Minutes
Minnetonka City Council
Monday, July 10, 2017

1. Call to Order

Mayor Terry Schneider called the meeting to order at 6:30 p.m.

2. Pledge of Allegiance

All joined in the Pledge of Allegiance.

3. Roll Call

Council Members Tony Wagner, Bob Ellingson, Dick Allendorf, Patty Acomb, Brad Wiersum, Tim Bergstedt, and Terry Schneider were present.

4. Approval of Agenda

Acomb moved, Wiersum seconded a motion to accept the agenda with an addendum to item 10A. All voted “yes.” Motion carried.

5. Approval of Minutes: None

6. Special Matters: None

7. Reports from City Manager & Council Members

City Manager Geralyn Barone reported on upcoming city events and council meetings.

8. Citizens Wishing to Discuss Matters not on the Agenda

9. Bids and Purchases: None

10. Consent Agenda – Items Requiring a Majority Vote:

A. Resolution approving a conditional use permit to allow the demolition and reconstruction of a larger accessory structure at 3841 Baker Road

Allendorf moved, Acomb seconded a motion to adopt resolution 2017-069 approving a conditional use permit for accessory structures exceeding 1,000 square feet and 12 feet in height at 3841 Baker Road. All voted “yes.” Motion carried.
11. Consent Agenda – Items requiring Five Votes: None

12. Introduction of Ordinances: None

13. Public Hearings: None

14. Other Business:

   A. Items concerning Minnetonka Hills Apartments at 2800 and 2828 Jordan Avenue:

      1) Major amendment to an existing master development plan;
      2) Final site and building plans, with parking variances; and
      3) Preliminary and final plats

City Planner Loren Gordon gave the staff report.

Wagner noted that if a person exceeds the 15 miles per hour limit indicated on the sign, they cannot be ticketed for speeding. City Engineer Will Manchester indicated that was correct and that the signs are advisory. Schneider asked why 15 miles per hour is used given it's so slow. He thought 20-25 miles per hour was more realistic. Manchester said there was a formula used based on the grade of the road.

Wagner noted the property was guided R5 for quite some time, and with the steep slope impacts he asked if the issue was really a design issue or if any R5 plan would have the same issues as this proposal. Gordon said the site had some areas where the R5 ordinance would indicate the area should be avoided. The question was what could be designed for the site that would be economically feasible, meet the city’s ordinances, and would get approved. He said the city had not received an alternative from the developer. No alternatives for the site had been looked at since the 2004 townhouse project. Wagner asked if density was also the issue given the parking limitation. Gordon said anytime there was a multi-story project, parking probably had more impact than the building itself. Wagner asked what parking the developer was proposing for the property. Gordon said the proposal met the city’s parking requirements.

Acomb said that during the concept plan review there was discussion about affordable housing being encouraged as part of the project. She asked if staff had any conversations with the developer about affordable housing. Gordon said there had been a discussion with the applicant and the applicant would address that with the council.
John Ferrier, CSM Corporation, said that while the mass of the building generally stayed the same as what was shown in the concept plan, the placement of the building had been moved around to best fit for slope and tree preservation. He showed the tree buffer to Highway 169. He said this was a market driven plan and market studies had shown there really was a need for this type of housing. Affordable housing was being analyzed. A lot would depend on what type of TIF pool was available. He said the site was a very expensive site to develop. This would make affordable housing a little more difficult.

Clark Wicklund, Alliant Engineering, said in looking at the city’s steep slope ordinance, there were performance standards that had six objectives. One was to preserve open space and that wasn’t a condition with this property. The remaining five objectives related to risk and maintaining the city’s identity. He said the views surrounding what would be disturbed would be very limited to a small corridor that would primarily be visible to northbound traffic on Highway 169. The site’s location near the ridgeline near the top of the watershed would limit the amount of stormwater that passed through the site. The risk during construction and post-construction before the site becomes stabilized would be limited. He said there was 14 feet of cut in terms of the excavation quantities. This was a manageable amount that was dealt with daily on road projects. Looking at the issue as what is observed, what is maintained, and the feasibility, he said buildings with underground parking are tucked into slopes all the time. The nearby apartment building, which was considerably larger, was also on a 20 percent slope.

Susan Goll, board member with the Cedar Cove Homeowners Association, said the only access in and out for the Cedar Cove residents was on Jordan Avenue. The residents understand the need for high density housing and what a desirable location this property was. She said the association doesn’t believe this is the right project for a number of reasons. The planning commission talked a lot about the impact on the environment. The residents appreciate the environment and it was one of the things they loved about living in the area. Because the trees on the ridgeline would have to be removed, the view would change substantially. She showed a picture of the view from the existing Minnetonka Hills building entrance showing the many trees that would be removed because the area would become part of the parking area. The residents’ biggest concern was the traffic. She said the traffic study indicated there would not be much impact on the existing flow. The concerns however related to the 140 feet sight distance in both directions. The guidelines for a speed limit of 20 miles per hour indicated the appropriate decision sight distance was 225 feet. For 30 miles per hour speed limit the distance was 335 feet. A vehicle making a left turn from the existing driveway does not have the
appropriate sight distance to make the maneuver. The traffic study recommended 15 miles per hour speed limit to address the issue. She said another concern was when the Minnetonka Hills plows its parking lot there was no place for the cars to park. Many cars park along Jordan area leaving little room for emergency vehicles to get through. She noted staff indicated they had talked with the developer about this issue. She asked for further study of traffic be done regardless what happened with this proposal because of the existing safety issues.

