

**ELYSIAN PLANNING AND ZONING COMMISSION  
REGULAR MEETING  
NOVEMBER 1, 2022**

The Elysian City Planning and Zoning Commission met in regular session Tuesday, November 1, 2022 at City Hall at 6:00 pm.

Present were: Chairperson Tom McBroom, Sr.; Commissioners Kristina Droog, Dan Engebretson, and Jeremy Henninger; Zoning Administrator Lorri Kopischke. Absent: Commissioner Al Linse.

On motion by Droog, seconded by Engebretson, all voting in favor, to approve the agenda as presented.

On motion by Engebretson, seconded Henninger, all voting in favor, to approve the minutes of the October 4, 2022 Regular Meeting as presented.

Commissioner Henninger excused himself from the table for consideration of the Planned Unit Development request of Henninger Properties.

On motion by Engebretson, seconded by McBroom, all voting in favor, to close the Regular Meeting and open the Public Hearing at 6:01 pm.

Henninger Properties, represented by Jeremy Henninger, is requesting consideration of a Planned Unit Development (PUD) to allow an additional 4-plex on the property located at 220 Maple Avenue SW.

The property is 65,960 square feet, is zoned R2 Multi-Family Residential, and is located in the Shoreland Overlay Zone. There is a 4-plex and a parking area located on the property that results in an impervious surface of 23.3%. The application states that the addition of the proposed 4-plex would add 3.5% impervious surface for a total lot coverage of 26.8%.

The request has been reviewed by Amy Barrows, Planner, SEH Engineering. Her report included:

“Based on a review of the Shoreland Zoning Code standards, the following provisions should be considered during the decision-making process:

- Section 156,066 provides provisions for the R-2 Multi-Family residential zone. Multi-family housing up to four units is allowed by right. Multi-family housing with five or more units requires a Conditional Use Permit. The applicant is proposing a Planned United Development (PUD) as a Conditional Use to comply with this provision.
- In accordance with Section 156.071 of the Zoning Code, a PUD allows for the provision of common open spaces through clustering, density increases and a mix of structure types and land uses, when combined with innovative design techniques and a greater oversight of site design by the Planning Commission.
- A property owners association agreement is required for all residential PUD’s with mandatory membership. The provisions of 156.071(D)(1)(c) shall be met. Deed restrictions, covenants, easements, or other instruments must also be in place that address vegetation and topographic modifications, construction of buildings, long-term preservation, and maintenance of open space.
- At a minimum, the city should require the preservation and maintenance of open spaces in perpetuity through the instruments listed above. These open spaces should be

commonly owned if there are multiple owners of the property. The open space shall make up at least 50% of the total project area. It appears this provision will be met. The wetlands shall be part of the open space requirements. Erosion control and storm water management shall be reviewed for compliance with all city and state requirements.

- Additional PUD provisions apply because of the shoreland overlay status. These provisions are identified in Section 156.090-156.092 of the Zoning Code.
  - The required minimum lot area is 49,000 sq. ft. and minimum lot width is 245 ft. These provisions will be met. A request to increase the density beyond 4 units shall comply with the tier standards of Section 156.092(B)(2)(c)(2). It appears that the property would be allowed a 200% density increase, yielding 8 units.
  - Maximum coverage (impervious surface) is 25%. It does not appear that this provision will be met. Based on the applicant's calculations, 26.8% impervious surfaces are proposed. This percentage will be higher once the wetlands are removed from the overall acreage, which is a requirement of the PUD standards.
  - There are additional setbacks in the shoreland overlay. However, setbacks are not a problem on the site. There are also floor area ratio provisions that will need to be reviewed.
  - The property appears to meet the suitable area evaluation criteria.

