

APPROVED
Minnetonka Beach Planning Commission Meeting Minutes
February 26, 2024 – 7 pm

1. Call to Order

Chair Breazeale called the meeting to order at 7:00 pm.

2. Roll Call

Present: Commissioners Blodgett, Breazeale, Finnegan, Steinfeld, Swanson, Whitely and Council Liaison Halverson. Absent: Commissioner Wortman

Staff in attendance: City Administrator Heidi Honey, Zoning Administrator Phil Carlson

3. Approve Agenda

(Steinfeld motion, Swanson second to approve the agenda; all ayes.) Motion passed.

4. Approve Minutes - Regular Meeting of January 22, 2024

(Whitely motion, Blodgett second to approve the Regular Meeting Minutes of January 22, 2024; All ayes.)
Motion passed.

5. Public Hearings

5.1. Land Use Requests

5.1.1. Variance Request – 3 Crescent Street – Front Yard Setback

Carlson reviewed the front yard variance setback request in the packet. The home currently has part of the house and garage built into the 50 ft front setback and those parts are considered “grandfathered” and allowed to remain. The applicant wants to add a small, covered entry and new roof at the front of the house which require variances to the front setback. The home is in a wooded area and not seen much by surrounding properties. Crescent Street only serves two homes and is not a full width street. Zoning code allows for a two-foot overhang, and they are requesting an additional foot. The variance criteria are outlined in the packet and Carlson noted the request meets the variance criteria.

Public Hearing opened at 7:06 pm.

Tom Flint – Alexander Design Group, 275 Lake St East, Wayzata – Flint stated the goal is to update the look of the house and give it more design appeal.

Public Hearing closed at 7:07pm

Steinfeld stated he walks the neighborhood and has never seen the house. He stated the change is minor, most of the house is outside the buildable area, and he supports the request.

Swanson supported the request as most of the house is within the setback and the changes are minor.

Blodgett stated that he looks out the rear of his house on to Crescent Street. He supported the request stating it would bring the home up to design, it would not negatively impact anyone and be an improvement. He added that undeveloped streets can be petitioned to be abandoned and therefore denied development of the undeveloped streets.

Breazeale stated it is reasonable to have an overhang over the front door, and the small encroachment is a reasonable request.

Whitely agreed with comments made.

Finnegan expressed caution about variance creep by allowing small amounts time over time. However, she supported this request and thought it was reasonable. Breazeale stated each variance is reviewed independently. Carlson stated the request is further from the setback than the current garage.

Swanson made a motion using the template on page 13 with the 7 findings of fact.

(Swanson motion, Steinfeld second to recommend that the City Council approve the variances for the porch addition and roof overhangs at 3 Crescent Street as submitted on the Certificate of Survey from Moore Engineering, Inc. dated 1/11/24 and plans prepared by the Alexander Design Group dated 1/18/24, with the findings of fact in the Planner's report of February 26, 2024,:

- 1) **The home at 3 Crescent Street was built in 1980 with portions of the house and garage within what is now a required 50-foot front setback for structures. Those portions may remain as legal non-conforming parts of the structure.**
- 2) **The Minnetonka Beach Zoning Code in Table 4.4.4(D) allows eaves or roof overhangs to encroach into the required setback up to 24 inches (2 feet).**
- 3) **The owner, Amy Lamparske, proposes to build a covered front porch addition of approximately 47 square feet within the required 50-foot front setback. The remodeling project also involves a new roof on part of the house with a 3-foot overhang, 1 foot of which is not allowed within the required 50-foot front setback.**
- 4) **The vicinity of 3 Crescent Street is unique compared to most residential properties in the City in that the street rights-of-way for abutting Northwood Avenue and Crescent Street are not built as full paved city streets but rather as a driveway serving only two homes. The property across the street from the front yard of 3 Crescent Street is vacant City park land.**
- 5) **The front porch addition and new roof are modest, reasonable modifications to the home.**
- 6) **The proposed additions will barely be noticed and will not alter the character of the area.**
- 7) **The request meets the standards for approving a variance in Section 3.4.3.D (1) and (2) of the Zoning Code. ; All ayes.) Motion passed.**

5.1.2. Conditional Use Permit Amendment Request -Lafayette Club, 2800 Northview Rd – Fence Near Hole #7

Carlson stated the Club operates under a conditional use permit (CUP) and previously Carlson did not think an amendment to the CUP was needed but an appeal was made and the council acting as the Board of Adjustment and Appeal determined an amendment was needed. Due to that, the Club has now applied for the CUP amendment. The fence is 8 ft tall, 244 ft long with fabric covering it and there are landscape plans to screen and block the fence as shown in the packet. Carlson stated the issues that come up are unique because it is a golf course and the settings of the properties. One issue is safety, and the Club says they need this for safety and a fence with the fabric would keep balls from going into neighboring properties. Another issue is the appearance of the fence, and some people think chain link is unsightly and fabric makes it more so, others may think it improves the appearance of a plain chain link fence. It is for Planning Commission to discuss community standards and the impact of the fence. He stated another issue is which side would be considered inside/outside for finishing purposes. His recommendation is the finished side with fabric and landscaping face Woodbridge Rd. Carlson then discussed the lot abutting it at 2669 Woodbridge. The property is unique in that it does not abut a street. There is a designated front yard solely for technical zoning purposes and access is via an easement. It is a landlocked property with all four sides facing other properties.

