

**North Oaks Planning Commission  
Meeting Minutes  
City of North Oaks Via Electronic Means and Community Room  
January 27, 2022**

**CALL TO ORDER**

Chair Azman called the meeting of January 27, 2022, to order at 7:00 p.m.

Pursuant to Minnesota Statute 13D.021, the meeting was conducted with attendees and Commissioners participating both in the Community Room and via Zoom.

**ROLL CALL**

Present via electronic means: Chair Mark Azman, Commissioners, Nick Sandell, Anne Conroy (dropped due to technology issues partway through the meeting), Joyce Yoshimura-Rank (joined at 7:44 p.m.)

Present in the Community Room: Commissioners Scott Wiens, Bob Ostlund, Councilor Jim Hara, City Administrator Kevin Kress

Absent: Commissioner David Cremons

Other Staff Present: City Engineers Tim Korby and John Morast, City Attorney Jim Thompson, Sanitary Inspector Brian Humpal and Ryan Menter of American Engineering Testing

A quorum was declared present.

**PLEDGE OF ALLEGIANCE**

Administrator Kress led the Pledge of Allegiance.

**CITIZEN COMMENTS**

There were no citizen comments.

**APPROVAL OF AGENDA**

Chair Azman asked to move the Septic Variance for Ridge Road to be the first business item and the CUP for 14 Cherrywood Circle to the second item.

**MOTION by Sandell, seconded by Conroy, to approve the agenda. Motion carried unanimously by roll call.**

Chair Azman welcomed Scott Wiens and Bob Ostlund, the two new members of the Commission, and thanked prior member Grover Sayre for his service.

**APPROVAL OF PREVIOUS MONTH'S MINUTES**

**a. Approval of December 30, 2021 and January 6, 2021 Planning Commission Meeting Minutes**

**MOTION by Sandell, seconded by Conroy, to approve the previous months minutes. Motion carried unanimously by roll call.**

**BUSINESS ACTION ITEMS****a. Discussion on Ordinance Application**

Chair Azman explained that the general standard of review for land use decisions is whether the government's actions are reasonable and rationally based. If the Planning Commission and the City Council neglects to state reasons for an action taken, then the action may be presumed to be arbitrary and not enforceable. Similarly, if the record contains no findings by the council, it can demonstrate that the city's actions were not reasonable. When moving through the decision-making process and developing recommendations for Council, sufficient record must be made to support decisions and recommendations. Decisions should be rationally-based with a factual record that is developed during the proceedings in which they are discussed. Facts that are not presented in the record should not be used in making decisions.

Chair Azman also outlined the philosophy that he has found to be important in the City of North Oaks and as a Planning Commissioner about building and development. The City's Comprehensive Plan, an official document that the City Council approves and is approved by state entities, is a helpful guide in applying ordinances. The mission statement says that the city "shall preserve and maintain the city's status as a unique place to live. In concert with all established homeowner's associations, etc. the city shall continue to emphasize community and individual privacy with the protection and management of all natural resources." The comprehensive plan is also intended to carry out the vision of a rural design community with characteristics focused on the protection of the environment and the natural topography, woodlands, lakes, ponds and wetlands. The Planning Commission, to the benefit of all existing and future property owners in the community, should follow these concepts. Furthermore, the development concept and vision by the company in 1950 was to plan a residential community with sufficient commercial areas to serve our needs but also with a major emphasis on the stewardship of the natural environment, including the topography, wetlands, ponds, woodlands, the prevention of pollution in the environment and the retention of groundwater recharge areas. The city places an emphasis on the preservation of trees and the natural contours and slopes of the land such that each lot has a suitable building area without changing existing contours. As subdivision applications, CUPs, variances and other matters are reviewed, Commissioners should remember these mission statements, the philosophy of the development and what is embodied in the comprehensive plan. These concepts add a patina of stewardship of the natural environment to all of the ordinances, and ordinances should be interpreted and applied through the lens of that patina.

**b. Discussion and Possible Action on Septic Variance #21-14 for 9 Ridge Road.**

- Chair Azman opened the discussion with a reminder that for a variance, the Planning Commission must look at the reasonableness of the use, the uniqueness of the circumstances and whether or not the proposed variance will alter the essential character of the property.

