

MINUTES

CALL TO ORDER

Vice-Chair Riedel called the meeting to order at 7:00 P.M. and explained the Planning Commission is comprised of residents of the City of Shorewood who are serving as volunteers on the Commission and are appointed by the City Council. The Commission's role is to help the City Council in determining zoning and planning issues. One of the Commission's responsibilities is to hold public hearings and to help develop the factual record for an application and to make a non-binding recommendation to the City Council. The recommendation is advisory only.

ROLL CALL

Present: Commissioners Eggenberger, Riedel, Huskins and Holker; Planning Director Darling; Planning Technician Carlson, City Engineer Budde, and Council Liaison Gorham

Absent: Chair Maddy

1. APPROVAL OF AGENDA

Holker moved, Huskins seconded, approving the agenda for August 2, 2022, as presented. Roll call vote: All in favor, motion passed 4/0.

2. APPROVAL OF MINUTES

- **May 3, 2022**

Commissioner Huskins noted two minor typographical errors in the minutes on page 9.

Huskins moved, Holker seconded, approving the Planning Commission Meeting Minutes of May 3, 2022, as amended. Roll call vote: All in favor, motion passed 4/0.

3. MATTERS FROM THE FLOOR - NONE

4. PUBLIC HEARINGS -

- A. PUBLIC HEARING – MAPLE SHORES: REZONING, PUD, CONCEPT/DEVELOPMENT STAGE AND PRELIMINARY PLAT**
Applicant: Chamberlain Capital, LLC
Location: 20430 Radisson Road and four adjacent parcels on the south side of Highway 7

Vice-Chair Riedel gave an overview of the procedures and rules for public hearings.

Planning Director Darling explained that the applicant is proposing to develop the property for seven homes in a planned community with shared maintenance to be called 'Maple Shores'. She noted that this site is comprised of 5 separate parcels located between Radisson Road and

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Highway 7 on the east and north sides of Lake Como. She reviewed the elevation and current conditions of the property. She noted that the developer is proposing to remove the existing home and lower the middle of the property in order to construct the homes along a new private street with 4 of the homes backing up to the lake and 3 backing up to a new stormwater pond. She stated that the plans call for water to be extended across Highway 7 and noted that sewer is available in Radisson Road. She explained that the homes would have the majority of the living area on the main level with either a walk-out level for those on the lakeside or an upper level on the stormwater pond side. The homes would be upwards of 3,400 square feet and feature extra deep two stall garages. She explained that the applicant has requested a rezoning from R-1A to PUD as well as a Concept/Development Stage and Preliminary Plat. She gave an overview of the items that the applicant is requesting flexibility on such as the ability to construct two-family homes, three homes to be served by a private street, reduced setback, ability to remove 5,840 cubic yards of material, and the ability to construct a model home prior to installation of utilities and street paving. She stated that the plans are to construct the townhomes and keep the majority of the site for open space and for the individual homeowners to just own the land around the foundation of the unit. She reviewed the impervious surface coverage requirement, the amount of dirt proposed to be removed from the site, the route for the truck traffic, and the requirement for a fence along the top of the retaining wall to address safety concerns. She gave a brief overview of the proposed conditions that staff is recommending, if this is approved. She stated that the site has a number of significant trees that will be removed as part of this project and would be required to replace 28 replacement trees, however, the applicant is proposing to plant 35 trees with a number of them being along Highway 7. She stated that staff feels the site can accommodate even more trees and would also provide a greater visual barrier for the residents, so they are recommending additional plantings. Staff recommends approval subject to the conditions listed in the staff report. She stated that the City has not received any written comments on this application.

Vice-Chair Riedel noted that the packet had also included an engineering report and information from the DNR.

Commissioner Huskins asked about how water would be brought into the development and whether the County would need to be involved.

Planning Director Darling stated that the City ordinance requires that any subdivision with four or more homes proposed has to be served by City water. She stated that in this area of the City there are two options for City water, one would be to directionally bore under Highway 7 from mains that are within Excelsior Boulevard and the other option would be to extend a main from public water main that is close to the water tower. She stated that the applicant has proposed the crossing under Highway 7 as their preferred approach and will require permits from MnDot, but no permits for the crossing from the County. She turned the answer to the question on operation questions on the extension to City Engineer Budde.

