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2 **AGENDA ITEM 4. Consent Agenda**

3  
4 **a.) Approval of the April 19, 2021 Planning Commission Meeting Minutes**

5  
6 Chair Plantan read the item on the consent agenda and asked if any Commissioners wished to pull  
7 it for further discussion.

8  
9 Hearing no such request, Chair Plantan asked for a motion to approve the Consent Agenda as  
10 presented.

11  
12 Commissioner Stockton made a motion, seconded by Commissioner Merriam, to approve the  
13 Consent Agenda as presented.

14  
15 Director Goellner completed a roll call vote on the motion. Upon a vote, the motion carried with  
16 6 Ayes, 1 abstain (Bashioum).

17  
18 **AGENDA ITEM 5. Old Business Items**

19  
20 **a) Consider Adoption of Planning Commission Report and Recommendation of**  
21 **Approval of New Wayzata Design Standards and Related Amendments to**  
22 **Chapter 909 of Zoning Ordinance**

23  
24 Director Goellner gave an overview of the process up to this point of updating the City's Design  
25 Standards, and introduced Andrew Faulkner of Van Meter Williams Pollack, the City's consultant  
26 on the project.

27  
28 Mr. Faulkner noted that they have been very happy with the input from the community, the Zoning  
29 Task Force, and the Planning Commission regarding the Design Standards. He gave a brief  
30 overview of the purpose and the proposed amendments to the Design Standards. He reviewed the  
31 differences between the Bluff, Lake Street, and Wayzata Boulevard Districts. He reviewed the  
32 discussions and recommendations considered for: Parking; Walkways; Landscaping; Rooftop  
33 equipment; and Colors.

34  
35 At the conclusion of Mr. Faulkner's presentation, Chair Plantan asked if the Commission had any  
36 questions for staff or Mr. Faulkner.

37  
38 Commissioner Bashioum stated that the document that the Commission received in their packet  
39 had lots of strike throughs and changes of position in the document. She stated that it was difficult  
40 to find a cohesive paragraph that laid everything out without the strike-throughs and different  
41 colored text. She asked if the Commission would be getting a clean version of the document with  
42 the information that was presented by Mr. Faulkner this evening.

43  
44 Mr. Faulkner stated the over-struck version of the ordinance was provided as a companion to the  
45 Design Standards document to show where changes were being made to the zoning ordinance. He  
46 agreed that it was very difficult to read the marked-up version of the ordinance, and recommended

1 the Commission read the PDF version of the Design Standards document because it is much more  
2 digestible.

3  
4 Chair Plantan noted that there are a number of murals in town, and asked how those would relate  
5 to the Design Standards with regard to treatment or altering of exterior building materials or if that  
6 would fall under a sign ordinance.

7  
8 Director Goellner explained that typically what has happened with murals is they are reviewed on  
9 a staff level. She noted that there is not a lot of clarity in the code around how the City would  
10 review public art. She stated that she spoke with Mr. Faulkner today on what he has seen in other  
11 communities and asked if he had any advice on best practices in light of her concerns about  
12 addressing murals and public art within the standards.

13  
14 Mr. Faulkner stated that regulating murals can be a free speech issue, and there is currently a bit  
15 of that regarding a mural in South St. Paul. He stated that generally they have seen that murals are  
16 not regulated under a sign ordinance, which are usually more defined for commercial purposes.  
17 He stated that some communities have a Public Art Commission, and in others it is the charge of  
18 the Community Development Staff. He stated that they have found it is probably best to have  
19 some sort of body that includes representation from the art community to be able to pass judgment  
20 on these. He stated that it is always difficult to determine if it is art or if it is branding. If the  
21 question is about pure art, he believes it is probably best overseen by a separate commission, with  
22 perhaps a separate ordinance that is specifically about art. He noted that he had been thinking that  
23 if there were standards within this document, they would only apply to commercial, mixed-use,  
24 and multi-family construction, which means someone could put something on their home or a  
25 property wall and it would not be covered.

26  
27 Commissioner Douglas stated that there was a Public Arts Committee in the City, but she was  
28 unsure if it was still functioning. She stated that she feels murals would go in that direction, and  
29 suggested that the City take a look at that possibility.

30  
31 Director Goellner stated that she does not believe that committee is still functioning.

32  
33 Commissioner Douglas suggested talking to former Mayor Willcox because she believes he had  
34 something to do with the original formation of that committee.

35  
36 Commissioner Bashoum noted that she had served as a member of the Public Arts Committee.

37  
38 Commissioner Merriam asked why the first sentence on page 68, that began with “Housing uses  
39 are encouraged...” was eliminated.

40  
41 Mr. Faulkner stated that happened following a discussion with staff. He explained that they ended  
42 up pulling that sentence out because they believe that the Design Standards should not address  
43 land uses that are addressed elsewhere in the Zoning Ordinance.

44

1 Commissioner Merriam asked about an item on page 69, item C, that lists the activities that the  
2 Design Standards do not apply to and asked if the wording could be changed to “a similar size *and*  
3 design” rather than “a similar size *or* design”.

4  
5 Mr. Faulkner stated that change could be made.

6  
7 Commissioner Merriam asked if the wording under item C on page 69 could be changed to “similar  
8 and equivalent quality materials”, rather than “same or similar materials”.

9  
10 Mr. Faulkner stated that they could also make that change.

11  
12 Commissioner Merriam asked for an explanation of the proposed language of Sec. 909.061.

13  
14 Mr. Faulkner explained that this should read, “Building recesses shall be provided to allow space  
15 for outdoor dining, seating, or landscaping.” He noted that significant breaks would count as a  
16 building recess.

17  
18 Director Goellner stated that it appears as though 1 and 2 in that provision are meant to be the same  
19 number and not separate provisions.

20  
21 Commissioner Merriam asked about Sec. 909.07A.1.a. and stated that she thinks that the way it is  
22 worded could leave it open for interpretation that there is the ground floor and then there is a recess  
23 above the ground floor. She stated that her understanding is that the recess would be to be included  
24 with the ground floor.

25  
26 Mr. Faulkner clarified that is an important distinction, and explained why the City would not want  
27 to have the ground floor included on the upland sides of the building, but would on the lake side  
28 of the building.

29  
30 Commissioner Merriam noted that screened porches are included in Sec. 909.085 and asked if the  
31 City really wanted to include them in this section.

32  
33 Mr. Faulkner stated that it could be removed and explained that he believes the thought process in  
34 this instance was that the Promenade used screened porches throughout. He stated that he  
35 understands her concern because they can seem very dark even though they are an attractive  
36 amenity. He stated that if the other Commissioners agree, they could take that out.

37  
38 Commissioner Merriam stated that, personally, she would like to see it taken out. She referenced  
39 6B.3 and asked if this language was removed because it was considered a zoning issue and did not  
40 belong in the Design Standards.

41  
42 Mr. Faulkner stated that he believes it was moved out of the standards and into “guidance” section.

43  
44 Commissioner Merriam stated that she would like to spend some time discussing how deviation  
45 requests are reviewed. She stated that the document stated that minor deviations would fall under  
46 staff review. She questioned some of those things, such as any deviation from numerical standards

1 equal to or less than 5% of the standard. She stated that sometimes 5% can be a big deal, so she  
2 wonders if that type of blanket statement should be made. She stated that if they are significant  
3 deviations, they need Planning Commission and City Council approval, but the proposed language  
4 lists several items that would automatically fall under the definition of minor deviations. She  
5 stated that Sec. 909.5B referenced to large scale sites of 3 acres or more. She stated that she is  
6 uncertain why the Planning Commission would not want to look at large scale sites. She gave  
7 other examples of things like; rooftop equipment and screening, façade articulation, ground floor  
8 design, awnings, building materials and quality, that she felt could be deemed significant  
9 depending on the circumstances. She asked how the other Commissioners felt about these issues.

10  
11 Mr. Faulkner gave an overview of the building materials and quality deviation and noted that the  
12 idea is not to remove the control from the Planning Commission but to give staff a bit more  
13 flexibility in working with applicants to propose suitable materials. He noted that the Planning  
14 Commission would still see the design review and elevation package from the applications.

15  
16 Commissioner Merriam asked for an explanation of why the large-scale sites would be considered  
17 for minor deviations.

18  
19 Mr. Faulkner stated that this was to give staff flexibility to work with applicants on issues such as  
20 whether the internal streets connect to neighboring properties. He gave the example of Wayzata  
21 Boulevard where there is not that much of an existing street grid around. He stated that staff and  
22 the City's planning consultant were a bit concerned about this standard and explained that they  
23 wanted to give staff the ability to waive some of those standards on a site-by-site basis. He stated  
24 that once again, in this situation, this would be included in the staff report to the Planning  
25 Commission and they would receive information about it, but it would be negotiated and worked  
26 out earlier in the process rather than later.

27  
28 City Attorney Schelzel stated that wants to make sure everyone understands the process and the  
29 review staff would be doing with these changes, and what things would and would not be coming  
30 to the Planning Commission.

