

**ELYSIAN PLANNING AND ZONING COMMISSION
REGULAR MEETING
FEBRUARY 7, 2023**

The Elysian City Planning and Zoning Commission met in regular session Tuesday, February 7, 2023 at City Hall at 6:00 pm.

Present were: Chairperson Tom McBroom Sr.; Commissioners Kristina Droog, Dan Engebretson (via Google Meet), Jeremy Henninger, and Al Linse; Zoning Administrator Lorri Kopischke. Absent: None.

On motion by Droog, seconded by Henninger, all voting in favor, to approve the agenda of the February 7, 2023 meeting as presented.

On motion by McBroom, seconded by Linse, all voting in favor, to approve the minutes of the December 6, 2022 Regular Meeting and January 17, 2023 Special Meeting as presented.

On motion by Droog, seconded by Linse, all voting in favor, to reopen the discussion of the Henninger Properties request for a Planned Unit Development (PUD) to allow an additional 4-plex on the property located at 220 Maple Avenue SW.

Commissioner Henninger stepped away from the table for discussion of this item.

This request was considered, and a public hearing held on November 1, 2022. The Planning and Zoning Commission tabled consideration of the request to the December 6, 2022 meeting and asked Henninger Properties to address the following:

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.

Mr. Henninger appeared at the December 6, 2022 Planning and Zoning Meeting and requested a 60-day extension to allow time to gather the requested information. A 60-day extension was granted that will expire on February 14, 2023. A Special Meeting to again discuss the request was scheduled for January 17, 2023.

Mr. Henninger appeared at the January 17, 2023 meeting. Mr. Henninger’s engineer, Bolton & Menk, had provided the requested information and Mr. Henninger had addressed other concerns of the neighborhood. These documents were submitted to the City on January 5 and 6, 2023. As of January 17, 2023, the City Engineer had not yet responded to this information. Therefore, staff recommended that the Planning and Zoning Commission continue discussion of the request to the February 7, 2023 meeting.

A response to the Henninger submittal was received from Todd Piepho, Area Hydrologist, Minnesota Department of Natural Resources on January 17, 2023 as follows:

"I still don't see how they calculated the lot density to show the allowable units, that is something that you would need to show that they are allowed to have as many units as they intend to build. The impervious surface comment and wetland delineation comment still are warranted, they cannot use the area within the wetland boundary in the lot density calculation, if they are using that area that is incorrect and should be re-calculated. If they are using an estimated area for the wetland boundaries and are fairly certain the area is non wetland and can show the density the delineation can be done at a later date if needed. Without seeing the lot density calculation it is not possible to see what they used.

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 this 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 how much of that area can be excluded from the lot area calculation for the impervious calculation."

And a response received from Amy Barrows, Planner, SEH Engineering on February 2, 2023 as follows:

"The Minnesota Department of Natural Resources staff is requesting an explanation of allowable density and impervious surface calculations at the Henninger property located at 220 Maple Avenue, Property ID: 16.426.0030. After receiving clarification from the MNDNR regarding related Minnesota State Statutes, below is a summary of the PUD requirements for the project. Please use this memo in place of the memo dated October 27, 2002. The density calculations from the previous memo are incorrect.

The property is zoned R-2 multi-family residential zone with potential wetlands on the eastern edge of the property. In accordance with Section 156.091(B)(1)(a), the property is allowed four units by right because it is served by sewer and meets the minimum lot square footage of 49,000 sq. ft. and minimum lot width of 245 ft.

In accordance with Section 156.091(B)(2)(a), dwelling unit densities may be increased if designed and approved as a residential planned unit development conditional use in accordance with Section 156.071. The applicant is proposing a residential planned unit development.

Section 156.092(B)(2)(c)(2) contains a tiered system for allowing an increase in density provided certain PUD provisions are met. If it is determined that the PUD provisions are met, the tiered system consists of a modified base density calculation, as well as a 200% density

increase, on the subject property. Based on the below calculations, the subject property would yield approximately 12 units. The maximum density should be noted on any approvals.

Section 156.092 PUD Standards include site suitability, density, and maintenance and design criteria. All of these provisions must be met. Below is a summary of the calculations that result in the allowable density.