Carlson then reviewed the standards for fences generally. Fences do not require a permit from the City but other zoning regulations apply. Specifically exempted from fence requirements are permitted recreational facilities. City requirements on no chain link fences would not apply. This feature of the Club would not require a permit or any other type of special approval in any other location. In residential property a fence would be allowed with or without a reason without a permit. Neighbors of the community may not like seeing a fence, but they have the right to install one. This fence is in that type of discussion. The Club wants to put up a fence for valid reasons and people don't like the appearance of it. Carlson stated with the added landscaping it will look very different than today. He stated these are the questions the commissioners and Council are asked to review: the nature of conditional uses, the nature and standards of fences in the community and the relationship between properties and neighbors. Carlson stated his conclusion based on his reading of the code is that this fence meets the standards for approving a conditional use permit especially with the addition of the new landscaping and so his recommendation is to approve the amendment to the conditional use permit for this fence with the landscaping with some conditions; the fence be maintained in an attractive manner, that the row of evergreens be guaranteed and maintained, and if the fence is changed in any significant way (except removal of the fence), those changes are reviewed as an amendment to the CUP. He then referred to ten findings of fact for consideration in his memo in the packet.

Steinfeld asked Carlson if it is true the fence would not be appropriate for any other homeowner. Carlson confirmed that chain link would not be allowed for residential uses. A homeowner could install a solid wood privacy fence to 6 ft height and then two additional ft that is not opaque. This fence is 8 ft and opaque.

Breazeale opened the public hearing at 7:24pm.

Applicant Steve Doyle - President of the Lafayette Club Board of Governors. Doyle stated he is a 30-year resident of the 'Beach, served seven years on the Planning Commission and numerous City task forces. He mentioned this to show he is personally committed to our community and cared enough to have devoted time to the civic duties as you have. He stated he took the oath to uphold the rules, regulations, and City Codes in a fair and impartial manner with people who are frequently our neighbors, without prejudice or malice. The job demands impartiality and application of the Codes devoid of personal emotion or bias in the face of sincere and heartfelt arguments from both sides of the issue. This decision should and must be fact-based. He stated they are asking that Lafayette Club have a right, as the city's only private recreational facility of 45 acres, to erect a chain-link fence with safety screening entirely consistent with fences elsewhere on its property allowed by the Zoning Ordinance and City Code, permitted by the City, in order to protect its membership from liability and injury, and, as good neighbors, to protect residents and property so closely adjoining what we now know and recognize as an existing danger.

Doyle stated the precedent of denying the Club a CUP amendment to erect a safety fence which complies with the Code requirements according to the Zoning Administrator, against a backdrop of known safety concerns, would be alarming, irresponsible, and potentially illegal. In multiple conversations with City officials, both former and current about this issue, they have acknowledged that the Club is at a risk of liability and that it should be allowed to address the problem in a responsible and prudent manner. He then referred to the narrative for the CUP amendment application in the packet, but requested his statement be included in the official record of tonight's proceedings.

He asked to reiterate their key points from the CUP-related hearing in Fall of 2023, and refuted the following comments circulating among the neighbors that: this is a “spite” fence, the Club’s ulterior motive was for it to purchase the property from the Birkholtzs, there is no danger of errant golf balls causing injury or damage, the fencing does not match any other permitted and existing fences in the vicinity or indeed don’t commonly exist at other golf clubs, and the Club has been acting unilaterally, like a bully, and has not engaged in good faith with the two affected adjoining neighbors. He stated these are mistruths and distortions they have heard.

Doyle then provided the Club’s perspective. The Club and Golf Course which have existed since 1899, just five years after the village of Minnetonka Beach was incorporated, have had a friendly, genial and symbiotic relationship with the City and its residents. Its founding and early members were a who’s-who of Minneapolis business leaders who built summer and eventually year-round homes in the Beach, attracting other wealthy and civic-minded residents to settle here who then nurtured and developed the City we see today. The 45 acres of largely “green space” the Lafayette Club owns, magnificently manages, manicures and caretakes has attracted new residents to The Beach (many of whom also become members) as well as brought national fame and high credit to the City. Its existence as “green space” has helped allow the City’s hardcover cap to be as high as it is. They have always tried to act as good custodians of our park-like paradise, and the City and its residents have enjoyed the benefits.

Since 1988/89, when the City first required them to operate under a Conditional Use Permit, the Club has complied well over a dozen times with City requests for CUP amendments for projects that had potential for significant changes as the facility grew and needs evolved. Some were for facility expansion, such as the outdoor pool, the tennis building, the new dining room and the bar. The Club also requested and received approval for safety features that protect members and pedestrians, from injury or worse due to errant golf balls: netting over the outdoor pool, tall netting alongside the 9th tee, and the chain-link fence and fabric screening surrounding the tennis courts. Prior to the CUP process, the Club had also erected safety chain-link fencing along the range, behind the 2nd green to protect the 3rd tee, and between the 5th green and 6th tee. Three Rivers Park District, in association with the Club, received permission to erect a chain-link fence to protect trail users in the 2000s, along the 5th and 8th Holes where the fence is 10 feet high, the latter being within a stone’s throw of the Birkholtz property. The Club has acted to protect its members and residents wherever and whenever known safety concerns have arisen, and always tried to be pro-active where safety has been threatened.

Doyle stated the recent history with the 7th Hole dates back to 2000, when the Club executed an easement plan with the Shermans who lived at 2663 Woodbridge, now owned by the Paines. The easement allowed access to the vacant lot now owned by the Birkholtzs, which is located between the 7th green and Club owned land along the Trail. In exchange, the Shermans allowed the Club to use the vacant lot as part of the 7th fairway, with the agreement that the Club would maintain it. The grounds staff reported dozens of balls within the vacant lot every time they mowed. That was the trigger point for what started in 2021. When the Club became aware of the impending sale of the vacant lot in April of 2021, it started a string of engagements with the City over the legality of the driveway easement, as well as an in-person meeting with Club officials on August 6th requested by the immediate neighbors, the Whitelys and Paines, both of whom wondered if it was even a buildable lot because of concerns over the easement. The easement was found to be executed legally and, hence it was a buildable lot.

