

**City of Columbus**  
**Regular Planning Commission Meeting**  
**January 17, 2018**

The January 17, 2018 regular meeting of the Planning Commission for the City of Columbus was called to order at 7:00 p.m. by Chair Garth Sternberg at the City Hall. Present were Commission members: James Watson, Pam Wolowski, Jesse Preiner, and Jody Krebs; City Administrator Elizabeth Mursko; Planner Dean Johnson; Attorney Jacob Steen, and Recording Secretary Karen Boland.

Also in attendance were City Councilmembers Mark Daly, Jeff Duraine, Bill Krebs, Denny Peterson, and Mayor Dave Povolny; City Staff Jim Windingstad, Lorie Lemieux, and Jessica Hughes; Ken Rohlf, Ron Hanegraaf, Jason Spiegel, Dennis & Marlene Nelson, Chad Eggersglass, Paula Peterson, Megan Peterson, Emily Peterson, Eric Peterson, Jessie Frattalone, Dennis Mars, Rick Graybill, Margie and Vern Roisum, Tony Frattalone, Rick Parent, Jeff Anderson, Lori Breen, Denny Breen, Keith Anderson, Todd Lee (?), Joanne and Bob Stadnik, Pat Bjorke and Dan LaCoursiere, Barb Bobick, Dan Mike, Aaron and Troy Munson, Clifton and Tammy Meyers, Mark Hanson, Cindy & Myron Angel, Judy and ? Linneroot (?), John and Kim Taylor, Jay Gustafson, Nate Alan (?), Dan Sebesta, Don Santanni, Mel Mettler, Brent Romanowski, Derek Otto, Sherry Cerra, Paula Cammarata, David Wiblishauser, Julie Harper, Tom Scherber, John Menard, Randy Schumacher, Shelly Logren, Janet Hegland, Arlen Logren, William Bobick, Kim Tong, Tom Olson, Gerrie Olson, Dan Burt, Anita Thompson, Lynette Spence, Marlene Nordstrom, Nancy Loecken, Marie Hansen, Sean Skubitz, Sarah Lange, Lynn Carver-Quinn, Norma Heuer, Roger Wismer, Patsy Wismer, Patrick Stevens, Ed Eigner, Jackie Stevens, Jon Rausch, Kent Peterson, Mary Preiner, Pat Preiner, Joe Radach, and Wayne Jacobson.

**AGENDA APPROVAL**

*Motion* by Sternberg to amend the agenda to move the Public Open Forum for new business between items 3 and 4 on the agenda. Second by Krebs. Motion carried unanimously.

*Motion* by Krebs to approve the amended Agenda. Second by Watson. Votes as follows: Krebs – aye, Preiner – aye, Wolowski – abstain, Watson – aye, Sternberg – aye. Motion carried.

**PUBLIC OPEN FORUM**

No topic was raised at Public Open Forum.

**APPROVAL – REGULAR PC MEETING MINUTES OF DECEMBER 20, 2017**

*Motion* by Krebs to approve the minutes of the December 20, 2017 regular Planning Commission meeting as written. Second by Watson. Votes as follows: Krebs – aye, Preiner – aye, Wolowski – abstain, Watson – aye, Sternberg – aye. Motion carried.

**PUBLIC HEARING – BITUMINOUS ROADWAYS COLUMBUS PRELIMINARY PLAT (PC-18-103), AND BITUMINOUS ROADWAYS COLUMBUS SITE PLAN REVIEW & CUP (PC-18-104)**

At this time a joint public hearing was held to consider a request for a preliminary plat “Bituminous Roadways Columbus” combining two lots and creating one new lot; and to consider a request to allow the development and construction of an asphalt production facility with outdoor storage and handling of various construction materials at the property described in the notice in the Light Industrial (LI) district. Separate minutes are prepared.

**BITUMINOUS ROADWAYS COLUMBUS PRELIMINARY PLAT, AND BITUMINOUS ROADWAYS COLUMBUS SITE PLAN REVIEW & CUP DISCUSSION**

Planner Johnson said MN DOT automatically gets a plat review for any property that abuts any State roadway. They submitted a memo to the City. Their comments are in response to the plat abutting Interstates 35 E and W. They will require review of the drainage permit to determine that current drainage rates impacting the ditches along the interstates won’t change. That information will ultimately be part of a permit that’s pending from Rice Creek Watershed District. He would add that MN DOT requirements be met to the recommendations for the plat and the CUP if approved.

Johnson pointed out a typo in Finding of Fact #8 for the preliminary plat re: the size of the office lab/vehicle maintenance building. In recommendations regarding the CUP he inadvertently left out language about exterior building materials in #5.

Johnson clarified that the matter of whether an asphalt plant is allowable is no longer at the discretion of the PC or CC. The decision was made and the action taken to allow an asphalt plant within the LI district. This is a conditional use allowable in this zoning district.