City Engineer Budde stated that he believes their plans are for directional drilling which means Highway 7 would be undisturbed from a traffic perspective. He stated that the City will require that they hook up with a 'wet tap' which means they are able to make the connection without having to shut down the existing 12 inch main on the north side.

Commissioner Holker asked about the location of the homes closest to this development.

There was an answer given from the audience.

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Commissioner Holker stated that she would also like to know about the indication on one of the maps about 'limit of landscaped yard'.

Planning Director Darling suggested that Vice-Chair Riedel repeat the statements that were made from the audience since those comments were not recorded.

Commissioner Holker stated that the answer that was given indicated that the structure she was referencing had bedrooms on the backside closest to the boundary of the proposed development.

Commissioner Huskins asked about information in the staff report about the common area being 'primarily' used for shore area, wetland, wetland buffers, stormwater pond, and open spaces.

Planning Director Darling stated that there are not a whole lot of uses beyond the conservation easements, wetland buffers, open spaces, and lawn areas. She stated that it is all within an outlot and a structure cannot be built on outlot, which would prohibit having something like a shed.

Commissioner Holker stated that there were a few references to Lot 11 and asked for clarification on what that was referring to.

Planning Director Darling stated that she believed those references were in the property owners narrative. She noted that lot 11 is owned by an adjacent property owner but many of the residents in the area have a private easement over the property for access to the lake and passive shoreland uses. She stated that the easement is private and whether or not the new residents in the subdivision have rights to the lot is outside the City's authority and the City does not get involved in the interpretation of private easements, which is why it was not addressed in her staff report.

Commissioner Huskins asked about Lake Como and its allowed uses.

Planning Director Darling stated that the lot lines, when they are showed as extending into the lake, are riparian, which means the DNR has jurisdiction over everything below the ordinary high water level for Lake Como. She stated that means it is open to use even though there is no public access to this lake. She explained that it was a very shallow lake with marshland all the way around it. She stated that there is nothing preventing people from fishing on the lake, but she was not sure if there were even any fish in the lake.

Commissioner Huskins asked if it would be a fair statement to say that if this PUD was completed, it would not change the character of the lake, access to the lake, or change what people have been routinely doing.

Planning Director Darling stated that is correct and the only change would be the areas that are adjacent to the lake that are within these parcels would be owned in common. She stated that it does mean that the residents could walk down to the shoreland and use the water, if there was any kind of clear and open access to the water, for example for a canoe or kayak.

Vice-Chair Riedel asked if there would be any restriction on putting a dock into the lake.

Planning Director Darling stated that the DNR would not have a restriction that would prohibit anyone from putting in a dock, however the City's wetland regulations do not allow for artificial obstructions of stormwater purposes, so this is a bit complicated because of the extensive marshland.

Commissioner Holker asked if looking across the lake the retaining wall would be visible.

Planning Director Darling stated that the lowest portion of the retaining wall would be about 18 feet above the ordinary high water level of the lake but noted that it is fairly heavily treed in the area which should obscure some of the visibility.

Commissioner Eggenberger asked about the plans to assign each home a certain amount of surface they can use in the future for impervious surface coverage.

Planning Director Darling explained that this was both now and in the future and is based on the stormwater design and the goal of not exceeding the 25% allowed.

Commissioner Eggenberger confirmed that the first person to build could not come in and use of the entire allotment.

Planning Director Darling explained that this was why there is a portion assigned to each lot so one homeowner could not use up the impervious surface allowed for another homeowner.

Commissioner Eggenberger stated that he assumes that there would be a lot of water behind the retaining wall and asked where the water will go.

Planning Director Darling stated that she anticipates that they will tile the water around the wall as part of their structural design of the wall.

Commissioner Eggenberger stated that there are 68 ash trees on the site. He stated that he understands that there are plans to have an arborist come in and see which ones should be removed but asked, before the development begins, why they wouldn't just come in and remove all of the ash trees so they are not even able to get ash borer. He stated that in his mind it may be easier to get them all out and then compensate with additional trees.

Planning Director Darling explained that the Commission could certainly propose something to that effect. She stated that some of the existing trees are on pretty steep slopes and getting the equipment down there may cause more damage than letting the tree die naturally. She stated that they are in the conservation easement area, so they can be allowed to become part of the natural environment as they die. She clarified that it is unlikely that the trees on those slopes would be a hazard for the new structures.

