

MINUTES

CALL TO ORDER

Chair Huskins called the meeting to order at 7:00 P.M.

ROLL CALL

Present: Chair Huskins; Commissioners Eggenberger, Holker, Longo, and Magistad; and Planning Director Griffiths

Absent: None

1. APPROVAL OF AGENDA

Commissioner Holker moved, Commissioner Longo seconded, approving the agenda for May 6, 2025, as presented. Motion passed 5/0.

2. APPROVAL OF MINUTES

- **April 1, 2025**

Chair Huskins explained that he had submitted minor edits and typographical errors to Planning Director Griffiths before the meeting.

Commissioner Eggenberger moved, Commissioner Magistad seconded, approving the Planning Commission Meeting Minutes of April 1, 2025, as presented. Motion passed 5/0.

3. MATTERS FROM THE FLOOR

George Greenfield, 24715 Old Yellowstone Trail, asked Chair Huskins if he felt it was his obligation to respond to questions from citizens, especially in light of last month's meeting when there was confusion among the Commission related to a distinction the Planning Director had made about one portion of the ordinance being relevant to the Commission and the other was not. He stated that neither the Commission nor the audience truly understood and explained that he had emailed Chair Huskins to try to clear things up, but he had not heard back from him.

Chair Huskins stated that he had not received an email from Mr. Greenfield.

Mr. Greenfield stated that he felt this matter still needed to be cleared up and that Planning Director Griffiths tried to force a conclusion on the Commission. He noted that he felt the entire meeting seemed a bit shady because it felt like something was being forced on the Commission. He stated that he would submit another email to Chair Huskins to try to get some answers.

Commissioner Eggenberger explained that usually the Commission did not respond to emails from citizens because one Commissioner cannot conduct City business on their own. He stated that City business has to be done in partnership with the other Commissioners and must be done in a public forum, and noted that they usually refer anything they get to staff.

Planning Director Griffiths clarified that the Commission can respond to individual questions, but agreed that typically the proper channel would be to refer them to staff, and staff can put together a response on behalf of the Commission.

Chair Huskins agreed that would be what he would typically do when he received an email.

Mr. Greenfield referenced Commissioner Eggenberger's comments and asked when citizens could have conversations with members of the Planning Commission.

Commissioner Eggenberger clarified that those conversations could take place through staff members.

Mr. Greenfield stated that the Planning Commission and staff were two different entities.

Chair Huskins explained that the Planning Commission's standard procedure was to receive input from any citizen, listen, ask questions to ensure they understand the issue, and then take that to Planning Director Griffiths who would help the Commission understand if it was a matter that should be placed on an agenda for the entire Commission or to force it up to the City Council for their actions. He reiterated that individually, the Commission members do not act by themselves, but act as a body, in public meetings.

Mr. Greenfield stated that he would send an email and ask Planning Director Griffiths to respond to his question on why the Commission was not apprised of the distinction he had made at the last meeting regarding one section of the amended statute being relevant to their view and the other not being relevant to them. He stated that despite that distinction, he had asked the Commission to vote on the entire thing, even though he had told them the entire thing was not under their jurisdiction, which he found very confusing.

4. PUBLIC HEARINGS

Chair Huskins explained that the Planning Commission is comprised of residents of the City of Shorewood who are serving as volunteers on the Commission. The Commissioners are appointed by the City Council. The Commission's role is to help the City Council in determining zoning and planning issues. One of the Commission's responsibilities is to hold public hearings and to help develop the factual record for an application and to make a non-binding recommendation to the City Council. The recommendation is advisory only.

A. PUBLIC HEARING – VACATION OF EASEMENT

Applicant: Heidi and Craig Johnson

Location: 27940 Smithtown Road

Planning Director Griffiths reviewed the request from Heidi and Craig Johnson at 27940 Smithtown Road for vacation of an easement. He explained that they were trying to clean up the title work on the survey of the property and stated that staff recommended approval of their request.

Chair Huskins asked if the extension of the Johnson Hollow easement was still in force and, if so, why.

Planning Director Griffiths stated that vacation of easements can only be requested by an individual property owner or by a City Council resolution, which meant that they were only considering vacation of the easement for this particular property. He noted that he has had

conversations with adjacent property owners to let them know that this was a process they could also pursue and that the City would be supportive of their efforts.

Commissioner Magistad asked if there was potential for these properties to be subdivided in the future, and having implications for new easements.