Johnson also wanted to clarify that matters of air quality, water quality and noise are regulated by the federal government. The City does not have the authority to require additional monitoring or exceed restrictions set by the federal government or the Minnesota Pollution Control Agency (MPCA). Those entities are responsible for monitoring and enforcement.

Mursko brought up Lino Lakes’ request for more landscaping. The stormwater pond is the structure limited to the south side of the property. There are existing wetlands and there is wetland replacement along the easterly property boundary, which is abutting Interstate 35. The landscaping proposed by the applicant doesn’t extend the entire length of the stormwater pond being constructed. Lino Lakes is asking for consideration to extend landscaping to the easterly edge of that stormwater pond.

Preiner asked about an appeal that was raised as an issue by one of the people testifying during the hearing. Attorney Steen said an appeal was received on January 12<sup>th</sup>. He said State statute is very clear that a legislative action such as the adoption of an ordinance is reviewed by District Court.

He said the City will prepare a letter and return the appeal to the appellant. It's a defective appeal. He said the appeal has no effect on the CUP and there is no reason the applications cannot move forward.

*Motion* by Watson to forward to the City Council the request for a preliminary plat "Bituminous Roadways Columbus" combining two lots and creating one new lot, with a recommendation for approval, based on the findings of fact and recommendations for approval from the Planner's memo dated January 11, 2018, with revision to Findings of Fact #8 and the addition of Recommendation #10 as noted below. Second by Krebs. Votes as follows: Krebs – aye, Preiner – nay, Wolowski – nay, Watson – aye, Sternberg – aye. Motion carried.

Mursko requested clarification, asking if the motion included extra screening as requested by the City of Lino Lakes. It did not.

### **Findings of Fact**

1. The City received a preliminary plat application from Bituminous Roadways, Inc. ("BRI") on December 1, 2017. The application was found complete.
2. The 120-day preliminary plat review deadline is March 31, 2018.
3. The proposed 46.44-acre, 1-lot plat is located at 13345 and 13363 West Freeway Drive, legally described as part of the East Half of the Southwest Quarter of Section 36, Township 32, Range 22, lying westerly of Interstate Highway 35E, southerly of Interstate Highway 35W and easterly of West Freeway Drive [also known as CSAH 54, formerly known as CSAH 21,] ("Property").
4. The Property currently contains two parcels and two residences. All existing structures and two existing septic systems will be removed and two existing wells will be abandoned according to County standards.
5. The Property will be served by new private sewer and water services until public sewer and water services become available.
6. The Property is currently zoned LI Light Industrial.
7. A development agreement to determine public utility phasing is required in the LI District for properties that do not abut public utilities and are not immediately served by public utilities.
8. Proposed site development includes site grading, wetland replacement, and stormwater management for a new asphalt plant, including material stockpile areas and a ~~4000~~ **4600** square feet office/lab and vehicle maintenance building.
9. Rice Creek Watershed District (RCWD) issued a "conditional" permit (CAPROC) on July 5, 2017 for original development plans prepared by BRI in the spring of 2017.
10. The current plat and development plans received by the City on December 1, 2017 are being reviewed by RCWD at this time.
11. Access to the Property is proposed via a full access location on CSAH 54 at the south end of the proposed plat. A northbound exit-only access onto CSAH 54 is also located at the north end of the proposed plat.

12. Anoka County Highway Department (ACHD) issued a letter for access requirements for the Property on June 2, 2017, reflecting original development plans prepared by BRI in the spring of 2017.
13. The current plat and development plans received by the City on December 1, 2017 are being reviewed by ACHD at this time.
14. Drainage and utility easements have been located adjacent to all property lines, and cover all stormwater ponds and wetlands.
15. Minimum one-rod buffers will be required adjacent to final wetland boundaries.
16. The Property has been identified by the City as a corridor for a trunk water main loop from the west side of I-35 to the east side.
17. There are no sidewalks or trails or other public improvements proposed within the plat.
18. The Preliminary Plat public hearing was held by the Planning Commission on January 17, 2018.

