

**North Oaks Planning Commission
Meeting Minutes
City of North Oaks Community Meeting Room and Via Teleconference
Thursday, February 25, 2021**

CALL TO ORDER

Chair Azman called the meeting of February 25, 2021, to order at 7:00 p.m.

Pursuant to Minnesota Statute 13D.021, the meeting was conducted via Zoom, with Chair Azman and Administrator Kress present in the Council Chambers.

ROLL CALL

Present: Chair Mark Azman, Commissioners Anne Conroy, Stig Hauge, Nick Sandell, Grover Sayre III, Joyce Yoshimura-Rank.

Absent: David Cremons

Staff Present: Administrator Kevin Kress, City Attorney Bridget Nason, City Septic Inspector Brian Humpal, Engineer Corey Bergman.

Others Present: Videographer Maureen Anderson, Mike Capra, Capra Utilities, Inc.

A quorum was declared present.

PLEDGE OF ALLEGIANCE

Chair Azman led the Pledge of Allegiance.

Chair Azman welcomed the newest member of the Planning Commission, Anne Conroy.

CITIZEN COMMENTS

There were no citizen comments.

APPROVAL OF AGENDA

MOTION by Yoshimura-Rank, seconded by Sandell, to approve the agenda. Motion carried unanimously by roll call.

APPROVAL OF PREVIOUS MONTH'S MINUTES

A. Approval of Planning Commission Minutes from November 10, 2020

B. Approval of Meeting minutes from December 2, 2020

C. Approval of Meeting minutes from December 29, 2020 Special Planning Commission Meeting

Yoshimura-Rank noted one correction on the first page of the December 2, 2020 minutes. She noted the word "plan" should be "plant" regarding the North Oaks Company (NOC) providing 15-20 natural barriers.

MOTION by Sayre, seconded by Yoshimura-Rank, to approve the Planning Commission Minutes from November 10, 2020, December 2, 2020, and December 29, 2020. Motion carried by roll call, with Conroy abstaining as she was not present at those meetings.

BUSINESS ACTION ITEMS

a. Review of Septic Variance application 20-06 for 33 Eagle Ridge Road

Azman noted a public hearing is not required under City ordinance for a variance. He welcomed Staff to give a presentation followed by a time for the Applicant to speak. He noted Humpal has some history here as there have been applications submitted and withdrawn with further guidance given.

Humpal said there had previously been a variance application on this property and that proposed system would have encroached into the road easement. Based on those facts, it was Humpal's recommendation to deny that variance request; he noted it would have been the first time in his history he would have seen a system allowed to go into the road easement setback. He worked with the owner and designer and came up with the plan presented today. The Applicant is requesting a variance to install a subsurface sewage treatment system which would encroach 20 feet into the required 30 foot south property line setback and 12 feet into the required west property line setback. The current system has been classified as non-compliant under MPCA rules due to the lack of the required 3 foot separation between the bottom of the drain field and the limiting soil conditions. The area available for installation of a replacement system is limited due to water supply wells, structures, pervious areas, steep slopes, and property lines. Based on these facts, it is the Staff's opinion that the applicant has met the requirements for variances outlined in section 151.078 of the code. They are in agreement with the designer Jesse Kloeppner that the proposed location of the new system appears to be the most viable. This would be the minimum variance which would alleviate the practical difficulties. Additionally the proposed system would result in a significant improvement to the local ground and surface waters.

Azman asked if they could pull the map up on screen.

Humpal said they are asking the Planning Commission to make a recommendation to the City Council to approve or deny variance 20-06 Version 2, to encroach 20 feet into the required 30 foot south property line setback, and 12 feet into the required 30 foot west property line setback.

- Azman said as they are looking at the screen, it is the bottom left/southwest corner and asked if that is correct.
- Humpal said that is correct.
- Azman stated the drainage or absorption area is totally within the setback on the south side.
- Humpal said no it is not, it would be 18 feet from the property line.
- Azman asked Humpal to run down the other options that were considered or investigated on the site that were within the setbacks and would not require a variance.

