

CITY OF AFTON  
**APPROVED** PLANNING COMMISSION MINUTES  
September 10, 2018

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- 5 1. **CALL TO ORDER** – Chair Kris Kopitzke called the meeting to order at 7:00 PM
- 6
- 7 2. **PLEDGE OF ALLEGIANCE** – was recited.
- 8
- 9 3. **ROLL CALL** – Present: Chair Kris Kopitzke, Roger Bowman, James Langan (for first half of meeting),  
10 Mark Nelson, Lucia Wroblewski, Sally Doherty, Justin Sykora, Scott Patten. A Quorum was present. Absent  
11 was Annie Perkins, (excused).  
12 **ALSO IN ATTENDANCE** – City Council member Joe Richter, City Administrator Ron Moorse, City Clerk  
13 Julie Yoho  
14
- 15 4. **APPROVAL OF AGENDA** – re-organize items and address item 7d first.  
16 **Motion/Second Patten/Bowman to approve the agenda for the September 10, 2018 Planning**  
17 **Commission as modified. Passed 8-0-0.**  
18
- 19 5. **APPROVAL OF MINUTES** –  
20 A. August 6, 2018  
21 **Motion/Second Patten/Nelson to approve minutes of August 6, 2018 as corrected. Passed 5-0-3**  
22 **(Doherty, Sykora, Wroblewski abstain due to absence).**  
23
- 24 6. **REPORTS AND PRESENTATIONS** – none  
25
- 26 7. **PUBLIC HEARINGS – (items taken out of order)**  
27 A. Application by Eric and Kaya Cook and Ken and Linda Johnson for minor subdivision for a lot line  
28 rearrangement  
29 Chair Kopitzke opened the public hearing at 8:02 PM  
30  
31 Administrator Moorse provided the following summary:  
32 Eric and Kaya Cook and Ken and Linda Johnson have applied for a minor subdivision for a lot line  
33 rearrangement to transfer 1.8 acres of property from 3787 St. Croix Trail, to be combined with the property at  
34 3752 River Road to make the 3752 River Road parcel conforming to the minimum 5-acre lot size. The  
35 application does not create any additional lots. The application is for a minor subdivision vs. a simple  
36 subdivision because the existing parcels are nonconforming. The 3752 River Road parcel is currently  
37 nonconforming regarding lot size. The 3787 St. Croix Trail parcel is nonconforming due to its access being  
38 provided through a private easement driveway through the 3752 River Road Parcel rather than directly from its  
39 frontage on St. Croix Trail. Access from St. Croix Trail is not possible due to very steep slopes.  
40  
41 Condition of approval is scenic easement over steep slopes  
42  
43 Eric Cook, 3787 St Croix Trail, applicant; stated that the driveway extension mentioned is proposed between  
44 the garage and house.  
45  
46 No other comments  
47  
48 **Motion/Second Patten/Bowman to close public hearing. Passed 7-0-0.**  
49  
50 Public hearing closed at 8:12 pm.  
51  
52 Discussion  
53 Bowman asked if this is a private road to access multiple lots with buildings up on property.  
54 Administrator Moorse stated this application is for transferring land, driveway proposal is coming later.  
55 Wroblewski stated this is a 5 acre lot in RR with an easement. This makes it a conforming lot.

56 Doherty stated the lot size will get up to 5 acres, other things are still non-conforming.

57  
58 **Motion/Second Doherty/Wroblewski To recommend approval of the Cook/Johnson minor subdivision**  
59 **application with the following findings and conditions with exception of condition #2:**

60 **Findings**

- 61 1. **The two parcels in the proposed subdivision are zoned Rural Residential**
- 62 2. **The land to the south, west and east of the subdivision is zoned Rural Residential and the**  
63 **land to the north is zoned VHS-R.**
- 64 3. **The proposed minor subdivision does not create any additional lots.**
- 65 4. **The proposed subdivision adds 1.8 acres to the 3752 River Road parcel, which is currently**  
66 **nonconforming with a lot area of 3.3 acres vs. the required minimum lot area of 5.0 acres.**
- 67 5. **The parcel at 3787 St. Croix Trail obtains its access from a private driveway easement**  
68 **through the 3752 River Road parcel.**
- 69 6. **The parcels include areas with slopes of 12% and greater.**

