

**CITY OF PARK RAPIDS
REGULAR MEETING
PLANNING COMMISSION
OCTOBER 26, 2015, 6:00 p.m.
Park Rapids Library, 210 First Street West – Lower Level
Park Rapids, Minnesota**

1. CALL TO ORDER: The October 26, 2015, Regular Meeting of the Park Rapids Planning Commission was called to order at 6:00 p.m.

2. ROLL CALL: Present: Commissioners Dick Bradow, Joel Vorhes, Nels Peterson and Dick Rutherford. Absent: City Councilmember Paul Utke. Staff Present: City Planner Ryan Mathisrud and Planning Assistant Carmen L. Lockhart. Others Present: Mary Beth Anderson, Diane Dennis, Katie Warmbold and Thom Peterson.

3. APPROVAL OF AGENDA: A motion was made by Rutherford, seconded by Vorhes, and unanimously carried to approve the following agenda as presented.

4. APPROVAL OF REGULAR MEETING PLANNING COMMISSION MINUTES OF SEPTEMBER 28, 2015: A motion was made by Peterson, seconded by Vorhes, and unanimously carried to approve the September 28, 2015 Regular Meeting Minutes as presented.

5. PUBLIC HEARING:

5A. PRELIMINARY AND FINAL PLAT REQUEST FROM MCGRANE PARTNERSHIP FOR A MINOR SUBDIVISION NAMED MCGRANE FOURTH ADDITION CONSISTING OF ONE LOT AND 2.5 ACRES LOCATED IN AN R-3 MEDIUM DENSITY RESIDENTIAL DISTRICT, BETWEEN 11TH STREET WEST AND INDUSTRIAL PARK ROAD, A PORTION OF PID#32.26.05000:

Mathisrud explained this public hearing is for a Preliminary and Final Plat for McGrane Fourth Addition brought by Kathy Grell of McGrane Partnership. They have 52.4 acres and are intending to subdivide off 2.5 acres to create McGrane Fourth Addition. Mathisrud provided an aerial view of the location which is just north of the Kuepers 29 unit apartment built last year.

Mathisrud stated the approximate address is 1106 Pleasant Avenue South although it has not been assigned yet as that will be done when the building is constructed. It is currently zoned R-3 for Medium Density Residential and our Future Land Use Map shows it as being multi-family residential. The intent of the R-3 zoning is really to provide for medium density residential which are multi-family structures and related uses. In our ordinance we allow for up to twelve housing units being permitted and if you want to exceed that density you have to apply for a Conditional Use Permit. Mathisrud advised that he reviewed this area and did not find any environmentally sensitive areas at this location. When reviewing the utility map on the west side of this

particular parcel we do have utilities available as there is an 8 inch water main and sanitary sewer and storm sewer. On the east side which is on Main Avenue South, there is a 10 inch water main and to the north there is sanitary sewer and water available so it has all utilities there.

Mathisrud explained in reviewing the size of the lot based on the R-3 zoning ordinance for multi-family housing, the minimum lot size is 10,500 square feet plus 1,500 square feet per dwelling unit and the minimum lot width is 100 feet. The proposed development is currently undeveloped and is a green field. This lot is actually 391 feet by 278 feet so it does meet the subdivision ordinance for lot size. It is brought as a subdivision because any unplatted lands in the city where a developer is proposing to split it down smaller than five acres must be platted so it has to go through this process. Platted lands are of course reviewed to make sure that they meet the zoning ordinance, the survey pins are set, the requirements in the subdivision ordinance are met and we also require that the Park Land Dedication Fee be paid and any impact fees are paid. The city doesn't have any impact fees at this time but that's typically part of the process if we had them.

Mathisrud provided the plat and stated it does encompass all the area to the north of the existing 29 unit apartment building. Mathisrud advised that he reviewed this and it meets all the requirements of the subdivision ordinance and meets the zoning ordinance for density. The future land use, a developer could build up to 66 dwelling units on this site. Utility easements are provided in the plat and there is basically a 10 foot easement that goes around all sides of the lot and is a shared easement between the two lots to the north and south. All city staff reviewed this as well as the city engineer, fire chief, public works, police chief and all provided no comments or comments that were provided are addressed in the Final Plat so we do feel it meets all ordinances and regulations. As part of that, there is a Park Land Dedication Fee which is calculated by the ordinance and basically based on the value of the land prior to subdivision so for the amount of land being subdivided, it came to \$348.25. Mathisrud explained that real estate can be requested in lieu of cash but because it is so small we are not requesting real estate.

Mathisrud recommended approval of the Preliminary and Final plat of McGrane Fourth Addition, a portion of PID#32.26.05000 with the following condition:

1. Park Land Dedication Fee in the amount of \$348.25 is required prior to the filing of the Final Plat.

The Public Hearing was opened at 6:13 p.m.

The Public Hearing was closed at 6:13 p.m.

