

**CITY OF SHOREVIEW  
MINUTES  
REGULAR CITY COUNCIL MEETING  
November 17, 2014**

**CALL TO ORDER**

Mayor Martin called the regular meeting of the Shoreview City Council to order at 7:00 p.m. on November 17, 2014.

**PLEDGE OF ALLEGIANCE**

The meeting opened with the Pledge of Allegiance.

**ROLL CALL**

The following members were present: Mayor Martin; Councilmembers Quigley, Wickstrom and Withhart.

Councilmember Johnson was absent.

**APPROVAL OF AGENDA**

MOTION: by Councilmember Wickstrom, seconded by Councilmember Quigley to approve the November 17, 2014 agenda as submitted.

VOTE:                   Ayes - 4                   Nays - 0

**PROCLAMATIONS AND RECOGNITIONS**

Mayor Martin welcomed members of Boy Scout Troop 9626.

**CITIZEN COMMENTS**

There were none.

**COUNCIL COMMENTS**

**Councilmember Wickstrom:**

The Northern Lights Variety Band Holiday Concert will be held Saturday, December 13, 2014. Carriage rides from the parking lot to Benson Great Hall will be available. Tickets purchased at City Hall ahead of time are at a discount. The concert begins at 7:00 p.m.

**Councilmember Withhart:**

With legislative help, the City has been able to receive funding from MnDOT for the expansion of the portion of I-694 through Shoreview. On Thursday, December 4, MnDOT will hold an

informational meeting on the project at City Hall from 4:30 to 6:30 p.m. Anyone interested is welcome to attend. Construction is planned for 2016.

The Shoreview Community Foundation will host an Evening with Friends Dinner on Thursday, December 4, 2014, at the Community Center at 5:30 p.m. A complimentary meal will be served with music from the Classical Sounds Trio. An original play will be performed by the Lakeshore Players called *A Stroll through Shoreview's Colorful History*. It is a fundraiser so donations are requested. All are welcome to attend.

**Councilmember Quigley:**

The Volunteer Recognition Dinner last week was very successful. He would encourage anyone who has interest in serving on a City committee or commission to get involved.

**Mayor Martin:**

On Thursday, November 20, the outdoor Lighting Ceremony will be held at the Community Center. Turtle Lake School's choir is coming to sing carols. Refreshments will be served inside.

The Citizen of the Year was announced at the Volunteer Recognition Dinner. George Robinson, who has been very involved in Gallery 96, received the award this year.

**CONSENT AGENDA**

Mayor Martin noted that revised November 3, 2014 City Council Meeting Minutes were distributed with a few small corrections.

**MOTION:** by Councilmember Wickstrom, seconded by Councilmember Quigley to adopt the Consent Agenda for November 17, 2014, and all relevant resolutions for item No. 1, and items No. 3-10:

1. November 3, 2014 City Council Meeting Minutes, as corrected
3. Receipt of Committee/Commission Minutes:
  - Public Safety Committee, September 18, 2014
  - Planning Commission, October 28, 2014
4. Monthly Reports:
  - Administration
  - Community Development
  - Finance
  - Public Works
  - Park and Recreation
5. Verified Claims in the Amount of \$1,017,101.86
6. Purchases
7. License Applications
8. Approve Plans and Specifications and Order Taking of Bids for Sanitary Sewer Improvements--Highway 96 Lift Station, CP 14-07
9. Developer Escrow Reduction

10. Adoption of Administrative Penalties for Tobacco Violations--Cameron Dahl, Exxon of Shoreview and Shoreview BP

VOTE:                   Ayes - 4                   Nays - 0

MOTION:    by Councilmember Withhart, seconded by Councilmember Wickstrom to approve item No. 2, November 10, 2014 City Council Canvass Minutes.

