

**North Oaks Planning Commission
Meeting Minutes
City of North Oaks Via Electronic Means and Community Room
June 30, 2022**

CALL TO ORDER

Chair Azman called the meeting of June 30, 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 in the Community Room: Chair Mark Azman, Commissioners Marc Asch, Dave Cremons, Robert Ostlund, Nick Sandell, Scott Wiens, City Administrator Kevin Kress, City Council liaison Jim Hara, City Engineer Tim Korby, City Planner Kendra Lindahl

Present via electronic means: Commissioner Joyce-Yoshimura-Rank, City Councilor Tom Watson, City Attorney Jim Thomson, City Engineer John Morast

Absent: None

A quorum was declared present.

PLEDGE OF ALLEGIANCE

Chair Azman led the Pledge of Allegiance.

CITIZEN COMMENTS

Damien Lepoutre introduced himself as a former resident of the Black Lake area of North Oaks, and the owner of a lot that will be the topic of an agenda item. He wondered if the continued discussion item related to his lot is a reconsideration of his request, or if will just be finding more reasons for the previous denial. He wanted to know if he will be able to speak at the time of the discussion later in the agenda. Chair Azman clarified that the public hearing on that topic is closed, however since he is the requestor, he will be able to make further comments at that time. Chair Azman explained that the City Council made the decision to return the application to the Planning Commission with specific instruction to better articulate the reasons for the motion at the May 26th Planning Commission Meeting.

Lepoutre chose to share his comments in Citizen Comments. During the last Planning Commission meeting, he discovered that preliminary work of reviewing facts did not take place before the meeting. Hence, some of the Planning Commission and other citizens put forward inaccurate claims with the goal to push for denial. This drove toward a downward spiral of falsehoods and lies during the meeting. There were talks on exclusive rights to the sewage of Rapp Farm and no one reacted. There were talks on requirements to cut trees, tear out grass lawns and natural vegetation, but there was nothing in his proposal that indicated this. There

were even talks about the need to dig and bore the asphalt and sidewalk, however the sewer connection already exists on his lot. Even the existence and capacity of the sewage connection was questioned when it has been in place and documented since 2014 for 200 houses plus 12, when there is only 156 houses in Rapp Farm. The city is responsible for managing its documents and the as built which would all show these facts. If any Commissioners questioned this, it should have been checked before the meeting instead of using the meeting to fuel doubts. Commissioners should clearly know now if not at the time that all these claims are false. All the time spent on this was spent at the tax payors expense, including his payment for the process that should have been used to review documents and check everything before the Planning Commission meeting. He hopes that this can be considered errors from the past, and that everyone can get over it and reconsider the application. He knows Commissioner do not always have enough time to dig deep into documentation. To help them, he has invested time and effort to bring forward a straightforward 5-slide synthesis of the facts. He presented it to the City Council and it has been included in the Planning Commissioners packet. These should help Commissioners get up to speed on the foundations for approving more easily than using the administrative dossier. He stated that Planning Commissioner can now vote based on the real merits of this request with only benefits for him, for the environment, for residents, and for the future of North Oaks with good precedent on environmental management. His request is for a very minor correction of the map that showed Lot 1 as served by sewer during the comprehensive plan internal build that was erroneously changed at the last minute when the other lots of the Nord parcel were changed from to-be-served to not-served. Most and foremost, he hopes they will show some care for the interest of their constituents in full compliance with rules, regulations and ordinances as they have been elected to do. He stated that we all know this should have been a simple and easy process with common-sense approval, saving time and dollars, with everyone satisfied and no negative impact whatsoever for anybody. He stated he will ask further questions later when the item is being discussed.

