



**Request for City Council Committee Action  
From the Department of Community Planning & Economic Development**

**Date:** December 15, 2005

**To:** Council Member Gary Schiff, Chair, Zoning & Planning Committee and Members of the Committee

**Prepared by:** Becca Farrar, Senior City Planner, (612) 673-3594

**Approved by:** Barbara Sporlein, Director, Planning

**Subject:** Appeal of the decision of the City Planning Commission by Dan Radunz.

**Previous Directives:** At the November 14, 2005, City Planning Commission meeting, seven of the Planning Commission members were present. Planning Commissioners voted 7-0 to deny all land use applications associated with the development known as the Radunz Residence located at 5912 Girard Avenue South.

<b>Financial Impact:</b> Not applicable
---

<p><b>Community Impact:</b> See staff report and attached neighborhood letters.</p>
---

<p><b>Ward:</b> 13</p>
------------------------

<p><b>Neighborhood Notification:</b> The applicant notified the Kenny Neighborhood Association via email on September 27, 2005 informing them of the development project. Staff has not received any official correspondence from the neighborhood group. All neighborhood letters received have been attached to the staff report.</p>
---

<p><b>City Goals:</b> See staff report</p>
--

<p><b>Comprehensive Plan:</b> See staff report</p>
--

<p><b>Zoning Code:</b> See staff report</p>
---

<p><b>Living Wage/Job Linkage:</b> Not applicable</p>
---

<p><b>End of 60/120 Day Decision Period:</b> On November 2, 2005, Staff sent the applicant a letter extending the decision period to no later than February 1, 2006.</p>
--

<p><b>Other:</b> Not applicable</p>
-------------------------------------

- **Background/Supporting Information:** Dan Radunz has filed an appeal of the decision of the City Planning Commission. The appeal is associated with the decision of the City Planning Commission to deny all land use applications associated with the development known as the Radunz Residence. The applications that are being appealed are as follows: (1) Conditional Use Permit to locate development within 50 feet of any protected water (wetland), (2) Conditional Use Permit to allow development within 40 feet of the top of a steep slope, (3) Variance to permit development in the Shoreland Overlay District within 50 feet of any protected water, and (4) Variance to permit development within 40 feet of

the top of a steep slope. The minutes from the November 14, 2005, City Planning Commission meeting are attached.

The appellant has stated that the decisions are being appealed for two reasons. First, the appellant states that by denying this application and not providing any guidance as to what would be an acceptable plan for this property and utilizing the property as stormwater runoff holding area, the city is indirectly exercising eminent domain without any compensation to the property owner. Second, the appellant believes that there are many inconsistencies within the city code that bring into question the findings that were presented by the City Staff. The appellant's complete statement of the actions being appealed and reasons for the appeal are attached.

**Department of Community Planning and Economic Development – Planning  
Division**

Conditional Use Permit and Variance  
BZZ-2677

**Date:** November 14, 2005

**Applicant:** Dan Radunz, 8951 Mariago Circle, Bloomington, MN 55438, (952) 210-8582

**Addresses of Property:** 5912 Girard Avenue South

**Project Name:** Radunz Residence

**Contact Person and Phone:** Dan Radunz, 8951 Mariago Circle, Bloomington, MN 55438, (952) 210-8582

**Planning Staff and Phone:** Becca Farrar, (612)673-3594

**Date Application Deemed Complete:** October 4, 2005

**End of 60-Day Decision Period:** December 3, 2005

**End of 120-Day Decision Period:** On November 2, 2005, Staff sent the applicant a letter extending the decision period to no later than February 1, 2006.

**Ward:** 13      **Neighborhood Organization:** Kenny Neighborhood Association

**Existing Zoning:** R1 (Single-family) district, SH (Shoreland) Overlay District

**Proposed Zoning:** Not applicable for this application.

**Zoning Plate Number:** 36

**Lot area:** 6,365 square feet or .14 acres

**Legal Description:** See attachment.

**Proposed Use:** A new single-family home in the R1 district.

**Concurrent Review:**

- Conditional Use Permit to locate development within 50 feet of any protected water (wetland) and to allow development within 40 feet of the top of a steep slope.
- Variance to permit development in the Shoreland Overlay District within 50 feet of a protected water and within 40 feet of the top of a steep slope.

**Applicable zoning code provisions:** Chapter 525, Article VII, Conditional Use Permits, Chapter 525, Article IX, Variances & Chapter 551, Article VI, SH Shoreland Overlay District.

**Background:** The applicant proposes to construct a new single family home northeast of Grass Lake on the property located at 5912 Girard Avenue South. The property is currently vacant but densely vegetated, zoned R1 and is located within the SH (Shoreland) Overlay District.

Due to the proximity of the property to Grass Lake and the surrounding wetland, the grades on site and the location within the SH Overlay District, the proposed development requires a conditional use permit to allow development within 50 feet of any protected water (wetland) and to allow development within 40 feet of the top of a steep slope. A variance is also required in the SH Overlay District in order to permit development within 50 feet of any protected water (wetland) and within 40 feet of the top of a steep slope. The SH Overlay District defines a steep slope as land having an average slope of 18 percent or greater measured over a horizontal distance of 50 feet or more.

The single-family home as proposed would be approximately 45 feet wide. With the inclusion of the proposed covered porch which appears to wrap around the side of the proposed home, the structure would be 50 feet wide. Per Section 535.90, the minimum width of single-family residential structures is 22 feet. The structure as proposed would meet the required setbacks per the R1 district from the property lines. The property would not be subject to a front yard increase (546.160), as the adjacent residential property to the north is located 21 feet 7 inches from the east property line which is less than the 25 foot minimum district requirement. The home is proposed at 2 ½ stories and 35 feet tall with a walkout basement. Without benefit of detailed architectural plans, Staff is unable to determine whether the home is meeting the height limitations within the Shoreland Overlay District. Should the Planning Commission approve the applications, the applicant would be required to attain a separate permit for the single-family dwelling which would be required to meet all applicable requirements.

