

REPORT / RECOMMENDATION



To: MAYOR AND COUNCIL

Agenda Item #: VII.D.

From: Cary Teague, Community Development Director

Action

Discussion

Information

Date: November 19, 2013

Subject: Resolution No. 2013-114 Approving a Final Plat and Tree and Slope Preservation Easement at 6609 Blackfoot Pass.

Action Requested:

Adopt the attached resolution and approve the Tree and Slope Preservation Easement.

Information / Background:

On October 14, 2013, the City Council approved the Preliminary Plat. The Final Plat is the same as the approved Preliminary Plat.

ATTACHMENTS:

- Preliminary & Final Plats
- Tree and Slope Preservation Easement
- Resolution 2013-114
- City Council Minutes October 14, 2013

SITE ADDRESS: 6609 BLACKFOOT PASS
EDINA, MN 55439

126-13 REF: 31-13 128/63

PRELIMINARY PLAT FOR: GREAT NEIGHBORHOOD HOMES

Legend

- Floor
- SAN — Sewer
- Manhole
- Light Pole
- Power Pole
- Hydrant
- Deckhouse Ties
- Concrete Curb
- ▤ Timber Retaining Wall
- ▥ Neystone Retaining Wall
- ▧ Prepared Retaining Wall
- Existing Elevation
- Proposed Elevation
- Existing Centerline
- Proposed Centerline
- FYS Front Yard Setback
- RYS Rear Yard Setback

• Denotes Iron Monument Found
 • Denotes 5/8" x 1/2" x 1/4" Iron Pipe w/ Plastic Cap located in S.W. 1/4 Sec. 25

6609 BLACKFOOT PASS EXISTING AREAS:
 Lot Area = 77,417 SF
PROPOSED SURFACE:
 House = 2,147 SF
 Deck Area 150' of Advance = 428 SF
 Concrete Around Pool = 7154 SF
 Total = 33,130 SF
 = 1.25

6609 BLACKFOOT PASS EXISTING ELEVATIONS:
 FIRST FLOOR = 927.6
 LOWER ENTRY = 918.9
 TOP OF BLOCK = 918.4
 GARAGE FLOOR = 918.0

PROPOSED LOT AREAS:

Proposed Lot 1 = 48,473 SF or 1.07 Acres
 Width (of 50' Setback) = 153.8 FL
 Depth = 286.0 FL

Proposed Lot 2 = 30,920 SF or 0.71 Acres
 Width (of 50' Setback) = 100.1 FL
 Depth = 323.8 FL

EXISTING YARD SETBACKS FROM NEAREST LOTS:

6605 BLACKFOOT PASS = 62.0'
 6621 CHEYENNE TRAIL = 42.0'
 6624 CHEYENNE TRAIL = 45.0'

PROPERTY DESCRIPTION: Lot 4, Block 3, HILLS, Hennepin County, Minnesota.

BENCHMARK: Edna #503
 731.4 on the West Side of Cheyenne Tr. Between #8704 and #8703. Elevation = 931.00.

NOTE: No Setback Was Made For Any Encumbrances

NOTE: The location of all utilities shown are from plans furnished by the utility companies and are approximate. Utility companies should be notified for exact location before doing any excavations.

I hereby certify that this survey, plan, or report was prepared by me or under my direct supervision and that I am a duly registered Land Surveyor under the laws of the State of Minnesota.

W. BROWN LAND SURVEYING, INC.

Woodrow A. Brown, R.L.S.
 Woodrow A. Brown, R.L.S. MN REG 15230
 Dated: 03-04-2013

PERCENTAGE OF SPACE TAKEN ON OWN ATTACHED BY FINANCING CONSIDERATION OF PRELIMINARY PLAT LOTS 1 & 2:

Lots 1 & 2 Square Footage of Gross 15% or Over = 05,809.6 SF
 Total Square Footage Affected Lots 1 & 2 w/ Lot 2 Home Positioned at 45' Front Setback (Minimum Required) = 11,818.8 or 23.0%
 Total Square Footage Affected Lots 1 & 2 w/ Lot 2 Home Positioned at 100' Front Setback (No Setback Required) = 12,506.1 or 21.4%
 Maximum of 25% Allowed

PROPOSED HOME LOT 1:

First Floor = 928.0
 Lower Entry = 918.9 (Existing Home = 918.3)
 Home W/ West of Zoning Requirements

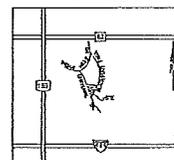
PROPOSED HOME LOT 2 WITH 45' FRONT SETBACK (MINIMUM REQUIRED):

First Floor = 901.0
 Edge Height Minimum = 33' Above Existing Grade (Each Above 40')
 Home W/ West of Zoning Requirements

PROPOSED HOME LOT 2 WITH 100' FRONT SETBACK (NO SETBACK REQUIRED):

First Floor = 913.0
 Edge Height Minimum = 40' Above Existing Grade
 Home W/ West of Zoning Requirements

VICINITY MAP



NOT TO SCALE

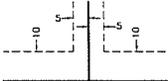
W. BROWN LAND SURVEYING, INC.
 6500 Cedar Avenue So., Suite 278
 Bloomington, MN 55423
 Phone: (952) 854-4503
 Fax: (952) 854-4505