APPROVAL OF AGENDA

Commissioner Asch asked to amend the agenda to strike the language on 7c and replace it with: “The Planning Commission is not being asked to re-hear the application or conduct new proceedings; the Planning Commission is being asked to identify the details and evidence that supports the Planning Commission motion recommending denial and identify/clarify the city ordinances and state statutes applicable to the application.” Commissioner Cremons objected to the change, stating that they prepared based on the agenda they received, and to significantly change the agenda now seems unreasonable to him. Commissioner Wiens seconded Asch’s suggested amendment because the Commission had made a decision on this item already and what the City Council asked them to do was to provide reasons for their decisions, not to reconsider it. City Attorney Thomson clarified that this would not be an actual change to the agenda, it is a change to how they might be approaching the agenda item, which could be handled when the item comes up. Commissioners Sandell and Yoshimura-Rank said they would like to keep the agenda as-is. Commissioner Asch stated he believes it was inappropriate for the agenda to be worded in such a way that makes it sound like they are reconsidering a decision that had been made and acted on. It violates Robert’s Rules for reconsideration, and the lack of notice for a move to rescind makes it moot. He thinks they need to do what the City Council asked, which is further explain themselves.

MOTION by Asch, seconded by Wiens, to change the wording of 7c to reflect the word-for-word directive from City Council. Motion failed 3-4.

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

APPROVAL OF PREVIOUS MONTH'S MINUTES

a. Approval of May 26, 2022 Planning Commission Meeting Minutes

MOTION by Yoshimura-Rank, seconded by Wiens, to approve the minutes of the May 26, 2022 meeting. Motion carried by roll call vote. Cremons and Sandell abstained due to not being present.

BUSINESS ACTION ITEMS

a. Public Hearing – Conditional Use Permit FOR A HOME LOCATED AT 16 SHERWOOD TRAIL IN EXCESS OF 35 FEET in height pursuant to City Code Section 151.050(D)(7). Discussion and possible action on application.

- Chair Azman called the public hearing to order at 7:17 p.m.
- City Planner Kendra Lindahl presented on the proposal. She noted that it is a vacant parcel being proposed for development. The Conditional Use Permit (CUP) is for a 40.5 foot building height where 35 is allowed. When the application originally was submitted, it appeared that a CUP was also required for grading, however in working with the applicant, they got revised materials and it meets the requirement. The home is designed as a look-out home, and it complies with the Conditional Use standards for height as outlined in the staff report. The CUP has specific standards that require that the front building elevation not exceed 35 feet, and none of the building elevations exceeds 45 feet. The site is suitable for a lookout. Test pits were dug and groundwater was not found. The home is two stories with a basement, and the side and rear setbacks increased from 30 to 41 feet. Staff concluded that the conditions have been met for a CUP. They recommend approval.
- The applicants Brad Holschuh stated that they placed the house to be as minimally impactful to the property as possible, moving it to a natural clearing. The closest setback to any property line is approximately 75 feet. Even with the CUP request, they are still 35 feet to the closest property line. They also chose a lookout basement on the property which minimizes the grading requirements and preserves larger than necessary setbacks. They are hopeful that the Commission will review it favorably, and they are excited about living on the property.
- Commissioner Asch asked staff if the pits that were dug were in times of normal precipitation or low precipitation, and how confident they are in the pits. City Engineer Tim Korby stated he believes they were done in June, and he believes it was during normal or wet times of precipitation. Jennifer Otto stated she does not remember the

exact date. She noted that these were not just borings, but were large test pits where they went about 5 feet below the proposed basement floor elevation. The pits were open for quite some time and in all of the pits that were dug, there was no indication of water. City Engineer Korby stated he was satisfied with this.

- Commissioner Asch asked the homeowner if they are having an unfinished basement, why do they care about the view? Holschuh stated that the basement will be fully finished. Commissioner Asch stated that if it is fully finished, then it will be a three-story house. Commissioner Cremons noted that it is very common in this neighborhood to have a two-story house with a walkout or finished basement. Chair Azman asked Commissioner Asch for a citation of the ordinance language on this. Jennifer Otto stated that the standard ordinance states “two stories plus a basement with no more than 50% allowable exposed”. They are coming for the CUP because with a lookout, they are exposing more of the rear yard as the topography of the land drops off.
- Chair Azman asked if Ms. Otto has any comment on the slope issue. He did not see any other issues with this application other than just confirming the slope. Ms. Otto stated she did not. They have learned a lot from their past CUPs and they are very mindful of where they place the homes, setting them up against the natural contours of the land. They are very mindful of the trees they are moving to place the home and septic.
- Councilor Hara stated that the front northeast corner of the house is at 920, the back southeast corner is 914, so that is 6 foot of slope that is consistent with a lookout.
- Commissioner Yoshimura-Rank stated that she appreciates the applicant being mindful of the trees and their efforts to locate their home in such a way that is minimally-impactful.
- Commissioner Asch stated that he was reading from the staff report: “Buildings shall be limited to a basement and two-full stories. Finished areas within the roof structure will be considered a full story”. If the basement is finished, would it not be three stories? Chair Azman stated they have not been applying the ordinance in this way. Commissioner Cremons stated they had three Sherwood properties that they reviewed earlier in the year and they worked very hard to make sure everything was compliant. They developed a policy on slope and the ordinance was very carefully studied. The houses were designed to comply. He believes Commissioner Asch’s interpretation is incorrect because it is inconsistent with the way the operated in the past.