There are wetlands located on the south side of the property. The proposed home would wrap around the northern edge of the delineated wetlands and at the closest point would be constructed approximately 1 foot from the delineated boundary. A wetland delineation report was prepared by a private consulting firm and has been attached for reference. The report states that the wetland boundary was delineated along a slight rise in topography due apparently to historic fill. The report further states the Hennepin County Soil Survey has not mapped the soils in this portion of the county because it is urban land. Additionally, the applicant has also provided a survey which identifies the trees currently located on site which has been attached for reference. Based on the applicant's proposal, it would appear that the majority of the trees on site would be removed in order to construct the proposed structure.

Staff is concerned and questions whether the site could be developed while adhering to the following applicable regulations: **(1)** compliance with the grading and filling regulations of Section 551.510, including employing best management practices to prevent erosion and trap sediment; and **(2)** removal of vegetation on a steep slope

which is prohibited except as authorized by the zoning administrator in section 551.520 of the zoning code.

Staff has not received correspondence from the Kenny Neighborhood Association stating a position on the applications prior to the printing of this report. Neighborhood letters have been attached for reference.

**CONDITIONAL USE PERMIT** – **(1)** to permit development in the Shoreland Overlay District within 50 feet of any protected water (wetland) **(2)** to permit development in the Shoreland Overlay District within 40 feet of the top of a steep slope

**Findings as Required by the Minneapolis Zoning Code:**

The Department of Community Planning and Economic Development – Planning Division has analyzed the application and from the findings above concludes that the establishment, maintenance, or operation of the proposed conditional use:

**1. Will not be detrimental to or endanger the public health, safety, comfort or general welfare.**

To permit development in the Shoreland Overlay District within 50 feet of any protected water (wetland): Wetland protection at various levels of government is based on a consensus that there is a strong public interest in the preservation of the quality and quantity of wetlands. The design and configuration of the structure as proposed would be located within 1 foot of a delineated wetland. Staff would expect that the design of the proposed home could be deemed to have a detrimental impact on or endanger the public health, safety, comfort or general welfare. The majority of the dense vegetation on site would be removed and Staff would expect that construction of a new home within 1 foot of the wetland could be detrimental as it is unlikely that the wetlands wouldn't be disturbed.

To permit development in the Shoreland Overlay District within 40 feet of the top of a steep slope: Staff does not generally believe that allowing the proposed development within 40 feet of the top of a steep slope would endanger the public health, safety, comfort or general welfare. However, the structure as proposed and designed would be located directly within the area categorized as a steep slope which could have a detrimental impact. Staff would expect that the property could potentially be developed in such a manner that the above listed impacts are minimized.

**2. Will not be injurious to the use and enjoyment of other property in the vicinity and will not impede the normal or orderly development and improvement of surrounding property for uses permitted in the district.**

To permit development in the Shoreland Overlay District within 50 feet of any protected water (wetland): Staff believes that the structure as proposed could potentially be injurious to the use and enjoyment of other property in the vicinity however, would likely not impede the normal or orderly development and improvement of surrounding property for uses permitted in the district. The proposed structure would be located

within 1 foot of a delineated wetland area and would likely require that the majority of the vegetation on site be removed.

To permit development in the Shoreland Overlay District within 40 feet of the top of a steep slope: Staff believes that the proposed development located within 40 feet of the top of a steep slope and constructed within the steep slope could potentially be injurious to the use and enjoyment of surrounding property, however, would likely not impede the normal development of the surrounding area. The development as proposed would likely result in substantial alteration to the property as it currently exists, both in regard to vegetation removal as well as grading and filling impacts.

**3. Adequate utilities, access roads, drainage, necessary facilities or other measures, have been or will be provided.**

The applicant would be required to work closely with the Public Works Department, the Plan Review Section of the Inspections Department and the various utility companies during the duration of the development to ensure that all procedures are followed in order to comply with city and other applicable requirements.

**4. Adequate measures have been or will be provided to minimize traffic congestion in the public streets.**

The parking requirement for the proposed development would be 1 off-street parking space. The applicant is proposing to provide 2 spaces in an attached front-loaded garage off of Girard Avenue South. Staff believes that adequate measures would be provided.

**5. Is consistent with the applicable policies of the comprehensive plan.**

According to the *Minneapolis Plan*, the site is located in a predominately low density residential area. According to the Principles and Policies outlined in the *Minneapolis Plan*, the following apply to this proposal:

***Policy 9.5 Support the development of residential dwellings of appropriate form and density.***

Staff would argue that the development as proposed is not appropriate in regard to form based on the configuration and design of the proposed structure. A proposal inclusive of a home at or near the minimum width requirement of 22 feet instead of a 50 foot wide home would potentially be supportable as the home would be located substantially further from the on –site wetland area and would arguably impact the on site steep slopes less as well.

***Policy 7.4 Minneapolis will encourage the planting and preservation of trees and other vegetation.***

Staff would argue that allowing the development to move forward as proposed would not result in the preservation of trees and other vegetation currently on the site.

Based on the submitted tree survey provided by the applicant, Staff would expect the majority of the trees to be removed to make way for the proposed home.