- First, the property was divided up into tiers at 267 ft. intervals measured from the lake (Section 156.092(B)(1)(a)). Lake Elysian is classified by the DNR as a recreational lake per Section 156.085(D).
- The property has a very small area included in the 2nd tier and a very small area included in the 4th tier. A large majority of the property is located in the 3rd tier. Wetlands, if they exist at all, occupy the eastern edge of the property. The wetlands are estimated to take up approximately 2,000 sq. ft., but a delineation would be required to know for sure.
- In accordance with Section 156.092(B)(2)(a), the suitable area within each tier is divided by the single-family residential lot size standards for lakes to determine density. The suitable area would be approximately 63,960 sq. ft. (suitable area on the lot minus the approximate wetland from the calculation) divided by 15,000 sq. ft. (lot size standard for single-family residential) = 4.26 units*.

*This could fluctuate if the area of any wetlands is more or less than the estimated 2,000 sq. ft.

- Section 156.092(B)(2)(c) provides for a density increase multiplier. The second tier is provided a density increase of 100% and the third and fourth tiers are provided a density increase of 200%. Since a majority of the property is in the third and fourth tiers, we estimate that 12 units would be allowed on the property (combination of existing and proposed). Per MNDNR staff, a 200% increase is equivalent to taking the allowable # of units $(4.26) \times 3 = 12.78$ units. The applicant would not be allowed to round up, so the property is limited to 12 units. The calculation methodology was verified by MNDNR staff.

It appears that the applicant is proposing 33.7% impervious surface on the entire site, whereas a maximum of 25% is allowed, excluding the wetland acreage. The applicant will need to reduce overall lot coverage to meet the criteria or treat the additional impervious surfaces through mitigation efforts. The wetland will need to be delineated to know what square footage of lot coverage is allowed.

In order to consider the density increase provided above, the city must consider the following:

- In accordance with Section 156.071, 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. It is important that this criterion be met considering the applicant is getting four times the density that would otherwise be provided. Examples of innovate 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.
- 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 on 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.

- Floor area ratio, setbacks, and impervious surface will need to be reviewed for compliance with the Zoning Code. It appears setbacks and the suitable area evaluation criteria have been met. Additional information is required to determine if the proposal complies with floor area ratio and impervious surface.”

Staff recommends approval of the PUD with the suggested conditions or some combination thereof:

1. Mitigation to make up for the additional lot coverage of 33.7% where 25% is allowed. SEH Engineer Cavett suggested in his memo of October 27, 2022, that this could be accomplished with development of a natural storm water facility (bioretention basin/rain garden) area that would cover lots 1, 2, and 3, and also manages the surrounding areas tributary to the low area to the east and / or the establishment of native prairie along. The DNR seems to agree with this but would require this to be designed by a licensed engineer. The engineer also suggests an owner management agreement for those areas.
2. The preservation of open space of at least 50%. It appears that this requirement will be met but it should be documented that no further structures should be allowed.
3. Ms. Barrows stresses the importance of “innovative design techniques”. Examples of this may include heightened architectural elements, vegetative screening of the parking lot, and additional landscaping throughout the site.
4. Both SEH and the DNR suggest the wetland be delineated. This cannot be done this time of year. This would be a decision for Commission to make if it is necessary to delineate the wetland or if you believe there is enough flexibility between the 33.7% impervious and the 50% open space requirement to accommodate the wetland. Amy Barrows states as follows: “The applicant really needs to delineate the wetland to get accurate #'s for density and impervious surface. If they are only proposing 8 units and they are allowed 12, density will not be an issue. However, it is relevant for the purposes of impervious surface and ensuring disturbance isn't taking place in the wetland. It is a pretty flat area so it could be larger or smaller than it seems.”
5. Erosion control, storm water management, and any other requirements of the City Engineer.

Jeremy Henninger, representing Henninger Properties, has also submitted the following dated January 4, 2023, in response to comments received at the public hearing:

“Amy Barrows, Chris Cavett, Brent Kavitz, and Todd Piepho asked for me to have a formal site plan prepared by a qualified person showing exact % coverages.

Site plan and new TOPO was performed by Bolton and Menk on December 13th. They took into account all landscaping including the new building, sidewalks, patios, and parking lot and came back with 33.7% coverage. More than I anticipated but not surprised. Exhibit Drawing provided.

