

**CITY OF MEDINA**  
**PLANNING COMMISSION**  
Meeting Minutes  
Tuesday September 13, 2016

1. **Call to Order:** Chairperson V. Reid called the meeting to order at 7:00 p.m.

Present: Planning Commissioners Todd Albers, Chris Barry, Laurie Rengel, Kim Murrin, Robin Reid, Victoria Reid and Janet White.

Absent: None.

Also Present: City Planner Dusty Finke.

2. **Public Comments on Items not on the Agenda**

No comments made.

3. **Update from City Council Proceedings**

Anderson reported that the Council met the previous week to discuss and adopt the preliminary budget. He reported that the City finances are in very good shape noting that the slight increase in the budget will be offset by the higher property values. He stated that City Administrator Johnson was recognized for his five years of service to the City. He noted that a remedial budget for the Sioux Drive project was approved to correct the flaws in the original project.

Albers asked and received confirmation that the Sioux Drive items are in respect to the project that was completed the previous fall.

4. **Planning Department Report**

Finke provided an update.

V. Reid stated that she was not able to attend the tour dates of the AutoMotorPlex site in Chanhassen and asked if there would be additional dates.

Finke stated that the business owner would most likely be willing to coordinate additional dates, but noted that the next large event date for that site would be October 8<sup>th</sup> from 8:30 to 11 a.m.

5. **Approval of Draft Planning Commission Meeting Minutes**

- A. **July 12, 2016 Planning Commission Meeting**
- B. **August 3, 2016 Concurrent Special Meeting with Council**
- C. **August 16, 2016 Concurrent Special Meeting with Council**

**Motion by White, seconded by Murrin,** to approve the July 12, 2016, Planning Commission meeting minutes with the noted corrections. Motion carries unanimously.

**Motion by R. Reid, seconded by Barry,** to approve the August 3, 2016, Special meeting minutes as presented. Motion carries unanimously.

Motion by R. Reid, seconded by White, to approve the August 16, 2016, Special meeting minutes as presented. Motion carries unanimously.

6. ~~**Public Hearing – AutoMotorPlex – PUD General Plan, Site Plan Review, and Plat to Construct 237,500 Square Feet of Private Garage Condominiums and Accessory Retail, Service, and Meeting Space on 19.17 Acres East of Arrowhead Drive, North of Hamel Road**~~
7. **Public Hearing – Ellis and Nancy Olkon – Variance from the Contiguous Suitable Soil Requirements for a Subdivision at 2362 Willow Drive**

Finke presented a request for a lot size variance at 2363 Willow Drive, noting that this request is part of a larger request but advised that the plat was not ready for review and explained that this decision will be helpful to determine if the applicant should move forward. He stated that the subject site and all surrounding sites are zoned rural residential and therefore require five acres of contiguous suitable soils per lot. He stated that the five acres of contiguous suitable soils requirement is the zoning tool the City uses for the rural residential land use, noting that the maximum density within the Comprehensive Plan for the rural residential zone is one lot per ten acres. He stated that the subject site does include a fair amount of wetland and steep slopes, which make soils unsuitable for septic systems. He stated that there are criteria that must be met, specific for variances and within the subdivision ordinance, in order to approve a variance. He reviewed the criteria necessary to qualify for a variance from the zoning criteria. He noted that the subdivision variance criteria are slightly different and reviewing those criteria, noting there are commonalities. He stated that specific to the zoning criteria it states that economic considerations alone should not be considered as difficulty. He stated that if the Commission finds that the criteria are met for a variance there are other issues that would need to be discussed and resolved in order for the plat to move forward, such as wetland locations. He stated that staff believes the fact that the property was divided prior to the contiguous suitable soils rule would be fairly common in the rural residential district and not unique to the property. He stated that the applicant is present to answer any questions.

Barry stated that the applicant's letter states that a variance was granted in the subdivisions for Bueller and Stonegate and asked the lot sizes for those developments.

Finke replied that Stonegate was a Conservation Design Planned Unit Development and therefore a variance was not obtained, noting that those lots were about two acres in size. He stated that in the Bueller case the size was 3.5 acres of suitable soils, noting that subdivision only resulted in one buildable lot and an outlet.

Albers stated that it would be his assumption that you could not build below and pump up the hill to a septic site.

Finke replied that it could possibly be done, but noted that it is a steep slope. He stated that with really careful design it would be possible to accommodate a rural lot on two acres.

Albers stated that his other concern would be that some of the two-acre lot would be consumed with the driveway and the setbacks, noting that lot two would be pushed towards the gully.

Finke confirmed that the setback is 50 feet. He stated that septic mounds are likely 60x100 each.

V. Reid asked how many pieces of land would have a similar situation potentially.

Finke stated that it would be difficult to generalize since each situation would be different.

V. Reid asked how many people in the City would have a similar type of situation.

Finke stated that in order to answer the question, you would have to determine what similarities you are comparing and to what alternative. You could look at development potential given two different alternatives.