Commissioner Eggenberger stated that he was not implying that they could be a hazard to the structure, but rather a potential hazard of spreading ash borer. He stated that to him, it would make more sense, before the development even begins, to just go in and remove those ash trees.

Planning Director Darling stated that the Commission could consider this as an added condition.

Vice-Chair Riedel stated that there will be large areas that are undisturbed, so to go in to specifically cut out ash trees may not be the best way to move forward.

Paul Cameron, Chamberlain Capital, stated that the idea behind this development is a need that he and his wife personally have. He stated that they are coming out of a big house, their children are in college so they don't need that much space. He stated that they want to live in a space that is very controlled and have their own garages with some extra space for things such as motorcycles. He stated that the fully built out spaces are about 3,500 square feet but they include spaces like sunrooms and screened in porch spaces. He stated that the spaces are intended to

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be single level living with extra space either up or downstairs for when company comes over. He stated that they are envisioning this as a turnkey type of property where people can go south for the winter without having to worry about anything because the association is intended to be full maintenance. He explained that they had originally planned for 9 units but after discussing the future expansion of Highway 7, they reduced the number of units down to 7. He noted that all of the gutters will be helmeted and the water will come down the house and back into the street underground and following the stormwater all the way down to the catch basins and then into the pond. He stated that the one exception may be on the backside because they aren't sure they can get the gutter angle correct.

Vice-Chair Riedel asked if Mr. Cameron was in agreement with the recommendations suggested by staff and gave examples of HOA rules.

Mr. Cameron stated that they were in agreement and assured the Commission that they were of the mindset that it should be a really clean development. He noted that they are not in favor of parking on the street overnight or having a third vehicle parked on the driveway because it doesn't fit in the garage. He stated that they will probably have to have exceptions for situations like a college kid home for the summer, but suggested that they may have a permit process in that situation.

Vice-Chair Riedel noted that there is no parking allowed on Radisson Road. He stated that he suspects there will be concerns raised about that, the amount of traffic, and stressed that there simply cannot ever be overflow traffic on Radisson Road.

Mr. Cameron stated that he understood and explained their hopes for parking situations such as a party or even and noted that he expects this situation to arise only rarely.

Commissioner Huskins asked if his understanding was correct that this was a one phase process and they would build when they get a contract. He asked what they expect the timeframe would be from first sale to seventh sale.

Mr. Cameron stated that the customer for this would be someone who already lives in the area and would like to downsize without having to leave the area. He stated that they believe their primary residents will be empty nesters who will be downsizing and will have equity in their homes so they do not think they will need to be sensitive to the talk about recession and higher interest rates. He noted that their intent is to only build the model home if it is needed, depending on the timing. He stated that the expectation is that they will build next spring and be ready to move forward with all 7 units. He noted that when they had originally put together their plan, they had expected to be further along in the process by now. He noted that he is not concerned about any of the conditions and expectations raised by staff because they all appear to be very logical but reiterated that many of them may not end up being relevant because they may not even have a model and will just move right into building the actual products.

Vice-Chair Riedel opened the Public Hearing at 7:56 P.M. noting the procedures used in a Public Hearing.

Paul Cossette, 5570 Shore Road, stated that he feels the City has done a fine job assessing what will need to be done with the assumption that a PUD is approved. He stated that he believes their issue is that they do not believe a PUD should be approved because the things being done under the guise of a PUD do not necessarily fit with the zoning that is there or the neighborhood development the way it is now. He stated that the impact of the variances being discussed do impact the people in the neighborhood and the atmosphere that is there. He stated that if it

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remained under the existing zoning he did not feel they would have those issues. He stated that their first issue is with the significant amount of trees that will be removed because it is essentially two-thirds of the trees in the area and to scrape most of the remaining area to turn it into a parking lot. He stated that those trees provide a tremendous amount of noise protection and are visually very important and the replacement trees are very small. He explained that his next issue was related to the capacity of the lift station that is in place because this will add a significant amount of people onto the lift station. He stated that his basement is the lowest thing in the entire area, so when the lift station doesn't work, which has happened, his basement floods with raw sewage, which obviously causes him concern. He stated that he is also concerned about the stormwater run-off and noted that the way it is set up with the pond is very good for standard rain and standard run-off, but the applicant admits in their information that once it is over a 1 inch rain the water will flow down the street and into Como and into the pond across the street, which happens to be in front of his house. He expressed concern about the sizing of the watermains and asked that if this is approved and moves forward under the PUD that they are sized so the neighborhood could connect up to City water, which he thinks the majority would like to do if it were an option. He stated that he felt the variances being asked for were significant and noted that the closer proximity of the buildings mean that it will be a much more dense neighborhood which is not allowed under the current zoning and, in his opinion, is not appropriate for the neighborhood. He stated that he questioned how the neighbor in the nearby house will be effected by the large retaining wall that is planned.