- Humpal noted south of the driveway is disturbed soil and would have still encroached into the setbacks, and the contours were not conducive to the installation of a system. In the northwest corner of the property they were dealing with excessive slopes which also would have been less than desirable.
- Azman asked where the absorption area is identified, is there a hill in that area, and what does the topography look like.
- Humpal replied it is sloping down from the house towards the property line. The contour lines represent 2 foot contours, so it is going from 932 down to 930, and so on. Current water will flow in the vicinity just north of the 930 contour line to the south of the property line.
- Azman asked to understand why the absorption area could not be shifted further north, such that a variance might not be required.
- Humpal replied regardless, they still would have been dealing with a variance on the west side; the way the contours are, they run out of contour if they shift the system to the north. The rock bed needs to be positioned across the contour, and must be on the native, original contour from end-to-end. He noted it is a little deceiving with the contour map on screen.
- Hauge asked if they could move the absorption area a bit further to the southeast.
- Humpal said when they move to the east, they run into the contour changes there for the upslope edge of the mound rock bed, which is not allowed by code.
- Azman asked if the existing drain field can be reused or if there are issues of inappropriate soils.
- Humpal stated the soil in that area is not appropriate, it is heavy soils, it has been disturbed, and is less than ideal. Additionally, again they come back to the contour issue and the existing drain field is in a location that is off contour.
- Azman asked why the existing system is failing.
- Humpal said ultimately the Applicant has chosen to do this as he is preparing to market the property and wants to get ahead of any problems that might occur during a property transaction. At this point, he would not be forced to replace the system, but he is taking appropriate steps to sell the property in the future.
- Azman asked when they had an inspection done, what was the failing nature of the existing system.
- Humpal stated the system there does not have the proper separation between the bottom of the drain field and the limiting soil conditions. That system would not be protective of ground water.
- Hauge asked instead of a Type 3 system, if they went to a Type 4, would that change anything with respect to the absorption field.
- Humpal noted the absorption area would remain the same regardless of the type of system. It would decrease the length of the system marginally, but he would have to review some design calculations.
- Azman asked about the ability to preserve trees and if there would be any loss of trees in the proposed area for absorption.
- Humpal replied there would be some loss of trees due to the construction of the system.

- Yoshimura-Rank asked where the well is located for the house to the west.
- Humpal said it is directly to the east of the front of the house, noted on screen with a “W” and a circle around it. He noted the larger circle around it is the setback from the well.
- Conroy thinks Yoshimura-Rank was asking about the adjacent property, rather than the Applicant property.
- Yoshimura-Rank replied that is correct.
- Humpal said he cannot answer that.
- Yoshimura-Rank said if it is in that 30 foot setback, it would be good to know.
- Humpal stated in looking at the aerial map, he can make out some components of the septic system for the property to the west and it appears that the system would be located east of that house. This would lead him to believe the well would be located west of the property to the west.
- Azman thought they had a well index report as part of the packet.
- Humpal said it is difficult to determine where a lot of wells are, as many of them were GPS’d in by a contractor and a well-drilling rig and they are only somewhat reliable for their exact locations.
- Azman said it was his understanding that the other wells were sufficiently distant from the proposed absorption area as part of the review.
- That is Humpal’s understanding as well, and is something they look at when they go through a permanent approval process, and have not been through on this property yet.
- Hauge asked if there are any comments or objections from neighbors.
- Kress said there are no objections or comments.
- Azman asked which neighbors were notified.
- Kress stated all of the surrounding neighbors with the traditional 10-day notice by letter.
- Conroy asked Humpal, in looking at the previous design and this design, it seems that every design option has not been exhausted. She noted she is not a design professional, but it looks like some things could be slid a little bit to accommodate and leave the setbacks clear. She asked if Humpal can say unequivocally that they have looked at every design option and that there is nothing else possible.
- Humpal replied the applicant has been through three designs and this last one, Humpal gave a lot of input to the designer trying to guide him in order to minimize the variances needed. He really does not see any other practical solution. Are there things that could be done that would not require a variance? Yes, and he would be very concerned that those things will function and operate.
- Conroy asked if Humpal could give some examples of systems he would be concerned about, and yet might fit on the site.
- Humpal said whenever they are dealing with putting mound systems on excessive slopes with heavy soils, there is a higher potential for leakage out of that system. Constructing a system where the existing system is, they really reserve that for a last-case scenario where all other options have been exhausted. The problem is, there is an area that has been receiving sewage for however long, heavy soil conditions, and it has been worked and disturbed. When dealing with non-native soils, there is concern about how well that soil is going to

accept water. He continued saying when they are dealing with undisturbed soils, they have a pretty good understanding of how that soil is going to perform hydraulically.

