

CITY OF MEDINA PLANNING COMMISSION

Meeting Minutes

Tuesday, October 9, 2007

1. **Call to Order:** Chair Mary Verbick called the meeting to order at 7:01 p.m.

Present: Planning Commissioners Mary Verbick, Jeff Pederson, Doug Dickerson, Michele Litts, Charles Nolan and Robin Reid (left at 7:42 p.m.).

Absent: None

Also Present: Planning Director Tim Benetti; Assistant to Planning Dusty Finke.

2. **Public Comments:**

3. **Update from City Council Proceedings:**

Reid read aloud a written report from Councilmember Weir (attached) on recent City Council actions.

4. **Planning Staff Report**

Benetti summarized items which may appear on the November Planning Commission agenda. The application for a site plan for the construction of six condos at 705 Hamel Road is still pending some additional information, but may be ready for November.

Benetti reminded Commissioners about the Comp Plan Open Houses on October 25 and October 27, and stated that Commissioners should plan to attend. The Public Hearing will be held on Tuesday, November 27 at 7:00 p.m. at the Community Building.

5. **Approval of the September 11, 2007 Planning Commission Minutes**

Motion by Dickerson, seconded by Reid to approve the September 11, 2007 minutes, with the suggested changes. **Motion passes unanimously.**

6. **Public Hearing for an Ordinance Amendment – Section 826.98 – Pertaining to regulations to animal-assisted therapy facilities in the Rural Residential (RR) zoning district.**

Finke delivered a brief staff report. Finke stated that at the last City Council meeting the Council directed staff to bring an ordinance amendment on the animal assisted therapy facility and regulations back to the Planning Commission in order to require a 75 acre minimum for an Animal Assisted Therapy Facility. He stated it has an allowance for adjacent parcels under common ownership, assuming the CUP would apply to both parcels. Finke stated that it is a relatively straight forward ordinance amendment this evening and reminded the Commission that there will be a Public Hearing.

Dickerson inquired how the 75-acre requirement would impact an AAT wishing to move to a commercial horse facility.

Finke replied an AAT facility would not be allowed at the commercial horse facility unless it was 75 acres in size.

Dickerson stated that he wished to allow it on 15-acre commercial facilities, and 75 acres for residential. He asked if horse facilities are zoned commercial.

Finke replied that under current ordinances, they could only be located in the RR2 district. However, there are also those zoned RR with older CUPs from before the creation of the RR2 district. Finke listed the existing facilities that are zoned each way. Finke stated that staff could look at working in a lot-size exemption for commercial horse facilities.

Nolan inquired concerning what was to be discussed and if they would be opening this up to all kinds of ordinance changes.

Benetti said his experience on a professional level is that the any issue referred by the Council should be discussed first in order to resolve that issue. If there are any other issues the Commission wants to coat-tail on that, you can certainly make that recommendation to Council. The Council could then act on that additional recommendation, or refer it back for another Public Hearing.

Reid asked what would happen if the Commission was not able to reach an agreement on this amendment. Benetti said if the Commission does not recommend the amendment, and the Council doesn't adopt it, the ordinance would continue as it stands in the City Code today.

Verbick asked if members in the community could get in touch with staff or the City Council if they had concerns related to this. Benetti said after the results of tonight's meeting, staff would take the recommendation to the Council meeting next Tuesday night, memorializing any issues the Commission wants to put as part of this amendment, or other issues they may want brought to the Council.

Public Hearing opened at 7:18 p.m.

Jeff Dobbs (1772 Morgan Road) stated that they support the change for an increased minimum acreage. Dobbs said at the last meeting the City Council was clear that their intent was to rescind this ordinance following their approval for the Turnquist property. While there was some disagreement over whether the Turnquists should be allowed to have AAT on their property, there was clear consensus of the entire Council that the AAT ordinance, as currently drafted, fails to address any of the issues which have been raised over the past several weeks. In addition to the concerns about future AAT uses, the Council was clear that their intention was to only approve the Turnquist CUP for a period of two years. Unfortunately when the City grants a CUP, the permit attaches to the land. This means that as long as the conditions are met, anyone who owns the land can operate under that Conditional