MOTION by Sandell, seconded by Yoshimura-Rank, to open the public hearing at 7:31 p.m. Motion carried unanimously by roll call vote.

- Jennifer Otto added some clarification to the question about the ordinance regarding stories. She understands the statement “a basement and two full stories and any finished living space within the roof structure” to mean that if someone finished the space under a roof, say an attic, that this would become another full story.

MOTION by Yoshimura-Rank, seconded by Cremons, to close the public hearing at 7:35 p.m.

MOTION by Yoshimura-Rank to approve the CUP for 16 Sherwood Trail, subject to conditions put forth by staff, seconded by Cremons. Motion carried 6-1 by roll-call vote.

- Chair Azman noted that the Planning Commission has made a recommendation for approval, and that the application will go for final review to the City Council at their July 14, 2022 meeting.

- b. Public Hearing – Conditional Use Permit FOR A HOME LOCATED AT 38 CATBIRD LANE IN EXCESS OF 35 FEET in height pursuant to City Code Section 151.050(D)(7) and LAND RECLAMATION CUT/FILLING ACTIVITIES IN EXCESS OF 100 CUBIC YARDS pursuant to City Code Section 151.027. Discussion and possible action on application.**
 - City Planner Kendra Lindahl stated that the lot is currently vacant. The application is for a CUP for a building height of 42 feet 11 inches where 35 feet is allowed. The application shows grading 1,559 cubic yards where more the 100 cubic yards requires a CUP. However, staff believe this number is not accurate because it includes all grading, but code exempts the area within 25 feet of the home, parking pad and driveway from calculation. They have asked the applicant for updated information, but they have not yet received it. There were also two letters of support received and entered in to the record.
 - Staff believe that the building does comply with the criteria for building height and the standards have been met. Although they have not yet received an updated number for the grading, in looking at the materials they believe it is going to comply and the conditions will be met.
 - Commissioner Cremons asked if there have been any soil borings or test pits to test for ground water. City Engineer Tim Korby stated that the prior property was in a different development where there are more wetlands and thus a greater need to test for groundwater. In the development where this lot is located, he is not as worried about groundwater.
 - Chair Azman noted that the home seems to fit with the natural contours of the land.
 - Commissioner Cremons stated that it would be difficult to approve the CUP tonight without the correct number on the grading, but it seems unfair to delay the decision a month if the information is readily available. Could the Commission have a short one-topic meeting in the next few weeks once they have updated information?
 - Steve Kothman from Hendel Homes shared that there is a 3.5 foot downward slope from the height of the street to the base of the home. They have pushed the house down as low as they can because there is an 8% driveway and it becomes a safety issue of driving a car in. He learned tonight that area within 25 feet of the home, parking pad and driveway is exempt from the dirt calculation. He is planning a three-day backfill on this job, and on the second day he is meeting the boulder wall company on site to talk about the shelves they are creating so they can have the walkout and also determine how much dirt they import or export out. He will have a better handle on that at that time. At this point, he does not know how much they will be importing or exporting. He thinks they will be

importing, but he does not know that. They used Rudd and Sons to survey the property. They gave him their best guess, but he did not want to certify those numbers. Their best guess was what they submitted. He is hopeful they can move forward with the CUP on house height and then circle back on the dirt import/export at a later date. Chair Azman stated he thought that would be fine. City Administrator Kress agreed and stated they are two separate CUPs that can be approved, denied or extended separately. City Engineer Tim Korby noted that this should be a fairly simple calculation that the surveyor could make to provide the number. Chair Azman suggested that if the final number is out of compliance they could come back in July for the CUP.