In the August 6th meeting, followed up in a Sept 2nd email, there was discussion at the suggestion by the neighbors to explore the idea of a 3-way purchase of the vacant lot with them and the Club in order to control the property, which ultimately did not come to fruition. On Sept.13th, Mrs. Howarth (past current president) and I met at the 7th green with the new owner and developer, Sven Gustafson,

to discuss tree removal and easement boundaries, and mentioned to him their concerns for the errant golf balls and to protect our members from potential liability in the event of injury or damage occurring on the property, we were exploring fencing options to mitigate the problem as had been strongly recommended by the Club's attorneys. Sven told us that wouldn't be necessary, but in a follow-up email, we affirmed that course of action of pursuing a permanent fencing option. Just days later, we put up a temporary snow fence along our border of the Paine and the Gustafson lots as we had noticed the general public (non-Club members) wandering across an active fairway to view the property which had a For Sale sign posted. The Club asked the City to post No Parking signs along that stretch of Woodbridge to discourage uninvited visitors from parking along our active fairways, so the City was again aware of our safety issues and concerns.

The Club was concerned with tree trimmers, landscaping vendors and construction crews visiting the lot and possibly driving across our fairway unless the border was blocked off and clearly defined. The vacant lot was re-sold for development by Mr. Gustafson to the Birkholtzs and the sale closed in October. We assumed the seller had divulged the information about the possibility of the fence to the buyers.

In September the Head Professional, Mark Sampson, and a medium-handicap average golfer, teed off from the back tees on #7 as well as the front tees for about half an hour aiming to drive the Par 3 green using a driver or 3 Wood as most golfers do. We observed about 1 in every 4 tee shots either bounced off the snow fence or carried directly into the vacant lot, whether over or around the trees at the corner. With this evidence in hand, the appropriate Club committees vetted, and the full Board agreed, to the capital spending request for an 8' fence with safety fabric screening and landscaping along the common border with Paine and Birkholtz to prevent, as best we could, golf balls flying or bouncing into the neighbors' properties. This was taken with full consultation with legal counsel, Finance, Golf & Grounds as well as the Board and was felt to be the next-best, more foolproof solution to erecting a 30-40' high wall of netting for the entire 200' similar to driving ranges and what is done, for example, at Interlachen Country Club.

We feel the 8' black chain-link fence and forest green fabric, when completed with the planned arborvitae camouflage landscaping, would be the best balance for least-obtrusive, most cost-effective and visually pleasing safety solution to counter a potentially dangerous situation, and avert a liability against any of our members. It is optional to remove the green fabric screening in the off-season to prevent weather degradation. The Club has been monitoring the wear on the screening this winter; we don't know what effect the yearly removal and re-installing will do to the fabric, so the Club has not made an operational decision about whether it could be removed temporarily in late-Fall and re-installed in Spring. We feel the 7th Hole Fence is consistent with other fencing on or along Club property within 350', and with screening elsewhere on the grounds, and it is consistent with past Club proactive practices to protect members when safety concerns become known.

Doyle went on to say Rita, Gregg and I first met with the Birkholtzs at the Club on May 11th, 2022, and shared directly with them our plans to erect the fence, which they pleaded with us not to do, saying they would never have purchased the property knowing there would be a fence. We offered to have them to sign an Indemnification Waiver against the Club and its members for any and all injuries to persons and damages caused to property on their lot from errant golf balls and bind all future owners to it in exchange for us putting up a simple split rail fence and landscaping in lieu of the current fence. We met again on May 27th where they reiterated their request for us to not erect a chain link fence, they required, in our view, unacceptable changes on signing an Indemnification Waiver, so that idea withered. In an attempt to show goodwill to the Birkholtz and help them ameliorate the disappointment and frustration of the situation in which they found themselves, our Finance Chair,

Neil Brown, then spoke saying the Board had authorized us to make a fair market offer to purchase their lot from them, but our offer was immediately and emphatically rebuffed. We told them we would hold off on applying for the fence if they would like to take more time to consider and/or make a counteroffer through their attorney to our attorney.

After several unsuccessful attempts on our part to inquire of progress, response or engagement with the Birkholtz, after a full year, the Club sought the professional advice of the Zoning Administrator, Mr. Carlson as to whether we would need a CUP amendment to install a system to protect our members from errant golf ball liability and to delineate and secure our property and the neighbors'. Mr. Carlson, answered that he thought we would, but this was based upon his belief that the request was for a 30-40-foot netting wall. Upon submitting more details about the fencing system, he corrected his initial impression and ultimately determined it was his opinion that an 8' chain link fence and safety covering was reasonable and consistent with general recreational facilities, as well as consistent with other fencing nearby on Club grounds and the TRPD trail.

When he determined that no CUP amendment was needed, only then did the Club order the material and schedule the installation of the fence, which was completed on August 7th, 2023. It is important for the record in this matter to demonstrate the amount of time and energy the Club has spent over the years to work with the neighboring parties on resolving this issue. The Club followed every process set out by the City and constructed a fence that is permitted for recreational facilities under the Zoning Code, with staff approval, and with full knowledge by the neighbors after seeking alternatives. The landscapers recommended waiting for more favorable conditions this spring or early summer to complete the arborvitae plantings.