70 **Conditions**

- 71 1. **Scenic easements shall be placed on all areas with slopes of 12% or greater.**
- 72 2. **The area of the existing driveway serving the 3787 St. Croix Trail parcel shall be exempted**  
73 **from the scenic easement restriction regarding driveways.**
- 74 3. **The property owners shall each execute a scenic easement agreement and shall record the**  
75 **scenic easement concurrent with the subdivision**

76  
77 Discussion

78 Nelson asked about intent of leaving condition #2 out

79 Doherty replied that all slopes go into scenic easement if at 12%.

80 Doherty asked about the status on the 2<sup>nd</sup> house? (Nothing is functioning. Condition of purchase was they have  
81 to remove the kitchen and shower. Intent for use is home office/home school).

82 Administrator Moorse stated that a simple bathroom is allowed, tub/shower not.

83 Nelson asked if we have ever issued a variance that covers scenic easements? Moorse replied no, not since he's  
84 been here. City holds the scenic easement; if they do have to cross a slope, they will need a variance and  
85 amendment to the scenic easement.

86 **Motion/Second Doherty/Wroblewski To recommend approval of the minor subdivision as listed with**  
87 **findings and conditions; plus 4<sup>th</sup> condition requiring removal of kitchen and shower facilities before**  
88 **finalizing subdivision.**

89 **Administrator Moorse amend to "before subdivision is recorded". (accepted)**

90 **Vote:**

91 **Passed 7-0-0.**

92  
93 **B. Application by Ken & Linda Johnson for a variance at 3752 River Rd**

94  
95 Chair Kopitzke opened the public hearing at 8:35 PM

96  
97 Administrator Moorse provided the following summary:

98 Application by Ken and Linda Johnson for a variance at 3752 River Road to allow an addition to their existing  
99 house that would have a setback of 121 feet from the centerline of St. Croix Trail vs. the required setback of  
100 150 feet. The existing house, which was built in 1875, has a legally nonconforming setback of 100 feet from  
101 the centerline of St. Croix Trail. The proposed addition is on the side of the house facing away from St. Croix  
102 Trail, but also extends south of the existing house at a setback of 121 feet from the centerline of CR 21 vs. the  
103 required 150 foot setback, which causes the need for the setback variance.

104 The proposed addition extends to the south of the existing house to avoid eliminating the only remaining  
105 window facing east from the kitchen and family room. The existing driveway that accesses the property  
106 along the south side of the house from St. Croix Trail would be eliminated. The proposed addition would be a

107 non-rental guest apartment that would enable the Johnsons to remain in the house under the care of one of  
108 their two children at such time as that would become necessary.

109  
110 No public comments

111  
112 **Motion/Second Wroblewski/Nelson to close public hearing. Passed 8-0-0**

113  
114 Public hearing closed at 8:38 PM

115  
116 Sykora asked about well location. (near east side of house)

117 Patten asked about ordinance regarding mother in law apartments.

118 Kopitzke answered they have to be contiguous to the main house and have shared access

119 Bowman added that separate pods or structures are prohibited

120 Wroblewski asked about the non-conforming uses chapter. Does that apply?

121 Moorese answered that the Lower St Croix Riverway language was used.

122 Kopitzke stated that this is consistent with what's been done in the past

123 Bowman asked about the design (will blend in with existing)

124  
125 **Motion/Second Wroblewski/Doherty To recommend approval of the variance to the City**  
126 **Council with findings and conditions listed and additional finding that existing house has well**  
127 **making it difficult to extend.**

128 **Findings:**

129 **1. The subject property is zoned Rural Residential, as are the properties to the south, east**  
130 **and west. The property to the north is zoned VHS-R. A portion of the property is bounded**  
131 **on the east by the St. Croix River.**

132 **2. The existing house was built in 1875, prior to the existence of St. Croix Trail.**

133 **3. The existing house is located 100 feet from the centerline of St. Croix Trail vs. the required**  
134 **setback of 150 feet.**

135 **4. The proposed addition is located 121 feet from the centerline of St. Croix Trail.**

136 **5. The existing house has a kitchen that faces east located in the southeastern portion of the**  
137 **house. If the addition was to be located completely to the east of the existing house, the only**  
138 **window facing east from the kitchen and the family room would be eliminated.**

139 **Conditions:**

140 **1. The existing bituminous driveway located directly to the south of the existing house shall**  
141 **be completely removed.**

142  
143 Doherty asked about septic (sewer)

144 **Vote: Passed 7-0-0**

145  
146  
147 C. Application by Joe Bush for an amended conditional use permit

148  
149 Chair Kopitzke opened the public hearing at 7:05 PM.