VOTE:                   Ayes - 3                   Nays – 0                   Abstain – 1 (Withhart)

**PUBLIC HEARING**

**PRELIMINARY PLAT--5515 TURTLE LAKE ROAD, TOM AND BARB NOVOTNY**

**Presentation by City Planner Kathleen Castle**

The City Council is holding this public hearing due to an error in the publication notice for the Planning Commission.

The application is to subdivide property at 5515 Turtle Lake Road to create two new lots for development of detached single family homes and to enlarge the existing lot at 5525 Turtle Lake Road with a boundary line adjustment. The property consists of 6.22 acres with a lot width on Turtle Lake Road of 440 feet. It is developed with a single family home. There is wetland on the north and west side of the property. Surrounding land uses are residential and public to the south in North Oaks. No variances are needed for the development of Lots 1 and 2.

The property is zoned R1, Detached Residential District. It is required that municipal water and sewer be provided to the two new lots. Connections for both lots are stubbed at the front lot line. Drainage and utility easements are required along lot lines and over wetlands and wetland buffer areas. The new parcels must front on a public street.

The property is in Policy Development Area (PDA) 4 identified in the Comprehensive Plan as Turtle Lake Road Neighborhood. PDA 4 consists of approximately 30 acres and is guided for future development that is integrated, not developed piecemeal.

The plat creates four single family lots. Lots 1 and 2 will be new lots. All lots conform to City requirements for the R-1 District with sufficient buildable area. Lot 3 will be joined to the property at 5525 Turtle Lake Road to create a larger parcel. Lot 4 is developed with the property owner's home. The lots exceed lot requirements for the R-1 District. The applicants have demonstrated how this subdivision will not impede cohesive future development in the area.

Storm water and impacts to trees will be evaluated at the time of building permit applications. The historic drainage pattern will remain. Any removal of landmark trees will require replacement at a ratio of 2 to 1. The Rice Creek Watershed District is currently reviewing the wetland delineations. A 16.5 wetland buffer is required by City Code. No wetland impacts are expected with development.

Property owners within 350 feet were notified of the proposal. No written responses were received. Two telephone calls were received. One expressed concern about the potential for storm water issues with the future subdivision of Lot 4. The Planning Commission reviewed the application and voted 6 to 0 to recommend approval.

Councilmember Wickstrom stated that the proposed new home furthest east will be located on a curve. She requested a condition for that driveway be located as far west as possible so as not to be on a curve. Also, it would be good to have a turn-around area and not have to back onto Turtle Lake Road. Ms. Castle responded that City Code does not have a requirement regarding driveways on a curve, but that does make sense to consider.

City Attorney Kelly stated that proper notice was published and sent to surrounding homeowners.

Mayor Martin opened the public hearing. There were no comments or questions.

**MOTION:** by Councilmember Quigley, seconded by Councilmember Wickstrom to close the public hearing at 7:20 p.m.

**VOTE:** Ayes - 4 Nays - 0

**Mr. Bob Moser**, Developer, stated that he is receptive to locating the driveway of Lot 1 as far west as possible. Due to the width of the lot, he is not sure a turn-around will be possible.

**MOTION:** by Councilmember Wickstrom, seconded by Councilmember Quigley to approve the preliminary plat application submitted by Moser Homes, Inc. to subdivide the property at 5515 Turtle Lake Road, subject to the following six conditions and an additional condition to place the driveway of Lot 1 as far west as possible, and subject to the two findings in the motion:

1. The approval permits the development of a detached residential subdivision providing 4 parcels, two lots with existing detached residences and two lots for single family residential development.
2. A public use dedication fee shall be submitted as required by ordinance prior to release of the final plat by the City. Credit shall be given for the two existing dwellings.
3. The final plat shall include drainage and utility easements along the property lines and wetland areas, including a 16.5 foot wetland buffer. Drainage and utility easements along the front and rear lot lines shall be 10 feet wide and along the side lot lines these easements shall be 5 feet wide, and as otherwise required by the Public Works Director.
4. Tree Preservation and Replanting plan shall be submitted with each building permit application for Lots 1 and 2. Replacement trees shall be planted in accordance with the City's Woodlands and Vegetation Ordinance.
5. Grading, Drainage and Erosion Control shall be submitted with each building permit application for Lots 1 and 2.