It was also suggested to possibly have the wetlands delineated. This would push the project out months and the only wetlands on the property are in the ditch to the east, most of which if not all are not even on my property. I would ask that this not have to be done.

Remedy: A retention pond was added in the last phase at my expense to help with any water shed and with the new building more drains will be engineered and added to flow to the pond to take care of any and all run-off. If it is recommended that additional ponding, and or vegetation be added, like what was initially proposed to help with the extra coverage, we WILL add it. There is no water on any of the properties that can run anywhere other than my pond and the creek on the east side of the property.

Height of the buildings was brought up: **Remedy:** the height of this and all buildings are and will be under the 30ft maximum.

Dogs going the bathroom on other people's property was brought up: **Remedy:** I bought a new pet station for easy clean-up which I hope encourages all tenants to use simply for the ease of it. I can't control what people do when they leave my property. A photo of the pet station is included.

Lights shining into other people's property: **Remedy:** Although the safety of my tenants come first, I do not want any lighting to be an issue for neighbors. The lights that were installed were not a nuisance, in my opinion, BUT I have bought all new "down shining wall packs" for all buildings to help with the situation. Because of weather the electricians have not been able to install them yet. Photos have been provided.

Mark and Deb Thompson mentioned a fence running north and south between our properties. **Remedy: If approved** I will build a 6 ft tall privacy fence approximately 80 ft long between their back yard and my property. I will also wrap it around the corner at the north east corner of lot 1 (220 3rd St. SW) approximately 30 feet to help screen their entire back yard. This will be a wood cedar tone fence that will be built and placed according to the city's building codes. This will be built and completed by the time the new building is completed. Sketch attached

Screening for Maple Street was brought up: **Remedy:** I will plant 6-8 bigger fuller trees (recommended by Wesley's Tree Service) to be planted along Maple to screen all apartment from the neighbors to the south. These will be planted **AFTER** the street projects are completed. Sketch attached

Remedy: I have employed a full time Office Manager that takes care of all tenant relations outside of the property. An On-Site property manager that lives there full time, and an On-Site maintenance man who tends to any day to day issues. These are the only things I can do to help alleviate the noise, garbage, and traffic concerns that were brought up.

I understand that people don't like change and the added density that came with these apartments. Adding 4 more small 2-bedroom units will be unnoticed with what is already in place. We all agree more apartments are good for the city. This is a way to help with that."

Henninger stated that both Phase 1 and Phase 2 of this project were engineered and this Phase will be as well. If it is determined that the pond needs to be larger, the lot has the room and there is the ability to do that.

Henninger stated a wetland delineation would set the project back 9 months and cost \$5,000. And for what? To determine if there is a possible wetland on the property line. The project will not touch the possible wetland and his water will be going into the pond so it will not effect the possible wetland. He does not want to be required to delineate the wetland.

Engebretson congratulated Henninger on his efforts to utilize this land and bring more apartments to the City of Elysian. The pond with some good vegetation should handle the water on the site. A wonderful job was done with addressing the concerns of the homeowners.

On motion by McBroom, seconded by Linse, to approve the requested Planned Unit Development to allow an additional 4-plex on the property located at 220 Maple Avenue SW with the following conditions:

1. All items (remedy) in Henninger's memo dated January 4, 2023 be completed as described.
2. Erosion control, storm water management, and any other requirements as determined by the City Engineer.

Voting on the motion: Aye – Droog, Engebretson, Linse, McBroom. Nay: None. Abstain: Henninger.

Commissioner Henninger returned to his place at the table.

Jessica Steinke, MN Valley Council of Governments, will be attending the April 4th Planning and Zoning Meeting to assist with development of a survey related to the Comprehensive Land Use Plan to be sent to City residents. Commissioners were asked to study the survey used by the City of Cleveland and to think about where the City is, where the City needs to be, and how we get there? for discussion at the March meeting.

There was no further business to come before the Commission.

On motion by McBroom, seconded by Henninger, all voting in favor, meeting adjourned at 6:31 pm.

Attest:

Ton McBroom, Sr., Chairperson

Lorri Kopischke, Zoning Administrator