31  
32 Director Goellner explained that the intent is that the Planning Commission would review all  
33 requests for significant deviations, which are listed in Sec. 909.29, and would make its decisions  
34 based on that criteria. Staff would handle the overall design review, in a manner like a zoning  
35 review is currently done. Staff would receive a development application that would include escrow  
36 payment as well as application fees. She stated that she is recommending that at least for the first  
37 year, the City would keep Van Meter Williams and Pollack on a retainer basis to assist staff in  
38 applying the new standards and using escrow dollars from applications for that technical  
39 assistance. Staff, with the assistance of the architectural professionals, would review proposed  
40 design to ensure a proposed project meets all of the standards and if there are any minor deviations,  
41 under Sec. 909.29B, staff could approve them if the review done by staff shows that the deviations  
42 meet the criteria for approval. If a deviation requested is significant as defined in the Design  
43 Standards, that would be brought through the process of Planning Commission review and Council  
44 approval, and noted that it will be very similar to how it functions when a building needs a variance  
45 or other land use approval.

46

1 City Attorney Schelzel clarified that staff will always prepare a report with their design analysis  
2 and any deviation approvals, but the Planning Commission and City Council would only get  
3 involved if there was a significant deviation, which is a shift from the way it is currently handled.  
4

5 Mr. Faulkner stated that if an applicant proposes a deviation which would fall under a minor  
6 deviation, and staff rejects it, and the developer proceeds, then it would arrive in front of the  
7 Planning Commission.  
8

9 Director Goellner agreed that there should be some sort of appeal process for a developer who  
10 disagrees may be a good thing to have codified.  
11

12 City Attorney Schelzel noted that he doesn't think there is an appeal process expressly spelled out  
13 in the proposed amendments. In effect, that is what could happen if a developer wanted to press  
14 it further; it would default to a variance from the Design Standards and reviewed under that criteria.  
15 If the Commission wanted to have some sort of appeal process of a staff decision, he thinks that  
16 should be written into the changes to Chapter 909.  
17

18 Commissioner Merriam reiterated that she would question whether façade articulation, rooftop  
19 equipment, or any deviation from numerical standards equal to or less than 5%, should actually be  
20 considered a minor deviation.  
21

22 Mr. Faulkner stated that the only standard in the façade articulation section is that it must occur at  
23 a specified average spacing and can include the things listed. He explained that it is fairly detailed  
24 and fairly limited because they are taking care of so many of the building and façade architectural  
25 character elements through the massing provisions of the standards, and a deviation from those  
26 would be a significant deviation.  
27

28 Chair Plantan asked about the 5% requirement and if it meant that if the application meets 95% of  
29 the required numerical standards it doesn't need to be reviewed or documented.  
30

31 Mr. Faulkner stated that this is a key point of clarification and explained that the answer is no. He  
32 stated that he thinks they will need to figure out a way to make this point more clear. He explained  
33 that they are saying that if a standard would require something at 50 foot spacing and the applicant  
34 provides something at 47.5 foot spacing then, that would be acceptable, because it is a reduction  
35 of 5% from the number.  
36

37 Director Goellner stated that it would be up to staff to document that determination. Using the 47.5  
38 foot spacing as example, a determination would need to be made that it meets the criteria and why  
39 staff was comfortable with it. She stated that it does not mean that everyone only needs to follow  
40 95% of the rules.  
41

42 City Attorney Schelzel stated that one of the things discussed at the last meeting was how to get  
43 folks to follow the guidance of the Design Standards, since guidance was a suggestion rather than  
44 a requirement. He stated that following the guidance was added as a deviation approval criterion  
45 in the latest draft. So, when an application is being reviewed, if overall it follows a lot of the  
46 guidance, that will weigh in favor of approval of any requested deviations.

1  
2 Commissioner Bashioum asked if the sidewalk widths will be included, and explained that she felt  
3 it was a bit unclear whether it was within the County right-of-way roads or within the different  
4 districts. She asked what would be the minimum sidewalk width anywhere within the City as it  
5 applies to Design Standards.

6  
7 Mr. Faulkner stated that it will be 12 feet on Lake Street, 5 feet in the Bluff, and 7 feet on Wayzata  
8 Boulevard. He noted that Wayzata Boulevard gets a bit complicated because of the County  
9 standards and currently, you would only be able to get 5 feet because that is what the County  
10 builds.

11  
12 Commissioner Bashioum stated that the City does not currently consistently have 12-foot  
13 sidewalks on Lake Street, so this would be a new change. She asked what would happen for  
14 buildings that aren't compliant, and if they would be grandfathered in.

15  
16 Mr. Faulkner stated that the 12 feet was taken directly from the existing standard, so he will confess  
17 that he didn't know that a number of buildings along Lake Street did not already meet that standard.  
18 He stated that it was possible that they were developed prior to the current standards requirement,  
19 and that Commissioner Bashioum just raised a fairly complicated issue. He stated that the City  
20 cannot require somebody to reconfigure or demolish part of their building to increase sidewalk  
21 width, and there is likely grandfathering involved.

22  
23 Commissioner Bashioum clarified that her question was actually more about a situation where, for  
24 the 12 feet of sidewalk, there are patios or other construction that impedes pedestrian traffic, and  
25 not so much about whether the building itself was in that space but other incursions into the public  
26 right-of-way.

27  
28 Mr. Faulkner stated that the standards are really focused on the development and construction,  
29 and not necessarily the use and the maintenance of clear sidewalk open space.

30  
31 Director Goellner stated that for sidewalk cafes that encroach into the right-of-way, the City  
32 Council uses the right-of-way ordinance for those decisions, so the Design Standards are  
33 applicable to new or significant construction. She stated that she thinks the Council will use the  
34 Design Standard widths in consideration for future opportunities.

35  
36 Commissioner Bashioum stated that walkability and being pedestrian friendly is mentioned at least  
37 a dozen times in this document as well as the Comprehensive Plan. She noted that if the City  
38 doesn't follow through on its code and is looking to update designs standards for a new building,  
39 it doesn't seem fair that the City is not equally representing what they want the City to look like.

40  
41 Director Goellner stated that she believes the City Council makes those decisions based on right-  
42 of-way ordinance, and regulates the encroachments and outdoor sidewalk cafes by permit, which  
43 are reviewed and approved at public Council meetings.

44  
45 Commissioner Bashioum asked if the permits are temporary.  
46

1 Director Goellner clarified that the permits are renewed each year.

2  
3 Commissioner Bashioum asked if the permits were also reviewed each year.

4  
5 Director Goellner stated that her understanding is that they are reviewed each year.

6  
7 Commissioner Bashioum asked if the new Design Standards would enter into the renewal process.

8  
9 Director Goellner stated that the Design Standards are really meant to address new building  
10 construction, or substantial rehabilitation or additions to buildings. She stated that she thinks the  
11 discussion the Commission is having about walkability is an important consideration for Council,  
12 and they have the discretion to decide whether they feel each permit is appropriate for the area.

13  
14 Commissioner Bashioum stated that the Council also has the discretion to decide if they feel it is  
15 appropriate to encroach on public right-of-way, impinging pedestrian traffic.

16  
17 Commissioner Douglas asked if the 12-foot sidewalk measurement included the 6-foot strip of  
18 landscaping.

19  
20 Mr. Faulkner stated that was correct. He clarified that it is 12 feet, with 6 feet of landscape, which  
21 in some cases means street trees and in others it is lawn.

22  
23 Commissioner Merriam stated that she feels as though the sidewalks have changed recently, with  
24 the new Panoway improvements. She asked if the City still had aggregate brick sidewalks on Lake  
25 Street. She referenced Sec. 909.16B3 and noted that if the City doesn't, this section should  
26 probably be changed.

27  
28 Mr. Faulkner stated that they can coordinate with City staff to make that change and answer that  
29 question.

30  
31 Commissioner Stockton asked about the Wayzata Boulevard District walkability with regard to  
32 high-speed areas, and if there was the ability to consider putting metal poles coming out of the  
33 ground in the crosswalk areas. She explained that they are frequently used in Europe where two  
34 or three of these poles are placed in the cross walks, so if a car were to veer off the road into the  
35 pedestrian area, they would hit the metal rather than the person. She stated that this may not be  
36 the right arena for that decision, but explained that she wanted to at least bring it up.

37  
38 Mr. Faulkner stated this area has been a very large struggle for them, and would encourage the  
39 Commission to see what they have addressed on Wayzata Boulevard. He noted that it is sort of  
40 the most they can do, at this moment, and is definitely a temporary solution. The challenge in that  
41 area of the City is that the roadway is controlled by the County, so nothing can be done without  
42 their assistance. He stated that they have done everything they can within the Design Standards to  
43 address those issues without really touching what is the County's.

44



1 Director Goellner stated that they have been thinking about adding in elements of traffic safety  
2 analysis into the larger Wayzata Boulevard Corridor Study that intersects land use, design, and  
3 future road construction.

4  
5 Chair Plantan asked if the Commission felt ready to make a motion recommending approval, or if  
6 they would prefer to table the approval in order to incorporate some of the things that have been  
7 discussed tonight.