Use Permit. While the Turnquists have told the City they only intend to use the property for AAT for two years, the City Attorney has stated this is not an appropriate condition for the permit; and that the City does not have the right to enforce a two-year limitation on the use through the CUP. While a CUP cannot be restricted to a specific length of time, other communities allow for a temporary use such as this one under an Interim Use Permit process. Currently Medina's Interim Use code addresses areas that are in transition. If the Council's intent is to allow AAT on the Turnquist property for only a limited period of time, the Planning Commission should recommend that Council amend the Interim Use Ordinance to allow for temporary uses under the provisional code. In summary, the Council has asked the Commission to provide a recommendation of an amendment to the Animal Assisted Therapy ordinance. Given the thoroughly stated objectives of the Council, Dobbs respectfully requested that the Planning Commission recommend that Ordinance #428 be rescinded in its entirety.

Abdish Bhavsar (2105 Chestnut Road) respectfully asked a Commissioner to bring up a point of order. He said the restriction of tonight's discussion to only the 75-acre minimum question is, respectfully, out of order. The announcement for a Public Hearing was made one week prior to the last City Council meeting. It was at the last City Council meeting that the discussion of limiting the use to 75 acre properties came about. Therefore, it would not be in order to restrict the discussion tonight by the Commission or the Public Hearing to answering one question. He stated that the ordinance was written for one CUP and allows access over a private road, which the City is signatory to for non-residential use. He stated that this does not seem legal or appropriate. By allowing non-residential traffic on such a small private road, the City essentially commits a violation of such an agreement. He stated that he has heard that if the Planning Commission or City Council knew of dissention of neighbors prior to passing the ordinance, the ordinance may not have been written or may not have passed in the first place; and that it may be too late to voice a dissenting opinion, or to change the course of events. As the ordinance is before the Commission for discussion, clearly it is not too late to change the course of events. He stated that whether or not this influences his property is beyond discussion today, as it seems the ordinance has already been written and the CUP will pass. He stated that his comments have nothing to do with the CUP, but rather for his neighbors on the other side of his property who have similar small roads and who may face the same type of proposal under the ordinance as it stands. He stated the amendment woefully does not address neighbors concerns about adequate access. No one likes to see division amongst neighbors. He stated that if it would be solved for some other neighbor on some other day, it would be his hope that the Commission rescinds Ordinance #428 for the future. He stated that he would never speak any negative word about the program, and actually is pondering how to use AAT with his patients who are losing vision. He stated that he thinks it could be a wonderful thing, but it shouldn't be on this particular street, or any other similar street in Medina. That's why most of us have chosen to live on a small dirt road like this. He expressed disappointed in the City Attorney's assessment of the road in his memo, because it essentially encourages private legal action. He stated it is not their desire to litigate any neighbor or the City. He stated that he and his neighbors are actively trying to find other properties that would be appropriate for this use in Medina, and would have good access. He respectfully asked that the ordinance be revoked this evening.

Dale Considine (2265 Chestnut Road) said she has been at every one of the meetings that started a long time ago and wanted to re-iterate that of eight people on Chestnut Road, there is only one person that isn't happy about this situation. She wanted to be a voice for some of the people not there tonight that live right on Chestnut Road. She wanted to say she has always supported this and thinks it is proper for the period of time they are expressing.

Jim Lane (attorney for the Turnquists, and representing MnLINC) wanted it made clear that neither the Turnquists nor MnLINC have any objection to the proposed increase in area, from 15 acres to 75 acres.

Jim Simons (1862 Morgan Road) stated that the round peg in a square hole analogy seems to fit well. He reiterated that while it is easy to say could've, should've, would've, the fact is that the ordinance is back before the Commission. He encouraged everyone to step back. It appears that the CUP will be approved and that in a few months the ordinance will be brought back to the Commission to be deleted. Everyone is entitled to an opinion, but you will notice that comments are not about MnLINC, not about Chestnut Road, but rather about the precedent created. The Council is not recommending the ordinance be rescinded all together. Leaving that aside, this is a permanent change to a non-arterial road. There are 27 conditions on the CUP, and probably will be more just in order to comply with the ordinance. It is not just about one property on one road. He stated that his property meets the 15-acre requirement and he wouldn't want to see that for his neighbors.

