

**CITY COUNCIL MINUTES**  
**Monday, January 11, 2010**  
**7:00 P.M.**

**CALL TO ORDER & PLEDGE OF ALLEGIANCE**

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

**ROLL CALL**

Present: Mayor Jim Doak; Councilmembers, Michael Jilek, Tom Newberry, Sliv Carlson and Troon Dowds.

Staff: Chief of Police Cory Johnson, Zoning Administrator Gus Karpas, City Engineer Dave Martini and City Clerk Shelley Souers.

Guests: Steve and Tamela Schroll, Steve Hartig, Bruce Schmitt, Darren Schmitt, George Stickney, Dennis Jabs, Susan Newberry, Chris, Ashley and Georgia Newberry, Guri Kirkeng, Earl Windhal, Maria Saulsbury, Jim and Lori Brown and Mark Gronberg.

**CONSENT AGENDA**

**A. Minutes of the Council Meeting, December 14, 2009**

**B. Setting the Date of the Annual Board of Review – April 12, 2010**

**C. Adopt Resolution No. 01-2010; Appointment & Assignments for 2010**

*Councilmember Carlson moved to approve the consent agenda as presented to include items A, B & C. Councilmember Jilek seconded the motion. Motion carried 5-0.*

**PUBLIC COMMENTS**

JoEllen Marx, 2924 County Road 101, submitted a letter to the City Council regarding an insurance claim for damage to her property caused by a fallen tree.

Mayor Doak moved this matter to New Business (item C) on the agenda, for further discussion.

**PUBLIC HEARING**

**A. Steve & Tamela Schroll, 2700 Stone Arch Road, request a Special Use Permit to alter the topography of the existing grade in conjunction with new construction of a single family home.**

Mayor Doak outlined the public hearing process and opened the public hearing at 7:06PM.

Councilmember Newberry excused himself from the Council table and abstained from Council discussion and Council vote.

Zoning Administrator Karpas summarized staff's findings, noting that based on the review criteria, staff recommends conditional approval of the special use request in conjunction with the demolition of the existing non-conforming structure and the construction of the new single family home which would require the substantial alteration of grade, equaling a ten foot change at its maximum increase, as presented for 2700 Stone Arch Road.

Findings:

1. Effect of the proposed use on the character and development of the neighborhood:  
The impact on the neighborhood should be positive, provided the proposed drainage does not change or is controlled in a manner which lessens the rate and volume of water that leaves the property. This would be verified by the City Engineer prior to the construction of the home and later when the final grade has been established.

The proposed change in grade would have minimal impact on the view of the lake from adjacent properties since the home could be constructed at the same height, creating the same visual impact. The proposed home has been moved to the east to comply with the setbacks.

2. Effect of the proposed use on the health, safety and welfare of occupants of the surrounding lands:

The proposed use is consistent with the existing use as a single family home. The proposed grading will create a slope moving from the west to the east. With the proper installation of rain gardens and directed flow of drainage, there would not appear to be any negative effect on the health, safety and welfare.

3. The existing and anticipated traffic conditions, including parking.

Aside from parking during construction, the proposed use would have parking consistent with the other single family homes in the neighborhood. Parking during construction, and the delivery of material to the site will be regulated by the city so as not to create an unnecessary burden to the neighborhood.

4. The effect on property values in the surrounding area.

Staff spoke with the City Assessor who said he would not anticipate any negative impact on the property values surrounding the proposed project. The proposed home is consistent with those most recently constructed on the lakeside of Stone Arch Road in terms of size and value.

Conditions:

1. The proposed structure and all structures proposed in the future for the property may not have an overall height that exceeds 973.5 feet above sea level.
2. The applicant must install Minnehaha Creek Watershed District approved rain gardens, at the direction of the City Engineer, to control runoff on the property with a focus on the east side where the topography is relatively flat and a much greater percentage of impervious surface has been constructed over what currently exists.
3. Parking will be limited to the subject property during construction.

State Statute 15.99 requires a decision by the governing body within 60 days, unless the applicant is notified in writing the initial 60 days that the time period for a decision is extended. The City Council must approve, modify or deny the request by February 15, 2010.

City Engineer, Dave Martini summarized his staff report noting that the proposed first floor elevation is 2.53 feet higher than the existing first floor. The drainage patterns proposed are consistent with the existing patterns. The proposed grade changes will have a visual impact to neighboring properties. The engineer recommended installation of rain gardens or features to reduce water runoff and improve water quality by reducing phosphorous loading into the lake. Mr. Martini noted that there is an opportunity to improve drainage on southeast side of garage and north side of the house. Mr. Martini recommended that the homeowners work with the Minnehaha Creek Watershed District regarding options and permits.

