

**OFFICIAL PROCEEDINGS OF THE
BOARD OF ADJUSTMENT AND APPEALS**

REGULAR SESSION

SHAKOPEE, MINNESOTA

SEPTEMBER 8, 2011

MEMBERS PRESENT: Mangan, Seidensticker Magin, McQuillan, Klemm, and Collins

MEMBERS ABSENT: Gorton

STAFF PRESENT: Julie Klima, Planner II, Mark Noble, Planner II, Michael Leek,
Community Development Director

1. ROLL CALL:

Vice-Chair Klemm called the meeting to order at 7:00 p.m. Roll call was taken as noted above.

2. APPROVAL OF THE AGENDA:

Motion: Mangan/Collins moved to approve the agenda. No discussion.

Vote: Motion carried 6-0.

3. RECOGNITION BY BOARD OF ADJUSTMENT AND APPEALS OF INTERESTED CITIZENS:

Vice-Chair Klemm recognized anyone in the audience wishing to speak on any item not on the agenda. There was no response.

4. APPROVAL OF THE MINUTES OF THE AUGUST 4, 2011 MEETING:

Motion: McQuillan/Mangan moved to approve the August 4th, 2011 meeting minutes.

Vote: Motion carried 6-0

5. PUBLIC HEARING - CASELOG #11013: APPLICATION FOR CONDITIONAL USE PERMIT TO ALLOW FOR AN AUTOMOTIVE RENTAL FACILITY IN THE HIGHWAY BUSINESS ZONE. PROPERTY LOCATED AT 491 MARSCHALL ROAD. APPLICANT: HERTZ CORPORATION.

Vice-Chair Klemm asked for a motion to open the public hearing on Caselog #11013.

Motion: McQuillan/Mangan moved to open the public hearing on Caselog #11013.

Vote: Motion was carried 6-0. The public hearing opened at 7:03 p.m.

Mr. Noble addressed the Board and presented the application for Conditional Use Permit by Hertz Corporation. The Hertz Corporation has applied for a Conditional Use Permit to allow a vehicle rental facility within the Highway Business (B-1) Zone. The applicant is proposing to locate this use within a tenant space previously occupied by Avis Budget. Hertz is presently located at 580 Marschall Road (southwest from the proposed new location).

The applicant has provided a narrative of the request describing the proposed business, noting that there may be up to five (5) employees on site and that they would utilize 10 additional parking spaces for their rental vehicles (15 designated spaces total). The site plan identifies the locations of their designated parking spaces. Staff notes that those spaces presently in front of their proposed lease space are designated handicap accessible spaces, and those spaces would have to be relocated to another area on the site, and would have to comply with the ADA requirements (such as location, size, signage, etc.). The lease space does have a wash bay garage area, accessible from the rear of the building, and an enclosed trash collection area.

In the Highway Business Zone, vehicle rental facilities require a Conditional Use Permit. The City Code (Section 11.87, Subd. 2, T.) provides standard conditions, which apply to all vehicle rental facilities, the conditions are as follows:

1. Shall conduct all maintenance, repair, and washing of vehicles within a building;
2. Shall screen all rental car parking areas from adjacent residential properties;
3. Shall apply the parking setback to all areas where vehicles are located;
4. Rental vehicles must not take up required parking spaces for customers and employees.

The applicant is proposing to park 10 rental vehicles on the property, along Marschall Road. The amount of surface parking available at Eagle Creek Plaza supports the 10 rental vehicles on the lot, in compliance with the parking requirements set forth by City Code.

The area for the wash bay is approximately 120' from residentially zoned properties, therefore staff recommends that if the Board approves this request, that the overhead door to the wash bay remain closed during operation to mitigate noise from power washers and sprayers.

The Fire Marshall commented that should this CUP be approved, a condition should be added that a fire code compliance inspection is required prior to occupancy.

Section 11.85 (Conditional Use Permits), Subd. 1 (Criteria for Granting Conditional Use Permits) states that, “In granting a conditional use permit, the Board of Adjustment and Appeals shall consider the effect of the proposed use upon the health, safety, and general welfare of the occupants of surrounding lands and the City as a whole.” The Board of Adjustment and Appeals shall not grant a Conditional Use Permit without making certain findings. The criteria required for the granting of Conditional Use Permits are listed below.

Criteria #1 The use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, nor substantially diminish and impair property values within the immediate vicinity;

Finding #1 The Board has received no evidence that the use will be injurious to the use and enjoyment of other property in the vicinity nor that it will substantially diminish or impair property values, provided the conditions included in the resolution are met.

Criteria #2 The establishment of the conditional use permit will not impede the normal and orderly development and improvement of surrounding vacant property for uses allowed in the area;

Finding #2 The Board has not received any evidence that the conditional use permit will impede the normal and orderly development and improvement of surrounding vacant property for uses allowed in the area, provided the conditions included in the resolution are met.

Criteria #3 Adequate utilities, access roads, drainage and other necessary facilities have been or will be provided;

Finding #3 Adequate utilities, access roads, drainage and other necessary facilities have been or will be provided.

Criteria #4 The use is consistent with the purposes of the zone in which the applicant intends to locate the proposed use; and

Finding #4 The use is consistent with the purposes of the Highway Business (B-1) Zone.

Criteria #5 The use is not in conflict with the Comprehensive Plan.

Finding #5 The use is not in conflict with the Comprehensive Plan.

Staff recommends the following conditions:

1. The applicant shall not park more than 10 rental vehicles in the parking lot.
2. If moved from their current location, designated handicap accessible spaces would have to be relocated to another area on the site and would have to comply with ADA requirements (such as location, size, signage, etc.).
3. Service and repair of vehicles is not permitted on site.

4. Rental vehicles shall not include moving trucks or cargo vans.
5. The overhead door and entry door for the wash bay are to remain closed during washing and drying of vehicles.
6. The applicant must submit proper building and plumbing permit applications for any proposed modifications.
7. Separate water metering is not available for this site.
8. Separate electric metering is available, but must meet all applicable SPUC standards.
9. Hazardous waste license should be obtained from Scott County Environmental Health Department, if applicable.
10. Shall utilize a water conservation or recovery system. Shall properly drain/dispose of water and chemicals from vehicle wash bay.
11. Ensure that the wash bay drain trap is maintained and in working order at all times.
12. Signage for the site shall be addressed through the sign permit application process. Approval of the conditional use permit does not grant any signage approval or variances.
13. A fire code compliance inspection is required prior to occupancy.

Mr. Noble opened the discussion to the Commission. The Commission inquired about the existing wash bay at the site. The wash bay is heated and air-conditioned and the applicant is advised to keep the doors shut. Discussion also ensued regarding the relocation of handicapped parking spots and potential need to restripe and replace signage. In addition, the Commission discussed the potential conflict with a vegetable stand during the summer months. It was determined that parking spots could be shuffled to accommodate the stand.

Christopher Dutton, of Hertz Corporation, addressed the Commission. He stated that they were currently operating a location just across the street. They were requesting a move to provide a better location for their customers. They are in good standing in the community. The Commission inquired about the number of cars at the location at any given time. Mr. Dutton stated they are in the business of renting cars, so their goal is to have the least number of cars there at all times. They are requesting 10 parking spots, but anticipate the maximum number of cars would be between 2 and 5 on a daily basis.

Motion: Magin/Seidensticker moved to close the public hearing.

Vote: Motion was carried 6-0. The public hearing was closed at 7:16 p.m.

Vice-Chair Klemm asked for a motion on the item.