Allendorf asked if staff looked at straightening the road to keep drivers in their lanes and a no parking situation on the one side of the road. Manchester said staff had looked into the options. He said striping the centerline would be an improvement to keep drivers within their lanes. Adding white fog lines by the curb would also help by making the lanes seem narrower. Adding no parking signs could be looked at but staff wanted to be sure that issues were not being created in other areas by doing so. Allendorf said whether this project were approved or not, adding the centerline striping could help guide drivers.

Wiersum asked if there were meaningful opportunities to do some trimming of the foliage to improve the sight lines. Gordon said looking to the north there was a retaining wall that was preventing possible improvements to the visibility issue. He said the wall could be moved back further into the hillside but it was unlikely it could be moved enough to meet the 335 foot guideline.

Allendorf said in listening to the comments, he questioned if anything could be built on the site. He asked Gordon what the developer could do that would respect the steep slope and ridgeline. Gordon said staff had discussed what could be built that it would recommend for approval. Staff had not seen anything from the developer other than this plan. There may be ways to look at the site with a development on the southern half and also doing something on the northern side. It would take a finely tuned analysis of all the site conditions to figure out what could work.

Wagner said in looking back at the history of the site, even though there was agreement this was a good site for R5, there had been concerns about steep slopes since 1985. The question was if R5 housing could really be built on the site. He was trying to determine if the issue was one of design and density that could be addressed by the developer, or if any R5 proposal would run into the same issues. He couldn’t support the project because of the ordinance.

Wiersum noted there was a disagreement between staff and the developer about steep slope cutting and filling measurement. Assuming
the staff measurement was correct, the question was what would need to be done to the design to bring the proposal into compliance. He didn’t think staff knew the answer to the question because there hadn’t been the interaction between staff and the developer. He said he clearly was not in a position to approve the proposal at this point. The developer had to decide if he wanted to move forward, and if he does he will need to work more closely with staff to figure out what was really doable.

Schneider said he didn’t have quite the same degree of concern others have likely because of the history and background of how the steep slope ordinance was developed. This particular site had always had the challenge of wanting something built but not knowing how that could be done. He thought there was some opportunity to reduce the berm and retaining wall. Lowering the grade two or three feet would significantly improve the sightline. He said there were deep discussions when the steep slope ordinance was developed. He thought the consultant captured some of the huge issues like tree preservation, view sheds and safety. That was how some of the language was incorporated. There had been back and forth discussions about how no slope in the city was the same. The idea of building on the pinnacle or ridge was strictly about if someone were going to build a structure, they should not be building on the steepest part of the slope. He pointed to the building on Plymouth Road that was built on the ridge, the peak was removed and part of the slope is gone.

Schneider said in this case the peak was not in the middle but on the edge of the two properties. If the building were put there, there wouldn’t be a second thought about cutting off 14 feet, but the building wouldn’t be there because of the parking. He said whatever high-density building was built on the site would have the same general impact. The question was had the developer sited the building the best way possible. His opinion, seeing the tree preservation on the east side, seeing that the drainage work, and seeing the peak would have gone away anyway, was it seemed like a good solution. Yes, the peak was being removed, but it was for a good reason. If the feeling was the use was right, getting additional diversity, multi-family housing, then he thought the council needed to be open to the idea of managing the slope in order to make it work. He was open to supporting the project.

Acomb said since she wasn’t at the meeting when the concept plan was discussed, she went back and listened to the discussion. She agreed with the mayor’s comments about reducing the size of the building to reduce the amount of surface parking needed. This would have a major impact on the steep slope area. She said the city had its environmental ordinances for a reason and making an exception might mean establishing a precedent. She agreed high density residential was the appropriate use of
the property, but she questioned what degree of high density was appropriate. She would be more comfortable having the developer work with staff to address the steep slope issues rather than just disregarding the ordinance.

Allendorf said he didn’t hear the mayor suggest disregarding the ordinance but rather taking a look at approving the removal of the peak. The comments from the homeowners’ association were mainly related to safety and traffic and not the steep slope. He thought staff should look at addressing those concerns. He also thought staff should work with the developer so there was comfort in the changes to the steep slope. If that was done, he could support the proposal. As he looked at the alternative, nothing would be built. He thought the project merits the council looking favorable upon it.

Bergstedt said he would be in favor of tabling the item to allow the developer to work with staff. He thought the developer had come back with a good effort in preserving trees and trying to deal with the steep slopes but he didn’t think the proposal was at a point he could approve. There never would be something that would fit perfect on the site. He agreed staff should move forward in addressing the safety and traffic issues.