Bhavsar stated that they are the neighbors most affected by it, but are not a lone voice in the wilderness. Their property runs the entire length of the dirt road, the house is on it and the traffic directly affects them. He stated that in all fairness, everyone should disclose what their relationship is, either business or non-business, to MnLINC or to the Turnquists. One of the neighbors is a prior employee of the Turnquists and still does work for them occasionally, and his daughter lives in the house next door. Out of loyalty, they support them. The third house is definitely opposed to it in no uncertain terms. She is so violently upset that when you ask her about it, she starts trembling. She refuses to come to meetings or to voice her concerns because she has lost faith in the democratic process. The Considines, have a daughter who works for MnLINC. The LeMonds are public figures and to say on record anything against a program for children would be suicide. So that's the layout of the neighborhood with respect to the road, with respect to common land ownership, and common boundaries. He stated that this is where the folks over on Morgan Road come in, because they share the largest property boundaries in common, next to us and the Turnquists.

Public Hearing closed at 7:40 p.m.

Litts stated that she wished to make everyone aware that she had prior contact with MnLINC, previous to being appointed to the Commission. Her daughter had taken riding lessons through a company that worked with MnLINC, but were not part of the MnLINC program. She wished to make everyone aware that she had been in contact through her daughter.

Dickerson thanked everyone for coming. He said that a couple of months ago the Commission said this was going to open a can of worms, and it sure did. He has been in favor of the 80

acres from the getgo. He stated that was not enough territory covered with the notices that were sent out, for a thousand feet we should have sent out at least 20 letters. Only one neighbor came to the public hearing, so we didn't hear all the concerns. It appears this is going to be a two-year use. He said he is glad to see that the 75 acres is in play again. If you look at an 80 acre parcel with good soils, they could subdivide and have 13 lots. With 2.3 people per unit, you are looking at more people than what this facility is going to have. He stated that we are looking at kind of the same thing; does this impact our rural residential character? He stated that he doesn't think it really does. The Turnquists are trying to do a good thing; the program is a good thing. He stated that staff should come up with a temporary use permit or something creative to handle the two year maximum. He said he is a little concerned about police and fire vehicles on the road going into the facility, and is also concerned about market value.

Benetti reiterated that CUPs go with the land. They become valid uses as long as the conditions are followed. The City Attorney questions the enforceability of a time restriction. The applicants have offered the time limitation on the record, in the minutes.

Nolan stated that other cities have created interim use permits within their ordinances. For instance, in Bloomington, airport parking near the airport is an Interim Use Permit. They ultimately want to see hotels in these areas.

Finke noted that the way in which interim uses are used in Medina's Code is for areas in a transaction regarding land uses. Certain uses may be allowed until sewered development occurs, in which case the interim use should cease. The RR district, and especially Chestnut Road, are located within the "permanent rural" land use, which aren't set to transition for at least the next two decades, most likely much longer.

Lane inquired if he could speak on the two year limitation.

Verbick asked Commission members if this would be acceptable.

The general consensus was to allow further public comment.

Lane stated that the two-year limitation was not a "gentleman's agreement," but rather a specific, written letter to the City Council requesting a condition in the CUP that mandates the AAT facility be ended before October 1, 2009 and if it does not, that the entire CUP be revoked.

Nolan stated that his issue at time of the CUP was the traffic. The issue is that this does not belong in the back of a neighborhood, on a small street. He stated that he is fine living next to a commercial horse facility, because it is served off of Willow. If it came off of his little private road, he would not be as ok with it. Putting more intensive land uses behind less intensive is bad land use policy. He stated that he is not against MnLINC, but it is not appropriate to put commercial uses on little neighborhood streets. The cemetery ordinance, which will be discussed later, is similar, except that it is only allowed off of major streets. The 75-acre requirement misses the mark, if the property is commercial, 15-acres is probably enough. If it were on Willow or CR24, it would be different, but this is a local road. He

stated that we feel compelled to allow it because it is a noble cause, but it just doesn't belong there. It is also a concern that there would have to be so many conditions on an approval. He stated that he would be in favor of the 75-acre requirement, but the road issue is the more important issue. He stated that he did vote in favor of the application, but only because there was no one that spoke against it, and he thought the Turnquists were living there.

