

METROPOLITAN COUNCIL
390 North Robert Street, St. Paul, Minnesota 55101

REGULAR MEETING OF THE COMMUNITY DEVELOPMENT COMMITTEE
Tuesday, January 22, 2008

Committee Members Present Chair, Natalie Steffen; Richard Aguilar; Sherry Broecker; Georgeanne Hilker; Vice-Chair, Annette Meeks; Tony Pistilli

CALL TO ORDER

A quorum being present, Committee Chair Steffen called the regular meeting of the Council's Community Development Committee to order at 4:05 p.m. on Tuesday, January 22, 2008.

APPROVAL OF AGENDA AND MINUTES

It was moved by Aguilar, seconded by Hilker to approve the agenda. **The motion carried.**

It was moved by Broecker, seconded by Hilker to approve the minutes of the December 17, 2007 regular meeting of the Community Development Committee. **The motion carried.**

Guy Peterson, community development director, introduced and welcomed Paul Burns who will replace Jan Gustafson, manager, housing & livable communities, when she retires on March 3. Peterson provided a brief overview about the wealth of experience that Burns brings to the position and shared his work background.

Chair Steffen expressed that several proponents and opponents were present for the following business item. She invited one proponent, Ciara Schlichting, consulting city planner; one CPA opponent, Kay Frye; and Steve Johnson, National Park Service/MNRRRA; to address the committee following the Lilydale presentation.

BUSINESS

2008-2 - City of Lilydale, City Property Comprehensive Plan Amendment. Denise Engen, senior planner, reported that the *2030 Regional Development Framework* identifies Lilydale as a developed community. Lilydale is located within the Mississippi River Corridor Critical Area (Critical Area) and the Mississippi National River and Recreational Area (MNRRRA). According to the City's 1997 Comprehensive Plan, 82.5 percent of the city is park, trails, water and road rights-of-way, with the remaining 17.5 percent residential, commercial and industrial. Harriet Island - Lilydale Regional Park is about 325 acres, or 56 percent of the community. She explained that the site is .85 acres, steeply sloped, previously undeveloped, owned by the city, and the amendment proposes to reguide it from parks and open spaces to multi-family residential. The city is proposing this so that they will be able to sell the property for development. Engen provided an update about two recent amendments that were done since Lilydale's plan was approved. She reported the findings are that the CPA conforms to all regional policy plans, it's consistent with the Council's development framework, and it's inconsistent with Executive Order 79-19 (Mississippi Critical Area) requirements. Letters received from citizens regarding this proposed CPA were distributed to committee members and available at the sign-in table.

Chair Steffen asked Dave Theisen, legal counsel, to explain the history of Executive Order 79-19 with respect to critical area plans. Steffen welcomed Ciara Schlichting, consulting city planner, city of Lilydale. On behalf of the proponents of this amendment, Ms. Schlichting introduced Mayor Tom Swain, Council Member Warren Peterson, Council Member Dr. Anita Pampusch, City Clerk/Treasurer Joan Olin, and retired City Clerk/Treasurer Bernie Weitzman, as being in attendance. Schlichting provided a brief overview about the amendment, stated the property was owned by the city, is currently guided as open space, and understands that there are allegations that this parcel was dedicated to the city for permanent open space. She advised that the city attorney has reviewed both the deed and the certificate of title and, in his opinion, there are no restrictions on the property for its use—the parcel was donated to the city. She reported that the purpose of this application is to provide for the sale and potential development of this site, but there is the possibility that someone could purchase this site and keep it as permanent open space under different provisions. Schlichting stated that the city did follow their set procedures which required public hearings before the city council made their decision. Discussion about issues regarding single-family vs. multi-family designation was shared. She further stated that the city is updating their comprehensive plan due at the end of 2008 and is looking at adding additional land use designations. Schlichting also reported that the city is proposing to guide this parcel as single-family and just note in the language that

this could include some attached low-density, residential housing. The public hearing for the comp plan update will be held on February 18, 2008. She pointed out that the city understands the staff recommendation that this application is not consistent with critical area due to the slopes, and the city does have adopted plans and ordinances regulating development on steep slopes. She also stated that it was recognized that a variance would be needed to get a driveway to this site due to the steep slopes. She expressed that since the city owns the parcel, they would start conversations about requirements, code, vegetation management, and site alteration with whomever they sell it to from the get-go. She concluded by stating that it was understood that it is the city's job to work with the DNR on how this comp plan amendment would be implemented.