***Policy 7.5 Minneapolis will protect and sustain its water resources.***

**Implementation Steps:**

- **Preserve and restore wetlands for their irreplaceable contributions to water quality, control of floodwater rates and volumes, wildlife habitat and aesthetic purposes.**
- **Undertake community-based and citywide measures to protect lake water quality by managing storm runoff, employing erosion control measures and other best management practices.**

The applicant proposes to construct a 50 foot wide single-family home with a walkout basement in the Shoreland Overlay district within 1 foot of a delineated wetland and within the steep slope located on the property. This specific proposal is not in conformance with the above noted principles and policies of the comprehensive plan.

**6. And, does in all other respects conform to the applicable regulations of the district in which it is located.**

With the approval of the conditional use permits and variances, as well as compliance with the single-family home design requirements and the Shoreland Overlay District requirements, this development would appear to meet the applicable requirements of the R1 zoning district. The applicant must comply with the grading and filling regulations of Section 551.510, including employing best management practices to prevent erosion and trap sediment. Additionally, removal of vegetation on the steep slope shall be prohibited except as authorized by the zoning administrator in section 551.520 of the zoning code.

**ADDITIONAL FINDINGS FOR CONDITIONAL USES (551.490) –**

**A. Evaluation Criteria**

1. **The prevention of soil erosion or other possible pollution of public waters,  
both during and after construction.**

The applicant would be required to prevent soil erosion and possible pollution of public waters, both during and after construction. The applicant would be required to install a silt fence during construction and would be required to follow all applicable City requirements to prevent any type of pollution. Due to the constraints of the site and the proposed design of the residential structure within very close proximity of the wetland, Staff is concerned with the potential for erosion on site. Staff recommends that the applicant consider an alternative design that significantly increases the distance between the dwelling and protected water.

**2. Limiting the visibility of structures and other development from protected waters.**

It is difficult to predict the potential for visibility as the majority of the vegetation on site would likely be removed and the structure as proposed would be 35 feet tall. However, the adjacent site closest to Grass Lake is also densely vegetated.

**3. The suitability of the protected water to safely accommodate the types, uses and numbers of watercraft that the development may generate.**

Not applicable for the proposed development.

**B. Uses Allowed – development within 50 feet of a protected water (wetland) and within 40 feet of the top of a steep slope**

**1. The foundation and underlying material shall be adequate for the slope condition and soil type.**

The applicant has not verified that the underlying material would be adequate for the existing slope conditions and soil types. The existing slope would likely not remain intact as some filling and grading of the site would likely be necessary in order for it to be buildable. Further, the slope and wetland on site would likely be disturbed throughout the entire construction process.

**2. The development shall present no danger of falling rock, mud, or uprooted trees or materials.**

The applicant has not verified that the development would not present any danger of falling rock, mud or uprooted trees and other materials. Silt fencing would be required to be placed at both the top and bottom of the steep slopes subject to City requirements.

**3. The view of the developed slope from the protected water shall be consistent with the natural appearance of the slope, with any historic areas, and with surrounding architectural features.**

Staff believes that the view of the developed slope from the protected water would not be consistent with the natural appearance of the slope and with the surrounding architectural features.

**VARIANCES - (1)** to permit development in the Shoreland Overlay District within 50 feet of any protected water (wetland) **(2)** to permit development in the Shoreland Overlay District within 40 feet of the top of a steep slope.

Findings as Required by the Minneapolis Zoning Code for the Variances:

**1. The property cannot be put to a reasonable use under the conditions allowed and strict**

**adherence to the regulations of this zoning ordinance would cause undue hardship.**

To permit development in the Shoreland Overlay District within 50 feet of any protected water (wetland): It would be unlikely that the property could be put to a reasonable use under the conditions allowed and with strict adherence to the regulations of the zoning code. If required to develop at least 50 feet away from the delineated wetland boundary on site, only 15 square feet of buildable area would remain with adherence to the interior and rear yard setback requirements. Due to the site constraints, Staff believes that the house as proposed is not a reasonable use of the property. It is Staff's position that a modified proposal incorporating a house at or near the minimum width requirements could be deemed reasonable; however, construction of a home with a walkout basement within 1 foot of a delineated wetland is not a reasonable use of the property.

To permit development in the Shoreland Overlay District within 40 feet of the top of a steep slope: It would be difficult to put the property to a reasonable use under the conditions allowed and with strict adherence to the regulations of the zoning code. The top of the steep slope on site is based on the existing contours of the site and is therefore, irregular. The buildable area would be substantially reduced and would require that the majority of any new construction be located adjacent to the rear lot line. It is likely that the home as proposed would require significant alterations to the existing property. Staff would argue that the proposal is not reasonable and that construction of a home designed sensitively to fit into the existing contours or with minimal grading and filling meeting the requirements of Section 551.510 would be reasonable and potentially supportable.

**2. The circumstances are unique to the parcel of land for which the variance is sought and have not been created by any persons presently having an interest in the property. Economic considerations alone shall not constitute an undue hardship if reasonable use for the property exists under the terms of the ordinance.**

To permit development in the Shoreland Overlay District within 50 feet of any protected water (wetland): The circumstances could be considered unique as there are wetlands that are delineated on the south side of the property. However, it is Staff's position that that the proposed development does not constitute a hardship. A house at or near the minimum width requirement of 22 feet would arguably have much less of an impact on the wetland area located on the property and could potentially be supported. Designing and proposing to construct a house, with a walkout basement within 1 foot of a delineated wetland at a width of nearly 50 feet has been created by the applicant and does not constitute a hardship.

To permit development in the Shoreland Overlay District within 40 feet of the top of a steep slope: The circumstances requiring a variance to allow development within 40 feet of the top of a steep slope are somewhat unique to the site, however, it is likely that the home as proposed would require significant alterations to the existing property and the on site slope. Staff would argue that the proposal does not constitute a hardship and that construction of a home designed sensitively to fit into the existing contours or with minimal grading and filling meeting the requirements of Section 551.510 could potentially be supportable.