Dates: 126-13
 Date: 03-04-2013
 Scale: 1 inch = 20 Feet
 1 of 1

Final Plat

INDIAN HILLS 4TH ADDITION

Drainage and utility easements are shown thus:

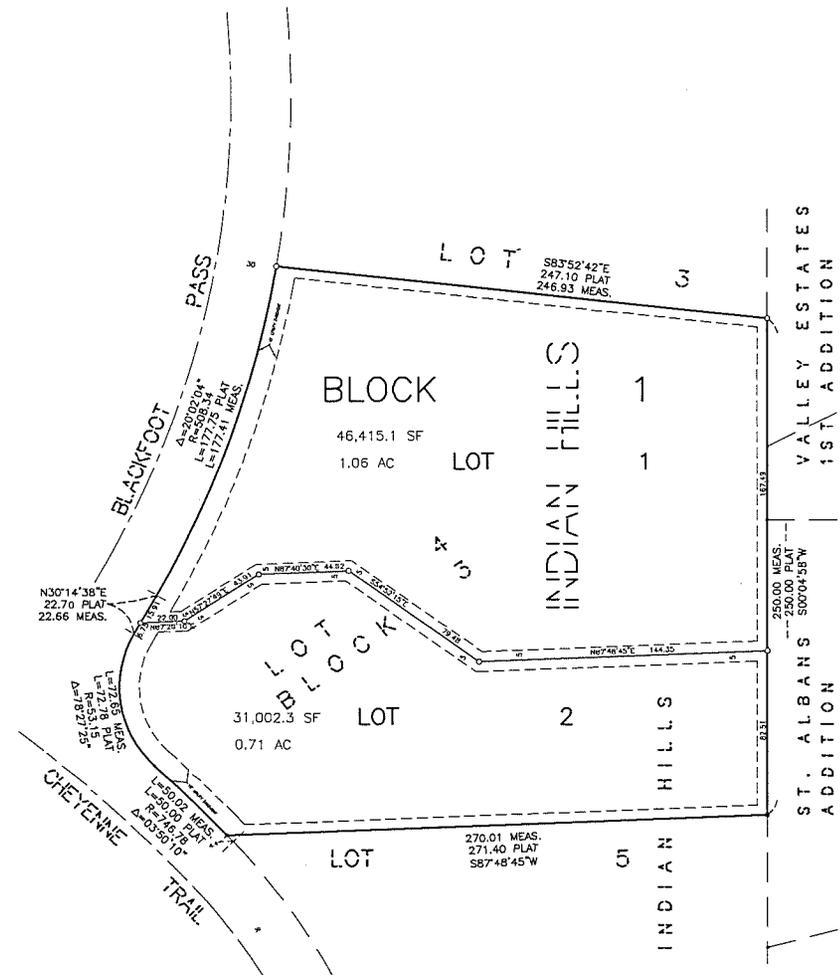
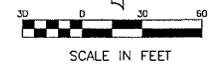


Being 5 feet in width, unless otherwise indicated, and adjoining lot lines, and 10 feet in width and adjoining right-of-way lines, as show on the plat.

R.C. DOC. NO. _____

- Denotes Set Iron Monument
1/2 Inch by 14 Inch Iron Pipe
Marked R.L.S. 15235, unless otherwise noted.
- Denotes Found 1/2" Iron Monument,
unless otherwise noted.

Direction of this bearing system
is based on the North line of Lot
4, Block 3, INDIAN HILLS, has an
assumed bearing of South 83
degrees 52 minutes 42 seconds
East.



KNOW BY ALL PERSONS BY THESE PRESENTS: That Douglas L. Johnson, owner and proprietor of the following described property situated in the County of Hennepin, State of Minnesota, to wit:

Lot 4, Block 3, INDIAN HILLS, Hennepin County, Minnesota.

Has caused the same to be surveyed and platted as INDIAN HILLS 4TH ADDITION and does hereby dedicate to the public for public use the public way(s) and/or the drainage and utility easement(s) as created herewith, and does hereby donate to the City of Edina the park(s) as shown on this plat.

In witness whereof said Douglas L. Johnson, has hereunto set their hands this ____ day of _____, 20__.

Douglas L. Johnson _____

STATE OF _____
COUNTY OF _____

This instrument was acknowledged before me this ____ day of _____, 20__ by Douglas L. Johnson.

Notary Public, _____
My commission expires, _____

I, Wendrow A. Brown, do hereby certify that this plat was prepared by me or under my direct supervision; that I am a duly Licensed Land Surveyor in the State of Minnesota; that this plat is a correct representation of the boundary survey; that all mathematical data and labels are correctly designated on this plat; that all monuments depicted on this plat have been, or will be correctly set within one year; that all water boundaries and wet lands, as defined in Minnesota Statutes, Section 505.01, Subd. 3, as of the date of this certificate are shown and labeled on this plat; and all public ways are shown and labeled on this plat.

Dated this ____ day of _____, 20__.

Wendrow A. Brown, Licensed Land Surveyor
Minnesota License No. 15230

STATE OF _____
COUNTY OF _____

This instrument was acknowledged before me this ____ day of _____, 20__ by Wendrow A. Brown.