- Sanitary Inspector Brian Humpal stated that the applicant is requesting a variance to install a subsurface sewage treatment system which would encroach 12 feet into the required 30 foot South property line setback and 6 feet into the required 30 foot West property line setback. The current system has been classified as non-compliant under MPCA rules due to lack of required separation between the bottom of the drainfield and the limiting soil condition. The area available for installation of a replacement system is limited due to water supply wells, structures, impervious areas, slopes and property lines. Based on these facts, it is staff's opinion that the applicant has met the requirements for a variance as outlined in section 151.078 of the code. This is a hardship created by the property itself and not the result of actions of the property owner. Staff agrees with the designer that the proposed location of the new system appears to be the most viable location for an SSTS. This would be the minimum variance which would alleviate the practical difficulties. Additionally, the proposed system will result in a significant improvement to the local ground and surface waters.
- City Engineer Tim Korby stated that he visited the site. He agreed that it was a reasonable request and it was appropriately positioned. He is in favor of the variance.
- Commissioner Conroy asked Korby if there were any other options that would provide onsite sewage treatment that would stay out of the offsets. Korby stated that the variance proposal is the most viable. Conroy noted that this is becoming a greater issue in North Oaks, and was wondering if improving ISTS technology could help with this ongoing problem. Korby noted that some of the newer systems are very expensive and controversial because they require digging up roads, etc. Humpal commented that even if the homeowner was looking at installing another type of system, they would still need to apply for the same same variance.
- Chair Azman asked whether moving earth around at the site will change drainage around the site. Humpal stated he does not have any concerns.
- Commissioner Sandell asked Humpal and Korby to review the drawing. He noted that some areas of the mound seem to be clipped at the property lines, and he wondered how this would work. Humpal noted that the corners of the mound are typically rounded and they won't be clipped. The overall appearance will be relatively uniform. The build should not encroach on other property lines.
- Chair Azman asked if old tanks will be removed or decommissioned. Humpal noted that old tanks will be properly abandoned. Chair Azman asked how the city was made aware that they system was failing. Humpal thought city had received a compliance report on the status of the system.
- Craig Hara, the homeowner, clarified that up until they decided to replace the system, there was not a noncompliance issue. However, they knew that they were on the last legs of the system the way it had been functioning so they decided to proactively replace it at this time. The system was only recently deemed noncompliant upon Humpal's review for the variance application.
- Commissioner Conroy asked if anyone has approached the neighbors about the proposed variance. Hara said that they have spoken to both neighbors and neither have expressed any concerns.

**MOTION by Sandell, seconded by Wiens, to approve the Septic Variance application #21-14 for the home located at 9 Ridge Road, with conditions as listed by City Staff. Motion carried unanimously by roll call.**

Chair Azman noted that the recommendation for approval will go before the Council at their next meeting on February 10, 2022 for final consideration.

**c. Public Hearing on Conditional Use Permit #21-21 for a proposed new home in excess of 35 feet in height a garage in excess of 3,000 square feet for the property located at 14 Cherrywood Circle. Discussion and possible action on CUP.**

Chair Azman called the Public hearing to order at 7:38 p.m.

- City Engineer John Morast gave an evaluation of the height of the building. He noted there were a couple items that still need additional information. First, the elevations did not dimension to the top of the tallest point on the house, the taller chimney line. This could potentially add 10 feet or more to the building height. In addition, there were no calculations for all of the side lot setbacks. One of them was still less than 35 feet as shown on the plan.
- City Engineer Tim Korby added that if they have a soil boring, it would be nice to see that to confirm that the basement is 3 feet above the groundwater elevation. He thought there might be soil boring records because he believed they plan to put a pool in, which usually includes getting soil borings in the process.
- Administrator Kress also added that one of the requirements for a CUP includes a Floor Area Ratio (FAR) requirement that does not exceed .12. Currently, the plans put it at a little over .13. They would need to drop approximately 1,000 square feet in order to meet this requirement.
- The applicant for the CUP, Joel Larson, asked that they move forward with the CUP review and approval tonight because they are requesting approval for height and garage size. He explained that they would be willing to provide the information that is being requested and will reduce the size of the house before submitting the building permit. Administrator Kress and Chair Azman clarified that a CUP cannot be approved until the FAR is shown to be met.
- Chair Azman explained that the Commission has two options: they can recommend denial because sufficient information has not been submitted, or they can continue the hearing to another time. The next meeting is scheduled for the end of February. Chair Azman noted that his preference would be to continue the meeting. He asked Administrator Kress for his opinion and Kress agreed.
- The applicant Joel Larson said he was confused about issue with setbacks. His interpretation of the ordinance was that the front of the house was at least 35 feet in the setbacks, and the height of the building doesn't change until they are over 60 feet of the setback on one side and 72 feet on the other. Administrator Kress explained that the

setback applies to the whole building, not just the sides that exceed 35 feet. Chair Azman and Administrator Kress said that this is how the ordinance has been interpreted and applied in previous applications.

- Chair Azman said the best approach at this time would be to continue the application to the next meeting, and to allow the applicant to work with Administrator Kress and City Attorney Jim Thomson to resolve the outstanding issues in the meantime.

