

**City of Cottage Grove  
Planning Commission  
October 25, 2004**

Pursuant to due call and notice thereof, a regular meeting of the Planning Commission was duly held at City Hall, 7516 – 80th Street South, Cottage Grove, Minnesota on the 25th day of October 2004 in the Council Chambers and telecast on local Government Cable Channel 16.

**Call to Order**

Chairperson Bailey called the meeting to order at 7:00 p.m.

**Roll Call**

Members Present: Myron Bailey, Tim Booth, Ken Brittain, Rod Hale, Robert Hudnut, Shannon Nitsch, Chris Reese, Alberto Ricart, Bob Severson

Staff Present: Howard Blin, Community Development Director  
John McCool, Senior Planner

Others Present: Pat Rice, City Councilmember

**Approval of Agenda**

*Motion by Hudnut, seconded by Severson to approve the agenda. Motion approved unanimously.*

**Open Forum**

Chairperson Bailey asked if anyone wished to address the Planning Commission on any non-agenda item. No one appeared to address the Commission.

**Chair's Explanation of the Public Hearing Process**

Chairperson Bailey explained the purpose of the Planning Commission, which serves in an advisory capacity to the City Council, and the City Council makes all final decisions. In addition, he explained the process of conducting a public hearing and requested that any person wishing to speak should come to the microphone and state their full name and address for the public record.

**Public Hearings**

**6.1 CASE V04-050**

**Keith and Stacy Kapaun, 8804 – 88th Street South, have applied for a variance to Title 11-3-3C, Accessory Structure Setbacks, to allow a garage to be located 6 feet 8 inches from the rear property line when 10 feet is required, and to Title 11-3-4E, Encroachment Over**

**Easements, to allow the garage to encroach within a 10-foot drainage and utility easement.**

McCool summarized the staff report and recommended denial based on the findings of fact listed in the staff report.

Keith Kapaun, 8804 – 88th Street South, asked for clarification on the 10-foot drainage and utility easement. McCool responded that when the property was platted in 1978, A 10-foot drainage and utility easement that ran from the rear property line interior to the city was included.

Severson asked if Kapaun had applied for a building permit prior to building the garage. Kapaun responded that he did not know he needed a permit for a shed.

Hudnut asked what the hardship was. Kapaun stated that the hardship would be to move the building because it is built on a four to six inch slab.

Hale asked how the city found the violation. McCool responded that a building inspection was being performed on a neighboring property and the inspector saw the structure being constructed. Hale asked if the variance was granted, what penalty would be assessed. McCool responded that they would have to apply for a building permit and typically they are charged a double permit fee.

Bailey asked what the procedure would have been followed if the applicant had applied for a building permit. McCool responded that a building permit application requires a site plan showing the location of the structure and how far from the property lines. As part of the review, staff would have noted the proposed location was too close to the property line and encroached on the easement and required the applicant to submit a revised site plan showing the relocation of the structure. This review would have been done prior to issuing the building permit and beginning construction.

Hudnut asked if the city has granted similar variances in the past. McCool responded that there have been just a few variances granted for setbacks, and those variances typically were for more topographical issues.

Brittain asked what type of utilities could potentially be located in the easement. McCool responded that the drainage swale is quite defined, and if a significant amount of drainage was not flowing correctly, a storm sewer would be constructed through that drainageway.

Ricart asked if there have been any comments from the adjoining neighbor. McCool responded that staff has not received any but there may be a neighbor who will testify tonight.

Hudnut asked the applicant why he did not apply for a building permit in the first place. Kapaun stated that he did not know a building permit was required for sheds because he sees a lot of sheds being constructed without permits.

Bailey asked if a variance was granted and a utility needed to go in back there, would the property owner be responsible for moving the structure. McCool responded that would be one of the conditions in the resolution of approval.

Kapaun explained that the exterior materials of the structure would match the existing house. He stated that while the schematic does show that the structure can be moved forward, he believes that because of the way the neighborhood is laid out, that was the best location of the shed as it does not interfere with the open view through properties in the area.

***Bailey opened the public hearing.***

Pat Slagle, 8800 – 88th Street South, testified that he believes there is no better place to locate the structure on the property than where it is at. He does not believe it is going to be an eyesore because it is going to have matching exterior materials to the home. He reported that he has talked with other neighbors who also do not believe there is going to be a problem. He does not believe drainage should be an issue due to the way the structure is elevated.