### **Recommendations**

Based upon the above Findings of Fact, the Planning Commission should recommend approval to the City Council of the Bituminous Roadways Columbus Preliminary Plat, subject to the following:

1. Detailed recommendations of the City Engineer.
2. Title review and recommendations of the City Attorney.
3. A development agreement at final plat review that determines the phasing of public sewer and water improvements to the Property, that identifies a trunk water main corridor and easement through the Property, and that requires the proper removal of the two existing residential septic systems and abandonment of the two private wells.
4. Requirements of the Anoka County Surveyor and Highway Department.
5. Requirements of Rice Creek Watershed District.
6. Permanent wetland buffer plaques at intervals determined by the City.
7. Cash in lieu of park land dedication.
8. Reimbursement of all City expenses associated with plat approval.
9. Future development within the plat is subject to local ordinances and permitting requirements.
- 10. Requirements of the Minnesota Department of Transportation.**

*Motion* by Watson to forward to the City Council the request to allow the development and construction of an asphalt production facility with outdoor storage and handling of various construction materials at the property described in the notice in the Light Industrial (LI) district, with a recommendation for approval, based on the findings of fact and recommendations for approval from the Planner's memo dated January 11, 2018, with revision to Recommendation #5 and the addition of Recommendation #23 as noted below. Second by Krebs. Votes as follows: Krebs – aye, Preiner – nay, Wolowski – nay, Watson – aye, Sternberg –aye. Motion carried.

## Findings of Fact

1. The City received a CUP application from Bituminous Roadways, Inc. (“BRI”) on December 1, 2017. The application was found complete.
2. The 60-day review deadline is January 30, 2018. The 120-day review deadline, if required, is March 31, 2018.
3. The CUP is for property located at 13345 and 13363 West Freeway Drive, legally described as part of the East Half of the Southwest Quarter of Section 36, Township 32, Range 22, lying westerly of Interstate Highway 35E, southerly of Interstate Highway 35W and easterly of West Freeway Drive [also known as CSAH 54, formerly known as CSAH 21] (“Property”).
4. The Property is currently zoned LI Light Industrial.
5. The 46.44-acre Property is being platted as a single lot (Lot 1, Block 1), as proposed in the Bituminous Roadways Columbus Preliminary Plat.
6. BRI proposes to construct a new asphalt plant on the Property. Preliminary details of the asphalt plant were submitted with the application materials and include, but are not limited to the following basic components:
  - Asphalt mixing drum
  - Bag house
  - Control house
  - Cold feed system & recycled feed system
  - Six hot mix storage silos/loadout facilities (~70’ height)
  - Four asphalt cement storage tanks (~43’ height)
  - One tack oil storage tank (~36’ height)
  - Secondary storage containment bunker
  - Ramps, conveyors & hoppers, road scale □ Asphalt and concrete rubble piles (35’ max height)
  - Recycled asphalt and concrete piles (35’ max height)
  - Asphalt millings pile (35’ max height)
  - Virgin rock and sand piles (35’ max height)
  - Specialty aggregate piles (~20’ height)
7. BRI also proposes to construct a 40 feet by 115 feet office/lab and vehicle maintenance building. A new well and septic system will be constructed for this use.
8. The office/lab portion of the proposed building is approximately 19 feet tall at the peak of the gable roof and has brick veneer wainscoting and metal siding on three sides. The roof of the building is metal.

9. The vehicle maintenance portion of the proposed building is approximately 33 feet tall at the peak of the gable roof and has two-toned (upper/lower and middle) metal panels on three sides. There are two 16' overhead doors and one 8' overhead door proposed.
10. Site preparation for the proposed asphalt plant includes removal of existing buildings, structures and private sewer and water services; overhead electric powerline relocation; wetland replacement; stormwater ponding; bituminous surfacing for the primary plant area and office/lab building; aggregate surfacing of the stockpile areas and truck parking areas; and property access improvements.
11. Rice Creek Watershed District (RCWD) issued a "conditional" permit (CAPROC) on July 5, 2017 for original plans prepared in the spring of 2017.
12. The current development plans received by the City on December 1, 2017 are being reviewed by RCWD at this time.
13. A full access on CSAH 54 is proposed at the south end of the Property. An exit-only northbound access is also proposed at the north end of the Property.
14. Anoka County Highway Department (ACHD) issued a letter for access requirements for the Property on June 2, 2017, reflecting original plans prepared in the spring of 2017.
15. The current development plans received by the City on December 1, 2017 are being reviewed by ACHD at this time.
16. The proposed asphalt plant will be generally operational from April through November. Peak truck usage is estimated at approximately 250 round trips per day. Average daily truck usage (eight month operational period) is estimated at approximately 120 round trips per day.
17. It is anticipated that approximately half of the average truck traffic will exit the Property north on CSAH 54 and approximately half will exit to the south on CSAH 54.
18. General hours of operation are 6:00 am to 7:00 pm Monday through Saturday. Many highway, airport and commercial projects include night paving to minimize traffic congestion; so, there will be periodic nighttime operations.
19. The proposed asphalt plant will include the backhauling of concrete and asphalt rubble from job sites. Rubble will be crushed approximately two times a year for up to 5-week periods of time. There may be up to 250,000 tons of unprocessed rubble, recycled asphalt and concrete, and virgin aggregates on the Property during the construction season. Unused material stockpiles will remain on the Property during the off season.
20. Air quality emissions are regulated by the Minnesota Pollution Control Agency (MPCA) and must meet federal air quality standards. Fine sands and dust emissions in the asphalt production process are controlled by primary and secondary filtering systems. Dust generated by truck traffic will be minimized in the production loading and unloading area by paved driveway accesses and maneuvering areas. A street sweeper is kept on the Property to clean paved surfaces, including any material tracked onto CSAH 54. Dust generated in the material stockpile areas will be mitigated by watering. All trucks hauling materials to or from the Property will be covered.

