

CITY OF HAM LAKE
PLANNING COMMISSION MINUTES
MONDAY, NOVEMBER 25, 2024

The Ham Lake Planning Commission met for its regular meeting on Monday, November 25, 2024, in the Council Chambers at Ham Lake City Hall located at 15544 Central Avenue NE in Ham Lake, Minnesota.

MEMBERS PRESENT: Commissioners Brian Pogalz, Kyle Lejonvarn, Jeff Entsminger, David Ross, Jonathan Fisher and Erin Dixson

MEMBERS ABSENT: Commissioner Dave Ringler

OTHERS PRESENT: City Attorney Mark Berglund, City Engineer Tom Collins, and Building and Zoning Clerk Jennifer Bohr

CALL TO ORDER: Chair Pogalz called the meeting to order at 6:00 p.m.

PLEDGE OF ALLEGIANCE:

The pledge of allegiance was recited by all in attendance.

APPROVAL OF MINUTES:

Motion by Ross, seconded by Dixson, to approve the minutes of the November 12, 2024, Planning Commission meeting as written. All present in favor, motion carried.

PUBLIC HEARING:

Consideration of amendments to Article 9 of the Ham Lake City Code related to adding Wetland Banking as a Conditional Use in R-A (Rural Single Family Residential) zoning

Chair Pogalz asked Attorney Berglund to present the facts related to the proposed amendment to Article 9 of the Ham Lake City Code. Attorney Berglund stated approximately a year ago, discussion started about allowing wetland banks in the city when a Ham Lake landowner approached the city to discuss converting a sod farm into a wetland bank. Attorney Berglund stated developers are required to preserve a portion of the land they intend to develop as wetland. Attorney Berglund stated when wetland areas are used for development, wetland bank credits can be purchased from a wetland bank to offset the amount of wetland that is impacted within a development. Attorney Berglund stated developers can find, and buy, credits from wetland banks, established by private landowners, via a website maintained by the Board of Water and Soil Resources (BWSR), which is one of the agencies that regulates and monitors wetland banks. Attorney Berglund stated private landowners must comply with rules and requirements of BWSR and the city and area watershed district regulations where the wetland bank is located.

Attorney Berglund stated the developer must go through several processes to establish the wetland bank. Attorney Berglund stated a developer is restricted from selling wetland bank credits until the wetland bank meets certain criteria. Attorney Berglund stated wetland bank areas are valuable and can presently generate revenue of approximately \$100,000 an acre, but developers also incur start-up expenses related to engineering of a wetland bank plan, and BWSR application costs. Attorney Berglund stated various factors were researched and considered when the city began to explore the allowance of wetland banks. Attorney Berglund stated he found that cities themselves typically own wetland banks and sell the credits though that is not a requirement. Attorney Berglund stated currently there is one wetland bank in Ham Lake that was created by the Metropolitan Airports Commission (MAC) when a runway was extended at the Blaine airport. Attorney Berglund stated the MAC bought the land to create a wetland bank and put a fence around the area; nothing further can be done with that land due to wetland bank regulations. Attorney Berglund stated when a wetland bank is established, it is to remain in its approved wetland state in perpetuity and regulators monitor it forever. Attorney Berglund stated the applicant, or owner of the land, is presumably the one that is to be responsible for maintenance of the land in perpetuity. Attorney Berglund stated the city must consider what may happen to the land when the applicant has made all the money they can make on the land, become disinterested in the land and potentially abandon it. Attorney Berglund stated consideration needs to be given to who would end up owning the land, which would likely be the city. Attorney Berglund stated staff and council members expressed that there should be some benefit to the public if wetland banks are allowed within the city since the land must remain in a natural state forever. Attorney Berglund stated that is why language about constructing a trail or paying a monetary parkland dedication fee per wetland bank acre, was incorporated into the proposed ordinance. Attorney Berglund stated, the proposed language considers several things. Attorney Berglund stated, first, the language defines what a wetland bank is, which is derived from Minnesota Rules; reference is made to the specific rule numbers so if the rules change over time, the city's ordinance changes too. Attorney Berglund stated the city intends to establish a monitoring fee, that will be added to the city's fee schedule, for any required monitoring activity assigned to the Local Government Unit (LGU) within the first five years. Attorney Berglund stated there is constant monitoring of the wetland bank area during the first five years to ensure all standards and procedures related to the establishment of a wetland banking area are met and followed. Attorney Berglund stated the Coon Creek Watershed District (CCWD) is one of three watershed districts within city limits. Attorney Berglund stated the CCWD will monitor wetland bank areas within their district and the City Engineer will monitor wetland bank areas that are within the Upper Rum River and Sunrise River Watershed Management Organizations areas. Attorney Berglund stated Paragraph C states a maintenance fee of 3% of the value of each wetland bank credit sold will be charged by the city to developers of wetland bank areas. Attorney Berglund stated wetland banks will be monitored by the state in perpetuity. Attorney Berglund stated when a wetland bank owner has sold all the credits available in the wetland bank, it is possible that person or organization may abandon their maintenance responsibilities; if that happens, the city will likely have to assume responsibility of any maintenance required of the wetland bank area. There was discussion about when a wetland bank owner's maintenance responsibility could end, what percentage of the city was overseen by the CCWD, what percentage of the city was managed by other watershed maintenance