Chair Steffen then welcomed Kay Frye, resident of Lilydale for over 30 years, and designated speaker for the group of opponents. Frye stated that over 100 people have signed a petition opposing the application for rezoning and changing the comprehensive plan. Frye stated that this group was in agreement with the staff report that changing from passive to multi-residential does violate the Mississippi River Critical Area regulation and believe that any development would be harmful to the community and to the region. She described the parcel in question as very tiny (less than an acre) but as a significant piece of green space, wooded area that would help to preserve the bluff line. She expressed that there were many residents who remember that John Thompson, the land donator, wanted it to be used as a bird sanctuary. She stated that the people who live there really do want this area remembered as a bird sanctuary. She asked committee members to remember that the land below is the flood land and is also the Lilydale regional park which is actually owned by St. Paul. Frye shared a few comments about the site itself, parking and traffic concerns, unstable soil and water conditions, and pointed out that opponents feel this is unbuildable land. Water runoff, sewer system, and eroding bluff concerns were also shared as she walked members through the history of building on the bluffs during the 1980's and 90's. Frye noted that the site is too steep for rain gardens and also shared information reported by the PCA about their findings which is another whole issue. She also discussed the costs involved to stabilize the bluffs. Frye concluded by stating that the Lilydale city council has ignored its citizens, ignored the DNR, ignored their ordinances and, therefore, the opponents respectfully request that the Metropolitan Council deny this application for rezoning and changing the comprehensive plan.

Committee member Rick Aguilar commented that he lived in Lilydale at one time and that Lilydale is in his district, District 13. He stated that he has not been contacted by the city council over this issue or past issues, but he had heard from many citizens who have been opponents of previous development issues. He asked staff to make a note of informing the Lilydale city council that he is their representative to the Metropolitan Council and encouraged the city to communicate with him via a telephone call so that issues can be talked about. He stated that finds himself again of being in a situation where hundreds of constituents say this is a ridiculous development and doesn't make any sense, but that staff has shown this application does meet the requirements. Aguilar concluded by expressing his desire and willingness to work closely with Lilydale on any future matters.

Chair Steffen then invited Steve Johnson, National Park Service/MNRRRA, to address the committee. Johnson thanked the committee and stated that this particular property is within the Mississippi National River and Recreation Area park boundary. He reported that he visited this property and explained that it was a heavily wooded site with steep slopes. He further described a flat spot located in the middle of the property and noted that it would be very difficult physically to get a driveway from Highway 13 to that flat spot. He expressed there is no question that variances would be needed in addition to addressing storm management issues. He concluded by stating that to suggest this site could support a multiple-family designation is exceptionally inappropriate.

Hilker moved, seconded by Pistilli that the Metropolitan Council:

1. Allow the City of Lilydale to put the CPA into effect contingent upon review and final approval by the Minnesota Department of Natural Resources (MN DNR).
2. Find that the proposed CPA is not consistent with Executive Order 79-19, (Mississippi Critical Area).
3. Forward the CPA information, staff report and the Metropolitan Council's findings and recommendations to the Minnesota Department of Natural Resources (MN DNR) for review.
4. Find that this land use change does not affect the City's system statement forecasts.
5. Advise the City to include a description of its I/I program in the City's 2008 comprehensive plan update.

The motion carried.

Chair Steffen thanked all of today's visitors for making their wishes known to their city and to the members of this committee. She invited visitors to talk to staff before leaving this meeting if they had questions on the committee action taken.

2008-4 – Empire Township CPA: Mineral Extraction Overlay. Patrick Boylan, senior planner, stated that the Township is proposing to expand the existing Mineral Extraction Overlay to an 80-acre area. He further noted that the underlying land use will remain as "Long-Term Agriculture," and the "Mineral Extraction Overlay" allows interim access to and use of aggregate resources. Boylan walked the committee through a map showing regional policy areas and explained concerns regarding future regional pond issues. Staff has asked to be kept up to date regarding this issue on that site. He stated that this amendment will have no impact on adjacent communities. There were no questions from the committee.

Pistilli moved, seconded by Broecker, that the Metropolitan Council:

- 1) Allow the City to put the comprehensive plan amendment into effect.
- 2) Require the Township to submit to the Council all annual monitoring reports as detailed in the February 2007 "*Groundwater and Surface Water Monitoring Plan*" by Barr Engineering.

The motion carried.

Chair Steffen expressed that visitors would have the opportunity to address the committee following the presentation.