- City Engineer Morast stated that he did a quick trace of the site plan with the 25-foot offset, and most of the grading contours are within the offset, so the surveyor should be able to make the calculation quickly. By his estimate, it does not look like it will be more than 100 because there is not much grading outside of the 25 foot perimeter.

MOTION by Yoshimura-Rank, seconded by Sandell, to open the public hearing at 7:57 p.m. Motion approved unanimously by roll call vote.

- There were no comments in the chamber or via zoom, but there were a couple emails received by the city that will be included in the record.

MOTION by Cremons, seconded by Sandell, to close the public hearing at 7:58 p.m.

MOTION by Asch, seconded by Wiens to consider the CUP applications for height and grading separately. Motion carried unanimously by roll-call.

- City Planner Kendra Lindahl noted that condition number five in their recommendation states that soil borings need to be performed, but they do not believe this to be so, so it could be removed from the motion if they wish. If they wish to approve the CUP for height, they could make a note in the approval that no CUP is approved for grading to exceed 100 cubic yards and the applicant must provide facts to confirm compliance with that part of the code.

MOTION by Yoshimura-Rank, seconded by Cremons to approve the CUP for height for 38 Catbird Lane with staff recommendations, minus staff recommendation number five. Motion carried unanimously by roll-call. Commissioner Asch abstained.

- Chair Azman noted that the Planning Commission has made a recommendation for approval, and that the application will go for final review to the City Council at their July 14, 2022 meeting.

MOTION by Asch, seconded by Cremons to table the CUP for grading until the next Planning Commission meeting in July, with instructions to the applicant to get new soil calculations to the city. Motion carried unanimously by roll-call.

- Commissioner Cremons asked if the Commission would be open to having an earlier meeting if the information can be provided earlier. Chair Azman and others agreed.

Continued discussion on amendment request for the Cities 2040 Comprehensive Plan maps, and verbiage for potential sewer extension to lots located in the Sherwood Trail (Nord subdivision), pursuant to State Statute 462.355

- Chair Azman stated that the cities comprehensive plan is an expression of the city's vision for the future and a strategic map to reach that vision. It is an important tool to guide future development of land and to ensure a safe, pleasant and economical environment for community stakeholders. Planning helps us in a number of areas, including preserving natural resources, land and other areas, creating opportunity for residents, identifying issues and staying ahead of trends, ensuring growth that makes the community better, not just bigger. We foster sustainable economic development, we provide an opportunity to consider future implications of today's decisions, we protect property rights and values and we enable other public and private agencies to plan their activities in harmony with our plans. Cities have very broad discretion in land use planning and regulation, including the adoption of a comprehensive plan, which the courts tell us is legislative in nature. Chair Azman said that an issue that has troubled him with Mr. Lepoutre's application is the appropriate standard of analysis that the Planning Commission should apply when reviewing his request to amend the comprehensive plan. In 2019, the City Council repealed certain city ordinances governing the Planning Commission. In that process, an ordinance in section 150.078 was also repealed that addressed the Commission's process for amendments of the comprehensive plan. That statute stated that the Commission may, from time to time, amend the plan "whenever changed conditions or further studies by the Commission indicate that the amendment or addition is necessary. However, that guidance is no longer available to them due to its repeal. However, it is informative. He believes the intent of that repeal was to reorganize and reconstitute the Planning Commission, not alter its lawful planning duties. Since the repeal included the city ordinances addressing planning, preparing a comprehensive plan, procedures for the effectuation of the plan, zoning, plats and amendments, he believes the repeal of that amendment provision was probably inadvertent. For that reason, he believes it provides guidance. However, the courts have already provided guidance to the Planning Commission and to cities on the standards to apply, which is the standard he is advocating tonight. The courts tell us that a city's decisions regarding amendments to the comprehensive plan are legislative in nature and entitled to broad discretions. The city's decision must be legally sufficient and factually supported in the record. There must be a rational basis for their decision. Within the concept of a rational basis, a factor can include the concepts of the former ordinance addressing amendments in light of changed conditions. He also notes the Met Council has identified several examples of when a city might consider amending its plan. Those factors could be changes resulting from neighborhood or small area planning activities, land use changes, proposed forecast