**3. The granting of the variance will be in keeping with the spirit and intent of the ordinance and will not alter the essential character of the locality or be injurious to the use or enjoyment of other property in the vicinity.**

To permit development in the Shoreland Overlay District within 50 feet of any protected water (wetland): Staff would conclude that granting the variance to construct a new 50 foot wide, single-family home with a walkout basement within 1 foot of a delineated wetland is not in keeping with the spirit and the intent of the ordinance. The Shoreland Overlay district was established to preserve and enhance the environmental qualities of surface waters and the natural and economic values of shoreland areas within the city. Further the district provides for the efficient and beneficial utilization of those waters and shoreland areas and protection of the public health, safety and welfare. Staff would argue that this proposal is not in keeping with the spirit and intent of the ordinance, and further could alter the essential character of the locality.

To permit development in the Shoreland Overlay District within 40 feet of the top of a steep slope: Granting a variance to construct the proposed home would likely not be in keeping with the spirit and intent of the ordinance and would likely alter the essential character of the area. The proposed development would have significant impacts on the property as the densely vegetated site would likely need to be cleared to accommodate such a large home. The proposed location would also likely require significant grading and filling.

**4. The proposed variance will not substantially increase the congestion of the public streets, or increase the danger of fire, or be detrimental to the public welfare or endanger the public safety.**

To permit development in the Shoreland Overlay District within 50 feet of any protected water (wetland): Granting a variance to allow development within 1 foot of a wetland area would likely not result in a substantial increase in the congestion of the public streets, danger of fire or be detrimental to the public welfare or endanger the public safety.

To permit development in the Shoreland Overlay District within 40 feet of the top of a steep slope: Granting the setback variance to allow development within 40 feet of the top of a steep slope would likely not result in a substantial increase in the congestion of the public streets, danger of fire or be detrimental to the public welfare or endanger the public safety.

## **RECOMMENDATIONS:**

**Recommendation of the Department of Community Planning and Economic Development – Planning Division for the conditional use permit:**

The Department of Community Planning and Economic Development – Planning Division recommends that the City Planning Commission adopt the above findings and **deny** the application for a conditional use permit to allow development within 50 feet of a protected water for property located at 5912 Girard Avenue South.

**Recommendation of the Department of Community Planning and Economic Development – Planning Division for the conditional use permit:**

The Department of Community Planning and Economic Development – Planning Division recommends that the City Planning Commission adopt the above findings and **deny** the application for a conditional use permit to allow development within 40 feet of the top of a steep slope for property located at 5912 Girard Avenue South.

**Recommendation of the Department of Community Planning and Economic Development– Planning Division for the variance:**

The Department of Community Planning and Economic Development – Planning Division recommends that the City Planning Commission adopt the above findings and **deny** the variance to permit development in the Shoreland Overlay District within 50 feet of a protected water for property located at 5912 Girard Avenue South.

**Recommendation of the Department of Community Planning and Economic Development– Planning Division for the variance:**

The Department of Community Planning and Economic Development – Planning Division recommends that the City Planning Commission adopt the above findings and **deny** the variance to permit development in the Shoreland Overlay District within 40 feet of the top of a steep slope for property located at 5912 Girard Avenue South.

**Attachments:**

1. Statement of use and description of project
2. Findings
3. Correspondence
4. Letter from Minnehaha Creek Watershed District
5. Wetland Report
6. Zoning map
7. Plans – survey, site and proposed residence elevations
8. Neighborhood letters

**Excerpt from the  
CITY PLANNING COMMISSION  
MINUTES  
Minneapolis Community Planning & Economic Development (CPED)  
Planning Division  
350 South Fifth Street, Room 210  
Minneapolis, MN 55415-1385  
(612) 673-2597 Phone  
(612) 673-2728 Fax  
(612) 673-2157 TDD**

---

**MEMORANDUM**

DATE: November 29, 2005

TO: Steve Poor, Manager, Community Planning & Economic Development - Planning Division; Phil Schliesman, Licenses

FROM: Jason Wittenberg, Supervisor, Community Planning & Economic Development - Planning Division, Development Services

CC: Barbara Sporlein, Director, Community Planning & Economic Development Planning Division

SUBJECT: Planning Commission decisions of November 28, 2005

---

The following actions were taken by the Planning Commission on November 28, 2005. As you know, the Planning Commission's decisions on items other than rezonings, text amendments, vacations, 40 Acre studies and comprehensive plan amendments are final subject to a ten calendar day appeal period before permits can be issued:

Commissioners Present: President Martin, El-Hindi, Krause, Kummer, LaShomb, Motzenbecker, Schiff and Tucker – 8

Not present: Henry-Blythe and Krueger.

---

**10. Radunz Residence (BZZ-2677, Ward 13), 5912 Girard Avenue South ([Becca Farrar](#)).**

**A. Conditional Use Permit:** Application by Dan Radunz for a conditional use permit to locate development within 50 feet of any protected water (wetland) for the property located at 5912 Girard Avenue South.

**Action:** The City Planning Commission adopted the findings and **denied** the application for a conditional use permit to allow development within 50 feet of a protected water for property located at 5912 Girard Avenue South.

**B. Conditional Use Permit:** Application by Dan Radunz for a conditional use permit to allow development within 40 feet of the top of a steep slope for the property located at 5912 Girard Avenue South.

**Action:** The City Planning Commission adopted the findings and **denied** the application for a conditional use permit to allow development within 40 feet of the top of a steep slope for property located at 5912 Girard Avenue South.

**C. Variance:** Application by Dan Radunz for a variance to permit development in the Shoreland Overlay District within 50 feet of a protected water for the property located at 5912 Girard Avenue South.