6. The applicant is required to enter into a Site Development Agreement and Erosion Control Agreement with the City. Said agreements shall be executed prior to the issuance of any permits for this project.
7. Driveway be moved as far west as possible on the eastern lot.

This approval is based on the following findings:

1. The subdivision is consistent with the policies of the Comprehensive Plan and in compliance with the regulations of the Development Code.
2. The proposed lots conform to the adopted City standards for the R-1 District.

ROLL CALL:           Ayes: Quigley, Wickstrom, Withhart, Martin  
                               Nays: None

## **GENERAL BUSINESS**

### **APPEAL OF PLANNING COMMISSION ACTION VARIANCE--1648 LOIS DRIVE, MIKE MORSE**

#### **Presentation by City Planner Kathleen Castle**

Mr. Morse is appealing the Planning Commission's denial of a variance to reduce the required 5-foot side yard setback to 2.3 feet for a detached garage and concrete slab. The original garage from 1965 has been taken down. The City's Development Code sets the maximum accessory structure area allowed as 750 square feet or 75% of the dwelling unit foundation area in Detached Residential, R-1 Districts. Minimum setback requirements are 5 feet from a side lot line and 10 feet from a rear lot line. The maximum height permitted is 15 feet, or the height of the home.

Lawful nonconforming structures may not be rebuilt if the nonconformity is discontinued for more than one year. Any expansion of a lawful nonconforming structure must comply with current code. Any new structure must comply with current code. City records show that a building permit for the original garage on this property was approved with dimensions of 18 feet by 20 feet and a 6-foot setback from the side property line. Since the original garage has been removed, its exact location cannot be verified. The proposed new structure and slab is an expansion and must comply with Code requirements. The proposed detached garage is 22 feet by 26 feet, or 572 square feet. The existing concrete slab was put in without a building permit. The proposal also shows the concrete slab continuing behind the proposed new garage. The proposed garage size, height and setback from the rear yard are all in compliance. The variance needed is for a 2.3 foot setback from the side yard.

The Planning Commission considered the application at its October 28, 2014 meeting. Public testimony was heard. The discussion focused on the location of the original garage, drainage easement, existing slab location and proposed garage location and use of the slab. The Planning Commission denied the variance request on a 4 to 2 vote based on the determination that practical difficulty is not present.

The applicant is appealing the Planning Commission decision and states that practical difficulty does exist due to the location of the drainage ditch on the property, placement of the original garage, and the proposed garage utilizes the existing driveway.

Staff has reviewed the proposal. According to the Building Code, a portion of the structure that encroaches within 5 feet of the side property line must consist of one-hour fire rated construction. The concrete slab must also be in compliance, and a structural analysis will be required.

Staff finds that the application does not meet the criteria for granting a variance. Practical difficulty is not present. Secondly, the property can be used in a reasonable manner without the need for a variance. The drainage ditch and location of the slab do not create unique circumstances. The drainage ditch does not impede location of the garage, and it can be built in compliance with the required 5-foot setback. The existing slab location is a circumstance created by the property owner. Third, the proposed 2.3 foot setback would impact the neighborhood character and adjoining properties. Mitigation of the visual impact is not possible with landscaping. Storm water is a concern, although the applicant has indicated gutters will be installed. However, there is not enough room for maintenance on that side of the garage.

Property owners within 150 feet were notified of the appeal. The comments received include one in support who says that the drainage ditch does impact the placement of the garage. Others who oppose are concerned about the impact to the adjoining property both visually and in regard to storm water management.