8  
9 Commissioner Parkhill stated that he feels the Commission can note the changes and still  
10 recommend approval.

11  
12 Commissioner Douglas stated that she agreed with Commissioner Parkhill, and the Commission  
13 can acknowledge today's discussion and move the document forward.

14  
15 Chair Plantan stated that she brought up the idea of tabling discussion because of the issues raised  
16 by Commissioner Merriam with relation to significant versus minor deviations and staff review  
17 rather than Commission review.

18  
19 Commissioner Bashioum stated that she would like to see a document that does not have as many  
20 strike-throughs because it is a bit confusing to go through the entirety of the document, and  
21 explained that she would like to see a clean copy before it moves forward to Council.

22  
23 Commissioner Stockton stated that she agreed with Commissioner Bashioum and noted that even  
24 though she is on the Task Force, this a big decision.

25  
26 City Attorney Schelzel stated that if the Commission decides to make a motion to move this  
27 forward, there is a draft report and recommendation included in the packet that would do that. He  
28 noted that he wanted to draw the Commissions attention to a recommended condition in that report  
29 that there would be incorporation of any final edits to correct minor errors, clarify existing or  
30 proposed language, and make sure that it is properly codified within the City Code. He stated that  
31 the draft Report could be adopted and moved forward with an additional condition or direction  
32 that certain things be changed in the proposed standards, such as moving something from a minor  
33 deviation to a substantial. He stated that there is also the option noted by the Chair to table this  
34 item until the next meeting and direct staff to come back with a document that reflects more of  
35 these changes and a clean copy of the updated ordinance that could be more easily read without  
36 the strike-throughs.

37  
38 There being no further discussion, Chair Plantan asked for a motion on the application.

39  
40 Commissioner Douglas made a motion, seconded by Commissioner Parkhill, to adopt the Report  
41 and Recommendation recommending approval of the proposed new Wayzata Design Standards  
42 Document, and the Zoning Ordinance Amendment, subject to the incorporation of any final edits  
43 to the document that correct minor errors, clarify existing or proposed language, properly codify  
44 within City Code, and/or are recommended by the City Attorney or City Clerk.

45

1 Chair Plantan asked if the discussion tonight regarding significant or minor deviations would be  
2 considered with this motion.

3  
4 City Attorney Schelzel stated that he took the motion to mean that it is moving forward the  
5 documents as proposed, and noted that there could be a friendly amendment could be added to the  
6 motion on the floor to include a note or direction on that if the Commission wanted a more  
7 substantial or specific changes to some of those areas.

8  
9 Hearing no such amendment, Chair Plantan asked for a roll call vote.

10  
11 Director Goellner completed a roll call vote on the motion. Ayes – Plantan, Sorensen, Parkhill,  
12 Douglas, Stockton; Nay – Merriam, Bashioum. The motion carried.

13  
14 Director Goellner stated that they will correct the typos and work with the City’s consultant, the  
15 City Attorney and City Clerk to ensure the process around the deviations is incorporated as  
16 discussed.

17  
18 City Attorney Schelzel stated that the Council will be aware of the discussion that the Commission  
19 has had, and noted that Council is free to make further amendments to the documents.

20  
21 **AGENDA ITEM 6. Public Hearing Items**

22  
23 **a) Consider Development Application for a Planned Unit Development Amendment**  
24 **and Variance for the Rice Street Townhomes of 520, 524, 530, and 534 Rice Street**  
25 **East**

26  
27 Director Goellner explained that this application for the Rice Street Townhomes is for a PUD  
28 amendment and variance from the R-4 and R-5 standards that are applicable in a residential PUD  
29 District. She gave background information on the zoning in the surrounding neighborhood. She  
30 stated that this property is zoned PUD, and is guided as high density residential in the 2040  
31 Comprehensive Plan. She reviewed the location of the completed and adjacent building 1, and  
32 buildings 2 and building 3 of the proposed plan, and noted that there are two units in each building  
33 for a total of 6 units. She stated that the PUD district was approved in 2006, and since then,  
34 Building 1, the stormwater management system, and the parking lot have been completed; but  
35 noted that Buildings 2 and 3 were not built at that time. The properties for Buildings 2 and 3 are  
36 under new ownership as of 2019. She stated that after discussion between staff and the applicant,  
37 the applicant decided to complete the project as originally approved and a building permit was  
38 issued for Building 2. She explained that staff had missed some of the applicable PUD standards  
39 for the new building, so construction was halted about a month ago. The Building Official has  
40 allowed the applicant to preserve and secure portions of the building and materials that were on  
41 site and underway at the time because the application review process would take time to conclude.  
42 She stated that the applicant is proposing to construct Building 2 and also Building 3 under a  
43 revised plan which requires a PUD amendment and a variance to the R-4 and R-5 standards that  
44 are applicable in the PUD district. She stated that this is unique in that a building permit was  
45 incorrectly issued but that the City still needed to apply the applicable PUD standards. She showed  
46 photos of the existing conditions on the site.

1  
2 Assistant Planner Kieser reviewed the PUD amendments that are proposed and highlighted the  
3 main changes from the 2005 plans to the current plans, including: front yard setback; staggering  
4 of unit heights for Building 2; rooftop enclosure; building materials; construction deadline; other  
5 modifications to the plans such as window locations, floor plans, deck locations. He noted that  
6 the applicant is asking for the construction deadline to be changed to 2 years after the approval of  
7 a new or updated Development Agreement for the project.

8  
9 Director Goellner summarized the public comment that the City has received thus far. She stated  
10 that all comments that had been received by April 29, 2021 were attached to the packet and were  
11 from: Anne LaFrance; Anthony Straszewski, Marlene Straszewski; Bruce Merry; John Adams;  
12 Jon Munson; Kathleen Nash; Peter Slocum; Robert Kinghorn; Tasha Winkels; and Tom Robbins.  
13 She explained that the comments expressed many concerns about the proposed changes with the  
14 utmost concern being the smaller front yard setback for Buildings 2 and 3, the change in the  
15 staggering of the unit height for Building 2, the visual of the impact of the rooftop elements that  
16 are proposed, and the changes to building materials. She stated that a petition was signed by 7  
17 property owners, which is a total of 14 residents, that states that the original applicant had worked  
18 with the neighborhood during the first PUD approval process and listed the modifications in the  
19 current plan that they found unacceptable. She reviewed the questions for the Commission to  
20 consider when considering the requests by the applicant.

21  
22 Chair Plantan asked if the Commission had any questions for Staff.

23  
24 Commissioner Sorensen stated that it was interesting to see the site plan that showed the location  
25 of the storm sewer, and that he was under the impression that was the driving issue that resulted in  
26 the setbacks moving closer to Rice Street. He stated that in looking at the plans, it is a little hard  
27 to understand why the buildings have to be moved so far into the setback. He asked if the storm  
28 sewer was not built where the City thought it would be, and therefore the buildings now have to  
29 be moved.

30  
31 Planner Kieser stated that is the main reason that the applicant has stated that the building was  
32 moved forward in their plans. But, essentially, that there is no real reason that Building 3 would  
33 need to be moved forward based on that. He stated that the only reason that the applicant might  
34 need to do that is if there is any future work done on that site, they could get down there and do  
35 that work, but staff would not require it.

36  
37 Public Works Director Mike Kelly stated that his understanding is that the storm sewer was built  
38 exactly according to plan, and noted that it is a very large structure. He stated that he is not sure  
39 how the surveyor laid it out on their drawing, and noted that the opening/manhole cover was placed  
40 as far north as it could be, which would allow the building to be built within a few feet of the  
41 structure. He stated that in his opinion, the current building could have been constructed closer to  
42 the storm structure; but there was no discussion or request from the applicant to the engineering  
43 or public works department for moving the building to the north.

44  
45 Commissioner Sorensen noted that he has other questions not on this topic, but asked if it would  
46 be appropriate to allow other Commissioners who may have questions on this topic to ask theirs

1 now before he moves on. The Chair thanked Commissioner Sorensen and recognized  
2 Commissioner Douglas.

3  
4 Commissioner Douglas asked for clarification on whether there was any concern from the  
5 developer or discussion about the location.

6  
7 Public Works Director Kelly stated that from his recollection, there were no concerns with the  
8 design of how the stormwater was meant to drain towards Minnetonka Avenue. The plan was  
9 always to have a smaller building unit on that parcel ,and there was not discussion with engineering  
10 staff about moving or changing the unit from its original design.

11  
12 Commissioner Sorensen asked what the rationale is from the applicant regarding not staggering  
13 the buildings.

14  
15 Planner Kieser stated it comes back to the review of the PUD standards, and not finding it at the  
16 forefront. He stated that in the 2005 plans and renderings, it does not show the exact calculation  
17 or the height of the staggering units. He stated that in the approved building permits, it shows  
18 Building 1 should be staggered 4 feet from unit 1 to unit 2, and was actually built at a 2-foot stagger  
19 between the units. Building 2 should be staggered at 2 feet from unit 3 to unit 4; however the  
20 proposed plans do not show that staggering.

