

## **CITY OF MEDINA PLANNING COMMISSION**

### Meeting Minutes

Tuesday, November 14, 2006

**1. Call to Order:** Chair Crosby called the meeting to order at 7:01 p.m.

Present: Planning Commissioners Tom Crosby, Jeff Pederson, Doug Dickerson, Marilyn Fortin, Sharon Johnson and Robin Reid.

Absent: Planning Commissioner Mary Verbick

Also Present: City Planner Rose Lorsung; City Planning Consultant Kendra Lindahl; Planning & Public Works Assistant Dusty Finke

**2. Public Comments:** None

**The general consensus of the Commission was to move to agenda item #6.**

### **6. Rising Sun Memorial Park**

Lorsung delivered the staff report on the application. She described the property (area, zoning, guiding, Peter Lake, tree cover, slopes, wetlands). She described the concept elevation drawings of the above-ground structures in comparison to the screening proposed by the applicant. Lorsung reviewed the recent update to the cemetery ordinance.

Lorsung reviewed some possible issues the Planning Commission could discuss. Additional setbacks for residential homes (100 feet on west and south) could be required, as well as additional setbacks for Highway 55 expansion (100 feet). The city could require that lawn sprinkling come from NURP ponds, not city water. Additionally, the Commission could discuss further berming/screening requirements.

Lorsung stated that the level of discretion that the City has on a CUP and Site Plan are relatively low if all ordinances are met.

Lorsung stated that there are 35 conditions suggested in the staff report if the Planning Commission were to recommend approval.

Crosby stated that certain uses have been historically allowed in residential districts, including churches, schools, and cemeteries. Crosby read ordinance language that stated that City Council shall consider that the Conditional Use will not be injurious to the enjoyment of property or substantially impair property values. He also read a clause that stated that in addition to the conditions set forth in the cemetery ordinance, the City Council may add additional conditions they deem reasonable to maintaining the residential character of the area.

Crosby stated that it looks as if the Planning Commission would hold the public hearing tonight and hear from the applicant and a number of residents. The Commission would then continue the discussion at the December meeting as well.

Lorsung stated that there were some apparent errors on the plan set including things with regard to setbacks, property boundaries, location and orientation of neighboring homes, etc.

Richard Gay – Rising Sun Memorial Park – stated that they had applied in July. The application triggered an update to the city ordinances and staff asked for more time to research and update. The applicant reluctantly agreed to the extension. Gay stated that the submittal meets the updated ordinance and should be approved tonight. The items that still need to be worked on can be done so with the staff.

Gay stated that since the applicant is following the ordinance, they believe the city should as well. They understand that there are issues that come up because of the type of application and will work hard to approach any issues with neighboring property owners.

Gay stated that the cemetery would be non-sectarian and would be available for everyone of any faith, which would be an asset to the city. It would be a burial location of choice for people in the western suburbs as none in the area rise to the level of the proposal. Buildings would be placed in areas where current barns are located. There is 25% less square footage of structures proposed than already exist on the property. There will not be grave markers all over the site, and there will be continual improvements to landscaping. It will be open to the public, with trails for walking. The applicant is working with the Minnesota Land Trust to set up conservation easements in the wooded and wetland areas.

Gay stated that a majority of the conditions in the November 7 staff report have been met. Some were carryovers and have been addressed already. The lot lines are correct, but there are some small items that need to be approached. Gay stated that the staff report had discussed screening, and the landscape plan included a type of deciduous trees that would give screening 12 months a year. Gay stated that the slope of the lot provides a layout where burial monuments would be almost impossible to see from neighboring properties. The proposal includes only flush monuments within 50 feet within property lines.

### **Public Hearing opened at 7:32 p.m.**

Jack Vilski – co-owner of 3595 Pioneer Trail – stated that he had been in real estate of 30 years and has sold 2000 homes or more. He has his name on \$4 million worth of mortgages. His experience lends him credibility. He stated that he would have never undertaken a guaranteed buyout if he knew there would be a cemetery in the vicinity. He stated that in his 30 years of experience, he has seen many factors impact the value of homes. However, the main is Location, location, location. In 2002, he had a home on the market for 90 days with 70 showings and 0 offers. It was reasonably priced, but backed up to a cemetery. Vilski stated that new state laws makes disclosure a huge issue. A seller must disclose any issue that may occur with the property, or they are in deep trouble. He stated that Asian culture states that they cannot be within a certain distance of cemeteries, so he must disclose that there is a proposal.