Mrs. Susan Newberry, 2750 Stone Arch Road, asked if the alteration will cause water to drain into their property.

Mr. Martini noted that the water ultimately ends up at the front of the lot near the road. The plan is designed to direct water towards the lake. Drainage on the north side will also go towards the lake. The proposed alterations create an opportunity for the owners to reduce direct drainage to the lake.

Mayor Doak reiterated that mandates from the Watershed District prohibit drainage directly to the lake and that attention be paid to phosphorous runoff.

In answer to Mayor Doak's question regarding the stability of Stone Arch Road, City Engineer Martini responded that Stone Arch Road is structurally weak and is susceptible to damage during construction. Mr. Martini suggested prior to construction, an inspection and report be made for Stone Arch Road to document conditions, and follow up with periodic monitoring during the construction. A security deposit from the contractor would also ensure proper repair of construction related damage.

Mr. Darren Schmitt, with Bruce Schmitt and Associates Architects, summarized the proposed design stating that the lot was considered a transitional lot in terms of grade and house height. The home was designed to allow garage access on the main level. Water drainage along the west side and from the driveway is directed to the existing pond. Mr. Schmitt asked that the Council reconsider the condition relating to the height restriction, noting that the condition would exist in perpetuity, and could impede a future sale of the property.

Mayor Doak asked if locating the garage on the west side was considered.

Mr. Darren Schmitt noted that the proposed design uses the garage as the retaining wall along the east side and created a transition in the elevation from east to west.

Councilmember Carlson noted that she visited the property and was concerned the slope of the driveway will create a visual impact for the neighboring properties, whose views have been over a flat driveway and land area. Councilmember Carlson asked if alternatives were considered.

Mr. Darren Schmitt noted that the driveway slope would be 7 to 7 ½ percent. Due to low elevations certain areas cannot be altered without going below the flood plain. The impervious

surface would be reduced from 27 to 22 percent and noted that the sill of the front door will be 2 ½ feet higher than the current house.

Mr. Schroll stated that the house was designed for long term living with the majority of the living area on the main level, including the garage access. The present house has a lower level garage with numerous steps to access the main level. Mr. Schroll stated that they have no problem with creating rain gardens and have extensive landscaping planned for the property. Mr. Schroll noted that they are concerned with the permanency of the height restriction and unclear as to what the condition accomplishes. The condition may hinder a future sale of the property, if their property is the only property in the neighborhood with the height restriction. Mr. Schroll asked for a better understanding of the condition relating to the height restriction.

Mayor Doak stated that the grade modification Ordinance was created to encourage building to the natural contours of the land rather than altering the lot to fit the home. The City is also concerned with phosphorous loading into the lakes and wetlands as well as the rights of the neighboring properties.

Councilmember Jilek stated that he is concerned that the alteration may set a precedence to elevate adjacent homes.

Mr. Schroll stated that the grade changes are largely a function of what needs to be done to fit the homes that are designed for today's use.

Mayor Doak stated that the ordinance was created so homeowners would not use grade alterations to by-pass the 35-foot height limitation.

Mrs. Newberry, 2750 Stone Arch Road, asked if the home could be designed with the garage lower to eliminate the berm.

Mr. Schroll stated that the design would not fit their needs. The style was designed to minimize the visual effect and to not cause any actual impact with water run-off.

Mr. Newberry, 2750 Stone Arch Road, distributed written comments to Councilmembers to be read into the record regarding the position of his family on this request.

*"The proposed land alteration would have a negative effect on property values in the surrounding area, because the proposed land alteration is very significant: to achieve the proposed elevation increases would require 2,000 cubic yards of dirt, using over 200 dump trucks. 2000 cubic yards of dirt would fill 5 Council Chambers (like this one) to the ceiling with dirt. At the end of the new driveway, the elevation of the land would be increased from the level of this floor to the height of this ceiling, which is a full 10 feet."*

Mr. Tom Newberry introduced Mr. Dennis Jabs, MAI, to address the impact of the proposed land alteration on the property values in the surrounding area.

Mr. Jabs stated that he has worked as a real estate appraiser for over 30 years and holds the highest designation given appraisers (MAI designation). He is very familiar with the lakeshore

market, having lived on Christmas Lake since 1986; he has experience appraising estates located on Lake Minnetonka. Mr. Jabs is also familiar with property assessments and has work both for and against assessing authorities in property tax litigation.