**Action:** The City Planning Commission adopted the findings and **denied** the variance to permit development in the Shoreland Overlay District within 50 feet of a protected water for property located at 5912 Girard Avenue South.

**D. Variance:** Application by Dan Radunz for a variance to permit development in the Shoreland Overlay District within 40 feet of the top of a steep slope for the property located at 5912 Girard Avenue South.

**Action:** The City Planning Commission adopted the findings and **denied** the variance to permit development in the Shoreland Overlay District within 40 feet of the top of a steep slope for property located at 5912 Girard Avenue South.

Staff Becca Farrar presented the staff report. She displayed a survey provided by the applicant that showed the encroachment of the wetland on the property on a substantial amount of area. She noted the Grass Lake Management Plan which was referenced in several letters, and that the report was developed by the Grass Lake Committee of the Kenny Neighborhood Association, and for clarification that the plan is not a plan that has been adopted by the City Council and does not address land use. She also stated a clarification to the staff report regarding visibility because as she had looked at the site again without vegetation on the trees, it was clear that the application will impact the properties that are located across Girard as well as those located along Grass Lake Terrace. She also noted that she had not received official communication regarding the application from the Kenny neighborhood group.

Commissioner LaShomb: Is this house consistent with the character of the neighborhood.

Staff Farrar: I would actually say that it's probably not within the character of the neighborhood. I would say that a lot of the homes up there are not 2 ½ stories. Actually, I don't know if I saw a house that was 2 ½ stories while I was out there. So I would have to say no.

Commissioner LaShomb: Well, to me... I didn't drive out and look at this. I guess my question is I'm a little confused – are you saying that a house that was 22 feet wide could be built on this site?

Staff Farrar: Yes. Well, I'm saying that I don't know for sure whether... We would have to look at the proposal in the specific context of it being proposed. I can't say whether a 22 foot wide house is going to be appropriate for this site. I can't say whether any development is appropriate for this site. But because we had a specific proposal in front of us, we're saying that it might be possible perhaps a house that was at or near the minimum width requirements, we could consider that again as an application. But putting a 50 foot wide house within 1 foot of a delineated wetland is not an appropriate use of a property.

Commissioner LaShomb: Yeah, I guess you know, my ten second sermon. The sense I get is nothing can be built on this site, that what staff is saying is nothing can be built on this site, which makes me wonder what situation a property owner is when the city's position basically is nothing can be built on this site. I mean, we should be buying this site, making it public property if nothing can be built on the site because it's a real burden on a property owner to say: pay the property taxes, but oh, by the way you can't build on it. So that's not a question, that's just an observation.

Staff Farrar: Can I comment on that? I think that I tried to be careful in the way that I had written the staff report because I don't think we necessarily said as a planning staff that we'd absolutely not consider any other proposal. I think what it basically states is that we would consider a proposal and potentially that could be supportable and maybe that's a wordy way of saying it, but we didn't necessarily say that this is not a developable piece of property... This is a lot of record, it has many site constraints, but the proposal that we had to look at, not within the context of looking at it and any other proposal, but this specific proposal is inappropriate.

Commissioner Motzenbecker: I just was wondering if you gotten any information in the interim on the final, finished floor elevation and about kind of how much fill would be needed for this because it seems like quite a bit.

Staff Farrar: I would expect it would be quite a bit as well, although I was not given that information from the applicant.

President Martin: Thanks, Becca. OK, I'll open the public hearing for item number 10 and ask if there are folks who want to speak to this. And I will tell you in advance, we have a lot of correspondence, so if you've written us, you don't need to repeat what you wrote in here because that's already a matter of the record.

Donna Noukki (1317 West 59<sup>th</sup> St): I know how that site was filled in. It was with sand that was taken from the housing development across the street to the north of Grass Lake. It's pretty much sand and is extraordinarily eroded for those who have not gone to look at it, you would not possibly imagine how it is steep. And it has occurred to the neighbors that perhaps maybe the city should buy it – that it is not an area that would not flood a walk out basement when the water levels are high. The water levels vary a lot. There's stormwater runoff from the surrounding neighborhood which will make the water level rise and fall. Wink Associates in Maple Grove had done a water survey. It's about 10 years ago, I was chair of Grass Lake Committee at that time. And we did an awful lot of looking into exactly how to preserve the wetland and how best to go about it. And the varying levels of water would make it very difficult to keep any walkout from

flooding. And the erosion of the banks would make it very difficult to build anything there unless it's on stilts. Are there any questions or comments? Also it's a duck nesting habitat and that's mainly what the neighbors appreciate it for. We love the trees and the bushes that everyone wants cut down. [tape unclear]. And there will be many neighbors speaking to that and thank you.

President Martin: Thank you.

Tim Martin (5901 Grass Lake Terrace): We live in the home directly north of the property in question. My wife and I have been there for 6 years. We're one of 1,700 homes in the Kenny area. If I can just hold this up briefly. There's 1,700 homes here in Grass Lake and they all love the Grass Lake. Not for... we don't have a band shelter, we don't have any specific picnic grounds, but we've... It's called the jewel of Minneapolis because we have habitat and we're going to take half of that habitat away if you allow this construction. Please don't let it happen. Thank you.

President Martin: Can I just get a show of hands of how many of you want to speak against this? OK, you don't all need to, but...