Pederson stated that he had also voted to recommend the application, but no one had spoken against it. The Commission tried to do what was right, and does not want to divide members of the community. The elected City Council has asked for specific input on the 75-acre change, and the Commission ought to stick to that.

Benetti clarified that the Commission can recommend any changes to the ordinance that they wish to. They could recommend changing any parts of it, or even recommend revoking it. He urged the Commission to at least make a specific recommendation on what the Council referred to. However, the Commission could make any additional recommendations as well. The Council could then act on it, or refer it back again.

Verbick inquired if the CUP currently be considered meets the current ordinance requirements, and if it would with the 75-acre change.

Benetti stated that staff believes that it does. Finke added that it would meet both the 15 and 75-acre requirements.

Motion by Dickerson, seconded by Nolan to recommend adoption of the ordinance as presented in the staff report with two additions: 1) properties with an existing CUP for a commercial horse facility need only 15 acres; and 2) amend clause ii to read "shall be located with direct access to a collector or arterial roadway."

Jim Lane asked to speak, and was recognized by Chair Verbick.

Lane stated that from the perspective of the Turnquists and MnLINC, adding such a road access requirement would kill the pending CUP. He stated that he wanted to make sure everyone understood that.

Nolan stated that he understood that, and it kind of paints him as the bad-guy. However, he stated it is bad land use policy to allow this use in the back of a neighborhood. If the Council is going to go back and amend or delete the ordinance in the future, why is there even a discussion tonight? It either makes sense or it doesn't.

Verbick suggested that maybe the access portion of the motion be removed so that it can be considered on its own accord, especially if such a thing would kill a pending application.

Nolan stated that the Commission is a recommending body; they will not be killing anything this evening. Land use policy should not take into account the emotion of certain applications; it has to be broad sweeping. If Commissioners agree that putting a quasi-commercial use on a less than collector street is bad policy, then they should suggest so to the Council.

Verbick reiterated that she believed it would be better if Nolan withdrew that part of the motion and then voted “no” on the motion and was able to explain why.

Nolan stated that he prefer the motion as it stands get a vote to see if it carries or not.

Bhavsar requested to speak since the attorney was allowed to.

Chair Verbick recognized Mr. Bhavsar.

Bhavsar stated that the City Council will decide whatever they will decide. The Commission’s decision is advisory, and they can surely send forward a message.

Motion fails (Yea: Nolan, Pederson; Opposed: Verbick, Dickerson, Litts; Absent: Reid).

Dickerson stated that he is in favor of the 75-acres, but wishes to allow MnLINC to move after two years to a commercial horse facility over 15-acres in size.

Litts stated the Commission has already discussed this issue, the ordinance was passed, and it was passed fairly unanimously. Now there are people coming out opposed to it, and everyone is thinking they made a mistake and they have made everyone happy. It seems that no one is looking back and saying: “This is what we believed in at the time.” Now, it is curious that everyone wants to pick over it again. It was drafted originally and has been approved.

Verbick stated that the work done previously was done in good faith and with an understanding of what was going on. She stated that she stands by her decision. Farming could be seen as commercial also, but it is also very rural. AAT is also a rural activity, it is not highly intensive. The CUP gives staff the ability to regulate the activity.

Nolan stated that it appears that this takes too much comfort in the 2-year limitation.

Dickerson stated that he wished to leave that up to the City Council. Perhaps then a vote could be taken on if the Commission supports AAT as an interim use.

Verbick asked for direction from staff.

Finke suggested that if the motions are broken down into smaller subjects, the direction and recommendation is much clearer for staff and the Council.

Motion by Dickerson, seconded by Litts to recommend approval of the ordinance as presented by staff. **Motion carries** (Opposed: Nolan; Absent: Reid)

Nolan stated that he opposed the motion because he believes it is bad land use policy to place commercial or quasi-commercial activities on neighborhood streets. He recognizes that it does seem like rural character. However, this is more intensive, brings in more traffic. The

use would be entirely appropriate as a commercial horse facility, but it shouldn't be placed near people who bought property within rural neighborhoods.