Notary Public, _____
My commission expires, _____

EDINA, MINNESOTA
I hereby certify that this plat of INDIAN HILLS 4TH ADDITION was approved by the City Council of the City of Edina, Minnesota at a meeting thereof held this ____ day of _____, 20__. If applicable, the written comments and recommendations of the Commissioner of Transportation and the County Highway Engineer have been received by the City or the prescribed 30 day period has elapsed without receipt of such comments and recommendations, as provided by Minn. Statutes, Section 505.03 Subd. 2.

CITY COUNCIL OF EDINA, MINNESOTA
By _____, Mayor By _____, City Manager

TAXPAYER SERVICES DEPARTMENT, HENNEPIN COUNTY, MINNESOTA
I hereby certify that taxes payable in 20__ and prior years have been paid for land described on this plat. Dated this ____ day of _____, 20__.

Merk V. Chapin, County Auditor, by _____, Deputy

SURVEY DIVISION, HENNEPIN COUNTY, MINNESOTA
Pursuant to MN. STAT. SEC. 383B.565 (1969), this plat has been approved this ____ day of _____, 20__.
William P. Brown, County Surveyor, by _____

COUNTY RECORDER, HENNEPIN COUNTY, MINNESOTA
I hereby certify that this within plat of M-W DEVELOPMENT 3RD ADDITION was filed in this office this ____ day of _____, 20__, at ____ o'clock ____ m.
Martin McCormick, County Recorder, by _____, Deputy

TREE AND SLOPE PRESERVATION EASEMENT

THIS INSTRUMENT, is made _____, 20___, by and between the **CITY OF EDINA**, a Minnesota municipal corporation (“Grantee”) and Douglas L. Johnson (“Grantor”)

A. Grantor is the owner of certain real property located in the City of Edina, County of Hennepin, State of Minnesota, legally described as Lot 4, Block 3, Indian Hills, Hennepin County, Minnesota, according to the plat recorded therein (the “Property”).

B. Grantor submitted to Grantee an application for subdivision of the Property.

C. As a condition of approval of the subdivision, Grantee required Grantor to grant a tree and slope preservation easement (“Easement”) for the protection of trees and slopes over a portion of the Property, as legally described in Exhibit A (the “Easement Property”).

NOW THEREFORE, in consideration of the City's approval and in satisfaction of the condition imposed, Grantor hereby grants and conveys unto the Grantee a tree and slope preservation easement over, under and across the Property for the protection of the slope and trees. The terms of this Easement are as follows:

1. Except as permitted by this Agreement, no action of any kind may be undertaken to disturb the slopes or harm the trees within the area shown by Exhibit A as of this date. The following activities are prohibited within the Easement Property identified:
 - A. Cutting or removing trees within the areas identified in Exhibit A without a special permit granted by the City of Edina. If any trees need to be removed for some reason, new trees having a cumulative total equal in diameter or greater must be planted to replace it (species approved by the city).
 - B. The deposit of waste, yard waste, or debris.
 - C. Activity detrimental to the preservation of the slopes or specified trees
2. Allowable activities within the Easement Property:
 - A. Grantor may encroach within the Easement Property for purposes of constructing driveways, sidewalks, utilities, accessory buildings, or landscape features.

Grantor reserves the right to construct driveways, sidewalks, utilities, accessory buildings, or other landscape features within the Easement Property. Grantor reserves full rights for determination of location of driveways, sidewalks, utilities, buildings, or other landscape features.

- B. Grantor reserves the right to manage the grade, trees, the undergrowth and surface growth within the Easement Property. Removal of trees within the Easement Property will be subject to the terms of paragraph 1.A. of this agreement.
3. Grantor hereby grants to the Grantee the affirmative right, but not the obligation to enter upon the Easement Property for the purposes of inspection and enforcement of this Tree and Slope Preservation Easement and to take whatever actions are necessary to restore the Easement Property to its agreed upon nature. Grantee may assess the reasonable costs of this restoration against the Property, and Grantor waives all rights to contest those costs. Further Grantee may enforce the terms of this Easement by any proceeding in law or in equity to restrain violation, to compel compliance, or to recover damages, including attorneys' fees and costs of the enforcement actions. Grantor is not liable for the actions of any third party, other than its employees, agents or contractors, which may violate the terms of this Easement, unless Grantor, its employees, agents or contractors had actual knowledge of the violation and failed to take reasonable action to stop the violation.
4. Failure to enforce any provision of this Tree and Slope Preservation Easement upon a violation of it cannot be deemed a waiver of the right to do so as to that or any subsequent violation.
5. Invalidation of any of the terms of this Tree and Slope Preservation Easement will in no way affect any of the other terms, which will remain in full force and effect.
6. This Tree and Slope Preservation Easement does not convey a right to the public to use the Easement Property nor does it convey any right of possession in the Easement Property to the public or the Grantee. Access by the Grantee to the Easement Property is limited to access necessary for purposes of inspection and enforcement as specified in paragraph 2 above. Grantee is not entitled to share in any award or other compensation given in connection with a condemnation or negotiated acquisition of all or any part of the Easement Property by any authority having the power of eminent domain. Grantee hereby waives any right it may have to such an award or compensation.
7. This Tree and Slope Preservation Easement runs with the Easement Property and is binding on the Grantor, its successors and assigns, and inures to the benefit of the Grantee, its successors and assigns.