21  
22 Commissioner Sorensen stated that he believes the current building is hand-laid brick and cast or  
23 limestone accessories. He asked if the intent for Buildings 2 and 3 to be hand-laid brick because  
24 the word 'vener' was used. He stated that he thinks this is important information for the  
25 Commission to know, namely, if it is hand-laid brick or just a veneer that is attached to a pre-cast  
26 panel.

27  
28 Planner Kieser explained that the plans show a brick veneer finish and cast stone. He noted that  
29 the materials are available at City Hall for review to show the likeness to the materials that were  
30 used in 2005. He stated that the applicant can give a more detail response.

31  
32 Chair Plantan asked if there had been a landscape plan submitted.

33  
34 Planner Kieser stated that there was not a landscape plan submitted with this application. He stated  
35 that there was an encroachment review for the retaining walls in the right of way, but nothing for  
36 the landscaping.

37  
38 Commissioner Parkhill asked if Building 1 was a block construction with a brick outside, and if  
39 Building 2 was a metal frame or wood construction with full brick on the outside. He stated that  
40 he would like to understand the difference in the construction being proposed versus what is in  
41 place on Building 1.

42  
43 Planner Kieser stated that Building 2 is framed as wood, and believes the intent is to lay the brick  
44 on the wood for the brick veneer, but reiterated that he would have the applicant explain this in  
45 more detail.

46

1 Commissioner Parkhill asked about whether there was a difference in functionality between  
2 limestone cast and cast stone.

3  
4 Planner Kieser stated that in the Design Standards, there are simply ‘stone’ requirements, so those  
5 are all incorporated into a broader category.

6  
7 Commissioner Parkhill confirmed with Planner Kieser that there was not an issue with the permit  
8 for Building 3, there was just a mistake issuing the permit for Building 2. He asked how the  
9 buildings were moved forward from where they are in the original plans, and asked if it was a new  
10 drawing that was submitted for permitting.

11  
12 Planner Kieser stated that those were the plans that were submitted with the building permit for  
13 Building 2 and when it was reviewed in greater detail later, that resulted in the halt, in order to  
14 move through this public process to allow continued construction of the building.

15  
16 Commissioner Parkhill asked if there was a separate architect hired by the builder.

17  
18 Planner Kieser stated that the architect is DFP which was not the architect for the original PUD.

19  
20 Commissioner Merriam asked Public Works Director Kelly about the building process, and  
21 whether there is a discussion about where the garage level is compared to the driveway and how  
22 that is supposed to be set. She stated that she understands that the road is already in place behind  
23 all three units. She noted that she went to the site today and because the second building wasn’t  
24 staggered, the garage is a good foot lower than where the connection is from the driveway. She  
25 asked if that was something that was also approved or considered.

26  
27 Public Works Director Kelly stated that they looked at that, and explained that the drawings that  
28 were presented to the Engineering and Public Works department last fall indicated that the garage  
29 floor would be at an elevation of 952. He stated that he understands that number probably doesn’t  
30 mean anything to the Commission, but explained that it is higher than the driveway. Typically  
31 they would want to see an elevation of the garage floor above the driveway when looking at its  
32 relationship to a public street. He stated that this is a bit different from the standpoint that it is  
33 adjoining a private driveway; however, when the City reviewed the plans last fall, in relationship  
34 to the encroachment agreement, the elevations for the second building were at 952 and both above  
35 the driveway. He stated that what Commissioner Merriam saw today is an elevation of about  
36 948.5, so somewhere between the plan that was reviewed last fall and the issuance of the building  
37 permit, he believed that number changed.

38  
39 Commissioner Douglas stated that she went to City Hall early today and took a picture of the  
40 proposed brick and it says on the brick ‘Rice Street Faux Brick’. She asked for clarification on  
41 the building materials.

42  
43 Planner Kieser stated that he will have the applicant answer that question.

44  
45 Commissioner Douglas asked if there was elevator equipment on the roof.

46

1 Planner Kieser stated that there is no elevator equipment on the rooftop.

2  
3 Commissioner Douglas asked how large the rooftop enclosures are relative to the first building.

4  
5 Planner Kieser explained that the approved 2005 plans do not show roof dimensions, but in the  
6 plans for the building permit for Building 1, those enclosures were shown at around 100 square  
7 feet. The proposed square footage for the remaining enclosures are around 144 square feet and  
8 just a bit larger for unit 6.

9  
10 Commissioner Douglas asked what the reason was for the increase in size by almost 50%.

11  
12 Planner Kieser stated that the applicant has requested to be able to build according to these plans,  
13 so would be another question for the applicant.

14  
15 Commissioner Sorensen stated that he thought he understood that when the plans were initially  
16 submitted by the applicant, that the garage elevations were 952 but have actually been built at 948.  
17 He asked if the building permit plans that were mistakenly approved show an elevation of 948.

18  
19 Public Works Director Kelly stated that he does not oversee the Building Department, so he is not  
20 sure exactly which set of plans were submitted for the permit. He stated that what he has seen  
21 more recently had the elevation at 948.5, and explained that the documents he looked at for the  
22 encroachment agreement show the garage floor for building 2 to be 952.

23  
24 Commissioner Bashioum asked Public Works Director Kelly about the disparity in the garage  
25 floor, and if that would be considered a significant change.

26  
27 Public Works Director Kelly stated that he would like to clarify the two elevations of 952 and  
28 948.5 which is about a 2-foot difference and is essentially a drop off into the garage from the  
29 current driveway whereas, originally proposed it was above the driveway. He stated that when  
30 they look at things from a drainage standpoint for single family residences, they have a code  
31 provisions that would typically like to see the garage at least 1 foot above the center line of the  
32 street or the edge of the street. He explained that most of the time homes are setback from the  
33 street by 20-30 feet or more which makes it very challenging in a large rain event for the water in  
34 the street to back up enough that it would find its way into a garage. In this case, he understands  
35 the driveway is graded from the building to the south curb line, so the issue with water coming  
36 down the driveway would likely not go into the garage; however, it may because of its grade  
37 change. He stated that the driveway is tipped from the north side to the south side so the water  
38 wants to be on the south edge.

39  
40 Commissioner Bashioum asked if Public Works Director Kelly was concerned about water getting  
41 into the garage.

42  
43 Public Works Director Kelly stated that it is not a concern for him because he will not be living  
44 there, but if he was a property owner looking at this site, he would be concerned.

45  
46 Chair Plantan invited the applicant to address the Commission.

1  
2 Applicant K.C. Chermak, Pillar Homes, stated that he will do his best to fill in the gaps from the  
3 presentations made by Director Goellner and Planner Kieser. He stated that his process began last  
4 spring just as COVID hit and has been under scrutiny the entire time. He noted that the  
5 correspondence can be documented pretty solidly for about 9 months until the building permit was  
6 issued. He stated that there was not a hidden agenda or deviation that was supposed to cause this  
7 upheaval. He stated that this site has sat dormant for 13 years and noted that it had to go back to  
8 the bank in 2008 because of the economic turndown. He stated that there have been 2 owners  
9 between then and now, and the interpretation of everything that goes with that is of utmost  
10 importance for everybody involved with Pillar Homes. He stated that this is a concept plan and it  
11 does meet, has met, and has been reviewed by the City relentlessly for 9 months. This PUD had a  
12 lot of aspects to it, first and foremost, it was not finalized and submitted to the County and  
13 reiterated that it was a concept. He stated that it is the first thing stated on the resolution 'concept  
14 plan approval'. The concept plans are a bunch of general plans that have been somewhat stated  
15 and shown by staff, and he feels were designed to have some deviations and alterations made to  
16 them when data, engineering, and survey work was applied to the site. He stated that the back lot  
17 had to be broken off which was part of the PUD and also 206 Minnetonka; that building was a  
18 Dutch colonial and was designated to stay, and that also had to be split off and taken care of. In  
19 the meantime, what was left was the final plat for the townhomes. He stated that he would like  
20 the Commission to notice that he has switched from PUD to plat, and the final plat was finalized  
21 at the County. As the changes were finalized, changes had to be made on site to accommodate  
22 that, which is why most of the stuff turned in was concept. He stated that he believes staff will  
23 back him up on the fact that everything that was turned in was labeled 'concept' or 'hypothetical'  
24 with a plan that was designed to achieve certain setbacks, hardcover, and design standards. The  
25 small deviations have been reviewed, discussed, suggested by a professional. He stated that has  
26 done just want the resolution says, in complete accordance with the City and the direction that was  
27 given to him by staff. He stated that he worked very hard to complete the PUD to the best of the  
28 interpretation of the PUD that was filed. He reiterated that they believe they have adhered to the  
29 original PUD and look forward to the final details that can be reviewed. He stated that he does not  
30 think he was given any special treatment by staff and would say that he was scrutinized  
31 significantly more than an average permit would be. There are some specifics that were set in  
32 stone that were easy to follow. It was not mentioned once, which he is a little surprised by, that  
33 this particular development had 75% hard cover and is a PUD development. He stated that it is  
34 important to note the things that were removed from the PUD and the 75% hard cover has to do  
35 with the townhomes and the six lots and not the driveway, which is the common area outlot, that  
36 holds the water management system together. From day one, the concept plan for the site was  
37 such that even the lot lines that set up the existing PUD were not finalized. Lot 1 and 2 were made  
38 to be the largest which slides everything to the west. The plat that was filed does not match up  
39 with the particular location of where the townhomes were conceptually going and all shifted  
40 slightly to the west. Based on the data of that particular location, everything had to be shifted and  
41 the adjustments were made accordingly to accommodate that.