The result of that appeal regarding Mr. Carlson's opinion that no CUP amendment was needed is what brings us here tonight and the Club is requesting an amendment to the CUP for the fence as-built and with screening by arborvitae or appropriate evergreens.

Steinfeld asked what the decision was to not put-up netting. Doyle stated they thought a driving range type fence with up to 50 ft posts every 50 to 75 ft would not be attractive to the neighbors or to the city. It is also very expensive. Steinfeld asked if they discussed any alternatives with the neighbors. Doyle stated they did not to his knowledge. They may have mentioned it but he wasn't privy to the conversation and Mrs. Howarth may have. Steinfeld asked if this fence prevents balls from going through. Doyle stated he would hope so. Steinfeld asked about high shots. Doyle stated it would not, but they have done the best they could in keeping it consistent with what is done at a recreational facility. He added if it does not work their next step was to ask for a netting system which would help to mitigate many of the balls. The current fence will stop quite a few as was their analysis after watching it. Steinfeld asked if after the fence went up August 7th, did club look at effects of it. Doyle said it's anecdotal with it being 8 ft tall, he can't see over it. Nobody went around it but he assumes there are balls there. He added that no system is fool proof which any judge or attorney would tell you unless it is domed. Steinfeld asked what the reason was for opaque fabric. Doyle stated the fabric screening is a safety feature because the grid is a 2" grid and balls can transit through the 2" holes. Steinfeld asked if there are other fences with smaller holes. Doyle does not know. He stated it was recommended by their vendor who has done others on the property. Steinfeld asked if they considered another fabric like a translucent/see through fabric. Doyle stated he does not know. The discussion would have been between the vendor and ground staff.

Jake Saufley – Larkin Hoffman, Attorney Representing the Club on this application – Saufley stated they were asked to come back for this appeal process and make this application. He stated they are not waiving any rights under the code of MN law. He stated the decision is a quasi judicial decision, the

fence is approved as a by right fence under zoning code Section 6.3, the legal factors have been established for the fence to be approved as an amendment to the CUP, we have articulated conditions that negate the harms to placing the fence on the property, and stated there are no rights to a view shed (conceptual air rights – which mean if you are in a residential home and a neighbor builds a 6 ft opaque fence, they can block your view). Saufley went on to say the Club is over 100 years old, it is situated in R-1 zone, and operated as a golf facility and recreational facility long before the city’s zoning took effect and long before the CUP was enacted. Throughout the course of time predating the city’s regulations, the Club has operated as a recreational facility for the benefit of its members for golf and ancillary activities and has included safety fences in the past to protect the members and the public. Saufley referred to zoning code section 6.3 stating fences are allowed for recreational facilities and it is not that the city chooses to regulate fences, it is not that anyone needs to apply for a permit for a fence, but it is the code clearly determines that fences are not regulated as severely for recreational facility, they are allowed and given more latitude given the nature of a golf club and recreational facility in general. He then referred to Carlson’s report stating that Carlson clearly went through the factors of a CUP and amendment thereof, and referred to the Club’s narrative which articulates additional findings that indicate why a CUP amendment should be granted.

- It is a necessary precaution to ensure safety for those in and around the Club, it doesn’t affect health, safety and morals in a negative way for anyone around the area, and the purpose of the fence is safety. There are no odors or fumes.
- It does not impede normal development of the area, the easement rights between the Club and Sherman property from 2000 expressly allow access to that lot and prohibit any impediment to that lot and the fence is constructed in compliance with the easement.
- The use of roads, public utilities and parking not impacted, it prohibits trespassing.
- Sight pollution refers to flashing or garish lights and is not applicable.
- Fence material is consistent and compatible with materials used around the Club, and code refers to 14-gauge chain link so it was considered and generally seen. He added that an 8 ft fence won’t be perfect, but it helps. He added that a 20-30 ft netting system would be more obtrusive, so the Club thought 8 ft was a good balance between, safety, economics and concern for the neighborhood. The early assumption was that the system would be very tall.
- Attractiveness is subjective criteria and not a legally relevant finding for this process. The fence is aesthetically pleasing because it is similar to other fences at the Club and many types of fencing at other golf courses within 20 ft of other residents at other clubs. He said this is discussed in the context of the city code and the practice for the Club in Minnetonka Beach. He went on to say there has been discussion that it is unusual for fencing to be around golf courses, but he submitted photos proving otherwise by showing fences 20 ft from residential properties and this fence is 80 ft away. Saufley handed out an aerial photo that showed the fence location and tree groupings to show trees already block views.
- The Club could have asked to build a taller fence but did not. It is a suitable size and not excessive.
- Fence does not impact the shoreline, does not create erosion, land around is manicured and green.

Saufley then addressed comments related to Section 7.1. of the City’s Comprehensive Plan stating policy goals are aspirational in nature and if 7.1 were law of land, it would be in zoning code and fences would be prohibited. Residential properties in the city are allowed an increased hardcover due to the Club’s green space. He discussed the negotiations between the Club and 2669 stating 2669 would not agree to the indemnification agreement and he added if the Club could contract away from having a fence, they would be very happy to do that but have been unable to find that resolution and that is how they ended up after three years of active effort. Saufley then stated Carlson wrote an excellent report and agrees with the conditions to build the arborvitae but stated if they planted a mix

of trees, they may ask for flexibility to plant something that may grow taller. Saufley then discussed Comp Plan policy goal 6.2 regarding aesthetic quality and community and stated it does not define what those items are and it needs to be rationally related and connected to what is already seen in place. He added that sometimes you have to make decisions the law requires and some of those decisions are unpopular. They have to apply the legal findings of fact. He stated they meet the requirements to amend the CUP and asked for approval of the application.