V. Reid said she was curious approximately how many people were in the same boat.

Finke replied there are 108 parcels in the rural residential district that are 20 acres or more in size. He stated that more common than not there are limitations with the soils that suggest their dividability would be limited. He stated that more than half of them would be more subdividable if the City considered a 10-acre minimum, rather than suitable soils. He stated that the suitable soils calculation has been used since the 1980's and in the early 1990's the size was increased to five acres of suitable soils. He stated that while there could be discussion on the policy in the future, that is not the question in front of the Commission tonight.

Ellis Olkon stated that he knows some of the Commission and Council as he has been on the Park Commission for three years. He stated that the conversation began in 1987 when his neighbor to the east was dealing with the Council in order to subdivide what is now Hollybush. He stated that the City Council told him that he could not have his subdivision unless his neighbors, the Olkons, granted him an easement, which would amount to  $\frac{3}{4}$  of an acre of land free. He stated that the Council persuaded him that it would be beneficial to the City to go forward with the easement for Hollybush and told him that when he desired he would be able to subdivide his property in half. He stated that he is basing his request on promises that he was given at that time, noting that he has been a resident of Medina for 31 years. He stated that he has sat down with and explained his situation to each and every member of the City Council and began those discussions with the members of the Council four years ago. He stated that four years ago he was told that he would have to be patient because of the situation with Stonegate. He stated that ultimately the Council caved on Stonegate and there is precedent. He stated that he has 21.8 acres and  $\frac{3}{4}$  acres of those is an easement for Hollybush. He stated that he is not setting precedent, but simply asking to subdivide his property. He stated that the City made a lot of money in taxes from the Hollybush development, noting that he did not receive any money for that easement. He asked that this issue be referred to the City Council to grant the variance. He stated that if the body does not want to recommend the variance, he asks that the Commission refer the item to the Council with no recommendation. He recognized that Finke is simply abiding by the rules in his staff report and believed that his request should be grandfathered in because of the precedent set by Stonegate.

R. Reid asked if there is any agreement in writing from the 1980's.

Olkon replied that he does not have written agreements, but could get affidavits.

Murrin asked why the property owner wants to subdivide rather than sell as is.

Olkon replied that by subdividing he would be able to generate an additional \$300,000 to \$600,000 that would assist with his wife's medical bills, noting that she is a quadriplegic and her hospital costs for eight weeks was \$1,500,000 and the costs for personal care annually are \$100,000.

Murrin asked for clarification on when the easement was granted.

Olkon replied that he began discussions with the Council in 1986 and granted the easement in 1988. He stated that they were later made aware, in 2008, that an ordinance was passed in 1999 by a different mayor and council to change the suitable soils requirement.

Barry asked how much suitable soil the applicant has.

Olkon stated that there is enough property and suitable soil to build two five bedroom homes, noting that one home is still there.

Barry stated that in 1988 it appears the applicant was still aware that a variance would be necessary.

Olkon stated that he had a promise and agreement from the Council members that he would be allowed to subdivide. He noted that many homes were built on one acre or less. He acknowledged that he may have needed a variance should he have wanted to subdivide in 1988.

Finke stated that the history is a bit complicated on suitable soils, as prior to 1988 there were two classifications of suitable soils, conventional and innovative.

Olkon asked that Finke read aloud a letter from his next door neighbor, which was unsolicited. He noted that his neighbor, who would be most affected, is in favor. It was noted that the Commission received a copy of the letter. He acknowledged that he should have gotten his promises in writing from the Council in 1988.

Chair V. Reid stated that the letter from Judy Mallet is entered into the record.

Finke stated that there are no suitable soils in the easement area, which means the easement and the subdivision of Hollybush is largely irrelevant to whether the Olkon lot is subdividable.

Olkon stated that he could grant an easement from lot one to lot two for access. He stated that the other subdivision issues could be worked out, but the issue tonight is simply the variance. He stated that the soils consultant has stated that there are suitable soils to build two large five-bedroom homes with two large septic systems.

V. Reid opened the public hearing at 7:46 p.m.

No comments made.

V. Reid closed the public hearing at 7:47 p.m.

Barry asked the location of the current septic system.

Olkon identified the current location, noting that the system is 49 years old and would most likely need to be replaced soon. He identified two septic site locations that could be used.

V. Reid stated that she personally does not think it would cause a problem, but noted that the problem is that the criteria would have to be met.

Murrin noted that the suitable soils would still not be met and advised that previous decisions do not set precedent for future variances. She stated that Stonegate was a Conservation

Design PUD. She stated that comments made by the Council in 1988 were not made in writing and therefore the Commission should follow the Comprehensive Plan guidelines.

Olkon noted that some of the properties in Stonegate are less than two acres in size.

V. Reid stated that the item that concerns her is whether the variance would provide special privileges to the applicant over others with similar lands.

R. Reid agreed that there are numerous property owners that would like variance from the suitable soils requirement.

V. Reid stated that she feels bad there was no payment for the easement that Mr. Olkon provided. She stated that the variance cannot be issued for economic hardship and reviewed the other criteria that are not met.

Murrin stated that the economic hardship criteria clearly states that the main reason cannot be for economic gain and the applicant has stated that he would like to subdivide so that he could get more money when he sells.