EXHIBIT "A"

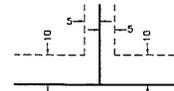
Legal Description of Property: A. 10 feet wide preservation easement contiguous with the perimeter of Lots 1 and 2, Block 1, Indian Hills 4th Addition, Hennepin County, Minnesota, together with the south 70 feet of the east 145 feet of said Lot 2, subject to driveways and walks for ingress and egress purposes.

EXCEPT

Along the southerly line of Lot 1 and the northerly line of Lot 2, Block 1, INDIAN HILLS 4TH ADDITION, Hennepin County, Minnesota

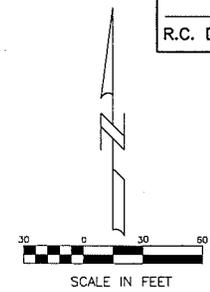
INDIAN HILLS 4TH ADDITION

Drainage and utility easements are shown thus:



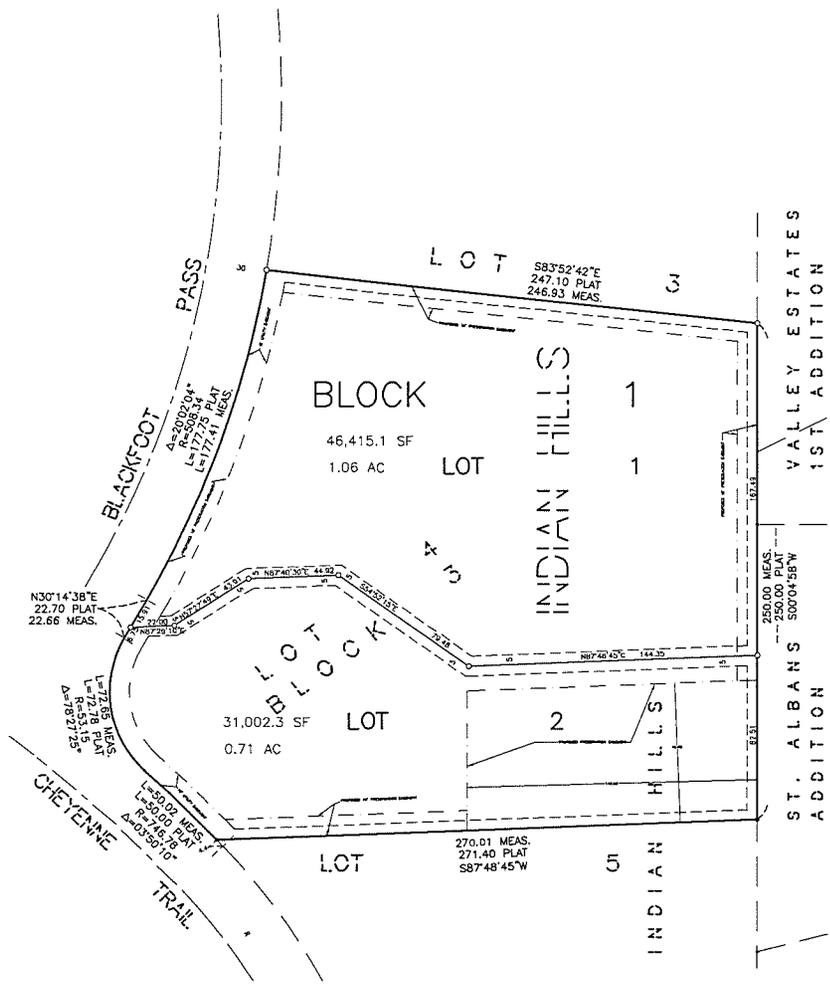
Being 5 feet in width, unless otherwise indicated, and adjoining lot lines, and 10 feet in width end adjoining right-of-way lines, as shown on this plat.

R.C. DOC. NO. _____



○ Double 5/8" Iron Monument
1/2" Inch by 1 1/2" Inch Iron Pipe
Marked R L S 152350, unless otherwise noted.
● Double 1/2" Iron Monument,
unless otherwise noted.

Orientation of this bearing system is based on the North line of Lot 4, Block 3, INDIAN HILLS, has an assumed bearing of South 83 degrees 52 minutes 42 seconds East.



KNOW BY ALL PERSONS BY THESE PRESENTS: That Douglas L. Johnson, owner and proprietor of the following described property situated in the County of Hennepin, State of Minnesota, to wit:

Lot 4, Block 3, INDIAN HILLS, Hennepin County, Minnesota.

Has caused the same to be surveyed and platted as INDIAN HILLS 4TH ADDITION and does hereby dedicate to the public for public use the public way(s) and/or the drainage and utility easement(s) as created herewith, and does hereby donate to the City of Edina the park(s) as shown on this plat.

In witness whereof said Douglas L. Johnson, has hereunto set their hands this ____ day of _____, 20__.

Douglas L. Johnson
STATE OF _____
COUNTY OF _____
This instrument was acknowledged before me this ____ day of _____, 20__ by Douglas L. Johnson.