**MOTION by Sandell, seconded by Conroy, to continue the CUP #21-21 for 14 Cherrywood Circle to the next meeting and allow the applicant to work with Kevin and staff to resolve outstanding issues with the application. Motion carried unanimously by roll call.**

**d. Discuss 2022 Planning Commission Meeting Schedule**

- City Administrator Kress began the discussion. He noted that the City Council and Natural Resource Commission have been reviewing their meeting schedules in an effort to reduce the number of meetings that occur on Thursday evenings. The Natural Resource Commission will likely be moving their meetings to Mondays. Kress recommended the the Planning Commission continue to meet the last Thursday of the month, but consider moving the meeting start time to 6 p.m., and consider adding a second monthly meeting that could be used as needed. Several of the Commissioners noted that 6 p.m. is difficult for them, but 6:30 p.m. could be a compromise. Commissioner Sandell also cautioned against adding a standing second meeting, suggesting that although the intention is for it to be optional, they may end up just defaulting to two meetings with fewer items. Other Commissioners seemed to agree, and the consensus was to keep the current meeting time and add follow-up meetings for carryover items as needed. Kress suggested that they think about the time for another month or two and re-visit if it seems like the 7 p.m. time is not working.

**e. Follow-Up Discussion and Possible Action on CUP #21-15 for 6 Sherwood Trail.**

- Chair Azman noted that they had discussed this CUP application regarding building height in the last couple meetings. At the most recent meeting, they took public comments and closed the public hearing. They had then requested for additional information on soil borings from the applicant because they were concerned about environmental issues with the groundwater at the lower elevations of the home and the pool.
- City Engineer Tim Korby said that at the last meeting he had stated his concern about basements getting wet in this area. Basements must be at least 3 feet above the groundwater or adjacent wetland areas. They had asked for soil borings to indicate where the groundwater is at the site, and the applicant was able to produce this data. The firm that completed the borings was called Interstate Geotechnical Engineering out of Cottage Grove. Patrick Hines completed the report. Two soil borings were completed on the site. The conclusions indicated that the groundwater elevation was somewhere around 900.

The basement elevation is approximately 916, so the groundwater is approximately 16 feet below the basement elevation, well within the 3-foot buffer that is required. Korby said that based on this information, he feels comfortable saying that groundwater should not be an issue.

- Ryan Menter from American Engineering and Testing (AET) provided some general information about the soil and groundwater testing. AET completed soil borings for 10, 14 and 16 Sherwood Trail which are also in that area and have applied for CUPs as well. Menter explained that when looking at test data, it must be kept in mind that that data only reflects that time and location, and can change from one area to another. Chair Azman asked whether the tests were acceptable having been done in December, a winter month in Minnesota. City Engineer Korby asked Menter how much groundwater can fluctuate from season to season. Menter said it could fluctuate as much as 5 feet, but that is a very general rule of thumb and can vary from area to area.
- Commissioner Sandell asked about the 3 foot rule in the ordinance. If groundwater can fluctuate as much as 5 feet from area to area, is the 3 foot rule adequate? Menter noted that 3 feet is the industry standard of practice, and is used by the MPCA.
- Commissioner Yoshimura-Rank asked if Korby could give an explanation of monitoring wells, and whether this is something the city should be doing for all of the lots in this area for future development. Korby said that he believed if there were wetlands within the lot or in close proximity and there is a concern about groundwater and wet basements, it could be helpful to put in a monitoring well and at least monitor for a year. At this point, the City has not decided to move forward with this, but it might be something a homeowner would consider before they begin building.
- Chair Azman turned to the height issue and noted that he believe these were addressed in previous meetings and deemed acceptable. City Administrator confirmed this and added that setbacks were also acceptable. The last piece was natural suitability of a walkout.
- City Engineer Morast reiterated from his report that he believes the site and plans are suitable for a walkout. Commissioner Hara noted that it seems like the plan would require quite a bit of dirt movement. Morast said that there would be some cut and fill, but nothing unreasonable. The applicant, Jennifer Otto, offered that she does have dirt calculations, but not readily available at the time of the meeting. Chair Azman asked whether the potential need for a dirt CUP would have any impact on the current CUP for height. City Attorney Jim Thomson said that it should not have an impact on this CUP. Chair Azman said in his opinion, the applicant satisfied all the other conditions and it is topographically suited for a walkout.
- Hara disagreed that the build fits the topographical landscape and was also concerned that it would require a lot of tree removal. Chair Azman questioned whether there would be more trees removed for a walkout versus a non-walkout. The applicant Jennifer Otto noted that they will be making every effort to preserve trees and maintain a short impact zone around the home, but that some impact is to be expected when building a home, installing a septic system and potentially installing a pool.

**MOTION by Sandell, seconded by Yoshimura-Rank to approve CUP #21-15 for 6 Sherwood Trail. Motion carried unanimously by roll call. Commissioner Conroy did not vote due to technology issues, Wiens and Ostlund abstained.**

**f. Public Hearing on Conditional Use Permits #21-18, #21-19, #21-20 for proposed new homes in excess of 35 feet in height for property located at 10, 14 and 16 Sherwood Trail. Discussion and possible action on CUPs.**

Chair Azman called the Public hearing to order at 9:02 p.m.