R. Reid stated that the job of the Planning Commission is to review a case against the rules and therefore she does not believe that the Commission could grant the variance as the criteria are not met.

Albers agreed with the comments of R. Reid and noted that this would grant special privilege. He stated that there are other properties similarly situated and he would imagine that more of these requests would come forward if this was approved. He did not believe the request meets the requirements for a variance.

Barry agreed that special personal circumstances have to be taken out and the Commission has to review the request against the requirements and therefore the request does not meet the requirements.

White stated that she would also agree and noted that although the Commission may want to consider the special circumstances, this request is not even a minimal variance request and is far from meeting the criteria for a variance.

R. Reid asked if the Commission must issue a recommendation for approval or denial, as the applicant had asked the Commission to take no action.

Finke noted that there did not appear to be a reason for the Commission to not make a recommendation.

V. Reid replied that the Commission must make a decision and the Council can consider the other circumstances during their review. She stated that as much as she may like to recommend approval she simply cannot.

**Motion by R. Reid seconded by Albers**, to recommend denial of the variance from the contiguous suitable soil requirements for a subdivision at 2362 Willow Drive. Motion carries unanimously.

Finke reported that the City Council will hear this request on October 4<sup>th</sup> at 7:00 p.m.

8. **Public Hearing – Ordinance Amendment – Chapter 8 of the City Code Related to Floodplain Management**

Finke provided additional clarification on how the optional provisions are displayed in the Commission packet. He stated that the City has a limited amount of discretion between the federal and state laws. He stated that if the City has not adopted this ordinance by November 4<sup>th</sup>, residents would not be eligible for floodplain insurance. He stated that even if amendments were requested he would still recommend approval of the ordinance for adoption, and then additional amendments can be made in the future. He stated that staff does not recommend the optional provisions.

R. Reid asked if property owners would be notified if the status of their property changes.

Finke stated that information would be published in the City newsletter, but advised that notification would not be provided from the DNR. He stated that there would likely be folks that review the data and sell that information to the mortgage and insurance companies.

Murrin asked if not adopting the optional provisions would allow more development.

Finke stated that not adopting the optional provisions would result in less development within the flood prone areas and clarified that this language as proposed would be more restrictive.

V. Reid opened the public hearing at 8:06 p.m.

No comments made.

V. Reid closed the public hearing at 8:06 p.m.

V. Reid asked if the City would provide notification to every resident that has their designation changed.

Finke stated that he would be putting an article in the newsletter and encouraging residents to contact him. He stated that he would provide a link on the website with the map. He provided additional information on floodplain insurance.

**Motion by Murrin, seconded by Barry**, to recommend approval of the ordinance related to Floodplain Management as proposed with the notation that the optional provisions are not to be adopted. Motion carries unanimously.

9. **Potential Reschedule – November 9, 2016, Meeting/Comprehensive Plan Open House, Hearing Schedule**

Murrin asked if there would be a regular meeting in November.

Finke replied that there will be a regular meeting. He stated that the Steering Committee hoped to have the formal public hearing for the Comprehensive Plan in November, but it is clear to him that the draft will not be ready. He suggested keeping the regular meeting for November and delaying the public hearing for the Comprehensive Plan to December.

Murrin asked if the public hearing could be scheduled for a date other than the regular meeting date.

Finke confirmed that the hearing could be held at a special meeting. He noted that it would be hard to hold a special meeting later in November because of the Thanksgiving holiday.

Murrin asked if a separate meeting should be called for the public hearing in order to ensure that the regular business is not rushed.

Finke stated that would be a possibility, but noted that it is difficult to hold special meetings in the holiday season. He agreed that it may be difficult to provide full focus to regular meeting items after the Comprehensive Plan schedule.

Murrin stated that the hearing could be delayed to January, after the holiday season.

White suggested possibly holding the hearing on December 12<sup>th</sup> or 14<sup>th</sup> in order to hold the public hearing the day prior to or following the regular meeting.

V. Reid stated that the open houses will occur prior to the public hearing and therefore she did not foresee any large changes that will be proposed at the public hearing.

Murrin suggested holding the public hearing prior to the Thanksgiving holiday.

White stated that staff has stated that the information would not be ready for the November regular meeting date.

Barry asked what the concern would be for holding it with the December 13<sup>th</sup> regular meeting. He noted that typically the meetings are fairly straightforward and move quickly. He stated that it would be hard to add additional dates in December.

R. Reid stated that other agenda items could always be delayed to January if need be.

Finke agreed that December is typically a slow meeting and would be a good fit to combine with the public hearing.

Murrin stated that she would be in favor of holding the hearing in January because of the holiday activities in December.

V. Reid stated that she will be finishing her position in December and therefore a new Chair will take over at the January meeting.

It was the consensus of the Commission to hold the public hearing on December 13<sup>th</sup> with the regular meeting.

#### 10. **Council Meeting Schedule**

Finke advised that the Council will be meeting the following Tuesday.

No one from the Commission was available to attend, therefore Finke stated that he could provide a report at the meeting.

#### 11. **Adjourn**

**Motion by Albers, seconded by Murrin**, to adjourn the meeting at 8:23 p.m. Motion carried unanimously.