Blodgett asked if the lot was to stay empty, would they still be adamant to put up the fence. Saufley stated the purpose of the fence was to protect adjoining properties and if there was guarantee there would be no construction on the lot, the Club would consider it, but if there is a possibility something will be constructed there, the Club cannot take the risk that someone working on the property or developing the property could be struck by a golf ball. He added that they may be wondering if the fence could be shortened to the tree line and stated aesthetically the fence the run all the way without a gap because fences usually connect to a natural feature or a corner. Blodgett asked what type of injuries and accidents have occurred. Saufley stated with the vacant lot, the risks were minor but with the lot development the risks increase. Doyle stated there were no previous injuries because you have wait for the green to clear before the next tee off. Breazeale stated without a substantial hook, you would need to go through Paine's property to get from tee box to hole and asked why the fence doesn't go all the way down Paine's property. Doyle stated they connected the Club fence to the border with the Paine's fence but if there are problems, they may have to look at it. Saufley stated the Club has a right to install a fence which could be installed up to the border.

Whitely asked if one condition is that the fence has to be customary. Saufley stated in the fall they discussed if the fence was customary or typical and that was among the criteria Carlson used to evaluate whether or not a fence is permitted under a conditional use analysis so based on that, it needs to be customary. Carlson added that he did not introduce the word "customary" and that word is in the code.

Steinfeld stated it's not that they are making a decision on if they have the right to put up a fence based on fencing rules but whether or not the fence that has been chosen complies with the Comprehensive Plan and asked if they had comment to that. Saufley stated they have, and the guiding principles are guiding principles to promote safety and welfare, to promote tranquility. Fence does not cause disruption or in any way impede the gentle nature of the community.

Mike Lang – 2651 Woodbridge – Lang stated he is a member of the Club since 2008. He stated he did not know the Club had his interest in mind. This fence is an eyesore and in his opinion it serves no purpose from a boundary to someone's house. He stated there are countless holes where a fence could be put up. A fence could be put up to prevent a golf ball from hitting his car on Woodbridge Rd. There is no fence to protect people and cars when you drive up to the Club where a ball can easily go into the parking lot. He stated the Club has not done anything to protect anybody but for some reason they have focused on this property. He added that the Club has not approached 4-5 other property owners on Woodbridge so that is not being a good neighbor. Lang then stated all criteria of the CUP amendment need to be met for the city to grant approval. The nature of the fence is sight pollution and the city cannot approve it due to that.

Tim Magnusson – 2615 Woodbridge – Magnusson stated he is member of Club for 15 years and has played the course many times. He stated you could put a fence up anywhere in the Club, and it doesn't take much for a car to be hit. He doesn't know what rights they have for the fence but stated the Planning Commission is here to talk about the broader plan of the city. He stated the fence is ugly and he takes issue with it being referred to as "aesthetically pleasing" because they have to look at it every

day. As a member of the Club, he understands that nobody wants to be sued but there will never be a perfect solution. He has hooked balls that would have landed on the lot with a 20 ft fence. People who live on a golf course assume the risk. The Paines were willing to accept that risk. He added it is unneighborly of the Club to install the fence without talking with neighbors, it looks like a construction fence and it is ugly.

Arlyn Birkholtz - 2669 Woodbridge – Birkholtz stated he is not happy to be here and feels forced to be in this position. He stated he purchased the property in fall of 2021 to build a home on it. He recognizes the Club has liability concerns and therefore installed a fence. Conversations with the Club have been adversarial, making it difficult to come to a workable solution. He proposed that they (Birkholtz and Club) come together and work on a solution that can mutually benefit all parties. He stated he would like to work with the Club to develop this comprehensive plan they could agree upon going forward. He asked the Club to table the application for 60 days so they can work together to come up with terms of an agreement that they can all be happy with and move forward. He then asked if that is something the Club would be willing to do.

Carlson stated the City is obligated by state statute to take action by 60 days, but the city can extend that deadline an additional 60 days without the applicant's permission as long as it is in writing. The current deadline for Council action is April 9, 2024. Delaying beyond that, the city could need the applicant's permission. Carlson then explained there is a difference between the Club withdrawing their application and they could come back with another application at a later date and agreeing to table it to a certain date. Breazeale continued with the public hearing and the Club could respond later in the meeting to the request.

Birkholtz went on to say it was a lovely lot to build on when purchased, but their hopes and dreams to build were diminished by the Club. He stated they have destroyed the property values, lake views, and green space by installing a huge black fence in their front yard. The black tarp blocks views and destroys from the homeowners' perspectives. He added there were many ways to have handled the situation legally other than the way it was forced upon them by the Club without getting approvals from them or other Minnetonka Beach homeowners. He then stated the bridge entrance to access the 7th and 8th holes and half of the sand trap is also on their property and the Club has said nothing about the infringement. The Club chose not to work with them on a solution. Birkholtz stated the Club has been vindictive, and the fence only stops the low balls or harmless ground balls from entering their front yard. He stated he expects golf balls in his front yard and golfers could walk across the yard to retrieve them. He then stated there are thousands of other property owners on golf courses and they do not have indemnity agreements or fences. He added the fence where it is installed does not prevent a ball from going over the fence and possibly causing damage to the property or persons, and that is when the damages will occur. He stated the fence does not serve its purpose for protection. He added the Club is exploiting the word fence to block and damage their view, not for protection and liability purposes. Birkholtz explained that the design was to position the house on the back of the lot to get the home further away from the 7th hole. The fence as positioned now would not stop a dangerous ball from hitting the house and it would take a 50ft fence to stop that projectile. A dangerous ball is one that would go over the fence and not the ball that would hit this fence. Birkholtz then stated that the Club's claim for installing the fence for liability reasons does not warrant installation of an ugly fence of this nature. The fence is ineffective for stopping the dangerous long ball. He asked the purpose of the fence other than to purposely block or damage their views. He then talked about the liability of Woodbridge Rd. and balls going over, under and through. He talked about Woodbridge Road liability where there is a fairway drive with a high-speed golf ball from the 7th hole tee box going over, through or landing on Woodbridge Rd. and there are cars, pedestrians, and kids on bikes in the middle of the 7th hole fairway. The 7th hole fairway drive is on Woodbridge with no fence