42  
43 Mr. Chermak asked Director Goellner to put up the official survey of the site that he has turned  
44 into the City that was completed by Sathre Bergquist and explained that every single grade from  
45 the original survey deviates by anywhere from 3.8 to 4.2 feet in height off the ground. Deviations  
46 were made to this from day one, which is acceptable and staff reviewed them. The original survey

1 that everyone has been referring to, the actual garage floors are 956.1 and 954 and the original  
2 grades were supposed to 960.9 and 958 and noted that this was in the approved data that was turned  
3 in with the PUD. He stated that on all the elevations, there were 10-11 steps coming from the front  
4 sidewalk to the front door and in actuality, there are 5 steps. He stated that to bring the discussion  
5 back to today's standards, he would like to point out some of the things that were discussed, such  
6 as the plans, were just concept plans and not building or bidding plans. He stated that the storm  
7 sceptor being discussed in the original plans was the man hole cover and not the exact sceptor. He  
8 stated that it is just over 7 feet tall, and the reason that the pipe deviates from there is that it was  
9 never a requirement that he could see on any documents that this system and the pipe that collects  
10 the water from the parking area to the commercial building is to the west. He stated that he can't  
11 find that on any of the documents. He stated that on the grading plan that was signed and approved  
12 and turned in with the PUD, it shows a man hole in the middle of the parking area and also shows  
13 a much smaller man hole touching the building and doesn't indicate the actual structure going in  
14 underground; it shows nothing relating to the water that needs to be picked up from the existing  
15 commercial building to the west. He reiterated that part of what was approved is a concept plan  
16 and part of the concept does not match reality. He explained that there are constant indications  
17 throughout the entire paperwork that was turned in with the PUD that completely matches up with  
18 the 'word of the day': concept. There is no man hole in the middle of the parking lot, there are  
19 three large man holes on the backside, and the actual storm sceptor is in the general location. He  
20 stated he had to provide this information with the help of Sathre Bergquist. He reviewed the pipe  
21 locations and explained that the sliding of the building came through a suggestion from the  
22 surveyor, from Pillar Homes and a collaboration of planning and staff to be able to not deteriorate  
23 or provide jeopardy to the storm sceptor. Based on this, a whole bunch of other things were decided  
24 in continuity and consistency with the City. He reviewed the building plan and garage levels and  
25 noted that units 3 and 4, the garage floor will be 951.5 and units 5 and 6 will be 948 and the  
26 difference has to do with the entire outlot driveway sloping from high to low from east to west.  
27 He stated that the concept plan was approved in 2005 and has been dormant for 13 years. He noted  
28 that there was not a Shoreland Overlay District when this was done, but believes it was  
29 implemented shortly thereafter. He stated that he is very involved in water management and enjoys  
30 filtering and making sure water, before it gets to Lake Minnetonka, is filtered and purified. He  
31 said they requested, and were approved for, permeable pavers from the outlot lot line to the  
32 garages, and would completely address with Public Works Director Kelly was talking about and  
33 water will never make it to these garages. He stated that they are all pitched so that the water either  
34 gets into the ground through the permeable pavers or it will angle and work its way down to the  
35 normal storm sceptor that is at the end of the building that has been there for 15 years.

36  
37 Mr. Chermak continued that he feels it is important for the Commission to know how everything  
38 reached this point and the immense dialogue that took place with professionals to problem solve  
39 the situation. He explained that the engineering backs up everything that is taking place on the  
40 site, and was carefully scrutinized by the City and was done, in step, together. Based on the  
41 location of units 1 and 2 and the finalizing of the plan, they are located further west than the original  
42 concept plan. He stated that that they moved the building that was on the lot line over 5 feet and  
43 the biggest unit is unit 1, which moves the middle of the building further to the west which means  
44 everything else had to be slid to the west and all grades had to be adjusted. He stated that every  
45 single height requirement, every single concept height, that was in the original PUD was not based  
46 on data, and everything in there is 4 feet higher than it should be. He stated that the reason it is



1 important that the two buildings are slid further to the west is that the grades start to diminish and  
2 stepping the buildings was not necessary. He stated that he believes because the original survey  
3 work was not accurate based on the factual information of what was going to be installed, that the  
4 grades were all off and the elevation height is actually lower than the intended plan were originally  
5 set. He stated that this was not in violation of anything and they were simply adjustments that  
6 make this project work. The plans that were turned in with the data base that they are referencing  
7 with the PUD had to do with particular elevations and were concept plans and incomplete. He  
8 stated that the plans are simply not buildable and gave the example of the stairs that reach the top  
9 of building and the doors that are depicted to the south, but in actuality face east and west, and  
10 explained that this building was not built based on these plans. He stated that he pointed this out  
11 to Planner Kieser in one of his earliest reviews that these plans do not match what was built. He  
12 stated that there was a deviation made, and he is requesting to do the same.  
13

14 Mr. Chermak stated that Commissioner Douglas had raised a question on what the square footage  
15 of the roof tops was off by 50% and explained that it was only off by that much because they were  
16 not using accurate, real world data. He moved on to explaining the exterior of the buildings and  
17 noted that it will match. He stated that it is just 13 years newer product and much more durable.  
18 He stated that thin veneer is brick that is cut in half, and veneer can mean anything from siding to  
19 shakes to wood products. They are using brick veneer in a full fashion, which means grouting it  
20 in in a normal fashion. He noted that for the limestone, he brought a sample to the City and believes  
21 that it is the exact limestone based on research of the vendors along with the brick and the design  
22 and pattern will be replicated. He stated that cast stone is also a very similar product and some  
23 was planned to be used on more of the landscaping and front entry walls. He explained that  
24 limestone is a terrible product to use for landscaping, so he plans to use the cast stone in more of  
25 the landscaping. He stated that all the black detailing in the plans will be matched, almost identical  
26 and noted that some of the window locations are different based on floor plans and were not part  
27 of the PUD. He stated the floor plans match with today's market but the exterior will stay  
28 consistent with the original two units plans. He stated that he believes he has addressed all the  
29 questions that the Commissioners had brought up this evening and offered to answer any additional  
30 questions.  
31

32 Chair Plantan asked if the Commission had questions for the applicant.  
33

34 Commissioner Parkhill asked how the decision was made to modify the setbacks.  
35

36 Mr. Chermak stated that after the information was discovered regarding the storm sceptor and the  
37 pipes, the plan that was set forth for lot 6 with a minimal deviation to get away from it, they  
38 decided, in collaboration with the City, to slide it away from there. He explained the details of how  
39 they moved the setbacks.  
40

41 Commissioner Parkhill asked if this modification was included in the plans that had been approved.  
42

43 Mr. Chermak stated that this does match up with the survey work.  
44

1 Commissioner Douglas stated that when she looked at the building materials at City Hall, it was  
2 labeled 'Rice Street Faux Brick' and although there were regular bricks there, it doesn't appear as  
3 though that is what will be used.

4  
5 Mr. Chermak stated that it is "f-u-l-l", full veneer brick.

6  
7 Commissioner Douglas stated that she thought that the proposed material wasn't quite a match for  
8 building 1, and asked if he has taken the materials over there to take a look.

9  
10 Mr. Chermak stated that he has had both the supplier and the installer take them over to the first  
11 building.

12  
13 Commissioner Sorensen confirmed that the brick would be hand set by masons, brick by brick.

14  
15 Mr. Chermak stated that is correct.

16  
17 Commissioner Merriam asked if the design of 520 and 524 was actually bigger than what was on  
18 the originally approved for the PUD.

19  
20 Mr. Chermak stated that there is a slight deviation and the westerly wall, front to back, is about 5  
21 feet longer.

22  
23 Commissioner Merriam asked what the supplier and the installer said about the brick when they  
24 took it over to the first building.

25  
26 Mr. Chermak explained that they said it was a perfect match, and were very complimentary and  
27 excited that they found a match.

28  
29 Commissioner Bashioum stated that Mr. Chermak had mentioned that he was using brick, she  
30 thought he had mentioned it was half thickness. She asked if they were half bricks or full bricks.

31  
32 Mr. Chermak stated that they will be 100% full brick.

33  
34 Commissioner Bashioum asked if that would then not be considered veneer.

35  
36 Mr. Chermak explained that the term veneer just means some sort of cladding on the exterior of a  
37 building, to be legally and officially documenting the term. He stated that it is a full veneer brick.