Planning Director Griffiths stated that at this point, he would say 'no' because the Zoning Ordinance would not allow for further subdivision of the properties, because there were also protections for Lake Minnetonka. He explained that the applicant was interested in vacation of this easement because they wanted to remodel their property.

Chair Huskins opened the Public Hearing at 7:14 P.M., there being no public comment, he closed the Public Hearing at 7:14 P.M.

Commissioner Longo moved, Commissioner Magistad seconded, recommending approval of the Vacation of Easement for Heidi and Craig Johnson at 27940 Smithtown Road, as presented. Motion passed 5/0.

Planning Director Griffiths noted that this item would go before the City Council on May 12, 2025.

B. PUBLIC HEARING – CONDITIONAL USE PERMIT FOR INCREASED FENCE HEIGHT
Applicant: Richard and Jennifer Pearce
Location: 5905 Grant Street

Planning Director Griffiths reviewed the request for a CUP for an increased fence height at 5905 Grant Street and explained that the fence had already been built. He noted that on their north boundary, they had constructed an 8.5-foot fence on the last portion because of the existing retaining wall. He explained that the applicant had gone through the permit process with the City for the fencing and stated that staff had approved the permit most likely based on the angle of the fence on the other side of the retaining wall that still looked like it was a 6 foot tall fence, and was why the applicant was here requesting this deviation from the code. He stated that staff recommended approval of the request based on the unique appearance of the fence and the applicant's willingness to provide the structural certification. He stated that they had received public comments on this item, and a majority were in favor of this request. He noted that they had also received a few phone calls from people who had some questions, and one who wanted to anonymously indicate that they were opposed.

Commissioner Holker asked if the applicants were located on the right-hand side of the picture and asked if there was anything that required the horizontal planks to go down to the ground.

Planning Director Griffiths stated that there was no requirement for that and explained that the City Code would most likely prefer the existing design.

Commissioner Holker stated that one of the comments submitted was about the neighbor's fence being lower than this fence, so this fence would be seen above the neighbor's, and asked if there were any pictures of that situation.

Planning Director Griffiths stated that he did not have any photos of that situation, but did not believe it was the immediately adjacent property.

Chair Huskins asked where the retaining wall was located on the north side of the property.

Planning Director Griffiths displayed a photo and pointed out the location of the retaining wall and explained that the fencing runs the length of the property line.

Chair Huskins asked if the photograph had been taken from the backyard.

Planning Director Griffiths explained that the photo was taken from the street.

Chair Huskins asked if the 8.5-foot portion of the fencing was on the driveway portion of the property.

Planning Director Griffiths confirmed that it was essentially located on the driveway portion of the property. He indicated the photograph and explained that it was just the first panel of fencing, where it was up on the posts, before the remaining part of the fence just followed the grade.

Commissioner Magistad asked about the structure certification and whether it had included the integrity of the retaining wall.

Planning Director Griffiths stated that the fence was not attached to the retaining wall and was a completely self-standing structure, with footings under the posts.

Commissioner Magistad asked if repairs had to be made to the retaining wall, and whether the fence would have to be deconstructed.

Planning Director Griffiths noted that he felt that they would be able to make those improvements from the other side and there would be room to access the top of the retaining wall underneath the fence.

Commissioner Eggenberger shared some hypothetical situations and asked questions on how they would be handled.

Planning Director Griffiths stated that the hypothetical situations outlined by Commissioner Eggenberger would be handled in the same manner as the current application.

Commissioner Longo asked if the City allowed this, what would be the limit.

Planning Director Griffiths explained that typically, 6 feet would be the maximum, and any deviation would come before the Commission and the City Council for authorization.

Commissioner Longo stated that in this case, it was built before they got this authorization, which meant that he could build something and then, at some point, come for authorization, and reiterated his question about what the limit would be.

Planning Director Griffiths reiterated that the Council and Commission set the limit through their review of the requests. He stated that precedent was not that important from request to request, because there were always different factors involved, and noted that he believed it had been many years since the City had reviewed this type of request.

Commissioner Eggenberger noted that he did not believe he had ever seen a request like this and stated that he did not believe this would have ever come before the Commission if they had

only constructed the fence at 6 feet in height. He stated that the retaining wall could be any height as long as this was 6 feet above the retaining wall, they could go up as far as they want.

Planning Director Griffiths stated that was not accurate and explained that he was saying that the way the City Code was set up was that if a fence was built on top of a retaining wall, the combined height between the retaining wall and the fence was capped at 6 feet. He stated that anything over that height would have to come before the Commission through this permitting process.

