

## 1. CALL TO ORDER/ROLL CALL

Chairman Lucking called the meeting to order at 7:00 p.m.

Members Present: Chairman Lucking and Commission members Douglas Reeder and Alternates Lisa Christian and Kristi Conrad

Absent: Commissioners John Beal and David Paeper

Others Present: Council Liaison Bill Cook, City Attorney Kelly and Zoning Administrator Gus Karpas.

Due to the absence of Commissioners Beal and Paeper, Alternates Christian and Conrad will be voting members of the Commission at tonight's meeting.

## 2. APPROVE AGENDA

Commissioner Reeder moved to accept the agenda for tonight's meeting. Commissioner Christian seconded the motion. Motion carried 4-0.

## 3. MINUTES OF September 19, 2012.

Commissioner Reeder moved to approve the minutes of September 19, 2012 as amended. Commissioner Conrad seconded the motion. Motion carried 3-0-1. Commissioner Christian abstained.

## 4. NEW BUSINESS

### **Discuss Feasibility Study for Potential Excelsior Boulevard Watermain Project**

City Attorney Kelly explained the process for special assessments for public improvements and the role of the Planning Commission and a planning body to determine if the proposed project is compatible with the Comprehensive Plan.

Zoning Coordinator Karpas said he attached the relevant sections of the Comprehensive Plan noting the plan does not specifically address municipal water since the city does not have its own system. He said because fact, the proposal is not inconsistent with the plan.

City Engineer Martini gave an overview of the feasibility study. He said the feasibility study is based on area of those who petitioned the city to have a water line placed in Excelsior Boulevard in conjunction with an upcoming Metropolitan Council sewer project. Mr. Martini said if the city were to install a water line, this would be the time to do it since a majority of the cost would be borne by the Met Council since they would already be opening up the road for their project and would install the pipe. He said the feasibility study looks at the cost of the project to run the pipe from Christmas Lake Road to the furthest property included on the petition. He said those properties that have expressed an interest would be charged an assessment for the installation of the pipe and provided a stub, but would not be charged for the stub until the property actually hooks up to the

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water system. The thought behind that is since the road is new; you don't want residents damaging the road to connect to the system at a later date.

Mr. Martini said the cities of Excelsior and Shorewood have discussed connecting their services at either end of Excelsior Boulevard. If this is done, the City of Greenwood has thought about adding stubs to all properties along the line for the same reason as mentioned above. He said in any scenario, the pipe would be owned and operated by the City of Excelsior.

Commissioner Conrad clarified the properties shown in orange in the study would already be served by water and would be charged for connections only. Mr. Martini said the existing system terminates to the west of these properties requiring long connections. These properties will have to be reconnected with more traditional stubs and it has been determined that they will not be charged for new stubs. Conrad asked if those opposed to the line have to pay an assessment. Mr. Martini said they will be responsible for the cost of the line, but not for the cost of a connection until they hook up to the system. He said if it extends through the entire city the cities of Excelsior and Shorewood should do some cost sharing. Conrad asked if there are homeowners and businesses opposed to the project. City Attorney Kelly said there hasn't been a public hearing held at this point. Conrad asked what could stop the project at this point. Kelly said the City Council is not obligated to approve the project, he said this project is resident driven and not a city initiative.

Commissioner Christian asked who initiated the process. City Attorney Kelly said a number of residents along Excelsior Boulevard.

Commissioner Reeder asked if an eight inch pipe would be sufficient to serve the system if connected to Shorewood. City Engineer Martini said the pipe would have to be enlarged to a twelve inch pipe. Reeder said the residents could not be assessed for the increased size. Martini agreed, but said the city could assess for the cost of the stubs. He said the assumption in assessing these projects is they reflect the increased value created for the properties receiving the service. The problem with this project is there are only properties on one side of the road which increases the cost per property.

City Attorney Kelly explained the assessment process and said the City Council has six months to act on the petition. Chairman Lucking asked if we'll know if there's an agreement between the cities of Excelsior and Shorewood before the public hearing. Kelly said he's not sure. Council Liaison Cook said they're going to have to make a decision soon because there's going to be a point where the Met Council is going to have to move ahead with the project whether or not there is an agreement between the cities.

Commissioner Conrad moved that Planning Commission inform the City Council it has reviewed the Feasibility Study for Potential Excelsior Boulevard Watermain Project and found that it is not in conflict with the city's Comprehensive Plan. Commissioner Reeder Seconded the motion. Motion carried 4-0.