Notary Public, _____
My commission expires, _____

I, Woodrow A. Brawn, do hereby certify that this plat was prepared by me or under my direct supervision; that I am a duly Licensed Land Surveyor in the State of Minnesota; that this plat is a correct representation of the boundary survey; that all mathematical data and labels are correctly designated on this plat; that all monuments depicted on this plat have been, or will be correctly set within one year; that all water boundaries and wet lands, as defined in Minnesota Statutes, Section 505.01, Subd. 3, as of the date of this certificate are shown and labeled on this plat; and all public ways are shown and labeled on this plat.

Dated this ____ day of _____, 20__.

Woodrow A. Brawn, Licensed Land Surveyor
Minnesota License No. 15230

STATE OF _____
COUNTY OF _____
This instrument was acknowledged before me this ____ day of _____, 20__ by Woodrow A. Brawn.

Notary Public, _____
My commission expires, _____

EDINA, MINNESOTA
I hereby certify that this plat of INDIAN HILLS 4TH ADDITION was approved by the City Council of the City of Edina, Minnesota at a meeting thereof held this ____ day of _____, 20__, if applicable, the written comments and recommendations of the Commissioner of Transportation and the County Highway Engineer have been received by the City or the prescribed 30 day period has elapsed without receipt of such comments and recommendations, as provided by Minn. Statutes, Section 505.03 Subd. 2.

CITY COUNCIL OF EDINA, MINNESOTA
By _____, Mayor By _____, City Manager

TAXPAYER SERVICES DEPARTMENT, HENNEPIN COUNTY, MINNESOTA
I hereby certify that taxes payable in 20__ and prior years have been paid for land described on this plat. Dated this ____ day of _____, 20__.

Mark V. Chapin, County Auditor, by _____, Deputy

SURVEY DIVISION, HENNEPIN COUNTY, MINNESOTA
Pursuant to MN, STAT. SEC. 363B.555 (1969), this plat has been approved this ____ day of _____, 20__.

William P. Brawn, County Surveyor, by _____

COUNTY RECORDER, HENNEPIN COUNTY, MINNESOTA
I hereby certify that the within plat of M-N DEVELOPMENT 3RD ADDITION was filed in this office this ____ day of _____, 20__, at ____ o'clock ____ p.m.
Martin McCormick, County Recorder, by _____, Deputy

A 10 foot wide preservation easement contiguous with the interior perimeter of Lots 1 and 2, Block 1, INDIAN HILLS 4TH ADDITION, Hennepin County, Minnesota, together with the south 70 feet of the east 145 feet of said Lot 2, subject to driveways and walks for ingress and egress purposes.

EXCEPT
Along the southerly line of Lot 1 and the northerly line of Lot 2, Block 1, INDIAN HILLS 4TH ADDITION, Hennepin County, Minnesota.



**RESOLUTION NO. 2013-114
APPROVING A FINAL PLAT AT 6609 BLACKFOOT PASS**

BE IT RESOLVED by the City Council of the City of Edina, Minnesota, as follows:

Section 1. BACKGROUND.

- 1.01 Great Neighborhood Homes Inc. on behalf of Douglas Johnson is requesting a Final Plat of 6609 Blackfoot Pass to divide the existing parcel into two lots.
- 1.02 The following described tract of land is requested to be divided:

Lot 4, Block 3, Indian Hills, Hennepin County, Minnesota.
- 1.03 The owner of the described land desires to subdivide said tract in to the following described new and separate parcels (herein called "parcels") described as follows:

Lots 1 and 2, Block 1, Indian Hills 4th Addition.
- 1.04 Within this neighborhood, the median lot area is 27,131 square feet, median lot depth is 183 feet, and the median lot width is 146 feet. The proposed new lots would meet these median width, depth, and lot size requirements.
- 1.05 On October 14, 2013, the City Council approved the Preliminary Plat; Vote 3-2.

Section 2. FINDINGS

- 2.01 Approval is based on the following findings:
 1. The proposed Final Plat is the same as the approved Preliminary Plat.

Section 3. APPROVAL

NOW THEREFORE, it is hereby resolved by the City Council of the City of Edina, approves the Final Plat for the proposed subdivision of 6609 Blackfoot Pass.

Approval is subject to the following Conditions:

1. Prior to issuance of a building permit, the following items must be submitted:

- a. If required, submit evidence of Nine Mile Watershed District approval. The City may require revisions to the preliminary plat to meet the district's requirements.
 - b. A curb-cut permit must be obtained from the Edina Engineering department.
 - c. Utility hook-ups are subject to review of the city engineer.
 - d. Grading and drainage plans specific to any proposed house would be reviewed at the time of building permit, and shall be subject to review and approval of the city engineer. Drainage from any new home, garage or driveway would have to be directed to the street, and shall not allow any additional drainage onto the property to the south of the subject property.
 - e. The applicant work with the city forester in regard to tree preservation and removal of Buckthorn.
2. Park dedication fee of \$5,000 must be paid prior to release of the final plat.
 3. Drainage for construction of the new homes shall be directed away from adjacent property and toward the street to greatest extent possible. Drainage plans for individual homes would subject to review and approval of the city engineer at the time of building permit approval.
 4. A 10-foot preservation easement must be established along the lot lines to preserve the vegetation areas along the streets and along the north and south lot lines; and to assist with drainage and runoff from the site. The preservation easement shall be generally consistent with the staff rendering labeled A14 in the Planning Commission staff report.
 5. Trees removed for construction on Lot 2 shall be replaced in accordance with a landscape plan to be approved by city staff. The number of trees removed and replaced shall be 1 to 1.