changes, text changes to revise a policy, routine updates to incorporate new information. Against this backdrop, the Commission is presented with the following instructions from the City Council: the Planning Commission is not being asked to re-hear the application or conduct new proceedings. The Planning Commission is being asked to identify the details and the evidence that supports the Commission's motion recommending denial, and identify and clarify city ordinances and state statutes that are applicable to the application. The staff report identifies the state statutes that are applicable to the procedure governing how we process the application, and he believe he followed those. His comments address the legal standards they apply making the decision on the amendment request. The city does not have a practice or policy of not amending the comprehensive plan. Cities need to be nimble and respond to further studies, changes in policy, changes in conditions or other factors that may prompt review of a city's vision and strategy within its comp plan. Prudent planning dictates against such a policy and for good reason. We need to make a rational decision based on the facts. In speaking with City Attorney Thomsen, he indicated it would be highly irregular for a city to have a policy against amending the comp plan. Finally, he urged Council Member Watson to send this item back to the Planning Commission because he was concerned that they applied the wrong standard of analysis at the May 26th meeting. The issue is really whether their decision is legally sufficient and factually supported. Is it rationally based? Also, the Planning Commission needs to clarify and state with specificity the reasons for its decision.

- Commissioner Cremons stated he intends to make a motion to rescind the prior action and reconsider what happened at the prior meeting. In order for that to be fairly committed, he wanted to share what he observed at the last meeting, and ask staff some questions. He wanted to know if it is certain that connection to the pipe on Lot 1 will involve digging on Rapp Farm. City Engineer Korby stated there would be no earth excavation outside of the applicant's property. However, at the manhole that the company connected to in Rapp Farm, the pipe comes into the middle of the manhole so it would need to be reconstructed. This would be a 10-15 foot area around the manhole in the cul de sac that would need to be dug up. No construction would occur in anyone's yard except Mr. Lepoutre's, and the appearance would be the same after work is complete.
- Commissioner Cremons asked if it would be an issue if the the sewer line had to go through the 70-foot wetland setback. City Engineer Korby stated that lines are put through wetland areas all the time, and he would need to do temporary wetland mitigation if they were to run through it. However, he believes the line would not run through a wetland. Mr. Lepoutre has already agreed to pay for any remediation needed.
- Commissioner Cremons asked if it was correct if there was a 1000 foot line that would have to be dug up and trenched across the lots. Korby said no, and that he would require would Mr. Lepoutre to extend the two-inch force main across his property to Lot 2. This could be done using directional boring rather than digging a big trench.
- Commissioner Cremons asked whether these two homes would overstrain the capacity of Rapp Farm. City Engineer Korby investigated this and according to White Bear

Township which services the area, not only does it have capacity for two homes, but it was actually designed and built to take in a portion of Lino Lakes.