## **5. PUBLIC HEARING**

**Chip Fischer, 5185 Greenwood Circle**, variance requests to remove an existing non-conforming single family home and construct a new single family home which would

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encroach into the minimum required front and east side yard setbacks and exceed the maximum permitted impervious surface and above grade structure volume. The applicant also proposes to remove and reconstruct an existing non-conforming lakeside accessory structure within the required lake and west side yard setback.

Section 1120:15 of the Zoning Ordinance requires a minimum front yard setback of thirty feet. The applicant proposes a front yard setback of four feet for the proposed single family home. The proposal requires a variance of twenty-six feet of the front yard setback.

Section 1120:15 of the Zoning Ordinance requires a minimum east side yard setback of fifteen feet. The applicant proposes an east side yard setback of six feet for the proposed single family home. The proposal requires a variance of nine feet east side yard setback.

Section 1120:15 of the Zoning Ordinance requires a minimum front yard setback of thirty feet. The applicant proposes a front yard setback of four feet for the proposed single family home. The proposal requires a variance of twenty-six feet of the front yard setback.

Section 1140.10 of the Zoning Ordinance does not permit the placement of an accessory building between the lakeshore and the side of the principal building nearest the lake.

Section 1176.04(3)(3) permits a maximum permitted impervious surface area of 30%. The applicant is seeking a variance to exceed the maximum permitted impervious surface area by 6.3%.

Section 1140.18(3) regulates the maximum permitted above grade structure volume based on lot area. Based on the applicant's lot area, the permitted structure volume for the property is 32,390 cubic feet. The applicant proposed a structure volume of 34,946 cubic feet. The applicant is seeking a variance to exceed the maximum permitted above grade structure volume by 2,556 cubic feet.

Chairman Lucking summarized the request and opened the public hearing.

Chip Fischer, 5185 Greenwood Circle, said after the last meeting they went back to the drawing board and designed a home with the comments of the Planning Commission in mind. He said they feel they're at the point where the house may be getting too small. He said the size of the house has been reduced to 2,400 square feet and with adjustments in the home cut the excess volume almost in half. He said the structure now complies with the required lake setback. He said they really tried to get something practical on the lot. He said there are a number of practical difficulties associated with the lot including the size of the lot which is less than fifty percent of the minimum required lot area, the fact the lot tapers down in size, the elevation of the lot drops fourteen feet from the street to the buildable area which prevents the structure from having a basement and requires the entire lower level to count as volume. He said there are a lot of practical difficulties on the lot that require variances to build anything on the lot. He said a home any smaller than what is being proposed would be economically unviable. He feels the proposed home is undersized for homes in the community and the smallest in the neighborhood. He said the intent of the ordinances is to maintain the character of the neighborhood, but in this case it forces the opposite by requiring a home

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to be built that is out of character of the neighborhood. He said he has spoken with all the neighbors in the neighborhood and they are supportive of the proposed impervious surface and volume. He said all they are trying to do is fit into the neighborhood.

Commissioner Conrad asked the applicants if they were happy with the structure they were proposing. Mr. Fischer said they had a discussion about the proposed structure and though they would prefer something bigger, they just want to see something approved. He said they wouldn't bring anything before the city if it weren't something they could live with.

City Attorney Kelly asked if the intent was to restore the existing boathouse. Mr. Fischer said it was.

Bill Cook, 5195 Greenwood Circle, said he is the neighbor west of the property. He has spoken with Mr. Fischer about this request and the previous request and was and is supportive of both requests. He feels either will be a great improvement to the neighborhood.

Commissioner Reeder asked about the differences, in terms of variance requests, between this request and the previous request. Zoning Coordinator Karpas said the applicant has increased the proposed front yard encroachment by one foot, a five foot setback to a four foot setback. The existing setback is two feet. The applicant no longer encroaches into the required lake yard setback. The current structure encroaches eleven feet into the lake yard setback. The applicant has reduced the request impervious variance request by .3% and the requested volume request by over 2,000 cubic feet.

Rehn Hassel, RA Architects, said the home was moved slightly closer to the road since it seemed less of a concern to the Planning Commission than the lake setback. He said the wider the home got, the further it gets pushed back.

Commissioner Reeder asked about the replacement of the boathouse. Zoning Coordinator Karpas said the request is the reconstruct it as is.

Commissioner Conrad feels the applicant has done a fantastic job reworking the project after listening to the concerns and feedback from the Planning Commission though she doesn't want people to build a house they don't want. She feels on this lot either volume of impervious surface has to be sacrificed; and she would rather see it be volume. She has no problem with the request as presented.