150  
151 Administrator Moorese provided the following summary:

152 Joe Bush has applied for an amended Conditional Use Permit to revise four conditions of the approval of the  
153 Afton Creek Preserve PLCD subdivision to enable the existing house on the parcel at 5550 Odell Avenue to be  
154 relocated to a conforming location on the parcel rather than being removed from the property (see the attached  
155 site plan). The application does not propose any changes to the subdivision layout. The requested revisions to  
156 the four conditions would make the owner of the 5550 Odell parcel responsible for the maintenance of the  
157 parcel, rather than the developer; would enable the existing house on the parcel to be relocated to a new location

158 on the parcel, rather than being removed from the parcel; and would allow construction work on the parcel  
159 related to the relocation of the house, but not related to the construction of the subdivision.

160  
161 Joe Bush, developer; stated that the easement is an allowable use and has been done in the Cedar Bluff  
162 development.

163  
164 James Rickard, 5650 Odell; stated that after all the negotiation the developer is now asking to keep the house  
165 that the owner rents to a family member. This is a RR lot, this is not harmonious with area use. Ordinance  
166 prohibits substandard lots. Concerns over increased construction traffic.

167  
168 Doug Parker, Trading Post Trail; stated that the City has already given the developer everything, in return the  
169 developer hasn't compromised or offered concessions to neighbors.

170  
171 Bill Dickes 57<sup>th</sup> St.; owns lot contiguous to proposed road. When property was purchased the intent was it  
172 remain rural. Concerned they are bisecting lot and is making theirs a corner lot. Clearly being done for money.  
173 Does not want Afton to change, not in City's best interest.

174  
175 Dave Husebye, Osgood Ave; stated that an agreement had been reached between city and developer. House  
176 could be moved into one of the PLCD lots. What will he want next? Unfair to change, deny request.

177  
178 Kathy Graham, Trading Post Trail; stated that the developer is asking for another concession. Neighbors feel  
179 that there has been no compromise for them. Developer has gotten everything. No hardship exists.

180  
181 Perry Jagers, stated the AG zone shouldn't have 16 lots. Zoning rules not made to be changed

182  
183 Christian Dawson 5888 Trading Post Trail; stated he is confused on how we have a road here in the first place.  
184 City Council hasn't listened to the Planning Commission's recommendations on this. Does city have right to  
185 add conditions to a CUP that was agreed on? No neighbors should be adversely affected. Need protection. Has  
186 had negative run-ins with the developer. Clarify how this is PLCD related.

187  
188 James Rickard, asked how does the city ensure impervious surface rules are observed? Can't be more than 10%

189  
190 Patrick Leahey, Odell; stated he agrees with all the neighbors. Not surprising the developer is looking for more  
191 concessions from city.

192  
193 Jen Wroblewski, stated that the Cedar Bluff development should not be precedent. Many see it as a mistake.  
194 Have to be responsible how land is developed.

195  
196 Joe Bush stated that the history with parks committee was that house would be removed for a park. There are  
197 parcels near this lot that have less acreage with easements. Easement is allowed by code.

198  
199 Doug Parker stated that the parcel is not a park because it required a super majority to pass.

200  
201 **Motion/Second Doherty/Wroblewski to close public hearing. Passed 8-0-0.**

202  
203 Public hearing closed at 7:37 PM

204  
205 Discussion

206 Doherty stated that this could become very complicated, but really is about re negotiating a few conditions on  
207 the CUP. If they want to change, then the whole thing should be opened up for negotiation.