- Commissioner Cremons noted that there was concern about cascading requests from other properties, however the Commission just approved a home in proximity to the lots that is designed for septic, suggesting that the cascading effect does not seem to be happening.
- Councilor Hara noted that the utilities in the area were paid for by the residents of Rapp Farm, and they pay to maintain them, so there is some concern of adding other people who did not pay the initial costs for the system. Commissioner Cremons asked if a maintenance assessment for that system would be a part of Mr. Lepoutre's obligations. City Administrator Kress said yes, any time you make a connection to a system, there is a Sewer Access Charge or Water Access Charge depending on what the utility is to cover the cost of buying into the system.
- Commissioner Cremons stated that it has been suggested that the two lots owned by Mr. Lepoutre were created by the North Oaks Company to sell, that they didn't exist before and they were taken from the city. However, he stated this is false. There are two lots called the orphan lots. One is a small piece south of Lot 2 referred to as B292, which in 1974 was created because the road went through the middle of an existing lot. The property to the north of that road became B292. V284 is a parcel that impacts Lot 2, as well as 3,4,5,6, and 7. If there is a problem with the properties related to the orphan lots, there are other homeowners that will be affected. This property was not taken, they were pieces of land leftover from the platting of the properties. He has confirmation from the surveyor on this. Councilor Hara stated that in the PUD future trail map, there shows a trail going through Mr. Lepoutre's lots. He was on the Planning Commission when it was brought up by staff and by the Company that this "must have been a mistake" by the people that did the 1999 PUD. However, he believes a lot of time was spent on the PUD by thoughtful people, and to have such specific pieces carved out with a trail seems like it was intentional. He believes that the city did not get a fair deal.
- Commissioner Asch stated that the reason the application was rejected was because the applicant did not qualify under the PDA to make the request. He is not a subdivider. The only person who has grounds to ask where sewer goes in the PDA is the subdivider, the North Oaks Company. However, the North Oaks Company told the City Council that they did not want to use sewer in Nord, which is now Sherwood. Commissioner Asch also voted against it because he did not want to move the MUSA line. Finally, he thought the decision had already been made by the subdivider where they wanted sewer and it did not include these lots.
- Commissioner Cremons stated that the advice from City Attorney Thomson is that Mr. Lepoutre qualifies as a subdivider. Chair Azman stated that he does not think it matters from a standing analysis whether Mr. Lepoutre qualifies as a subdivider. The Company is the subdivider, but he thinks that is irrelevant because Mr. Lepoutre has the right to ask his government to amend the comprehensive plan. Mr. Thomsen stated it is true that the subdivider has the right to make a request. But, the subdivider no longer holds the property, and the property owner does have standing to make the request.

- Commissioner Yoshimura-Rank stated that at the last meeting, she was going to request to have the item tabled, but the vote was taken before she could express that. She felt blindsided when they were voting, and she said no at the time because she felt they did not have the facts. She feels it was irresponsible to jump at a vote when so much of the information presented was heresy. She asked at the end of the last meeting whether she could change her vote because she felt she should have probably abstained. She would like to see the whole discussion and vote revisited.
- Councilor Watson stated that he was concerned when the matter came to Council that the printed report did not include all of the information in an outlined fashion of findings of fact. He believes when a matter has been discussed the record must completely reflect the discussion. He and Chair Azman had a conversation and they discussed references to ordinance and the fact that a provision that lays out how to amend a comprehensive plan was removed when the land use ordinance was amended. He believes this must be cleared up. He is adamant that the record has to be complete with findings for any decision the Planning Commission recommends.
- Chair Azman's recollection was that there was significant discussion about what the North Oaks Company had done as the subdivider. The Company as the subdivider may utilize sewer. Here, the Company submitted a concept plan for Nord that did not have centralized sewer. In February of 2020, the Company submitted a formalized application to subdivide Nord. In that application, those sites were to be serviced by individual septic systems, not sewer, despite the fact they knew that the pipes were present. The Nord site was the subject of discussion at a lot of Planning Commission meetings. Ultimately, the Planning Commission voted to approve the preliminary plan for Nord on June 9, 2020, which included septic systems for each of those lots. This was subsequently approved by the City Council, and the final application was approved on December 17, 2020. Each one of those applications included septic. City Engineers have not given their opinions that Lots 1 and 2 could not be serviced without any detrimental effect to the environment, nor has the applicant provided any engineering opinions indicating that a septic system is not capable of safely operating on Lots 1 and 2. The 2040 Comprehensive Plan includes Maps 16 and 17, which were approved in January 2022. Those provide that the Nord development is serviced by on-site septic. He is not seeing any factors to change a comprehensive plan for two individual lots. There are no safety issues that have been presented, there is no evidence that there are not detrimental effects to the lots or the neighborhood, and there is no evidence that a sewer will avert any environmental consequences to the site.
- Commissioner Asch raised a Point of Order on that the majority required to pass the Cremmons' motion without proper notice was 2/3.
- City Attorney Thomsen said (1:52:19) Roberts Rules of Order says without prior notice a motion to rescind requires a 2/3 vote to pass. The motion is in order. If the PC has not adopted its own rules and the City has adopted RRO, by default RRO applies.
- He agreed to reconsider the question after the vote.
- Chair Azman stated assuming Robert's Rules applies, there is not a 2/3 majority vote, and if it requires that there be notice at the prior meeting or in the call, then the motion fails.