Commissioner Magistad noted that they would not build a retaining wall unless it was retaining something.

Commissioner Holker asked if the request had been approved by staff originally.

Planning Director Griffiths explained that this had happened before he was with the City and stated that his understanding was that former Planning Director Darling issued a zoning permit for this project based on the design, looking from the view on the other side.

Chair Huskins asked for clarification on the location of the 8.5-foot fencing.

Planning Director Griffiths pointed out the location of the 8.5-foot fencing in the photo that was being displayed.

Chair Huskins referenced the email received by the City that said they would see a portion of this fence higher than the fence that they had on their property, and stated that he would like to be clear where that was located.

Commissioner Holker noted that the email referred to their backyard.

Planning Director Griffiths stated that the applicant may be able to shed some light on that issue.

Richard Pearce, 5905 Grant Street, stated that the email they were just talking about was referring to the house that is located to the east and pointed out on the screen what she (the homeowner) was talking about. He stated that their fence was not being built there and was already in place and is before he started fencing. He explained that he believed she was thinking that he proposed to build another fence that was 8 feet tall and was not referring to the fence that was already there. He explained that they had applied for this fencing through the City, and it had been approved and built. He stated that the fence was built in good faith, and there was just a misunderstanding about the height in the location near the retaining wall. He stated that it was not a situation where they had built something with the idea of trying to get away with something, and they had submitted applications for all the necessary permits and felt that they had intended to follow the letter of the law in everything that they had done on the property. He explained that this was a fence that was 6 feet tall from their backyard and steps down from the backyard to the front yard, and matches the rest of their fencing. He noted that the posts shown in the photos were the only thing that added the extra height. He explained that this fence was a significant improvement over the fence that was there previously and noted that it was also higher than what they had just built. He explained that the previous fence had a lattice at the top as well as a structure at the end of the driveway, which was taller than 10 feet. He stated that they believe that the fence they have constructed was aesthetically pleasing and noted that there were neighbors present and many had also written to the City in support of their request. He noted that this was a necessary privacy fence that was desired by them, but also by their neighbors to the north. He stated that the neighbors to the north had also applied for a fence, but were denied

because it did not meet the City's requirements, and reiterated that their fencing had been approved by the City. He explained that the fence had helped to reduce the number of unpleasant interactions with their neighbors, which seemed to stem from the construction of their home. He stated that they have two small children and explained that, in the past, they had been subjected to things by the neighbors to the north, and this fence was helping them just be able to live their lives and be left alone. He stated that he felt the fence brought the opportunity for peace, separation, and hopefully also civility. He explained that their request had a lot of support from the community. He explained that the neighbor's sewer line ran through their property and had to be cut when they built their home, and the neighbors had been upset with them ever since they built their home 2.5 years ago.

Commissioner Eggenberger asked what it would mean to Mr. Pearce if the fence were only 6 feet tall in this location and not 8.5 feet.

Mr. Pearce stated that if the panels were lowered to 6 feet, that would mean that from their backyard, they would have a 4-foot-tall fence, which would not be a privacy fence. He noted that the area to the left is a sunken driveway, which is why it looks like it does. He reiterated that the previous fence matched that elevation and was higher than what they had installed.

Chair Huskins opened the Public Hearing at 7:37 P.M.

Derek Allmendinger, 5915 Grant Street, stated that they have lived next to the Pearce's for ten years, and the families have been close. He stated that the effort the Pearce's have put into their property over the last ten years has elevated their property, but also everyone else's in the area, which was greatly appreciated by their direct neighbors. He stated that the fence is structurally sound, safe, and provides privacy, and noted that the only person who has expressed opposition was about its aesthetics. He suggested that the Commission drive by and look at it because he felt it was very visually appealing, and asked the Commission to recommend approval of this request.

Kevin Kensel, 23255 Park Street, stated that he felt this fence had plenty of setback from the street and did not provide any visibility issues, and asked the Commission to recommend approval of the request.

Julie Williams, 771 Grant Street, Excelsior, stated that she was also here in support of this request and asked the Commission to recommend approval of their fencing, which she felt was beautiful.

Brenda Boime, 826 Pleasant Street, Excelsior, stated that they live behind the Pearce residence and stated that they felt they had done a wonderful job building a beautiful home and fence. She stated that she also encouraged the Commission to recommend approval of their request. She noted that they felt the Pearce's had done a great job and had elevated the property values for everyone in the area.