He inquired if we need a cemetery there; there seem to be cemeteries that aren't even filled. He stated that people who bought property in the area bought for the land as is was, and this will drastically impact the property values.

Crosby summarized the comment that there is a definite devaluation of property values. He stated that he wished to make sure people knew the comment was heard and urged further speakers to avoid a lot of repetition.

Allen Litts – 4660 Covey Trail – stated that he owned the property to the west. He objects strongly because the proposal impacts his property enjoyment and value. His home is tilted in a way so that the large proposed structures will be all that can be seen from the back of their home. He stated that the burial sites are 57 feet from the home. Litts stated that the plans misrepresent the location of their home and the distance to burial sites. The structures are larger than the current barns, not smaller. The density is jammed within 4 ½ acres of the 26-acre site. The people who say that they would not mind living next to cemeteries often change their minds when they hear about above-ground structures. The city should require water, well, water table, environmental studies. Highway 55 is already dangerous, and this cemetery receives access from the highway. Long processions will cause huge problems. He stated that the 100-foot setback should include structures such as mausoleums. The change in use should trigger the office coming into compliance with code, which would include setbacks. He stated that he also presented a letter that and some photos

Tim Lambrecht – 4605 Wichita Trail – stated that the staff report seems to focus on the Litts' property, but doesn't speak about properties across the lake. He stated that he meant to speak with Lorsung about his concerns ahead of the meeting, but was not able to find the time. Their property is across from Peter Lake from the site and they see the sunset over the lake and over the site. He stated that hopes that the next staff report will also discuss impacts to his property and his neighbors across the lake. Lambrecht stated that the developer stated that he would approach concerns with the western neighbors with bushes and screening, but from the opposite side of the lake, the property is cascading down in clear view. Lake Peter has a big issue with water level. There was a beaver problem, and a culvert was put in to drain the lake. However, he and his father-in-law go out to clear the culvert every four days. The DNR even issued a permit to eliminate some of the beavers. Tom Hovey stated that they were not even aware of the water levels. An assessment must be done because the lake is sometimes 7-feet deeper than normal levels. He also stated that culverts are a bad idea because beavers love to dam them up.

Lorsung stated that condition #8 already states that the DNR will need to establish the Ordinary High Water on the Lake. The DNR will be made aware of the fluctuations in the water level.

Lorsung described the site plan, showing the setback from the ordinary high water level. The wetland setback is currently more restrictive, so if the ordinary high water mark does not change significantly, the shoreland setback will not be overcome the wetland setback.

Fu Wong – 4600 Covey Trail – stated that they moved to Medina three years ago because of the beauty of the open spaces in Medina. Peter Lake is a beautiful private lake and provides unique green space and wildlife. This is the definition of open space. Wong stated that the cemetery

will have severe impacts on the Open Space elements. Additionally, he and his family are from Chinese background. In Chinese culture, it is not acceptable to live near a cemetery. It creates ill-harmony and residents of homes next to cemeteries will be plagued by bad fortunes for generations to come. If this would be approved, he and his family would have really no other choice to involuntarily move. The proposal is invasive and intrusive to his rights as a property owner. Wong stated that their minds are constantly on the fact that if this proposal goes forward, they will be forced to find a new place to live. It makes his property inhabitable. The developer has stated that you cannot see into the burial areas. This may be true from the ground, but not from the home. This is a permanent establishment that will be there forever. It has the longest possible term impact on the property and neighboring properties.

Pat Tillman – 22410 Highway 55 – expressed concern about the proposal. He has lived at the property to the north for 20 years. He bought because of the views over Peter Lake and the wildlife. He stated that he asked his daughters (age 11 and 14) what they thought about seeing a mausoleum across the street and their first words were: “ewww.” They do not want to see the cemetery; they don’t want to grow up with it. Tillman stated that his home is 50 feet above the property, no screening can block that. The future commercial use in the area could be 20 years down the line, and until then he will live where no amount of screening will block the cemetery.