Benetti stated that this item will be before the City Council on October 16. Dissenting comments will certainly be included within the information packet.

Tanya Welsch (MnLINC) stated that the more intensive uses had been agreed to be removed. The larger meetings are no longer allowed and hours were reduced. She stated they are a small operation, with only two employees. They will stand by their word regarding the two year limitation.

7. Ordinance Amendment – Section 828.43 – Pertaining to regulations related to wetlands
Public Hearing

Benetti stated that the wetlands ordinance had been discussed two years ago, and had been pending for a fairly long time, awaiting the completion of the wetlands functions and values assessment by a consultant. He introduced John Smyth, the City's wetland engineer and agent for the Wetland Conservation Act. Smyth is helping the City with the ordinance since he is an expert in the field.

Smyth delivered the staff report. He described the Wetland Conservation Act (WCA), which offers some protection for wetlands. People cannot fill or drain a wetland without going through the process and meeting specific criteria. The WCA attempts to have no net loss of wetlands, but does not protect wetlands for adjacent land uses which may degrade their quality. Cities and watersheds can protect the quality of wetlands by implementing ordinances. Wetland experts largely believe that upland buffers are one of the most effective tools for protecting the quality of wetlands. Some of the benefits of buffers are: water quality (filtering), erosion control, nutrient removal, aesthetics, wildlife habitat, expanding open space around wetlands, and maintaining rural character.

Smyth described the recommended buffer widths from the State Stormwater Advisory Group in 1997. 25 feet or more in natural vegetation helps with filtering, while 50 feet to 100 feet may be necessary to protect habitat, especially for rare and threatened species. Another benefit is preventing human encroachment, which the Group recommends 100 feet to 150 feet. Smyth noted that the City made the decision back in 2005 to protect wetlands based on their functions and values. The City did not have an inventory of this at that time, and has since been working with WSB to acquire one. Smyth referenced the draft map hanging in the back of the room. Smyth described the process of assessing the wetlands. From this data, wetlands were placed into one of four classifications based on Minnesota Board of Water and Soil Resources (BWSR) criteria. These classifications are: Preserve (has at least one exceptional function or value), Manage 1 (high), Manage 2 (medium), and Manage 3 (all other wetlands).

Smyth described the regulations set by the watersheds within the City. The Minnehaha Creek Watershed requires buffer based on wetland size. The City thought that functions and values would be a better basis for the buffer. Minnehaha Creek does not include any structure

setbacks from the buffers, so buildings could be built right on the edge of the natural vegetation. Minnehaha triggers the establishment of these buffers with relatively minor events, such as the disturbance of 5000 sq. ft. of area, or 50 cu. yds. of volume. Pioneer-Sarah requires 20 foot buffers with no setbacks, which are triggered at time of development or redevelopment. Elm Creek requires a 50 foot buffer if adjacent to the Creek itself, and leaves it to the City to set its own buffer requirements otherwise. Smyth noted that each of the Watershed Districts would have to support the ordinance in order for the City to take over regulatory authority.

Smyth described the draft ordinance before the Commission. He described the buffers by wetland classification. Smyth stated that one option which the Commission could consider and add to the draft would be additional buffer requirements for Preserve wetlands which are adjacent to areas of high value natural resources. This is not included in the current draft, but the Commission could recommend adding it. Smyth noted that all buffers would include 20 foot structure setbacks. This forms a back yard and is makes it less tempting to push into the wetland. Smyth described the triggers which would cause the buffers to be formulated. In the current draft, any formal land use application or construction of a structure greater than 1500 sq. ft. would trigger the buffer requirement; as would any grading disturbance greater than ½ an acre in area. The third trigger would be a lesser grading activity (50 cu. yds. or 5000 sq. ft.) to be similar to Minnehaha Creek's requirement. However, in the current draft, it is less inclusive because this trigger would only apply if new hardcover is proposed within 100 feet of a wetland, and if the area drains directly to a wetland. This is meant to not require buffers for smaller projects.

Pederson inquired about the "minimum buffer" column in the table.

Smyth stated that the ordinance allows for an averaging of the buffer, so that it can be narrower in some areas, and wider in others. However, it could be no narrower than this minimum.

