertson asked the applicant to address Mr. Cotterman's question regarding parking and access to proposed public park.

Mr. Peterson replied that the City's big picture plan is to acquire additional properties to make this a 5 plus acre park with access from a different point where the grades would be less challenging.

Mr. Hunting agreed that Outlot G would be part of a larger acquisition for a park and would likely not be developed until the collector street continues further north.

Chair Maggi asked if Outlot G would be appropriate for a park with its severe topography.

Mr. Hunting advised that the Parks Director is aware of the topographical challenges but is still looking at it for some type of park.

Commissioner Niemioja stated she appreciated the parkland dedication but did not feel quite ready to make a recommendation on this request tonight.

Commissioner Robertson stated she hoped the City would move forward soon on acquiring the additional parkland needed so as to ensure there would be a park in this location.

Chair Maggi closed the public hearing.

Planning Commission Discussion

Chair Maggi asked for a show of hands and the consensus was that they were not prepared as a commission to make a recommendation tonight. She asked what additional information commissioners would need for the October 6 meeting besides detailed information regarding traffic in and out of this area, and the Park Director's thoughts on the likelihood of securing additional property to form a 5- or 6-acre park.

Commissioner Weber stated it would be impossible for him to move this forward without an engineering report.

Commissioner Niemioja stated as far as she knows there is no other project like this in the City and she feels it is important to get the Housing Committee involved and hear their thoughts on this project.

Commissioner Robertson would like to see firmer commitment by the developer on providing a public street right-of-way to the property to the east rather than the vague language in Condition 9.

Commissioner Simon stated she is looking for comments from MNDOT and Dakota County regarding the future plan for 70th Street east of Highway 3 (i.e. will there be a barrier, right in right outs, etc.) as this development will put a big traffic load on the east side of the roundabout.

Chair Maggi summarized the request from the Planning Commission for the following to be addressed for the October 6 meeting: traffic, parks and potentially attendance by the Parks Director, the engineering report, a response from the Housing Committee, addressing more concretely the street to the east, and Dakota County and MNDOT review.

Motion by Commissioner Weber, second by Commissioner Simon, to table the request to the October 6 planning commission meeting.

Motion carried (9/0).

Chair Maggi called for a two-minute break at 2:23 p.m.

The meeting resumed at 2:25 pm.

BITUMINOUS ROADWAYS – CASE NO. 20-12CA

Reading of Notice

Commissioner Simon read the public hearing notice to consider the request for a conditional use permit (CUP) amendment and an amendment to the sand and gravel overlay district to add a bulk storage facility to load, store, and unload asphalt cement on the property located at 11201 Rich Valley Boulevard. 29 notices were mailed.

Presentation of Request

Allan Hunting, City Planner, explained the request as detailed in the report. He advised that Bituminous Roadways is requesting to amend their existing CUP to allow the construction of three bulk storage tanks for asphalt cement. The tanks are 80 feet in diameter and 48 feet tall. The total project would consist of three 1.8-million-gallon storage tanks. Phase 1 would include construction of Tanks 1 and 2, Tank 3 would be constructed as part of Phase 2. The new tanks would be located on the floor of the existing mine adjacent to the asphalt plant. The volume of storage requires an environmental review (EAW), which was done by the MPCA. The City hired Barr Engineering to do a review for any environmental concerns and they did not find any. He noted a typo in the report which should have read that this operation does **'not'** impact noise levels. No significant traffic impacts are expected from the project. The Fire Marshal reviewed the plans and is requiring the installation of an approved fire suppression system before filling the tanks. Regarding the variance, the intent of the height provision is to minimize height and bulk of buildings. Because the tanks will be located in a hole, they would have limited visibility from the street. Staff recommends approval of the request with the conditions listed in the report.

Chair Maggi asked staff to address a question in John Wendt's email regarding a CUP renewal in 2022 and the responsibility for removal of these tanks if they were to discontinue their operation.

Mr. Hunting advised that the CUP does not need a renewal; rather, the sand and gravel requires an update every five years. There is also a condition requiring that all buildings be removed from the site within three months of the closure of the facility. The Commission could modify the condition to include the tanks as being part of the total removal once the sand and gravel operation has ceased.

Commissioner Simon asked if the Fire Marshal's comment requiring a fire code amendment to allow for large above ground storage tanks should be added as a condition.

Mr. Hunting agreed that that verbiage could be added as a condition.

Commissioner Wippermann asked if a change in hours of operation was being proposed.

Mr. Hunting replied that the applicant did not specifically request a change of hours of operation.

Commissioner Weber asked for clarification of how they determined the wells marked as being located within one mile of the project site and he questioned how complete it was.

Mr. Hunting stated the applicant could best answer that question.

Opening of Public Hearing

Kent Peterson, Bituminous Roadways, 6130 – 150th Street SE, Prior Lake, advised he was available to answer any questions.

Chair Maggi asked the applicant if he read and understood the report.

Mr. Peterson replied in the affirmative.

Michaelea Whelan, Sunde Engineering, responded to Commissioner Weber's question about the well map, stating they got their information from the County Well Index. She stated that Barr and the MPCA did not find any condition that would impact neighboring wells.

Commissioner Niemioja asked the applicant why they were building the tanks.

Mr. Peterson replied that the tanks would allow them to purchase asphalt cement year-round which would allow them to better manage their supply and they could take advantage of winter pricing, which typically was lower than in the summer.

Ms. Whelan noted that this material is already being stored on site in 44-foot tanks. The proposed tanks would be 48-feet tall but would be minimally visible from the street as they are in the recessed portion of the mine.

Chair Maggi closed the public hearing.

Planning Commission Discussion

Commissioner Niemioja commented that economic considerations seem to be the basis for this variance being sought and she hopes it does not set a precedent.

Planning Commission Recommendation

Motion by Commissioner Simon, second by Commissioner Clancy, to approve the request for a conditional use permit (CUP) amendment and an amendment to the sand and gravel overlay district to add a bulk storage facility to load, store, and unload asphalt cement on the property located at 11201 Rich Valley Boulevard, with the addition of a condition requiring that current fire code would need to be amended to allow for large above ground storage tanks on property not zoned I-2, and an amendment to Condition 12 to require that all **bulk storage tanks** also be removed from the site within three months.

Motion carried (9/0).

Mr. Hunting advised that he was unsure when this would go to City Council as fire code first needs to be amended.

Commissioner Niemioja asked if the next Planning Commission meeting would be via zoom.

Mr. Hunting replied in the affirmative.

The meeting was unanimously adjourned at 9:43 p.m.

Respectfully submitted,

Kim Fox
Recording Secretary