

September 1, 2009

The Scandia Planning Commission held their regular monthly meeting on the above date. The following were in attendance: Chairman Chris Ness, Commissioners Tom Krinke, Christine Maefsky, Susan Rodsjo, Peter Schwarz and Planner Berry Farrington. Chairman Ness called the meeting to order at 7:30 p.m.

APPROVAL OF AGENDA, MINUTES

Schwarz, seconded by Krinke, moved to approve the agenda as presented. The motion passed unanimously.

Commissioner Rodsjo noted a correction to the August 4, 2009 minutes to include City Administrator Hurlburt's discussion of the need for the City to adopt a special events ordinance. **Schwarz, seconded by Rodsjo, moved to approve the August 4, 2009 minutes as amended. The motion passed unanimously.**

JOE ACKERMAN, VARIANCES FOR LOT SIZE AND SETBACKS TO CONSTRUCT A SINGLE-FAMILY DWELLING AT 23271 LOFTON COURT (RESOLUTION NO. 09-01-09-02)

Joe Ackerman, 7790 229th Street North, Forest Lake, has applied for a variance from the Ordinary High Water (OHW) setback, bluff line setback, and lot size requirements to allow for construction of a new single family dwelling and attached garage at 23271 Lofton Court. This property is approximately 0.43 acres in size and is within the Agriculture and Shoreland Overlay District with frontage on Bone Lake. There is currently an existing house, detached garage and a shed on the property. The OHW setback of the existing house is 82 feet.

Planner Berry Farrington presented the Planner's report. The Applicant submitted plans which proposed a lake setback of 58 feet and a bluff line setback of -2 feet, due to a deck overhanging the bluffline. This OHW setback was proposed in order to allow sufficient space for a secondary/back-up septic area in the yard between the home and existing septic mound. The Washington County Department of Public Health was consulted about the space need for the future septic area. Staff confirmed that there would be adequate space for the secondary septic if the proposed home were moved closer to Lofton Court by 20 feet, thereby increasing the OHW setback to 78 feet and the bluffline setback to 18 feet. This recommendation was written as Condition #1 of the report.

A permit will be required from the Comfort Lake-Forest Lake Watershed District which will implement stormwater management practices.

The Planner's report recommended approval of the variance request for lot size, 78 feet OHW setback and an 18 feet bluffline setback based on findings as outlined in the report. The recommended building site minimizes the degree of nonconformity and limits impacts to views from the lake.

Applicant Joe Ackerman requested that the shed/boathouse remain along the lakefront for storage purposes.

Chairman Ness opened the hearing to the public.

Amy Beyer, 23167 Lofton Avenue: Is the proposed structure a garage or house? *Planner:* House. Will it be seasonal or permanent? *Ackerman:* Permanent. What is the height variance? *Planner:* A variance for building height is not needed, as the building measures 19 feet, which is under the maximum height standard of 35 feet.

Margie Schmidt, 23319 Lofton Avenue: Will approving this variance set a precedent for future decisions? *Chairman Ness:* With this type of request, he favors structures moved further back from the lake. Other options, such as scaling back the size of the house, may allow for this. Ness stated that yes, approval would set a precedent for future decisions.

Commissioner Schwarz answered that a precedent was set the first time that similarly requested variances were granted.

Joe Ackerman, Applicant: The OHW setback was determined to allow adequate space for a secondary septic, a requirement of the County. The house cannot be moved any closer to the road.

As there were no further comments, Chairman Ness closed the public hearing.

Commissioner Schwarz noted that the shed/boathouse is situated very close to the water (20 to 30 feet). He suggested allowing it to remain on the property, but be relocated so that it sits no closer to the lakeshore than the house. The ordinance states that no structures should be within 100 feet of the OHW.

Commissioner Rodsjo stated that she has no issues with leaving the existing shed. Her concerns were with the landscaping and screening requirements. Rodsjo recommended that trees marked for removal be documented and that tree replacement be required. The neighbors should be allowed to enjoy a wooded view. In addition, plans for the installation of raingardens and other water quality improvement measures should be submitted to the City as a condition of approval. The City would have verification that this is done. Building/Code Enforcement Official Thorp stated Watershed permits are required and this agency will oversee the installation of buffers to protect water quality.

Commissioner Krinke asked if the trees would need to be replaced in the same location. City Administrator Hurlburt stated no, alternate locations would be identified. The requirements in the woodland and tree preservation ordinance would be referred to. Krinke also recommended that the shed/boathouse be relocated to be in line with the house setback.

Council member Lindell asked for determination of the bluffline. Planner Farrington explained that this is where the slope becomes pronounced at a point greater than 18%. Setbacks are recommended due to slope erosion. Lindell stated that he found difficulty in granting this variance due to a hardship based on the plight of the landowner. The lot is as it is and has an existing use. Regulations are put in place to protect water quality.