2008-7 – Tax Base Revitalization Account Funding Recommendation for Hopkins Town & Country Dodge Project. Marcus Martin, senior planner, indicated that the Tax Base Revitalization Account (TBRA) awards grants for the cleanup of contaminated land and buildings to prepare sites for redevelopment twice annually. He reported that awards for the second funding cycle in 2007 totaling \$2,385,900 were made by the Council on January 9, 2008, and that the Community Development Committee delayed consideration of the Hopkins Town and Country Dodge project until the January 22, 2008, committee meeting. Martin provided a chronology about the history of the city's application and review process and indicated that the application was initially not scored since it was under an active investigation by the Minnesota Pollution Control Agency (MPCA) at the time of application. He further explained that costs were determined to be ineligible during the review process but noted that the city has since presented a letter stating that they have reached a resolution with the MPCA regarding the asbestos issue. Martin reported that DEED funded the project for \$112,500; they did not fund asbestos demolition. Since that time, the applicant has submitted an amended request to the Metropolitan Council. He noted that the original request was for \$81,250, and the new request is for \$500,000. Martin reported that he scored the project at the request of the Committee for the original request of \$81,250 at 79 points (the project tied for the second highest rank). If the revised application were scored, it would rank lower. Martin noted that the city of Hopkins doesn't have financial involvement in the project. He also commented that the Metropolitan Council has previously paid for clean-up costs incurred less than 180 days before a TBRA application was submitted when the grants are supplemental to earlier TBRA grants.

Chair Steffen commented on the conditions that must be met very clearly regarding clean-up costs incurred between grant rounds, and she read pertinent information from application guidance documents. Steffen invited Dave Theisen to comment on the Council's process and the staff recommendation. Theisen noted that two things, both process and precedence, have legal and policy implications for the Council. He explained the Council's concerns, stated that this is a competitive grant award program, and expressed that allowing information on a grant application after the staff had made its evaluation and forwarded it to the Council Members could set a bad precedent.

Chair Steffen indicated that a request to address the committee had been received from the city of Hopkins regarding the Hopkins, Town & Country project and welcomed Kersten Elverum, the city's planning director. Eugene Maxwell, mayor, city of Hopkins, stated that this was an important project to the city and expressed excitement about ongoing redevelopment projects. He provided some history about the site and stated that this project would be a great amenity to the citizens of the city. Elverum thanked the committee and staff for their time regarding this project.

Member Meeks asked for a clarification about the amended dollar amount requested. Chair Steffen welcomed Dan Schleck, Schleck and Associates, who was representing the developer. Schleck indicated that a handout had been

provided and thanked the committee for the opportunity to address them. He explained that in terms of addressing this project, he felt there has been some confusion and interpretation that he doesn't necessarily agree with. He expressed that as new issues are raised by staff, the applicant needs an opportunity to respond. He further commented that to say that all information should be cut off at the time of the scoring may not look at the realities of the program. He provided an overview of this project and restated that the applicant was unaware of any of the issues related to the MPCA and the asbestos issues prior to Mr. Martin identifying this two days before the last CDC meeting. He indicated he felt it would be extremely unfair to an applicant to raise an issue before a committee meeting and to then attempt to justify not scoring or funding an application without giving the applicant the opportunity to respond.

Schleck indicated that the point is that the goals of this program are to promote job and tax base growth for the communities that are affected. He restated that this project scored the second highest of all projects that were evaluated for this grant round. Schleck felt it was narrow to say that the Council has never moved forward with funding these projects after work has started before. He revisited that the costs associated with this project increased significantly after it was started because of a fluke with respect to how the asbestos was impregnated into the building materials of the building. Schleck expressed that it would be a shame if this project was to go unfunded given the important work that has been done by these funds in the past and what it can promote in the future. He then specifically addressed the confusion with respect to the joint funding between DEED and the Metropolitan Council. Schleck explained that when an applicant applies for both funds, the maximum amount to the Council is applied for after the DEED funding because the DEED funding program has much more funds available.

Mr. Schleck expressed that the committee should have received an email from him with a long list of projects in which there were changes in the project or changes in the contamination—that is the nature of the environmental business. Schleck stated it was important for the committee to understand that there was no loan for these costs. He expressed that it appears maybe that was miscommunicated to Mr. Martin. Schleck explained the costs remain unpaid and, as indicated on the documents submitted, a lien has been filed on the property by the contractor because the costs have not been paid. He also felt it was important to note that this project was going to go forward with another developer who backed out because of the environmental issues.