Mr. Jabs, a co-founder of Jabs, Gehrig & Company, addressed the Council regarding property values, stating his comments would address two points; the value impact to the Newberry property [2750 Stone Arch Road] of the proposed plan and the City Assessor's comments as noted in the staff report. Mr. Jabs stated that he has no bias with respect to the property or parties involved.

Mr. Jabs stated that the scope of his work included inspection of the property [2700 Stone Arch Road] on December 30, 2009, review of the elevation markers denoting the location of the proposed improvements and review of Pdf files which included a survey and topography maps, along with letters between the Schrolls, Newberrys and the City Council.

Mr. Jabs stated that the building improvements would add value to the Newberry property [2750 Stone Arch Road]; however, the addition of fill to elevate the driveway will adversely affect the value of the Newberry property. Prior to adding fill to the elevation of the driveway, the Newberry property has views to the west of a pond and a massive land area consistent with the open neighborhood, topography and views shared by neighboring properties. After adding fill, the driveway elevation from Stone Arch Road to the 944 elevation mark, (where the driveway approaches the house) will range from 1 to 12 feet in elevation changes. Mr. Jabs believes this creates an obstruction to the Newberry view of the land mass and pond to the west along the entire length of the Newberry property, approximately 190 lineal feet. The Newberry property would be more desirable before the fill than after, causing a diminution of value to the Newberry property. In appraising the Newberry property, Mr. Jabs stated that he would apply a negative adjustment for the sight and view characteristics due to the driveway elevation. Mr. Jabs referred to the architect's stating that the driveway elevation is fairly unique. Usually the driveway grade is less than 7% and if there is an issue with travel through the house, an elevator might be installed. It is unusual to see such a severe grade change leading up to the house.

Mr. Jabs also commented on the City Assessor's statement, as noted in the staff report. Mr. Jabs stated that the scope of work for assessment purposes is significantly different than the scope of his appraisal work described earlier that he performed to come to his first opinion. The City Assessor did not consider the driveway elevation change, and was only looking at the improvements to the house. Mr. Jabs noted that this is typical because assessments are based on a mass appraisal method, and the analysis seldom addresses the detail related to the proposed driveway. The City Assessor's statement that the proposed home is consistent with the size and value of other homes in the neighborhood does not address the driveway elevation. Mr. Jabs stated that this proposed property is an example of what is known in the industry as a "mcmansion" and although he agreed that "mcmansions" generally add value to surrounding properties, that issue is a different issue than if the Newberry's property value has a higher value before bringing fill to the Schroll property than after adding fill to elevate the driveway.

Councilmember Jilek asked if Mr. Jabs looked at other property beyond the Newberry property to determine how the proposal might affect other property.

Mr. Jabs stated that he limited his assignment to the Newberry property and did not have an opinion about the other properties, but noted that there is a general norm for views and topography in the neighborhood that would be breached by adding as much fill as proposed.

Mr. Newberry, speaking on behalf of the Newberry family, asks the City Council to make a finding of fact that the proposed land alteration would have a negative impact on property value in the surrounding area.

Mrs. Saulsbury, 2805 Stone Arch Road, stated that she agrees with the Newberrys' statement, and although she is pleased with the [house] design, she expressed concerned with potential for additional flooding. Mrs. Saulsbury stated that the driveway will be steep causing their view to change drastically as they will look at a hill instead of the grass area.

Mrs. Kirkeng, 2825 Stone Arch Road, stated that she is concerned that this type of request will escalate future requests from owners to raise their homes.

Mr. Gronberg, surveyor of 2700 Stone Arch Road, clarified that approximately 1,000 cubic yards of fill is proposed to be brought in, approximately 100 truck loads. There will be cut generated on site from digging the basement.

Mr. Stickney, realtor for the Schrolls, spoke in support of the Schroll's position, reiterating that the existing house was built in 1953 and the proposed house will raise the base floor elevation 2 ½ feet.

Mr. Brown, 2660 Stone Arch Road, stated that the shared pond created between their properties controls much of the water that had sat on the lot and suggested that any water draining along their shared property line also be diverted to the pond.

There being no further public comments, Mayor Doak closed the public hearing 8:21P.M.

Councilmember Jilek reiterated that he was concerned the elevation is being altered to fit the house rather than the house fitting the property.

Councilmember Carlson stated that she is concerned with the mass of the slope and questioned if alternate options exist to handle the slope to address drainage and potential flooding concerns.