***No one else spoke. Bailey closed the public hearing.***

Brittain asked if the concern was that the garage would prevent the flow of the drainage in any way or the erosion of the elevated area. McCool responded that he does not believe that the structure would prevent or restrict the flow of drainage, though it might divert it further to the north. His concern is that there is not a lot of height difference between the wood exterior materials and the crest of the swale, and if a significant amount of water flowed through there, the water would go into the building.

Reese asked how high the structure is elevated and does the rear yard slope in a way that would force water directly toward the structure. Kapaun stated that the lowest point to the drainage is roughly 14 to 16 inches.

Hudnut asked if staff knew how many similar non-conforming structures there might be in the city. McCool responded he did not know. Hudnut stated that the Commission did grant a similar variance to the people with the beautiful garden that was also very close to the property line, and because of that, this applicant should also be granted a variance.

***Hudnut made a motion to recommend approval of the application. Hale seconded.***

Hale suggested adding conditions of approval to include the penalty for work without a building permit and a hold harmless clause to the city for any drainage damage that might be rendered to the structure itself. Hudnut agreed with those conditions of approval.

Brittain suggested adding language stating that it would be the property owner's responsibility and expense to move the structure if utilities need to go through the easement. Hudnut and Hale agreed with the addendum.

Blin stated that staff would draft findings of fact for granting the variance. He suggested that the basis could be that a 10-foot wide drainage swale is not necessary to handle the drainage in that area. The Commission concurred.

Booth commented that he believes that while these situations are difficult, these types of variances are self-inflicted. He stated that he does not want to give the impression that the

Commission will rubber stamp these types of requests when most people do go through the proper procedures and get building permits.

Reese asked the applicant if the materials for the siding, soffit, and shingles have been ordered already. Kapaun responded that he already has the materials. Reese asked if they are the same as the house. Kapaun responded yes.

Brittain stated that he agrees with Booth in theory that the Commission should not be a rubber stamp but mistakes do get made and the Commission should have the opportunity for logical consideration as to whether there are any real harm or not in granting a variance.

Hale agreed with Booth but he believes that the city is doing a good job because there are only a few of these types of variances are applied for each year. He also agrees with Brittain that in this particular case there does not appear to be any detrimental impact to the neighborhood. He stated that a penalty is being imposed and the property owner would be responsible for any damage that may occur as the result of the structure's location.

***Motion passed unanimously.***

## **6.2 CASE RS04-051**

**Rodney and Mary Hale have applied for a rural subdivision to subdivide an 18-acre parcel located on Lower Grey Cloud Island into two parcels.**

Blin summarized the staff report and recommended denial based on the findings of fact listed in the staff report.

Rod Hale, 11701 Grey Cloud Trail South, stated that as a member of the Planning Commission, he is recusing himself from voting on the applications. He explained that a variance should be requested only when the applicant believes it can meet the intent of the ordinance. He stated that two standards apply to this property, the critical area standards and Cottage Grove's development standards. He stated that the critical area standards are in place to protect the visibility of the property from the river, which is the reason for the setback requirements. The property in this application is on the back water of the channel, which is non-navigable water. Hale displayed pictures of his house and property that showed his current house sits on a zero setback from the bluff line.

Hale stated that there is concern about the septic system, which requires an acre and a half of land that lies above the 700 contour. He stated that the property consists of 1.07 acres of land. He pointed out an area on the map stating that while it is not acceptable for a septic system, that area constitutes almost a half acre of land. He believes there is plenty of land available for a septic system. He referenced the percolation report from Barry Brown, who is one of the most respected septic designers in Washington County, that indicates the proposed 125-foot setback would be adequate for a septic system. Hale then referenced the issue of road frontage. He stated that they can meet that requirement; however, it would limit the placement of the structure on the parcel being created. He stated that under the current application, the parcel that would need that variance for the frontage is his homestead parcel, not the parcel being created.

Brittain asked where the house would be built. Hale stated that he is just selling the parcel but there is plenty of area on the parcel if they get a variance to the bluffline setback. He pointed to several areas on the survey that could accommodate a house. He stated that the reason for not dividing the property so that there is 180 feet of frontage is to give more flexibility on the lot being created.

***Bailey opened the public hearing.***

Patricia Bogey stated that she has a notarized letter from Nannette LaChapelle, 11973 Grey Cloud Trail, who could not attend the meeting. She read the letter for the public record, which expressed concern about the quarter-quarter policy and how this subdivision would affect other property owners' ability to subdivide their properties. Bogey stated that she also has concerns about contamination from septic systems and the city having to supply sewer and water down to the Island.

Fred Mattson, 10971 Grey Cloud Trail South, stated that he feels that five variances for one buildable lot is excessive and this is an unreasonable request.