Gary Roller – representing Richard Burke (3962 Tomahawk Trail) – stated that Mr. Burke was very opposed to the cemetery. The city is currently proposing an Open Space plan, and this property is right in the center of it. Roller stated that this does not fit in. It is not one single issue creating a problem. Rather there is a cumulative effect in the short term, and even greater in the long term. Because the property is permanent, decisions must be based on the long term.

Jim Reeder – Corcoran resident – stated that while he is not adjacent to property, he stated that the applicant letter said that the cemetery will not allow gunfire. This is offensive and a slap in the face to veterans who have served the country. He requests that it be stricken from any proposal. There is no logical reason to disallow gun fire. Noise is not a concern being between Highway 55 and the train tracks. Additionally, gun fire already exists during hunting season.

**Public Hearing closed at 8:10 p.m.**

Crosby suggested that the Commission step through the topics for discussion in the staff report.

- *prohibiting use of the easement to the lake on the south side of the property*  
Crosby inquired to Gay if the property has any rights to the easement.  
Gay replied that it did not.  
Crosby stated that this is probably not an issue
- *access for funeral procession being only on Highway 55 and not through the residential area*  
Lorsung stated that this provision was added because there was a fear expressed that the processions would wind around Pioneer Trail so that they could turn right into the cemetery.

- *the proximity to the cemetery and proposed burials as they are within 50 feet of two residential backyards (staff proposes a 100 foot setback on the north, west and south sides for burials-not headstones but rather bodies)*  
Lorsung stated that there is nothing within the ordinance speaking about setbacks for burials from residential dwellings. This provision approaches the issue.
- *The future expansion of Trunk Highway 55 and the permanent land use. The requirement of 100 foot setback on the north side for burials would solve this issue.*  
Lorsung stated this would allow for future expansion.
- *screening including a six-foot cedar fence and additional trees on the west and south side*  
Lorsung stated that this was discussed because of the proximity of neighbors' homes.
- *proximity to the residential wells*  
Lorsung stated that this issue has more to do with drawdown during sprinkling than is has to do with pollution.
- *requirements for sprinkling that doesn't use city water*  
Lorsung stated that this provision would only take affect if and when the property is served.
- *the conversion of the house to an office and the non-conforming setbacks on the west side (20')*  
Lorsung stated that as long as there are no additions, the structure can remain non-conforming as far as setbacks.
- *hours of operation*  
Lorsung stated that this should be discussed because of the residential nature of the area.
- *prohibition of future crematorium*  
Although no crematorium is shown, it should be noted that it will not be allowed in the future. Additionally, this site plan should be thought of as the Master Plan for the cemetery and it should look as close to possible to what will happen in the future.
- *the scattering of ashes*
- *density of the proposed buildings all with immediate proximity to the resident to the west's backyard*  
Lorsung stated that this could be a way to approach some of the neighbor concerns.

Crosby suggested that the city should prepare a development agreement sooner rather than later.

Dickerson stated the he respects what the applicant is doing, but it seems like the wrong spot for the cemetery. Although it is within the ordinances, it is the City's fault for not having a better ordinance. He stated that the permanency of the use brings up legal issues. There are also issues with safety. A few decades in the future, Highway 55 will be four lanes. 100 years from now, it may be an interstate and the cemetery will still be there. Dickerson stated that the state will not be able to use eminent domain to move bodies to increase the size of Highway 55.

Traffic will not be coming from Medina because there are no funeral homes. Dickerson stated that funeral processions can be miles long. He stated that it is a concern that the land will not be taxable. Dickerson inquired what would happen if after a number of the sites are sold they go bankrupt...who would take over?

Johnson stated that this is a classic example of "not in my backyard." She stated that this is an allowed use. The decision is made at a comprehensive plan level. She stated that there is no way to guarantee everyone's complete privacy to their land. There is no way the city can make a moral decision to not allow a use just because a bunch of people didn't like it. She stated that unless someone can give grounds for not allowing it except that people don't like it, the city doesn't have the right to deny it.

Crosby stated that churches are different now than traditionally. The city ordinances don't seem to deal with the 21<sup>st</sup> century uses of churches and cemeteries. He would like to see if the buildings could be placed on the east of the road or towards the north of the property. This would respect the rights of the adjacent land owners and would push it where it was less unappealing. Crosby stated that the landscaping should be improved so that screening will be possible into the long term. He also stated that the plans should show specifics of the parking for processions.