Motion: Magin/Seidensticker moved to approve Resolution No. PC11-013, a resolution approving the Conditional Use Permit for a vehicle rental facility, subject to the proposed conditions.

Vote: Motion was carried 6-0. No discussion.

6. **PUBLIC HEARING - CASELOG #11012: AN APPLICATION FOR CONDITIONAL USE PERMIT ANNUAL REVIEW. PROPERTY LOCATED AT 1650 COUNTY ROAD 83. APPLICANT: SHAKOPEE GRAVEL.**

Shakopee Gravel, Inc. has submitted an application for annual review of a Conditional Use Permit and a Mineral Extraction and Land Rehabilitation Permit for their operation located at 1650 County State Aid Highway (CSAH) 83. A condition of approval includes a requirement that the permits be reviewed annually.

Shakopee Gravel, Inc. received approval of an amendment to the Conditional Use Permit and a Mineral Extraction and Land Rehabilitation Permit Renewal on November 21, 2006 (Resolution No. 6533), and received a positive review of their operation by the Board of Adjustment and Appeals on September 9, 2010 and a positive review by the City Council on September 21, 2010.

The conditions contained in the adopted resolution are listed below, with Planning Staff's review/comments following in italics. Additionally, staff received comments from City Engineering and the Fire Department, with the Engineering memorandum attached for the Board's information. The Board should review the information submitted by the applicant, information provided by staff and outside reviewing agencies, as well as comments, information, and testimony provided by the public in conducting the review of this permit.

The conditions of the adopted resolution are listed below, with staff's comments in italics:

1. *The Shakopee Board of Adjustments and Appeals shall review the Conditional Use Permit and Mineral Extraction and Land Rehabilitation Permit annually to ensure that the owner/operator is in full compliance with all provisions of the Conditional Use Permit. The owner/operator shall apply for review no later than July 15th of each year. Applications for CUP and Mineral Extraction and Land Rehabilitation Permit review will include records of groundwater monitoring information. With each application for review, the applicant shall submit a consolidated and updated operations plan. Notification of the meeting shall occur through use of the local newspaper and through notification to designated representatives of the neighborhood located within 350 feet of the Shakopee Gravel property. The findings of each annual review by the Board of Adjustments and Appeals shall be reported directly to the City Council.*

This condition is presently being met. Staff sent a notice on August 18th to property owners along Wyndam Drive, to the Southern Meadows and Thomas

A. Philipp Addition Homeowners Associations, and to homeowners in the Southern Meadows subdivision that are adjacent to the Shakopee Gravel site. The applicant submitted the application on July 14, 2011, and included an update on the amount of product removed from the site during the past year, and an updated site plan that identifies the current mining and reclamation areas.

2. *Approval of a Conditional Use Permit amendment is contingent upon Board of Adjustment and Appeals approval of the Mineral Extraction and Land Rehabilitation Permit.*

The Board has previously approved the Mineral Extraction and Land Rehabilitation Permit and Conditional Use Permit. In the event the Board determines that the CUP should be amended, it may be appropriate to re-affirm the approval of the Mineral Extraction and Land Rehabilitation Permit.

3. *Security fencing shall be used on the main access roads to control vehicular access to the mining and equipment area, and along any adjacent residential development. Additionally, the applicant shall install fencing adjacent to other developing properties within 90 days (depending on weather conditions) of the time a final plat for those properties is recorded.*

Security fencing has been in place for a several years around the perimeter of this site. Recently, access to the site was relocated and new fencing was installed along the east boundary as part of the County Road 83 road construction project.

4. *The applicant shall obtain a County Road Entrance permit from the Scott County Highway Engineer.*

Scott County has previously provided staff a copy of an application for access driveway or entrance permit, dated March 22, 1999, which was a request to widen the existing entrance and black top the entrance.

5. *County Road weight restrictions shall be adhered to. Truck traffic shall be limited to the use of County Road 83 to Hwy. 101 and County Road 42. Absolutely no truck traffic from the mining operation shall be routed through the urban portion of the City of Shakopee.*
This condition is presently being met.

6. *Design/maintenance treatment of the berm adjacent to the residential properties along Shakopee Gravel Inc.'s west property line shall be consistent with the following additional conditions:*

- a. Maintenance of a 1:1 slope for the berm adjacent to the homes in Wyndam Ponds (including regarding where necessary on the north end, i.e. first 4 properties) to remedy those spots where erosion may have occurred.

- b. Removal of the berm, or returning the berm to 3:1 slope along Southern Meadows as outlined at the public hearing meeting preceding the October 19th (2006) meeting.
- c. Removal of the weeds using the steps outlined by the Scott County Weed Inspector.
- d. Stabilization of the slopes, establishment of plant/turf cover, and mowing at least once a year or as needed more than that to maintain a suitable appearance.
- e. A landscape/tree planting plan shall be submitted to and approved by the City of Shakopee prior to installation of a mix of 2 1/2" (min.) caliper deciduous trees and 6' – 8' tall coniferous trees, 15 feet on center with a 5 foot offset adjacent to the properties in the Wyndam Ponds Subdivision.

The applicant has met the above five (5) conditions. Along the berm adjacent to the Wyndam Drive residences, the applicant replaced two (2) trees this past year, and has mowed the property at least twice this past year.

7. *The mining operation shall maintain the following minimum setbacks: 100 feet from any residential or commercial property line; 500 feet from any residential or commercial structure that was in existence prior to commencement of mining, unless the written consent of all owners and residents or occupants of said structures is obtained; 30 feet from any road right-of-way.*

Mining operations (i.e. the extraction, processing and removal of sand, gravel, rock or other material) are not occurring within 100 feet of any residential or commercial property lines.

8. *All portable buildings must be approved by the Building Official.*
This condition is presently being met.

9. *Truck loading operations within the pit shall be allowed from 7 a.m.-5 p.m., Monday thru Friday. All other operations shall be allowed from 8 a.m. - 5 p.m., Monday thru Friday.*

The applicant has represented that they are in compliance with this condition, and staff has received no evidence to the contrary.

10. *Dust must be controlled by paving main access roads, watering haul roads and equipment and by any other means, which will control adverse effects of dust on neighboring properties.*

The applicant is aware of the need to monitor the dust levels generated from their haul roads, mining activity, and equipment, and periodically utilize their watering truck for addressing this issue. They have been notified by the County and the City to keep adjacent streets, sidewalks and trails free of any offsite sediment tracking, and that they are responsible for street sweeping. They are working with a contractor to sweep the drives and streets as needed to comply with this condition.