A motion was made by Vorhes, seconded by Rutherford, and unanimously carried to recommend to the City Council approval of a Preliminary and Final Plat request from McGrane Partnership for a Minor Subdivision named McGrane Fourth Addition consisting of one lot and 2.5 acres located in an R-3 Medium Density Residential District between 11th Street West and Industrial Park Road, a portion of PID#32.26.05000 with the following conditions:

1. Park Land Dedication Fee in the amount of \$348.25 is required prior to the filing of the Final Plat.

6. INFORMATIONAL/DISCUSSION:

6A. POINT OF SALE SSTS ORDINANCE DISCUSSION: Mathisrud explained at the last meeting we discussed a proposed point of sale ordinance. Staff was requested to put together a few things on this and bring it to the council for review. Basically what it is is a requirement that the seller disclose to the buyer as well as the city the current condition of existing septic system and they do this by completing the SSTS form which is a state form that many are familiar with and to present that to the buyer. If the system is compliant the transaction would proceed normally but if it is not compliant then additional steps do need to be completed.

Mathisrud advised at the last meeting we discussed a little about this and basically what the ordinance would do and what the intent was so at this meeting I would like to go over what the proposed process would be if we did adopt this. From the buyer and seller's perspective, this is how it would work.

1. A seller lists their home for sale.
2. A buyer completes a purchase offer which is accepted by the seller.
3. A compliance inspection is ordered.
4. The inspection is completed by a qualified inspector and a copy is sent to the buyer/seller/city.
5. The city form is completed with attachments before closing or at closing. If the system is compliant or exempt, the process is complete.
6. If the system is not in compliance, or adjacent to city sewer and water, the escrow account is established at the city to complete the transaction or the system is brought into compliance prior to closing.

If it is during winter months, an escrow is established so if the upgrade of that system cannot be completed because of winter, basically just an escrow agreement is completed and funds could be held at the city so that the following spring when the system is upgraded those funds would be released to whoever created the escrow. Basically it's used as a way to get the project completed. The alternative is to bring it back into compliance prior to closing.

7. Staff follows up to ensure that the system is installed correctly.
8. Escrow funds are released to appropriate parties.

Note: A well advised seller would complete the inspection at the time of listing to prevent unnecessary delay in the closing. If the seller is not exceptionally motivated to sell, they may want to hold off on this just because then they wouldn't have to pay the fee of getting the inspection completed without having a purchase offer.

Mathisrud stated there isn't a way to stop this at the recorder's office to prohibit a sale so a sale could potentially be completed without completing the city form and process so the city would actually have to monitor transactions so those that did occur without having gone through that process we would actually have to go back and do some retroactive enforcement. So you would have a provision for a misdemeanor or

something of that nature in our proposed ordinance that shows if you do complete the sale without doing the inspection, basically the seller is responsible for upgrading that system because they did not disclose that, so we would have to actively monitor these to ensure that this process was being completed correctly. We would be able to withhold future permits until that inspection is completed so basically if someone didn't do it then we just wouldn't issue permits for expansions or remodeling or anything else that they needed.

Mathisrud commented as part of this, if adopted, I would recommend an educational process basically reaching out to real estate agents, attorneys, and anyone who is involved with a real estate transaction process to let them know how this process would work so they are aware of it. That way everyone knows the new rules.

Mathisrud asked for questions, concerns and thoughts on this as to how to improve it or anything at all.

DISCUSSION:

- The number of how many cities in Minnesota have adopted this?
Mathisrud responded as he understands from the MPCA reports about 50% of local governmental units have adopted a point of sale septic system ordinance and that includes both cities and counties and that was as of 2013. In 2012 it was 49% so there does appear to be a trend towards adopting these. Rutherford asked county verses city, is the county's better than the city ones? Mathisrud said typically the counties will adopt a point of sale ordinance and then the cities septic ordinance has to be as restrictive as the county's or more restrictive if they choose. Right now Hubbard County does not require this so it would be more restrictive than Hubbard County. I don't have data that shows examples of where cities have adopted an ordinance above and beyond a county's but that is really up to municipalities to make that choice for themselves.
- Benefits, drawbacks and goals: protecting the ground water.
Mathisrud explained the benefit is it could help in protecting the ground water. The downside from an administrative standpoint is simply the fact that this will increase our workload to a small degree so this is more stuff that we've got to do and more enforcement activities. It does provide some additional benefits to the city in that now we have a mechanism to help ensure more hookups to city services. There are some benefits to making it easier and achieve the goals that we've already adopted as a city so it does help with that. I think there are benefits to doing this.
- Number of septic systems throughout the city and records of all septic system installations including annexation areas and the number of systems throughout the city.