David Hoo, 23260 Park Street, stated that he also hoped that the Commission would recommend approval of this request for the fence, as is. He stated that he felt it was a nice addition to the neighborhood and agreed that the Pearce's had done a beautiful job on their house and fence, and their work had considerably improved the property.

Chair Huskins closed the Public Testimony portion of the Public Hearing at 7:43 P.M.

Commissioner Holker stated that she had not seen a letter from the property to the north.

Planning Director Griffiths stated that the City had not received any comments from the property to the north.

Commissioner Eggenberger stated that he hated fences, so when he sees a variance or a CUP request for a fence that goes beyond the City Code, alarms go off in his head, but explained that he realized there was a need for fencing in some cases. He stated that he intended to vote in favor of this request.

Commissioner Magistad moved, Commissioner Holker seconded, recommending approval of the Conditional Use Permit for Increased Fence Height for Richard and Jennifer Pearce located at 5905 Grant Street. Motion passed 5/0.

Planning Director Griffiths stated that this would come before the City Council on May 12, 2025.

C. PUBLIC HEARING – PRELIMINARY PLAT AND DEVELOPMENT STAGE PLANNED UNIT DEVELOPMENT APPLICATION

Applicant: Mark Kaltsas

Location: Shorewood Carriage Homes, 24560 Smithtown Road

Planning Director Griffiths gave a brief overview of the request for a Preliminary Plat and Development Stage PUD for Shorewood Carriage Homes at 24560 Smithtown Road. He noted that this property was recently rezoned to match the Comprehensive Plan guidance for medium density for development of 6 to 8 units/acre, and they were proposing a relatively straightforward 6-lot development. He explained that staff recommended approval subject to the conditions included in the staff report.

Commissioner Eggenberger asked about the guest parking spaces and asked if they would have signs that indicated it was for use by cars only and not RVs or trailers.

Planning Director Griffiths explained that, as part of the HOA documents and the previous City Council approval, there was a general restriction that those types of items were supposed to be stored on the exterior of the HOA-owned property.

Commissioner Magistad asked about the timeline for the development.

Planning Director Griffiths stated that the applicant would like to begin construction in 2025, if the City approved.

Commissioner Longo stated that there are a lot of Native American burial grounds in the area and asked if there was that kind of finding, if the City would end up being liable for taking care of it.

Planning Director Griffiths stated that burial grounds are a bit tricky because their location is protected as confidential data by State law. He stated that the City's engineering firm has access to some of that information and noted that they did not have any concerns with this location.

Commissioner Longo noted that two of the units will need some specific force mains for the sewer and asked if there were issues with them if the City would be responsible for any damage to the units.

Planning Director Griffiths stated that the City would not be responsible because those would be private improvements for the homeowners. He explained that several homes in the City have private force mains, and it is not uncommon. He stated that the City ensured that its infrastructure was a gravity main and was comfortable with this proposal.

Chair Huskins asked about the fence and why it was in the staff report.

Planning Director Griffiths stated that he was not with the City at the time, but his understanding from the record was that the adjacent fence on the south side of the site was falling over and in a state of decay. He stated that the fence is located on the property line, and with this application, there is the opportunity for the developer to provide some additional screening for the residents of the apartment. He noted that the language used in the section was 'consider' because the City cannot require this level of off-site improvements, and explained that the applicant had indicated that they were trying to work in good faith with that property owner to figure out the fence situation.

Chair Huskins asked where the sidewalk would end in the development.

Planning Director Griffiths explained the location at the development entrance where the sidewalk would end and noted that there was a full trail on the south side of Smithtown. He stated that the developer was proposing some small sidewalk improvements so the residents can get back up to the intersection at Smithtown Road and Country Road 19 to make a safe crossing to access the rest of the trail system.

Chair Huskins asked if there may be an opportunity, for safety reasons and access to the Country Club development and the trails, for some signage or a painted pathway to provide a crossing over Smithtown Road from the development.

Planning Director Griffiths stated that the issue here was the proximity to the intersection with County Road 19 and stated that having a crosswalk in this location would not be safe for residents because of how close the intersection was. He explained that the safest option for pedestrians would be to go to the intersection and cross at that point.

Chair Huskins asked about the landscaping to the west near the single-family home.