21. Noise will be resulting generally from trucks and equipment used at the facility. All site activity will be required to meet daytime and nighttime noise standards. All trucks and equipment owned by BRI are retrofitted with “white noise” back-up alarms, which minimize noise. Truck movements on the site are generally drive through operations, which minimize the use of back-up alarms, including “beeping” back-up alarms which may be used on non-BRI-owned trucks unloading rubble or other aggregates.
22. Odors can be generated in asphalt facilities. Odors, like noise, dissipate with distance. The nearest residentially zoned properties in Columbus are nearly a mile to the west. Land within one mile of the Property in Lino Lakes is undeveloped “Rural” or undeveloped “Rural/Business Reserve” zoning. While odors may not be a problem, the City could request that additives be put in the asphalt cement and condensers can be placed on the vents of the asphalt cement tanks to minimize potential problems.
23. There are no existing residences that are adjacent to the Property. The nearest residence is located on the north side of I-35 W, approximately 700 feet from the nearest site improvement on the Property (concrete rubble pile). Proposed site screening includes several components:
  - A. A berm, landscaping and 6’ vinyl fence along CSAH 54 between the two access locations (9 spruce, 26 ornamental trees, and 59 shrubs).
  - B. 39 spruce trees on the southerly edge of the Property along CSAH 54 and the westerly half of the south property line.
  - C. 5 maple trees and 22 spruce trees along the east-central portion of stock pile areas.
  - D. It is also proposed that the easterly edge of the asphalt rubble pile and the northeasterly edges of the concrete rubble pile will be mulched and hydro seeded and vegetated to maintain permanent natural cover on those back slopes of the rubble piles.
24. Final equipment specifications, plant layout details, overhead powerline relocation plan, site lighting, and detailed building plans will be prepared and submitted for City approval prior to building permit issuance.
25. The Planning Commission held a public hearing on January 17, 2018 to consider the CUP application submitted by BRI.

### **Recommendations**

Based upon the above Findings of Fact, the Planning Commission should recommend approval to the City Council of the Bituminous Roadways, Inc. CUP application, subject to the following:

1. The CUP is contingent upon detailed recommendations of the City Engineer.
2. The CUP is contingent upon recommendations of the City Attorney.
3. The CUP is contingent upon approval of the Bituminous Roadways Columbus Final Plat.
4. The CUP is contingent upon execution of a development agreement identifying the phasing of municipal sewer and water service extensions to the Property.

5. The CUP is contingent upon detailed plan review, **including revised exterior building materials**, and approval by the Building Official.
6. The CUP is contingent upon recommendations of the Anoka County Highway Department.
7. The CUP is contingent upon recommendations of the Rice Creek Watershed District.
8. Once authorized, BRI shall construct and maintain all site improvements consistent with the bound “Application for Site Plan Review and Conditional Use Permit,” dated November 30, 2017, and submitted on December 1, 2017, and as supplemented, modified and subsequently approved by the City.
9. BRI shall operate facilities on the Property in compliance with the bound “Application for Site Plan Review and Conditional Use Permit,” dated November 30, 2017, and submitted on December 1, 2017, and as supplemented, modified and subsequently approved by the City.
10. The operation of the asphalt plant must be consistent with all local, Federal, and State laws that apply to the use of the Property.
11. Approval of the CUP does not eliminate the requirement for obtaining any other permits and approvals as may be required by City, watershed, county, or state laws, rules, ordinances, and policies, including but not limited to grading permits, building permits, plumbing permits, electrical permits, stormwater permits, sign permits, water appropriation permits, and sewage treatment system permits.
12. Normal hours of operation shall be 6:00 a.m. to 7:00 p.m. Monday through Saturday, except that a facility may operate outside of those hours for a maximum of thirty days in a calendar year where such operations are necessary in order for the owner/operator of the facility to perform work under a contract related to a public road project that specifies work be performed outside the hours of 6:00 a.m. to 7:00 p.m. Monday through Saturday and/or on Sunday. The operator shall provide the zoning administrator written notice of such exception to normal hours of operation at least forty-eight (48) hours in advance of the exception. No facility operations shall be permitted on New Year’s Day, Easter, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, or Christmas Day.
13. BRI shall instruct all company and contract truck drivers not to employ “engine braking” in the City of Columbus.
14. All trucks hauling materials to or from the Property shall be covered.
15. All BRI-owned trucks and equipment used on the Property shall be equipped with “white noise” back-up alarms.
16. BRI shall retrofit asphalt cement tank vents with condensers to reduce odors. BRI shall agree to use additives in the asphalt cement, if odors from the asphalt plant are determined by the City Council to require such action.
17. Stockpiles of backhauled concrete and asphalt rubble, except back slope areas used for screening, shall be crushed and recycled at least once a year. Crushing activity shall not exceed five (5) continuous weeks of crushing at any single crushing interval.