38  
39 Commissioner Bashioum asked if he knew the dimensions of the brick.

40  
41 Mr. Chermak stated that he does not have the exact dimensions, but believes it is in the area of 3  
42 inches thick by 8 inches long.

43  
44 Commissioner Merriam asked about the size of the bedroom level decks on units 530 and 534.

45

1 Mr. Chermak stated that the deck on the main floor is roughly about 20 feet long, and 6 feet 6  
2 inches deep.

3  
4 Commissioner Merriam stated that the dimensions of the deck for the existing building look like  
5 they are 6 feet 10 inches by 2 feet 8 inches. She asked if the second building would have two  
6 decks.

7  
8 Mr. Chermak clarified that there will just be one deck, and explained that the one that was going  
9 to be a deck is just going to be in its likeness and will just cover the deck below it.

10  
11 Commissioner Stockton asked if the total building area for building 3 is the same today as it was  
12 at the time of the original approval in 2006.

13  
14 Mr. Chermak stated that there is a document with the PUD that gives the approximate sizes of the  
15 square footages, and noted that building 3 is 181 square feet larger and building 2 is 181 square  
16 feet less.

17  
18 Commissioner Bashioum stated that the windows are considerably different than the original  
19 windows with the arches, which is a glaring difference on how the building looks from the outside.  
20 She asked what made him deviate from the approved style and the placement.

21  
22 Mr. Chermak stated that the front elevation is virtually identical which was most important. He  
23 noted that in reference to the window that Planner Kieser mentioned, in that particular area, there  
24 wasn't a need for a window. For the side windows, which are only 10 feet from the two sides, he  
25 went to square windows with the accent limestone piece above it that will be arched, and for the  
26 back of the house he did sliding doors.

27  
28 Chair Plantan asked why the deck is constructed differently and has 6 x 6 supports holding the  
29 deck, versus how it is constructed now on building 1.

30  
31 Mr. Chermak explained that the engineering behind it is significantly more complicated in today's  
32 building world, so instead of trying to brace anything off of the house with no supports, it was  
33 designed to have the supports that come down in a more structural and a better long-term advantage  
34 for building the decks.

35  
36 Chair Plantan asked if it would ever be enclosed and that was why it was constructed this way.

37  
38 Mr. Chermak stated that it was not and was just set up as a better structure. He noted that the  
39 phantom screen is a new product that has entered the marketplace and is not a permanent screen,  
40 but rather a cosmetic, roll-up screen that is mounted to the underside of the covered area above  
41 this deck.

42  
43 Chair Plantan asked if it would be categorized as a screened porch.

44  
45 Mr. Chermak stated that it is not a screened porch, but are simply open decks with the option to  
46 add screened porches which would be done with a temporary roll up material.

1  
2 Chair Plantan asked if Mr. Chermak would have been able to do this construction on the deck if  
3 the second building was in its original location.

4  
5 Mr. Chermak stated that the posts are just 3 feet away from the house and if the second building  
6 was in its original location, he probably would have had to adjust it back slightly to about 2 feet  
7 away.

8  
9 Chair Plantan stated that there is no cornicing on these buildings to emphasize the stepping down  
10 or breaking up the façade like the original building, and asked if that was simply a design decision.  
11 She stated that there is also not any of the horizontal banding designating the levels.

12  
13 Mr. Chermak stated that the horizontal band is on the sides and should have been continued around  
14 the back. He explained that he believes that it was just missed by the architect.

15  
16 Chair Plantan confirmed that the horizontal banding was included in the construction documents  
17 just not on the elevations. She asked, from a design standpoint, why they made the decision to not  
18 to do the arched windows or to follow any of the detailing in the original plans.

19  
20 Mr. Chermak stated that it was strictly putting the focus on the front of the house. Due to the fact  
21 that the sides are so hidden, it functionality became more important than the arched effect and  
22 provides the option for them to open the window.

23  
24 Chair Plantan asked if the only location for arched windows was on the front at the very top and  
25 the others are square windows with an arched cornice piece.

26  
27 Mr. Chermak stated that this was correct.

28  
29 Chair Plantan asked when the most recent survey was done that Mr. Chermak has referenced  
30 numerous times.

31  
32 Mr. Chermak stated that it was completed within the last 60-90 days and noted that he had turned  
33 it in with his submittal.

34  
35 There being no additional questions from the Commission for the applicant, Chair Plantan  
36 reviewed the significance of, and rules for, the public hearing, and opened the public hearing on  
37 the application at 9:49 pm.

38  
39 Christopher Vojta, 125 Walker Avenue South, stated that they have sent multiple letters to the City  
40 and strongly protest any variation from the original 2005 PUD. He stated that due to the lateness  
41 of the hour, he will let their letters speak for themselves and just noted the three main things that  
42 they do not understand how they could be approved: the setbacks; the height amendments; and  
43 unnecessary exceptions for this project.

44  
45 Tom Vanderhayden, stated that he thinks the challenge for the commission in reviewing this  
46 application is behaving as though a building didn't already exist and is just on paper. He stated

1 that from his recollection and experience as a former commissioner, a few elements that they had  
2 to be sensitive to was sheer economic interest of the developer, and that variances based on that  
3 should be weighed accordingly. He stated that there are a host of variances in this application, and  
4 that any one of them could have rationally knocked down a recommendation of approval. He  
5 listed the requests and stated that the differences are meaningful and not minor. He stated that he  
6 wanted to encourage the Commission to hold fast to their role and what is required in this case.  
7 He stated that he is not supportive of any of the proposed changes, and noted that the developer  
8 said the stepping down of buildings was not necessary; not that it couldn't be done. He stated that  
9 he found the answer to the screen porch question interesting because Mr. Chermak basically said  
10 it is a screened porch, but not a screened porch. He encouraged the Commission to diligently push  
11 in on this case.

12  
13 John Adams, 544 Rice Street East, stated that he would like to correct the record because there  
14 was a lot of misinformation that was given by Mr. Chermak tonight. He stated that Jon Munson  
15 wanted to be at tonight's meeting however, he needed to attend the Council meeting in Deephaven.  
16 He stated that Mr. Munson is considered by many to be one of the top architects and builders in  
17 the state, and has built hundreds of homes around the lake. Mr. Adams stated that some of the  
18 drawings that Mr. Chermak submitted, for example, the one that shows the rooftop elevator and  
19 garden, the man hole in the parking lot, and the plan that shows the grass areas—those 3 are  
20 conceptual original drawings from early on in the process. He stated that dates are from mid-2005  
21 and the building permits were issued for all 3 buildings; those were working drawings and  
22 complete plans for all three buildings that were building ready. He stated that they sold those plans  
23 to the previous owner of those lots who paid \$50,000, and Mr. Chermak received those plans upon  
24 purchasing the lots. He reiterated that those were working drawings, and for Mr. Chermak to call  
25 them a concept plan is 100% wrong. He stated that those three drawings were not part of the PUD  
26 plan. He stated that he doesn't have a record of those three, but has a roof plan that is a complete  
27 roof plan with measurements. He stated that he has a site plan that was part of the approved PUD.  
28 He stated that there are so many things being stated tonight that are just smoke and mirrors, that it  
29 is driving him crazy. He stated that on the site plan that is approved and part of the PUD, the first  
30 unit is at 971.5, the second unit is 969.5 the third unit is 967.5, the fourth unit was 965.5, units 5  
31 and 6 are 963.5. He explained that these numbers were the first-floor elevations and are included  
32 on the site plan. The plans also show the building heights of building 1 at 34 feet, building 2, 32.3  
33 feet, and building 3 at 32 feet and shows that each unit was to go down by 2 feet. He stated that  
34 for Mr. Chermak to talk about the surveys being wrong is absolute craziness and reiterated that  
35 this was platted, surveyed, and all submitted. He stated that he was supposed to review any  
36 changes, and was told by the City that all the residents of the association had to sign off on any  
37 modifications or changes. He stated that if Mr. Chermak had a problem with any of the information  
38 he shared tonight, he should have sat down with him and told him what was wrong, and he would  
39 have gotten the accurate information to him and proven him wrong. He stated that the only reason  
40 Mr. Chermak is pushing the buildings forward was so unit 6 could be bigger, and it has nothing to  
41 do with the storm sewer. He explained that the building was designed around the storm sewer  
42 because he had an agreement with Kathleen Nash and Tom Robbins, who lived across the street,  
43 that he would move the buildings as far back on the site as possible. So, Jon Munson had to design  
44 the 6<sup>th</sup> unit to go around the storm sewer and be smaller in order to accommodate their request to  
45 get approval for the project. He stated that the roof over the deck is not acceptable and will block  
46 the sunlight and, in his opinion, will look goofy. He stated that there were no screened porches