Planning Director Griffiths displayed the proposed landscape plan and stated that they were proposing a six-foot-tall ornamental fence that would run the length of the property line. He noted that the big circles shown on the plan indicated trees that would be planted to help with screening from things like headlights shining on the adjacent property. He stated that they were also planning a line of shrubs on the inside of the fence for the length of the property. He noted that the City had received a comment from that property owner, Paul Hirsch, 24590 Smithtown Road, who indicated that he would prefer it be a privacy fence rather than an ornamental fence.

Chair Huskins asked how much of the 10-foot setback area would be consumed by the landscaping and how much usable backyard the units would have.

Planning Director Griffiths stated that the backyards of these properties would be covered by a drainage and utility easement, so they would not be able to build structures in their yards. He noted that the Commission could think of this project almost like a detached townhome, and things like sheds would be controlled by the HOA covenant. He stated that there will be a few feet where residents could have something like a grill, but essentially, the whole backyard area would predominantly be landscaping.

Chair Huskins asked about the entrance related to signage and lighting.

Planning Director Griffiths explained that the entrance would be on Smithtown Road as a private driveway access and would not be any other improvements associated with it. He stated that he believed the applicant may place a monument sign at the entrance.

Chair Huskins asked if the private road would be wide enough to support traffic in both directions at the same time.

Planning Director Griffiths stated that the road was about 26 feet wide, so two cars could fit side by side and squeak by each other. He reminded the Commission that there were only 6 homes in the development, and staff were not concerned about residents running into each other all the time.

Chair Huskins explained that he was more concerned about the entrance with vehicles exiting or entering when there was substantial traffic on Smithtown Road.

Planning Director Griffiths stated that there could be cars entering and exiting at the same time and displayed a diagram that showed the amount of room available and stated that he felt there was enough room for the cars to negotiate with each other for entrances and exits with the traffic driving by.

Chair Huskins asked if a homeowner would be able to leave the property if there was an emergency vehicle on the property.

Planning Director Griffiths admitted that it would be a bit trickier and displayed the current rendering that showed the emergency vehicle turning movements, and stated that with an emergency vehicle on site, it would get a bit more difficult. He noted that the intent would be that it be signed as 'no parking', so he felt the emergency vehicles would be able to negotiate that like they would any other driveway or street in the City. He noted that the Excelsior Fire District had reviewed this concept and was generally supportive of it.

Commissioner Magistad stated that the potential zoning reform appeared to be stalled at the State level and asked if the City were proactive now, if it would give them any planning capital for the Comprehensive Plan, and if the City could demonstrate that they would build medium-density residential ahead of any State reforms.

Planning Director Griffiths stated that he did not believe so because, by law, the City was required to develop at this density at this location. He stated that the City was essentially doing the bare minimum with this proposal and noted that any less development with fewer units would not meet the City's requirements.

Will Matzek, Kimley Horn, St. Paul, explained that they were proposing a 26-foot wide entrance, which should be sufficient, and noted that Target's drive aisles were 24 feet wide. He stated that they also want this to be a safe development and have been working with staff at the Fire Department.

Commissioner Holker asked about the fence on the west side and the request from the homeowner to install a privacy fence rather than an ornamental fence, and asked if they had spoken about this.

Mr. Matzek stated that they have only been working with staff up to this point and noted the ornamental fence was what was desired at the Concept Plan phase, but noted that they could have some discussions with the homeowner about this to find an amenable solution.

Commissioner Magistad asked when responsibility would transfer to the HOA.

Mark Kaltsas, 7035 Halstead Drive, Minnetrista, stated that he was one of the owners of the property and explained that they would transfer the responsibility to the HOA when there was about 75% ownership in the development.

Commissioner Magistad asked about the expected timeline if they were allowed to break ground in 2025.

Mr. Kaltsas stated that it would come down to how quickly his real estate team can sell the properties. He explained that because they were introducing a product that did not currently exist, they were hopeful that there would be a demand in the market at their price point.

Commissioner Holker asked about the price point.

Mr. Kaltsas stated that it was not set but explained that they would come in lower than anything that was new construction single-family homes in the City, and noted that he was hoping that it would be between \$500,000 and \$900,000. He stated that he expects this to be about a 2-year build if they were able to break ground in 2025.

Chair Huskins asked if there was a plan for a sample home.

Mr. Kaltsas stated that if they had to, they would build a model, but he intended to try to sell and then use one of the initial builds to show others as people become interested.

Chair Huskins asked staff about the restrictions that may be related to sample homes in developments.