18. Stockpiles of backhauled concrete and asphalt rubble shall not exceed one and one-half (1.5) times the amount required for annual asphalt production or reuse as base material in annual construction projects.
19. BRI shall agree to all reasonable requests by the City for dust control on the Property.
20. BRI shall reimburse the City for all out of pocket expenses incurred in the review and issuance of the CUP and for all ongoing inspections and enforcement actions required for the CUP.
21. BRI shall submit a listing of all substantive complaints received and complaint resolutions in writing to the City on a monthly basis
22. In the event the City Council determines that the asphalt plant is not being operated in accordance with any term or condition contained herein, the CUP may be revoked by the City upon proper notice and a hearing. The City shall notify regulatory authorities that have issued licenses or permits in connection with the Conditional Use Permit of any such revocation.
23. **The CUP is contingent upon the recommendations of the Minnesota Department of Transportation.**

These matters will go before the City Council at its January 24<sup>th</sup> meeting.

**A brief recess was called.**

#### **PUBLIC HEARING – SANCTUARY AT HOWARD LAKE PRELIMINARY PLAT VARIANCE REQUESTS (PC-18-102)**

At this time a public hearing was held to consider a request for variances to Chapter 7E of the Columbus City Code to reduce the setback from the Ordinary High Water Level (OHWL) of Howard Lake from 150 to 50 feet and to reduce the Shore Impact Zone from 75 feet to 50 feet for development in the Community Retail (C/R) zoning district. Separate minutes are prepared.

#### **SANCTUARY AT HOWARD LAKE PRELIMINARY PLAT VARIANCE REQUESTS DISCUSSION**

*Motion* by Watson to forward to the City Council the application for variances (PC-18-102) to reduce the setback from the Ordinary High Water Level (OHWL) of Howard Lake from 150 to 50 feet and to reduce the Shore Impact Zone from 75 feet to 50 feet for development in the Community Retail (C/R) zoning district, with a recommendation for approval, based on the findings of fact and recommendations for approval from the Planner’s memo dated January 15, 2018. Second by Krebs. Motion carried unanimously.

#### **Background**

The Sanctuary at Howard Lake (“Sanctuary”) is a senior citizen housing proposal involving 26 association-managed detached housing units on 17.17 acres of property. The property is located on the north side of Lake Drive NE, west of Zurich Avenue NE, in the Northwest Quarter of the Northwest Quarter of Section 24, Township 32, Range 22 (“Property”).

The Property is zoned CR Community Retail. The CR District allows senior citizen housing as a conditional use. The Property is dually designated in the Comprehensive Plan as Commercial and as Suburban Residential Overlay. The Property is located within the City's approved Metropolitan Urban Service Area ("MUSA") – both municipal sewer and water services benefit the Property.

The Property is also located within the Shoreland Overlay District. The City's Shoreland Management Ordinance (Chapter 7E of the City Code) was adopted on March 1, 2007, after the Minnesota Department of Natural Resources ("DNR") found the City's ordinance to be compliant with State Rules on February 12, 2007. The City's Shoreland Management Ordinance allows land uses and development standards to be governed by underlying zoning district standards. The only development standards identified in the Shoreland Management Ordinance that are more restrictive than the underlying zoning district standards regard the Ordinary High Water Level ("OHWL") and Shore Impact Zone setback areas.

Howard Lake is identified by the DNR and within the Shoreland Management Ordinance as a Natural Environment Lake. The OHWL setback for Natural Environment Lakes is 150 feet. By definition, the Shore Impact Zone is the area between the OHWL and a boundary that is 50% of the OHWL setback. In the case of Howard Lake, the Shore Impact Zone is an area 75 feet from the OHWL.

The City's "urban" zoning district provisions, which are applicable to the Property, were originally adopted in 2003. These included the provisions for senior citizen housing in the CR District at a density of 16 units per acre and Planned Unit Development ("PUD") standards. Subsequent ordinance modifications have increased the maximum density for senior citizen housing to 20 units per acre and established a variety PUD standards for a variety of different housing types.