1 intended for this project, nor was it part of the PUD nor is there a practical difficulty. He stated  
2 that the plans call for cast stone which is poured concrete and not limestone. He stated that in  
3 looking at Mr. Chermak's building plans, they do not appear to be very complete and don't, for  
4 example, show front stair cases. He stated that this is an incomplete plan and has a building height  
5 of 34.7-foot height on the building he is currently constructing. It had been approved for 32.3  
6 feet, which were agreements that he had with Tom Robbins. He stated that he and Tom argued  
7 about the height of building 2 and 3 for months, and many meetings were held with the neighbors.  
8 He stated that former Council member Bangert told him that he had to make the people across  
9 Rice Street happy or she wouldn't support the project. He stated that he got the plans approved on  
10 a 3 to 2 vote from the City Council. He stated that the current deck design with the posts coming  
11 down have nothing to do with the latest and greatest construction methods, and has everything to  
12 do with Mr. Chermak not wanting to pay the money to cantilever them out like he did, which is  
13 more expensive. He stated that the garage going down by a foot is a nightmare even though it is  
14 sloped. In a downpour he thinks there is going to be water coming down off of Walker and heading  
15 right down the driveway. He stated that Jon Munson had designed this perfectly to follow the  
16 grade and the new plan makes absolutely no sense. He stated that they could have gotten building  
17 permits for all three of the buildings with the drawings that were submitted as part of this PUD.  
18 He reiterated that there is a whole bunch of smoke and mirrors going on in this situation and he  
19 wants the Commission to know the truth and feels that so far, Public Works Director Kelly has  
20 been the honest one. He stated that he believes Public Works Director Kelly when he told the  
21 Commission that the set of drawings he looked at had the garage floor at 952 feet. He feels this is  
22 a bad design and doesn't like the deck situation. He emphasized the buildings never should have  
23 been moved forward or allowed to be higher than what was approved. He reiterated that there  
24 were some difficulties with the site, but Jon Munson did a wonderful job designing around it with  
25 a smaller unit.

26  
27 Chair Plantan noted that Mr. Adams had gone over his allotted time and asked him to conclude his  
28 comments.

29  
30 Mr. Adams stated that he could go on for an hour because he is so riled up. He reiterated that there  
31 was a lot of misinformation put out there to the Commission.

32  
33 Bruce Merry, 216 Minnetonka Avenue South, stated that the east side of his property is very close  
34 to what would be the 6<sup>th</sup> unit in this development. He stated that he believes the original PUD was  
35 well-conceived in both style and design. He stated that he doesn't feel as though anybody would  
36 question Jon Munson's talent. He stated that he would like to peel back the layers of this issue  
37 because it is really simple. He stated that it is quite obvious to him that this is about a builder  
38 wanting to make money. He would like to ask Mr. Chermak the questions that if this isn't about  
39 making money, why can't he just comply with the original PUD and build the buildings as they  
40 were proposed. He stated that the Planning Commission is being asked to weigh their sense of  
41 integrity versus allowing a building to further Mr. Chermak's monetary self-interest.

42  
43 Anthony Straszewski, 527 Rice Street East, thanked Public Works Director Kelly for his honesty  
44 and noted that it takes a lot of courage to say and do the right thing. He stated that in the City staff  
45 report, Mr. Munson's name is incorrectly spelled and should be Jon Munson. He explained that  
46 Mr. Munson is the architect of record for the original development and the PUD that was approved

1 in 2006. He stated that it seems odd to him that the citizens are in this position tonight and that  
2 Planner Kieser doesn't know the architect of record for a huge development and is a huge misstep.  
3 Mr. Munson submitted working drawings for this PUD which was approved. The City Code and  
4 ordinances are crystal clear that any change to the approved PUD needs to go through the Planning  
5 Commission. When neighbors realized that what was being built didn't conform to the PUD and  
6 approached City staff to get the information posted on the website, the requests were summarily  
7 dismissed by staff. He stated that it wasn't until a few weeks ago that the plans were actually  
8 posted so they could see what was going on. He stated that the Code is clear, which is why this is  
9 now at the public hearing process. He noted that his big question is how things got this far. He  
10 stated that how the City issued permits for significant changes, such as moving a building 6 feet  
11 when someone cannot get a variance on a fence for 2 feet, is obscene. He reiterated that the Code  
12 is clear, but wanted to note that there were so many misstatements and omissions of fact in the  
13 City staff's report that it is really almost embarrassing. He asked the Planning Commission to read  
14 everything that was submitted and not rely on the staff report because it is not entirely true. He  
15 stated that he has 3 pages of notes on all the misstatements from both Mr. Chermak as well as City  
16 staff members. He stated that there is an opportunity to do the right thing, and he doesn't feel the  
17 staff report reflects the right thing. He stated that the liability hole that City Attorney Schelzel has  
18 created with that report is becoming significant. He stated that the Commissioners may be looking  
19 at this and think that the new proposal isn't all that different, but he feels that moving the building  
20 this much is significant.

21  
22 Tom Robbins, 523 Rice Street East, stated that he has the sad distinction of owning the house and  
23 lot that are the most negatively effected by Mr. Chermak over-stepping his bounds. His home is  
24 on the lowest lot of the 5 lots on Rice Street in the middle of the block. He explained that his  
25 1890s home was on Big Island and moved over the ice to Wayzata in 1908. He purchased it 30  
26 years ago, has totally remodeled it, and it is his only major asset. When he moved to Wayzata,  
27 there was an old rental house on Mr. Adam's lot that was demolished in 2007 and he assumed that  
28 any new structures would have to start from the original dirt base. Mr. Adams explained that the  
29 first 2 units were on the original base so he assumed it would continue. The new construction sites  
30 are obviously not on the original base and have been raised up anywhere from 4 to 6 feet. The big  
31 question is why. There are many variables to consider which should be defined and agreed upon  
32 in advance and enforced. He stated that for many reasons, it seems as though the enforcement has  
33 been lax. For years, he has been sitting at his main floor desk looking out his window at the 117-  
34 year-old Weis house, which resembles the original home that Mr. Adams demolished. The roofline  
35 of that home is at his sitting eye level. He stated that the new, huge, dominating structure appears  
36 like Godzilla in comparison. He explained that he was very concerned and afraid about this  
37 project. He asked the Planning Commission to recommend a denial of the proposed amendment  
38 to the PUD, and at a minimum he would ask that the Commission take more time to review the  
39 proposed amendments and direct staff to report back. He stated that it appears to him that if there  
40 is a French drain problem, the alley should be torn up and the drain should be dug deeper and in a  
41 different spot.

42  
43 There being no additional comments on the application, Chair Plantan closed the public hearing at  
44 10:22 pm.

45  
46 Chair Plantan asked for the Commission to share their questions and feedback on the application.

1  
2 Commissioner Merriam asked if the PUD amendment being discussed is an amendment to a PUD  
3 final plan and if it had anything to do with a concept plan.  
4

5 Director Goellner stated that amendments can be considered in concept or to final plans. Typically  
6 a concept plan for a PUD amendment is that something has really drastically changing in terms of  
7 land use, for example changing from a residential project to a commercial project.  
8

9 Commissioner Merriam stated that the reason she asked is because the applicant mentioned that it  
10 was only a concept plan, which she really questions because she cannot imagine the project being  
11 built if it was only a concept plan.  
12

13 City Attorney Schelzel noted that as Commissioner Merriam may remember, because she was on  
14 the Commission at the time, there was a recommendation on the original PUD that went to Council,  
15 and a concept, general, and final plan were ultimately approved and memorialized in the  
16 development and PUD agreement.  
17

18 Commissioner Merriam stated that she just wanted to make sure the Commission understood this  
19 point and noted she was on the Planning Commission when this went through in 2005. She stated  
20 that she remembers that it was a huge hurdle for John Adams who fought long and hard to get this  
21 project approved because the neighbors really didn't want it. She stated that she remembers that  
22 he negotiated hard with them for every little inch that he got, which is something that is important  
23 to consider.  
24

25 Commissioner Bashoum stated that when the Commission is evaluating a request for a variance  
26 or changes to ordinances, they are asked to consider whether a hardship or a practical difficulty is  
27 present, and if it is due to the applicant's actions. She stated that ultimately, it is the property  
28 owner's legal responsibility to know and understand the land use regulations, the agreements that  
29 run with the property or properties, and to adhere to all previously approved instruments and  
30 entitlements for the site. She stated that she feels that the reason that Mr. Chermak is coming to  
31 the City now is due to his own actions, as has been demonstrated this evening. She stated that she  
32 does not think she can support this application presented to the Commission this evening.  
33

34 Commissioner Douglas stated that this was a long and involved application, and noted that she too  
35 remembers the original application from John Adams. She stated that Mr. Adams spent hours with  
36 the neighbors working out the details and ultimately, he and the neighborhood came to a win/win  
37 solution. She stated that the neighbors reactions today are as valid as it was 15 years ago. She  
38 stated that the positive of the current situation is that this project may be completed in a similar  
39 fashion and quality, but she questions the definition of 'similar' and feels that what is proposed is  
40 not similar enough. She stated that the City did appear to make a mistake in granting a building  
41 permit, but the developer also appears to have been negligent in not talking to and developing more  
42 of a relationship with the neighborhood. She explained that she cannot recommend approval for  
43 the following reasons: the lack of collaboration with the neighbors; the setback encroachments;  
44 rooftop enclosures being larger; lack of arched windows on the rear of the buildings; change in  
45 deck sizes; no landscape plan; and finally that she was not convinced about the brick color. She  
46 stated that she has lived in row houses, which are different than living in a single-family