208

209 Wroblewski quoted the CUP permit language. The Planning Commission needs to consider adverse effects.  
210 It's public record that the Planning Commission has voted against this. Recommend no change allowed to the  
211 CUP. Traffic must go as per agreement.  
212 Sykora stated that he wasn't part of this when it started. Seems like wasting resources and that the developer  
213 should have thought of this before.  
214 Kopitzke asked if the road counts as impervious surface? (yes)  
215 Patten asked when the council rejected the park concept what was the long term plan for this lot?  
216 Administrator Moorse replied that the lot would remain in a well maintained natural state maintained by  
217 developer/home owners association.  
218 Kopitzke stated that much discussion was held at the council meeting.  
219 Wroblewski stated that a super majority vote was needed to accept the park dedication, then the issue was  
220 tabled.  
221 Council member Richter stated there was discussion and feeling that the reason for the gift was to count it as  
222 part of park dedication. Two council members were against accepting as a gift.  
223 Nelson stated that the PLCD ordinance limits average density over the entire PLCD while the Comp Plan  
224 limits quarter-quarter sections to 4 dwellings without mention of average density, so that Carlson's 6  
225 dwellings in the NW1/4 of the SW1/4 of Section 33 is noncompliant with the Comp Plan.  
226 Langan stated the biggest issue is the 10% impervious surface limit.  
227

228 **Motion/Second Bowman/Doherty Recommend the request to amend the CUP be denied based on the**  
229 **following:**

- 230 **1. The city's Planning Consultant finds the request contrary to the intent of 5 acre lot size**
- 231 **2. Change to the agreement after such a short period of time**
- 232 **3. Parcel is not part of the PLCD**
- 233 **4. Promotes unstated rolling variances**
- 234 **5. Construction equipment does not need to access here**
- 235 **6. Neighbors have expressed opposition**
- 236 **7. Never had a resident speak in favor**
- 237 **8. Owner created situation**
- 238 **8. Impervious surface**
- 239 **9. Contrary to comprehensive plan**
- 240 **10. No similarly valuable concessions for the city**

241  
242 Discussion

243 Patten asked about including the findings from staff?

244 Bowman stated findings 1,2,3,& 5 as 4 seems like an endorsement

245 **Findings**

- 246 **1. The conditions of approval of the Afton Creek Preserve PLCD subdivision include the**  
247 **removal of all structures from the 5550 Odell parcel**
- 248 **2. The parcel at 5550 Odell Avenue is five acres in size**
- 249 **3. The parcel contains an existing house**
- 250 **4. ~~The existing house could be moved to a new location on the lot that would meet all setback~~**  
251 **requirements**
- 252 **5. The parcel is planned to have a public road running through it on a sixty foot wide public**  
253 **roadway easement**

254  
255 **Vote –Passed 8-0-0.**  
256  
257  
258  
259  
260

261  
262 D. Application by Roger Mireau at 12225 Hudson Rd

263  
264 Chair Kopitzke opened the public hearing at 8:48 PM

265  
266 Administrator Moose provided the following summary:

267 Roger Mireau, the owner of the property at 12225 Hudson Road, would like to enable a heavy equipment rental  
268 business to operate on the 12225 Hudson Road property. The list of uses allowed in the I-1A zoning district  
269 does not include heavy equipment rental. Mr. Mireau has requested a determination that a heavy equipment  
270 rental use is substantially similar to the current use operating on the property at 12225 Hudson Road through a  
271 Conditional Use Permit (CUP). The request is based on the “Determination of Similar Uses” process set out in  
272 Sec. 12-133 of the Zoning Code.

273  
274 Tammy DeGraw, broker for owner; stated he has had several offers on the property for over a year and all have  
275 backed out after talking to the city and being told no.

276  
277 Roger Mireau, owner stated he has never had any complaints, been there since 2005.

278  
279 No other comments.

280  
281 **Motion/Second Doherty/Patten to close the public hearing. Passed 7-0-0**

282  
283 Public hearing Closed at 8:54 PM.

284  
285 Discussion

286 Doherty asked about the new buyer and how often traffic is coming and going? Is it business to business?  
287 (traffic would be early in day or late evening, business to business, year round.) Were neighbors notified for  
288 this? (within 500 feet – 10 were notified, also published).

