

**WOODLAND  
CITY COUNCIL MINUTES  
Monday, November 13, 2006  
7:00 P.M.**

**CALL TO ORDER**

Mayor Stark called the meeting to order at 7:00 P.M.

**ROLL CALL**

Present: Mayor Jean Stark; Councilmembers Steve Hornig Jim Doak, Michael Jilek and Mark Evenstad.  
Staff: Police Chief Virgil Gustafson, City Attorney Joel Jamnik, Zoning Coordinator Gus Karpas and Clerk Shelley Souers  
Guests: George Barr, Dan Bartus, Sarah Henriksen, Mike Peters, Jim Andrews, Craig Kipp, Steve Moss, Gus Boller, Cliff Traff, Joy Fruen, Herb Suerth and Tom Newberry.

**CONSENT AGENDA**

**A. Council Minutes – October 9, 2006**

Councilmember Doak moved to approve the consent agenda and item(s) contained within. Councilmember Jilek seconded the motion. Motion carried 5-0.

**PUBLIC HEARING**

**A.** Sarah Henriksen, 2830 Inner Road – Request a variance of the required minimum separation between structures for the Groveland Homeowners Association residential district to construct a new single-family home, according to Section 900.09, Subd. 3 (a).

Mayor Stark opened the public hearing at 7:03 PM to consider a variance of the structure separation setback to construct a new single-family home at 2830 Inner Road.

Zoning Coordinator Karpas presented an overview of the request for a variance. The owner requests to remove a non-conforming home and construct a new single-family home. The proposed house will comply with the impervious cover restrictions, height and the individual building setbacks. The Groveland Zoning District has a structure separation setback requirement of 20 feet. The adjacent property structure is within five feet of the property line, causing the need for a variance. Staff recommends approval.

Zoning Coordinator Karpas noted that he received a call from Sydney Anderson, 2825 Inner Road, who expressed concern that the proposed house would block daylight from her house. A packet of written comments was also delivered to the office regarding concerns expressed by several Groveland residents.

Councilmember Doak noted that the proposal improves the current setback.

In answer to a question from Councilmember Hornig, Mr. Andrews, 2805 Center Road, the adjacent neighbor to the west, stated that his house has been improved over the last three months and has no immediate plans to make additional changes to his structure.

Zoning Coordinator Karpas stated that the existing structure height is unknown. The proposed height conforms to the height guidelines.

Councilmember Doak believes that, under the circumstances, the 20 foot structure separation requirement could create a hardship by making it difficult to construct a house. He noted that there is a concern among residents that the height of the façade is imposing, relative to the character of the homes throughout the neighborhood. The issue may be a matter of aesthetics and he encouraged the architectural committee and Ms. Henriksen to work together to agree on a satisfactory plan.

Councilmember Hornig asked if the house could be moved towards Inner Road.

City Attorney Jamnik stated the house could not be located closer to Inner Road without a variance.

Mr. Andrews, 2805 Center Road, agreed that the proposal is an improvement over the existing situation and would improve the water drainage between his home and the Henriksen property.

Ms. Henriksen stated that she went through the architectural review process. The plans were approved contingent on removal of the third-stall garage and shifting the house back over the garage space.

Mr. Andrews, President of Groveland Homeowners Association stated that the Architectural Committee recently reviewed their guidelines and based on resident feedback improved the criteria. Approval was granted with contingencies. Of the 42 homeowners, 13 reviewed the plans and made comments, 11 expressed concern with the height of the north façade. The plan was approved 8 to 3, contingent on removal of the third stall garage. Mr. Andrews stated that he has no objection to the proposed construction, but the north side is “overbearing” and could be mitigated through a change in plans or landscaping, but supports the request.

Ms. Henriksen stated that she is considering altering the pitch of the roof and changing the grade to mitigate the overall height. Several alterations could shorten the height by several feet.