Planning Director Griffiths stated that there were some restrictions, but explained that they typically revolved around parking and construction access to the site, and noted that for this development, he did not foresee there being any issues.

Chair Huskins opened the Public Hearing at 8:17 P.M.

Paul Hirsch 24590 Smithtown Road stated that he was the homeowner to the west and had spoken with Planning Director Griffiths earlier today. He stated that he had been spoiled in not having any neighbors, and it made him a bit teary to see what was happening, but he understood that this project would be going in. He explained that he felt a privacy fence would be better than an ornamental fence. He noted that he has a few really old trees and felt it would be crazy to build anything underneath them, and did not see a reason that he should have to remove something that had been there for 50 years, and noted that he had been there for 40 years. He stated that the nature in the area was fantastic and explained that he had been envisioning this kind of project forty years ago when he bought the property, and stated that he felt like he was getting a rug yanked out from under him because this was not what his vision was for the property. He stated that there are eagle nests that are within 500 feet of the building area, which concerns him. He noted that he had been on pins and needles since the Smithtown Crossing project

happened 18 years ago and hadn't done anything to his house because this proposal came in to take over his property and control it, which was the only thing he owned. He explained that he lay awake at night worrying about this, even though he realized that there was nothing he could do and just had to take what was getting crammed down his throat and hope for the best. He reiterated that he would request that they install a privacy fence.

Chair Huskins asked Planning Director Griffiths to speak to this application as a PUD, which he felt provided a degree of leverage for the City to make requests about the project and what types of requests would be reasonable.

Planning Director Griffiths stated that with a PUD, it was not really for the City to leverage different benefits from a development, but to look at the project that was more efficient or had a better layout than what could otherwise be done with the City code. He noted that typically there were other improvements with this kind of project because the applicants were trying to build a desirable product, but the City was not necessarily in a position to leverage its approval to try to get different things from the project. He explained that in this situation, the applicant was providing several offsite improvements through the construction of a sidewalk and were in conversations with the adjacent owner on the opposite side on an ornamental fence and felt that the Commission could weigh in with a similar recommendation for a privacy fence in this instance, because it related to screening for the adjacent homeowner. He stated that he had spoken with the developer today about the concerns related to the trees that Mr. Hirsch had brought forward.

Mr. Kaltsas stated that they were amenable to installing a privacy fence as requested by Mr. Hirsch and explained that they would work with him on possible tree issues and did not expect that he would have any costs associated with their development. He explained that he understood Mr. Hirsch's plight and assured the Commission that they were not trying to do something that was not in compliance or accordance with the plan. He stated that they had bought the property knowing the guidance the City had for the property and explained that their intent was really to create a transition between commercial on the east side and low-density residential on the west side. He stated that if the Commission had other direction they wanted to give, they would be happy to hear it and would work with Mr. Hirsch.

Commissioner Longo stated that, having 6 units that had such short backyards, he felt having privacy fencing would be the most appropriate.

Mr. Kaltsas stated that a privacy fence may also be good for their buyers and agreed that it was a good solution.

Chair Huskins closed the Public Testimony portion of the Public Hearing at 8:25 P.M.

Commissioner Eggenberger noted that when the Commission gets proposals for a project on a lot that had been vacant for years and the adjacent property owners do not want anything to be built on it was hard and a bit sad, but the owner of the lot has the right, as long as they are within City Code, to do what they want to with the lot. He stated that he felt for Mr. Hirsch and his concerns, but would be voting in favor of this application.

Commissioner Holker moved, Commissioner Eggenberger seconded, recommending approval of the Preliminary Plat and Development Stage Planned Unit Development Application for Shorewood Carriage Homes located at 24560 Smithtown Road.

Commissioner Eggenberger stated that the only thing he would add was that the Commission had heard, in good faith, that the applicant would work with the neighboring property owners on making this development more acceptable to them.

Chair Huskins asked if the Commission needed to formalize that point as part of their recommendation of approval.

Planning Director Griffiths stated that it would be part of the record, and staff would draft the resolution that comes before the Council with language to that effect.

Motion passed 5/0.

Planning Director Griffiths stated that this item would come before the City Council on May 12, 2025.

Chair Huskins recessed the meeting at 8:29 P.M. and reconvened at 8:32 P.M.