Fortin stated that it is a permitted use within the district. However, she agrees with the letters and emails that the use is injurious to the enjoyment of property and the property values.

Pederson stated that he would have liked more time to work on the ordinance when it was updated. There is an obvious effect to the neighboring property owners. He stated that access off of Highway 55 could lead to fatalities and that there should be a right-in/right-out. He asked how they designed a mound system if they don't know how many people will be using it.

Crosby stated that the ordinance does leave a certain amount of flexibility in the last clause. Conditions can be added within reason to protect the neighbors.

Reid stated that this large-scale, commercial cemetery will not benefit Medina residents. The character of this cemetery is very different than schools, churches and cemeteries. This will diminish property values and traffic issues are a concern

**Public Hearing re-opened at 8:41 p.m.**

Vilski stated that the major concern with approving anything was how a use can keep going. He also stated that a six-foot cedar fence is not a permanent fence.

Lambrecht stated that 100 vehicles would seem to fit on the private road. Cars would then try to park on Highway 55 and in the neighborhoods in the area.

**Public Hearing closed at 8:46 p.m.**

Crosby stated that these are not easy decisions for the Commission or Council.

**The Planning Commission recessed briefly from 8:47 p.m. until 8:58 p.m.**

**7. United Properties Ferrell Gas Redevelopment Concept Plan: 3575 Sioux Drive**

Lorsung delivered the staff report. She showed the area of the concept plan and the conceptual site plan. Drive-thrus would be for a retail site (coffee) as well as credit union. The application will most likely need a number of variances in order to be approved. Three of these variances arise because of the Uptown Hamel district and difficult regulations for drive-thrus. The remaining two variances arise because of the proximity to Elm Creek.

Lorsung summarized the comments from staff. There appear to some traffic issues to address (both internally on the site and externally). The Transportation Plan shows a frontage road going through this site and the commercial piece to the west. The applicant's concept plan shows these improvements being made as per the Transportation Plan. The DNR, Watershed District and city engineers will all be looking carefully at the use of best management practices if the city were to grant the variance for shoreland setback and impervious surfaces. There was also discussion about the layout of the site in relation to the Uptown Hamel district and discussion about how to make the site a gateway to Uptown Hamel.

Lorsung stated that while this is a non-binding discussion but as much direction as possible should be given to the

Crosby stated that he believes as a concept, there is one main issue for the Planning Commission to discuss. He inquired if a retail development with two drive-thrus is the correct use for this property.

Pederson stated that he is owner of the property to the west. He would mainly be taking part in this conversation as a business owner and resident instead of a Planning Commissioner. He stated that he had met with Lorsung and the city on where the frontage road should be located. The road should be located close to Highway 55 on the north. It should not come through the center of existing buildings. If there is going to be road, it should be shown only on their property, not ghost platted through neighboring buildings. Additionally, there should be some berming or screening.

Eric Simmer – United Properties – Stated that because of the proximity to Highway 55, retail with drive-thrus make a lot of sense and would be a great asset to the city. He stated that the Members First Credit Union is excited to move forward. Simmer stated that they were excited to make this project a gateway to the Uptown Hamel area, a project that everyone can be proud of. He stated that if the site will be held to the 25% impervious surfaces rule, this project will obviously be impossible, as will most commercial projects.

Tom Worst – HTG Architects – Stated that the main thing you see when you drive up is the large retaining wall. The elevations attempt to show look similar to the retaining wall. The landscaping and sign could all link together to make it a gateway.

Crosby inquired what the MnDOT comments were.

Lorsung stated that MnDOT had requested a traffic study, which would fit in nicely with the city's study of its transportation plan.

**Public Hearing opened 9:20 p.m.**

Dan Parks – Westwood Engineering – questioned why a transportation study for MnDOT was necessary. There is no access to the state Highway. Additionally, there is not a lot that can be done with the results. There is limited room for expansion of Sioux Drive, and little room for a long right-turn lane on the southbound Sioux.

Reid stated that it appears as an appropriate use of the site and a good transition into Uptown Hamel. It appears to be a nice project for the use.