Wagner said he supported tabling the item because there were fundamental questions about what, if anything, could be done to make the project better.

Wiersum said there was general agreement that if something appropriate could be built on the site, it should be. He agreed the proposal wasn’t at a point he could approve it. He supported tabling the item to allow for more collaboration.

Schneider said he didn’t disagree with that approach. His intent was to point out the developer was complying with the general intent of the ordinance on a difficult site.

Allendorf said the onus should be on the developer to come up with the ideas the staff reacts to rather than have staff design the proposal differently. He also thought it would be helpful to document the ideas to improve the safety in the area so that the neighbors had the opportunity to review and make comments.

Barone noted there was a July 15 deadline for the council to act on the item.
Ellingson said during his time on the council, there had never been a proposal with a steep slope issue similar to this one. Other proposals involved steep slopes that didn’t meet the ordinance’s definition of a steep slope. He remembered visiting the site and being surprised at how steep the slope actually was.

Ferrier agreed to extend the deadline 60 days. He said he would submit that in writing to staff.

Acomb asked that the affordable housing be looked at for the project.

Allendorf moved, Wagner seconded a motion to table the item for a period not to exceed 60 days. All voted “yes.” Motion carried.

B. Items concerning a parking lot expansion at Minnetonka Executive Plaza, 10275 Wayzata Boulevard:

- Major amendment to the existing master development plan;
- Parking setback variance; and
- Encroachment agreement

Gordon gave the staff report.

Patrick Sarver, of Civil Site Group, said the right of way situation was quite unique. The right of way was not at grade with the right of way of the road. There was an 11-foot difference. The request was for similar treatment that was given to the property to the east. He didn’t think a precedent would be set. He said staff had visited the site several times and saw the parking demand needs were definitely there. He disagreed with the staff on the retaining wall. He didn’t share the level of concern with the proximity of the construction of the parking. There was an average of five to 13 feet from the retaining wall. The property to the east was consistently five feet from the retaining wall. The proposed engineering improvements matched grade at the existing conditions of the retaining wall. It was a pour in place concrete retaining wall. There was extremely low risk of damaging the retaining wall.

Faysal Abraham, CEO of King Show Games, thanked the council for its consideration of the request.

Wagner noted there was a bus that ran close to the property. He asked if Abraham had any transit programs for his employees that would limit some of the parking demands. Abraham said many of the staff ride the bus but there wasn’t any formal program in place. There were also staff
who rode bicycles and motorcycles to work. Wagner asked for the number of employees. Abraham said there were 117.

Bergstedt asked how many employees would be moving to the new location. Abraham said the new space had a maximum of 36 people.

Wagner asked if staff believed it could write an agreement that would effectively protect the city. If the city needs the right of way back, there needs to be the ability to get it back. Gordon said from the use standpoint given this was an interstate highway corridor the need for the right of way probably never diminishes. Maintaining space at the edges probably would always be important. The walls would need to be maintained and if there were things up against the wall it would make that difficult to do. An agreement could be written but the staff position was it was better not to jeopardize the things that needed to be protected. Wagner said the basis of his question was support of a growing business in the city, but there were options like the use of transit available.

Wiersum said Sarver had noted that the property to the east had parking within the right of way. He asked from a legal perspective if that created any precedent. City Attorney Corrine Heine said she would have to research the specifics of the history of the property to the east. It was possible the parking lot was there before the right of way was acquired. That would be a different circumstance. She said in general, allowing something in one circumstance does not require the council to allow it in another circumstance. The council had the ability to make a decision they believed was in the public’s best interest. Wiersum said he tended to support the staff’s recommendation just because you don’t know what you don’t know. There are reasons the city has right of ways. He agreed with Wagner that the applicant had options to address the parking issue without having to go into the right of way.

Acomb asked if there was a way to put in parallel parking within the applicant’s property. Gordon said a few parallel parking spaces could be done but there probably would be some impact to the trees.

Bergstedt said all the council was thrilled to see a thriving business in the city. He thought in addition to the upcoming expansion, the company’s success might lead to additional expansions, but because the property was in a major interstate corridor, maintaining the right of way was important. No matter how well a legal agreement was written, a dangerous precedent would be set. He said he would find it difficult to go against the planning commission and staff recommendations.
Schneider concurred. The situation was challenging. It was a critical right of way. To allow the applicant to take it back would be shortsighted. There were many other options available. One would be working with the neighboring properties on an arrangement where the applicant paid to build more parking in exchange for being allowed to use 3/4ths of the stalls. Another option would be to do a more active shuttle to an offsite parking location.

Allendorf moved, Bergstedt seconded a motion to adopt resolution 2017-070 denying the major amendment to the existing master development plan, parking setback variance, and an encroachment agreement for parking lot expansion at Minnetonka Executive Plaza, 10275 Wayzata Boulevard. All voted “yes.” Motion carried.

15. Appointments and Reappointments: None

16. Adjournment

Wiersum moved, Acomb seconded a motion to adjourn the meeting at 8:25 p.m. All voted “yes.” Motion carried.

Respectfully submitted,

David E. Maeda
City Clerk