for protection of the public using the road. He stated this is more dangerous and a much bigger liability than the property at 2669 Woodbridge and it is not a matter of if but when someone gets hit by a golf ball. He asked what the Club will do with that liability. He stated maybe the Club needs to move the 7th hole green to the other side of Woodbridge Rd. Birkholtz then asked is Lafayette Club within Minnetonka Beach jurisdiction or is Minnetonka Beach within the Club's jurisdiction because the Club acts like wild west and do what they want and when they want. Birkholtz went on to say the Club is a landowner like everyone else. He invited the commission and council to walk the property to observe the fence and ask themselves what purpose the fence serves. He asked the commission to vote to tear down the fence and work on a solution that works for them all. He thanked the commission for allowing him to voice his opinion.

Nancy Birkholtz - 2669 Woodbridge – Birkholtz stated they were excited to build a dream home, become part of the Lafayette Club and the surrounding community, and their dreams have been diminished. After closing they were informed by the Club they would need to sign an indemnification agreement which would relinquish the liability of the Club and its players of all responsibility in the event of an accident and put total liability on them. Their attorneys recommend they not sign it. In the end no agreement was reached on both sides. They learned no other homeowners were asked to sign an indemnification agreement. She went on to say that a Club board member made a low offer but never followed up with a formal offer. It appeared to them the Club wanted to buy the lot but wondered why they did not buy it from the original owner since the bridge and sand trap sit on their property. The Club has to figure out what to do with the bridge and the sand trap and it would have been the perfect opportunity to work with them on a solution. They continued with the design process thinking the Club might come back and try to work out an agreement, but they heard nothing for several months. A three ft snow fence was installed around the perimeter of the property to prepare for construction. In May, they were informed by a neighbor who chatted with a contractor that was measuring for post locations, that an eight ft chain link fence was going to be installed. Before they knew it, a huge, unsightly fence went up. It was ugly and wrapped in rags. She asked how this could have happened without the approval of the people affected by the fence? How could this have passed city approval? How could this have happened to them and their neighbors without them being made aware of it? She stated she is having a hard time putting into words exactly how it feels when you stand at 2669 Woodbridge Rd right now? Is she locked in a closet? How did it go from a beautiful green space view to a hideous fence? She stated she can tell with full confidence that it does not feel like home, and in 2021 she stood at that same location and envisioned her dream home with beautiful views of green space and a stunning view of the lake. All of that was taken away with the fence. She reviewed documents and zoning requirements in preparation for the meeting. She stated the 2669 lot does not look like other homes on the course because there is not one other 8 ft chain link fence in any other front yard. She added the unsightliness of the fence is a prime example of sight pollution. She stated the fence also obstructs their view of the lake and surrounding area. It goes against the policies and practices of the community vision to protect and maintain the views. The fence works negatively against their property value. The guiding principles state that their views are to be protected but the Club obliterated their lake view and decreased the quality of their residential space. She then stated it was in their front yard that the 8 ft fence wrapped in tarp was placed and eliminating any kind of view for them, which is not right. She asked everyone to put themselves in their shoes and be their guest and visit the lot and let them know if that is something they would approve of. She then stated that she encourages city planners and city council to do the same. Do the right thing and remove the fence.

Lindsay Paine – 2663 Woodbridge Rd – Paine corrected a comment from the Club's attorney that it was said golf courses don't have chain link fences but that was not the position. It was that it is unusual for them to have fences between fairways and holes most clubs have perimeter fences. The photos provided by the Club show all perimeter fences. The clarification is not about chain link fences,