Pederson asked why some of the watersheds leave it up to the City.

Smyth stated that watersheds cross many cities which are very different. For instance, Minnehaha Creek expands into Minneapolis, to Minnetrista, to Medina and everywhere in between. They need to set reasonable rules for these huge differences and leave the cities the opportunity to create rules for their land use tendencies.

Verbick noted that it should also be noted that because Medina has three different watersheds with three vastly different regulations, it would be important to establish consistent regulations across the three. This was one of the main reasons for having this ordinance.

Pederson inquired about how shoreland areas interact with the ordinance.

Smyth noted that if the shoreland has a wetland adjacent to it, then the ordinance would hold. If it did not, then the shoreland rules would apply. Regardless, whichever of the setbacks is most restrictive would need to be upheld.

Pederson inquired about existing homes which may be destroyed by a natural disaster, hypothetically in Foxberry, where there is often not much area away from the wetlands. He asked if they would be prevented from rebuilding.

Smyth noted that the buffer flexibility may help with some of this concern.

Finke noted that there are variance provisions. In terms of non-conformity, a home which was completely destroyed would be considered a Type-C non-conforming use, and could only be replaced if the damage was less than 60% of the market value of the home. If the Commission wished, staff could look for ways to alleviate this fear.

Dickerson inquired about how WSB was coming on the assessment. He stated that the cart seems to be before the horse in talking about the ordinance. Dickerson stated that they were supposed to have a presentation. Dickerson stated that he has neighbors who, if they walk out the back of their house, are within 50 feet of stepping into the water of a wetland. He also wished to include some of the wetlands in Open Space corridors and require additional buffers. He would like to get more information from the assessment.

Finke stated that from a process standpoint, the wetlands ordinance is obviously very technical, involved and important. Staff was foreseeing that the Commission would want to have more than one look at the ordinance, so it is certainly not a problem to discuss it in November as well. Staff will also get a hold of WSB to make a presentation as well.

Dickerson recommending tabling the ordinance until after the presentation from WSB.

Finke stated that while it certainly will be helpful to have WSB make a presentation, and could allow for discussion about specific wetlands, he suggested the Commission take a close look at some of the important regulatory pieces of the ordinance, at least from a broad, philosophical perspective. The Commission could then give staff feedback, and concerns could be addressed before the November meeting.

Dickerson asked about the names of the classifications. It seems too formal and engineer-like.

Smyth stated that BWSR prefers consistent naming, but the names could be changed.

Public Hearing opened at 9:07 p.m.

Dave Thill (Hennepin County Environmental Services) stated that he wished to bring up a few suggestions. Medina is unique in the County because of some of the natural resources. It is very important to protect them. He suggested implementing wider buffers for wetlands adjacent to places which the natural resource inventory identifies as ecologically significant. Thill also described the wetland classification system. Thill circulated additional information about suggested buffer widths.

Dickerson inquired if it was permissible for an ordinance to call out specific areas for additional buffers.

Thill stated that as long as the ordinance referenced the scientific data, it should be fine.

Abdish Bhavsar (2105 Chestnut) inquired who from the City could serve as a resource for people who are looking to undertake work to rehabilitate and improve wetlands. He also inquired about managing wetlands to drain wetter wetlands to dryer wetlands during wet times.

Smyth stated that the WCA regulates some of these activities. Draining one wetland to another would certainly be regulated. Wetlands, in their natural state, vary in the amount of open water, but different types of wetlands have different purposes. It might not be good, ecologically, to drain a wetter wetland to the dryer wetland. Each of them has their own ecological purposes because of their differences.

Finke offered to read written correspondence which was submitted before the meeting from a property owner who was unable to attend the meeting.

Comments from Bob Trojan (3505 Pioneer Trail) were read into the record and are attached.

Public Hearing Closed at 9:25 p.m.

Nolan stated that he was curious why the Manage 3 wetlands had a 20 foot buffer and 20 foot setback when looking at the classification system; most of the functions are rated as 'low.' He asked for more information on what a Manage 3 wetland looks like.

Nolan stated that the reference to 1,500 sq. ft. structure should be clarified so that it refers to the footprint of the building, not the total square footage of all of the levels.