organizations and what is known and unknown about wetland banks per the research done by Attorney Berglund. Attorney Berglund stated the city is trying to anticipate the future if the city allows wetland banks to exist and will collect fees at the beginning of the establishment of a wetland bank to cover potential costs to the city in case maintenance of the wetland bank becomes the city's responsibility. Attorney Berglund stated the City Council has suggested that a trail easement be dedicated through and/or adjacent to a wetland bank as noted in Paragraph D. Attorney Berglund stated requiring a trail easement through a wetland would require the landowner or developer to mitigate the area that impacts wetlands and buy wetland credits from a wetland bank. Attorney Berglund stated he has talked with a BWSR representative about trails in a wetland bank area. Attorney Berglund stated his recommendation was to have a trail on the border of a wetland, which is what has been done for some other wetland banks. Commissioner Entsminger asked if wetlands could be created and would a developer have to pay for wetland bank credits if the land that would be part of a trail easement wasn't wet. Commissioner Dixson stated the creation of a wetland bank should not be thought of as a marshy pond. Commissioner Dixson stated a wetland is an area that can take in water but does not have to be constantly under water. Commissioner Dixson stated a wetland bank area could be thought of as a place to reintroduce natural species. Engineer Collins stated there are various categories of wetlands that are based on depth of water and vegetation. Commissioner Lejonvarn asked if an access point for maintenance of the wetland bank must be created, could that be used for a snowmobile trail. Attorney Berglund stated if an easement is granted for a snowmobile trail, the developer must give up some wetland credits for the wetland impacted. Attorney Berglund stated additional discussion is needed as to whether wetlands would be impacted by snowmobiles just driving over frozen ground in the winter. Engineer Collins stated any land encumbered by easements will not be considered part of the wetland bank for wetland bank credits. Engineer Collins stated if a snowmobile trail easement is granted to a snowmobile club and not the city, the city would not maintain the easement. Engineer Collins stated the language related to non-motorized public use in Paragraph D may need to be modified. Chair Pogatz asked about the custody of the wetland bank property once all wetland credits have been sold and is abandoned by the landowner; what would the city be responsible for and what could the city do with the land. There was discussion about the value of land purchased for wetland bank credits versus the value of a buildable piece of land, the costs associated with the creation of a wetland bank and the ratio of wetland bank credits that must be purchased to offset development impacts to wetlands. Chair Pogatz asked if there would ever be a scenario where the city would not permit someone to buy land for a wetland bank or not allow a developer to purchase wetland bank credits for a construction project. Engineer Collins stated anyone interested in wetland bank creation, or wetland bank credit transactions, needs to follow the requirements of the Wetland Conservation Act. Attorney Berglund stated Paragraph E addresses improvement of road frontage for access adjacent to wetland banks. Attorney Berglund stated the City Engineer will determine the extent of road frontage improvement that would be required. Engineer Collins stated this clause is like what is required for any excavation or earth movement in 11-600 of City Code. Commissioner Entsminger asked about the potential of dividing an outlot designated as a wetland bank after all wetland bank credits have been sold. Attorney Berglund stated a wetland bank cannot be divided after all wetland bank credits have been sold. Commissioner Dixson suggested adding language

to the proposed wetland ordinance that states a wetland bank area cannot be divided and if the owner of the wetland bank property no longer wants the land, it would be forfeited and would become the property of the city. Attorney Berglund stated the BWSR representative he spoke with stated a pathway could be put around the wetland bank area to create a clear separation between wetland bank land and land owned by private parties. Commissioner Entsminger stated he felt it was unnecessary to require improved road frontage if the developer is required to pay parkland dedication and maintenance fees. Engineer Collins stated if the area along a wetland bank is an access point, it must be constructed to 9-ton capacity. Commissioner Fisher asked to discuss non-motorized use of a trail easement. Commissioner Fisher stated when an applicant applies for a Conditional Use Permit (CUP) for wetland banking, and a trail easement is required, conditions related to the type of use the trail would have, could be added to the CUP.

