

The Planning Commission meeting was called to order by Chair Campbell at 7:07 p.m. at the Community Meeting Room, 100 Village Center Drive Suite 150, North Oaks. Chair Campbell acknowledged that Commissioners Joyce Yoshimura-Rank and Gregg Nelson were absent. Also present were City Administrator Melinda Coleman, Videographer Kevin Scattum and Administrative Assistant Linda Hanson.

### **Approval of Agenda**

City Administrator Melinda Coleman asked to add one item to the agenda concerning the protocol for a public hearing.

Commissioner Bob Wilson moved to approve the agenda with the addition. The motion was seconded by Commissioner Katy Ross and passed unanimously.

### **Approval of Minutes**

Commissioner Dick Hara moved to approve the Minutes from the August 30, 2012 Planning Commission meeting. The motion was seconded by Commissioner Nancy Reid and passed unanimously.

### **New Business**

#### **1. Proposed Wildlife Feeding Ordinance**

City Administrator Coleman presented information on the proposed change to the Feeding of Wildlife Ordinance. This change came from the Natural Resource Committee's recommendation. The changes make the feeding of wildlife broader to include all wildlife except songbirds. It also strengthens the enforcement of the Ordinance. Ms. Coleman explained that she has received only one phone call on this issue and it was in support of the changes.

David White, 21 Pheasant Lane, from the NRC explained that the City already has a deer feeding ordinance, but this change is to expand it to all wildlife excluding songbirds. The change is recommended by the DNR who states that feeding wildlife does not do the animals any favor. The surrounding communities of Shoreview, Arden Hills, and Vadnais Heights all have a similar ordinance. The new Ordinance requires that all bird feeders have a platform that is 5 feet off the ground and it must be located in a way to not attract other animals. The new Ordinance also establishes a system to fine offenders that is similar to what the City does with false alarms. There will be a \$100 fine for first offences, \$200 for the second offense and \$300 for each offense after that.

Mr. White also explained that in the past neighbors could sue another homeowner for feeding deer. This is no longer part of the Ordinance, but instead, puts the enforcement into the hands of the City.

Commissioner Hara questioned if the fine was strong enough to deter this action. Ms. Coleman explained that after instituting fines for false alarms, the number went down dramatically. She hopes the same will be true when enforcing this Ordinance. She believes that part of the responsibility of the City is to educate homeowners as often they are not aware of all Ordinances in the City. Ms. Coleman and the Community Service Officer will be in charge of checking out any offenses. If the Ordinance is not effective, it can be tweaked at a later date, but Ms. Coleman based on her experience working in this community is confident that most people will comply.

Chair Campbell asked about gardens and stated they also feed animals. Gardens are not prohibited; the ordinance deals with artificial feeding. Commissioner Reid asked if a number of residents are feeding the animals. Mr. White explained that some do put out corn to feed the deer and the turkeys. The City will rely on neighbors and the CSO to let the City know if the Ordinance is being violated as it does for other ordinances. The NRC is hoping that the articles they have placed in the North Oaks News will help educate the residents on why feeding is not advised.

Chair Campbell opened the Public Hearing at 7:23 pm and with no comments, closed it at 7:24 pm.

Commissioner Hara stated that this seems to be more of a problem in the winter. Chair Campbell stated that he believed this was a good change and the education piece is an important part of enforcement.

Commissioner Wilson moved to recommend to the North Oaks City Council that Ordinance No. 107 for Amending Chapter 90: Animals be approved. Commissioner Ross seconded the motion and it carried unanimously.

## **2. Zoning Ordinance Change: To allow Essential Services with a CUP in the Recreation District**

City Administrator Coleman explained to the Commission that when the City started conversations with the St. Paul Regional Water Services on a new aeration system, an issue surfaced. The St. Paul Water Authority wants to take down their current building on the south side of Pleasant Lake and put in a new tank and equipment to aerate the Lake. The question was raised as to what the City's legal rights were in regards to the Water utility.