In summary, it appears that the proposed development complies with the density standards of the Zoning Code when consideration is given to the subject property only. However, the Plan Commission should review the development carefully to determine if the applicant meets the criteria of a PUD and ensure compliance with all other provisions, including setbacks, floor area ratio, and impervious surfaces. The following should be considered:

- The impervious surfaces would need to be reduced to 25% and the wetland area excluded from the lot area calculation.
- Open space areas should be reviewed for perpetual preservation and management, including the review of a restriction instrument.
- The applicant is also required to demonstrate that the development includes innovative design techniques. It is important that this criterion be met considering the applicant is getting double the density that would otherwise be provided. Examples of innovative design techniques may include heightened architectural elements, vegetative screening of the parking lot, and additional landscaping throughout the site. The applicant should also consider additional stormwater management measures to manage and treat stormwater from the site and surrounding area.”

The request was reviewed by Chris Cavett and Brent Kavitz, Engineers, SEH Engineering. Their report stated:

“This preliminary engineering review is a follow up to the PUD Planning review, as there has been NO revised engineering information provided with this preliminary PUD “concept” review.

First and foremost, the main PUD criteria that appears will not be met is the percent impervious surface coverage limit. There has also been no wetland delineation provided for the wetland to the east which will likely make the percent coverage even greater. A conservative no grade limit was established during the initial phase of the development, but if an exact percent impervious is to be determined, which excludes wetland area on the lot, then a wetland delineation will be required.

The other criteria that should be questioned is the criteria of a PUD. In simple terms, PUD's were developed to provide some flexibility in development, but in exchange there should be some "public benefit" to the community to allow those flexible standards and to allow a higher density than allowed under conventional zoning. As an example, the dedication of perpetual open space. As it might related to this site, the best example of a public benefit improvement might be the development of a natural stormwater facility (ie: bioretention basin/rain garden), that not only manages the stormwater from lots 1, 2 and 3, but also manages the surrounding tributary to the low areas to the east and therefore improving hydrology of the adjacent wetland and improving water quality draining south toward Lake Elysian, and / or the establishment of native prairie along these spaces and the establishment of the plant communities would require and owner maintenance agreement for those areas.

Generally speaking, the engineering is feasible assuming the PUD criteria can be met."

The request was reviewed by Todd Piepho, Area Hydrologist, Minnesota Department of Natural Resources. His reported included:

"Since this one is not riparian and does not have any lakeshore there are several items within the PUD language that are N/A. It looks like most of the items I would question have been covered in the SEH Planning Review Memo HenningerPUD document. I would agree with the comments on the following items with some clarification:

1. SEH mentions that area would be eligible for the 200% density increase, I would request that they show how that calculation was determined. I am not doubting the number, but I would recommend that be documented in the file as the proposal would then maximize the number of units on this site. That is assuming that the existing 4 plex has 4 units and the proposed additions are also contain 4 units? Without an explanation of how they determined these quantities it is tough to say whether or not an additional 4 units could be built.
2. If the impervious surface limitations of 25% or below cannot be met I would recommend that the City require some sort of mitigation to make up for the additional water above the allowed. SEH makes recommendation of a stormwater retention (natural such as a rain garden or some sort of bio retention) area that would cover lots 1, 2, and 3. That would be a good mitigation effort, however should be sized accordingly to manage the amount of water coming to the area with the thought of temporary storage versus a flow through system in mind. This would need to be done by a licensed engineer.
3. The wetland boundaries should be delineated to determine who much of that area can be excluded from the lot area calculation for the impervious calculation."

Staff is recommending that consideration of the PUD to allow an additional 4-plex be tabled to the December 6, 2022 Planning and Zoning meeting with the following conditions:

1. Require applicant to have the wetland delineated and provide a site plan and the exact impervious surface coverage. Also, provide a plan to provide mitigation to make up for the additional water above the allowed. This would need to be approved by a licensed engineer.
2. Require applicant to submit a formal site plan showing setbacks and open space calculations. Require applicant to provide floor area ratio provisions per Shoreland Ordinance.
3. Planning Commission should review the site to determine what design techniques/enhancements could be used to "make the site better" visually, in regard to storm water, etc. This is similar to conditions that are allowed to be required as part of a

conditional use permit. Examples may include vegetative screening of the parking lot, additional landscaping throughout the site, lighting, etc.