Michael Fox (5913 Grass Lake Terrace): This is a view looking out from the back of our house. I'll be very quick. Other way around. That's the back view of our house to the lake and the box square is precisely the area that this construction would cover. Talk about shadowing and reduction of our property values. This is a photograph taken showing the lake side is on this side, this is the property line from the surveyor, and this is a flag put in showing the demarcation of the wetlands. So you can see the wetland is actually inside the property line. And it is correct that there is only 15 square feet of developable land. Around Grass Lake, which, as a previous speaker said is a jewel in the community, virtually all the houses are set back to protect the lake by this embankment. The biodiversity in this lake is seriously threatened. This is virtually the only low-lying area on the lake that is critical nesting area for 2 species of turtles, for wood duck and other species. And we all know that property that will roadwork on the other end on highway 62 and 35W very soon which will disturb the wildlife and send them to this other end of the lake. And with construction going on there, there will be even more stress and disturbance on the wildlife. Many of our urban ecosystems are stressed with loss of biodiversity and this would be a serious crush to this extremely vulnerable and exquisitely beautiful little lake. On the point of critical habitat, no net loss when wild lands or wetlands are destroyed, we need to bring even to this small, precious plot. Currently, the owner is paying property tax on this land. It is zoned and it has a street number. Clearly something needs to be done here. Possibly the land donated to the park department that does maintain the trees and other vegetation around the edge of this lake. The community concern is great. When this land was bought by a speculative real estate agent this last spring time and when canvassing the neighborhood, I collected over a hundred signatures of concern and over this past weekend, in anticipation of this hearing, I collected the necessary signatures as representative of a petition for an environmental assessment worksheet that was filed today with the environmental quality board – just to tie this up for good. Thank you.

President Martin: Thank you. Others?

Dan Radunz (8951 Mariable Circle, Bloomington): I'm the person applying for the conditional use permit here at 5912 Girard Avenue South to build a single family home. I'm applying on behalf of Mr. Knuth who is the owner of the property and has been the owner and is still the owner for over 50 years and has been paying property taxes on this lot for that 50 years. The staff report is recommending denial in four main areas: vegetation removal; the possible disturbance of the wetland; grading and filling; and conformance with the plan, and I'd like to address each of those areas separately. The vegetation removal: Most of the vegetation that is on the lot, as you see from the survey that was done, most of the trees that would be removed are actually small saplings and scrub brush in the 2 to 4 inch range. There are a few larger trees that are on the side of the property which we would actually maintain while we build the home. Also, I would say that there actually has been a lot of tree removal on this lot over the last few years. This is a shot of a aerial photo that is actually on the Hennepin County tax website. That you can see there's actually I've highlighted some circles there [tape end]. There's two more large stumps that you can see that I've highlighted in yellow that are on the lot. These are actually very large trees – they're 12 inches to 2 feet in diameter and they have been removed and cut up over the last two years. Here you can see a lot of the debris that is just left on the lot, remaining tree stumps and limbs that have been cut up and chopped. This is actually a tree here that I highlighted, that's about a 3 inch diameter tree that was cut down and that's actually in the wetland area. I think a lot of these trees are actually being removed, probably with the applicability of increasing the view of the adjoining water. Here's two more stumps. So I counted at least 6 to 8 stumps that are trees that have been removed in the last couple of years on this property. All of them in a very large diameter, anywhere from 10 to 24 inches. Here's another remaining – some extra trees that are still broken down and laying as debris on the property.

President Martin: OK, Mr. Radunz, I think we're getting the point there.

Dan Radunz: Thank you. As to possible wetland disturbance, I've actually worked with the staff and the Minnehaha Watershed district very closely in trying to come up with a plan that I think would work for everyone. I actually communicated to the staff when we drew up the plan, I was asking for guidance on what they would think would be supportable. But I was told was at the outset was designing the house to basically stay out of the wetland area which is what we are proposing to do. We are actually stipulating that we would stay two feet back from the wetland area within the lot. And it is actually only a 45-foot wide house and we would be gladly [sic] to remove the portion that's actually only a foot of a wrap-around porch to keep it at a 45 feet. I would also like to mention that we have approval from the Watershed District. They do not have any requirements for setback from the wetland. Their only requirements are that you do not build within the wetland and you do not build within the 100 year floodplain. As you'd see on the survey, we are not in the wetland area and we are not in the 100 year flood plain. And we also have a soil survey that was done by an engineering group that says the lot is buildable and will support a single family home without a lot of filling or excavation. I have a letter here from Rebecca Clark from the Watershed District who says they're only permitting requirements would be for us to work with them on erosion control measures which we would gladly work with them and the city because we agree the wetland and the water – that Grass Lake is a very beautiful area and we want to protect it as well. So we do everything in our power to make sure that the erosion is