- Conroy noted they had looked at the south side; it sure looks like there is space along the south for the drain field, particularly if there was an adjustment from a Type 3 to a Type 4. She asked if she is incorrect about that.
- Humpal replied with a Type 4 system, they are still forced to be located on the contours and still have those same concerns with disposal of that water. Ultimately the absorption areas do not change with a Type 4 system, it remains the same. The waste water that goes through the system, by the time it hits the surface when it is going to infiltrate into the ground, it is at the same water quality as if it were a Type 4 system. That is why there is no credit given for using a Type 4 system over a Type 3 as far as a mound goes.
- Conroy understands there are processes to replace drain fields that are very effective and she sees Humpal's point about it being a disturbed system. She noted they are highly functional and asked if they have explored that.
- Humpal said that would be new to him that there is new technology that would allow them to re-use the existing system with guaranteed results. Is there something that could work? Yes, maybe. Are they going to be able to guarantee that it works; could the applicant go through all of this work and it fails? Yes. He noted that is what they are trying to avoid.
- Conroy said it seems that where the mound is proposed to be located, there is a little wetland down there, and isn't that where all of it ends up flowing.
- Humpal said further over to the west there is a wetland where all the water ultimately ends up.
- Conroy asked if they would expect that the effluent released below this mound system would actually be all off of this property based on where this location is, that there would not be any of that plume that goes into the groundwater that would be on the property.
- Humpal replied all of the absorption that occurs, occurs within that red box absorption area on screen. That is where all the effluent from the system percolates into the ground. After that point, the rest of the system is just berming to support the system.
- Hauge said the answer to Conroy's question is no, then.
- Humpal replied that is right. If there is a plume going from the system, they have a problem.
- Hauge said that is not what is going to be planned here.
- Humpal said that is correct.
- Conroy made the point one more time that the flow from this lot, all of the water washes over the area where the mound will be and will go down into the wetland and adjacent area. She is just pointing that out.
- Humpal replied correct, and within the City code and State code, drainage has to be diverted around and away from the system.
- Conroy clarified the water will be directed around and then towards the wetland.
- Humpal said that is right. Water flowing downhill from the north, would need to be directed, he would assume, to the east and to the west. Then water that perhaps comes from the east will be directed around the system. He noted most of the water flowing from this area will be coming from north to south.

- Azman asked if this system will interfere with the existing drainage patterns now.
- Humpal said water will move differently through the area, and ultimately water will go to the same location that it has been.
- Azman said as Conroy was saying, will it go around the mound and then end up in the same spot if the mound was not there.
- Humpal noted ultimately the water should be going to the same location that it was; water is diverted around that system, the way the contours are here it will continue on to the west where it had been going previously.
- Azman stated if the system is constructed correctly, there shouldn't be runoff from the drainage into the system that goes into the wetland. It should stay in the absorption area and asked if that is correct.
- Humpal replied that is right.
- Azman asked about the existing drain field.
- Humpal said the existing drain field will be left in place.
- Azman asked about the drainage patterns involving the existing drain field, is it the same idea with the existing drain field, the water should stay within that absorption area and not leech out.
- Humpal said once waste water has gone through three feet of unsaturated soil, it is treated, within the City's codes. That is at the level where it can get back into the ground and surface waters. The existing drain field does not have that separation, so that drain field would not be protective of the ground water.
- Conroy thanked Humpal for bringing up the point about saturation. She does not know about the other Planning Commissioners, but certainly every spring, especially recently, they have had incredibly saturated soils, particularly in areas similar to this where there is a low spot. She is sure Humpal can speak to the soil type and the rest, but she wonders about that in locating essentially a drain field in an area which would appear to get a heavy water load and be more saturated than other locations on the site. For example, the existing drain field that is 4 feet higher there. She asked if Humpal is concerned about that as far as water retention existing in that soil where this little back corner is.
- Humpal said the systems are designed – and it is built into Code – to deal with typical soil saturation conditions in the North Oaks environment.
- Conroy asked what typical means. She brings it up because their soils have been really saturated the last number of years because of the spring rains and runoff with snow, she understands what Humpal is trying to say, that perhaps this area would not have that situation. She can't help but look at it and see the drainage pattern and going into another area where there are a lot of organics that will hold moisture. Humpal does not think this particular area will be oversaturated for the performance and asked if that is right.
- Humpal replied that is correct.
- Conroy said he is basing that on what information – the soil?
- Humpal said he is basing it on the City's Codes and how the Codes were developed.
- Engineer Corey Bergman can add on to that from a drainage standpoint. He said this is not at a set low point where they would worry about the saturation; surface water will continue to

flow down with the drainage pattern. He noted it is the low point of that lot, but it is the high point of the adjacent lot to the west, therefore the water will continue to migrate off of the site. He noted they worry about oversaturation of soil if it is at a complete low point, which this is not. A 28 goes into a 26, 24, 20, and continues to migrate toward the wetland. The watershed over the top will continue to have that water both at the surface and subsurface levels will continue to work its way toward that wetland.