Mathisrud explained we have records of every system that has been issued a permit by the city. Where we have annexed in properties we have also received records from other local governmental units so as far as my level of certainty that we have all the records on every system that is in the community is not as high so that's the issue. We have somewhere between 150 and 200 systems we believe in the City of Park Rapids and the majority of failing systems I believe are going to be in Discovery Circle and we are starting discussions of doing a project out there in 2017 but there are no guarantees that there will be a project in 2017 so we feel many of these if we did have a project in 2017 would be addressed at that time. So is this going to affect a lot of people? I think it is going to come down to just a handful of properties every year that would be affected by something like this and by a handful I mean less than five.

- Peterson stated in his opinion this proposed ordinance doesn't do the following:
 - Doesn't protect the groundwater as only properties for sale are checked so what about the ones that aren't being sold.
 - Doesn't achieve the objective of finding all the noncompliant systems.
 - Doesn't foster good relations and discriminates against seller.
 - Doesn't help enforce existing regulations and places burden on staff.
 - Doesn't encourage growth in this area and disrupts our economic activity between buyers and sellers.
 - Doesn't meet goals in Comprehensive Plan.

Realtors brought up the following discussion points.

- Questioned why does the city need to be involved? The city is not a party to the transaction of real estate at all. The sellers are and the buyers are and they are the only ones who are. The State of Minnesota has already got septic system disclosure forms required by the state and approved by the state that we all fill out. The first six steps that were on that power point presentation, we already do, we do it every transaction and whether a septic system is compliant or not compliant is a matter that the buyer and seller can negotiate, most of the time if it is not compliant the buyers will request the sellers make it so and it is either paid for by the seller or the selling price is renegotiated to reflect the cost of that. Essentially, we feel it's an unreasonable burden on a seller, what happens for example if a transaction goes through a purchase agreement is made and accepted and they go to the bank and so forth and then for some reason, I just had one at Northwoods Bank, a gentleman lost his job a week before closing well that sale goes in the tank but the seller has already paid for the septic inspection and maybe even an upgrade by that point.
- The fact that nearly all mortgage investors including Freddie Mac and Fannie Mae will not permit an escrow for well or septic period and after

checking with some local lenders today it has even come down to the point that conventional mortgages, anything that is going to be sold, a mortgage sold on the secondary market will not allow an escrow. A lot of people that are buying homes these days don't have a lot of down payment saved up and they rely on Fannie Mae or Freddie Mac for zero percent down financing and if Freddie Mac and Fannie Mae won't allow an escrow that's not an option open to them and that blows the deal.

- Realtors and their mandatory disclosure rules under the real estate law we have to make our sellers fill these disclosures forms out actually, any seller of real estate now is required to fill out a Subsurface Sewage Treatment System Disclosure form.
- Knowing about Discovery Circle noncompliant systems because we've had compliance tests requested our buyers and it's what we usually tell our buyers to do, it's a good idea because it's an investment for their future and helps on their housing value. We know about their systems because we already do this stuff.
- How would the city police sales when a realtor isn't involved.
- If there is an 80 year old seller on a fixed income who is selling their home because they want to move into Summerfield Place or they need to move into assisted living or in with their children or something and you require this point of sale ordinance for their septic system and then the transaction falls through and the only way the seller could afford to pay for that system was from the proceeds from the sale of that home, what have you done to that seller? You've just given them a \$10,000 bill that they don't, they are on Social Security and they don't have the money to pay for it.
- It's one more complication to purchasing or selling real estate that a buyer or a seller is not going to see the value in and trying to market our area of Park Rapids and Hubbard County there is great danger of becoming the county or the city of regulations and when people want to come here and they want to do business here or they want to retire here, the last thing you want to do is have to fight city or local county government for everything that they want to do with their house and we've gotten to be a little bit that way and I think that's probably one of the reasons why the county shore land management ordinance or the county zoning backed off this spring to a great extent in their ordinance. It just gets to be so onerous for people they say well you know what's wrong with Brainerd or some other area and we don't want to do that.
- Buyer responsibility to request compliance inspection when purchasing.

Commissioners discussed other points?

- Percentage of buyers that request a septic inspection.
- Purchasing a Bond verses holding escrow.
- If this disclosure is happening right now, there wouldn't be any additional burden with this point of sale because it's already happening and realtors saying it is not mandatory to have an inspection but many buyers do request it.
- Enforcing residents to hook up to city water and sewer when it is available.

Mathisrud stated he wants comments from the commissioners as to any changes to the proposed ordinance to make it function better as he is hoping to put together the best ordinance possible for delivery to the City Council that is going to function the best regardless of what your opinions are on it. At the public hearing we will vote whether or not to recommend approval or not and if we are at an impasse so be it but if not I would like to deliver the best possible ordinance to the City Council. It was agreed that the escrow and bond options are investigated further.

7. ADJOURNMENT: A motion was made by Rutherford, seconded by Vorhes, and unanimously carried to adjourn the meeting at 7:12 p.m.

Chair Dick Bradow

ATTEST:

Carmen L. Lockhart
Planning Assistant