Ms. Joy Fruen, 2820 East Road, provided a summary regarding square footage and height of the homes throughout Groveland. Ms. Fruen stated that she is concerned with the overall size and is supportive of changing the roof pitch and to tier back the north face of the home. Ms. Fruen stated that she hopes builders are sensitive to the history and heritage of neighborhood and make homes fit within the neighborhood.

Mr. Herb Suerth, 2850 West Road, stated that the association would like to work with Ms. Henriksen and requested that the City Council table the request until the architectural committee has ruled.

Ms. Henriksen stated that the overall square footage includes the basement and storage space under garage. She is conscious of neighbor concerns. The proposed footprint is 26 feet by 72 feet, not much larger than the adjacent home to the west. The primary difference is the second story. Ms. Henriksen stated that she is willing to work with neighbors regarding their concerns.

Councilmember Doak stated that it can be difficult to find a common ground regarding style. The city needs to be sensitive to Ms. Henriksen and the concerns of the neighbors, but the city does not enforce private association rules.

Councilmember Evenstad asked if the third stall garage would be removed.

Ms. Henriksen responded that changing the footprint or removing the garage will not affect the overall height.

Mayor Stark closed the public hearing at 7:46 PM.

Councilmember Doak stated that he would prefer to act on the request once final plans are determined and after review by the Groveland Architectural Board.

**Councilmember Doak moved to table the application for 2830 Inner Road until the December 11, 2006 Council meeting and direct staff to send notice of the 60 day extension per law and that final plans be presented to Council following review by the Groveland Architectural Committee.**

Councilmember Hornig agreed that he would prefer to see final plans following review by the Groveland Architectural Board and would look more favorably on the plans if approved by the association board.

Councilmember Evenstad also agreed that he is supportive of a change to the footprint and would prefer the final plans to go thru the architectural board prior to Council review.  
**Councilmember Evenstad seconded motion. Motion carried 5-0.**

**B.** Daniel Bartus & Shirley Shawd, 18400 Maple Ridge Road - Request a variance of the required lot area to construct a new single-family home, according to Section 900.07 (f).

Mayor Stark opened public hearing 7:55 PM to consider a request for variance of the lot area for 18400 Maple Ridge Road.

Zoning Coordinator Karpas reported that the applicant is requesting a variance of the one-acre minimum lot area according to 900.07 (f) to construct a single-family home. The applicants request to have a lot area variance approved in order for the lot to be considered for development. The lot is approximately 600 square feet under the upland minimum requirements, taking into consideration all areas deemed wetland and easements. The lot area used in the application is taken from the third survey conducted per the Settlement Agreement entered into between the City of Woodland and Mr. Bartus.

Mr. Barr, Property Manager of Dan Bar Homes representing 18400 Maple Ridge Road, stated that they are not requesting a variance of the required buildable setbacks, but are requesting a variance of the lot area in order to build a house.

Zoning Coordinator Karpas stated that he received a call from Mr. Miller, 3100 Maplewood Road, regarding his opposition to the request because he felt it would change the character of the neighborhood.

Mr. Barr noted that they provided information to adjacent neighbors and has not received any response or feedback to-date.

Mr. Kipp, 18450 Maple Ridge Road, stated that he received the information regarding the request. Mr. Kipp noted that the variance request was denied in December 2004 due to the lot area and the proposal was considered inconsistent with the Comprehensive Plan. Mr. Kipp stated that he is opposed to the request because it will impact his property value and increase the noise and light disturbance. Mr. Kipp also stated that any house on that property, due to the hill, will change the character of the area because there is no natural buffer to stop any noise or light. Another concern is that the pond consistently floods and water over flows onto his property. Any structure will add to the drainage problem and cause more water to flow on his property.

Mr. C. Traff, 18500 Maple Ridge Road, stated that he platted the property 46 years ago and a sewer stub was made available through Deephaven. One option would be to annex the property into Deephaven.

Mayor Stark reported that she spoke with Deephaven Mayor Tom Anderson and he stated that Deephaven would not act on any request regarding the property until Woodland has made a decision on the property. Mayor Stark stated that it seems to be in the best interest of Woodland to keep the land within the city.