- Conroy would agree with that, except, in looking at the 28 contour, it flips and makes a little circle, she believes. So it is actually like a tiny little low plateau before it goes on. She is sure Mr. Bergman understands this better than she does.
- Mr. Bergman noted there is actually an opening there, it is almost like a swale at that entrance that allows the water to get out of there. He would assume they will have a similar situation with whatever they do to get the drainage around this mound system. They will have some form of a swale built in that routes the water and keeps the drainage moving in the same pattern that it is today.
- Conroy asked how they would do that and maintain the contours that she believes are part of the NOHOA letter.
- Mr. Bergman said they would have to tie into the existing contours, they cannot grade on to an adjacent property, but they can create different patterns there on how and where they put the mound and it is set up. That is ultimately what they must figure out and part of the approval process for this is that it will be reviewed to make sure the drainage patterns have not been interrupted by the mound system. He believes that is part of the process.
- Humpal said part of it is just based on the construction of it with the Codes – they must have drainage flowing around the system. If there is a system that is holding water behind it, that is a problem. He has reviewed the NOHOA letter; he sees that they will set precedence where every variance that comes forth for a replacement system, if the City is going to ask them for grading and drainage plans, most of that adds \$3,000-\$5,000 of engineering costs. He said it is excessive and he has not seen any community that has ever taken that direction.
- Conroy noted they are an environmentally friendly and forward community to try to protect their shared resources, so who knows what the future will bring.
- Azman circled back to try to understand what other options on this site. When it was first submitted, it was closer to the east side and within the easement right-of-way for the road and that was not acceptable at all. He asked Humpal where else they can put this that would not impede or interfere or somehow be involved with drainage issues.
- Humpal said any time they are building a mound, there will be drainage issues. He said they could put a mound on top of a hill and drainage is going to change, that is just the nature of the beast any time they construct any kind of above-ground system. He does not know if there would be any kind of option to remove the well and do things like that. In looking at the map and the slope, he does not see that there is enough room there, as once again, they are dealing with excessive contours coming off from both sides of that. He noted getting to this point has been a couple years in the making, there has been a lot of extensive work done to come up with a plan.
- Azman asked when Humpal says the drain field or absorption area needs to stay within the contour, does that mean it needs to be within a relatively flat area.

- Humpal said from end-to-end, the upslope edge of that rock bed needs to be on the contour. It needs to be situated across the contour.
- Azman asked if that is the 2 foot contour.
- Humpal said from end-to-end, the amount of soil brought in underneath that rock bed needs to remain level going across there. In a situation where they had a mound that needed a foot – or in this particular case, 3 feet of sand – Humpal expects that at either the east or west end of the system, there is going to be 3 feet of sand. Once they start getting into a situation where that is installed off contour, the absorption area changes and that is where they run into issues where there could be water that does not flow underneath that system the way they want it to. That would then change the potential for having it discharge out of that system.
- Hauge said that means they want to avoid water from draining to the sides of the drainage field.
- Humpal said correct, to put it in lay terms, they are looking for vertical flow of that waste water. They never usually get vertical flow, and that is why they have an absorption area which extends beyond where the rock bed is.
- Azman said if they shift things north to get into the next contour, is there enough room there as at least then they would be inside the southerly setback.
- Humpal said at that point, if it does go further to the north, it starts encroaching further into the west property line and then they start pushing more water west towards the neighboring house and closer to the actual structure of the house.
- Azman said to Mike Capra there is a black perforated line which is construction access and pumper access, it looks like the pumper truck can use the driveway for normal maintenance for the most part. He asked if the construction access would be used to get heavy equipment back there.
- Mr. Capra said that is correct. It would be along the side of the house there.
- Conroy would still go back and say it looks like there is space in the front, it would not need the removal of trees and it would be able to go along a contour, and would not be in a setback.
- Azman asked if she is talking about the southeast side.
- Conroy replied yes, and it might disrupt the driveway. She knows this is superficial, but she can't help but think that there is another option here.
- Capra said access would come around the side of the garage. As far as different options, one option was to go out by the road which was not approved because it was in the right-of-way. Unfortunately, it looks like it was kind of plotted where the whole road was designed way off to the side. That would be the best area and the original plan that was present; however, that was denied. That area would be the furthest away from any wetlands, setbacks, things like that. However the way the road was created through that area was through the right-of-way. He asked what the question was about the placement of where it is now.
- Azman was curious about the construction access.
- Hauge noted Conroy had a question about another location that they should answer.
- Capra said as far as closer to the driveway, the only access that would work that is closer to the driveway that is at a high enough elevation would be in the right-of-way. When one

drives down the road and looks at the property, one would certainly think that would be on the property, however it is not because of the way the road right-of-way ended up. As far as going outside of the road right-of-way, they end up at a huge depression in kind of a wetland area, that would not work as that area holds water.

