City of Marine on St. Croix
Planning Commission and Public Hearing
Tuesday, September 28, 2010

The City of Marine on St. Croix Planning Commission meeting of September 28, 2010 was called to order by Chairman Willenbring at 7:30pm. Roden, Creager and Warren present Brenner and Zajac Absent.

Citizens Present: Jonathon Kelly- Country Messenger, Tim Pabst, Gail Coolidge, Michael Tibbits, Stephanie Gassert, Tom Warth, Charles W. Arnason

Agenda:

1. Call to Order 7:30pm
2. Public Hearing: Joan Grant Property Minor Subdivision- 940 Broadway Street
3. Status of open position
4. Old/New Business: T-Mobile
5. Approval of August 31, 2010 minutes.
6. Review Codes in the SFR, SFU, SCR, SCU, VC Districts.
7. Adjournment

Public Hearing: Joan Grant Property Minor Subdivision 940 Broadway Street: Tim Pabst

Chairman Willenbring Opened the Public Hearing at 7:32pm to review the Joan Grant Property Minor Subdivision at 940 Broadway Street. Approval was given by Joan Grant for Tim Pabst to represent her during the process of the minor sub-division. Tim Pabst was present on behalf of Joan Grant. Commission members Warren and Creager worked with Mr. Pabst on the facts and findings. Member Warren gave a summary of the minor subdivision to the Planning Commission. Two corrections needed to be made to the draft copy of the facts and findings document. Finding numbers 13 and 18 reference finding number 17 and it should reference finding number 19. The property was described at one time as a total parcel of 120 acres with exclusion of property for the railroad. The sub-division includes the remaining 102 acres. The proposed minor sub-division would create a 97 acre parcel and 5 acre parcel in the south east corner. The five acres would contain the house and the property between the County Road 4 and Cedar Street that bounds the property on the east. The line extends approximately 900 feet north and south to make the five acres. While Warren and Creager were reviewing the property records and survey, two issues showed up. The first issue is the house encroaches on the Broadway right of way by two or three feet. This is something that was done in 1887, however no background was given. This issue could be resolved with an encroachment agreement. Other locations within the City of Marine have also had this situation, and an encroachment agreement allowed the owner to use the land as long as the building exists however prevents the landowner from laying permanent claim to the property containing the footprint of the encroachment. The second issue is County Road 4 from Broadway to Northwest Corner of Grant property near the mouth of the tunnel does not show on the abstract any dedications or easements for use by the public. Other

items that came out were the original land claim to the property was by the US Government in 1856. Parts of the house date back to1850 early in the history of Marine.

Members Warren and Creager included in the Fact and Findings report a comparison chart that compares the facts and findings to the City Zoning Ordinance Code.

Warren explained the Ordinance code paragraph 502(10)(a-i) and how the Planning Commission would make their recommendation to the City Council.

A letter was also received by Jim Shaver from the CarnelianMarine Watershed district in support of the minor subdivision. See attached letter.

Creager acknowledged the two points that needed to be worked out. The Broadway encroachment and the Quant setback.

Willenbring read through the Findings and Facts and how each item relates to the minor sub-division. See Below

REQUEST FOR SUBDIVISION DRAFT

September 28, 2010

Case Number: 090910-01

Location: Grant Property
940 Broadway
(North of Broadway, generally along northbound Ostrum Trail)

References:
Survey prepared by Midwest Surveyors and Engineers, Inc.; Job and File Number 09-128; dated 10-01-09 and revised 7-22-2010. (Two versions were furnished, one covering the overall property and the second detailing the proposed 5 acre parcel.)
Presentation by Tim Pabst to Marine Planning Commission of 08/31/10

Applicant's Request:
The request is to divide the 101.79 acre property owned by the Grant family into two parcels, one of approximately 97 acres and one of 5 acres.

Findings of Fact:
1. The properties involved are in the SFR and LI districts. The underlying property appears to have once been a rectangle of roughly 120 acres. The Wisconsin Central right of way (dating from 1886) physically divides the Grant property into a small parcel (7.67 acres) to the west of the right of way and a large parcel (94.12 acres) to the east. Abstract documentation describes the property as one entity with an exception made for that right of way and a residential parcel, leaving 101.79 acres after the exceptions are deducted. The proposed subdivision would

separate 5 acres from the 94.12 acre east parcel. This would leave about 89 acres east of the railroad which when added to the west 7.67 acres yields an approximate 97 acre parcel.

2. Regarding the LI zone, part of the 7+ acres west of the railroad, about 52000 sq ft (~1.2 acres), are in the LI zone, in a triangular parcel 1137 ft long and from 0 to 91 ft wide.
3. The other parts of the property are in the SFR zone. Walk through indicates the 97 acres contain woodlands and grasslands. The proposed five acre parcel, located on the east edge of the 89 acres, now contains a home and accessory buildings, woodlands, plus springs and brooks draining to the east.