Adopted this ___ day of _____, 2013.

ATTEST: _____
Debra A. Mangen, City Clerk

James B. Hovland, Mayor

STATE OF MINNESOTA)
COUNTY OF HENNEPIN)SS
CITY OF EDINA)

CERTIFICATE OF CITY CLERK

I, the undersigned duly appointed and acting City Clerk for the City of Edina do hereby certify that the attached and foregoing Resolution was duly adopted by the Edina City Council at its Regular Meeting of _____, 2013, and as recorded in the Minutes of said Regular Meeting.

WITNESS my hand and seal of said City this ____ day of _____, 2013.

City Clerk

Public Testimony

No one appeared to comment.

Member Sprague made a motion, seconded by Member Brindle, to close the public hearing.

Ayes: Bennett, Brindle, Sprague, Swenson, Hovland
Motion carried.

Member Swenson introduced and moved adoption of Resolution No. 2013-102, authorizing the certification of delinquent utility charges to the Hennepin County Auditor, as revised to change the word "penalty" to the word "fee."

Member Sprague seconded the motion.

Rollcall:
Ayes: Bennett, Brindle, Sprague, Swenson, Hovland
Motion carried.

VI.C. PUBLIC HEARING CONTINUED FROM OCTOBER 1, 2013 – RESOLUTION NO. 2013-82 AND RESOLUTION NO. 2013-83 ADOPTED – PRELIMINARY PLAT AND FRONT YARD SETBACK VARIANCE, 6609 BLACKFOOT PASS; GREAT NEIGHBORHOOD HOMES, INC. ON BEHALF OF DOUGLAS JOHNSON

Mr. Knutson stated this was a quasi-judicial decision to apply the facts to the law and determining whether it met the standards of the ordinance. If determined the ordinance standards were met, the courts indicate it should be approved. Mr. Knutson stated the court wanted objective standards in the ordinances and indicated if the minimum standards were met, it must be approved. The Council would be the judge whether the standards were subjective.

Community Development Director Presentation

Community Development Director Teague presented the request of Great Neighborhood Homes, on behalf of Douglas Johnson, to subdivide the property at 6609 Blackfoot Pass into two lots. The existing house would be torn down and two new houses built on the new lots. The new house on Lot 1 would be located generally where the existing house was located. To avoid large oak trees and steeper slopes, the house on Lot 2 would be located toward the street in an area away from the adjacent house to the south.

Mr. Teague stated that within this neighborhood, median lot area was 27,131 square feet, median lot depth was 183 feet, and median lot width was 146 feet. Both of the proposed lots would meet those median requirements. He displayed a map of the subject site depicting required setbacks and buildable area. It was noted that a subdivision (preliminary plat) to create two new lots and front yard setback variance from 100 feet to 45 feet for proposed Lot 2 would be required to accommodate this request.

Mr. Teague advised that the Planning Commission recommended denial of the Preliminary Plat, on a vote of 6-2, based on the subjective finding that the proposed subdivision would be out of character with the neighborhood and inconsistent with the goal of the Comprehensive Plan to preserve neighborhood character.

Mr. Teague stated the plat met all minimum standards. Slopes exceed 18%, and not more than 25% of that slope area could be disturbed. He stated the buildable areas were within that 25% threshold. He described the two building pads, noting both were located to disturb as little as possible. Additionally, the proponent was suggesting a ten-foot preservation easement along all lot lines, and staff suggested it be expanded to include some slope areas and mature trees. He noted that pulling the proposed house to the street would increase separation of the existing house to the south.

Mr. Teague presented variance criteria and staff's findings. The criteria was met as the practical difficulties were a result of steep slopes and location of mature trees, circumstances not caused by the applicant.

Minutes/Edina City Council/October 14, 2013

Another condition was an extra right-of-way along Cheyenne Trail, resulting in an additional area of setback and separation. Mr. Teague stated staff found the 45-foot setback variance was generally within the character of the neighborhood as it contained varying setbacks, noting the location of a 42-foot setback and a 45-foot setback. Mr. Teague noted the location of three lots less than 30,000 square feet, which were smaller than proposed with the two new lots. In addition, to minimize impacts of pulling the house forward, the proponent had agreed to a maximum ridgeline of 35 feet when the Code would allow 40 feet in height.

Proponent Presentation

Scott Busyn, Great Neighborhood Homes representing the proponent, presented a two-lot subdivision request for 6609 Blackfoot Pass, noting it could be accomplished without a variance but it was felt the variance would result in a better subdivision. He described the setting of Indian Hills as having a mix of wooded lots as well as open lots, both large and small sized houses, with none being the same. Mr. Busyn then described the subject site as being overgrown. He presented their goals for the subdivision and construction of two custom houses within a natural opening in the forest. Mr. Busyn stated they had successfully redeveloped 6808 Cheyenne Circle that had a similar wooded setting. He reviewed the steps taken to engage the neighborhood and site plan revisions based on that input.