- Azman asked where that was – on the south side of the driveway?
- Capra said when driving in the driveway on the left hand side which he believes would be the south side. He noted the original plan was to keep it as close to the road right-of-way as they could, however, not realizing when the original design was installed that it might have actually encroached on the road right-of-way. As they look at this, Mr. Capra still believes that is probably the best plan. He noted the owners drive out of their house, drive 40-50 feet down their driveway and they have no idea that they are technically driving in the road right-of-way just because of the way the roads were plotted. Does that make the most sense for a septic system, logically? Probably, as it is the furthest away from any lot lines, the furthest away from any wetlands, does not impact any drainage issues, and things like that. However, when they actually put a pen to paper, it is in the road right-of-way, so that area does not work.
- Conroy thinks they understand that piece. However, what if that location were pulled to the screen left up the driveway to follow the 934, 932. She noted Mr. Capra said there is a low spot there that is holding water.
- Capra said yes, that whole area is low alongside the garage and as Humpal said they must run on contour. As they get closer to the garage and closer to the house, they run out of contour and do not have the full 60 feet of length that they need. It also goes down into a depressional landscape and all the water will run to that area and flood out that system, so unfortunately it cannot go in that area. It is against the septic code and it would not function properly and would not get proper treatment there because it is a low area.
- Conroy asked if the 932 and 934 is a low area.
- Capra is unable to see the 932 and 934 contours on screen, but as they get further from the road and closer to the house, yes, it is a low, wet area and would need to be filled up pretty significantly to get a septic installed there. Additionally, he does not think they have the length to make a system fit in that area.
- Conroy asked not quite so far as what he is talking about; between the location they had before and to just come in the minimum amount they need to in to the setback. She noted there is a contour along there, the 934.
- Capra said sometimes these contour maps are not always that accurate, and said it is just a huge hole and a huge drop off so there is really not a great way to fill that in and make it work. The idea is that some of the area 932 and 934 would be used as the absorption area to get that water to drain. However, if they slide the whole thing into that area, there is not enough room to get it to fit.
- Conroy said and yet, this plan is the one they are using to design to even though the contours are a little suspicious, and asked if that is right.
- Capra asked if they are talking about the original contour from the first plan.

- Humpal said the original plan had an upslope into that easement. He does not have it in front of him, but he thinks it went all the way 30 feet into that easement.
- Hauge asked if they can pull up the map on screen.
- Conroy thinks in looking at the plans as they are presented, they have to keep in mind that they do not know the exact relationship to everything and where everything is without a survey. Sure, things may not be exactly as they appear here, and she thinks they all understand that.
- Capra is finally able to pull up the contour map and note 932 and 934. As they do this work, could they potentially be on the 936 contour across the front and the 934.
- Conroy thinks the 936 is in the setback.
- Capra said correct, and Jesse Kloeppner had laid this all out and they were very close, but sometimes when they get out there and put a laser on the land it doesn't quite come out exactly as it shows on these property lines. For example, it shows that the road right-of-way is only a few feet off the road, but when one physically goes out there it is much further in than where the little red line is. Could they potentially put a system across that 934 contour? Yes, he thinks they could and that would be a great spot for the system, however, it encroaches on the road right-of-way and the setbacks.
- Humpal asked which 934 he is talking about as there is the 934 directly adjacent to the road and then there is the 934 that is west of the easements.
- Capra said what they see on screen and when they actually go out on site, he is guessing there is a 935 contour that works really well, but does not physically fit without getting into the right-of-way. Eventually it falls into a big hole and it physically does not work; what happens is everything comes into a big bowl and they know they would have a leaking septic system that would not treat the water. He thinks there is probably a 935 contour along the front line that does not meet the setback that would actually work fairly well for a septic installation.
- Sandell noted they are not so much focused on the setbacks, they are here talking about a setback variance regardless. If it was just a setback variance as it related to this east location, that is perhaps not the non-starter. What he thinks Mr. Capra is saying is there is no viable spot on the east side that would not encroach into the road right-of-way easement.
- Capra said that is 100% correct. Could they keep the absorption width and all of the treatment area out of the right-of-way? Yes; however that absorption width and treatment area is all elevated. In order to keep it all elevated, they need some banking material which would encroach on the right-of-way. There is just no way to do that without having some banking material to keep that elevated.
- Azman's other concern is that the applicant has already submitted something on the east side and the Planning Commission told them that was not acceptable. He does not want to feel that the applicant is getting the run around here and told to now go back to the east side.
- Sandell is sure everyone would like the east side outside of that whole easement issue. From the construction conversation, it would be a lot easier to access. He appreciates Humpal and Capra's expertise they have shared with this and it is clear that they have given significant

consideration to this property. It just seems like the east side is a non-starter from what he can tell, especially based on the analysis they have all gone through.