There are 10 Natural Environment Lakes identified by the DNR in Columbus. Howard Lake is the only Natural Environment Lake which abuts the City's public utility district. Of all of the properties abutting all of the Natural Environment Lakes in Columbus, there appear to be only 15 parcels that are benefitted by public utilities. The City's minimum lot size for all other properties abutting all other Natural Environment Lakes is five acres.

When viewing air photos and ownership records of properties on Howard Lake, the DNR appears to own all but seven of the parcels abutting the "visible shoreline" around Howard Lake. Of those seven privately owned parcels, the Sanctuary Property is the only remaining undeveloped property.

The visible shoreline of the lake does not represent the OHWL. The OHWL is an elevation that represents the highest water level over a long period of time adjacent to the water body where

there is evidence of a change in primarily lowland and upland landscapes. In the case of the Sanctuary Property, the OHWL is located between 300 and 400 feet from the visible shoreline on Howard Lake. In effect, there is 300-400 foot wetland buffer from the lake itself (where swimming or boating occurs) and the OHWL. On other parts of Howard Lake, the visible shoreline and OHWL are relatively close together.

Other shoreland areas in Columbus include General Development Lakes (Coon Lake) and Tributary Rivers and Streams (Coon Creek, Sunrise River, and Rice Creek). The DNR's model shoreland ordinance standards allow for different OHWL setbacks for unsewered and sewer structures abutting General Development Lakes and Tributary Rivers and Streams. For example, the OHWL setback for unsewered structures on General Development Lakes is 75 feet; whereas, the OHWL setback for sewer structures is 50 feet. Similarly, the OHWL setback for unsewered structures on Tributary Rivers and Streams is 100 feet; whereas, the OHWL setback for sewer structures is 50 feet.

The City's Zoning Ordinance identifies variance provisions, consistent with the statutory requirements for variance consideration. "The Board of Adjustments and Appeals must make all of the following findings in order to grant a variance:

- A. That the landowner proposes to use the property in a reasonable manner.
- B. That the practical difficulty or plight of the landowner is unique to the subject property and is not created by the landowner.
- C. That the variance, if granted, will not alter the essential character of the neighborhood or City.
- D. That the terms of the variance are consistent with the Comprehensive Plan.
- E. That the variance, if granted, is in harmony with the purpose and intent of the Zoning Ordinance.
- F. That the practical difficulty is not created solely by economic considerations."

The application for variance consideration for the Sanctuary Property is limited to considering reducing both the 150-foot OHWL setback and 75-foot Shore Impact Zone referenced in the Shoreland Management Ordinance to 50 feet. All other development standards applicable to the proposed development are consistent with underlying zoning district standards. The following are findings for consideration of a variance for the Sanctuary Property.

## **FINDINGS OF FACT**

### **A. The landowner proposes to use the property in a reasonable manner.**

The proposed Sanctuary at Howard Lake is designed consistent with the Zoning Ordinance development standards established for senior citizen housing. The lot sizes, development density,

wetland buffers, private street access, association management, and housing styles were approved consistent with the PUD Conditional Use Permit procedures established by the City.

The Property is impacted by a large wetland basin adjacent to Howard Lake and four other wetlands within the Property. The proposed development does not alter or impact any of the wetlands. The setback of the proposed structures on the Property to the visible shoreline ranges from 350-400 feet. There does not appear to be an aesthetic purpose in adhering to a 150-foot setback from the OHWL. Pictures of the shoreline taken near the OHWL reveal dense vegetation that precludes seeing the shoreline in the summer and barely allows visibility of the shoreline in the winter.

The proposed setback of 50 feet from the OHWL should not jeopardize water quality concerns with this development. The proposed development meets all stormwater management requirements of the City. The development will meet minimum State buffering requirements from the wetland basin adjacent to Howard Lake. As noted earlier, that wetland area abutting the visible shoreline already provides a minimum 300-foot buffer to the visible shoreline.

It should also be noted that the DNR's model ordinance allows agricultural uses with only a 50-foot setback from the OHWL. Agricultural uses typically result in increased soil disturbance and runoff relative to senior housing residential development. There would not appear to be a strong argument to require a more restrictive setback for residential use of the property when all wetland buffering and stormwater management requirements are met, particularly when the actual structure setback from the visible shoreline is a minimum of 350 feet.

**For these reasons, the applicant proposes to use the Property in a reasonable manner.**

**B. The practical difficulty or plight of the landowner is unique to the subject property and is not created by the landowner.**

The Property is irregular in shape and impacted by considerable wetlands. The wetland locations and irregular property shape create development challenges that are not created by the applicant. The Property is included in the MUSA, which requires the installation of municipal sewer and water services for any development. Extraordinary development constraints make it difficult to use the property in a reasonable manner without a reduction to the setbacks as requested.