The Planning Commission discussed all three applications at once in the interest of efficiency.

- City Administrator Kevin Kress began with 10 Sherwood. He noted that city staff mainly had concerns with the engineering on this project. The groundwater elevation and the setbacks all met the requirements.
- City Engineer John Morast went through the calculations and articulated that all of the heights fit within the conditions. He believes it is a good fit for a walkout building.
- Ryan Menter from American Engineering and testing reviewed all of the soil tests for the three properties. 10 Sherwood: ground elevation was approximately 916. The test pit was located just north of proposed home in proposed driveway area. The test pit extended down about 17 feet below grade, which got them to about 899. No groundwater was observed. They didn't notice any seepage or obvious changes in moisture conditions. Chair Azman asked if their testing process was typical in the industry for this type of study. Menter said that yes, for the purposes of building homes he felt this type of test was appropriate. Chair Azman asked if it matters that the test was done in the winter. Menter said that if there is groundwater, it would still be evident in the winter.
- 14 Sherwood: The test pit was 15.5 feet deep, just shy of 8 feet below the low floor elevation and the bottom of the test pit. The existing grade is 923 so the bottom of the test pit was approximately 907.5 and the proposed low floor is a 916.4. Here the soils were brown sandy materials with various amounts of clay, gravel and silt. In this dirtier soil with finer grain sand, it can take longer to see water in the hole.
- 16 Sherwood: This test pit was 15 feet and was left open for 45 minutes. The grade was about a 918. They got down to about a 903. Currently, the proposed low floor is about a 911. Overall, based on the test pit observation, Menter confirmed that he did not see any groundwater in any of the properties at 10, 14 and 16 Sherwood.
- City Engineer Tim Korby said he was comfortable that the applicants have satisfied the requirement and groundwater should not be an issue. AET is, in his opinion, one of the best firms in Minnesota and he trusts their results. Chair Azman asked if the AET reports are in the file. City Administrator Kress confirmed that the files are quite large so not in packet, but they are in the city files.
- City Engineer John Morast reiterated that the environmental conditions for 10 Sherwood are naturally suited for a walkout. He reviewed the calculations for 14 and 16 Sherwood and said that he believes these properties are also suited for walkouts.

**Chair Azman called the Public hearing for 10, 14 and 16 Sherwood Trail to order.**

**MOTION by Yoshimura-Rank, seconded by Wiens, to open the public hearing at 9:28 p.m.**

**Motion carried unanimously by roll call. Ostlund abstained.**

- There were no public comments. Chair Azman noted that he did receive an email from a resident Leanne Savereide on Red Maple as well as an email from Franny Skamser-Lewis also on Red Maple. He has asked Kevin to include these in the record.

**MOTION to close the public hearing for all by Yoshimura-Rank, seconded by Sandell.**

**Motion carried by roll call vote at 9:31 p.m.**

- Councilor Hara asked if emails Chair Azman had could be explained. Chair Azman said the email from Ms. Skamser-Lewis stated that she did not feel home designs were consistent with neighborhood and felt the application should be denied. She was also worried about lighting issues in the area.

**MOTION by Sandell, seconded by Yoshimura-Rank, to approve the CUP application #21-18 for a home in excess of 35 feet at the property located at 10 Sherwood Trail, with conditions as listed by City Staff. Motion carried unanimously by roll call. Wiens and Ostlund abstained.**

**MOTION by Yoshimura-Rank, seconded by Sandell, to approve the CUP application #21-19 for a home in excess of 35 feet at the property located at 14 Sherwood Trail, with conditions as listed by City Staff. Motion carried unanimously by roll call. Wiens and Ostlund abstained.**

**MOTION by Sandell, seconded by Yoshimura-Rank, to approve the CUP application #21-20 for a home in excess of 35 feet at the property located at 16 Sherwood Trail, with conditions as listed by City Staff. Motion carried unanimously by roll call. Wiens and Ostlund abstained.**

Chair Azman noted that the recommendation for approval for the three CUPs will go before the Council at their next meeting on February 10, 2022 for final consideration.

### **COMMISSIONER REPORTS**

- Chair Azman noted that the next meeting of the Planning Commission will be on Thursday, February 24 at 7:00 p.m.
- Commissioner Yoshimura-Rank asked if the next meeting will be a combination in-person and virtual. Kress said this is most likely the case.

### **ADJOURN**



**MOTION by Yoshimura-Rank, seconded by Sandell, to adjourn the meeting. Motion carried unanimously by roll call. Meeting ended at 9:42 p.m.**

Kevin Kress  
Kevin Kress, City Administrator

Mark Azman  
Mark Azman, Chair

Date approved 2/25/2022