11. *Noise emissions shall not exceed the noise limits as noted in Section 10.60 (Noise Elimination and Noise Prevention) of the Shakopee City Code.*
Staff is not aware of any complaints regarding noise in the past year.
12. *Two propane tanks shall be permitted, one 325-gallon tank located next to the scale building and one 100-pound tank located next to the maintenance/electrical building. The propane shall be used to heat these two buildings only. The propane tanks must be installed and maintained in accordance with State Fire Marshall Rules (Chapter 7510.3100 – 7510.3280). There shall be no other fuel tanks on-site unless said tanks receive permit approval from the Minnesota Pollution Control Agency (MPCA) or other required agency. There shall be no use or storage of explosives except as approved in advance as part of this conditional use and mining permit.*
There exist two (2) diesel fuel tanks, which are fastened to trailers. The trailers house the generators that run the mining equipment. These tanks are approximately 4 feet high, 6-8 feet wide and 6-8 feet deep. There do not appear to be any additional tanks since staff conducted a site visit in May, 2002.
- The Fire Department commented that the property owner should: 1) provide the Fire Department with a list of tanks and tank sizes, for those tanks listed in this condition; and 2) work with the Fire Department to develop a Pre-Fire Incident Plan for the operations.
13. *No direct exterior lighting shall be visible from adjacent properties or the public right-of-way. Two 125-watt high-pressure sodium security lights can be installed on the site and they must be located on the site as shown on the submitted plan.*
There exist two (2) light sources; one that is located near the equipment on the floor of the mining operation and one that is located outside the scale building, which due to the relocation of the entrance/exit, no longer is visible off site.
14. *Stockpiles of gravel shall be allowed to exceed 25 feet in height, but not exceed the height of the surrounding berms and shall be setback from the property lines so that visual impact is minimal from the surrounding property.*
Staff is not aware of any stockpiles of gravel that are exceeding the height of the surrounding berms, nor encroaching upon the setbacks. The perimeter berms are either import material and/or black dirt scraped from the surface and stockpiled for site reclamation.
15. *The applicant shall be responsible for reimbursing the City for all costs incurred in reviewing the permit through the life of the operation.*
This condition is presently being met.
16. *The revised Gravel Extraction Plan and the End Use Plan, as submitted by the applicant, shall be adhered to, without modifications, unless approved in advance by the Board of Adjustment and Appeals.*

The revised end use plan approved in May, 2002 is the one that the city staff will continue to utilize in the ongoing review of this property.

17. *The applicant shall prepare in report form, a plan for operation, which if acceptable, shall be adopted by resolution as the Mining Permit. The Plan for Operation shall be comprised of 1) the submitted maps A, B, C; 2) the conditions of the approved permits 3) background information as contained in the memo prepared by Merila and Associates, Inc.; dated April 30, 1985.*

This condition has been met. Shakopee Gravel, Inc., is the operator of the mine.

18. *The City's approval of the permits (CUP and Mining) is made in reliance upon the applicant's representations regarding the life of the operation (17 years). Any factors, or future developments which significantly delay the completion of the mining operation, may be viewed by the City as sufficient grounds to revoke both permits.*

This condition has been met. The applicant has provided information on the past extraction rates and the estimated remaining balance of material on site, noting that the estimated completion date for mining operations is May 30, 2018, which is nine (9) months longer than the estimated completion date from last year (August 31, 2017 - see information submitted by the applicant) and 51/3 years later than the original estimated date.

19. *The Conditional Use and Mining Permits may be reviewed prior to the scheduled annual review, if the City receives complaints, supported by evidence indicating that the conditions of these permits are being violated. Upon receipt of such complaints, the Board of Adjustment and Appeals' shall review the complaints to determine whether it should schedule a public hearing, in accordance with the proper procedures for notice and publication.*

Staff is not aware of any complaints in the past year, other than the need to monitor sweeping of County Road 83, which they are presently doing.

20. *If the Board of Adjustment and Appeals finds that the applicants have substantially or repeatedly violated the terms of this agreement, the Board of Adjustments and Appeals may revoke said permit.*

This condition is simply a statement of the Board's authority, and requires a factual determination by the Board as to whether there are substantial or repeated violations.

21. *Allow for the relocation of the central processing area.*

At this time, staff is not aware of any immediate plans to relocate the central processing area further to the west on the property. The operator is aware that if the processing area is moved, that all conditions listed in this resolution, particularly those pertaining to setback requirements and noise emission control requirements, will be reviewed for compliance.

22. *Allow the final development grades to be between an elevation of 764 at the bottom of the proposed ponds and 832 feet.*
The applicant is aware that the grade of the final development of this property shall occur within the elevations noted.
23. *The operation should be mined in five phases, except as modified by any subsequent amendment to or renewal of the CUP and Mining permit.*
This is the intent of the operation. They are principally mining the area of the fourth phase.
24. *The applicant shall establish a monitoring well on the subject site for ground water quality monitoring, and shall regularly (at least quarterly) record measurements from that well, which measurements shall be submitted with any application for review, renewal, or amendment. Mining extraction shall not exceed a depth greater than ten (10) feet above the established ground water MSL elevation.*
This condition has been met. The applicant has continued to provide staff with the quarterly groundwater monitoring reports, which staff has been sharing with Shakopee Public Utility Commission staff, the Environmental Advisory Committee, and the City Council. It should be noted that there were no diesel range organics (dro's) detected in the past year.
25. *The mine shall operate for 17 years beginning on January 16, 1996, and terminating on January 16, 2013.*
The applicant did provide comment on this condition, reiterating their average extraction rate for the past several years and the estimated amount of material yet to be mined from this site, as well as their estimated completion date for mining operations (May 30, 2018, whereas it was estimated at last year's review that the completion date would be August 31, 2017 and the year before that August 31, 2016).
26. *Provided that the applicant is granted access to future 17th Avenue, consistent with the end use development of the property, the applicant agrees to dedicate the right of way for future 17th Avenue at no cost to the City and accept assessments based upon the end use development of the property.*
This condition has been met.
27. *The sanitary sewer along future 17th Avenue is shown, but not approved. Future extension of 17th Avenue will determine the ultimate alignment and depth. The City Engineer shall determine and propose a mutually agreeable location and depth for the trunk sanitary sewer along future 17th Avenue.*
This condition has been met.
28. *Access spacing to future 17th Avenue and CSAH 83 will be determined by Scott County, City of Shakopee and the applicant upon approval of the preliminary plat for the end use.*

Further review will occur at or before the time of submittal of a preliminary plat application for this property.

29. *Material imported onto the site for reclamation and final site grading shall be monitored to ensure that it is environmentally clean. Records shall be kept of all imported material and all of the necessary documentation shall be available. The applicant will certify that the property meets any and all standards set by the MPCA or government board that regulates mine reclamation.*

The applicant is presently documenting all imported material and has this information readily available for staff review as necessary. Staff has personally verified that the operators are monitoring the material being imported onto the site. There presently are four (4) areas where reclamation activities are occurring: along the east side, north of the scale/office bldg., in the southeast area of the site, in the northwest area of the site, and along the west side of the site, northerly of the area notated as the proposed area to be mined (see Existing Conditions plan). Reclamation efforts have been quite aggressive in the past year, due to the property owner establishing an agreement with a contractor working on a large project that is bringing an extensive amount of product onto the site.

30. *Material imported onto the site and used in the reclamation and final site grading shall only include soil materials of a bearing capacity sufficient to support development, as proposed in the End Use Plan. The depositing and compaction of materials shall be done in accordance with specifications prepared by a licensed geotechnical engineer.*

The applicant has stated that this condition is being met. The applicant is presently documenting all imported material and has this information readily available for staff review as necessary.

31. *The site shall be reclaimed in accordance with the End Use Plan and be available for development within one construction season following the completion of mining activities, if not before.*

The applicant has stated that this condition is being met, and will be verified by staff following completion of the mining activity.

32. *The storm sewer discharge along future 17th Avenue shall not exceed the design capacity in the CSAH 83 trunk storm sewer as determined by the City Engineer. The development of the subject property will necessitate the lowering of the storm sewer along future 17th Avenue. The property owner shall pay the cost of lowering this trunk line.*

This condition has been met.

33. *No Construction cutting or filling in the Minnegasco Easement #1997-7, recorded as document #0393488, except as authorized by Minnegasco.*

This condition appears to be met.

34. *The applicant is to provide to the city an earthwork quantity calculation, to be completed by a Registered Professional Engineer or Registered Landscape Architect, and the applicant is to provide to the city on an annual basis the quantity of export and import materials.*

The applicant has provided the earthwork quantity calculations as required.