Mr. Barr stated that they build homes in many communities and always work with the neighbors to construct a home that is acceptable. Mr. Barr stated that the issue of noise and light would still be the same regardless of lot area.

Mr. Moss, 18240 Shavers Lane, stated that the property has not been built on for 45 years and was a reasonable use then but questioned why it is not considered reasonable now.

In 1961 the regulations may have allowed construction, but since then there are more wetland protections. He does not agree a hardship exists just because the lot was created in 1961 and believes a house on that lot will alter character of the local. There may be homes with similar dimensions but there are no houses built on less than one acre of dry land. Mr. Moss stated that he believes the interest to develop the property is an economic consideration and is what seems to be the hardship being asked for.

Councilmember Hornig asked if Mr. Bartus was aware of the history of property.

City Attorney Jamnik informed the Council that Minnesota Case Law has new instructions from the courts that do not preclude a property owner from applying for a variance regardless if the need for a variance was known by the applicant. Coming to a hardship is not a basis for determining qualification or disqualifying for applying. A new owner can buy a substandard lot and apply for a variance and the city is required to go through the factors. The essential character of a neighborhood is still a factor.

In response to Councilmember Jilek's question about the previous issues with the property, Attorney Jamnik stated the former litigation brought up two issues. One was the basis for denial of variance, which under those findings previously, was that property unduly impacted the essential character of the neighborhood or locality. The second aspect was whether or not a variance needed to be applied for given the one-acre minimum. The Settlement Agreement stated that as a condition of the settlement, the first claim will be dismissed and focus on resolving the question of upland area. If the third survey confirmed one acre or more of buildable area, the applicant could file for a permit consistent with conditions in the Settlement Agreement. If there were not one acre of buildable area, the settlement left open the option for the applicant to file either for a wetland conservation fill permit and or a variance from the city. There was nothing in the Settlement Agreement that prohibited the applicant from seeking other methods of redress of using the property. The essential feature in the agreement was focused on buildable area. The delay occurred in selecting the third survey delineator. The Council now has reliable information of lot area being 600 square feet short, which we did not have in 2004.

Mr. Barr confirmed that they are not seeking any variance of building setbacks and would agree to that.

Councilmember Doak noted that there were specific requirements with regard to tree preservations along Maplewood Road and that the driveway access Maple Ridge Road included in the Settlement Agreement. Councilmember Doak stated that any variance must have those conditions carried forward.

Mr. Bartus noted that the property was represented as a buildable lot by Mr. B. Traff. Mr. Bartus stated that they do not intend to remove unnecessary trees. Mr. Bartus stated that part of their hardship is that the 1 ½ acre lot is divided between two cities.

The surveyors all acknowledge the matter was difficult to agree upon because of all the variables. Mr. Bartus stated that they will agree to the building setbacks and driveway placement on Maple Ridge Road and preservation of trees. If they obtained a fill permit the lot area variance would be reduced to 200 square feet.

Zoning Coordinator Karpas asked if the applicant could build a home without filling the wetlands.

Mr. Barr responded that the DNR would allow a permit for fill up to 400 square feet, but they are not intending on filling any portion of the wetlands and do not need to fill in order to build a house. Rain causes the pond to overflow and depending on the time the delineation was done, a one foot error can change the survey by 200 or more square feet.

Councilmember Doak noted that building on the side of hill will increase the impervious surface and asked what assurance the builder can give the neighbor regarding flooding of the pond and run-off.

Mr. Barr responded that they will submit drainage and grading plans that show how they will dissipate the water run-off to their property, the neighbor's property or the road.

Zoning Coordinator Karpas noted that grading and drainage restrictions already exist in the Settlement Agreement; item E. The City Engineer will review the plans.

Councilmember Hornig stated that there is a history that the lot is not buildable and asked what correspondence the city had on the property.

Mayor Stark responded that staff has looked for history on the property; the minutes did not specifically say the lot was not buildable.