Councilmember Dowds stated that in considering the four criteria he agreed with the findings of staff; however, was concerned that the grading may lower property values.

Mayor Doak noted that the request has multiple issues, not the least which is valuation and impact issue. Mayor Doak stated that he is concerned with drainage and would like more specificity in terms of what is being planned and whether the Minnehaha Creek Watershed District is in agreement with the plan. The Council has until February 15 to act on the request or may seek additional time. Mayor Doak stated the he would like to postpone the request until the February 8 Council meeting to consider the matters presented in greater detail.

In answer to Mr. Schroll's question, Mayor Doak reiterated that his issues were drainage and reducing the impact of the grade. Postponing a decision until February will give the applicants an opportunity to present more detailed plans and perhaps make modifications so the neighbors and the City will be comfortable with plan. Mayor Doak agreed that the situation is unique due to the extent of the fill and the drastic change of what was flat topography.

*Councilmember Carlson moved to continue the hearing on the Special Use Permit for 2700 Stone Arch Road, to February 8, 2010. Councilmember Jilek seconded motion. Motion carried 4-0.*

**B. First reading – Ordinance No. 07-06, Section 700 Building Codes and Ordinance No. 09-19, Section 900.04 Zoning Codes; Amending the Code of Ordinances to require as-built surveys for structure foundations, grading alterations and at completion of final construction.**

Mayor Doak opened the public hearing to consider the ordinance amendments to include as-built survey requirements at 8:37 P.M.

Council reviewed the proposed language.

There being no public comments, Mayor Doak closed the hearing.

*Councilmember Jilek moved to approve Ordinance No. 07-06 and Ordinance No. 09-19 as presented and to waive the second reading of both Ordinances. Councilmember Dowds seconded the motion. Motion carried unanimously.*

Staff was directed to publish both Ordinance amendments in the official newspaper.

**NEW BUSINESS**

**A. Hennepin County Sheriff's Office**

Steve Hartig a Lieutenant with the Water Patrol met with Council and provided an overview of the duties and departments included in the Hennepin County Sheriff's Office.

Lieutenant Hartig stated that the County Dispatch Center serves 36 communities across County. The three court service center saw a 30% increase in mortgage foreclosure.

Council thanked Lieutenant Hartig for his time and presentation and for the service of the employees of the Sheriff's office.

**B. Adopt Resolution No. 02-2010; administrative fees & Review Fee Schedule in the Code of Ordinances, Chapter 3, Section 300**

Council reviewed the fees delineated in Chapter 3 of the Code of Ordinances and Resolution No. 02-2010 regarding administrative fees.

Council agreed that no changes would be made to the fees delineated in Chapter 3.

*Councilmember Carlson moved to approve Resolution No. 02-2010; setting the administrative fees for 2010. Councilmember Dowds seconded the motion. Motion carried unanimously.*

*Mayor Doak moved to amend Resolution No. 02-2010, correcting the fee for police reports to .25 per page, as confirmed by Chief of Police Johnson. Councilmember Jilek seconded the motion. Motion carried unanimously.*

**C. Ms. Marx, 2924 County Road 101, letter regarding an insurance claim**

Mayor Doak reported that a letter was received from Ms. Marx regarding a recent insurance claim for property damage caused by a fallen tree that stood in the right of way, but was blown into her fence and roof by unusual winds. Ms. Marx has requested that the City examine a tree along Blaine Avenue and also consider removal of two pine trees along Blaine Avenue and consider reimbursing her for her deductible. The Council discussed Ms. Marx concerns and took no action to supplement Ms. Marx insurance recovery.

Councilmember Dowds will contact Woodland's tree contractor to examine the aforementioned trees and report back with his recommendation.

**COUNCIL REPORTS**

Deer Management & Website

No report.

Finance & Public safety

No report.

Road & Signs

Councilmember Dowds stated that he will contact Aaron Smith to examine a tree along Blaine Avenue, as requested by the homeowner.

Ordinances

No report.

**ACCOUNTS PAYABLE**

*Councilmember Jilek moved approval of the Accounts Payable as submitted. Mayor Doak seconded the motion. Motion carried 5-0.*

**TREASURER'S REPORT**

*Councilmember Newberry moved approval of the Treasurer's Report as submitted.*

*Councilmember Carlson seconded the motion. Motion carried 5-0.*

**ADJOURNMENT**

*Council unanimously moved to adjourn the regular meeting at 9:25 P.M.*

**ATTEST:**

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Shelley J. Souers, City Clerk

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James S. Doak, Mayor