The Sanctuary Property appears to be the only undeveloped property on Howard Lake that abuts the visible shoreline on the lake. The OHWL is located between 300 and 400 feet from the visible shoreline of Howard Lake on this Property. On other properties on Howard Lake, the OHWL is much closer to the visible shoreline. The setback of the proposed structures on the Property to the visible shoreline ranges from 350-400 feet.

The applicant had no control over the establishment of shoreland development standards that affect the Property, nor any control over the natural features affecting the Property. This Property is one of the few parcels abutting a Natural Environment Lake that has public utility availability. The applicant is also caught between conflicting State guidelines governing development. The Metropolitan Council requires a minimum density for residential development in the MUSA at three units per acre; whereas, the DNR's Natural Environment Lake shoreland standards preclude reasonable residential density opportunities for properties with public utilities.

The gross acreage of the site is 17.17 acres. The gross acreage south of the OHWL is 9.82 acres. The gross acreage south of the 150-foot OHWL setback is 6.31 acres. With the irregular shape of the property and presence of additional wetlands dispersed on the Property, the developable portions of the Property are severely diminished.

**For these reasons, the practical difficulty for use of this Property is evident, unique and not self-inflicted.**

C. The variance, if granted, will not alter the essential character of the neighborhood or City.

The Property is located in the CR zoning district. As noted earlier, the property is also designated as Suburban Residential Overlay, allowing either residential or commercial uses. All properties near the Sanctuary have the same zoning and land use designation. All area property owners have the same opportunity for a variety of development alternatives. Adjacent properties are benefited by public sewer and water systems and the neighborhood, as well as the entire "Freeway Corridor" is in transition from pre-existing nonconforming uses to more densely developed urban uses. The Sanctuary Property is located within a quarter mile of the Running Aces Harness Park and is a half mile from a proposed new interchange at Highway 97 and Interstate 35.

As noted earlier, the setback of the development from the visible shoreline or nearest users of Howard Lake is at least 350 feet. The character of the lake is not going to be altered as a result of the Sanctuary development. The existence of the large wetland basin adjacent to Howard Lake and the required stormwater management standards minimize any impacts to Howard Lake or to other adjacent properties.

**For these reasons, the proposed variance to OHWL setbacks and depth of Shore Impact Zone will not alter the essential character of the neighborhood or the City.**

D. The terms of the variance are consistent with the Comprehensive Plan.

The Comprehensive Plan is a guide for future development in the City. The plan includes an overall goal for growth management which essentially strives to balance what the City is and

what the City would like to be. There are more specific goals that relate strictly to protecting the environment, such as:

- Protect high quality functioning environmental systems from unnecessary impacts of future growth and development activities.
- Maintain and enhance the natural amenities of the City for future generations to enjoy.
- Protect the surface waters and wetland areas of the City to promote aesthetic qualities, natural habitat areas, and ground water recharge.

The plan also highlights the extent of wetlands and surface waters within the City of Columbus – approximately two-thirds of the entire community. While the goals for rural housing developments are consistent with and compatible with general environmental goals, the focus for future development in the plan is based upon efficient utilization of upland areas, expansion of the City’s tax base and employment opportunities, and the establishment of urban housing.

The proposed development is consistent with several of the development-oriented goals in the Comprehensive Plan, including:

- Provide for the orderly development of safe and efficient housing opportunities.
- Provide higher density housing alternatives in the I-35 public utility corridor.
- Provide a variety of development opportunities in the City, including rural and urban business centers.
- Promote opportunities to expand employment opportunities and the tax base in the City.
- Evaluate areas for potential future commercial and industrial expansion.
- Provide cost-effective public utilities within the I-35 corridor.
- Develop a long-term plan for the paving of all public thoroughfares in Columbus.

The proposed development is consistent with several specific development-oriented policies in the Comprehensive Plan, including:

- Limit single family attached residential development to locations within the Suburban Residential Overlay areas in the Freeway Corridor.
- Encourage the development of single family attached residential development in the Suburban Residential Overlay areas to expand life cycle housing alternatives and housing price options that do not exist in the rural residential area.
- Encourage the development of single family attached residential development in the Suburban Residential Overlay areas to provide additional housing choices for increasing employment opportunities.

- Promote the development of senior citizen housing, including assisted living and similar adult care facilities in the Freeway Corridor.
- Minimize the impacts on future residential uses due to area commercial and industrial land uses and freeway proximity.
- Maintain high design and development standards within all residential development areas.
- Coordinate affordable housing needs with the Anoka County Housing and Redevelopment Authority.
- Minimize potential incompatibilities between commercial/industrial and residential uses.
- Coordinate and promote marketing of Lake Drive and Freeway Corridor business development opportunities.
- Maximize existing investment and development opportunities within the Lake Drive business area and Freeway Corridor before expanding or establishing new business development areas.
- Maintain high design and development standards within all business development areas.
- Pursue and coordinate potential extensions of public utilities in the Lake Drive corridor with the City of Lino Lakes and the Metropolitan Council.
- Maintain a hierarchy of land uses within the Freeway Corridor, reserving land adjacent to the I-35 interchange for the highest intensity uses and land furthest from the interchange for more extensive land uses.
- Promote a pedestrian friendly development standard within the Freeway Corridor to provide internal non-vehicle access options and ensure future residential development has pedestrian access and circulation within the Freeway Corridor.