Chair Pogalz opened the public hearing at 6:38 p.m. and asked for public comment. Chair Pogalz reminded attendees that this public hearing is strictly related to amending City Code and is not related to a specific project.

Erin Casper, 13835 Isetta Street NE. Mrs. Casper asked how the city determined the 3% maintenance fee. Mrs. Casper asked who and what determines if something is economically feasible as noted in Paragraph D. Mrs. Casper states she feels \$2,500 per acre is extremely underpriced as the value of the wetland bank will be so much more. Mrs. Casper stated she does not like that road frontage to be improved along a wetland bank is to be determined by the City Engineer. Mrs. Casper stated she felt a specific number of feet, or minimum number of feet, should be required as it would be easier to enforce. Mrs. Casper suggesting that improved frontage be similar to what is required for a residential lot. Mrs. Casper feels signage should be required. Mrs. Casper stated she spoke with someone at the Coon Creek Watershed District, and they indicated nothing can be done to a property with a wetland bank; only repairs or improvements to the land are allowed. Mrs. Casper asked if there is a requirement that a home be built on property in a R-A, Rural Single Family Residential, zoning district. Mrs. Casper asked if the city has any idea on how many acres in the city could be put into wetland banking. Mrs. Casper stated she is very concerned about the permanency and the limitations that could affect things like future road extensions if large areas of land are dedicated to wetland banking.

Steve Jones, Keller Williams Realty, Maple Grove. Mr. Jones asked if physical improvements are made to a development, such as the construction of a park, will park improvement costs offset parkland dedication or maintenance fees as defined in development agreements. Mr. Jones asked when the 3% maintenance fee would need to be paid.

Celeste Bradish, 13810 Ghia Street NE. Mrs. Bradish asked if this matter had to be voted on at this meeting. Mrs. Bradish stated she is interested in learning more about the wetland banking process. Chair Pogalz stated the Planning Commission makes recommendations to the City Council. Chair Pogalz stated the City Council will have two readings of the ordinance. Commissioner Lejonvarn stated public comment is allowed at the beginning of each City Council meeting.

Ken Anderson, 13076 Jewel Circle NE, Blaine, MN. Mr. Anderson stated he represents the Rice Creek Snowmobile Trail Association. Mr. Anderson stated the first sentence of Paragraph D states the permit holder dedicate to the City an easement through and/or adjacent to the Wetland Bank for a ten foot wide trail. Mr. Anderson stated the third sentence states a 20-foot-wide minimum easement shall be maintained by the Maintenance Fee collected. Mr. Anderson suggested the wording be changed to state that the permit holder dedicate a minimum 20-foot-wide easement where a ten-foot-wide trail can be constructed by the permit holder. Mr. Anderson asked if a permit holder installs a ten-foot-wide trail, would it be an improved trail and what would the improvement entail. Mr. Anderson asked if it would need to be mowed grass with wetland vegetation that can be walked on or would it need to be a gravel or bituminous trail. Mr. Anderson stated the surface of the trail makes a difference as to how it can be used. Mr. Anderson also asked what determines if a trail easement is economically feasible. Mr. Anderson stated he feels economic feasibility needs to be clarified to avoid disputes. Mr. Anderson asked if the city could include an affirmative statement in the ordinance that states the city may allow separate motorized trail as the current language states the easement shall be for non-motorized public use. Mr. Anderson stated to him the current language could be interpreted to prohibit any future snowmobile trail use to be anywhere in the examples discussed in the Elwell Farms development. Mr. Anderson stated it is his understanding of the law is that if something isn't affirmatively allowed, it could be perceived as not being allowed and not permitted. Mr. Anderson stated there has been discussion as to whether a snowmobile trail can be used for other purposes. Mr. Anderson stated it is his understanding that any designated grants-in-aid trails can only be used for snowmobiling and other uses are prohibited. Mr. Anderson stated many other trails are used for snowmobiling that are not grants-in-aid trails.