Scott Smith, 6313 Loch Moor Drive, Minneapolis, stated that he was an attorney representing Donna Watts and Bill Hitler who are the fee owners of Lot #11. He stated that he would like to discuss this lot in relation to the project and noted that he heard Planning Director Darling's comment relative to the easement issue but noted that he would vociferously disagree with the notion that the impacts of this project, if approved, upon Lot #11 and the easement holders, are beyond the purview of the Commission. He stated that he feels the Commission is charged with considering the impacts in a variety of circumstances that this project, as proposed, may have on things like vegetation, trees, tax base, parking, and traffic. He stated that the impact that this project may have on the Lot #11 easement holders rights, are something that they ask the Commission to consider and deal with. He stated that his clients are opposed to this proposal and urge the Commission to recommend denial. He stated that he assumed that the Commission was generally familiar with the fact that there are easements on most of the Radisson Inn Addition properties that allow them to use Lot #11 for certain purposes. He stated that the problem is that this project is being marketed that it has homes with access to Christmas Lake, however the only such access is through Lot #11 because these properties are not on Christmas Lake. He stated that thinks that Lot #11 becomes an important part of the puzzle for the Commission to consider even though there have only been two references to Lot #11 in the materials submitted to them. He noted there was really nothing said that addresses how the developer will address the impact of multi-family housing with seven families on two lots and how it will burden both the owners of Lot #11 and the others who are entitled to use it through existing easements. He stated that the lack of discussion in the proposal on this issue feels problematic. He noted that he sees the bigger problem as shoehorning seven families into two lots that were created in 1939 which is not allowed under these facts by Minnesota law. He stated that the 'black letter law' in Minnesota is that an easement shall not be enlarged by legal construction beyond the objects originally contemplated by the parties. He stated that it raises the question of what the intent was when the easement was created in 1939 regarding the number of people who would be entitled to access Lot #11. He stated that he thinks that the original intent was never for multi-family dwellings or multiple families living on single lots to have full access rights. He stated that this was easement was originally created, the properties being discussed were Lots #24 and #23 and referenced page 14 of the packet material submitted by the applicant of Registered Land Survey N. 730 which is referenced as Lot #23 and explained that Lot #24 runs to the north. He explained that he believes

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the original intent of the grantor of this easement was that there would be two lots and two dwellings which would be the burden on Lot #11.

Commissioner Eggenberger asked if there was any evidence to show that they thought those lots would never be divided.

Mr. Smith stated that is a fair point, but he knows of no evidence that indicates that the lots could not be divided, however they do know that Lot #23 was essentially divided into 8 tracts of land. He explained that he still goes back to the original intent of the grantor from 1939 because according to Minnesota law you cannot impose the additional burden of having those families on that lot beyond what was intended at the time of the creation of the easement.

Vice-Chair Riedel stated that the City does not grant private easements, adjudicate disputes over easements, or enforce easements which is a matter for the courts. He stated that some of the discussion happening here is directed at the wrong audience and the disputes over the easement are not relevant to the discuss of the zoning criteria that is before the Commission. He stated that he would not discourage discussion or comments but wanted to make it clear that the discussion could not be done to debate the validity or impact of the easements.

Commissioner Huskins stated that Mr. Smith has used the term 'burden' which he is interpreting as meaning the number of people that are entering and leaving through Lot #11. He asked how many homeowners had this deeded easement today.

Mr. Smith stated that he believes the number is in the vicinity of 20.

A man from the audience stated that the number is 13.

A different man stated that this number was not correct.