He believes the comments provided in his narrative were the items discussed at the last meeting, and those provided a basis for the decision making.

- City Attorney Thomsen agreed, stating that having reviewed the section that Councilor Watson referenced, he does not believe that proper notice was given and therefore Robert's Rules requires a 2/3 majority vote.
- Chair Azman stated that the motion failed. The comments that he made in his narrative were the factors in bullet form that provided the basis for the Commission's vote at the May 26th meeting. Commissioner Asch added that they also did not want to move the MUSA line, meaning they did not want to amend the maps because they thought amending the maps would provide an opportunity for the Metropolitan Council to revisit the requirements for density within the area.
- City Attorney Thomson stated Chair Azman did an excellent job summarizing his reasons for the basis for the Planning Commission's recommendation for denial. That said, if there are other Commissioners that have other reasons, it would not hurt for them to articulate them so they can be included in the findings. These will be put before the City Council and then it is up to the City Council as to whether they agree with all or some of those reasons.
- Councilor Watson stated that the 120 days on this matter does not expire until August 26th. Mr. Perry's letter was received on July 10th at 5 p.m. in the afternoon and the Council meeting was started two hours later. He has another document to share tonight. Perhaps the Commission needs to consider continuing this matter until they review all of the documents, work on getting their document in the final form and act on it when they meet again in July. Or they can send it back to the Council and say they can't answer the question.
- City Attorney Thomsen suggested that if Mr. Perry submitted something else in writing tonight, make it part of the record and move this on to the Council with their recommendation. If something in the letter needs to be addressed, Council will have the opportunity to address it themselves and can supplement whatever findings or statements the Commission makes tonight. There also were statements in the staff report that would support a recommendation for denial. He has not compared them to everything that was said, but he will review them and include them as a basis for denial to the extent that they weren't already included in comments from the meeting. Chair Azman stated that Mr. Perry's supplemental memo should also be delivered to the City Council as part of their record.

MOTION by Cremons, seconded by Yoshimura-Rank to rescind the Commission's recommendation from May 26, 2022 with respect to the Lepoutre application seeking an amendment to the 2040 Comprehensive Plan and reconsider the application in its entirety. The vote was 4 in favor and 3 against. Motion failed.

- Mr. Jack Perry from Taft Law Firm spoke on behalf of his client Mr. Lepoutre. He suggested a possible solution to the question about proper notice would be to grant his client an extension in order to make proper notice of the motion and revisit the issue at

the next Planning Commission Meeting. As it relates to the question of whether the applicant can speak on a motion or a matter that has been sent back, he noted that there are two problems with what the City Council did: first, City Councils and superior bodies often remand things. In these situations, they can give direction to what they want. However, this body is different than the City Council. The Planning Commission makes recommendations independent of the City Council. He has never heard of a City Council saying they do not want a Planning Commission to do anything other than justify their result. Otherwise, they are not independent. Second, you cannot change or add to the record. If the City Council is asking what were the reasons for the decision, then the item must be fully reconsidered. There is an entirely new packet in front of the Commission tonight. To the extent that this body wants to look at the new staff report and rely upon it, then he believes the applicant must, under due process, get a chance to respond to it. On the other hand, if this body does not want to look at new evidence, then they should just articulate their rationale based on the record they had back in May. As it relates to the reasons in the record, they have already put forth their response to the City Council, and he believes that the City Council sent it back because it was clear that the reasons were inadequate as a matter of law and would result in a lawsuit.

COMMISSIONER REPORTS

- No reports

NEXT MEETING

The next regular Planning Commission meeting will be Thursday, July 28, 2022 at 7:00 p.m.

ADJOURN

MOTION by Asch, seconded by Ostlund, to adjourn the meeting. Motion carried unanimously by roll call. Meeting ended at 9:25 p.m.

Kevin Kress

Kevin Kress, City Administrator

Mark Azman

Mark Azman, Chair

Date approved 3-9-2023