Bill Christofferson, 11971 Grey Cloud Trail, stated that his concerns are similar to LaChappelle's. He is also concerned about the number of variances needed.

Eugenia Kulvich, 11523 Grey Cloud Trail, stated that this subdivision was denied in the past due to the number of variances needed. She stated that the 720 contour line goes through Hale's house, behind his garage, and through the corner of her house. She also expressed concern for the number of variances needed.

John Tschida, Coldwell Banker Burnet, 7350 – 80th Street South, stated that he has been working with Hale on selling the other parcel. He stated that this is a very desirable home site in Cottage Grove and desirable river property is rare. He does not believe that the requests are inconsistent with the area or what has been previously approved.

***No one else spoke. Bailey closed the public hearing.***

Bailey asked for an explanation of the quarter-quarter rule. Blin stated that as part of the Critical Area ordinance, the city limits development in unsewered areas to four units per 40 acres or quarter-quarter. In this case, the quarter-quarter includes Hale's existing house, the Maloney house that was approved a few months ago, and two other existing homes. He stated that he is not familiar with what other cities in the critical area have done regarding density.

Hudnut asked how this proposal affects LaChappelle's ability to subdivide her property. Blin responded that because of the four per forty requirement, there could be no more homes built in this area. However, she would be allowed to make a case for a similar variance to allow another lot to be created.

Severson asked if the quarter-quarter rule comes from the overlay or from the city. Blin stated that is in the critical area requirements. He is not sure if the city could choose not to adopt that portion of the ordinance. Severson asked if the critical area was not there, what would be the number of buildable lots that could be achieved. Blin responded that would de-

pend on the zoning classification and how many lots would be allowed based on the minimum lot size, which for this area would be a minimum of three acres. He explained that the enforcement of the critical area ordinance is strictly the city's and the state does not have jurisdiction. Severson asked if all the other property owners wanted to subdivide their properties, would they all have to go through this process. Blin responded yes, unless that provision was changed in the ordinance.

Hudnut asked why there is no response from the DNR. Blin responded that the city was slow to get the information to them and they are typically slow in responding. He stated that from previous comments, they would probably recommend against approving the applications.

Severson stated that he is concerned about the septic related issues and run-off. He does believe that the lots are buildable.

Hudnut asked why there would be issues with the septic system if there are reports stating that those issues are taken care of. Blin responded that there is not enough room on the lot to accommodate the 150-foot setback to create an adequate drainfield. However, as that letter states, if a variance is granted to allow that septic system to be setback 125 feet, it would function adequately for both a primary and secondary drainfield.

Brittain asked about the location of the house. Blin stated that nobody has looked at where that house would actually be sited on the lot. He believes that setback variances to the bluff line and the drainfield would be required to build a house on the lot.

Severson stated that he is also concerned that the new property owner would have to apply for variances to build a house. Blin stated that there is a setback variance request to allow a structure to be placed closer than 100 feet to the bluff line. Brittain stated that there is no information to base how much of a variance would be needed for the house setback.

Bailey asked if there is a possibility for Hale to get a plan showing where a house could actually be sited on the lot. Hale stated that there would need to be a variance for the bluff line setback for the house. He stated that there has only been 11 requests for variances within the critical areas before the City Council and all those requests have been granted. Brittain stated that of the variances that the Planning Commission has reviewed, all showed the location of the house. Hale stated that he could put a template together on the site plan.

***Hudnut made a motion to table the application. Ricart seconded.***

Tschida stated that they could quickly put together a template. Severson stated that he would like further information on what additional variances may be needed.

Brittain asked if the additional septic systems could cause pollution problems. Reese asked for background information on the other variances granted by the city to see if there has been any contamination.

Bailey asked if dealing with the quarter-quarter issue is viable because the city keeps granting variances to it. Severson stated that he would like to see what other communities are doing and what other possibilities exist.

Nitsch asked at what density it becomes necessary for the city to provide sewer and water. Blin responded that there is no magic number in terms of density; cities typically put in sanitary sewer service when septic systems fail and there are no alternative drainfields.

***Motion to table passed unanimously.***

### **6.3 CASE CUP04-52**

**Kerry J. Severson has applied to amend his conditional use permit for a horse boarding facility to allow a 60-foot by 80-foot addition for an indoor horse training arena at 11050 Manning Avenue South.**

McCool summarized the staff report and recommended approval subject to the conditions stipulated in the staff report.

Kerry Severson, 11050 Manning Avenue South, stated that the reason for the request is so multiple people can use the arena at the same time and for training of cart horses.