Mr. Smith suggested that he get the exact number and submit it to the City within a day or two. He stated that the question raised by Commissioner Huskins is good because this is potentially a precedent setting decision because there may be other properties in the Radisson Inn Addition that have the same easement rights and other developers may want to come and build multi-family units as well. He stated that he would disagree with Vice-Chair Riedel that this discussion is beyond the purview of the Planning Commission because they are charged with considering the potential impacts of the changing in zoning on the existing community. He reiterated that he did not think Minnesota law allows the developer to pyramid 7 new easement holders out of an estate on two lots that was clearly never intended for this purpose by the grantor in 1939.

Vice-Chair Riedel noted that he agreed with Mr. Smith's first point, but not his second point. He explained that he would agree that, very broadly, it is within the Commission's purview to consider this issue, but he disagreed that it is for the Commission to consider the legality of the subdivision because that is a matter to be argued before the courts. He stated that he would agree that it is within their purview to consider the impact of the subdivision, which includes the easement.

Mr. Smith stated that about five years ago there was a petition that was put forward relative to the use of the dock at Lot #11 to expand the number of boats that would be allowed to tie up there by easement holders. He stated that this was a legal issue and noted that the Council got an opinion from the city attorney, but they ultimately rejected the application because it was prohibited by Lake Minnetonka ordinances.

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Vice-Chair Riedel noted that he feels there is a critical difference in this situation because in the City's zoning code there is language that pertains to the use of the docks and there is nothing in the City code that pertains to easements and easements rights because that is a State issue.

Commissioner Eggenberger asked what 'additional burden' he and his clients were concerned about.

Mr. Smith explained that it would be things like added traffic, waste, potential for damage, and leaving water toys around. He stated that the traffic alone makes the property less marketable. He stated that adding 7 new families was not a burden that his clients contemplated when they acquired Lot #11 in 2015.

Michael Cohen, 20640 Radisson Road, stated that his boundary touches the boundary of Maple Shores. He stated that he has been a steward of taking care of Lake Como for the last 35 years. He stated that he would like to know exactly the percentage of acre, per unit, that is being allowed on this PUD because he owns 3 acres right next door. He stated that according to the comment from Mr. Smith, the City will set the precedent which means he could do the same thing as is being proposed, but noted that the neighborhood was never designed for 14 twin homes. He stated that the City cannot simply decide to approve these actions for one person and not for another. He noted that Mr. Cossette mentioned the lift station and noted that the low point of the hill has a lift station which does not have a gen set so when the power goes out the lift station fails because there is not generator. He stated that if 7 new homes are added, he thinks they need to consider the cost of a generator to lift the sanitary waste from those additional homes. He explained that he has good feelings about the new neighbors and thinks they are wonderful people but asked the Commission to realize that if they are allowed to develop, he can also develop. He stated that if they determine that they can add more access to Lot #11, so can he. He stated that it is unfortunate, but there has been fraud in this transaction. He stated that there is a template for the 13 families that won, at an enormous cost, a 10-foot easement and 121 feet of usage with a dock. He stated that when Mr. Chamberlain bought the property, the verbiage was in his packet, which is total fraud because he was not allowed that. He stated that three months after it was bought, it was switched back so he feels Mr. Chamberlain was duped on this transaction. He stated that he feels it makes a huge difference on the price he can sell these for, the quality they can be built with if this property, which is lake adjacent, can get to the lake versus not being able to get to the lake. He stated that he believes this is the oldest easement in the State as well as the most litigated easement. He stated that he would suggest that before anything goes forward that the legal team from the fee holder and the builder get an adjudication from the courts so they know exactly what they can sell.

Paula Callies, 20465 Radisson Road, stated that her home is across the street from the development. She stated that she agreed that this was the wrong venue for a discussion around Lot #11 and agreed with the suggestion by Mr. Cohen that there should be some other legal remedy. She stated that she feels the arguments made by Mr. Smith were very cogent but reiterated that she feels this is the wrong venue. She stated that she appreciated the questioning by Commissioner Eggenberger and explained that she doesn't really care if there are 7 more people who can walk down to the lake but noted that there is a limit on how many boats can be there, nor can there be another dock. She stated that this is a long-standing issue and explained that when her property was subdivided, they received the benefit of that easement so there may be other properties that can also be subdivided. She stated that this proposal would be a change for them personally and explained that it has been a nuisance property, so they are looking forward to having it cleaned up and improved compared to what is currently there. She stated that she could also say that she wishes that it would be one single family home in this location, but doubts that would be a realistic expectation. She stated that she would be in favor of a quality

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development and feels that Mr. Cameron has been responsive in listening to the neighborhood thus far, and has reduced the density, which she feels is positive. She noted that she did have some concerns about the sight lines. She explained that she felt the conditions recommended by staff appear to be reasonable and the applicant has expressed willingness to comply with them which is also positive.