Fortin stated that it would be an asset and a good gateway to Uptown Hamel. She stated that it seems to make sense for the coffee shop to be where the bank is located.

Simmer replied that he agreed and so would the potential coffee shop. This site plan was very preliminary because this it is a concept plan at this point. The size and location of structures may change in the time before the next submittal.

Crosby stated that he likes it as a land use. His concerns are with Highway 55 Rental and the frontage road issue. He also stated that there appears to be room to locate the buildings so that they can have two fronts and look attractive from both sides. Crosby stated that a traffic analysis must be done to see if two drive-thrus can fit functionally in this location.

Johnson inquired about the frontage road.

Commissioners and staff discussed the frontage road location the way it was linked to the south frontage road.

Dickerson stated that he likes the land use. He inquired about the number of drive-thrus for the bank.

Simmer replied that there would be three lanes, an ATM lane and a drive-by.

Dickerson stated that previous drive-thrus had been denied. He inquired how this fits in with that. Lorsung replied that the Ryan development had been a PUD, which meant that all land use regulations were open for discussion. The decision was to restrict drive-thrus. This project would not include a rezoning, so there is discretion on uses.

Dickerson stated that the view from the top of Hamel Road should be considered, because rooftop equipment can be extremely ugly.

**Public Hearing closed at 9:39 p.m.**

**8. Bazinet/Otten & Dalbec Preliminary Plat: 3003 & 3085 Hamel Road**

Lindahl delivered the staff report. She showed the existing two lots, and how the properties would be arranged to create a new lot to the east. All three lots are over the minimum lot size and have the required amount of suitable soils. The third lot on the east is to be sold as a future home site. Septic systems have a 150-foot setback from School Lake. The existing septic on Lot 2 does not meet this setback and would be non-conforming. In the case that this septic system has to be re-built, it would need to meet setbacks.

Lindahl stated that Hennepin County requested a 50-foot ½ right-of-way. In previous plats along Hamel Road, the Council has approved 33-foot right-of-ways and this plat shows 33 feet of right-of-way. While there are wetlands on the sites, no wetland impacts are noted.

Lindahl stated that the Park Commission will discuss this plat at a future meeting because a right-of-way trail is shown on the Trails Plan along Hamel Road. A 15-foot trail easement along Hamel Road would fulfill the Park Dedication requirements for the plat.

Lindahl stated that staff recommends approval of the preliminary plats subject to the proposed conditions discussed in the staff report.

**Public Hearing opened at 9:45 p.m.**

Crosby stated that he has no problems, as the plat meets ordinance and requires no variances.

Dickerson inquired about the 15-foot easement on the south of Hamel Road. It is difficult to tell which side of the road the trail would be placed.

Lorsung stated that on previous plats, a precedent has been set for acquiring trail easements on the south side of Hamel Road.

**Motion by Fortin, seconded by Pederson** to recommend approval of the Preliminary Plat along with the 15 conditions noted in the staff report. **Motion passes unanimously** (Verbick absent).

**9. Gary Kirt/Alpine Farms Preliminary Plat and Conditional Use Permit – 2182 Homestead Trail**

Lindahl delivered the staff report. She showed the existing 72 acre lot and how the parcel would be divided to create the additional lot to the east. Both lots meet minimum lot size and suitable soils requirements. The proposed new lot is a flag lot with a long, narrow area for a driveway along the southern boundary. There are large areas of wetlands and floodplains on the site and it is in the shoreland overlay district. The submittal will need to show the creek and setbacks from the creek, but it appears that those requirements should be easily met. No wetland fill is proposed at this time. However, when lot 2 develops, wetland will need to be filled in order to allow for a driveway. At that time they will need to have an approved wetland mitigation plan if the disturbance is more than de minimus.

Lindahl stated that this application will also go before the Parks Commission. Although the Trails Plan does not show a trail at this time, a trail in this area makes a lot of sense because of the horse uses in the area and the proximity to the County Park. A trail easement would act as the park dedication for this plat. The applicant does have some concerns with this trail dedication.

Lindahl noted that the new lot should be rezoned because no commercial horse facility is proposed. The Conditional Use Permit needs to be amended to note the change in legal description.

