1. **Call to Order**

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

2. **Roll Call**

Commissioners Magney, Calvert, Knight, and Kirk were present. O’Connell and Odland were absent.

Staff members present: Principal Planner Susan Thomas, Planner Jeff Thomson, Water Resources Engineer Liz Stout, and Natural Resource Manager Jo Colleran.

3. **Approval of Agenda:** The agenda was approved as submitted with additional comments provided in the change memo dated September 10, 2015.

4. **Approval of Minutes:** August 27, 2015

   *Knight moved, second by Magney, to approve the August 27, 2015 meeting minutes as submitted.*

   *Magney, Calvert, Knight, and Kirk voted yes. O’Connell and Odland were absent. Motion carried.*

5. **Report from Staff**

   Thomas briefed the commission the August 31, 2015 city council meeting.

   There will be a joint meeting of the EDAC and planning commission September 17, 2015 at 6:30 that will include a tour of development sites. The next regular planning commission meeting will be October 1, 2015.

6. **Report from Planning Commission Members:** None

7. **Public Hearings: Consent Agenda:** None

8. **Public Hearings**
A. **Floodplain alteration permit for a Purgatory Creek water management project located east of County Road 101 and north of Creek View Trail.**

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

Thomas reported. She recommended approval of the application based on the findings and subject to the conditions listed in the staff report.

Clair Blazer, administrator for the Riley/Purgatory Creek Watershed District, stated that the application came from a city-based petition. The area has severe erosion. Phosphorous is being released into the water and traveling downstream. Watershed district staff are excited to do the project. It is a partnership between the city and the watershed.

Knight asked if the erosion occurs naturally or if there is a specific cause. Ms. Blazer explained that creek banks do erode naturally, but the landscape has been changed dramatically which has caused an increased rate of flow and the amount of precipitation has increased from 100 years ago. This case deals with steep banks. Eventually, the bank shelf will collapse and increase sediment traveling to the creek. Purgatory Creek flows into the Minnesota River which is considered impaired for sediment.

In response to Calvert’s question, Thomas explained an error in the staff report. The tree ordinance allows trees to be removed for this type of activity, but also requires restoration of the area. Staff will correct the error prior to review of the city council.

Chair Kirk noted that the area is owned by the city, townhome associations, and private properties. Ms. Blazer stated that easements would need to be acquired. Restoration would be done in a way to minimize impact. The work would be done in the winter.

Calvert asked how much grading would be done and the impact to the trees. Colleran confirmed that grading would be done impacting critical root zones of various trees. The area has more of a floodplain forest characteristic. Elm, silver maples, and cottonwoods are lowland species. They will tolerate more root disturbance. Everything would be done to minimize impact to the critical root zones.

The public hearing was opened. No testimony was submitted and the hearing was closed.
Chair Kirk noted that the project would improve the conditions for trees and vegetation when completed. Colleran provided an illustration showing how the existing erosion cuts into the root systems. Erosion will kill the trees if left unchanged. The wooded character would be established again. The root wads would take hold right away and do a good job of holding the soils.

Knight asked what would be done to prevent invasive species from taking over. Colleran expected garlic mustard to grow in the upland region. In the wetter areas, the garlic mustard would die out because it cannot tolerate the wet condition. It would be made sure that the plant material would be stabilizing and functioning. There is buckthorn currently growing in the area. The project is not an invasive species restoration area.

**Magney moved, second by Odland, to recommend that the city council adopt the resolution on pages A34-A37 of the staff report approving the floodplain alteration permit for a Purgatory Creek water management project.**

**Magney, Calvert, Knight, and Kirk voted yes. O’Connell and Odland were absent. Motion carried.**

This item is tentatively scheduled to be reviewed by the city council at its September 28, 2015 meeting.

**B. Interim use permit for a home occupation at 25 Milbert Road.**

Chair Kirk 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.

Chair Kirk asked if all of the buildings on the property had building permits. Thomson answered affirmatively.

Steve Hemingway, 25 Milbert Road, applicant, works out of his house as an artist. He has been working with Thomson to address a complaint from a neighbor. He has been operating his business for 17 years. He works on a limited number of custom ordered pieces a year. The studio is a private place. He enjoys peace and quiet while he works. He constructed metal boxes to contain the sawdust and smell. He sent a video that shows the process. Smoke escapes through the edges for 2 minutes. He uses wet sand on the edges of the boxes to keep the smoke down. Not a lot of smoke escapes. The residual smell from the
sawdust is now contained. Some people find the smell pleasant. If the can is left uncovered, then he can smell it. The solution is containment. He would be more than happy to put a ventilation system in place. If he watches the wind and is careful, the neighbor does not notice.

The public hearing was opened.

Margaret Lund, 111 Milbert Road, stated that:

- She has talked to Mr. Hemingway since June about the smell.
- He allowed another person to use his kiln. She woke up and her house was smokey. She spoke to Mr. Hemingway and he did stop that from happening.
- She cannot hang out her laundry because of this.
- Mr. Hemingway called her and said that he did realize that there is an issue and that he would work on it. On May 29, 2015, he held a class. She told Mr. Hemingway that her house smelled. Mr. Hemingway said that he had a class all day, that she should shut the door to her house, and that if she had a problem she should talk to city staff.
- She provided pictures that show how large some of the art pieces are.
- Mr. Hemingway uses copper which is toxic. He makes these 10 feet from her garage. It gets up to 1,800 degrees. He works with sawdust is explosive. Her garage is 10 feet from where he works. Besides the smell that fills her house, it is very toxic. Kids walk by his house to the school.
- She feels sick when she smells the stuff. She told him that. He said that it is in her head.
- He has been abusive with her and told the neighbors that she has called the police to complain.
- He called her a slumlord.
- She did not want to live next to a place that has a fire that high. The vapor sticks to things.
- It is not o.k. for her to spend more on her taxes than what he does and he has a business there.
- She does not understand why it is allowed. She hates that she is in a position to have to go against him.
- She wants to be able to open her doors and not be concerned that he will start a fire that he cannot contain.
He uses a lift and wears gloves. She is 10 feet from the fire. It is not right. She cannot deal with it.