4. Applicants intend to transfer the 97 acres to the Minnesota Parks and Trails Council for eventual transfer to Minnesota Department of Natural Resources and incorporation into William O'Brien State Park. Public parks are permitted as a conditional use under PP 504.5 (5).

5. Applicants and prospective owners (reference the Tim Pabst presentation) of the 5 acre parcel intend to use the property as single family residential, employing a pre-existing home and accessory buildings, with the possible future addition of an accessory building and restoration of terrain immediately surrounding the springs and watercourses. Applicants and the prospective owners of this parcel indicate their uses would have as a major objective the preservation of the house for its historic value and to accommodate the wishes of the seller. Parks and Trails Council, as prospective owner of the 97 acre parcel, indicate they support separating the 5 acre parcel and house to enable its preservation and use as a residence, which would be in accord with the SFR zoning. Also, the parcel is largely separated by Ostrum Trail and Cedar St. from present and proposed park property. The prospective owners, in keeping with their objective of preservation and little future development, contemplate no change in the public services now provided or in storm water drainage from the parcel. These pre-existing uses meet the requirements for permitted uses and accessory uses described in PP 504.2 and 504.3.

6. The abstracts of title show certificates of location granted by the US Government to Hiram Berkey and Joel Reiner in 1855, followed by a patent from the US Government in 1856 and transfers via warranty deed after that. Berkey was a partner in Marine's sawmill starting with the initial partnership of the late 1830s and ending in 1858. Reiner was Berkey's brother-in-law. Berkey was the owner of extensive farmlands west of Marine. (Ref Dunn, Marine on St. Croix, 150 Years of Village Life) Applicant suggests that the older parts of the house date from the late 1850s. Separating the house and its parcel from areas intended for non-residential use will enable preservation of the house and its relationship to Marine history.

7. The south 1300 ft (approximate dimension north of a quarter section line near or at Broadway St.) of the parcel to be subdivided is within the Marine on St. Croix National Historic District. (Ref. application dated 04/08/1974 and notification of entry dated 06/28/1974) While the application does not reference the Grant properties specifically it may be inferred that the parcel was included because of proximity to farms supporting the early development of the Village of Marine Mills – in its earliest days an isolated and necessarily self-sufficient community - and to the cemetery. The 5 acre parcel and existing house are entirely within this district.

8. Comparison of the subdivision and proposed uses with the City's Comprehensive Plan suggests that at least the following should be considered:
(wording summarized, refer to Plan)
a. Natural Environment Plan Goal 2, Policy 8 calls for wetlands to be designated as protected open space.
b. Natural Environment Plan Goal 3 calls for preservation of natural resources and habitat.
c. 2030 Land Use Plan Map shows the north 2596 ft of the overall property to be used as parkland; the south 1254 ft to be used as single family residential.
d. The Land Use Plan speaks indirectly to the retention of older homes: "… promote the continued use … in a manner that reflects the historic architecture and development patterns of this area of Marine." Note that use of this wording is somewhat out of context, it being placed in the section applying to Urban Residential areas, where nearly all Marine's historic housing stock is situated, and not in the Rural Residential section.
e. Transportation Plan assumes the continued use of Ostrum Trail (CSAH 4).

9. Application of procedures under PP 1004 comply with the Development Code: there is only one additional lot being created, conditions such as dimensions and state of development are largely pre-existing, i.e. are well established, and non-conformities with dimensional requirements of the Development Code are pre-existing. Proposed uses are similar to the uses of the past several decades with the exception of the conversion of the 97 acre parcel from woodland and grasslands to park purposes.

10. PP 1004 allows the City to exempt certain requirements of the ordinance. Therefore the following are removed from the data requirements of PP 601 (2): (e) topographic data, (f) soils data, (g) photo map, (3) design features of planned public improvements such as roads, (4) (b) control of waters, (e) erosion control during and after construction, (f) vegetation preservation, (g) potable water, (h) homeowners' association documents.

11. A potable water supply and an individual wastewater disposal system pre-exist on the 5 acre parcel; such facilities do not exist on the 97 acre parcel but anticipated use does not require them. This makes other data requirements in 601 (4) (b) and (g) unnecessary.

12. Relevant data requirements of PP 601 (1) and (2) other than those noted in items 8 and 9 above have been submitted. Survey and abstracts show no drainage, utility, etc. easements.

13. Two lots are to be formed from the 102 acres, complying with the general requirement of one lot per five acres maximum density per PP 504.6. The 5 acre parcel complies with the specific lot size requirement of one to five acres per PP 504.8 (3) (a), even if reduced per item 17.

14. The proposed 5 acre parcel is separated from the 97 acre parcel by Ostrum Trail for its full north - south length, creating a pre-existing physical separation between the two proposed parcels. The 5 acre parcel is bounded to the east by Cedar St., an undeveloped right of way owned by the City of Marine, and thus is not contiguous to MN DNR property further east.