Nolan stated that if a wetland has not been classified, a property owner is required to pay for a classification. If it doesn't show up on our map, do we want to add that burden to them? When reviewing the ordinance, it does a great job at protecting wetlands in larger developments and subdivisions. Nolan stated that he believes it needs to be fixed up a bit in regards to the burden on existing homeowners; a homeowner with 40 acres, and some wetlands which do not show up on the classification map. They want to build a pool with a footprint over 1500 sq. ft. Now they have to pay to have the wetland delineated and accessed...and they can only do it during six months of the year. Why would you want all that if the pool is 500 feet away from the wetland?

Finke noted that if it was more than 100 feet from a wetland, it wouldn't trigger the ordinance.

Smyth noted that it could be an option to only include the wetlands shown on the classification map and not put the burden on property owners, if the Commission wished. He added that the ordinance can have a positive impact in situations where it is not even triggered. Maybe someone will move a barn further from a wetland, or to an area which doesn't drain to a wetland. This approaches the goals of the ordinance without it being triggered.

Nolan stated that he doesn't want to make a mountain out of a mole hill, but he also want to make sure not to club existing, law-abiding property owners with a regulation that holds them off from getting a project done until April 15.

Nolan inquired if there was a way to offer some administrative relief. If staff could go to a property and walk it off and see that they are easily over 250 feet away from a wetland, could they avoid the delineation.

Smyth stated that staff had tried to work that into the ordinance. The language reads "wetland boundary as approved by the City" rather than reading "delineated boundary." Staff could then field verify a conservative wetland boundary if it is far enough away.

Thill noted that the wetlands on the classification map are not delineated. WSB used Hennepin County's wetland map to find out where they had to go to carry out assessments. He noted that the map certainly caught a vast majority of wetlands in the City. He also noted that he could be a resource to find those conservative wetland boundaries.

Nolan noted that those things seem to help add some of the flexibility he was talking about.

Finke stated that this flexibility could only go so far, however. Once the ordinance is triggered, perhaps by constructing a building with a footprint over 1500 sq. ft., the property owner would need to get delineation so that the buffer could be described. He suggested Commissioners discuss this trigger to see if it should be adjusted.

Pederson asked Nolan if he thought that 1500 sq. ft. was reasonable.

Nolan replied that he believed it seemed reasonable.

Pederson stated that the 50 cu. yd. seemed low.

Nolan stated that this might be necessary because of the Minnehaha Watershed.

Finke noted that this 50 cu. yd. requirement is not stand-alone. Additional hardcover would have to be within 100 ft. of a wetland, and the area would have to drain to the wetland.

Pederson inquired if there was anything to mark the edge rather than signs on ugly posts.

Smyth stated that he has seen birdhouses used.

Commissioners stated that this seems to be much better.

Nolan asked staff to clarify the language describing the planting requirements. It should say that four different types of species are required; with the existing language, a lawyer could try to claim that they only needed to plant four individual plants.

Litts stated that she has seen a property owner moving large amounts of dirt around and impacting wetlands over the past few summers, and it hasn't been regulated because he never came in for a permit. She was curious how the ordinance would deal with that type of situation.

Finke stated that if they were in the wetland at all, it doesn't matter how little dirt is moved, it is a violation of WCA. A grading permit is required at 50 cu. yds., which would also help in monitoring that they stay out of the wetland.

Litts stated that protecting wetlands is extremely important. She understands the concerns of people who back up onto a wetland. She would certainly have to move where they would like to locate their pool because it wouldn't meet the buffer and setback requirements, but they could certainly do so.

Dickerson stated that he thought Orono's wetland ordinance was very well written.

Smyth stated that he had written that ordinance as well.

Dickerson inquired why a wetland wouldn't fall on the classification map.

Smyth stated that there are wetlands which the Hennepin County wetlands map may have missed. The ordinance would allow the City to require the applicant to classify them.

Dickerson asked why they would just not show it.

Finke stated that a surveyor would be ethically and professionally bound to show it if they thought it may exist, or else they would lose their license.

Thill stated that an example of a wetland which may be missed would be one that is wooded, because you can't see them from an aerial.