Jeremy Henninger, representing Henninger Properties, stated this property is approximately 1.5 acres which is enough room to handle more than one building but unfortunately as it is in the Shoreland Overlay Zone a PUD is required to have more than one building.

We had no idea how many rental units were needed in the City of Elysian. But I built the first two buildings, and all eight market rate apartments were rented without any advertising. There are wonderful tenants in those buildings. When we went to do the next phase, it was shot down because of the PUD and not wanting to go through that process because we didn't know if there was a need for that many apartments. So, I did one four-plex on the 220 lot. These are three bedroom / two bath units, and they are filled as well. And now there is a waiting list of seven people who want two-bedroom units.

The 4-plexes have brought twelve new families to the area. There are no rental apartments available in the City. There are no new rentals available for young people who have left and want to move back into the City of Elysian.

Henninger stated this development has beautified the area. He has gone above and beyond by adding overflow parking and building a large retention pond. The pond that is there will handle all the water there and from the additional building as well.

Henninger stated he has the land, he has a waiting list of renters, he has the oversized parking lot and the pond, and he is willing to build the 4-plex. He asked who else is willing to invest in this town and bring more people into town? He understands the requirements and is willing to provide the requested information.

#### Public Comments:

Mark Thompson, 206 Third Street SW, expressed concern with the density issues. The two units that are there now have clearly shown an increase in traffic and dog waste in his front yard and side yard. The light pollution, his whole side of his house is lit up at night. They have to keep their drapes drawn. This is a lot of people in a small corner of the City. The renters that are there now have been fine, but these buildings will not be in Henninger's ownership forever and who knows who will end up living there. We have to live there forever so who knows what will happen when you raise the density, the number of people. There is a noise issue (a lot) and with the dumpster that was placed on the north side of the existing building next to his house. There is constant banging and once a week the truck comes, and you hear that whole thing dump. None of those things were present before. My wife and I haven't really said much about it partly because I knew some of the people that lived there, and it was good for them but when is it going to end? The other question I have is about zoning. What is the elevation plan because especially in the back it slopes to my backyard. And then there is a privacy issue. At one time there was a conversation about a natural or a permanent fence. I would like some consideration for my privacy, light and noise, that there is a fence that goes north / south along his property line.

Julie Blackburn, 43958 45<sup>th</sup> Street, stated she is a Waseca County resident, but this is her community. The public notice talked about the increase of impervious surface to 26.8% but the shoreland overlay zone is much different than other areas. The exceedance of the minimum lot size for a 4-plex requires 49,000 square feet. Adding another 4-plex would mean the lot size would need to be at least 98,000 square feet but the lot is only 65,960 square feet meaning that you are 32,040 square feet smaller than allowed in lot size for two 4-plexes. So impervious

surface is one thing and the 26.8% is actually inaccurate. According to your own ordinance, impervious surface is a surface that has been compacted or covered with material layers that is highly resistant to infiltration by water. Much of that lot has been created as impervious including the pond or the wetland. The wetland is impervious. All of that area that's been compacted is impervious. So, when you are looking at that number impervious it is inaccurately represented by 26.8%.

Blackburn stated that additionally the exceedance of the building height requirements, the shoreland ordinance does not allow more than 30 feet of height. If you are looking at the same two-story building as the original lots, this is going to be in exceedance of the 30 feet. The current building on that lot is 19 feet so that fits that shoreland ordinance.

So those are two of the issues. And there is a large area of the City of Elysian that is in the shoreland. And that is a burden. But we are also stewards of these resources. Lake Elysian is already impaired for excess nutrients and phosphorous. It already has a lot of trouble. It doesn't need more trouble. Those shoreland ordinances are in there for a reason.

The current lot where the two 4-plexes are located are grossly in exceedance of the shoreland requirements. This lot that is open right now maybe makes up for that exceedance. Potentially putting additional 4-plex on is not acceptable. It is not acceptable if you care about the lakes, if you care about your shoreland ordinance. If you care about the very things that you are making decisions based on.