Commissioner Huskins asked if Ms. Callies was advocating that the matter relating to Lot #11 be adjudicated prior to approval by the City.

Ms. Callies stated that she did not think the City had any authority to require that. She stated that it would be great if it could be resolved but noted that it has been going on for a long time. She noted that there is different easement language for different properties.

Commissioner Huskins stated that his understanding is that this is not something that they could make as a condition of approval and would become part of the applicants' decision-making process as to whether or not it is a risk that they wish to take to build the development.

Vice-Chair Riedel asked if there were any residents present who wanted to speak about issues other than Lot #11 such as screening and traffic.

Mr. Cohen stated that if the assumption is made that all 7 homes are sold it would bring an additional 14 cars. He stated that there is an extremely narrow curve on Radisson Road near Al Peterson's house that is only wide enough for one car to pass through at a time. He stated that by adding 14 cars and not having this be a through-way is a concern. He stated that he believes they can live with it as long as the people realize that there is an easier and safer way out. He expressed concern about the heavy equipment and construction traffic and stated that he didn't feel they should ever go through that narrow portion.

Vice-Chair Riedel stated that currently there is a lot of green space and that will change with development. He stated that Highway 7 is very noisy and asked how residents felt about this change in screening.

Mr. Cohen stated that the noise of Highway 7 is based on the road surface which has improved over the years greatly. He stated that because of the large drop in elevation he thinks the noise will go over this property. He noted that on his property when the trees lose their leaves he can see Highway 7. He stated that Mr. Chamberlain did a great job with their tree planning and feels that he has completely respected his view which he appreciates.

David Downs, 20465 Radisson Road, asked about the comments shared about the lift station and asked if he was correct that this lift station was about to be replaced.

City Engineer Budde stated that he was not aware of that plan.

Mr. Downs stated that he understands that trees are coming down, but houses will be going up. He explained that when they built their home, noise from Highway 7 was a major concern but it has really been a non-issue so he did not think there would be a very significant change with these plans.

Mr. Cossette stated that he thinks there is a lot of concern about the trees coming down and the potential noise it may create for certain residents. He suggested that there be an independent sound analysis of what this will cause with the removal of the trees. He stated that he thinks that the homes will block some of the noise, but it may also push noise over.

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Mr. Cohen asked about the holding pond in the back of the property. He stated that his understanding is that the drain for the holding pond will be into Lake Como and asked what permits would be necessary in order to allow this overflow.

Vice-Chair Riedel stated that the holding pond is part of the stormwater management plan submitted by the applicant to capture the additional water from the new impervious surface. He stated that it was designed to capture and infiltrate water but the overflow during significant rain events would drain into Lake Como.

City Engineer Budde explained that the applicant would need a permit from the Minnehaha Creek Watershed District and if they work within the ordinary high water level of Lake Como they will also need a permit from the DNR.

Planning Director Darling suggested that the Commission may want to take a brief break.

Vice-Chair Riedel recessed the meeting at 8:48 p.m. and reconvened at 8:51 p.m.

There being no additional public comment, Vice-Chair Riedel closed the public hearing at 8:51 p.m.

Mr. Chamberlain stated that he appreciates the feedback they have gotten and noted that he had spoken with some individuals and tried to resolve many of these issues already. He stated that their stormwater design meets the requirements by the Minnehaha Creek Watershed District and has gone through all the appropriate processes. He stated that regarding the trees, they are required to give an arborist tree survey on the property and were not required to do the 60 feet from the blacktop of Highway 7 to the property boundary. He stated that they are planning to take the property down even further than it already is, so whatever noise is coming across those trees and continuing out will continue because he cannot put a barrier at the highway level. He stated that they tried to keep a ring of trees around the entire development and create a sort of enclave inside. He stated that he feels this type of housing is truly needed in the area. He understands that change can be hard but feels this is needed and noted that they are not planning to build something that is ugly. He stated that he is hoping that this will be kind of a timeless, Frank Lloyd Wright type style. He stated that they are not doing cheap, low-end construction.