35. *If the mining operation intends to bring solid waste material onto the site, a solid waste license must first be approved by the Scott County Environmental Health Department.*

The property owner does not intend to bring solid waste material onto the site. The owner is aware of the requirement if they elect to pursue this further.

Planning staff sent out the applicant's submittal to a number of reviewing agencies, and received comments back from the City Engineering Department and the Fire Department. The City Engineering Department has provided the following comments for the applicant and for the Board:

1. Adjacent streets, sidewalks and trails will be kept free of any offsite sediment tracking. The applicant will be responsible for street sweeping.
2. Turf shall be established onsite as per requirements set forth by the National Pollutant and Discharge Elimination System (NPDES) permit program.
3. Erosion control measures shall be installed, inspected and maintained as per requirements set forth by the National Pollutant and Discharge Elimination System (NPDES) permit program.
4. Slopes of all berms, existing and proposed, shall comply with standards set forth by the City of Shakopee's Design Criteria.
5. All berms, existing and proposed, shall receive a minimum of six (6) inches of topsoil. The topsoil, whether salvaged or imported, shall meet the requirements of select topsoil borrow as defined by MnDOT's specification 3877.
6. No import of material shall be utilized for the end use grading plans.
7. The applicant shall work with the City to restore previous mining areas as additional areas are opened.
8. The storm sewer discharge rate from the site shall comply with all requirements set forth by the City Engineer.

Mr. Noble addressed the Commission. He provided several recent photographs of the area and described the current status of the area.

Joel Speer, of Shakopee Gravel, addressed the Commission. The Commission only inquired about the termination date. Mr. Speer stated that development was down and they were coming close the end. Business has picked up with the Hwy. 169/494 construction project.

Motion: McQuillan/Magin moved to recommend to the City Council alternative no. 1; accept the review of the permit as conditioned in approved Resolution No. 6533, and move its approval.

Discussion ensued regarding the termination date. Mr. Leek stated that the termination date is slated for January of 2013. They are in discussion regarding the date but will continue to have discussion in the future.

Jack Perry, of the Briggs Morgan Law Firm, addressed the Commission. He stated that there is very little legal guidance for durational restrictions on CUP's. The goal has been to narrow all other issues and then attempt to narrow the time period for termination to the best of their ability. Mr. Leek responded that it was in their best interest to figure out a way to work with Shakopee Gravel and to preserve local resources. The Commission commented on the progress of the relationship over the years and that the applicant has made great strides in responding to any issues.

Vote: Motion carried 6-0.

7. **OTHER BUSINESS:**

No other business was noted.

8. **ADJOURN:**

Motion: Mangan/Magin moved to adjourn the meeting.

Vote: Motion carried 6-0. Meeting adjourned at 7:43 p.m.

OFFICIAL PROCEEDINGS OF THE PLANNING COMMISSION

REGULAR SESSION SHAKOPEE, MINNESOTA SEPTEMBER 8, 2011

MEMBERS PRESENT: Mangan, Seidensticker, Collins, McQuillan, Klemm, and Magin

MEMBERS ABSENT: Gorton

STAFF PRESENT: Julie Klima, Planner II, Mark Noble, Planner II, Michael Leek, Community Development Director.

1. **ROLL CALL:**

Chair Klemm called the meeting to order at 7:44 p.m. Roll call was taken as noted.

2. **APPROVAL OF THE AGENDA:**

Chair Klemm inquired if there were any additions or corrections to the agenda.

Commissioner Magin inquired if they could switch items #5 and #6, so that agenda item #6 was heard before item #5.

Motion: Magin/McQuillan moved to approve the Agenda as amended.

Vote: Motion carried 6-0.

3. **RECOGNITION BY PLANNING COMMISSION OF INTERESTED CITIZENS:**

Chair Klemm recognized anyone in the audience wishing to speak on any item not on the agenda. There was no response.

4. **APPROVAL OF THE MINUTES OF THE AUGUST 4, 2011 MEETING:**

Motion: Mangan/Magin moved to approve the minutes of the August 4th, 2011 meeting.

Vote: Motion carried 6-0.

6. **PUBLIC HEARING - CASELOG #11009 (CONTINUED FROM 8-4-11): TO CONSIDER AN APPLICATION FOR PRELIMINARY PLAT AND FINAL PLAT OF SHENANDOAH EAST. SUBJECT PROPERTY IS LOCATED SOUTH OF C.R. 101, EAST OF SHENANDOAH DRIVE AND NORTH OF 4TH AVENUE EAST IN THE LIGHT INDUSTRIAL (I-1) ZONE. APPLICANT: UNITED LAND L.L.C.**

Mr. Noble addressed the Commission. He noted that United Land, LLC, has submitted an application for Preliminary and Final Plat approval of property located north of 4th Avenue East, east of Shenandoah Drive, and south of CH101. The applicant is proposing to plat three (3) industrial lots, ranging from 13.332 acres to 28.720 acres in size, and a new public right-of-way (Shenandoah Lane), with the northeast lot the site of the proposed development at this time. No specific building plan has been proposed for this lot; development of this site will be subject to any city review requirements, whether Conditional Use Permit review and/or building permit review.

The developer also proposes the removal of approx. 859 trees from the site (including heritage trees), predominately in the northerly portion of the property, and intends to install 288 trees on the property.

Specific design and performance standards shall be reviewed at time of building permit, if this request is approved. That would include a review of the building materials, landscaping, parking lot (and curbing) design, trash and rooftop screening requirements, and other criteria (including lighting, noise, and odor regulations) as specified in the City Code.

Several city departments and outside agencies have provided memorandums, which note comments/conditions as a result of their review of the project. These memorandums have been attached to the report provided.

The Engineering Department has reviewed the application and provided a memorandum that includes a significant number of conditions that shall be incorporated into the resolution should this request be approved. Included with their memorandum is a memorandum from WSB & Associates, Inc., which addresses their review of the storm water management plan and preliminary construction plan.

Shakopee Public Utilities provided a memorandum, noting that street lighting installation is available subject to their standard terms and conditions, and that they must pay the associated fees. They also commented on the water and electric service availability. Street lighting will be required on Shenandoah Lane, as well as Shenandoah Drive.

Scott County Public Works reviewed the preliminary plat, and provided comments which includes a recommendation that the developer conduct a traffic study of the site and surrounding intersections, which should include current and future traffic, trip distribution, and potential traffic generated by the outlots. The proposed uses and improvements could trigger intersection improvements at CH101 (County Highway 101) and Shenandoah Drive. They additionally commented that any work proposed within the County right-of-way shall require a County permit, and no berming, landscaping, ponding or signage shall be permitted in the County right-of-way.

The City Director of Parks, Recreation and Natural Resources provided a memorandum noting a number of conditions of approval, specifically noting compliance with the City Code pertaining to heritage tree regulations, replacement requirements, and park dedication fees.

The City Clerk commented that the plat should be renamed Shenandoah East First Addition to avoid confusion with future plat additions, such as when the outlots are proposed to be platted. She also commented that the outlots shall be platted prior to issuance of any building permits for those lots.