Michael Bissonnette, 20 Milbert Road, stated that:

- He and his family have lived there since 1999.
- He supports what the applicants are doing.
- The fumes are not dangerous.
- The neighborhood is great. The applicants are part of the common good.
- He participated in the firings and helped for the fun of it. The lift is there to keep things safe.
- He loves the diversity of the neighborhood and having an artist across the street.
- Another neighbor has recreational fires quite often. He never received a complaint.
- He never smelled anything from the firing at the applicant’s property across the street.
- The applicants are considerate, wonderful people.
- Another neighbor had renters who allowed trash to pile up and it smelled.
- Another neighbor operated a vehicle repair business for 3 years.

Dale Anderson, 106 Milbert Road, stated that:

- He has lived there since 1961.
- He has no problem with anything occurring at the applicant’s property.
- He does not smell anything at his place.
- The applicants are wonderful people.

Kim Darsnick, who rented 111 Milbert Road for 6 years, stated that:

- She rarely got a smell from the kiln when the wind was right.
- She hung her clothes on the line all summer. There was no problem.

Chair Kirk asked staff to address the commission’s purview. Thomson explained that the interim use permit application is specific to the home occupation having an outside employee. Multiple site inspections have been performed by the fire marshal, environmental health staff, and planners to review the odor issue. The
use does create an odor. It is fairly brief and is similar to a campfire. Staff found that the use does not violate the odor ordinance or create an adverse impact. The conditions of approval include conditions that specifically address the odor issue. The site would be monitored to ensure compliance with the conditions.

Chair Kirk confirmed with Thomson that the impact of having an outside employee is what the planning commission is considering.

No additional testimony was submitted and the hearing was closed.

Magney confirmed with Thomson that the interim use permit would allow the city staff more control over enforcing complaints regarding smell and smoke.

Chair Kirk asked if the commission could do anything to restrict the smell. Thomson identified that the key question for commissioners to answer is whether having an outside employee would create noncompliance with the smell issue. Staff found that it would not.

Chair Kirk noted that one person firing pottery would cause a certain amount of smell. An additional person would probably increase the production and smell. That is the issue to discuss.

Calvert stated that everyone has neighbors. She encouraged the applicant and people in the neighborhood to work together. She encouraged the applicant to follow through with utilizing an air purification system. She limited her decision making to whether or not to allow one part-time employee.

Knight and Magney agreed with Calvert.

Chair Kirk believed a conditional approval and the city continuing to monitor the site for smell would be appropriate. He encouraged the applicant to mitigate as much as possible for the smell and consider times of the day and weather conditions to prevent the additional staff person from exacerbating the problem. He has a neighbor who likes to burn often and the smell travels in and out of his house.

Knight moved, second by Magney, to recommend that the city council adopt the resolution on pages A7-A10 of the staff report approving an interim use permit for a home occupation at 25 Milbert Road.

Magney, Calvert, Knight, and Kirk voted yes. O’Connell and Odland were absent. Motion carried.
This item is tentatively scheduled to be reviewed by the city council at its September 28, 2015 meeting.

C. **Conditional use permit for a pet boarding and daycare facility at 14901 Minnetonka Industrial Road.**

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

Thomas reported. She recommended approval of the application based on the findings and subject to the conditions listed in the staff report.

Annie Haubenhofer and Michael McKinley, applicants, introduced themselves and provided a history of Auntie Ruth’s. They stated that they need to relocate the business due to the building that currently houses the business being sold. The business provides daycare and boarding for dogs, cats, and smaller animals including those with special needs. Her relationship with the neighbors at the previous location was always positive.

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

Chair Kirk noted that the conditions would be the same as the approval for Unleashed. Thomas added that the city has not received a complaint regarding Auntie Ruth’s in the last 5 years.

*Magney moved, second by Knight, to recommend that the city council adopt the resolution on pages A13-A17 of the staff report approving a conditional use permit for a pet boarding and daycare facility at 14901 Minnetonka Industrial Road.*

*Magney, Calvert, Knight, and Kirk voted yes. O’Connell and Odland were absent. Motion carried.*

This item is tentatively scheduled to be reviewed by the city council at its September 28, 2015 meeting.

D. **Conditional use permit with a variance for a dental clinic at 13059 Ridgedale Drive.**

Chair Kirk 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.

Dr. Chris Steele, applicant, stated that his practice has been looking for additional space in the Ridgedale area. This is a great opportunity. He was available for questions.

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

Chair Kirk noted that the city received letters from neighbors in support of the proposal.

Calvert acknowledged that traffic would not be an issue.

Knight moved, second by Calvert, to recommend that the city council adopt the resolution on pages A11-A16 of the staff report approving a conditional use permit with variance for a dental clinic at 13059 Ridgedale Drive.

Magney, Calvert, Knight, and Kirk voted yes. O’Connell and Odland were absent. Motion carried.

This item is tentatively scheduled to be reviewed by the city council at its September 28, 2015 meeting.

9. Adjournment

Calvert moved, second by Magney, to adjourn the meeting at 8:10 p.m. Motion carried unanimously.

By:
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Lois T. Mason
Planning Secretary