Additionally, just a comment on the lighting. That lighting is horrific. I do not consider that beautification at all. It is astounding the amount of light that that generates.

Blackburn stated there has been a history of changing plans and even the building permit. There were twelve parking spots on the building permit. And I realized it was expanded for whatever reason, excess parking for the first two buildings. But it just seems interesting that now we are coming back for another request for another 4-plex building.

She requested the Committee to look at their ordinances, to look at those requirements. It is a PUD that is in a shoreland. 32,000 square feet of additional land needs to be met in order to meet your zoning requirements. And again, the height would be a violation of your own ordinance.

Dustin Snidow, 207 Maple Avenue SW, stated they are new residents. His family moved into their home for Elysian, for what Julie and Mark have described as the very things that I have come to already dislike about the short time in our home. When I visited the home, it was quiet and dark, silent, and peaceful. Now we draw our blinds in the front. We have these large, beautiful windows that we enjoyed being just able to be in our living room at night and now there is tons of traffic and tons of bold bright white LED light that lights up a square block essentially. And just tons of more traffic for our three small children that we have. Seeing the quick changes that have happened with the new residents moving into that recently built is pretty astounding. It was basically a flip of a switch from how it was to how it is now. He encouraged people to visit that area and see the amount of damages to the street. I know they are talking about a street repair and such, but it is very significant.

Henninger explained that when the first two units were built the parking lot was dark and it wasn't safe. The lights needed to be added. He was not aware that the lights were an issue. He will be happy to look into a way to redirect the lights so that they shine down into the parking. The only complaint on the lights he has received was a from the Campground owner and he is currently working with his electrician to resolve that issue.

Rob Willhite, 43911 45<sup>th</sup> Street, stated his concern is mostly with traffic and the condition of that road that the parking lot comes off of. You have the campground on the corner and when you come out with 24 cars, which is as full as its going to be, who's going left, who's going right. Are you going to go right and have to stop at the stop sign and go around Casey's or are you going to go left and go flying around that corner where there are kids to get up to the highway? Another thing in the winter both these entrances are so steep that if they don't get plowed right away you can't get out so more traffic and there is going to be accidents.

Willhite stated his lighting concern is kind of opposite. He works overnights so when he leaves it is dark and when he comes home it is dark. I almost run over people walking their dogs. There are no lights on the road, and it is very hard to see. The lights that they are talking about are only lighting up the parking lots.

John Ross, 43987 45<sup>th</sup> Street, stated that when the first two buildings were proposed he received a letter that said there would be no on street parking. He talked to the City guy and he said he would talk to the Council. He came back and said they were going to put no parking signs up, but they put them on the wrong side of the street. Nobody parks on that side everyone has their own parking on that side. Last year it was icy, and he came around the corner and a big truck was sitting there, and he almost ran into it. The willow tree also blocks the view.

Ross asked Henninger to turn off the lights on the first two buildings. His wife has dementia and they have moved the bed downstairs and the lights shines right in his house. At least put a guard on it.

He estimated the impervious surface at 220 Maple Ave to be 40% and with the proposed 4-plex it will be close to 50%.

Gerald Boger, 43958 45<sup>th</sup> Street, stated he hoped it has been considered what it will look like with almost 50 cars in that area. That is a lot of cars in that small, congested area. He has to close his drapes every morning because the cars start, and the lights shine in the windows.

There was no additional public comment.

Written comments:

Received via email on October 20, 2022 at 11:18 pm:

I am writing my concern for any further building by Henninger Properties at the 220 Maple Avenue SW, Elysian address. As a neighbor to this property, I am extremely concerned with any additional development at this site location for several reasons.

In the past year we have noticed and dealt with several concerns.