15. The proposed 5 acre parcel would be approximately 199 ft east to west at the south end, 268 ft east to west at its north end, and approximately 969 ft north to south. These east –west

dimensions are determined by the location of Ostrum Trail and Cedar St. There is no change contemplated in the east – west dimensions of the parcels, except for potential provision of right of way for Ostrum Trail. Thus the east – west dimensions are pre-existing. These lot widths comply with the requirements of code; approximately 200 ft at the set back line, and at the building line, vs 150 to 250 ft per PP 504.8 (3) (b).

16. PP 504.7 requires the designation as open space of 50% of the subdivided property and also its long term protection. This is to be met by the use of the 97 acre parcel as park land under ownership of the State of Minnesota.

17. The set back of the house from the north side of the Broadway right of way is shown on the survey as an encroachment into the right of way of 3.5 ft +/- , to be compared with code requirement of 40 ft set back per PP 504.8 (4) (e). The abstract of title shows that the north side of Broadway was determined via a deed from Berkey to the Village of Marine dated September 5, 1887. The section of the house involved predates the Grant family ownership (1940). Thus this is a pre-existing condition, is not created by the subdivision or by the applicants.

18. The set back of the house from Ostrum Trail as shown on the survey is shown as 7 ft +/-, less than the 40 ft prescribed by PP 504.8 (4) (e). This is a pre-existing condition, is not created by the subdivision, and is subject to the ambiguity described in item 17.

19. The survey is ambiguous concerning land used by Ostrum Trail and Quant Avenue. Property descriptions on the survey are written as if the proposed parcels will include land up to the center line of Ostrum Trail. A 66 ft right of way is drawn on the survey; 33 ft to each side from the centerline of Ostrum Trail.

However, the survey does not show descriptors such as sale or easement that would have created the right of way. Notes on the two surveys indicate that "The 66 foot wide right of way widths as shown for Ostrum Trail North (CSAH No. 4) and Quant Avenue North are scaled from a Washington County Surveyor's Office half section map. No documentation was provided or obtained to confirm this right of way width."

Inspection of the plat of Springview Acres, immediately north of the north boundary of the Grant property, indicates that the Quant Avenue right of way is 50 ft in width.

20. It is the precedent of the City to make recordable (deed, easement, etc.) provisions for existing rights of way during subdivision processes. Reference the Tanglewood and Jackson Meadow developments, among others.

<u>Findings for Recommendation or Denial of Subdivision</u> (subject to the Commission's review and consideration) as required by PP 502 (10), which requires a recommendation for denial if the Commission determines the subdivision presents conflicts with or lacks provision for the following code items (wording summarized, see ordinance for definitive wording):

Code Item PP 502 (10) (a - i) and Related Finding	Reference to Finding of Fact

(a) conflict with adopted general or specific plans Designation of rights of way for Ostrum Trail and Quant Avenue, streets that appear on City maps and are in use, are absent. Pre-existing house encroaches on Broadway St. right of way.	3,4,5,13,15, 16,17,19
(b) conflict with the comprehensive plan The subdivision, as differentiated from proposed uses after the subdivision, does not conflict with the comprehensive plan. The subdivision enables proposed uses that are in accord with the plan, especially in the areas of preservation of natural and historic features, wetlands (assuming designation of protected areas), habitat. However, the proposed park use is in conflict with the Land Use Map specific to the south 1/3 of the parcel, an issue that may properly be resolved at the handling of a Conditional Use Permit as required by code. See item (a)	3,4,5,6,7,8, 13,16,19
(c) physical characteristics make the site not suitable No reason for denial is found.	3,4,5,9,14
(d) adverse environmental or historic impact No reason for denial is found.	4,5,6,7,8, 9,16
(e) conflict with easements No reason for denial is found.	12
(f) lack of roads to serve the subdivision No new roads needed, but see item (a).	5,9,19
(g) lack of adequate drainage No reason for denial is found.	3,5,9
(h) lack of water supply No reason for denial is found.	9,11
(i) lack of waste disposal capability No reason for denial is found.	9,11

Potential Conditions: (Subject to Planning Commission review and consideration)

1. Rights of way for Ostrum Trail and Quant Avenue be designated such that use for the public is secured, as reviewed and approved by the City Attorney. The objectives are a) to verify the use of land needed for the roadway and its maintenance, and b) to partially relieve the non-compliance of the house with prescribed setbacks. Recommended right of way to meet objective a) is to allow 33 ft of right of way on both sides of the centerline of Ostrum Trail as shown in the survey. Recommended right of way to meet objective b) is to provide for a right of way of 20 ft on the east side of the roadway and 46 ft on

the west side of the roadway. These widths would apply to the south 200 ft of the east side of Ostrum Trail and the south 300 ft of Ostrum Trail on the west side. The recommended means is via easement to the City of Marine. (Ref Findings of Fact 17, 18 and findings 502 (10) (a and f))