maintained. As for grading and filling, we've come up with a plan actually that this would be minimal grading and filling. We're building the basement of the home as a walk out and basically would only have to dig a trench around for the footing of the home and then the basement walkout level would be actually at the existing contours. So we wouldn't have to do a lot of grading, we wouldn't have to do a lot of excavating to build the house here. We're also planning on utilizing Spancrete for the garage floor to minimize any grading or filling that would be needed to accommodate the garage. We're also building as close to the existing contours as possible. One of the things I'd like to point out is that the city code, because we have to apply for a conditional use permit and a variance, is actually because of something that's in the city code that is a misnomer. They actually say that you have to apply for a variance to get a 50 foot setback at one point in the code and then at another point in the code they say you have to apply for a conditional use permit. So that's why we were forced to actually pay two fees and apply for two different things, but it's actually just a mistake within the code is what my understanding is. And the actual classification of the steep slope for the lot – the code also says that anything that is under 10 feet is not considered a steep slope. Well we are exactly at 10 feet. So if it was one-millionth of an inch less than 10 feet, we wouldn't have to be applying for a steep slope variance. So the variance that we are applying for is very minimal here. As to conformance with plan, the plan that we provided does meet with all other zoning requirements except for the setback from the 50-foot high water mark or the wetland and the steep slope. As for form, I measured a lot of the houses in the neighborhood where the staff is saying they would now support maybe a house that was only 22 feet wide, that would have been nice to know what their guidance would have been – the get go – when we designed the house, but we never got that guidance in the beginning. But when I measure the homes that are adjacent to the property and straight across the street, at 5907 the house is approximately 40 feet wide. 5911 is 46 feet wide. 5901 Grass Lake Terrace is 58 feet wide. And 5913 is 54 feet wide. So when we're proposing a home that is only 45 feet wide, I think it is actually something that fits nicely within the neighborhood. We are actually not proposing a home that is 2 ½ stories. It is just a 1-story walkout. Because they classify it as 2-stories is because 90 percent of the walkout basement is exposed. The reason that is because we're trying to minimize how much fill and grading we have to do. So it's actually just a walk out rambler that's classified as a 2-story because of the large area of the walk out. I would also like to mention that there is precedence in the neighborhood. The house at 5941 Grass Lake Terrace is actually built on what would have been considered a steep slope and is even steeper than what we have. And there's only about 20 feet from the water's edge of Grass Lake Terrace, or the Grass Lake. And we are actually proposing that we're going to be much further back. We're probably going to be anywhere from 30 to 35 feet from the water's edge. In conclusion, I would just like to say that Mr. Knuth has basically owned this lot for 50 plus years. He worked for the City of Minneapolis for 30 plus years, loves the city and really would like to be able to see this lot put to its intended use when it was platted as a buildable lot. Also, a couple just side notes is we did offer the lot for sale. Mr. Knuth did send out a notice to everybody in the 350 foot radius within the neighborhood and sent a letter to the neighborhood association. No one actually came forward and said they'd like to purchase the lot to conserve it as a green space. My other contention would be that the culvert that is adjacent to the property – Grass Lake is actually a stormwater runoff pond and the culvert I think, is what created some of the wetland on this property. It is exactly adjacent to the property and a lot of the stormwater then runs on to the

property at 5912 Girard Avenue South. I also worked very closely with the neighborhood association. I met with the board and presented our plan to gather feedback. They actually directed me to a person whose name is Bob Engstrom and he's considered an expert in Grass Lake areas within the neighborhood. In talking to him recently, he was saying that they may be able to support a plan where we'd actually go to the watershed district and propose to fill in the portion of the wetland that is on this property and to build the home maybe not so far back on the property to alleviate any concerns with blocking some views of the neighboring properties. So I would basically ask that the Commission would approve this conditional use permit and variance or at a minimum, give us the opportunity to further work with the city and the neighborhood to come up with a plan that I think would work for everyone. Thank you.

President Martin: Thank you. Anyone else? New information now. I think we know a lot of people don't want this to be built and I think we know why.

Jim Ahrens (5844 Girard Court): In addition to the obvious case of this being an environmental and aesthetic disaster, I would just like to point out two things which were somewhat misleading in Mr. Radunz's presentation just now. The wood that was cut was done for two reasons – one, there was Dutch Elm disease on the property. As you probably know, that is automatically taken down by the city. Also, we recently had buckthorn removal around the entirety of Grass Lake which would also result in some of the... in the brush and lumber that's down in that area. Second, my neighbors have informed me that Mr. Radunz's statement that no one offered to buy the property from the existing owner is incorrect. There were offers made; however, they were turned down based on the price. It's obvious to most of us that this is not an appropriate plot of land for building and obviously we would probably all be in favor of the city condemning it and returning it to public ownership and using it as it stands as a green space. I thank you.

President Martin: Others? New information please.

Tom Johnson (5907 Girard Ave. S.): I've lived in the home directly across from this property for 22 years. I just wanted to say briefly in these pictures that we have... This particular picture here of these trees, which are rather large, there are two hawks that live in those trees and I observe them all summer long and it's a joy to watch them and to watch them hunt. And there's also snapping turtles that are down there. They breded [sic] last year, they were in my neighbors' yard, Tim's, my yard. There's all kinds of wildlife down there and one other thing if I could show you. This particular area here – you wouldn't want to go down there without boots on. The whole area is very wet throughout the spring. There's wild reeves that grow down there. And you can't go down there without boots on. It's wet all through June, part of July... the whole area – they keep saying that this wetland is on the south end – it's the whole area. And the trees that they're referring to as cut down, the city came and cleared those. I watched those guys out there with their big cutters. It wasn't anybody here that lives at the Girard area, it was the City of Minneapolis that cut them. They trimmed it all up. That's all I have. Thank you.

President Martin: Thank you. Anyone else.

Sheryl Carter (125 West Lake St., Wayzata, real estate agent representing the buyer and the seller): First of all, I'd like to go from the seller's prospective. He's had the property, like they said, for over 50 years. We don't need to go down that road again. Long, lifetime dream of building there. The lot was substantially larger at one point many years ago; he did subdivide that. And now, obviously is left with this particular piece to build on. Mr. Kurth, the seller, did take it a couple of times to address these homeowners. Both to individually let them know – they were called, their doors were knocked on recently this last fall, early spring to let them know that the seller wanted to account for them and their interest being homeowners there and living there for many, many years that he'd be happy to sell the property to them at a substantially very good price considering the market that we've had in Minneapolis the last couple of years. Nobody responded at that time. Mr. Radunz along with 97 other purchase agreements coming in on that property, was the only the only person the seller actually chose to work with on that parcel – mainly because of his concern about the people who currently live there, the current homeowners and their values, what would be built on that. There were several developers that wanted to go in and build extremely large homes there. We did have Braun Intertec come out and do the soil testings on that property and they did a substantial amount of testing all over that entire parcel and those were also submitted to wetland in previous meetings I understand with Dan. It wasn't until... Well, first of all, I'd like to let you know I'm working with Dan and his family – it's not like they're planning to build there and then sell it as an investment. They're planning to build there and live there and be part of that neighborhood and actually bring value to the other homeowners within that area. Then the only other thing I'd like to comment on is that through all this and once they found out that there was a purchase agreement and we were moving forward with soil testings, etc., not only to mention that the people who were doing the testing were continuously heckled and sworn at and all kinds of issues were made through neighbors while they were out there...