Lindahl concluded that staff recommends approval of the preliminary plat along with conditions in the staff report. Staff also recommends approval of the rezoning from RR-2 to Rural Residential and the amendment to the existing conditional use permit.

S. Todd Rapp – Attorney for applicant – discussed the manure management plan for the existing commercial horse facility. Although there was some staff comment about the proximity of manure storage to wetlands, an approved plan is in place that is designed to make water to run 250+ feet along a swale so that it can not impact the wetland.

Crosby stated that the existing horse facility, the western lot, is not necessarily part of the discussion for this meeting.

Rapp stated that the western lot would have 18.3% impervious surfaces, meeting city requirements. Lindahl stated that this should be noted on the plat.

Rapp stated that Mark Gronberg is of the opinion that any wetland impacts for the driveway should be de minimus.

Crosby stated that he would be more comfortable with having a mitigation plan ahead of the approval of the plat. If this does not happen, the city may be backed into a corner because in three years a person could come in for a permit and demand access to their site.

Rapp stated that he had gone through the conditions for approval. He understands that conditions will be placed on the buyer of the second lot when they come in for a building permit. The most significant issue is the proposed trail that is sought along the County Road. This is not in any comprehensive plan. Additionally, there is the practical constraint that there is a wetland in the northwest corner of the property that would be impacted if there was a trail. Additionally, there is a trail within the Park on the western side of the road already.

### **Public Hearing opened at 10:10 pm**

Alice Flischaker – 1942 Homestead Trail – stated that she is concerned that the driveway easement may become a public road if the second lot were ever to be divided farther. She also stated that she is concerned how close the driveway will be located to her property.

Lorsung stated that under current ordinance there could be no more subdividing on this second lot.

Reid stated that this location is significant because of the views. Hopefully the horse facility will be in existence for many years to come. Otherwise, there do not seem to be any issues.

Pederson stated that his only concern was the wetland mitigation issue.

Fortin stated that she has no issues except for the driveway. She stated that she is a little shaky on leaving the issue for the future.

Crosby stated he believed the wetland/driveway issue should be approached now.

Johnson stated that she thought the city did not want flag lots because they cause troubles. Commissioners replied that flag lots were added to the ordinance as an alternative to narrow lots.

Dickerson agreed with Crosby that the wetland mitigation issue should be taken care of at this time.

Rapp stated that the conditions of approval as proposed already state that if the wetland impacts are more than de minimus, the mitigation must be completed. He suggested an easy fix would be to put the requirement against the deed.

**Public Hearing Closed at 10:25 p.m.**

**Motion by Crosby, seconded by Johnson** to recommend approval of the preliminary plat subject to the 20 conditions noted in the staff report, along with an additional condition that language is added to take care of the wetland mitigation issue. **Motion passes unanimously** (Verbick absent).

**Motion by Fortin, seconded by Dickerson** to recommend rezoning Lot 2 to Rural Residential. Motion passes unanimously (Verbick absent).

**Motion by Reid, seconded by Johnson** to recommend approval of the amendment to the existing Conditional Use Permit reducing the acreage and changing the legal description. **Motion passes unanimously** (Verbick absent).

**The general consensus of the Commission was to move back to agenda item #3.**

**3. Update from City Council Proceedings**

Lorsung stated that the High Pointe Ridge Final Plat was approved. She also noted that the Council discussed a petition disallow truck traffic on Willow Drive. The Council directed staff to study the matter further. The Council also discussed resident traffic concerns on CR 116.

**4. City Planner's Report**

Lorsung stated that the following applications will most likely appear on the December Planning Commission: Rising Sun Cemetery (continued), Ryan Companies Retail Site (PUD Amendment, Plat withdrawn), Bancor Comprehensive Plan Amendment, and 2 CUPs in the Rural Residential for accessory structures over 3000 sq. ft.

**5. Approval of October 10, 2006 Planning Commission Minutes**

**Motion by Fortin, seconded by Reid** to approve the October 10, 2006 Planning Commission Minutes as amended. **Motion passes unanimously** (Verbick absent).

**10. Adjourn: Motion by Reid, seconded by Dickerson** to adjourn at 10:40 p.m. **Motion passes unanimously** (Verbick absent).