Administrator Hurlburt explained that the lot met the standards that were in place when the lot was created. Modern standards have changed and the owner does not have the ability to add additional land in order to make improvements to the property. The request to construct a single-family home is a reasonable use of the property and not excessive in nature. These situations should be considered when evaluating variance requests.

Chairman Ness suggested that less house and/or less deck be considered as options. He favors increasing the OHW setback.

Commissioner Schwarz asked if the building height included the walk-out basement. Planner Farrington explained that yes, the building height was determined using the ordinance definition. This measures the building height at nineteen feet.

Mayor Seefeldt stated that a non-conforming lot may be granted a variance for reasonable use of the property. Further conformity can be obtained through conditions such as getting structures off the lake. Seefeldt agreed with moving the shed no closer to the lake than the OHW setback of the house. The reasoning behind this is to improve the view of the lot from the lake.

Commissioner Rodsjo asked for opinions on the OHW setback. Should the recommended 78 feet be considered or should it be required to remain as 82 feet? Commissioners Krinke and Maefsky stated that they were fine with the 78 foot setback.

Commissioner Maefsky stated that careful consideration should be taken to preserve the significant trees on the site. There are beautiful old trees that will be taken down and those that have split trunks should be counted as multiple trees. Mr. Ackerman noted that three trees will potentially be removed.

Rodsjo, seconded by Krinke, moved to recommend to the City Council approval of draft Resolution 09-01-09-02, Approving Variance for 23271 Lofton Court, with the following amendments: 1) All significant trees to be removed shall be replaced as required by the zoning ordinance; 2) The shed/boathouse be moved to be no closer to the lake than the house. The existing house and garage must be removed. Voting in favor: Schwarz, Rodsjo, Maefsky, Krinke. Opposed: Ness. The motion passed with a vote of 4-1.

**AMENDMENTS TO CHAPTER 6 OF THE SCANDIA DEVELOPMENT CODE,
FLOODPLAIN MANAGEMENT REGULATIONS (ORDINANCE NO. 118)**

Administrator Hurlburt presented information regarding the necessary amendments to the Floodplain Management Regulations, Chapter 6 of the Scandia Development Code. Since the adoption of the floodplain regulations in March 2008, FEMA has updated the Flood Insurance Rate Maps (FIRMs). The new study and maps will become effective on February 2, 2010. All Washington County communities have been notified that they must amend their regulations to reference the new study and maps by this date or be suspended from the flood insurance program. The Minnesota DNR, being responsible for reviewing floodplain regulations before submission to FEMA, has reviewed the amendments and finds them to be compliant with the new study.

Chairman Ness opened the public hearing.

Tom Ascheman, 15351 220th Street: Is the City adopting floodplain management regulations as a way to collect increased property tax revenue? Past experience of a relative with property on Big Marine Lake has given him this impression. *City Administrator Hurlburt:* No, floodplain regulations and maps are adopted so that property owners are protected. It is necessary to have these in place in order for owners to purchase flood insurance.

As there were no further comments, Chairman Ness closed the public hearing.

The Planning Commission and Council reviewed the draft ordinance. Commissioner Maefsky asked for clarification of the redlined draft.

Schwarz, seconded by Krinke, moved to recommend to the City Council adoption of Ordinance No. 118, Amending Chapter 6 of the Development Code Pertaining to Floodplain Management Regulations. The motion passed unanimously.

DRAFT ORDINANCE REGULATING SPECIAL EVENTS (ORDINANCE NO. 119)

At the August 4 meeting, the Planning Commission and City Council reviewed a draft ordinance regulating outdoor special events. The purpose of regulating outdoor events was introduced as a way to address issues which have the potential to negatively impact property and affect public safety. A committee was formed to further discuss the draft. The committee met on August 12. The following were present: Planning Commissioners Chris Ness and Tom Krinke, Council members Dolores Peterson and Connie Amos, Meister's owners Scot and Courtney Taylor, Wayne Schmitt, and Administrator Anne Hurlburt.

Administrator Hurlburt presented the findings of the committee. Recommended changes were implemented into draft Ordinance No. 119. The definition of a special event includes any outdoor gathering of at least 100 people and will apply only to events that are open to the public. Private parties held on private property are excluded. Also excluded are events held on school grounds, museums, places of worship, athletic fields and similar places of assembly when used for regularly established assembly purposes. The committee also excluded auctions which end by 6:00 p.m.

The draft ordinance addressed the number of permitted events and noise restrictions. Subdivision 4 limits the number of amplified events held per calendar year to no more than six events, with no limit on the number of non-amplified events. Amplified events must end by 11:59 p.m. on Friday and Saturday nights. This allows an exception to the noise ordinance, which prohibits amplified sound audible at the property line between 10:00 p.m. and 7:00 a.m.