D. PUBLIC HEARING – NONCONFORMITIES CITY CODE AMENDMENTS

Applicant: City Initiated

Location: City-wide

Planning Director Griffiths reviewed the proposed City-wide City Code amendments related to nonconformities and explained that the intent behind the proposed amendments was to make things simpler for residents, the Commission, and staff. He outlined the two most substantial policy changes that were being recommended and shared examples of when they would arise.

Commissioner Magistad gave the example of the most recent item, where the gentleman's property had been rezoned, and asked if that created a nonconformity. He asked, for example, if that owner could build an addition on the house under these proposed rules.

Planning Director Griffiths stated that he could build an addition on the house under these rules.

Commissioner Longo stated that Planning Director Griffiths had mentioned certain things that are reasonable and would not need a variance, but asked who would decide what was considered reasonable because the change would no longer come before the Planning Commission.

Planning Director Griffiths explained that with the way the language was written, there would only be very unique circumstances where variances would not be required, and explained that the ordinance would be determining what would be considered reasonable, and City staff would administer the ordinance.

Chair Huskins asked for a definition of 'may be' and noted that it may be, in part, in addition to the question asked by Commissioner Longo, and explained that they could use an example.

Planning Director Griffiths explained that this was where the legal precedent came in and explained that the way the State law was written was very wishy-washy. He stated that much of the language that City Attorney Shepherd had put into the ordinance was also not very rigid to allow for the flexibility of interpretation. He stated that in the situation mentioned by Chair Huskins, the term 'may' meant that if you can demonstrate this certain thing, the City may grant it. He explained that by using the term 'may' instead of 'shall', the City was trying to avoid potential litigation.

Chair Huskins stated that to him, that was more of a risk than using the term 'shall' and could require some form of mediation because what he thought may be completely different than what Commissioner Eggenberger may think. He reiterated that he felt the risk of a challenge to this may be higher with this approach.

Planning Director Griffiths stated that if that was something that concerned the Commission, he could have a conversation with City Attorney Shepherd about those references.

Commissioner Eggenberger stated that if they said 'shall' in those instances, they could still run into the same problem because then they have to decide which meant there would still be ambiguity.

Chair Huskins clarified that he was not arguing that they should insert the term 'shall' but explained that he had gotten hung up on the items that said 'may' and not 'shall' because the 'shall' statements were easier.

Commissioner Longo stated that the use of the word 'may' could make a citizen think that they may not need to ask for a variance, which may mean that things would be built or modified.

Chair Huskins stated that was why he had asked the generic question earlier about the meaning of the word 'may'.

Planning Director Griffiths stated that all he could say was that this language came from City Attorney Shepherd's office. He noted that this was a very complicated ordinance that covers a lot of topics. He explained that between this meeting and the City Council meeting, he could have a follow-up conversation with City Attorney Shepherd to discuss some of the Commission's concerns.

Chair Huskins stated that he would like to see that happen.

Commissioner Eggenberger stated that he did not think having that conversation would hurt anything.

Planning Director Griffiths stated that he felt it was a good question.

Chair Huskins asked about item 1201.03, Subd 1, item b related to continued nonconforming use and stated that this ended with 'but not, including expansion, enlargement, or intensification.' He noted that later in the document, he saw expansion being possible and asked if it might be better to say something like 'there are exceptions noted herein' or something similar.

Planning Director Griffiths stated that this was the point where the language was confusing and explained that this section came directly from State law and was saying the word 'use'. He noted that there were two different standards, nonconforming uses and nonconforming structures. He reviewed examples of nonconforming uses and nonconforming structures. He noted that he also wished that the State law was clearer.

Chair Huskins referenced item O. Appeal of estimated value of damage, on the last page and stated that it felt odd to him that this was pasted on at the end when earlier in the document that talked about the 50% and asked if there was a reason that this wasn't more contiguous with that portion of the ordinance.

Planning Director Griffiths stated that he was not sure there was a specific reason, but he could check with the City Attorney on how this had been organized.

Commissioner Magistad asked if Planning Director Griffiths felt a homeowner that did not agree with a decision made by the City about the need for variance, could use the Commission or Council meeting as a forum to use this document to challenge that determination.

Planning Director Griffiths stated that residents were always welcome to appeal to the Commission or Council if they disagreed with a determination that was made.

Chair Huskins opened the Public Hearing at 8:54 P.M. There being no one at the meeting, he closed the Public Hearing at 8:54 P.M.

Commissioner Eggenberger moved, Commissioner Holker seconded, recommending approval of the City Initiated Nonconformities City Code Amendments for the City, with the direction that Planning Director Griffiths discuss some of their concerns with the City Attorney. Motion passed 5/0.