- Capra thinks Sandell is right, unless at some point the Commission said they will accept it to put the system in the right-of-way; he completely understands that sets a huge precedent and a huge issue which could be a significant problem down the road.
- Conroy wants to be clear when she was talking about this part of the lot, she was not talking about having the system have any part of it in an easement or road setback.
- Sandell said it sounds like they are back to the west side of the property. He noted the drainage piece and having to divert it around the absorption area, that is not part of an exception or variance; rather, that would be part of the standard installation and process.
- Humpal said that is correct.
- Sayre said for everyone's comfort, could they make that a condition; it is already required, they will do it anyway.
- Bergman said would suggest with the concerns from NOHOA and others they have heard, that would be his recommendation. It will be done anyway, but in making it a condition it is held in there, as well.
- Capra asked if they are suggesting that the water drainage doesn't get diverted as it is right now on the plan. The property to the north, when the water flows, there is a little bit of retention there and it actually floods out the neighbor's house and garage to the south. They are trying to divert it to a wetland and a pond that was actually created to take runoff. However, some of the water goes there but not all of it. In looking to the left on the map, if they create all the drainage so it specifically goes to the left, it ends up with a significant amount of water on the property and is very troublesome to them. He noted they have spoken extensively to that neighbor and if there is a way to get that to flow to the top of the map or west, there is already a big retention pond there, designed for water treatment. According to the owner, that pond overflows and eventually heads to the lake. A lot of that water does go to that pond underground, but regarding the surface waters he does not know if they go directly to that pond.
- Sandell stated they were not necessarily saying it has to be exactly how it is today. If they have developed an alternative and improved solution that sounds great. The water drainage is a component of what they are talking about and any consideration here.
- Azman said the design notes advise to address the lack of drainage in that corner.
- Hauge said in the NOHOA letter it says something about keeping the surface water drainage directions the same as it is now. What they understand from what Mr. Capra is saying is that is not desirable.
- Capra said that is correct. They have spoken with a few of the property owners around there and anytime they requested anything, Mr. Eaton told them to do what they have to do - hire an engineer, hire this, hire that. At the end of the day, they just want to get it right for everybody and he believes getting it right is getting it to that pond. Nobody is trying to shortchange anything or take an easy shortcut.
- Bergman would say the ultimate concern is the property to the south; that anything that drains off of the property is not stopped by this berm system, that it has a way to route around

it and continue towards that wetland. That would be the ultimate concern from an engineering standpoint.

- Azman asked how they would go about constructing it so the drainage does not suddenly inundate the property to the west.
- Capra said in looking at the contours to the west there is already a retention pond there and supposedly – he has not been out to the site to verify – there is an overflow that goes to Pleasant Lake. In looking at the contours and where the homes are, the septic, and everything else, they are significantly higher than this wetland. If they route this water to the west, it should not have a huge impact on that wetland; it looks like that wetland was already designed and created to house the water and ship it somewhere else.
- Azman asked if that is inconsistent with what NOHOA is saying.
- Capra does not know if NOHOA has been out there and physically looked at what exactly they are dealing with on the site. They have just said “don’t divert water in a different direction.” He 100% agrees with their concept and theory; they cannot put a septic in and all of a sudden flood someone’s yard or house and they do not want to create that issue.
- Sandell took that comment more along the lines of ‘don’t make this unfavorable once this has been installed.’ If there is an alternative way to drain this that ends up being better for everyone involved, he would be supportive of that. He took that from NOHOA to be ‘don’t have drainage now become a burden on them.’
- Azman asked how they translate that into a condition. In looking at the property to the west and the absorption area is in the southwest corner of the applicant’s lot. How do they want the water to flow, it will flow in a northwesterly way and they want it to continue to do that to get into that lower area.
- Conroy said the flow would go down the hill, rather than along the contour.
- Capra said right now the flow actually goes to the left of the screen and to the west. It floods the garage of the neighbor’s house if they get heavy rains and is a huge problem for them. The Applicant has talked to them multiple times to see what they think about trying to get the water diverted to the wetland and not flood their house. He noted they are 100% on board with that. In looking at the contours with the houses on the side, they are so far above those elevations that it will be a moot point.
- Azman asked where the wetland is they are talking about.
- Capra said it is interesting because it doesn’t really show that on screen, in pointing the cursor at the 912, 914, 916 contours, that is actually a huge low spot. It fills up and supposedly there is an outlet on there to overflow; he does not think they are diverting enough water to even make a difference. However, he is not a civil engineer. They are just trying to help the neighbor not to get their garage flooded and getting water to divert around the septic system so they do not have an issue.
- Yoshimura-Rank asked where the retention pond is.
- Capra said he should not even call it a retention pond, but what is interesting, in looking on the print where it says 1,000 gallon tank, Jesse Kloeppner actually designed a system right along that contour. The setback was 25 feet to what they would call the “wetland” which is just outside of that, so that area actually holds some water. That was the original plan, before