Staff's recommendation is to uphold the Planning Commission's decision and deny the appeal. **Mr. Mike Morse**, Applicant, showed pictures of the placement of a gate attached to a fence on the property line. As seen, the gate is not 36 inches. A second photo shows the original garage at 3.3 feet from the property line and not 6 feet as was reported by staff. Mr. Morse stated that if he had bought the house yesterday and applied to build a garage, the process would have been easy. He believes he is being held to a different standard.

Planning Commissioner Ferrington stated that the variance was denied on a vote of 4 to 2. One reason is the inability to determine the location of the original garage. The 2 foot setback is too minimal and would impact the adjacent property. The Commission believes the circumstances have been created by the property owner. Two Commissioners supported the variance. One believes the decrease in size of the garage is sufficient. The other Commissioner believes the drainage ditch does impact the placement of the garage.

Mayor Martin opened the discussion to public comment. There were none.

Mayor Martin stated that an essential point is nonconforming uses that are legal and illegal. She requested the City Attorney to explain this issue to clear any confusion.

City Attorney Kelly stated that Minnesota Statute 462.357 (1) (e) addresses nonconforming uses and zoning ordinances. A nonconforming use is one that when it was constructed was legal

under code. An example would be a zoning change from multi-family to single family, which would mean a duplex that was legal would become nonconforming. A homeowner has the right to a continued legal nonconforming use with repairs, replacement or improvement, but the structure cannot be expanded. There are two ways that right is lost. One is if the nonconforming use is discontinued for more than one year. The second is if more than 50% of the structure is destroyed by fire or peril. Then it must be built within 180 days to continue the nonconforming use.

An illegal use is a structure that was not legal when it was built. Then there is no right for that continued illegal use. In 2012, the Minnesota Supreme Court reaffirmed in the City of North Oaks that an illegal use that has lasted over a long period of time does not allow the right to continue that use.

Councilmember Withhart stated that Mr. Morse is not being held to a different standard. He is being held to the same standard as all residents. This issue has caused great consternation in the neighborhood with illegal building. He supports the Planning Commission decision.

Mayor Martin stated that this is a new application and the issues of previous location or the location of the gate are not relevant. As a new application, it must rest on its own merits and whether or not less than a 5-foot setback meets the criteria for a variance. Mayor Martin stated that she does not believe those criteria are met.

Councilmember Quigley stated that the issue of granting a variance is confusing because of so many previous actions in the past with regard to this request for a garage. The market determined a price, the mitigation factor, for the presence of the ditch. He does not find any mitigating factors to grant a variance and agrees with the Planning Commission decision.

**Mr. Morse** stated that he has submitted numerous code violations that have not been addressed, as was done by his neighbor. The reason his house is in its location is because of the ditch.

Councilmember Wickstrom stated that it is difficult to look at this as a fresh application because so much has been done to the property. The slab was put in by the applicant without a permit. She is also concerned about the slab left in back of the garage that would become a dumping ground with no screening. The slab would not have been permitted, and she cannot support it.

Mayor Martin asked if there was any discussion about an expanded garage but keeping the 5-foot side setback. Ms. Castle stated that was not discussed at the last Planning Commission meeting.

**MOTION:** by Councilmember Withhart, seconded by Councilmember Quigley to uphold the Planning Commission's decision denying a variance to reduce the side setback from the minimum 5 feet required to 2.3 feet for a detached garage and parking area located at 1648 Lois Drive, based on the following findings of fact:

1. The request does not comply with the spirit and intent of the City's Development Code and Comprehensive Plan. The intent of the minimum 5-foot setback is to retain open space between properties and provide enough area for the structure's maintenance. The 2.3-foot

