CITY OF MEDINA
PLANNING COMMISSION

Meeting Minutes
Tuesday, February 12, 2013

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

   Present: Planning Commissioners Robin Reid, V. Reid, Kent Williams, Randy Foote, and Kathleen Martin.

   Absent: Mark Osmanski and Charles Nolan

   Also Present: City Councilmember Elizabeth Weir, City Planner Dusty Finke, NAC Consultant Nate Sparks and Planning Assistant Debra Peterson.

2. **Public Comments on items not on the agenda**

   No public comments.

3. **Update from City Council proceedings**

   Weir updated the Commission on recent activities and decisions by the City Council.

4. **Planning Department Report**

   Finke provided an update of upcoming Planning projects.

5. **Approval of the January 8, 2013 Draft Planning Commission meeting minutes.**

   Motion by Williams, seconded by Foote, to approve the January 8, 2013 minutes with the changes noted. Motion carried unanimously. (Absent: Osmanski and Nolan)

6. **Public Hearing – Property Resources Development Co. –Preliminary Plat for an 8 lot rural Subdivision located west of Willow Dr. /Deer Hill Rd. and east of Homestead Tr. (PIDs 21-118-23-31-0001, 21-118-23-34-0002, and 21-118-23-34-0003)**.

   Nate Sparks presented the application. He stated the application was a rural subdivision. The application consisted of three parcels totaling 80 acres, of which 30 acres were wetland and 50 acres farmland.

   Sparks explained that rural residential lots shall have a minimum lot size of 5 acres of contiguous suitable soils. He explained that applicants can contest the suitable soils and provide necessary data regarding soils. The proposed application contested the

soils and so the City hired Peter Miller of Wenck and Associates as the City's Soils Scientist to review the plans submitted relating to soils.

Sparks explained the proposed site access at Deer Hill Road and Homestead Trail. He stated that the City attorney does not believe that the ROW (right-of-way) exists as described. The City does not feel, as proposed, that adequate access was being provided.

Sparks explained internal private streets and said that private streets must be built to 24 foot width and be placed within a 60 foot wide outlot which was not proposed.

Sparks explained no significant tree removal was planned. He said the Park Plan components would be discussed at the next Park Commission meeting and Park Plans/trail maps were available for the public.

R. Reid clarified the primary concerns of staff: suitable soils; access/premature subdivision; design/private street; and Lot 7 doesn't meet the minimum setback requirements for septic systems from wetlands.

V. Reid asked to clarify the roadway. Sparks said the City didn't have the necessary ROW to develop the road.

Williams said Loren Kohnen, the Building Official, in his staff comments noted seven of the lots didn't meet the requirements. Finke explained that Kohnen's comments could be resolved by the applicant to be within code.

Williams asked about the six continuous years of use of the roadway and if it could precede the dedication. Nate said it would have to precede the dedication. Finke said the City wouldn't have had to take formal action on it. Williams said he understands they didn't have six years of continuous use and Finke agreed. Williams asked about lots 4 and 5 and if they met the 300 width foot requirement. Finke said yes.

R. Reid asked if there was existing ROW to the west. Sparks said the applicant shows Deer Hill Road as a 33 foot ROW, but only the part that has been used and maintained by the City qualifies. Staff questions how much, if any, ROW exists.

Finke said the statutory user ROW does expand beyond the driving area, such as the ditch for snow plowing areas and snow storage areas. He said the road ranges in from 24-33 feet in width. Williams asked if it had to be widened on the east side to meet City standards. Finke said yes.

R. Reid asked if there was ROW there at all. Sparks said "no". Williams asked what the best case scenario would be. Sparks said it could have a ROW in it, but statutory user has to be maintained, and in this case doesn't meet it. Sparks said the applicant would have to ask the City to condemn land to start purchasing to construct the road.

R. Reid asked about financing roadways. Finke said the City did finance Hunter Drive. Martin asked if it was really a similar example since Hunter Drive had existing ROW and homes along it, whereas the new application being proposed does not.

Williams asked whose burden it was to contest suitable soils. Finke said we've had a number of properties contested which were successful, but they were challenging the slopes rather than the actual soil types.

Peter Miller, Wenck Associates (City Consultant), explained a site specific survey can be done with a series of borings on-site, but hadn't been done as of yet. Miller said he never did visit the site since it was winter time, but rather reviewed the data submitted. Williams questioned Miller on the data provided. Miller said the data provided didn't provide evidence that the soil survey should be changed in any way.