Zoning Coordinator Karpas stated that records show the plat was approved in 1960 and the previous owner Mr. B. Traff was granted a sewer lateral from Deephaven in 2002 to eliminate the need for an on-site sewage treatment system. A letter was sent to Mr. B. Traff that it was the opinion of the staff that the lot is not buildable without a variance.

City Attorney Jamnik noted that with the execution of the 2004 Settlement Agreement the Council has said and agreed that if there is one acre of upland the lot could be buildable.

In response to the history of the property, Mr. C. Traff stated that he purchased the land 48 years ago from Mr. Mason who restricted, through the deed, any construction on the lot until his death.

Mr. Moss asked if his neighbor Mr. Boller would have the option of dividing off 1.9 acres of his property or anyone else in the community could divide less than 2 acres.

City Attorney Jamnik responded that nothing can preclude a property owner from requesting a variance. The Council is not obligated to grant variances. It is within Council's discretion to evaluate the application as presented and make findings and decisions. There are no guarantees in the situation and the city cannot prohibit a property owner from applying for variances and there are no assurances that, if applied for, a variance will be granted.

Mr. Kipp asked for an explanation regarding the lighting ordinance. Mr. Kipp expressed concern that lighting from a new house will affect his property value and the ordinances are in place to protect property values. Mr. Kipp stated that there is nothing that a house on the subject property will do to increase the adjacent property values.

Mayor Stark responded that when the lighting ordinance was adopted there were non-complying situations, but the Council wanted to have some guidelines and restrictions. Neighbors are encouraged to speak to each other if there are lighting issues.

Councilmember Jilek stated that his greatest concern is regarding the water run-off.

Mr. Kipp responded that his house sits on a hill, but the pond floods every year and backs up on both properties. If the drainage is diverted down the street it will still end up in his driveway.

Mr. C. Traff stated that he dug the pond to capture drainage.

Mr. Kipp expressed concern that Council is acting inconsistent with the earlier request, Henriksen property, because there are not blueprint plans to look at prior to making a decision regarding this variance.

Councilmember Doak stated that the requests on the agenda are different. The earlier request was for building setback and the request under discussion is regarding lot area.

Mr. Boller, 18250 Shavers Lane, asked if the city will expose itself to numerous variance requests by approving this variance.

City Attorney Jamnik stated that no legal precedent is set with approval or denial of the request, any precedence regarding value is merely political because each variance request is considered on its individual merits.

Mayor Stark closed the public hearing at 8:36 PM.

City Attorney Jamnik stated that the staff report crafted by Zoning Coordinator Karpas and himself includes a summary of the findings. The staff recommendations were included in the materials and would add recommendations from page 3 of the Settlement Agreement. The previously discussed conditions regarding the 50 foot setback from Maplewood Road and no fill or excavation of the wetlands on site.

If there is a motion to that affect, staff will prepare a resolution and bring it back for placement on the December consent agenda for final adoption. Council could act to approve based on the staff report at this meeting. If the Council determines that it wants to deny the variance, indicate to staff to deny and direct staff to prepare findings of fact consistent with the denial and bring those findings back to Council, but not to place the item on the consent agenda. Reason being, that staff has recommended approval and if Council decides to deny the request, staff would want time to make findings consistent with the discussion and direction of Council.

Councilmember Doak stated that he is sensitive to precedent, but is persuaded by the argument and legality that every variance is individual. The request has complex issues regarding previously platted lots. The difference of lot area found is not small but not as significant in the overall scope. In the process of seeking an agreement a good settlement was crafted to protect the trees, buffer zone and driveway access to Maple Ridge Road. Councilmember Doak stated that he is sensitive to the fact that Mr. Kipp may have neighbor that he does not have now, but Mr. Bartus owns the property and his interests must be considered as well.