the plan that was up in the right-of-way. He noted they are now on Plan 3, he does not know if Plan 1 was ever submitted, they looked at it and noted it was close to the pond, and actually went over the property line to get the proper banking, and did not know if that was a great idea. That is why they went to Plan 2 and ultimately Plan 3.

- Azman noted the two orange balloons that are at an angle and said that is how they want to divert water. Then there is the one that goes northerly and would ultimately divert into that wetland basin where there is a depression.
- Capra said that is correct.
- Azman said if there is an approval, then Capra will construct it consistent with that orange balloon at a right angle on screen.
- Capra replied yes, anytime they build a system they have to make sure they do not have any water ponding around or near the system. The part that goes north/south along the south side is already there. However, there is a little bit of a berm that goes up before it goes down to the south.
- Azman said the one at the westerly border will help the neighbor to the west with the heavier rainfalls. He asked Capra if he has talked to the neighbor about this and he was good with that.
- Capra replied yes, absolutely, and actually they were really hoping for this. The applicant (Larry Eaton) is a gentleman who just wants to do the right thing. Capra is not sure he even has to replace the septic; he is hoping to sell the house in the next 5-10 years and he does not want the new owner have to deal with this. Larry is going above and beyond saying he wants to get a working septic in.
- Azman asked if there is a restriction they can identify that ensures that the wells on the surrounding properties exceed the minimum distance of 50 feet.
- Capra said yes, absolutely, state code minimum is 50 feet so they have to be that far out. He does not think they are in the realm of being anywhere near 50 feet from any of those wells.
- Azman noted they can make that a condition.
- Sayre is seeing two conditions. First, verify that this new system will be 50 feet away from any well. It seems like they have an opportunity that the final grading after installation be done in such a way to reduce flooding that has been occurring on the neighbor to the west's garage.
- Capra agrees 100% and thinks that is great.
- Sayre said they have a system that is safer than the old one that they suspect will be breaking down and leaking before too long if it isn't already.
- Hauge asked if Sayre can say the motion once more.
- Sayre said the first condition is self-evident, verifying that this new system will be at least 50 feet from any existing well. He noted it has to be but they have to be super clear about it because they do not know where all the wells are. Second, a condition that to the extent reasonably feasible, the final grading after installation of the new septic system will be done in such a way to reduce flooding that has been occurring in the neighbor to the west's garage.
- Hauge said Sayre means to put it in the proposed location with those conditions and asked if that is correct.