Vice-Chair Riedel stated that the tree removal is one of the most significant aspects of this proposal. He stated that as one of the residents stated, if this were just an R-1A parcel with 6 acres, with the wetland buffers there may be able to be one or two homes, which means they most likely would have removed far fewer trees. He stated that in exchange for cutting down a lot of trees, they are accepting restrictions as part of the PUD. He stated that he feels that staff has done a good job of emphasizing the need for screening and strategic planting of trees. He stated that he feels that the right to develop at a higher density should have a commensurate higher burden to provide screening to preserve the character of the neighborhood, which currently has a lot of green space.

Mr. Chamberlain stated that he totally agreed and assured the Commission that they were on board with that idea. He stated that he didn't think many people understood that there are 5 lots, with one that could probably be subdivided again, but they do not conform so there are processes in the City that allow them to deal with non-conforming lots. He stated that would be 6 lots and he is asking for 7, but to cluster them together as guided in the Comprehensive Plan and meld it together into one package that makes sense.

Vice-Chair Riedel stated that there are 5 lots of record.

Someone from the audience asked to make a comment.

Vice-Chair Riedel reopened the public hearing at 8:59 p.m.

Gregory Hofstede, 20480 Radisson Road, asked about the retaining wall because he feels there are some elevation issues in the way the drawing is currently shown.

There being no additional public comment, Vice-chair Riedel closed the public hearing at 9:00 p.m.

Mr. Chamberlain explained that it almost looks like there was a road that was carved out in the middle of the property. He stated that it is high in the middle and then goes down on both sides so in order to get a building pad, they have to flatten that area which means the actual elevations will drop. He stated that as they blend the hill coming down onto the sides, the ends of the retaining walls will just be 1 foot and will be blended on the sides.

Vice-Chair Riedel asked about the building materials planned for the retaining wall.

Mr. Chamberlain stated that the retaining wall will be engineered and will not be boulder wall.

Vice-Chair Riedel asked if in there were any plans for screening at the base of the wall to kind of hide the wall.

Mr. Chamberlain stated that he cannot because it is in the wetland buffer.

Vice-Chair Riedel noted that once the soil has been disturbed to build a retaining wall, he believes they would be permitted to plant shrubs right in front of it.

Mr. Chamberlain stated that he believes that would be determined by Minnehaha Creek Watershed District, so they could ask if they could put shrubs in.

Vice-Chair Riedel stated that he understanding is that you are not allowed to cut things down in a buffer zone but you are allowed to plant in a wetland buffer zone.

Commissioner Eggenberger noted that many times the City will see tracts of land that the neighbors don't want anything to be built there. He stated that he would agree with the comments made earlier that the Lot #11 issue is not the Commission's issue. He stated that he is perhaps a bit more concerned about the lift station and watermain issues and suggested that it may be a good idea to look more closely at those issues. He stated that overall he thinks this is a reasonable plan and noted that he disagreed with the notion that this project would be precedent setting if this is allowed. He stated that he plans to recommend approval with the conditions as recommended by staff.

Vice-Chair Riedel suggested that the Commission could add a condition related to the lift station.

Commissioner Huskins stated that he agreed with Commissioner Eggenberger's concerns about the lift station. He stated that, in general, he is favorable towards the proposal. He stated that he also agreed that the issue related to Lot #11 was not the Commissions issue but will be for the applicant.

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Commissioner Holker stated that she was also in favor of recommending approval of this proposal and noted that she appreciated the way it has been tucked in and that it is a smaller density development.

Commissioner Huskins suggested that in addition to a condition about studying the lift station situation he thinks there could also be the opportunity to take a look at the trees and the sight lines.

Vice-Chair Riedel stated that the issue of Lot #11 is very complex and reiterated his statement that the City does not adjudicate, enforce, or pass judgement on easements. He stated that the issue of the subdivision and the easement that goes with it, is broadly relevant here however there is really nothing for the Commission to discuss. He stated that the final point made by Mr. Chamberlain was a strong point that they own 6 acres in R-1A that has 5 lots that are all substandard, but if you own property in this district, you are generally allowed to build on it. He stated that he believes that variances would be needed in every direction which would not be desirable. He stated that a PUD that proposes 7 homes is a compromise but agrees with Commissioner Holker that this seems very well laid out in the way they are tucked into the area. He stated that it appears that staff and the applicant have worked hard to minimize the impact and noted that he also intends to recommend approval. He stated that there has been discussion of the lift station and questioned whether that should be included as a condition or if it could just be a directive to staff.