In response to inquiry by the Council, Mr. Busyn presented information related to the soil borings and indicated the borings identified buildable soils in the area of the proposed building pads if the variance was approved. Mr. Busyn stated if the Lot 2 house was built without the variance, more aggressive retaining walls would be needed. With the forward-positioned building pad, the retaining walls would be fewer and shorter. Mr. Busyn agreed this was a challenging site and stated they would work with engineers to submit a stormwater management plan as part of this process.

Mayor Hovland reopened the public hearing at 9:58 p.m.

Public Testimony

William Wilkowske, 6621 Cheyenne Trail, addressed the Council and displayed a video presentation.

Kristin Wilkowske, 6621 Cheyenne Trail, addressed the Council.

David Frauenshuh, 6401 Indian Hills Road, addressed the Council.

Tara Dev, 6804 Cheyenne Trail, addressed the Council.

Dean Swanson, 6617 Cheyenne Trail, addressed the Council.

Harry Joslyn, 6718 Indian Hills Road, addressed the Council.

Charles Ledder, 6709 Cheyenne Trail, addressed the Council.

Susan Brunn, 6601 Blackfoot Pass, addressed the Council.

Mary Swanson, 6617 Cheyenne Trail, addressed the Council.

Paul Shoemaker, 6820 Cheyenne Trail, addressed the Council.

Christopher Johnson, 5308 Highwood Drive West, addressed the Council.

Kay Laaksonen, 6404 Indian Hills Road, addressed the Council.

Douglas Johnson, proponent at 6609 Blackfoot Pass, addressed the Council.

Bert Ledder, 6709 Cheyenne Trail, addressed the Council.

Pat Kreuziger, 6705 Cheyenne Trail, addressed the Council.

Tim Keane, attorney representing residents of Indian Hills, addressed the Council.

At the inquiry of the Council, Ms. Kreuziger stated her preference for the building pad to be closer to the street.

Member Swenson made a motion, seconded by Member Sprague, to close the public hearing.

Ayes: Bennett, Brindle, Sprague, Swenson, Hovland

Motion carried.

Mr. Knutson explained the role of the Comprehensive Plan, as it related to this application, was a guide for drafting official controls (zoning ordinance and subdivision ordinance). The requirements of the Comprehensive Plan should find their way into those two ordinances.

The Council addressed the issues raised during public testimony related to disturbing slopes and standard for buildability of the lot without variances. Mr. Knutson noted construction could occur on anything dependent upon the depth of pilings, and the ordinances do not address types of soil and buildability. He stated a condition could be placed on the plat to require an analysis of stormwater and buildability of the soils.

Mr. Teague stated a condition could be added prior to final plat approval to submit a plan that would improve drainage and channel it away from the property to the south, directing it towards the street through retaining walls and/or swales. He stated if approved, the conservation easement area and drainage would be worked out prior to final plat consideration. Mr. Teague indicated with regard to safety, engineering staff was comfortable with the driveway locations as proposed.

The Council noted the proponent's calculations were used to establish median lot area, width, and depth. Mr. Teague stated an error in the original submittals was corrected and staff was now comfortable with the median calculations as presented. He explained the difference between a median calculation and an average calculation, noting the two proposed lots were larger than the neighborhood median. The Council addressed the public's suggestion that "neighborhood" be more narrowly defined; however, there were five lots within 500 feet of the subject site that were smaller in size than the two lots as proposed. With regard to the number of trees that might be removed, it was mentioned that if a variance was not approved, the area of Oak Savannah would fall within the building pad and be impacted. Mr. Teague explained that if the subdivision was approved, a condition could be placed to walk the site with the land owner and establish (trees worth inclusion) within a preservation easement.

The Council noted that if the two-lot subdivision was approved based on subjective criteria, without the Lot 2 variance, the building pad would be 60 feet from Ms. Kreuziger's house as opposed to 120 feet with the variance. With the variance, the setback would be 45 feet from the property line and 65 feet back from Cheyenne Trail. The two houses across the street were 42 feet and 45 feet back from Cheyenne Trail.

With regard to water pooling on Lot 2, Mr. Teague stated that would be addressed under new regulations. An engineer was required to design a storm water plan for review by the City Engineer at the time of building permit.

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The Council reviewed the areas included within the conservation easement to preserve the slopes, Oak Savannah, and 100-year old oak, and agreed it should extend along the property line of Lots 1 and 2, as well as surrounding the proposed house location. Mr. Teague stated the intent of the ten-foot easement would be to preserve existing vegetation. The Council reviewed the wording of conditions within the resolution.

Member Sprague introduced and moved adoption of Resolution No. 2013-82, approving a Preliminary Plat at 6609 Blackfoot Pass, based on the following findings:

- 1. The proposed Plat meets all required standards and ordinances for a subdivision.**
- 2. The subdivision would meet the neighborhood medians for lot width and depth and area.**

And subject to the following conditions:

- 1. The City must approve the Final Plat within one year of preliminary approval or receive a written application for a time extension or the preliminary approval will be void.**
- 2. Prior to issuance of a building permit, the following items must be submitted:**
 - a. If required, submit evidence of Nine Mile Watershed District approval. The City may require revisions to the preliminary plat to meet the District's requirements.**
 - b. A curb-cut permit must be obtained from the Edina Engineering Department.**
 - c. Utility hook-ups are subject to review of the City Engineer.**

Grading and drainage plans specific to any proposed house would be reviewed at the time of building permit, and shall be subject to review and approval of the City Engineer. Drainage from any new home, garage, or driveway would have to be directed to the street and shall not allow any additional drainage onto the property to the south of the subject property.