Staff recommends that the Planning Commission recommend approval of the Preliminary Plat of Shenandoah East, subject to the following several conditions:

- I. The following procedural actions must be completed prior to the recording of the Final Plat:**
 - A. Approval of title by the City Attorney.
 - B. Rename the plat to Shenandoah East First Addition.
 - C. The applicant shall provide a detailed comprehensive site design depicting the fully developed conditions of Lot 1 of Block 1, Outlot A and Outlot B. The plan needs to clearly demonstrate how each lot will develop, how they will handle storm water runoff and how they will be served by sanitary sewer, storm sewer and water main.
 - D. The applicant shall provide a detailed lot area drawing showing the square footage and acreage of each lot, the right-of-way, the pavement area and the drainage and utility easements encompassing the approved high water levels of each storm water basin (WEST NURP POND and EAST NURP POND).
 - E. Execution of a Developer's Agreement, which shall include provisions for security for public improvements within the Final Plat and all engineering fees and charges.
 - F. Payments of Trunk Sanitary Sewer Charges shall be made, as required by the most current City of Shakopee Fee Schedule.
 - G. Payments of Trunk Storm Water Charges and Trunk Storm Water Storage and Treatment Charges shall be made, as required by the most current City of Shakopee Fee Schedule.
 - H. As Outlot A and Outlot B develop, a bituminous trail along Shenandoah Drive and 4th Avenue shall be installed.

- I. Provide electronic files (AutoCAD and Adobe Acrobat formats) of the Final Plat to be recorded with datum on the Scott County coordinate system.
- J. Park Dedication payment due at the time of recording of final plat. This fee is calculated at \$6,930 per acre.
- K. Applicant shall submit a landscaping plan of the site for staff review. The plan shall be in compliance with the most recent version of the City of Shakopee Easement, Fencing and Landscaping Policy. Replacement trees are required to be planted as follows:
 - a. A minimum of four feet from impervious surfaces.
 - b. A minimum of ten feet from property lines.
 - c. Not in easements containing utilities.
 - d. Not in City owned right-of-way.
 - e. not below overhead utilities.
 - f. Not below high water levels (HWL) in existing or created ponds or wetlands.
 - g. No planted tree species shall comprise more than 30% of the total quantity of trees to be planted on the site.
 - h. Consistent with the Shakopee Tree Planting Guidelines.
 - i. Ash (*Fraxinus* sp.) and Colorado Blue spruce (*Picea pungens*) are not allowed to be planted.
- L. The applicant shall plant a diversity of tree species on site consistent with the existing woodlands to prevent impacts from future disease.
- M. Compliance with the Woodland and Tree Management Ordinance. The applicant is approved to remove 834 trees (this does not include the Heritage Trees) and is required to plant 278 replacement trees within one year of removal. If the number of plantings cannot be met on site the following is required:
 - a. A cash payment of \$400.00 per replacement tree shall be provided to the City to complete other vegetative or environmental alternatives.
- N. Tree Management Plan Tree Replacement escrow due in the amount of \$350 per replacement tree X 150%.
- O. Trail width must be a minimum width of 8' located along Shenandoah Drive from 4th Avenue to State Trunk Highway 101.
- P. The applicant shall comply with City Code Chapter 11, Section 11.60, Subdivision 9 pertaining to Heritage trees.
- Q. The applicant has yet to receive final approval of the site's storm water management plan. Please see the attached memo from WSB & Associates, Inc. dated August 30, 2011, which outlines the items that need to be addressed in order to approve the plan.
- R. The master plan shall clearly show how each lot will be served by sanitary sewer and water main.
- S. Easements shall be shown on the Preliminary Plat and the Final Plat as approved by the City Engineer. They shall include, but not be limited to, the following:

- Minimum drainage and utility easements for public sanitary sewer and public storm sewer shall be dedicated per the City of Shakopee Design Criteria, Section 10.1 (A-D). The easements need to be centered along the public utility alignments.
- Provide adequate drainage and utility easements to encompass the approved high water levels for all storm water basins (temporary and permanent).
- Provide adequate drainage and utility easements on Outlot A to encompass drainage from the storm water basin (WEST NURP POND).
- Provide additional drainage and utility easement on Lot 1 of Block 1 to encompass the approved high water level of the storm water basin (EAST NURP POND). This is to account for the shifting of the basin to the west.
- Provide adequate drainage and utility easements on Lot 1 of Block 1, Outlot A, and Outlot B to accommodate emergency overflow routes of each low point and each storm water basin (temporary and permanent).
- Additional drainage and utility easements may need to be provided as a result of comments regarding the grading and erosion control plan, the master plan, and the street and utility plan.
- The applicant shall be responsible to obtain offsite drainage and utility easements for the proposed outlet to the easternmost storm water basin (EAST NURP POND). Otherwise they will need to propose an alternate outlet design.

II. Following approval and recording of the final plat, the following conditions shall apply:

- A. The applicant shall provide six inches of topsoil for the establishment of turf and plantings. The soil composition should be similar to the MnDOT topsoil borrow requirements.
- B. Irrigation systems shall require rain sensors.
- C. Storm ponds should be seeded with a native wetland seed mixture and erosion control blanket should be placed four feet either side of the normal water level and around outlets to prevent erosion and sediment deposits downstream surface waters.
- D. The applicant is responsible for preserving all trees indicated as saved on the plans. If, as a result of mass grading, any of these trees are determined to be wounded sufficiently to be considered dead or dying by the Natural Resources Coordinator, the developer shall be required to replace the tree(s) according to the Woodland and Tree Management Ordinance.
- E. Tree protection fence for mass grading is to remain in place the duration of the land disturbing activities. Removal of the silt fence and tree protection fence for mass grading shall be the responsibility of the developer.
- F. The applicant shall utilize the MPCA Protecting Water Quality in Urban Areas as a technical reference for erosion control.

- G. The applicant shall submit a landscaping plan for all areas where clearing and grubbing are approved, for review and approval by the City of Shakopee.
- H. Silt fence and/or tree protection fence shall be installed prior to any site work and/or tree removal, consistent with the City Code requirements. This fencing is to be removed following establishment of vegetation as determined by an inspection by City staff.
- I. Building construction, sewer, water service, fire protection and access shall be reviewed for code compliance at the time of building permit application(s).
- J. The developer and/or their assigns shall be responsible for any required or desired noise or dust mitigation measures.
- K. The applicant shall meet the screening and landscaping ordinance requirements of the City Code.

III. Following approval and recording of the final plat, the following conditions need to be addressed/completed prior to approval of a grading permit and/or a street and utility plan:

- A. No public improvements (site grading and street and utility) will be constructed until the City Engineer and the Shakopee Public Utilities (SPU) approves the required storm water management plan, the storm water pollution prevention plan, the grading and erosion control plan and the street and utility plan.
- B. The applicant shall provide two (2) separate plans for grading and erosion control and street and utility construction that are in compliance with the City of Shakopee Design Criteria.
- C. The applicant shall provide detailed earthwork calculations for the construction of the street and the fully developed condition of the plat.
- D. The applicant shall provide details concerning the haul route for all grading operations. Trucks are to enter the site via CH101 and Shenandoah Drive.
- E. The applicant shall provide detailed pavement design calculations for a bituminous roadway and a concrete roadway.
- F. The applicant shall provide a detailed contractor's bid for the proposed public improvements. Part of this bid shall include an alternate for concrete paving of Shenandoah Lane.
- G. Street lights shall be required on Shenandoah Boulevard and Shenandoah Lane. Plans identifying the design for and installation of lights on these streets shall be submitted to the City of Shakopee and Shakopee Public Utilities for their review and approval.
- H. The applicant must meet the City's Woodland and Tree Management Ordinance requirements. The applicant shall contact City Staff prior to any land disturbing activities for an inspection of the tree protection/silt fence installed at the drip line of trees to be preserved.
- I. Silt fence and/or tree protection fence shall not be installed within delineated wetland.