Steffen clarified the funding request for Member Meeks and expressed that DEED had some of the same concerns. She further commented that in no way does she think this is not a worthy project and reminded the committee about Mr. Theisen's comments regarding the process.

Schleck then introduced Ned Abdul, Chief Manager, City Center Ventures, LLC and asked for his comments. Abdul elaborated about the history of this project and provided an explanation about how the asbestos issue was handled. He indicated that all guidelines and directives had been followed and shared the lack of communication that occurred between the surveyor and the remediation company regarding the asbestos issues. He stated that eventually financing will need to be secured to move this project forward and shared the history about discussions held with the city on what they wanted to see on this site. He also reiterated that there is no loan stipulation that is specified for the financing on this site and expressed there were many requirements for the project including environmental from the state, landscaping from the city, and the site requirements the tenant has that may not be able to be completed. He stressed that the funds were counted on and expressed that he understands that nothing is guaranteed in the application; however, he felt they had a very good position based on meeting the guidelines and the benefits this project brings regarding jobs and the additional tax base.

The committee had a brief discussion regarding the private loan information reported in the staff business item. Schleck revisited the miscommunication, provided an explanation about loan comments he made, stated that no documents were ever provided to the Council containing loan information, and both he and the developer clearly articulated that there is no loan for this project. A discussion followed regarding the history of when the notice of asbestos violation was received by staff and the applicant. Schleck responded that the MPCA had not contacted them -- the first notice they had was in Martin's staff report to this committee, and that within four days they were able to meet with the MPCA and resolve that issue by agreeing to a fine of \$6,000.

The committee discussed whether the Council had ever allowed an application currently pending to change the dollar amount requested. Steffen and Theisen responded and discussion followed. Pistilli then asked to revisit the scoring process of this project and Martin responded. Steffen reclarified the question currently under consideration for the committee. She concluded by reminding the committee about Theisen's comments regarding process and precedence. Pistilli questioned if the applicant did everything according to the rules to make them eligible and Martin responded.

Theisen again raised two points for the committee's consideration: 1) that this is a government setting a process, and 2) that he believes a precedent such as this would not be good. He stated that staff based their conclusions and scoring upon the information that was in the applicant's application—not what the developer may or may not have known—but what the applicant had before staff in their application. Pistilli then stated that as worthy as this project is, the Council cannot deviate from the process. Meeks stated that she would abstain from voting on this matter because she respects Theisen's comments. She then expressed that she feels very sorry for the applicant because she also felt this was a very worthy project that ranked very high in the scoring process, and it now appears the applicant will not be able to go forward in the spring funding process. Aguilar also agreed that this was a great project, that great work has been done with government programs, and that rules have to be followed—if the request is not approved, there is a reason why it wasn't approved.

Aguilar moved, seconded by Hilker that the Metropolitan Council not award a Tax Base Revitalization Account (TBRA) grant to the Hopkins Town & Country Dodge project. Meeks abstained.

The motion carried.

Steffen thanked all participants from the city of Hopkins for their time and attention during this difficult process.

INFORMATION

Chair Steffen changed the order in which information presentations would be heard to allow a speaker request to address the committee regarding Information Item #4. She introduced Charlie Devine, a resident of the city of Afton. Dave Theisen commented that litigation is currently ongoing regarding the city of Afton and advised that the appropriate role for this committee is just to listen to the presentation.

Examples of Comprehensive Plan Follow-Up Issues. Phyllis Hanson, manager, local planning assistance, provided a PowerPoint presentation and overview regarding regional issues for the cities of Lake Elmo, Oak Grove, Minnetonka Beach, and Minnetrista. She also updated the committee about some of the major issues on local concerns that have been reported to staff in the cities of Afton, May Township, and Farmington. A handout of the PowerPoint presentation was available.

Chair Steffen welcomed Charlie Devine, Afton landowner, concerned resident, and former mayor of the city of Afton. Devine thanked the committee for their time, stated that he was representing and helping property owners along the I94 corridor industrial zone. He stated that since 2007 they have been in communication with staff at the Metropolitan Council to talk about the issues of the ordinance changes in the city of Afton. Devine stated that on August 7, 2007, Afton passed ordinances in their industrial zone that are in direct conflict with the 1998 comprehensive plan. He explained the background of how the city knowingly did this, despite staff concern for doing this, and shared some examples of what was done in the industrial zone. He noted they are now dealing with a situation where the city of Afton is attempting to stop all development along the I94 corridor. The comprehensive plan has only one goal for the industrial zone – to increase the revenues for school district 834 and decrease the tax burden for the residential parcels in Afton. He explained that what has happened as a result of this is that property values have plummeted along that zone, and all the property owners are going to appeal to have their property taxes lowered by as much as 150-200% next April.