- setback proposed results in a loss of separation and open space between the Morse property and the adjacent property, and is insufficient to maintain the structure.
2. Reasonable Manner. The applicant can use his property in a reasonable manner as permitted by the Development Code. In accordance with the City's regulations, a two-car 576 square foot detached accessory structure can be constructed on the property at the required 5-foot setback.
  3. Unique Circumstances. Unique circumstances are not present. The necessity for the variances is due to the applicant's actions. The existing drainage easement on the east side of the property and location of the driveway are not unique circumstances and do not impede a structure located at the 5-foot side yard setback required from the west side lot line. No obstructions are present that create the need for the requested variance from the side property line. The structure can be set back 5 feet from the side lot line in accordance with the Development Code. The existing concrete slab represents a circumstance that was created by the property owner, and does not warrant approval of the variance request.
  4. Character of the Neighborhood. The proposed setback from the western side lot line does negatively impact the character of the neighborhood and adjoining properties. Visual mitigation is not feasible due to the encroachment on the minimum 5-foot side setback required, and limited space for landscaping, storm water management and building maintenance.

ROLL CALL:           Ayes: Wickstrom, Withhart, Quigley, Martin  
                           Nays: None

**APPROVAL OF 2015 CURBSIDE RECYCLING BUDGET, CITY RECYCLING FEE AND AUTHORIZE REQUEST OF SCORE FUNDING**

**Presentation by Public Works Director Mark Maloney**

The City has had a Joint Powers Agreement with Ramsey County to collect recycling fees since 1991. The Agreement includes residential curbside pickup of recyclables and Spring and Fall Cleanup Days. Annually, the City requests SCORE Grant funding that is available through the Joint Powers Agreement, to help defray costs associated with this collection service.

The proposed budget is as follows:

Revenue:	
Charges for Services	\$509,500
SCORE Grant	53,000
Other Local Governments	12,000
 Total Revenue	 \$574,500

The revenue from Cleanup Day needs to be added to this total, which would bring the total to \$592,000. Mr. Maloney pointed out the change that needs to be made to the budget worksheet to include this revenue. The resolution will be changed to reflect the total of \$592,000.

## Expenses:

Contract for curbside pickup	\$514,170
Personnel	27,617
All Other Expenses	2,500
 Total Expenses	 \$544,287

The fee is proposed to increase from \$45 per residential unit to \$46 per residential unit. The fees are based on covering costs and keeping a fund equity to cover the first six months of the year until the City receives its tax revenue from the County.

Cleanup Days are done in conjunction with Arden Hills. Since 2011, Cleanup Day participation has averaged two-thirds Shoreview residents and one-third Arden Hills residents.

Mayor Martin asked if consideration has been given to having Cleanup Day once a year instead of both spring and fall, which would be a cost savings. This was discussed briefly. Staff and other Councilmembers felt that although there would be a cost savings, this could again create long waiting lines.

Mr. Maloney noted that there was four times the tonnage for a spring event, but there was not four times the cost because the City is working with a different handler for e-waste.

Councilmember Wickstrom asked if there would be an increase in materials collected with a new contract and whether the Environmental Quality Committee (EQC) has made a proposal. Mr. Maloney responded that there is an interest by the EQC, and he believes that in the next year a new proposal will need to be considered.

Councilmember Wickstrom asked if it would be possible to purchase the containers so they do not have to be switched with contractors. Mr. Maloney stated that has not been discussed, but there would be issues with storage and inventory. Councilmember Wickstrom suggested the EQC discuss the pros and cons of this possibility.

Staff is recommending adoption of the recycling budget, recycling fee and authorization for the request for SCORE funding.

**MOTION:** by Councilmember Wickstrom, seconded by Councilmember Withhart to adopt resolution No. 14-102 approving the 2015 curbside recycling budget, City recycling fee, and authorizing request of SCORE funding allocation.

**ROLL CALL:** Ayes: Withhart, Quigley, Wickstrom, Martin  
Nays: None

**ADJOURNMENT**

MOTION: by Councilmember Withhart, seconded by Councilmember Wickstrom to adjourn the meeting at 8:17 p.m.

VOTE: Ayes - 5 Nays - 0

Mayor Martin declared the meeting adjourned.

THESE MINUTES APPROVED BY COUNCIL ON THE 1<sup>st</sup> DAY OF DECEMBER 2014.

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Terry Schwerm  
City Manager