- J. The developer should implement the use of Best Management Practices for erosion control and storm water management during construction.
- K. The following items shall be addressed in the grading and erosion control plan:
- All vicinity maps shall be revised to show the entire plat.
 - Proposed buildings and their finished/low floor elevations, in compliance with the City's Water Resources Management Plan, need to be shown.
 - All existing structures and their finished/low floor elevations on the property to the east shall be shown. Freeboard will be provided in compliance with the City's Water Resources Management Plan.
 - Lot and block numbers shall be shown on each plan sheet.
 - All slopes shall be intermittently labeled on each plan sheet.
 - The street centerline and stationing shall be shown on each plan sheet.
 - The right-of-way width and street width shall be intermittently labeled on each plan sheet.
 - Class IV fieldstone riprap shall be shown at each inlet to each storm water basin. The riprap is to be installed to the basin bottom.
 - Class IV fieldstone riprap shall be shown at each outlet to each storm water basin in an amount adequate to prevent erosion.
 - Emergency overflows (EOF's) shall be shown for each storm water basin and each low point.
 - All high points and low points shall be denoted with spot elevations and drainage arrows.
 - The proposed easternmost driveway serving Lot 1, Block 1 shall be moved to the west so that no portion of the driveway or parking lot is in the drainage and utility easement encompassing the high water level of the storm water basin (EAST NURP POND).
 - The grading for the easternmost storm water basin (EAST NURP POND) shall be shifted to the west in order to remove any proposed work from within the existing sanitary sewer easement. This is to provide adequate access to the existing trunk sanitary sewer for maintenance personnel.
 - All applicable details outlined in the City of Shakopee General Specifications and Standard Detail Plates for Street & Utility Construction shall be provided.
- L. The following items shall be addressed in the street and utility plan:
- All vicinity maps shall be revised to show the entire plat.
 - Lot and block numbers shall be shown on each plan sheet.
 - The right-of-way and street widths shall be intermittently labeled on each plan sheet.
 - All high points and low points shall be denoted in the plan view with spot elevations and drainage arrows.
 - A more detailed design for the Shenandoah Lane intersections with Shenandoah Drive and 4th Avenue shall be provided. The design shall be in compliance with Section 8, Subdivision 4A of the City of

Shakopee Design Criteria. Vertical curves and spot elevations shall be shown.

- Utility crossings shall be shown on each plan sheet for all utilities.
- The scale of each profile view shall be checked for accuracy.
- The proposed easternmost driveway serving Lot 1, Block 1 shall be moved to the west so that no portion of the driveway or parking lot is in the drainage and utility easement encompassing the high water level of the storm water basin (EAST NURP POND).
- The applicant shall provide a cross-section for each driveway or provide a detailed intersection design eliminating this need.
- The proposed storm sewer system shall be designed to handle the fully developed condition of the site and any outside tributary drainage areas.
- The proposed class of pipe shall be shown for all storm sewer.
- Plan and profiles shall be provided for all storm sewer laterals, stubs to each lot and culverts.
- Outlet control structures shall be provided in compliance with the City's Water Resources Management Plan and the City of Shakopee Standard Detail Plate 4012.
- Plan and profiles shall be provided for all outlet control structures.
- The applicant shall match the 0.80 invert elevations for all storm sewer pipe.
- All culverts shall be a minimum of eighteen (18) inches in diameter and are to be reinforced concrete pipe.
- The first storm sewer structure upstream of each storm water basin shall have a sump of two (2) feet in depth.
- The proposed invert elevation of FES 110 shall be checked for accuracy.
- The size, material and invert elevations of the pipes beneath the railroad tracks shall be shown.
- The denoted offsets for each storm sewer structure shall be checked for accuracy.
- The two (2) sanitary sewer services located in the easternmost storm water basin (EAST NURP POND) shall be removed to the existing manhole.
- All applicable details outlined in the City of Shakopee General Specifications and Standard Detail Plates for Street & Utility Construction shall be provided.
- The applicant shall provide documentation that a ten (10) inch sanitary sewer main and multiple ten (10) inch sanitary sewer services are needed to serve Lot 1 of Block 1, Outlot A and Outlot B.
- The alignment of the sanitary sewer in the vicinity of SSMH 01, SSMH 02 and SSMH 03 shall be revised to relocate the structures closer to the centerline (out of the wheel path), away from the driveway to Lot 1 of Block 1 and to provide a minimum of ten (10) feet offset to the proposed storm sewer.

- Minimum cover for all sanitary sewer and water main crossings shall be provided per SPU requirements.
 - Sanitary sewer service crossings of the water main may need to be water main quality pipe per SPU requirements.
 - The applicant shall provide a minimum of six (6) feet of cover over the top of the proposed public sanitary sewer pipe.
 - The applicant shall show the proposed amount of insulation to be installed over the sanitary sewer pipe.
 - A minimum of eighteen (18) inches of cover shall be provided for all sanitary sewer and storm sewer crossings.
 - The maximum length of pipe between sanitary sewer manholes is four-hundred (400) feet. The length between SSMH 05 and SSMH 06 exceeds this maximum.
 - The applicant shall provide a 0.10' drop in each sanitary sewer manhole.
 - Structure marker signs need to be shown for all structures in pervious areas per City of Shakopee Standard Detail Plate 3009.
 - The applicant shall provide a permit from the railroad company or proof of permission to work in their right-of-way prior to commencing construction in this area.
 - The applicant shall provide a signage plan.
- M. The following items shall be addressed in the master plan:
- The proposed accesses on Shenandoah Drive shall align with those of the Interstate Addition to the west.
 - The proposed westernmost access on 4th Avenue to Outlot B shall be a minimum of two-hundred (200) feet from Shenandoah Drive.
 - Grading for the proposed trails along Shenandoah Drive and 4th Avenue shall be shown.
 - Grading in the rights-of-way and drainage and utility easements shall comply with slopes set forth in the typical section as it appears in the General Specifications and Standard Detail Plats for Street & Utility Construction.
 - No portion of a retaining wall system is to be located below the approved high water level of a storm water basin.
 - No portion of a retaining wall system is to be located within the existing sanitary sewer easement along the east side of the property.
 - The street centerline and stationing shall be shown on each plan sheet.
 - The right-of-way width and street width shall be intermittently labeled on each plan sheet.
 - Lot and block numbers shall be shown on each plan sheet.
 - Class IV fieldstone riprap needs to be shown at each inlet to each storm water basin. The riprap is to be installed to the basin bottom.
 - Class IV fieldstone riprap shall be shown at each outlet to each storm water basin in an amount adequate to prevent erosion.
 - Emergency overflows (EOF's) shall be shown for each storm water basin and each low point.

- All high points and low points shall be denoted with spot elevations and drainage arrows.
- Submerged inlets and outlets in the storm water basins are allowed, but they shall provide adequate ability for City staff to inspect.
- Outlet control structures shall be provided in compliance with the City's Water Resources Management Plan and the City of Shakopee Standard Detail Plate 4012.
- The sanitary sewer will need to be extended to the west in order to serve Outlot A.

IV. Following approval and recording of the final plat, the following conditions need to be addressed/completed prior to issuance of a building permit:

- A. A record "as-built" grading and erosion control plan shall be provided per the City of Shakopee Design Criteria, Section 2.5 and Section 11.2 (A-L). The record plan needs to be submitted to the engineering department.
- B. The street and utility construction shall be substantially complete as defined by City Resolution 6059.
- C. Outlots shall be platted prior to issuance of any building permits for those lots.
- D. The developer shall conduct a Traffic Impact Analysis of the site and surrounding intersections, which should include current and future traffic, trip distribution, and potential traffic generated by the outlots. The proposed uses and improvements could trigger intersection improvements at CH101 (County Highway 101) and Shenandoah Drive.
- E. Any work proposed within the County right-of-way shall require a County permit.
- F. No berming, landscaping, ponding or signage shall be permitted in the County right-of-way.