President Martin: OK, I'm going to ask you to talk about the proposal...

Sheryl Carter: Anyway, long story short, Mr. Kurth also received a letter from Tim Martin who I believe addressed you earlier this evening stating that he now if things failed would be very interested in purchasing that land. Once again, let me say that that would be... I mean, he was addressed early in with everybody else too so it was a fair opportunity for everybody to move on. We even looked at situations where maybe each one of the homeowners could contribute a fund even if they wanted to leave that as a lot or make it a park or do whatever they wanted to do with the city. There were several options that were put out for them to consider. I really highly recommend that you take a look at Mr. Radunz's plan for the property. Again, he's not an investor/developer out there – he's a single family homeowner that would like to take advantage as the rest of these people have done in the neighborhood and live and reside in a home that does conform with the existing properties.

President Martin: OK, I think we've heard enough.

Pam Blixt (4811 38<sup>th</sup> Ave. S., Vice Chair of the Minnehaha Creek Watershed District): You haven't heard from me.

President Martin: Something we haven't heard before?

Pam Blixt: I think so. I'm currently Vice Chair of the Minnehaha Creek Watershed District so I chose to speak to you after I heard Mr. Radunz talk about the Watershed District. I have been on the Watershed District since... for some time and was a part of the original implementation of the MOU between the Watershed District and the City of Minneapolis for the Grass Lake Plan and have worked closely with the neighbors in the past. And so I just want to clarify right now that what would happen – our permit process does not go into effect until after we have received a permit that's come through the City process. We don't start our review and we don't look at a permit until we have final plans in place. When that occurs, when there are final plans, that's when we will make a determination about the impact based on our rules. And we do have a buffer requirement in our rules that are triggered by wetlands, but they only occur when there is an impact to the wetland itself. And the minimum that [we] would require would be a 16 ½ foot buffer from the wetland delineated boundary. And based on the impact due to construction that is potentially go into effect for this particular proposal, but until we have the actual plans in place, we wouldn't be able to determine that. Other than that, there isn't any indication that we would also be a requirement for an erosion control for the project. So I just wanted to clarify that there is no permit that's been granted by the Watershed District at this time.

Commissioner LaShomb: Does the Watershed District have the ability to acquire property that if used some other way would have an adverse affect on the watershed?

Pam Blixt: Do we have the ability to acquire property?

Commissioner LaShomb: Yeah, do you buy property if...

Pam Blixt: We do. We currently have a very... actually a conservation acquisition in our budget.

Commissioner LaShomb: So I don't want to put you on the spot and have you write a check [laughter]...

Pam Blixt: I didn't bring the checkbook, no.

Commissioner LaShomb: Unless it's to me. I have water running in my condo... So, I guess the point I'm trying to make is that I'm still hung up on this basic notion that if people aren't going to issue permits and if we're not going to allow variances and do other things, then it comes pretty close in my mind to an illegal taking of property. So I'm just asking whether the Watershed District has the financial wherewithal if you do determine that building on this site would have an adverse effect on the watershed – which is very important – I'm a very strong supporter of the watershed.

Pam Blixt: We have a criteria for our purchases for our conservation purchases and there's a large number of criteria that would have to meet. And I can't off the top of the head tell you whether or not this particular piece would meet that criteria. It's possible.

President Martin: It would require further study.

Pam Blixt: Yes, exactly.

Commissioner LaShomb: And I understand there are only so many bucks in the pool. So, thank you very much. I just wanted to make sure we got that possibility in the record.

President Martin: OK, thank you. Now I am going to close the public hearing.

Michael Fox: Question please.

President Martin: One question only.

Michael Fox: I would like to hear from other people in my community for a show of hands whether they were contacted in writing or ...

President Martin: No. That has nothing to do with our process. You can ask your neighbors privately, but that's irrelevant to our decision tonight. Public hearing closed. Commissioners.

Commissioner Tucker: I will move the staff recommendation and findings on A, conditional use permit (Kummer).

President Martin: Any discussion?

Commissioner Tucker: Well, clearly this is too much house on this very difficult lot. Staff did suggest there's possibly some room for maneuver, but I notice in the plan not even the little triangle that is buildable was included in the plan. So this is way too much for this. So we can easily deny not being within the 50 foot.

Commissioner Motzenbecker: Yes, I would just speak to that staff recommendation. Some of the things that were mentioned about addressing steep slopes and specific reasons for setbacks from the wetlands – the slopes on this site in the front portion of this site are between 45 percent and 30 percent across the front of the site. Now that to me seems like a steep slope and I would know. But setbacks for wetlands are there for a reason. They're there to protect the ecosystems, they're there to protect runoff, to accept the stormwater bounce. The reasons are numerous, so I would just say that I don't feel that this is an appropriate use for this site and I would concur with the recommendation.

President Martin: OK, the motion is to approve the staff recommendation to deny the CUP in item A. All those in favor.

The motion carried 7 – 0.

Commissioner Tucker: I'll move staff recommendation on item B (Kummer seconded).

President Martin: Alright, we've had the discussion.

The motion carried 7 – 0.

Commissioner Tucker: I'll move staff recommendation on C and D – they're basically repeats of A and B (Kummer seconded).

The motion carried 7 – 0.