***Bailey opened the public hearing. No one spoke. Bailey closed the public hearing.***

***Motion by Brittain, seconded by Booth, to recommend approval of the application subject to the conditions listed below.***

- 1. All applicable permits (i.e., building, electrical, grading, mechanical) and a commercial plan review packet is completed, submitted, and approved by the City prior to any construction activities. Detailed construction plans must be reviewed and approved by the Building Official and Fire Marshall.***
- 2. The exterior materials and colors must match materials used for the existing horse stable facility.***
- 3. The property owner must abide with all the conditions of approval as stipulated in the original conditional use permit (City Resolution No. 03-013).***

***Motion passed unanimously.***

### **6.4 CASE CUP04-053**

**Las Margaritas has applied for a conditional use permit to allow a restaurant with liquor to be located in the Shoppes at Gateway retail development, 7750 Harkness Avenue South.**

Blin summarized the staff report and recommended approval on the basis that it is a multi-tenant building and the overall parking demand should be satisfied with 92 parking spaces.

Severson asked what the estimated seating capacity of the restaurant was. Blin stated there would be 40 tables, which amounts to approximately 160 seats. Severson asked if another restaurant located to this building, would that cause parking problems. Blin responded that it could, and if that happened the city may want to have a parking study done.

Reese asked what other tenants are looking at the site. Amy Jo McNamey, 11745 Arnold Palmer Trail, Blaine, Minnesota, responded that they have not signed any other tenants yet but they have received inquiries from an ice cream shop, an exercise facility, a bagel shop, and a tutoring center. She stated that at this time they have no intent to put another restaurant into the center.

Brittain asked if there would be restaurant parking in the rear of the building. McNamey stated that the rear of the building is meant for a loading area.

Reese asked what the intended hours of operation would be. Blin stated that they intend to open around 11:00 a.m. for lunch and stay open until midnight.

Booth asked what happens if there are significant parking problems when other businesses open in the center. Blin stated that the city looks to the building owners to regulate the uses. The city can control parking on the street but on-site parking is a private matter and the owners need to put the right mix of uses in there to accommodate parking. He stated that prospective tenants and their lenders do look at the adequacy of parking. McNamey stated that they are concerned about getting the right mix of tenants so there are no parking problems.

Bailey asked if there would be outdoor seating. Blin responded that there would be a small patio on the west side of the building.

Blin explained that the ordinance has two separate parking requirements for restaurants, 1 space per 60 square feet or 1 space per 3 seats, whichever results in the greater number of parking spaces, and in most cases the square footage formula requires the most parking.

Severson asked if alcohol would be allowed to be served outside or would that require fencing around the patio. Blin stated that he believes that the patio would be fenced and that serving alcohol outdoors would be permitted, but he would check with the City Clerk on that.

***Bailey opened the public hearing. No one spoke. Bailey closed the public hearing.***

***Nitsch made a motion to recommend approval of the application. Ricart seconded. Motion passed unanimously.***

## **6.5 CASE CP04-054**

**The City of Cottage Grove has applied for a comprehensive plan amendment to amend the 2005-2009 Capital Improvement Program (CIP).**

Blin summarized the staff report and recommended approval.

Hale asked about proposed improvements to Grey Cloud Island for a boat launch and if the \$50,000 is for on-site improvements or is part of that lease agreement with the landowner. Blin stated that it is intended for on-site improvements, but the property owners have indicated that the city may have to pay for the lease agreement.

Bailey asked where the access to Camel's Hump Park would be. McCool responded that the access would be through the Timber Ridge development. Bailey then asked where Hardwood Park would be located. Blin stated that it would be north of 70th on the east side of Hardwood Avenue. He explained that the park would be located on land that was dedicated with that development. He also explained that Camel's Hump is intended to be a low intensity park without active recreational amenities.

Hale asked if the park trust fund is that healthy that the city can spend a million dollars in 2004 and another \$740,000 in 2005. Blin responded yes, noting that a lot of that revenue has come from the sale of parts of Oakwood Park.

Brittain asked if the city was planning to spend \$7.5 million on sealcoating the roads in 2005. Blin stated that would be spent over five years. Rice stated that also includes trails.

***Bailey opened the public hearing. No one spoke. Bailey closed the public hearing.***

Blin explained that the Planning Commission is required to review the capital improvement program specifically for its conformance to the comprehensive plan.

Nitsch asked if the CIP is approved, does the Council still approve each project as they come forward. Rice responded yes.