Mr. Noble opened discussion to the Commission. The Commission inquired about any major traffic changes or excessive traffic in certain areas as a result of the project. Mr. Noble responded that the most of the traffic from the development would empty from Shenandoah to Hwy 101. Mr. Leek added that 10 years ago OPUS had done an AUAR of the area and study of this project was consistent with traffic flow findings from the AUAR. If a problem develops, they have discussed with WSB to update the AUAR. The Commission inquired who would bear the cost of an analysis and any updates that would result. Mr. Leek responded that if updates were required along Hwy 101 (a county road), then Scott County would cost share with the City 50/50. However, if it was determined that 4th Avenue would need updates, then the City would be responsible. The Commission then asked if the property owners or developers could be assessed to assist with the improvements. Mr. Leek and Mr. Noble were unsure of the process and would have to check with the other City departments.

Discussion moved to the developer's landscape plan and the removal of heritage trees. The Commission inquired if there were certain requirements for replacement of heritage trees only. Mr. Noble did indicate that there was a City Ordinance addressing heritage trees as well as sections of the Tree Management Plan. However, it would be best discussed with Jamie Polley and the applicant. Mr. Leek pulled the City Code (11.60 subd. C) that specifically deals with heritage trees.

The Commission inquired about the proposed bituminous trail. The trail would be constructed by the developer but maintained by the City. The trail would connect to other trails in the area, although some of the trails are still in the planning phase. This trail would not connect with the regional trail but is planned to connect to the SouthBridge area and across Hwy 169 when funding is available.

Commission members asked about alfalfa farming of the land until development resumes. It was discussed that the land is very rocky and prior to development in the area was used as a grazing field and not farming. In addition, the rocky soil has led to poor quality trees.

The applicant addressed the Commission. Mr. Bill Katter addressed the Commission on behalf of the applicant United Land. Mr. Katter reported that the purpose of the application was to obtain approval to install a road so they could better market the land. If approved, the road would be constructed sometime early next year. They are not seeking approval of any specific development plan on the site at this time.

The Commission inquired if the applicant had a timetable for the project. Mr. Katter responded that they were currently in negotiations with an occupant for one of the lots that would like to be in by the end of next year.

Tom Cesare, of BKM Engineers, spoke on behalf of the applicant with regard to storm water management on the proposed location.

The Commission inquired again if the traffic outlet of Shenandoah to C.R. 101 would be able to hold the amount of truck and vehicle that would result in the development. Mr. Katter responded that they are proposing the outlet on 4th Avenue as an additional outlet. The Commission inquired if there would be any additional traffic control changes to any of the roadways. Mr. Leek responded that they would have to check with the City Engineer, however, he anticipated that there would not be any additional four-way stops but certainly some sort of traffic control in the area.

The Commission had some concerns with regard to approving the plat as presented and then in the future, changes would need to be made. Mr. Leek stated that it is fairly simple plat and that staff does not anticipate major changes to the

project. Any minor changes could be addressed in the future and changed prior to the final plat.

Motion: McQuillan/Magin moved to close the public hearing.

Vote: Motion was carried 6-0. Public hearing was closed 8:30 p.m.

Chair Klemm asked for a motion from the Commission.

Motion: Magin/Collins moved to recommend to the City Council the approval of the Preliminary Plat, subject to the conditions as presented.

Vote: Motion was carried 6-0.

5. **PUBLIC HEARING - CASELOG #11014: TO CONSIDER AN APPLICATION FOR AMENDMENT TO THE CITY CODE REGARDING THE CRITERIA FOR CHANGEABLE ELECTRONIC SIGNAGE. APPLICANT: HOLIDAY STATIONSTORES INC.**

Motion: Magin/Mangan moved to open the public hearing .

Vote: Motion carried 6-0. The public hearing was opened at 8:32 p.m.

Holiday Station Stores has submitted an application for text amendment regarding electronic signage. The applicant proposes that the language be modified in the Highway Business (B1) and Major Recreation (MR) zones. Current language governing electronic signs for the B1 and MR zones is as follows:

Changeable Electronic Signs.

1. *If wall signs, shall be limited to the area provided generally in Code Section 11.70, Subd. 9.A. Wall Signs;*
2. *If freestanding signs, shall comply with the requirements of Code Section 11.70, Subd. 9.C. Freestanding and Portable Signs as to area, height and setback;*
3. *That the frequency of change be limited to up to eight (8) times per day and no greater than every thirty (30) minutes;*
4. *That the change be accomplished either immediately, by “fade” or by “dissolve”.*

The regulations in Section 11.70, Subd. 9.A. identify the amount (square footage) of signage allowed on the building walls.

The definition provided for Electronic Changeable Copy Signs is as follows:
A sign or portion of a sign that displays electronic, non-pictorial text information in which each alphanumeric character, graphic, or symbol consists of or is defined by matrix elements using different combinations of light emitting diodes

(LEDs), fiber optics, light bulbs or other illumination devices within the display area. Electronic changeable copy signs include images or messages projected onto building or other objects, wherein the projection device includes the elements described above.

The applicant's primary concern is allowing the message to change with more frequency than is currently allowed. The applicant is proposing that the sign be allowed to change its message every 30 seconds. Current regulations allow a change every 30 minutes up to 8 times per day. The applicant has proposed two alternatives to address their concerns. Language that is underlined is proposed for addition. Language that is ~~struckthrough~~ is proposed for deletion.

Alternative No.1:

The first alternative proposes altering the existing language governing electronic signs.

The definition proposed for Electronic Changeable Copy Signs is as follows:
A sign or portion of a sign that displays electronic, ~~non~~ or pictorial ~~text~~ information in which each alphanumeric character, or graphic, or symbol consists of or is defined by matrix elements using different combinations of light emitting diodes (LEDs), fiber optics, light bulbs or other illumination devices within the display area. Electronic changeable copy signs include images or messages projected onto building or other objects, wherein the projection device includes the elements described above.

In addition, the applicant is proposing the following changes to the regulations for electronic signs:

Changeable Electronic Signs.

- 1. If wall signs, shall be limited to the area provided generally in Code Section 11.70, Subd. 9.A. Wall Signs;*
- 2. ~~If freestanding signs, shall comply with the requirements of Code Section 11.70, Subd. 9.C Freestanding and Portable Signs as to area, height and setback. If part of a freestanding sign, shall not exceed thirty-two (32) square feet in area ;~~*
- 3. That the frequency of change be limited to up to once every thirty (30) seconds ~~eight (8) times per day and no greater than every thirty (30) minutes;~~*
- 4. That the change be accomplished either immediately, by "fade" or by "dissolve".*

Alternative No. 2

The second alternative proposed by the applicant contemplates a new definition and regulations for electronic signage.

The applicant proposes the following language be added to the City Code.

Section 11.02 Definitions.

Signs, Electronic Message Center – a sign or portion of a sign capable of displaying words, symbols, figures, colors or images that can be electronically changed by remote or automatic means, an electronic message center.

Section 11.70, Subd. 9.H. (for Highway Business and Major Recreation Zones)
Electronic Message Center Signs.