Commissioner Reeder wanted clarification on the ability to build the boathouse. City Attorney Kelly said the Shoreland Ordinance grandfathers existing lakeside structures as they are. Zoning Coordinator Karpas explained the State Statutes as they pertain to existing non-conforming structures and the protection they are afforded. Reeder said his only problem is with the boathouse and he has no issues with the proposed house.

Commissioner Christian has no concerns with the projects.

Chairman Lucking feels the applicant has done a marvelous job in redesigning the house. He doesn't have any issues with the proposed setbacks. He feels the ability to comply with the lake setback is astronomical. He has no issue with the proposed

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volume. He asked the City Attorney how to address the requests in a motion, if they should be individually or as one motion. City Attorney Kelly said they can be addressed individually in one motion.

Motion by Chairman Lucking to recommend the Council approve the variance requests by Chip Fischer to encroach twenty-six feet into the required thirty foot front yard setback and nine feet into the required fifteen foot east side yard setback. The size and dimensions of the lot create a practical difficulty in the reasonable development of the property and the proposed structure will maintain the essential character of the neighborhood. He recommends the Council approve the variance request to exceed the permitted above grade structure volume by 2,556 cubic feet. A practical difficulty existing in the extreme grade alterations on the property and the low lying nature of the lot placing it at the water table requiring the exposure of the entire lower level which counts more of the structure against the permitted volume. In addition the size of the lot creates a practical difficulty in that it is less than half the minimum lot area required for the zoning district. He recommends the Council approve the variance to exceed the maximum permitted impervious surface area by 6.3%. A practical difficulty exists in the size of the parcel and the proposal would not be out of character with the impervious on other lots in the area. He recommends the Council approve the variance to permit the reconstruction of an accessory structure between the lakeshore and the lake side of the principal structure which would encroach twelve feet, six inches into the required fifteen foot west side yard setback and forty-six feet into the required fifty foot lake yard setback. A practical difficulty exists in the condition of the structure and the need for additional storage on the property due to the inability to create storage within the principal structure. It is noted the structure is also grandfathered by the Shoreland Management Ordinance and its location and dimension are protected by State Statutes. Conrad seconded the motion.

Keith Stuessi, 5000 Meadville Street, believes the applicants have come up with a marvelous plan and believe the Planning Commission has worked with the applicant. He feels he represents a number of residents that live on small lots within the city. He feels the actions taken by the Planning Commission tonight are setting a dangerous precedence as these smaller properties turn over in ownership. He said the Commission needs to be clear on what the exact hardship was for this approval. He said without a clear hardship shown in the approval process there's a potential for massive discrimination in the process. He said he's been involved in two issues the last few years, taxes and assessed values. He said his property valuation has been increased based on the sale prices of nearby properties which had received variances. His argument is there's no guarantee he'll get similar variances and feels there should be some guidance to small property owners to what they can expect to build on their lots. He said the process needs to be transparent to owners of small lots.

Chairman Lucking noted that on this specific request all the existing non-conformities have been reduced. Mr. Stuessi said the reasoning for the approval need to be well documented.

City Attorney Kelly said what he hears Mr. Stuessi saying is he wants a set of standards for small lots. Kelly said that is a matter of politics and an issue that has to be addressed by the City Council. He said the decisions made the Planning Commission and Council are a matter of the practical difficulty standard set forth by the State Statute.

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Commissioner Reeder said there is no way a city can draft an ordinance to address the issues each individual lot may face.

Hearing no further public comment, the hearing was closed.

Chairman Lucking called the question on the motion to approve. Motion carried 4-0.

**LIAISON REPORT**

Council Liaison Cook said the Council received a report from the City Engineer about the reduction of phosphorus from the lake. He said the city's goal set by the MCWD was five pounds and the city has exceeded that by removing twenty-five pounds through annual street sweeping. He said the Council was addressed by the City Prosecutor who gave his annual report, that the Council held a public hearing on the delinquent sewer and recycling bills, approved the Precopio and Zygmunt variance requests, discussed removal of Buckthorn in the City and discussed a proposed LMCD Bow Fishing Ordinance.

**6. ADJOURN**

Motion by Commissioner Christian to adjourn the meeting. Commissioner Conrad seconded the motion. The meeting was adjourned at 8:10 p.m.

Respectively Submitted  
Gus Karpas - Zoning Administrator