289 Patten stated he has never seen this equipment when driving by. Bigger concern is environmental concerns.

290 Kopitzke asked if the CUP is substantially the same? (Fundamentally yes , similar use)

291 Patten asked if a CUP can go from one buyer to next? (yes)

292 Bowman asked if it will be investor owned and leased? (yes 20 – 25 yrs lease). Employees? (few) expected  
293 traffic per day? (heavy equipment will stay out on site for several months; 5-10 trips per day)

294 Doherty stated she is uneasy about establishing use for heavy equipment rental since we don’t have a definition.

295 Kopitzke stated that exterior storage and warehousing don’t describe current use. This would be business to  
296 business rental.

297 Patten noted that the owner has been operating here with no issues for years.

298 Nelson asked if there is currently rental? (yes, 10 – 15 trips a day, operator goes out with equipment. Rents out  
299 but with operator included).

300 Doherty asked if the use should be added to the industrial district ordinance? Moose replied the timing of  
301 process would be longer. In findings we could list the definition.

302 Bowman asked if CUP can be amended?

303 Moose replied yes if we amend CUP to allow rental as defined...

304 Doherty suggested defining items such as height, number of pieces, hours of use

305  
306 **Motion/Second Doherty/Bowman to recommend the City Council provide feedback on adding heavy  
307 equipment rental to ordinance and doing an ordinance change adding the use.**

308 Discussion

309 Doherty stated she doesn’t agree with “substantially similar” wording. Would deny this. Ask council if they  
310 want pc to consider use addition to ordinance

311 **Vote 7-0-0.**

312

313 **8. NEW BUSINESS - none**

314  
315 **9. OLD BUSINESS –**

316 A. Ordinance Amendment to allow Swimming Pool Auto Covers as Alternative to Fence Enclosure  
317 tabled from last month since so many members were gone. Public hearing was held in August.  
318 Administrator Moore provided the following summary:  
319 The Planning Commission, at its August 6, 2018 meeting, held a public hearing regarding the attached  
320 ordinance amendment to allow a swimming pool auto cover as an alternative to a fence enclosure, and  
321 discussed the proposed ordinance amendment. The Planning Commission had a number of questions and  
322 concerns regarding the safety and security of the auto cover vs. a fence enclosure, and continued its  
323 consideration of the ordinance amendment to its September 10 meeting.

324  
325 Patten stated he likes giving the choice to the homeowner.  
326 Bowman asked what happens in large rain event, does the water pool on top (yes – pump it off top)  
327 Sykora asked about the design and is there a cost difference? (cost similar depending on fence size; designed to  
328 cover whole surface of pool)  
329 Doherty asked if the cover is rigid (similar to trampoline, tucks away when not in use. Use a key or enter code  
330 to operate)  
331 Wroblewski stated it would likely be more expensive than a fence. Upkeep is necessary on parts, motor, etc.  
332 Bowman stated that a fence has self-closing gate and physical barrier. Pool cover can be left open.  
333 Kopitzke stated that our ordinances are to protect public and wildlife. It can be the homeowner’s decision.  
334 Bowman stated he is concerned about responsibility of the homeowner  
335 Wroblewski asked what if the cover is broken and not repaired?  
336 Nelson stated that motors break more than fences  
337 Sykora likes the option, put responsibility on owners

338 **Motion/Second Patten/Sykora To recommend the City Council approve an ordinance amendment to**  
339 **allow a pool auto cover so long as it remains in good repair, to be used as an alternative to the current**  
340 **requirement of fencing to completely enclose swimming pools.**

341 Kopitzke friendly amendment to read “allow a pool auto cover or a fence alternatively in the AG or RR...”  
342 (accepted).  
343 **Vote: Passed 4-3-0 (Bowman, Doherty, Kopitzke - Nay)**

344  
345 B. Update on City Council actions  
346 Council member Richter provided a summary of the Council meeting.  
347

348 **10. ADJOURN**  
349 **Motion/Second Patten/Wroblewski To adjourn. Passed 7-0-0.**

350  
351 Meeting adjourned at 10:15 PM

352  
353  
354 Respectfully submitted by:  
355  
356 JY  
357 Julie Yoho, City Clerk

358  
359  
360 **To be approved on October 1, 2018 as (check one): Presented: \_\_\_\_\_ or Amended: \_\_\_\_\_ X**