- d. The applicant work with the City Forester in regard to tree preservation and removal of Buckthorn.**
- 3. Park dedication fee of \$5,000 must be paid prior to release of the Final Plat.**
- 4. Drainage for construction of the new homes shall be directed away from adjacent property toward the street to greatest extent possible. Drainage plans for individual homes would be subject to review and approval of the City Engineer at the time of building permit approval.**
- 5. A 10-foot preservation easement must be established along the lot lines to preserve the vegetation areas along the streets and along the north and south lot lines; and a preservation easement shall be established in accordance with the staff rendering shown at A14, and to assist with drainage and runoff from the site.**
- 6. Trees removed for construction of a home on Lot 2 shall be replaced in accordance with a landscaping plan to be approved by City staff.**

Member Swenson seconded the motion.

Members Sprague and Swenson and Mayor Hovland acknowledged the Council needed to work within the ordinance and while the 500-foot rule might create certain unintended consequences at the edge of neighborhoods that was the ordinance at this time. In addition, the Council needed to consider objective standards rather than subjective standards.

Member Brindle stated the basis of her decision would be what was best for the property as well as residents within the neighborhood. Member Bennett stated she would like the issues addressed as soon as possible including the 500-foot criteria that had been written in the 1970s-1980s. Member Bennett stated she could not support the subdivision as she found the lot contained characteristics described in the ordinance related to susceptibility of erosion, flooding, use as ponding area, and potential disturbance of slopes. In addition, she found other considerations including concern as to buildability of Lot 2, based on soils, without a variance.

Ayes: Sprague, Swenson, Hovland

Nays: Bennett, Brindle

Motion carried.

Member Swenson introduced and moved adoption of Resolution No. 2013-83, approving a Front Yard Setback Variance at 6609 Blackfoot Pass based on the following findings:

1. The proposed building pad has been located on the site to cause the least amount of impact on the site's mature trees and slopes.
2. The proposed building pad for Lot 2 would be located farther away from the existing home at 6705 Cheyenne Trail, than would a Code compliant home.
3. Conservation easements would be located over the steep slopes and mature oak trees.
4. An additional 10-foot wide conservation easement was proposed along the north, west, and south lot lines to preserve the wooded feel of the lot.
5. The applicant is also agreeable to not construct a home to maximize the height allowed by Code. He would limit the total building height to 35 feet, when the Code would allow a home to be 40 feet tall to the ridge line of the home.
6. The proposal meets the required standards for a variance because:
 - a. The practical difficulty unique to the property is caused by the large mature oak trees and slopes on the east half of Lot 2 where a Code compliant building pad would be located. These are natural conditions not caused by property owner.
 - b. The requested variances are reasonable in the context of the immediate neighborhood. There are two homes with similar front yard setbacks at 6621 and 6624 Cheyenne Trail.
 - c. There is 18-20 feet of green space in the right-of-way of Cheyenne Trail, which would result in a 65-foot setback from the edge of the paved roadway.

And subject to the following conditions:

1. Prior to issuance of a building permit, the following items must be submitted:
 - a. If required, submit evidence of Nine Mile Watershed District approval. The City may require revisions to meet the District's requirements.
 - b. A curb-cut permit must be obtained from the Edina Engineering Department.
 - c. Utility hook-ups are subject to review of the City Engineer.
 - d. Grading and drainage plans specific to any proposed house would be reviewed by the time of building permit, and shall be subject to review and approval of the City Engineer. Drainage from any new home, garage or driveway would have to be directed to the street.
 - e. The applicant work with the City Forester in regard to tree preservation and removal of Buckthorn.
2. Any new home on Lot 2 would be limited to a ridge line height of 35 feet.
3. A 10-foot conservation easement must be established along the lot lines to preserve the vegetation areas along the streets and along the north and south lot lines.
4. A slope and tree conservation easement must be placed over the large oak trees and slope areas to be preserved by moving the home toward the street.

Member Sprague seconded the motion.

The Council acknowledged that the subdivision had been approved and the variance would preserve the legacy of the lot and create separation between the proposed house and Ms. Kruziger's house.

Rollcall:

Ayes: Bennett, Brindle, Sprague, Swenson, Hovland

Motion carried.

VI.D. PUBLIC HEARING – RESOLUTION NO. 2013-103 ADOPTED – PRELIMINARY PLAT AND VARIANCES, 5820 BROOKVIEW AVENUE; AKARE COMPANIES LLC ON BEHALF OF JOHN PETERSON

Community Development Director Presentation

Mr. Teague presented the request of AKARE Companies, LLC on behalf of John Peterson to subdivide property at 5820 Brookview Avenue into two lots. The existing house would be torn down and two new houses built on the new lots. A subdivision, lot width variances from 75 feet to 50 feet for each lot, and lot area variances from 9,000 square feet to 6,711 square feet for each lot would be required to