1. Location on a wall or a freestanding sign. Electronic message center signs may be located on either a wall or a freestanding sign.
2. Number of electronic message center signs. There shall not be more than one (1) electronic message center sign located on a parcel or zoning lot.
3. Maximum display area of electronic message center signs. The sign area of an electronic message center display shall not exceed thirty-two (32) square feet. The area of electronic message center display shall be included in the calculation of the total permitted sign area.
4. Character of the message and display. Electronic message center signs must only display static and stable text and/or images. Other modes of displaying messages, including scrolling, are prohibited. Modes of display that cause the message to flash are prohibited.
5. Duration of the message. Any message on the display shall remain static or stable for not less than thirty (30) seconds. The interval between serial message or changes of the display shall be at least thirty (30) seconds.
6. Transition between messages. The transition from one static and stable display to another must be direct and immediate without any special effects including fading, starbursts, wiping, and dissolving.
7. Maximum brightness and illumination. Electronic message center signs shall be restricted in their illumination and brightness so that no sign with electronic message center display may exceed a maximum illumination of 500 NITS during the nighttime and 7500 NITS during the daytime. All signs with electronic message center displays must be equipped with an automatic dimmer control or other mechanism that automatically controls the electronic message center display's brightness to comply with this requirement and assure at any time the sign's intensity does not exceed 0.3 foot candles above ambient light levels as measured from one hundred (100) feet from the sign's face. If there is a violation of the brightness standards, the adjustment must be made within one (1) business day upon notice of noncompliance from the City.
8. Malfunctioning electronic message center signs. Signs with electronic message center displays must be designed and equipped to freeze the sign face in one position if a malfunction occurs. Signs with electronic message center displays must also be equipped with a means to immediately discontinue the display if it malfunctions.
9. Operation of an electronic message center sign not in compliance with these regulations. The sign owner or operator must immediately turn off the display within one (1) hour of notification by email from the City that it is not complying with the standards of this ordinance.

The applicant has addressed the issue of travel distances and time between changing messages. The table on page 3 of Exhibit A illustrates that at a speed of 30 mph a vehicle travels 44 feet per second. Given that calculation, in a 30 second timeframe (the change interval proposed by the applicant) a vehicle would travel 1320 feet. A typical city block is approximately 360 feet in length, therefore, in the amount of time that lapses between message changes, a vehicle would travel a distance of roughly 3.5 city blocks.

The applicant has provided information on the regulations adopted by other cities regarding electronic message signs. The applicant provided information as follows:

City	Change interval
Eden Prairie	1 change/20 minutes
Burnsville	1 change/1 minute
Eagan	1 change/20 minutes
Minnetonka	1 change/20 minutes
Savage	1 change/20 minutes
Chanhassen	requires a CUP for any electronic sign
Apple Valley	only allows LED for gas prices

Staff has also included some research provided by the American Planning Association regarding LED signage. Please see Exhibit B for the attachments outlining the summary of research. The research summary supports the position that changing messages and the anticipation of new message distract drivers.

Other departments have been given the opportunity to review and comment on this application. The City Administrator has commented that a 30 second change interval will be distracting to drivers. The Fire Inspector has provided comment recommending denial of the request. Please see Exhibit C for the specific comment.

City Code Sec. 11.83, Subd. 3 provide the criteria required for the granting of a Zoning Ordinance Amendment. Only one of the criteria needs to exist for an amendment to be warranted. The Commission should provide direction to staff as to how it wishes to proceed and staff will draft findings consistent with those wishes. The Commission can then consider the draft findings at an upcoming meeting.

- Criteria #1** **That the original Zoning Ordinance is in error;**
Finding #1 *The City has received no evidence that the original Zoning Ordinance is in error. The current regulations allow for a change in message at 30 minute intervals up to 8 times per day providing a balance between public safety and the need for commercial visibility.*

Criteria #2 That significant changes in community goals and policies have taken place;

Finding #2 There have been no significant changes in community goals and policies that would support a change in electronic signage regulations. The City's Comprehensive Plan includes a tactic requiring that the City will ensure its signage requirements are flexible enough to identify each business given street conditions (speed, terrain, etc.) yet stringent enough to prevent dangerous The traffic condition, the obscuring of other business signage, and visual "clutter".

Criteria #3 That significant changes in City-wide or neighborhood development patterns have occurred; or

Finding #3 There have not been significant changes in City-wide or neighborhood development patterns that require a change in the provision of signage in the Highway Business or Major Recreation Zoning districts.

Criteria #4 That the comprehensive plan requires a different provision.

Finding #4 The comprehensive plan does not require a different provision. The adopted signage regulations allow for the opportunity to utilize electronic signage in commercial districts providing for changes in messages every 30 minutes up to 8 times per day.

Ms. Klima addressed the Commission. This amendment addresses the current regulations for size, height, set back and frequency of text changes. Currently, text can change at a rate of 8 times per day, but no more than every 30 minutes. The applicant is requesting a change of every 30 seconds. Staff has met with the applicant and was given examples of surrounding cities and their regulations.

After meeting with the applicant and given that there is no policy reason to vary from the existing standard, that the requirements of Shakopee's ordinance closely mirror those of the majority of other communities referenced, and that the existing standard provides a balance between the need for commercial visibility and public safety, staff recommends that the Planning Commission recommend to the City Council the denial of the proposed text amendment.

The Commission inquired if there were any other businesses that have requested a change in the recent past. Ms. Klima and Mr. Leek responded that there have only been two other entities requesting a change in the past 10 years, Canterbury and Shakopee School District.

Michael Cronin, Representative for Holiday Stationstores, addressed the Commission. He presented reasons for their request for a change in the text amendment. Their goal is to advertise to more people since there has been a

decrease in foot traffic within their stores. Mr. Cronin provided comparisons of surrounding communities. He also stated that there were no concrete studies proving that changing signs had any significant impact on traffic or accidents in the area. He asked that the Commission take their time on making a decision regarding this item. Holiday is not in a hurry and they would much rather that the Commission review all information and make an informed decision than make an adverse decision tonight.

The Commission alluded that their concern was in the future and that Shakopee would eventually turn into streets of flashing lights and that would be a significant distraction. The Commission struggled with keeping up with technology and maintaining a safe community.

Motion: Magin/Mangan moved to close the public hearing.

Vote: Motion was carried 6-0. The public hearing was closed at 9:15 p.m.

Chair Klemm asked for a motion.

Motion: Magin/McQuillan moved to recommend to City Council denial of the proposed text amendment.

Discussion ensued. Members of the Commission suggested that the item be tabled until a further time when more information could be gathered and obtain more public involvement. They would like to see what other businesses have to say and expressed their concern not to hinder development. Some members expressed a desire to leave the amendment as is and address at a later date. Mr. Leek and Ms. Klima provided information that there was a review deadline of November 23rd, however if the applicant would provide a letter in writing agreeing to an extension, the review period could be extended. Mr. Leek suggested contacting the Chamber for a possible opinion.

Vote: Motion fails 2-4 (with Magin and Seidensticker affirming and Klemm, Collins, Mangan and McQuillan dissenting).

Motion: Mangan/Collins moved to table this agenda item.

Vote: Motion was carried 4-2 (with Klemm, Collins, Mangan and McQuillan affirming and Magin/Seidensticker dissenting).

7. **OTHER BUSINESS:**

No other business was discussed.

8. ADJOURN:

Motion: Magin/McQuillan moved to adjourn the meeting.

Vote: Motion carried 6-0. Meeting adjourned at 9:35 p.m.

Amy Hulet
Recording Secretary