- Sayre said in the proposed location with those two conditions.
- Nason asked to build on that condition and said she heard that perhaps there was a request to include as part of that condition that grading changes should be completed within the property boundary, and drainage patterns shall be constructed in a manner so as to ensure no adverse impact from runoff on adjacent properties. She believes that was some of the essence of NOHOA's comments for consideration.
- Sayre is actually suggesting that he improve what is already happening in terms of runoff to a neighbor's property.
- Nason said and not impact any other neighbors adversely with that change. She noted it is the Commission's conditions.
- Azman said isn't that what the orange angular area on screen what they are talking about – using those areas to improve the grade.
- Sayre said right, so that it does not run as much over to the neighbor to the west's garage.
- Azman liked Nason's comments but the concept on the plan is supposed to be the method to accomplish that, than say to the extent there are no adverse consequences to the neighboring properties.
- Yoshimura-Rank asked about the loss of trees. Does that in any way affect the way the water drains?
- Capra said they will do their best to save all of the oaks they can, but yes, there will be some significant tree removal to get this pattern of water coming through. He met with Mr. Eaton and the people to the west to talk about how they can get the drain through there and preserve as many trees as possible. Unfortunately they will end up losing some trees, but will try to save every single oak if possible, and do the best to minimize the impact to the trees.
- Hauge said "significant" number of trees and asked what that is. He understands it will be minimized, but he is confused with those two.
- When Capra says significant, it depends on what they call a tree, as there are several 3-4 inch buckthorns that have grown 30-50 feet tall which will be taken out. They will do all they can to save the oaks, however, it is a wooded area so the whole thing is covered with some form of tree. They have talked about trying to put a little curve in the drainage pattern to save an oak tree and they certainly will.
- Sayre said to pick up Nason's thoughts, they say that all the grading will be done in such a way as to not adversely affect drainage onto neighboring properties. He noted she also said they want to stay on the property here, but to the extent that neighbor is okay and if it would help him to go over the boundary line a bit, he approves of it, and it fixes the flooding in his garage, that would be okay.
- Sandell likes what Sayre just said a little bit better than the first time around. He loves the idea that they can kill two birds with one stone and potentially help a current drainage issue. He was a little nervous that they got so specific about protecting flooding in a garage, as it would be hard to measure and might be a little controlling of a condition for this septic system. He really likes how Sayre phrased it this last go around.
- Capra said both of the neighbors are 100% on board with this project, so they will be working with both of them to construct the swale through there to do what works best for

both of them. He agrees, can they guarantee 100% that they will not flood their property in the future if it has been flooded before? No, they certainly cannot but will do the best they can.

- Azman noted that is two conditions he is keeping track of.
- Sayre said one is the well piece. He restated the other condition and said all of the grading will be done in such a way as to not adversely affect, and possibly improve, drainage onto neighboring properties.
- Azman said perhaps a third one would be consistent with the Kloeppner design.
- Humpal noted the Kloeppner design is already on the Staff report for a condition.
- Azman noted on page 75, one of the conditions should be revised to say “systems should be located and constructed per the design dated September 8, 2020.” He noted they usually do not put anything in about trees; he is quite certain that during NOHOA’s review they will address that. He asked Capra when they would move forward if approval is given.
- Capra said once road restrictions come off. He thinks they had some dates in May set but cannot recall. As far as the tree conditions go, in most cases, the septic ordinance supersedes the tree ordinance, although it may be different in North Oaks. He noted they are working with both homeowners who want to save as many of the oaks as they can; he said they will do their darndest to save every tree that they can.
- Kress noted the proposed motion on screen that the Planning Commission would then change into resolution for the City Council.
- Azman reiterated under number 2 on screen, that it should also say “and located.” They would also add in the two conditions Sayre had provided. He noted he usually likes to have a comment about the legal standard for a variance and asked Nason to give a short overview of a variance standard.
- Nason replied the variance standard found within the North Oaks City Code mirrors the variance standard found in Minnesota State Statute 462.357 and says that “a variance may be granted by the Board of Appeals and Adjustments” which in North Oaks is the City Council, and “variances may be granted when the applicant establishes that there are practical difficulties that exist with respect to compliance with the zoning ordinance.” Practical difficulties are defined as meaning that the property owner proposes to use the property in a reasonable manner, not permitted by the zoning ordinance; that the plight of the land owner is due to circumstances unique to the property, not created by the landowner; and that the variances granted will not alter the essential character of the locality. Nason said the North Oaks City Code has some additional provisions, specifically it calls out that economic considerations alone shall not constitute undue hardship. They cannot grant a variance for a use that is not permitted under the zoning ordinance, and a variance can only be granted when the circumstances as outlined in statute are present.
- Azman thinks they have a sufficient record to support a variance should a motion be made to approve.
- **MOTION by Sayre, seconded by Yoshimura-Rank, to approve Variance #20-06 Version 2.0 for 33 Eagle Ridge with two conditions; ensuring the septic is atleast 50 feet**

back from well, and all of the grading will be done in such a way as to not adversely affect, and possibly improve, drainage onto neighboring properties.

Motion carried by roll call as Commissioners Azman, Hauge, Sandell, Sayre, and Yoshimura-Rank voted for; Commissioner Conroy voted against.

COMMISSIONER REPORTS

Azman noted City Council will be organizing some additional training for the Planning Commission which is still in the works.

ADJOURN

MOTION by Sandell, seconded by Yoshimura-Rank, to adjourn the Planning Commission meeting at 8:37 p.m. Motion carried unanimously by roll call.

Kevin Kress

Kevin Kress, City Administrator

Mark Azman

Mark Azman, Chair

Date approved April 29, 2021