***Motion by Severson, seconded by Hale to recommend approval of the 2005-2009 Capital Improvement Program.***

Hale commented that in 2009 the Burlington Northern bridge at 103rd Street that the bulk of the money may come through general fund costs. He stated that with current discussions about extending 95th Street with an overpass over the railroad at that junction connecting with Grey Cloud Trail and it is conceivable that a better planning option may be to cul-de-sac Hadley, eliminate 103rd Street, and save our money and transfer the overpass to the developer at no cost to the city.

***Motion passed unanimously.***

## **Applications and Requests**

None.

## **Approval of the Planning Commission Minutes of September 27, 2004**

***Motion by Hale, seconded by Hudnut, to approve the minutes of the September 27, 2004, meeting. Motion passed unanimously.***

## Reports

### 9.1 East Ravine Planning Study Update

Blin gave the Commission a brief update on the progress of the East Ravine Planning Study and displayed some conceptual drawings.

Severson asked what Woodbury has planned long-term. Blin stated that they have met with Woodbury, and the southeastern part of their city would probably not develop for about 15 to 20 years. He stated that their comp plan shows that area for lower density, single-family development. He also stated that they are in agreement with Cottage Grove stubbing streets out to Woodbury in the plats. Severson asked which commercial area would be the first to begin development. Blin stated that it would probably be the northern area.

Blin summarized the schedule. He stated that the consultant team is planning to complete the infrastructure plans by the end of November or early December. By March or April the Planning Commission should have held public hearings and the City Council will have taken action on the comprehensive plan amendments and the AUAR. Those items will then be sent to the Metropolitan Council, who has 60 days to review them. In April and May, the city should start reviewing the zoning and land use controls and design standards. In mid-summer 2005, those amendments should be enacted. Development could start in late 2005 or 2006.

Severson asked if the school district has been informed of this process so they can plan for the population growth. Blin responded yes, noting that the city has asked the school district if they wanted to site any schools in the East Ravine.

Hudnut asked if there has been any contact with anybody at the national level, such as the Urban Land Institute, regarding these plans. Blin stated that was a good suggestion and would look into that.

Bailey asked if there would be an option in the future for properties in Old Cottage Grove to hook up to city sewer and water. Blin stated that there will be provisions to allow that extension, but that is not part of this plan. Bailey then asked if there were other areas of the city besides the East Ravine that is open for development. Blin responded that the West Draw is mostly platted. He explained that development should remain pretty steady until about early 2006. Bailey asked if there were additional development opportunities around the Mississippi Dunes subdivision. Blin stated that there is a parcel north of Mississippi Dunes that has sewer and water availability that is under agricultural preserve but is due to come out in 2006.

### 9.2 Recap of October City Council Meetings

Blin reported that the Council approved the Summerhill applications with the addition of allowing a one-year trial for after-hours pay-at-the-pump service.

### 9.3 Committee Reports

None.

### 9.4 Planning Commission Requests

Severson suggested running educational programs regarding building permits on the city's cable channel. He also suggested more information on how projects are funded. He then asked that the city look at the Mississippi River Critical Area Overlay District ordinance.

Brittain asked if it would be possible to have information for Menards and Home Depot to distribute to customers. Blin stated that staff would look into that.

Severson asked why he still sees merchandise being advertising on the reader board on 80th Street. Bailey stated that there was a variance granted for that sign. Severson then asked if the city now does not allow others that opportunity. Brittain stated that sign was constructed prior to changing the sign ordinance.

Reese stated that he believes that education on building permits is a good idea. He stated that people have gotten differing opinions from staff at both home improvement stores.

Booth expressed concern about the accessory structure variance that was recommended for approval, because it appeared that the Commission tried to make the situation fit the criteria, such as the hardship cannot be self-inflicted like putting a shed in the wrong place and then granting a variance after the fact. He stated that this sets a precedent and asked how the city can require others to follow the ordinance. He also expressed concern about all variances requested and granted for properties on the river. Hale stated that government should have some degree of compassion, noting that people do make honest mistakes. It is the Commission's job to represent the citizens of the community. He suggested that there should be a combination of education, policing, and increasing penalties. Booth agreed but stated that to grant a variance, the request must meet the five criteria for granting a variance.

Ricart asked about merchants displaying merchandise outside their business.

### 9.5 Response to Planning Commission Inquires

Brittain asked about safety of ponds. Blin stated that there will be a fairly extensive storm-water education piece available within the next year.

## Adjournment

***Motion by Booth, seconded by Hudnut, to adjourn. Motion carried unanimously. The meeting adjourned at 9:37 p.m.***