A subcommittee consisting of Councilmembers, Long, Nelson and Ackerman, Mark Azman, NOHOA, Bob Tipler, 2 Evergreen Court, and Keith Eibensteiner from the North Oaks Golf Club met to look at the issues. One recommendation was to seek an outside legal opinion on the City's rights and regulations involved. Research found that the first aeration system was installed in 1991. A Conditional Use Permit was given at that time. Because this land was zoned as a recreational district, a CUP should not have been given as it was not part of the City's Code. The recommendation is to correct the zoning classification to allow for certain essential services. The change involves correcting the definition of essential services spelling out the essential services and to allow for structures if needed. Also the first paragraph of the Code would change

to require Essential Services to obtain a CUP and comply with the specifications spelled out in the current Code.

Making this change will make the ordinance more accurate and it will cover the structures that are already there.

Ms. Coleman stated that the City published the Public Hearing and sent letters to property owners that are next to recreational zoned land and to NOHOA, the Golf Club, and the Water Authority. She also met with the St. Paul Regional Water Authority staff and they are willing to do an amended CUP. NOHOA also is in agreement of this change. The Staff is recommending that the Commission approve this correction to the Recreation District Ordinance which defines Essential Services and requires a Conditional Use Permit when needed.

Commissioner Hara asked if approval would be needed by the Architectural Supervisory Committee and Ms. Coleman stated that in most cases it would. Also a question about pumping out of the lake was questioned. At this time, there is no restriction in doing so.

Chair Campbell opened the Public Hearing at 7:34 pm.

Mark Azman, 12 North Deep Lake Road, stated that he supports this change and that the ASC would expect to have some input into what goes on the land. NOHOA does have some authority as the Water Authority does cross NOHOA easements.

The Public Hearing was closed at 7:36 pm.

Chair Campbell asked about the structures on recreational land at this time. Structures are currently only at the beach and on this land south of Pleasant Lake that is used by the St. Paul Water Authority and the Golf Club at this time. Mr. Campbell then asked if a Conditional Use Permit would be needed for these structures. Ms. Coleman explained that there is a difference of opinion between the City Attorney Dave Magnuson and the second attorney. Mr. Magnuson believes that the structures are covered under a legal non-conforming status. The outside counsel suggested that the City require an amended CUP from the Water Authority who is willing to apply for one.

The subcommittee is going to the next Council meeting with the recommendation to ask for an amended CUP and also to change the zoning ordinance. This will protect the integrity of the zoning process in the future. The Staff believes this is the right solution.

Chair Campbell stated that the concerns are about what the new system will look like. He wants to be careful to not give free reign. When the North Oaks Company owned the land and the Water Authority proposed the first structure, there was resistance to the project, the utility threatened condemnation. Because the Water Authority provides a basic public service of clean water, it would be difficult to challenge them on making service improvements.

If a new tank goes in it will be a horizontal tank with screening and/or fencing. The noise level is also being considered. The committee is looking carefully at the plan and it will require a public

hearing as well. Aesthetics will be considered. The procedure will remain the same and the Water Authority will need to come to the City first for a permit and then go to NOHOA for ASC approval.

Chair Campbell asked if there were any safety concerns. Ms. Coleman stated that liquid oxygen is used in many applications as long as the tanks are not enclosed it appears to be safe. The Water Authority would have to abide by the height requirements in the Code as well.

Commissioner Hara moved to approve the proposed Ordinance revision in Section 151.060 to include a requirement of a Conditional Use Permit for any building or structure in a Recreation District and the amendment to 151.005 to change the definition of Essential Services to include any non-profit providing community services. Commissioner Ross seconded the motion and it carried unanimously.