Chair Pogalz, Attorney Berglund and Engineer Collins addressed the questions and comments. Attorney Berglund stated the 3% maintenance fee was determined by staff after considering what the city's obligations may be for maintenance of the wetland bank areas in the future. Attorney Berglund stated determining economic feasibility will be determined on a case-by-case basis through discussions with the applicant seeking to get approval for a wetland bank, the Planning Commission and the City Council. Attorney Berglund stated the \$2,500 per acre fee was chosen as it is the same amount as the current parkland dedication fee charged for each lot within a residential development. Engineer Collins addressed the question asked about the requirement of a house on a parcel in the R-A zoning district. Engineer Collins stated structures are not required on a parcel in the R-A district as that district has been for agricultural, farming and livestock uses. Engineer Collins stated there are several other R-A zoned parcels in the city that do not have a structure on them. Attorney Berglund addressed the question as to how much land in Ham Lake could be dedicated to wetland banking. Attorney Berglund stated that has been discussed throughout the process of creating this ordinance for wetland banking as there are a lot of sod farms in Ham Lake that could potentially be converted to wetland banks. Attorney Berglund stated that is one of the reasons why the city is choosing to add wetland banking to its city ordinance so the city has some say and control over when and where wetland banks will be created in the City. Attorney Berglund stated he does not know the exact percentage of land in Ham Lake that could potentially be used for wetland banking. Attorney Berglund stated he reviewed what Forest Lake did related

to wetland banking. Attorney Berglund stated one of the reasons Forest Lake decided not to allow wetland banks is because when land becomes a wetland bank, that use is permanent and nothing else can be done with the land. Attorney Berglund stated other cities have declined allowing wetland banks for the same reason. Attorney Berglund stated there has been discussion on types of trails that could be constructed through wetland bank areas, materials that could be put on the trails and should fencing be required. Attorney Berglund stated the City Council wants flexibility in determining requirements as each potential wetland bank area is different. Attorney Berglund stated the recent discussion about having a snowmobile trail through a wetland bank area or use of non-motorized versus motorized vehicles on the trails are examples of the need for flexibility in determining the makeup and use of trails. Attorney Berglund answered the question about offsetting parkland dedication fees if a park was constructed. Attorney Berglund stated this ordinance is only for a wetland bank. Attorney Berglund stated if a park is constructed in a residential development, that park offsets parkland dedication fees related to the per lot fee for the development, which is separate from the per acre fee being proposed related to wetland banks. Chair Pogalz asked Engineer Collins to respond to the comment about requiring a specific amount of improved frontage, an amount similar to what is required for a residential lot, along a wetland bank area. Engineer Collins stated a minimum amount of improved frontage could be required; the proposed ordinance allows discretion for the amount of frontage that should be improved. Engineer Collins stated he does not see the need for 200 feet of frontage for an outlot that is unbuildable. Signage for a wetland bank, and any trails within a wetland bank area, was addressed. Attorney Berglund stated signage is addressed in Paragraph D. Attorney Berglund stated the current language states signage would need to be placed along any trails within a wetland bank area, but it could be expanded to state signage should be placed throughout the entire wetland bank area. Chair Pogalz addressed Mrs. Casper's question about how much of Ham Lake is in R-A zoning. Chair Pogalz asked Engineer Collins how much of the city has been built out. Engineer Collins stated more than half of the city has been built out and approximately 32% of the city is wetland; much of that wetland is part of platted property which could not be converted to a wetland bank. Engineer Collins stated he did not know what percentage of land in Ham Lake is in the R-A zoning district. Chair Pogalz stated if more land in the city is converted to wetland banks, it becomes open area which is what people in Ham Lake like. Chair Pogalz commented on Mr. Anderson's request to modify the language related to the width of the required trail easement. Chair Pogalz stated the required width of the trail easement, and the required width of the trail as stated in the proposed ordinance address two different things. Chair Pogalz stated he is unsure how to address how economic feasibility would be determined as there could be arguments that a trail at the very edge of someone's property negatively affects their property value, but there have been many cases where trails are at the edge of a parcel, and it has not affected the selling price of the home. Mr. Steve Jones asked for clarity on the costs to the developer of \$2,500 per acre if a trail easement is not dedicated, the 3% maintenance fee and the \$2,500 per lot parkland dedication fee. Mr. Jones asked if a park is constructed at a significant expense, would consideration be given to reducing the developer's cost of \$2,500 per acre if a trail easement was not dedicated through the wetland bank area. There was discussion about the different areas that applicants could use for wetland banks; some could be part of developments and some could be former sod farms. Should consideration be given to offsetting the \$2,500 per acre fee if a park