1 neighborhood setting; their HOA rules and regulations specifically spell out that things like  
2 windows, doors, steps, and materials have to be uniform, and to make even a minor change requires  
3 approval from the HOA. She stated that if this proposal was a large development, it may not matter  
4 as much, but this is a very small, tight-knit development and uniformity is very important; 'similar'  
5 is not good enough. She stated that she cannot support this project.  
6

7 Commissioner Stockton stated that she wholeheartedly agrees with Commissioner Bashioum's and  
8 Commissioner Douglas' commentary. She stated that she has been in one of the existing  
9 townhomes, and it is a quality building. It stands out in terms of its structure, the weight of the  
10 building, and inside and out is just high quality. There are material substitutions in the current  
11 proposal that she thinks will not reflect or mirror that, and noted that the whole discussion around  
12 the drainage still leaves her confused as to the justification for pushing everything forward into the  
13 setback. She stated that she is also concerned about the community feelings around the  
14 development. She stated that she did realize that construction costs are up and asked to what extent  
15 that may be relevant or worth noting.  
16

17 Commissioner Parkhill asked what happens if this application is not approved, and specifically  
18 what will happen to the building that is already pretty much built.  
19

20 City Attorney Schelzel stated that the Commission will make a recommendation to the Council,  
21 who will make the ultimate decision on the application. If Council does not approve this particular  
22 PUD amendment and variance requested, the builder would then have a choice in how to proceed.  
23 Mr. Schelzel stated that the City could not allow something to be built on the property that does  
24 not comply with City Code, so the existing building would need to be modified to comply with the  
25 standards of the existing PUD, or the applicant would have to submit a new application for a  
26 different proposal, so something else could be built. He stated that status quo is really not an  
27 option.  
28

29 Commissioner Parkhill stated that he appreciates what has already been shared by the other  
30 Commissioners. He stated that he believes the original PUD was great in both style and design.  
31 He stated that he understands the neighbors concerns, and assumes that City staff operated in good  
32 faith, but that there was obviously some sort of mistake made and a permit was issued. He stated  
33 that he would like to find a way to support what is mostly built there and make some modifications  
34 to it, so the City can fill this vacant land; but he also feels for the neighbors who will be looking at  
35 something different than they expected. He stated that he would like to try to find a compromise  
36 of some sort, and see the second building survive with some sort of agreeable modification. He  
37 stated that he thinks the third building needs to go back to the PUD plan. He reiterated that he  
38 would like there to be a reasonable outcome, where Mr. Chermak doesn't lose his shirt and the  
39 neighbors can look at something pleasant; but he doesn't know what that is. He stated that he  
40 cannot recommend approval all of the variance requests, and stated that he doesn't really want to  
41 do a full denial or a full acceptance; but also realizes his job is not really to figure out what the  
42 compromise may be. He stated that he would like to see some work done so this could be moved  
43 forward in a way that is mostly agreeable to everyone. He stated that he would recommend denial  
44 of the current request with the hope that it leads to another conversation where there is some sort  
45 of compromise found that will work for everybody.  
46

1 Commissioner Merriam stated that she agrees with a lot that has already been said tonight. She  
2 stated that she appreciates that 15 years later someone is attempting to get the other two buildings  
3 done, and appreciates that there may be some modifications that could be made that would help in  
4 the cost of construction; but she did not see any involvement of the neighbors in coming to a new  
5 plan. She stated that the applicant just went ahead and proposed something, knowing that there  
6 was a PUD in place and was in possession of the plans to fulfill the PUD. She stated that is it  
7 unfortunate that there wasn't more neighborhood involvement in this process. She stated that the  
8 design presented tonight, the PUD amendment, lacks architectural integrity compared to the  
9 original plan. The neighbors were counting on the original plans occurring, and are clearly not  
10 happy with the proposed amendments from something that they worked so hard to negotiate in the  
11 original PUD agreement. She stated that she also does not see a hardship in this instance, and  
12 would recommend denial of the requests. She stated that perhaps the applicant can come to a new  
13 agreement by working with the neighbors.

14  
15 Commissioner Sorensen stated that there are obviously strong opinions and feelings on all sides  
16 of this issue. He stated that he thinks it is a matter of how the Commission can be objective and  
17 fair, and really look at the criteria which govern the request. He stated that there have clearly been  
18 deviations to the original PUD, and he is attempting to look at how those relate to the criteria  
19 governing a variance request. He is sympathetic to the fact that this property has sat vacant for 15  
20 years and hasn't been developed, and that the economy and circumstances are a lot different now.  
21 He stated that he is considering the question of the essential character of the neighborhood, and  
22 whether it is altered with these changes, and whether the changes are in harmony with the general  
23 purpose and intent of the original PUD, and also take into consideration the practical difficulties.  
24 He stated that there were a few things that were still a bit difficult to understand, why changes  
25 were made, the biggest of which would be the setbacks. He stated that he cannot fully support this  
26 request, although he could see supporting some of the amendments. He stated that he supports  
27 Commissioner Parkhill's idea that the applicant investigate a strategy that may make things work,  
28 and minimize the downside of the current situation, and make it acceptable to the City and the  
29 neighborhood.

30  
31 Chair Plantan stated that she has spent time assessing this application and the stated objective of  
32 the Comprehensive Plan, which has been long and arduous, and has attempted to be objective and  
33 fair, not dwelling on the events of the past or personalities of those involved. She stated that after  
34 reviewing the documents, the applicants narrative, staff reports, public comments, she is leaning  
35 towards a denial recommendation of the application as well. She stated that she has difficulty with  
36 the number of deviations from the original PUD, with the most concerning being the setback  
37 deviation. She stated that she also wishes there could be discussions between the applicant and the  
38 homeowners association to resolve this issue. She reiterated that she will not be able to vote in  
39 favor of this application.

40  
41 City Attorney Schelzel noted that there is a draft report and recommendation for denial included  
42 in the packet that could go straight to the Council. Alternatively, the Commission could direct  
43 staff to prepare a report and recommendation of denial that could call out more of the things that  
44 seem to most concern the Commission and bring it back to the Commission for consideration at  
45 the next meeting. He stated that the benefit of the second option is that it could be particularized

1 for the Commission based on their comments this evening, and it may also give the applicant a  
2 window to consider changes or have dialog with the neighbors about a possible solution.

3  
4 Commissioner Merriam stated that if the Commission recommends denial based on the report that  
5 has already been drafted, the Council will have all the comments from the minutes to consider,  
6 and further noted that she believes a few of the Councilmembers are in attendance tonight. She  
7 stated that option may bring about a way for this to be resolved more quickly, rather than just  
8 putting it on hold until the next meeting.

9  
10 Commissioner Parkhill asked if the Commission recommends denial of this request, whether the  
11 applicant could then pull the application in order to work with the neighbors and bring back a new  
12 proposal.

13  
14 City Attorney Schelzel stated that the applicant has the option of withdrawing the application any  
15 time before Council has weighed in and makes a decision on it. He stated that this doesn't allow  
16 the project to go forward as currently proposed; but it would allow the applicant to resubmit a  
17 different application right away.

18  
19 There being no further discussion, Chair Plantan asked for a motion on the application.

20  
21 Commissioner Parkhill made a motion, seconded by Commissioner Merriam, to adopt the  
22 Planning Commission Report and Recommendation reflecting denial of the request for a PUD  
23 amendment and variance at 520, 524, 530, and 534 Rice Street E.

24  
25 Director Goellner completed a roll call vote on the motion. The motion carried unanimously.

26  
27 Chair Plantan noted that this would be on the City Council agenda for May 18, 2021.

28  
29 **AGENDA ITEM 6. Other Items:**

30  
31 **a) Welcome New Planning Commissioner Ken Sorensen**

32  
33 Director Goellner welcomed Commissioner Sorensen and asked him to give a little background  
34 on himself.

35  
36 Commissioner Sorensen stated that he is honored to be selected to serve as Planning  
37 Commissioner, and gave some background information on his life, work experience, and history  
38 in the area.

39  
40 **b) Review of Development Activities**

41  
42 Planner Kieser stated that there are not any new, complete development applications at this time,  
43 but are a few in review.

44  
45 **AGENDA ITEM 7. Adjournment.**

46

1 There being no further business on the agenda, Chair Plantan asked for a motion to adjourn.

2

3 Commissioner Bashioum made a motion, seconded by Commissioner Douglas, to adjourn the  
4 Planning Commission meeting.

5

6 Director Goellner completed a roll call vote on the motion. The motion carried unanimously.

7

8 The Planning Commission meeting was adjourned at 11:04 p.m.

9

10 Respectfully submitted,

11 Kayla Atkins Rokosz

12 *TimeSaver Off Site Secretarial, Inc.*

13