The committee recommended a permit fee of \$25.00 be charged. This fee would be adopted by a separate Council resolution. Application must be made at least 30 days in advance and needs to be approved by Council action. Subdivision 5 addresses the conditions that a permit may be denied by the Council.

Tom Ascheman, 15351 220th Street, commented that requiring events to end by midnight is good, but there should be no limit to the number of amplified special events allowed as these are beneficial to local businesses.

Commissioner Schwarz questioned if the terminology in Subdivision 7, Indemnification and Insurance, is adequate protection for the City. City Administrator Hurlburt explained that the permit holder will sign an indemnification certificate prepared by the City, holding the City harmless from any claims. Any events held on public property must provide a liability insurance policy naming the City as an additional insured entity with limits of not less than one million dollars per occurrence. This language was recommended by the League of MN Cities. City Attorney Hebert commented that each case depends on the facts and circumstances, but the requirements are in place in the best possible way to protect the City.

Commissioner Maefsky asked if political gatherings are required to have a permit. City Administrator Hurlburt answered that yes, if they are open to the public and held on private property. If the event is held in the Community Center, per Subdivision 3 of Section 3, the event is exempt from needing an events permit. Maefsky asked how penalties, Section 4, will be handled. City Attorney Hebert answered that it is unlikely that participants of an unpermitted event would be prosecuted. Authorities would handle disbursement of persons gathered and possible action would be directed to the event's organizer.

Commissioner Maefsky asked for Meister's owners Scot and Courtney Taylor's reaction to the permit requirements. Mr. Taylor replied that as participants in the draft's development, they were comfortable with the outcome and believes it is fair to businesses and the community.

Commissioner Rodsjo recommended that the language in the definition of a Special Event could be modified to state that a permit is required if the assembly meets for a period of one hour or longer but may not exceed twelve hours in duration. Rodsjo questioned if a church holding an outdoor concert event should be required to obtain a permit. Council member Peterson stated that church events were excluded from needing permits, but the ordinance can be amended if these become a problem.

Commissioner Maefsky recommended changing the ending time of auctions to 8:00 p.m. in Subdivision 3.

Council member Lindell questioned if the 30 day advance notice is enough time to process the application. Administrator Hurlburt answered that requiring 60 days may be too much time and the 30 day requirement leaves adequate time to get the permit on a City Council agenda and through the approval process. Lindell had concerns that even if an event met the conditions of approval and had no basis for denial, what discretion does the council have to halt a potential disruptive event from being permitted. Administrator Hurlburt answered that subdivision 2 addresses factors that can minimize problems, but the fall-out from an event can determine how future events are handled.

Mary Bailey, 15210 Oakhill Road, felt she spoke for the neighborhood around Meisters that by allowing up to six events lasting until midnight was too much of a change. Ms. Bailey saw this as an expansion of noise limits and frequency of events and suggested no greater than three events be allowed per year.

Mayor Seefeldt stated that these were also his concerns. He fields many complaints from residents who are affected by loud music up to a mile away from the establishment.

Council member Peterson explained that a decision to end at midnight was chosen as business owners felt that it is not feasible to hire a band that needs to end at 10 p.m.

Scot Taylor stated that he would be in agreement with lowering the number of allowed events to four per year.

Commission Chair Ness stated that he sees this ordinance as a compromise between promoting business events and protecting the neighbor's rights.

Mayor Seefeldt felt that the ordinance may progress depending on complaints and nuisances. City Attorney Hebert agreed that it is a well written ordinance and that amendments can be adopted at a later time if necessary.

Maefsky, seconded by Krinke, moved to recommend to the City Council adoption of draft Ordinance No. 119, Establishing Rules and Regulations for Special Events, with changes to Section 3, Subdivision 3, that auctions that end by 8:00 p.m. are exempt, and a change to wording in the definition of a special event (a permit is required if the assembly meets for a period of one hour or longer but may not exceed twelve hours in duration).

Ness moved to amend the motion to change the draft ordinance by lowering the number of permitted amplified events to four per year. The motion failed without a second.

The vote on Maefsky's motion was taken. The motion passed unanimously.

NOVEMBER 2009 MEETING DATE

November 3, 2009 is an election day for the Forest Lake School District. The City may not conduct the regular scheduled meeting on November 3 until after the polls close at 8:00 p.m. It was the consensus of both the Planning Commission and City Council to delay the start time to 8:00 p.m. for the Council meeting and 8:30 p.m. for the Planning Commission meeting.

Maefsky, seconded by Rodsjo, moved to adjourn. The motion passed unanimously.

The meeting adjourned at 9:17 p.m.

Respectfully submitted,

Brenda Eklund
Deputy Clerk