Planning Director Griffiths stated that this would come before the Council on May 27, 2025.

5. OTHER BUSINESS

A. Monthly Training Topic – Findings of Fact

Planning Director Griffiths explained that the City made decisions based on findings of fact and the record and shared a brief training about how findings of fact explain how and why the City reaches a decision. He noted that there was detailed information from the League of Minnesota Cities included in the packet for their reference.

Commissioner Holker stated that she thought this information was great and put a bit of caution in her mind not to be swayed too much by personal opinions if it was not consistent with the facts.

Chair Huskins gave the example of a situation where the Commission had heard the findings of fact, but upon a vote, there was not a unanimous vote, and asked if that exposed the City if there were non-unanimous recommendations.

Planning Director Griffiths stated that it did not expose the City at all and would be the same as the Supreme Court having a 5-4 decision. He explained that what the court looks at is whether the City followed its process, such as opening and closing the public hearing, considering what people had to say, and developing findings of fact to support whatever the majority decision was.

Chair Huskins noted that they ask the dissenting Commissioner to offer reasons for their vote and asked if that was important or if it was something that they should not be doing.

Planning Director Griffiths stated that he felt for this group, it made sense to ask that question so it could be shared with the Council all of their thoughts on a project, but noted that it did not have a substantial impact. He noted that the Commission would never get in trouble by providing more information and would only get in trouble if it provided less information.

Chair Huskins suggested that the Commission agree that if there was a non-unanimous vote that they would take the time to articulate the reasons. He stated that staff reports under former Planning Director Darling, there was a sentence routinely added that he had not seen in Planning Director Griffiths' reports. He stated that the sentence was something to the effect of, 'The Planning Commission may reasonably find otherwise' which she included following her recommendation.

Planning Director Griffiths stated that he did not include that sentence because he felt it was common sense and stated that they had been appointed to the Commission to disagree with him if they felt he was wrong. He noted that he would add that statement for variance resolutions because that was where the subjective review criteria could be found.

Chair Huskins noted that he was not asking this sentence to be included but wanted to make sure the Commission firmly understood that point, especially because there were two new Commissioners.

Commissioner Eggenberger noted that his starting point was the staff recommendation, but he did like the sentence former Planning Director Darling had included.

Planning Director Griffiths stated that he could certainly put the sentence back in for the Commission.

There was a consensus of the Commission that they would like the sentence used by former Planning Director Darling to be included, which clarified that the Commission did not need to agree with the staff recommendation.

B. Liaisons for Upcoming Council Meetings

Commissioner Holker noted that many of tonight's agenda items were being presented to the Council on May 12, 2025, but there was not a liaison for that meeting and asked if these should be aligned better.

Planning Director Griffiths stated that typically, the Park Commission sends a liaison to the first Council meeting of the month, and the Planning Commission sends a liaison to the second meeting of the month. He noted that typically in this situation where items were taken to the first meeting of the month he takes on the role of providing an update for the Council and most of the time, the Councilmember who serves as liaison to the Commission would also be present and able to give some insight to the Council, if necessary.

May 27, 2025 – Commissioner Longo
June 23, 2025 – Commissioner Holker
July 28, 2025 – To be determined

Commissioner Eggenberger explained that, due to health reasons, he would be resigning from serving on the Planning Commission. He explained that he was willing to stay on the Commission until the City Council appoints a replacement so Planning Commission would not run into any quorum issues.

Planning Director Griffiths suggested that Commissioner Eggenberger send him an email outlining his intention and willingness to continue serving until a replacement is found, and he will

bring that to the Council. He thanked Commissioner Eggenberger for his service to the City and noted that he was sorry to see him go.

C. Planning Commission Photo

Planning Director Griffiths stated that the Communications Department had asked him to take a photo of the Commission.

6. REPORTS

• **Council Meeting**

Planning Director Griffiths gave an overview of recent Council discussions and actions.

• **Draft Next Meeting Agenda**

Planning Director Griffiths stated he expected the agenda for the next meeting to be fairly light and reviewed the applications. He noted that the City was actively recruiting for the open Planner position and would be holding the second round of interviews sometime next week.

7. ADJOURNMENT

Commissioner Holker moved, Commissioner Magistad seconded, adjourning the Planning Commission Meeting of May 6, 2025, at 9:25 P.M. Motion passed 5/0.