with several amenities was constructed within a platted subdivision. Attorney Berglund informed Mr. Jones that the 3% maintenance fee would be collected when the wetland bank credits are sold. Commissioner Ross stated a city, or municipality, cannot charge any more in their percentages or fees than they can illustrate that there are concurrent expenses. Commissioner Ross stated it is difficult to know how much input cost the city will have on the onset of a project. Attorney Berglund stated that was correct. Commissioner Fisher stated there is an existing wetland bank in the city; how did that come to be. Engineer Collins stated the former city attorney oversaw that project; it involved wetland mitigation where a wetland area was created due to the impacts a project had on a wetland in another area in Blaine. Engineer Collins stated the MAC wetland mitigation area in Ham Lake will be the way it is today in perpetuity and has the same restrictions as a wetland bank. Commissioner Dixon asked Attorney Berglund if he has learned of any negative impacts on municipalities that have allowed wetland banks. Attorney Berglund stated he has not. Commissioner Lejonvarn asked if cost was the reason why the city was not obtaining land for a wetland bank. Attorney Berglund stated discussions related to wetland banks began due to the city being approached by two private landowners who want to create wetland banks.

Chair Pogalz closed the public hearing at 7:13 p.m.

Chair Pogalz asked Attorney Berglund and Engineer Collins if there are any reasons not to provide a recommendation to City Council on the proposed ordinance at this time. Attorney Berglund stated the proposed ordinance has been a work in progress for a year and the proposed ordinance is acceptable. Attorney Berglund stated that the non-motorized restriction in Paragraph D may need to change. Engineer Collins stated there was discussion about determining economic feasibility. Engineer Collins stated the Parks Committee would discuss each (wetland bank) project presented to the city. Engineer Collins stated a master wetland bank trail system may need to be created so landowners would know where trails will be required; it would need to be up to the applicants to prove whether a trail easement was feasible. Chair Pogalz proposed changes that may be made to the proposed ordinance and asked for the commissioner's input and feedback. Commissioner Entsminger asked if some percentage of the value of the wetland bank land be charged rather than charging \$2,500 per acre if a trail easement was not dedicated as the value of wetland bank credits could change in the future. Attorney Berglund stated that option was discussed during the creation of the ordinance. Attorney Berglund stated the maintenance fee is set at a percentage of the value of each credit sold so the permit holder is not required to pay a specific dollar amount; the \$2,500 per acre fee was chosen as it is the same amount as the current parkland dedication fee for each lot in a residential development. Engineer Collins stated the current parkland dedication fee is \$2,500 per lot and that is per the City's fee schedule that is reviewed on a yearly basis; it is possible the parkland dedication fee could be raised or lowered so the ordinance could state the per acre fee related to wetland bank trail easements is the same fee charged per lot for parkland dedication. **Motion by Pogalz, seconded by Fisher, to recommend approval of the proposed amendments to Article 9 of the Ham Lake City Code related to adding Wetland Banking as a Conditional Use in R-A (Rural Single Family Residential) zoning with the following modifications to Paragraph D:**
-Strike non-motorized in the second sentence.

-Modify the fourth sentence to read as follows: Permit holder shall install, at the permit holders' expense, appropriate signage identifying the trail and associated area and any rules or regulations for the use of the trail and associated area as determined by the City.

-Modify the fifth sentence to be modified as follows: In the event dedication of a trail easement is not economically feasible or possible, then the permit holder shall pay parkland dedication fees in lieu of the easement dedication ~~in an amount of \$2,500 per acre of the parcel considered for the wetland bank.~~

-Add the following three sentences: Fee per acre will be based on the current per lot parkland dedication fee schedule. Fees will be collected for each acre of the parcel considered for the wetland bank. However, at the discretion of the City Council, the fees per acre can be waived and/or credit can be given for other amenities provided to the developments associated with wetland banking applications. **All present in favor, motion carried.** *This application will be placed on the City Council's Monday, December 2, 2024, agenda.*

NEW BUSINESS: None

COMMISSION BUSINESS:

City Council Update

Commissioner Entsminger stated the City Council concurred with the Planning Commission's recommendations to approve the final plat of Enchanted Estates 4th Addition and sketch plan for Elwell Farms. Commissioner Entsminger stated the City Council did add one requirement to the Elwell Farms approval and that was requiring the developer, snowmobile club, and two Councilmembers to discuss options for placement of a snowmobile trail easement within the development. A Planning Commissioner will not be attending the December 2, 2024, City Council meeting.

ADJOURNMENT:

Motion by Fisher, seconded by Dixson, to adjourn the Planning Commission meeting at 7:32 p.m. All present in favor, motion carried.

Jennifer Bohr
Building and Zoning Clerk