### **3. Procedure for Public Hearings**

City Administrator Coleman would like to include in the letters going out to the property owners regarding the Charley Lake Preserves Project an information sheet covering the process for public hearings. The information will cover an outline of what is expected, set up a procedure and guidelines to follow so that public hearings take place in an orderly manner. Name and addresses will need to be given each time a person speaks and no one speaks twice until everyone has had a chance to speak. A time limit will most likely be given. Ms. Coleman suggested a time of two minutes.

City Attorney Dave Magnuson will also be present at the October meeting to guide the Commission if needed. Ms. Coleman suggested that any questions brought up at the hearing be written down and then answered in short intervals throughout the hearing.

If the Commission needs more time to make their decision, they can ask the Developer for more time. The current deadline is November 28<sup>th</sup> and if an extension is requested, the developer would have to agree in writing.

There appears to be strong public interest in this project. NOHOA is considering if membership would extend to the property owners if the project is approved. It would mean a change in the NOHOA by-laws to expand the boundaries. Chair Campbell stated that it was the intention of the Commission to ask NOHOA if an agreement with NOHOA and Pentom to work together would be possible. NOHOA is questioning if the Planning Commission and Council should act first and then they could consider what NOHOA would like to do. This is a new situation for North Oaks because in the past only North Oaks Company came forward to seek membership for the new communities. Also, it would put a greater burden on the Architectural Supervisory Committee if this project went through.

Ms. Coleman explained that the Commission cannot ban the project based on if they are members of NOHOA or not. First, the Council would need to approve the project and have it platted. Then they would seek membership if desired. Ms. Coleman suggested to the Developer that they develop a plan A and B to cover either scenario. First, a rezoning request must be

made including a preliminary Planned Unit Development. If approved, engineering work and design of street and lot layouts would be done. An application for a subdivision/plat would come back to the Planning Commission for approval and at that time the membership into NOHOA would need to be resolved.

Chair Campbell stated that he has received letters from citizens who are concerned about this project. He asked how much the Planning Commission takes into consideration the neighbors and their concerns. Ms. Coleman explained that their role as per State Statute is to listen to testimony and make sure their questions and concerns are addressed. The Commission had concerns which were given to the Developer. Now, the Commission needs to see if the issues are addressed. They should try to not be subjective.

Commissioner Reid asked if it was the Commission's job to uphold the City Ordinances. Ms. Coleman stated it was, but there is some latitude because they are asking for a new zoning classification. Ms. Reid stated that it would be valuable if the audience could be reminded of what their job is and explain that they are somewhat limited in what they can do. The City Attorney is also looking into other cases in the State.

Commissioner Wilson asked if the list of the Commissioners' concerns given to Pemtom was all inclusive. Ms. Coleman explained that the Developer does expect more questions, so it is not a completed list. Chair Campbell reminded the Commission that North Oaks Company came to the meetings more than once to get approval for past projects.

Mark Azman came to the podium and stated that the rezoning issue would have to follow certain factors established in the Ordinances and if they did not, the residents' concerns should definitely factor into the decision making process.

Commissioner Wilson asked about the number of homes in Rapp Farm. Ms. Coleman explained that the density is similar to the Pemtom proposal but Rapp Farm was developed as part of a multi- parcel PUD with all North Oaks Company land. In the case of the North Oaks Company PDA, the density was factored based on total acres including a large amount of land set aside for conservation. Although there are similarities with the Pemtom proposed project, it is difficult to compare because of the overall large areas of land with the East Oaks PUD.

Ms. Coleman reminded the Commission that they should take caution to follow policies and procedures as this is the first time land is not owned by the North Oaks Company.

### **Next Meeting**

Thursday, October 25, 2012 at 7 p.m. at the Community Meeting Room, 100 Village Center Drive

### **Adjournment**

On motion made by Katy Ross and seconded by Commissioner Nancy Reid and carried unanimously, the meeting was adjourned at 8:10 p.m.

Attest:

Respectfully submitted,

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Bill Campbell, Chair

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Linda Hanson  
Recording Secretary