Verbick stated that she agrees with tabling the item because it is so critically important. Water quality is important for the public welfare, wetlands are essential for that quality, and buffers are essential to protect the wetlands. Wetland protection and buffers help protect the City's rural character. The setbacks help maintain the buffers and reduce encroachment. This is the perfect time to implement the ordinance ahead of the Comp Plan update.

Motion by Nolan, seconded by Dickerson, to table the wetlands ordinance. Motion carries unanimously (Absent: Reid).

Dickerson stated that he had heard the consultants weren't able to access some properties to carry out assessments.

Thill stated that he believed that permission was received on these properties.

8. Ordinance Amendment – Section 826.98 – Pertaining to regulations related to cemeteries within the residential zoning districts. Public Hearing

Finke delivered a brief staff report. The ordinance was updated approximately a year ago, and a subsequent application brought up a lot of discussion on the subject. The City Council set updating the ordinance as a 4th quarter goal at the beginning of the year. Staff used the previous ordinance update as well as the discussion around the cemetery application earlier in the year and looked for the things that seemed to be of most concern for Commissioners and Councilmembers. The changes in the draft were meant to approach the main concerns.

Finke noted that there were two major changes in the ordinance. The first change regarded the size requirements for a cemetery. Under current ordinance, a minimum of 10 acres is required. The draft sets a maximum size of 10 acres. This was meant to approach some of the concerns about the scale of a potential cemetery. The second change added a setback requirement for burial sites. Under the current ordinance, if a burial had a headstone less than two feet in height, there was no setback requirement.

Verbick inquired about existing cemeteries. Existing burials would not have to be exhumed and moved to meet setbacks.

Finke replied that the existing burial sites could continue to exist in their current state.

Benetti stated that already purchased plots (for instance, a married couple to be buried next to each other) for which the person is still alive would also be considered existing.

Nolan stated that he was concerned about the allowed height for mausoleums. There could be a lot of 30 foot tall buildings on a site.

Public Hearing Opened at 10:03 p.m.

Jim Lane (2605 Hamel Road) stated that he wished to call the Commission's attention to the German Liberal Cemetery on Hamel Road, created in the mid 19th Century which is historically and culturally significant. Lane stated that it was in terrible disrepair when they had moved to their farm. In the early 1990's, some of the families took a renewed interest in the cemeteries, and they also began to market and sell some plots. He doesn't believe the City has a site plan for it, or if the City keeps an eye on what is going on, but they have been selling plots and burying people at a pretty good clip. These sites are extremely close to the existing home next door. He suggested the City take the time to look into the cemetery to see how things are progressing and make sure they are happening correctly. He thought he remembered that the cemetery had asked the City to take over its maintenance. In terms of height, there is an extremely tall flag pole on the site, and that may be something the Commission wants to talk about. Lane also stated that there is a large plastic drum of some type as well. He stated that he's tried to be a good neighbor for the past 30 years, but some of the recent activities cause concern, because it may create a health hazard.

Finke noted that the City had not taken action towards becoming involved in the maintenance of the cemetery. Staff was crunching numbers and researching it over the summer, but the proposal didn't seem to go forward.

Dickerson stated that the burial sites seemed terribly close to Hamel Road.

Verbick stated that she agrees with the maximum of 10 acres, and the setback requirements. She also agrees with looking at some height restrictions.

Verbick stated that she agrees that the cemetery has great historical and cultural significance, but doesn't think the City should get involved in managing a cemetery.

Dickerson inquired about an allowance for crematoriums.

Litts discussed the trend towards "green burials" which could be outside of concrete burials.

Nolan stated that the height, which seems reasonable, is a single story; perhaps 12-15 feet.

Commissioners and staff discussed how existing cemeteries should be treated with regards to setbacks.

Motion by Nolan, seconded by Pederson that the Commission recommend approval of the cemetery ordinance amendment as drafted along with additional research on the subject of mausoleum height (10-15 feet limitation), crematorium regulations, and existing cemetery setback language. **Motion carries unanimously** (Absent: Reid).

Public Hearing Closed at 10:30 p.m.

9. Adjourn

Motion by Pederson, seconded by Litts to adjourn at 10:31 p.m. **Motion carries unanimously.** (Absent: Reid).