The Sanctuary Property is located within the MUSA. It is dually designated as urban commercial and residential property in the Comprehensive Plan. The proposed variances alter a shoreland dimensional standard for setbacks from the OHWL on this property. The reduced setback standard in this instance still provides for extraordinary structure setbacks from the visible shoreline on Howard Lake.

**For these reasons, the terms of the variance are consistent with Comprehensive Plan.**

E. The variance, if granted, is in harmony with the purpose and intent of the Zoning Ordinance.

The general premise for establishing zoning regulations is to protect the public health, safety and welfare. Zoning ordinances include definitions, administrative procedures, use provisions and performance standards. The Sanctuary development is consistent with every provision of the Zoning Ordinance, except the 150-foot OHWL setback requirement and the 75-foot Shore Impact Zone.

The applicant is not proposing any structures within a proposed 50-foot OHWL minimum setback area. The Shore Impact Zone will also be 50 feet. There are no proposed water-oriented structures within the development. There is an existing footpath that will enable owners within the Sanctuary development to have walking access to an inlet on the northwest portion of the Property.

Reducing the OHWL setback affects a dimensional standard in the Shoreland Management Ordinance. There are no other setback requirements in Columbus that exceed a 50-foot setback, except the 75-foot unsewered structure setback on Coon Lake and the 100-foot unsewered structure setbacks on the Tributary Rivers and Streams. The sewer structure setback for these shoreland areas is 50 feet.

Given the characteristics of the Sanctuary Property, it can be concluded that any sense of crowding at the lake front is diminished because of the extensive setback that remains from the visible shoreline. Concerns over water quality would not appear to be an issue because the development is consistent with State wetland buffer requirements and it is regulated by provisions for urban stormwater management. The natural character of the lake is protected by the existing vegetation and depth of the wetland separating the development from the visible shoreline. New residential single family housing on this property will not have a negative impact on any adjacent property values.

A concern often referenced in variance considerations regards establishing any precedents for future actions. However, variances are property-specific and each application will be evaluated on its own merits. If the identical conditions exist on another property with the same zoning and shoreland regulations, then the issuance of a variance would be similarly justified. The fact is that there are very few circumstances that could be similar; because, there few properties with public utilities available that are affected by shoreline standards. There are also no other undeveloped properties on Howard Lake where the shoreline isn't already owned by the DNR.

**For these reasons, the variance, if granted, is in harmony with the purpose and intent of the Zoning Ordinance.**

F. The practical difficulty is not created solely by economic considerations.

Consideration for relief of zoning regulations on the Property is based on several factors, including unique property circumstances, conflicting State policies on development, and the proposed reasonable use of property. The applicant has not sought an increase in development density or the relaxation of basic development standards. The applicant has proposed a reasonable development consistent with the City's development standards for senior citizen housing.

The Property is impacted by previous policy decisions by both the City and the metropolitan council requiring the urban development of the Property to justify the installation of public

utilities. Similarly, the State impacted the Property with restrictive development standards that do not necessarily apply uniformly to all properties in the City. Virtually all development is scrutinized, today, to manage costs for ever increasing regulations that affect the feasibility of land development. The applicant has proposed a development project that is consistent with the Zoning Ordinance and Comprehensive Plan and was well received by the Planning Commission and City Council.

**For these reasons, the practical difficulties that necessitate the variances are not limited to economic considerations alone.**

### **RECOMMENDATION**

Based upon the above analysis and Findings of Fact, staff recommends that the Planning Commission recommend approval to the City Council of the variance application submitted by Howard Lake Development LLC. Approval of the variance would establish a reduced structure setback from the OHWL and Shore Impact Zone for the Sanctuary at Howard Lake PUD at 50 feet.

This matter will go before the City Council at its January 24<sup>th</sup> meeting.

### **CITY ADMINISTRATOR'S REPORT**

Mursko had nothing to report.

### **PLANNING COMMISSION MEMBERS' REPORT**

Planning Commission members had nothing to report.

### **ATTENDANCE - NEXT CC MEETING**

Preiner is scheduled to attend the City Council meeting on January 24, 2018.

*Motion* by Krebs to adjourn. Second by Watson. Motion carried.  
Meeting adjourned at 9:25 p.m.

Respectfully Submitted:

Karen Boland, Recording Secretary