Devine explained the countless hours it takes to develop a comp plan in a community like Afton and stated that the Metropolitan Council has defended their right to the Supreme Court to force communities to abide by the Metropolitan Land Planning Act, *Framework 2030*, and system statement. Devine provided an overview about the time he spent as mayor to assist the Metropolitan Council--Mr. Weaver and Mr. Bell--to try to get Lake Elmo to come to the table and do a compromise. Staff has never dealt with a situation like this and the problem is not being addressed. The property owners have filed lawsuits. He expressed that the Metropolitan Council will set a dangerous precedent if they do nothing, and the word will get out if the Metropolitan Council refuses to enforce comp plans and the Metropolitan Land Planning Act. The Council is now being asked, are you going to be part of the problem or part of the solution? He stated that the Metropolitan Council's position has been to sit on the sidelines and wait and see what happens with the lawsuit. However, that makes it part of the problem—by not taking a position to enforce comprehensive plans that are being knowingly violated.

In closing, as a result of this six month period, the city of Afton has now removed the cluster housing and just this last week has so restricted the Old Village industrial zone, and they passed new ordinances in the Old Village that now take those out of compliance with the 1998 comprehensive plan. He explained the reason the city felt they could do this is

because no one said what they did in the industrial zone was wrong and, the city has been so emboldened, that they are now doing this in other zones. Devine asked for the Metropolitan Council's help to deal with three city council members who were elected last fall, made campaign promises, and have fulfilled them. He expressed his and everyone's frustration and stated that the taxpayers of the city of Afton are going to suffer immeasurably from this zone not being utilized as an industrial zone whose uses are all now non-conforming.

Steffen asked if there was any representation from the city of Afton in the audience--there was not. She expressed her appreciation to Mr. Devine for coming before the committee to share his comments. Devine restated that he is asking for some action by the Metropolitan Council regarding a deeper concern in what is a clear violation of the law. He asked the Council and legal staff look at this matter again. Devine indicated he would avail himself to provide whatever facts and information are necessary to lay out why this is a violation of the city of Afton's comp plan. Chair Steffen suggested that perhaps it would be a good idea for Mr. Devine to share his concerns in writing to Guy Peterson, director, community development. Member Broecker also thanked Mr. Devine for his comments, noted that she has met with him and many Afton residents. She expressed her appreciation for their diligence in trying to get this matter resolved and stated she hopes to be part of that resolution.

Chair Steffen turned the meeting over to Annette Meeks, Vice-Chair, in order to leave for another meeting she was attending on behalf of Metropolitan Council Chair Bell. She further stated that the following three information items would be postponed until the February 4 CDC meeting: 1) Interim Forecast Revisions, 2) Status of 2008 Comprehensive Plan Update Submittals, and 3) 2008 Community Development Committee Work Plan Update.

Vice-Chair Meeks invited Jan Youngquist to begin her presentation.

Union Pacific Railroad Abandonment, Carver and Scott Counties. Jan Youngquist, senior planner, provided an information update to the Community Development Committee as requested since a report about this issue has already been presented to the Environment Committee and the Transportation Committee as a business item, due to implications regarding the interceptor system for Environmental Services and the policy issues for Transportation Services. She reported that on December 11, 2007, Union Pacific Railroad filed an abandonment application with the Surface Transportation Board to abandon the Chaska Industrial Lead spur in Carver and Scott Counties. Council staff from Environmental Services, Transportation Services and Parks have met with county, city, township and MnDOT staff several times to discuss potential shared uses of the railroad corridor. The Metropolitan Council's primary interest in the property is for sewer interceptor purposes. A secondary interest to the Metropolitan Council is for potential trail uses along the corridor. Although the *2030 Regional Parks Policy Plan* has not specified a future regional trail in this immediate area, it has identified the need for a crossing of the Minnesota River to connect regional trails in Carver and Scott County. It was noted this item will go to the full Metropolitan Council on January 23, 2008.

Meeks questioned whether the sugar company has filed a protest. Youngquist responded she doesn't know if they have yet or not. Pistilli asked if there was any monetary implications. Youngquist replied that there is no request for a funding requisition at this time. Discussion followed.

ADJOURNMENT

Business completed, the meeting adjourned at 6:20 p.m.

Respectfully submitted,

Diane Jadwinski
Recording Secretary