it is about protection and blocking a home from golf balls. He stated they are trying to think what is unique about the 7th hole representing a special liability. There is a house right behind the first green. There is a church behind the 8th green and there is no fence there, so he is trying to understand what is uniquely dangerous about the 7th hole besides the road going through which the fence does not address nor should it because that is not the Club's problem. The fence doesn't work for this purpose. It keeps some golf balls out but if you stand there and look from the Birkholtz property or our backyard to where the tee box is, for a golf ball to hit there, it is clearing the trees next to his house hooking around, going over the 8 or 15 or 20 ft fence and hitting me in the head or my car so it is not working for the purpose it was stated to provide. The fence stops some golf balls, but they have had the same number of balls in their yard before and after the fence was installed and they are there every day. Paine then stated he does not know if everyone has stood on the property to judge if the lake view is there or not, and he can't tell from an aerial if the view is there or not. That assessment cannot be made clearly if you haven't stood on the Birkholtz property and looked at the lake view that was there. Paine stated he thinks the fence should have a purpose to be there, and not because they just want it there. He does not think there is a legitimate concern and golf is not without risk and living on a golf course is not without risk. People who build and buy on a golf course assume that risk. As for golfers and carts, Paines have a split rail fence that takes care of that, and for construction, there are contractors for that so he cannot see a legitimate purpose for the fence. Paine went on to say in the application and the zoning administration rationale, there is no reference to the Comprehensive Plan. He added maybe that is because the fence is clearly not in conformance with the comp plan which should be the most important consideration in thinking about if the fence should be allowed or not. The zoning ordinance itself defines conditional use as a specific type of structure or land use that may be allowed but only after an in-depth review that the structure or land use conforms to the Comprehensive Plan and that the structure and or land use is compatible with the neighborhood. Neighborhood compatibility is addressed pretty obviously by the letters in the packet and the people who are here, this is the neighborhood. In describing its purpose, the zoning ordinance itself has a list of what its purpose is in 1.3 – to implement the policies of the Comp Plan. He does not think a thoughtful or complete analysis of the fence can completely ignore the Comp Plan, but that is what has been done by the Club and the Zoning Administrator. He went on to say the Comp Plan is very clear about protecting and preserving property values, lake views, aesthetics, open spaces, in softer terms than may be wanted. All CUP amendments must meet the 7 criteria including however this clearly fails in that it will not result in any nuisance including but not limited to as the list is not complete and sight pollution. The individual impact is only subjective if you have not stood on that piece of property before and after the fence. Paine went on to say the fence is clearly sight pollution. That is not some downtown concept, it is in Minnetonka Beach ordinances. The other piece that fails is that it won't be detrimental to persons residing or working near the site. Not wealth but welfare and if you look up welfare in Merriams, that does include a financial element to it. It is not wellness, it is welfare. The destruction in property value this fence has inarguably caused to that property, and to theirs to a lesser extent, is clearly detrimental to the people that live near the property. On that basis alone, this cannot pass. Paine stated our state statutes do not guarantee golf course views, but our city has a more specific and restrictive requirement on what you can and cannot build within the city. Paine then urged the Planning Commission to recommend against allowing this unpermitted fence to remain, it has no intended purpose, it does not conform to the Comprehensive Plan, and fails to meet the requirements of the CUP itself.

Laura Paine – 2663 Woodbridge – Paine stated that residents and commissioners have asked about the rules on residents installing fences and as we heard tonight, they don't require permits but are regulated and need to follow city design requirements. The Club as a recreational facility under the CUP is allowed to build some types of fences that residents cannot but they have to conform to the Comprehensive Plan and the requirements of their CUP. From the Comp Plan, the Guiding Principles

include protect and maintain property values, protect our lake views, open spaces and aesthetics of the community. The Land Use, Housing and Community Character Policies include resisting threats to visual pollution, and the goal of land use and housing is to sustain our community character. She sees lots of things that are in opposition to this. The fence violates each of these principles and the Club has failed in every aspect to address the requirements of our guidance, which is the Comp Plan. The Comp Plan has been completely ignored and overlooked in this application and the zoning administrator's review. Paine stated that as a Park Commissioner she knows their work always has to be in concert with the Comp Plan. She stated there is no legitimate purpose for the fence. The vast majority of the balls hit trees on the west side of their home and land in their side yard, and a relatively small portion of balls go into their back yard and into the empty lot. She stated they put up a beautiful split rail fence that helps golfers understand the boundary and to not drive golf carts there. They have two openings in the fence to allow golfers to retrieve their balls. She has handed dozens and dozens of balls to golfers who are always thankful. Paine is outside most days working on various gardens on their property, mostly on the west side by the golf course. She has a rapport with most golfers, and they have given dozens of balls to the Club for use in their children's program. All of those golf balls land on the side of their house. Paine stated they have never asked to sign an indemnification agreement nor would they. The house has been on the golf course for 86 years, with 86 years of families who have chosen to live by the golf course with no fence like thousands of other homes on golf courses. She added to her statement at the end of the public hearing.

Patty Rezabek – 2522 Lafayette Rd – Rezabek has lived in Minnetonka Beach for 55 years and thanked the commission for working all of the many hours on this. She has been a member of the Park Commission for a large portion of those years. She stated that while reading through the packet, one thing that confused her was about safety. She is a public health nurse and understands safety is number one but there is inconsistent safety on the course and people have discussed there are unsafe areas on different holes on the course. She stated that the safety concern here does not hold, because if it did, there would be more areas where people and property would be protected. She then shared comments she has heard from other residents who could not be here tonight stating that their common theme was their perception of aesthetically how the fence looks. The comments go from unsightly, decreased or lowered design standard, ugly, eyesore, unacceptable construct, monstrosity, and visual and aesthetic blight. She liked hearing that the owners are willing to consider working harder on a solution. She realizes that is more time, but it is very important to the community.

Kim Petersen – 2938 Northview Road – Read her input that was in the packet. Dear Commissioners and Council Members, We are writing to express our strong support for the concerns raised by Laura and Lindsay Paine regarding the fence erected by the Lafayette Club along the 7th hole. As residents of Minnetonka Beach and members of the Lafayette Club, we are deeply invested in the wellbeing of our community and the amicable coexistence of its residents and the Lafayette Club. The Paines have provided a comprehensive overview of the situation, highlighting not just the procedural missteps taken by the Club in erecting the fence without proper approval under the Conditional Use Permit (CUP), but also the broader implications for our community's aesthetic and the values we hold dear in Minnetonka Beach, such as being good neighbors. The unilateral decision by the Lafayette Club to install a 200x8 foot fence without community input or adherence to the CUP sets a concerning precedent. The reasons stated by the Club for the fence installation, including protection from golf balls and construction traffic management, do not convincingly justify the significant negative impact on the community's landscape and residents' enjoyment of their properties. If protection from golf balls is truly a key objective of the Club, the fence in question is entirely ineffective, as noted in the Paine's letter. Further, applying this standard of "safety" would require much taller fencing/netting at additional locations on the course – holes #1, #3, #5, and #8 for example. Please note, we are NOT suggesting this is a necessary course of action. We stand with the Paines in urging the City to carefully review the Club's application for an amendment to the CUP with the community's best interests at