Matt Duffy, representing Property Resources Development Company (PRDC), explained that on August 6, 2012, an application was submitted for a Preliminary Plat to the City. He said prior to their submittal they met with staff to better understand what would be necessary for submittal. Duffy reviewed a number of dates stating the City had plenty of time to have reviewed their application submittal prior to now. He further explained that they didn't think they were working in a collaborate effort with Planning staff. He said it is their position that Homestead Trail has a public ROW and the City would pave the Deer Hill Road area. The preliminary plat shows how it would be paved and only easements would be needed in order to pave that area. He said he asked the City what type of consultants they needed to hire, and they then hired an Engineer and Soils consultant. He said they think they have submitted all that is necessary for a complete application. He also said the City changed the regulations relating to subdivisions and they had already applied, which triggered issues for their project.

R. Reid asked what changed in December 2012. Finke said the City added the premature subdivision ordinance within the code and changed requirements for roadway widths. R. Reid asked the applicant if the City wouldn't have made the changes in December, do they feel they would have met the road requirements.

Jennifer Haskamp, applicant's consultant, said she has been working closely with their attorney as it relates to the roadway access. In terms of Deer Hill Road she said they would have been allowed to access it like all of the other 15 property owners along Deer Hill Road at the time they made their application, but the City stepped in and changed their Subdivision regulations which defined their application as a premature subdivision. Williams asked for clarification on the premature subdivision regulations.

Williams explained to the applicant that our City attorney and staff could not find evidence of it being used for the six years. Duffy said property records exist and Williams asked him if he brought the records with him to show evidence. Duffy said

he didn't have paperwork. Haskamp said the aerials were their evidence that the road existed and was in use and therefore they disagree with City staff. She said when you zoom in on the aerial you can see that the area was used as a road. She said they would argue that the ROW was in use and that on much of the title work it describes the full area. She disagrees with staff, since the title work describes the road as 33 feet wide. She sees it as the same parallel distance with the whole ROW. Martin asked for evidence that the road was maintained for six years. Haskamp suggested the dedication document that the road was in use for six years was evidence, along with the aerials. She asked if had been provided to the Commission and Williams said it was in their packet from staff, though no other documents. Haskamp said it was a recorded document and in her opinion proof. Finke said he believed the resolution directed the City record the dedication against the properties. The City attorney's memos state the width of the ROW is not 33 feet. He said they believe throughout history the roadway has always fallen short of the 33 foot width.

Duffy said statute requires the City to provide access. Susan Seeland commented that in 2008 the property division took place.

Williams said if the land wasn't split, the land would have access. He asked what the purpose was for the split and the purpose of filling in the wetland area on lots 4 and 5. Haskamp said the wetlands were reviewed and approved to be filled, and is a completed project. She said the reason for doing it was to meet the contiguous suitable soils and that experts did do some analysis on the soils. Williams asked who did the soil borings. Haskamp said she was very involved with the requirements to contest the soils and the City doesn't have standards within the ordinance. She was directed to hire an engineer or soil scientist which they did. She said they clearly planned to develop the land so that the soils could support structures.

Public Hearing was opened at 8:09 p.m.

Madeleine Linck, 1762 Morgan Road/Park Commissioner, pointed out that the MN DNR County Biological survey designated this area as a high priority natural area. The City's draft trail plan has a trail proposed in this area as a connection between Wolsfeld SNA ultimately to Baker Park.

David Weigman, 3834 Linden Drive East and representing Buckley property owners, said he is in opposition of the proposed application. He said he doesn't know where to begin, since he hasn't been able to remember when he's seen an application such as this one that didn't respond to staff's comments for revisions and changes prior to going before the Planning Commission. He said the documents show that Finke had submitted letters explaining insufficient revised plans repeatedly. He said he has a title commitment and there isn't an easement to Homestead Trail which has since been repealed. He said there's no ROW and even if there was, there is a creek and wetlands. He said he is not quite sure any of this had been addressed. He further explained the applicant has access to the south and the cart way issue can't exist.

Bethe Hattara, 1592 Homestead Trail, said even if a ROW to Homestead Trail did exist, she asked if anyone had ever driven it. She said the thought of putting a road in there is dangerous and it doesn't make sense to have any more access at that point. She said one of the reasons people like Medina is for its breathing room. She said she thought the subdivision seemed too close together.