City Engineer Budde stated that the City is planning to rehab that lift station this year which means replacing a lot of its 'guts' and making sure that it will function long term. He explained that the rehab will not change the capacity of the lift station because it already has adequate capacity for this development. He stated that he would agree that it is vulnerable with power outages which is something he will discuss with Public Works because this could be a good time to do something about that as part of the rehab process. He stated that he will follow up and provide a summary that explains more specifics of the lift station and how this development would change it to make sure everyone understands it clearly.

Commissioner Huskins asked if they could also get some information about the retaining wall and what types of screening would be possible.

City Engineer Budde stated that they can get feedback on that.

Planning Director Darling stated that regarding the wetland buffers, the two jurisdictions, the City and the Minnehaha Creek Watershed District have a different sized buffers and are both applying the required buffers to this development. She stated that the City's buffer is 35 feet for the wetland buffer itself and in that area they would not allow any construction and tree removal would be limited to just noxious weeds and diseased trees. She explained that the Minnehaha Creek Watershed District requires 40 feet for the wetland buffer but they do allow some flexible averaging. She noted that the DNR has asked that the entirety of the Minnehaha Creek Watershed District be included in the conservation easement. She explained that typically once there is a conservation easement you do not want any additional landscaping and simply preserve the natural habitat that is there, but there are times when there may be a lot of deadfall or diseased trees that the area needs to be re-vegetated to prevent erosion by using some type of native plantings. She stated that additional trees or shrubs could be added at the top end of the wetland buffer but would not want to get so close with the root systems that the retaining wall may be destabilized.

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Commissioner Huskins stated that earlier in the meeting Commissioner Eggenberger had made a statement about his concern regarding the ash trees and asked if the applicant had any feedback on that issue.

Planning Director Darling stated that after the meeting she could go through on the 'saved' trees and determine how many of those would be ash trees.

Commissioner Eggenberger asked who was responsible for removing the ash trees if they are diseased.

Planning Director Darling stated that if there is documented ash borer on private property, they would have to issue orders for their removal. She explained that if they were in the public right-of-way, then the City would be responsible. She stated that they know the emerald ash borer is marching this way, and is present in the surrounding communities, however, there has only been one documented case, to date, in the City.

Vice-Chair Riedel reminded attendees that the Planning Commission was just an advisory body and that the final decision would rest with the City Council.

Planning Director Darling agreed and noted that there are a few more steps in the review and approval process if this moves forward. She stated that the Parks Commission will also review the development for its impact to the park system in the City on August 16, 2022. She stated that on August 22, 2022 the City Council will hold a second public hearing on this application. She stated that if the Council approves the plans, the next step would be to submit a Final PUD and Final Plat which would take all of the conditions and incorporate them into the plans and resubmit with final details required.

Eggenberger moved, Huskins seconded, recommending approval of the request for rezoning from R-1A to Planned Unit Development; PUD Concept and Development Plan, and Preliminary Plat for 'Maple Shores' for property located at 20430 Radisson Road and four adjacent unaddressed parcels, subject to the staff recommendations. Roll call vote: all in favor, motion passed 4/0.

Commissioner Eggenberger asked staff to look into the lift station issue prior to the City Council meeting.

Vice-Chair Riedel asked staff to also take a look into the ash borer issue and the ratio of tree replacement that may be necessary.

5. NEW BUSINESS

A. Liaisons for City Council Meetings – August through December

August – Commissioner Riedel

September – Commissioner Eggenberger

October – Commissioner Holker

November – Commissioner Riedel (tentative)

December – Commissioner Huskins

6. REPORTS

- **Council Meeting Report**

Council Liaison Gorham reported on matters considered and actions taken during the Council's recent meetings.

- **Draft Next Meeting Agenda**

Planning Technician Carlson noted that there are a few applications coming up for the next meeting: an addition to a non-conforming house; a CUP for a privacy fence; and a Preliminary Plat for an outlot that will be converted into a single-family lot.

7. ADJOURNMENT

Huskins moved, Holker seconded, adjourning the Planning Commission Meeting of August 2, 2022, at 9:34 P.M. Roll Call Vote: Ayes – all. Motion passed 4/0.