2. Use of the 97 acre portion as a park be reviewed per code requirements for a Conditional Use Permit. (Ref Finding of Fact 4 and finding 502 (10) (b))

3. An encroachment agreement relating to the dwelling (house and porch) on the 5 acre parcel and Broadway St. be developed and signed. (Ref Finding of Fact 15 and finding 502 (10) (a))

4. Zones of 40 ft or those required by Minnesota statutes, whichever is greater, surrounding springs and brooks be designated for protection from development, with maintenance of present impoundments and/or remedial activities to return the springs and brooks to their natural state being allowed. (Ref Finding of Fact 6 and Section 4 of Code)

Tim Pabst restated he was present on behalf of Joan Grant and would answer any questions the Planning Commission might have. Mr. Pabst also noted the Historic preservation of the house is the main intention of Joan Grant. The Parks and Trails Commission would have no need to preserve the home if they were to keep the full 102 acres and therefore would be demolished.

Member Creager questioned Mr. Warth and if the DNR or Parks and Trails were going to keep the property 99% undeveloped. Mr. Warth did not know however explained that the Parks and Trails committee purchases property that becomes available in hopes that the DNR will purchase it. The Parks and Trails also can choose other options.

Roden questioned the establishing the right of way on Quant and Ostrum is it for the 5 acres with the house and along 97 acres park property. Warren confirmed it would be the full length of the roadway along as it is within the 102 acres.

Willenbring recommended modifying the Potential Conditions, condition number 4 to include “and Carnelian Marine St. Croix Watershed District after Minnesota statutes”. Add condition number 5 to say “The development rights not to be transferable from the 97 acres to the 5 acres.”

Mr. Pabst commented on the center line and the easement on the east of County Road 4. After reviewing the map and further discussion the Planning Commission agreed to modify the Potential Conditions, conditional number 1 to substitute 800 feet for 200 feet on the east side of Ostrum Trail and 900 feet for the 300 feet west side of Ostrum Trail.

Warren moved and Creager seconded that the Planning Commission recommend to the City Council under case number 090910-01 to Joan Grant per the draft of September 28, 2010 with the following changes in the facts and findings with modifications to findings number 13 to change reference 19, and finding number 18 to change reference to19. Change Potential Condition number 1 to substitute 800 feet for the 200 feet on the east side of Ostrum Trail and 900 feet for 300 feet on the west side of Ostrum Trail. Add to condition number 4 after Minnesota statutes, Carnelian Marine St. Croix Watershed District rules adopted March 1, 2010. Add Condition number 5 Development rights not to transfer from the 97 acre parcel to the

5 acre parcel. With addition from Chairman Willenbring that a letter of support from the Carnelian-Marine St. Croix Watershed District along with the comments received during the Public Hearing were in favor of the sub-division. Motion passed unanimously

Public Hearing closed at 8:30pm.
Chairman Willenbring thanked members Warren and Creager for their diligence and what was to be a simple sub-division, and it turned out to be very complex. Tim Pabst also thanked the Planning Commission for all their hard work.

Willenbring explained that the recommendation would go before the City Council on October 14, 2010 at 7:00pm

Status of open position: Chairman Willenbring acknowledged an email from Mike Zajac regarding the opinion of the Planning Commission on whether he should take a leave of absence or step down from the Planning Commission. Currently Mike has a conflict for the next few meetings that he would not be able to make. Mike would like to stay on the Planning Commission however understands if this is not workable. Willenbring pointed out that with Mike still being on the Planning Commission this could leave the Planning Commission in a bind when a quorum is needed. Willenbring recommended the Planning Commission members think about the situation and the discussion could be tabled a later meeting.

Old/New Business:

T-Mobile –Willenbring met with Amy Dresch from T-mobile just after Labor day and they will be repositioning the location of the tower further to the west down in a hole and will resubmit the location to the City. The elevation will be the same. When the survey is complete the Planning Commission will review it.

Approval of Minutes *Roden moved and Warren seconded to accept the August 31, 2010 Planning Commission Minutes as drafted. Motion carried unanimously.*

Review of Codes in the SFR, SFU, SCR, SCU, VC Districts. No Action

Adjournment: *Willenbring moved and Creager seconded to adjourn the September 28, 2010 Planning Commission meeting at 8:40pm. Motion passed unanimously.*

Minutes taken by Mary Tomnitz, Assistant City Clerk

PLANNING COMMISSION TERMS -, Dan Willenbring, Gwen Roden – Expires 12/31/2010, Andy Creager - Expires 12/31/2011, Jack Warren, Ron Brenner, Mike Zajac – Expires 12/31/2012