- 1) The garbage that continues to blow from the first built properties is a lot. I have never picked up so much garbage that blows down the street and across unto our property.
- 2) The security lighting system is a problem at the Henninger Properties. As a campground that caters to families, the lighting from the already built homes is so annoying to our campers to the extent that they complain. The lights shine right down the street and are aiming right towards campers in the first two rows that have children. Difficult to enjoy a quiet campfire and get your children to bed. This issue was brought to the attention of City Administrator and also Henninger Properties back in mid-September and there is still no resolution to the problem.
- 3) What can I say about dog poop and barking. I have complained already to the property manager, and we still deal with unleashed dogs roaming, pooping on our property or tenants

walking their dogs and letting them do their business without respectfully picking it up. This has been witnessed firsthand.

4) How many people can you cram in a small area. It already seems to be over the limit!

5) Shady Shores Campground has always been a quiet place to enjoy family camping in a quiet area but with the Henninger Property Development the noise level from balconies can be heard down the street. And what can be said with the increased traffic. During the summer months there are children on bikes and campers walking across the street, but it has been witnessed several times close calls with traffic coming both ways and sometimes loudly.

It is my hope that the Commission please reconsider any further development by Henninger Properties at 220 Maple Ave SW in Elysian and deny the request.

Thank you. Lori Trostem, Shady Shores Campground

There were no further written comments.

On motion by McBroom, seconded by Engebretson, all voting in favor, to close the Public Hearing at 6:40 pm and reopen the regular meeting.

McBroom stated he was in favor of tabling the request to the December 6, 2022 meeting to give Henninger Properties an opportunity to address the issues brought up by representatives of SEH Engineering and the DNR.

Engebretson stated he felt the housing was important. There is a need for more rental units in the City. He is just not certain that you should add more density to this area that is already quite dense. He thought some of the lighting issues could be alleviated with evergreens on the perimeter, or other adjustments to the lights. His main concern is the density of vehicles. Even if the road is increased to 28 feet wide that is a lot of traffic, especially with the campground on the other side.

Droog stated she was glad to hear that Henninger will be addressing the light issues. She asked if there will be any consideration given to the dog waste concerns.

Henninger replied that he is currently addressing the dog waste issue on the property. He stated he is not just some random person. He has staff to take care of the rental units. He has an off-site and on-site manager, and he has off-site and on-site maintenance. And he has cell phone and personal relationship with everyone who lives there. This is not just a free for all. The only question is can the area accommodate four more two-bedroom apartments.

Engebretson stated Henninger should be commended for bringing this request forward. It is a need in the City. It is a need, not just a want. He is still concerned with the density of traffic in the area.

On motion by McBroom, seconded by Droog, to table the request of Henninger Properties for approval of a Planned Unit Development (PUD) to allow an additional 4-plex on the property located at 220 Maple Avenue SW to the December 6, 2022 Planning and Zoning Meeting. Henninger is asked to address the following items:

1. Require applicant to have the wetland delineated and provide a site plan and the exact impervious surface coverage. Also, provide a plan to provide mitigation to make up for the additional water above the allowed. This would need to be approved by a licensed engineer.

2. Require applicant to submit a formal site plan showing setbacks and open space calculations. Require applicant to provide floor area ratio provisions per Shoreland Ordinance.
3. Provide design techniques/enhancements to “make the site better” visually, in regard to storm water, etc. Examples could include vegetative screening, additional landscaping throughout the site, lighting.
4. Address lighting, dog waste, screening, and landscaping issues discussed during public hearing.

Voting: Aye: Droog, Engebretson, McBroom. Nay: None. Abstain: Henninger.

Commissioner Henninger returned to the table.

On motion by McBroom, seconded by Henninger, all voting in favor, to recess the meeting for a five-minute break.

On motion by McBroom, seconded by Droog, all voting in favor, to reopen the meeting at 7:10 pm.

The Commissioners discussed section “Housing” of the Elysian Comprehensive Land Use Plan. The Commission will discuss the next section “Economic Development” at the December 6, 2022 meeting. A member of the Elysian Economic Development Authority will be invited to attend.

There was no further business to come before the Commission.

On motion by McBroom, seconded by Henninger, all voting in favor, meeting adjourned at 7:35 pm.

Attest:

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Tom McBroom, Sr., Chairperson

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Lorri Kopischke, Zoning Administrator