Steve Pflaum, 2725 Deer Hill Road, said he was speaking for all the residents on Deer Hill Road in addition to the packet of information submitted from their attorney. He said that there had been a number of misstatements and only nine residents lived on Deer Hill Road. We realize there will be development on that property, but their concern is Deer Hill Road as explained in the packet of information submitted to the City by their attorney. From our perspective, every single tree would have to come down to meet City Standards for a new road. If the tress didn't have to come down or the road widened, just asphalt added, he thinks the residents on Deer Hill Road would be satisfied. They are strongly opposed to widening Deer Hill Road and any expense that would be placed on the current land owners along Deer Hill Road.

Stuart Alger, attorney representing Steve Pflaum of Leonard, Street and Demard, said he concurred with the City attorney's opinion as to the lack of the City Road, or that a sufficient road exists to the east. He asked the Commission if they'd received his written materials and the Commission said yes. He explained that his view was if the project were to proceed, the City would have to acquire additional ROW for the project to move forward and probably through condemnation proceedings which would be quite expensive. Permanent easements, construction easements, and experts would all have to be hired by the City in order to develop the ROW. The City could potentially be liable to pay the property owner's attorney fees if it went that route. He also noted the trees along the roadway were certain to provide aesthetic value to each of the properties which would impact value.

Alger's said the proposed development could possibility have access through Co. Rd 6 or Homestead Trail, and the burden should not be on the adjacent land owners. He said the recorded documents of the property in question (survey map, the order, decree of registration, and filing of the document) doesn't determine the use. Factors should be taken under consideration in making a decision.

Clarkson Lindley, 1588 Homestead Trail, said the existing curve on Homestead Trail with additional traffic would be quite problematic. He said there is no evidence of a previous cart path.

Cindy Piper, 2905 Willowood Farm Road, said that she wanted to make sure the trails are put on the map and maintained into the future.

Bob Mitchell, 1745 North Willow Drive, said he came into the community and bought land in 1960 and built in 1980 and the road did not exist at that time. He said the properties are large enough to develop without having to get an easement or

roadway access from existing property owners. He said you can't sell land-locked property.

Amy Alworth, 1602 Homestead Trail, said she risks her life every day trying to get mail. She said they moved there because of the rural character and they'd like to preserve that.

R. Reid said that a decision has to be made, since the application is not willing to provide an extension. She asked for the opinions of the Commission on the following:

1. *Applicant's request to have City build ROW:* The Commission agreed it is an issue. V. Reid said she feels they have to go with staff and City attorney, as well as their recommendation. Martin said neighboring property owners did provide evidence that it wasn't in existence and said it isn't entirely clear. Williams said he feels it's the applicant's burden to show that it existed and we had three legal opinions stating it didn't exist, along with testimony that nothing was maintained. For that reason it seems to fail the test. He felt on both sides access was not being fulfilled by the applicant. Foote said he agreed with Williams and said he felt the applicant hadn't provided enough evidence.
2. *Suitable Soils*: Williams and Martin said the Zoning Administrator makes the determination and the Zoning Administrator followed the Soil Consultant's opinion, which they felt was the right thing to do.
3. *Proposal to put the private road in an outlot*: Williams said the development is not showing the private road in an outlot and should be shown that way. He said that if it were shown that way, he thinks they would fall below the eight lots.
4. *Flag lots, insufficient road access, and lot widths*: Williams explained how the lots didn't meet requirements.
5. *Contiguous suitable soil:* Williams raised concern that dumping fill to make it contiguous doesn't make it contiguous.
6. *Change of City Regulations:* Williams said the City has the right to modify their regulations and it is the applicant's responsibility to follow by modifying their application. In this case, the applicant chose not to modify their application.

Public Hearing was closed at 8:57 p.m.

Motion by V. Reid, seconded by Williams, to recommend denial of the Preliminary Plat request for an 8 lot subdivision because: 1) four of the proposed lots don't meet lot size, 2) the subdivision is premature, 3) the proposed private streets are not within an outlot, 4) Lot 7 doesn't meet setbacks from wetlands, 5) the proposed subdivision doesn't account for natural resources, 6) the site doesn't address a trial system to take advantage of the natural topography, and 7) the application creates an unreasonable hardship to neighboring properties per Section 820.29. Subd.2.l of the Medina City Code. Motion carries unanimously (Absent: Osmanski and Nolan).

7. **Council Meeting Schedule**

Williams to attend the Council meeting on February 19th, 2013.

8. **Adjourn**

Motion by Martin, seconded by V. Reid, to adjourn at 9:00 p.m. Motion carried unanimously. (Absent: Osmanski and Nolan)