**Councilmember Doak moved to accept the staff recommendation to approve request and that the current address remain 18400 Maple Ridge Road and adding the conditions of the Settlement Agreement with exception; page 3, item a. the 50 foot setback from Maple Ridge Road or Maplewood Road that healthy trees shall not be cut. Striking the last portion of the sentence that reads [*The cutting of trees shall be deemed necessary if the keeping of the trees imposes a financial hardship on the builder.*] so the no trees are allowed to be cut in the buffer zone unless normal tree removal protocol is followed regarding diseased or dangerous trees. And, add to item e. *all other state and regional review agencies' erosion control measures are followed.***

**Councilmember Jilek seconded the motion.**

Councilmember Hornig stated that the ordinances need to be strictly interpreted and expressed concern that opening up this issue may be problematic.

Councilmember Jilek noted that the property is stubbed into sewer service which makes the request more palatable.

City Attorney Jamnik stated that during discussion staff observed language regarding the fill of wetlands and the applicant agreed that they would not fill or excavate the wetlands as part of the conditions. If Council votes to support the motion as made, City Attorney Jamnik recommended that a condition be inserted that the applicant not fill or excavate the wetland as part of the conditions, amending page 3, item d. in the Settlement Agreement. City Attorney Jamnik recommended that the motion include insertion of the above conditions in item d. after the first shall. [*The plaintiffs shall not fill or excavate the wetland and meet all existing wetlands setback requirements of the City....*]

**Upon vote of the motion with conditions. Motion carried 3-2.**

City Attorney Jamnik stated that staff will prepare a formal resolution for placement on the consent agenda at the next meeting.

**OLD BUSINESS**

Councilmember Doak reported that the mail delivery was still inconsistent and asked staff to contact the post office.

**NEW BUSINESS**

**A. County 101 Reconstruction**

Clerk Souers reported that plans have begun to reconstruct County Road 101 from Minnetonka Boulevard to Wayzata Boulevard. There are no plans for review at this time but cities will be involved in layout and final plan approval. Initial plans will be presented to cities in January 2008. The project is slated to take three years with completion in 2011. The proposal includes one lane in each direction, a center turn lane where appropriate, shoulders on each side and a pedestrian/bicycle lane that will run from Highway 7 to Wayzata Boulevard. The road bed and right-of-way will be approximately 60 feet wide. There will be some property acquisitions to accomplish construction. There is to be an improved curve at the intersection of Breezy Point Road and a change in the grade at the access of Breezy Point Road and 101. The road will be built to accommodate all truck traffic because all funding will come from gas tax money, county and city road funds. No property assessments are proposed.

**B) Resolution No. 15-2006, Certification of Election Results**

**Councilmember Jilek moved to approve Resolution No. 15-06 certifying the election results for the City of Woodland. Councilmember Evenstad seconded the motion. Motion carried 5-0.**

**MAYOR'S REPORT**

No report.

**COUNCIL REPORT**

**Finance** – No report

**Police** – Councilmember Doak stated that he received a call expressing concern about traffic speeds on Breezy Point Road.

Police Chief Gustafson stated that the officers conducted an informal speed study and determined that one car per minute was exceeding the speed limit.

Councilmember Doak suggested that speed limit regulations be placed in the next newsletter and seek feedback on speed reduction methods.

**Roads** – Councilmember Doak reported that there are several tree branches along Maple Hill Road that will be trimmed.

Councilmember Doak expressed concern with contractors using heavy equipment on city streets and whether an ordinance could be adopted holding contractors liable for repair of damage caused to the city streets.

City Attorney Jamnik informed the Council that an ordinance seeking regress for road damage could be adopted, however, state law applies regarding proof of damage. The burden rests with the city to establish any damage was caused by a specific contractor in order to collect for such damages. The ordinance becomes difficult to enforce.

**Website & Deer Management** – Councilmember Jilek stated that all permits have been approved and deer traps have been placed. The city is permitted to remove up to 12 deer.

**Ordinances** - No report

#### **TREASURER REPORT & ACCOUNTS PAYABLE**

Councilmember Evenstad moved to approve the Accounts Payable and Treasurer Report as presented. Councilmember Doak seconded the motion. Motion carried 5-0.

#### **ADJOURNMENT**

Councilmember Doak moved and Councilmember Evenstad seconded the motion to adjourn. Meeting adjourned at 9:29 PM.

Respectfully submitted,

Shelley Souers