heart. The beauty, openness, and community spirit of Minnetonka Beach must be preserved, and this situation presents an opportunity for the Planning Commission and City Council to reaffirm its commitment to these values. It is our hope that a resolution can be reached that respects the needs and concerns of all parties involved, ensuring that Minnetonka Beach retains its character and charm. Thank you for your attention to this matter and for your ongoing service to our community. Sincerely, Mike and Kim Petersen

Jake Saufley asked to respond to one of the comments made during the public hearing. Chair Breazeale asked to finish with the input.

Council Liaison Jennifer Halverson read the following input for people who were unable to attend the meeting and asked that it be read into the record.

Scott and Jolynn Gamble – 3124 Old County Rd. We are Jolynn and Scott Gamble. Our home is 3124 Old County Road Minnetonka Beach. We want to thank you for this opportunity to share our concerns regarding the unsightly fence built along the 7th hole of the Lafayette Golf Club. We believe this fence is not consistent with the aesthetic standards of our community and especially for a distinguished country club. As frequent users of the Dakota trail, we were surprised to learn that this fence, one that obstructs views of the course and lake, is a permanent fence. Our first impression was that this was a temporary construction fence. It's simply not within the visual design standards one would expect for an open space historic neighborhood. We sincerely hope that all the parties involved, including the future home builder/owners of 2669 Woodbridge, would work together to find a more visually pleasing solution that meets everyone's objectives and preserves our beautiful historical committed community. Lastly, we want to thank you again for this opportunity to share our concerns regarding the unappealing fence built along the 7th hole of the Lafayette Golf Club. Sincerely your neighbors, Scott and Jolynn Gamble

Bob and Celia Stretmater – 2639 Westwood Rd. Heidi, It is our understanding that the Lafayette Club's application for an amendment to the CUP to allow for the fence along hole #7 is an agenda item for the Planning Commission meeting on 2/26. We will be out of town on that date but want to provide our point of view for the record. We live at 2639 Woodbridge Road. Our property is not adjacent to the Club property but we see the fence in question frequently from Woodbridge Road and the trail. We have been long time residents of Minnetonka Beach and long time members of the Lafayette Club so we have feet in both camps. Regarding the appearance of the fence, it is quite simply an eyesore in our neighborhood. Such a fence would only be appropriate to shield something unsightly, which is clearly not the case here. With respect to liability, the Club's argument rings hollow. It is generally known that if a house is built next to an existing golf course, golf ball liability rests with the homeowner and not the club. All that said, it comes down to whether the Club still has the right to build such an intrusive fence. The City's Comprehensive Plan and CUP process are in place to insure that the "structure and /or land use is compatible with the existing neighborhood". This is clearly not the case with this fence. For the good of Minnetonka Beach and our neighborhood, the Lafayette Club's request for an amendment to the CUP to allow the fence should be denied. Thank you for your consideration. Bob and Celia Stretmater

Richard Lindstrom – 2811 Westwood Rd. Dear Mayor Pagano, City Council, and Planning Commission: Please support the removal or replacement of the ugly black fence along the left side of golf hole number 7 at Lafayette Country Club. I make this request as a three-decade citizen of Minnetonka Beach, a fifty-year golf member of Lafayette Club and in concern for my neighbors who live adjacent to this aesthetically unacceptable construct. All stakeholders are losers with this fence. It detracts from the aesthetics and desirability of Minnetonka Beach, reducing property values. It detracts from the aesthetics of Lafayette Club and discourages new members from joining our otherwise beautiful grounds. It reduces the fun of playing golf hole number 7 and is a mar on the course. It is unfair to the needs of adjacent neighbors and those walking or biking our trail and streets. No one is a winner with this ugly black fence. I request you act to have it removed or replaced with an aesthetically pleasing structure that benefits our community, Lafayette Country Club and our fellow citizens and neighbors. Thank You and Warmest Regards, Richard L. Lindstrom MD

Jaci Lindstrom – Immediate Past Mayor. 2811 Westwood Road. The Lafayette Club is applying for an amendment to the Conditional Use Permit (CUP) that allows it to operate in Minnetonka Beach. The amendment is related to the fence installation on hole #7 of the Lafayette Club golf course, abutting 2669 and 2663 Woodbridge Road. I urge the City to deny this application. The CUP must conform to the City's Comprehensive Plan which helps to ensure that structures and land use preserve and enhance the aesthetic quality of the community. Among the guiding principles of the Comprehensive Plan (page 7) are to:

- Protect and maintain a Village atmosphere and property values
- Protect our lake and lake views
- Apply all laws equally

The 200x8 foot opaque fence meets none of these requirements. It is not in keeping with the visual standards or atmosphere of the community. It obstructs both lake and green space views for users of the Dakota Trail, Lafayette Club golfers, and the adjacent property owners. It does not consider the needs of the adjacent landowners and does not even fulfill the stated desire to protect the nearby lots from golf balls, which still land on the properties - something that is not unexpected for golf course homes. If, at such a time as a home is built on 2669 Woodbridge Road and protection from golf balls is needed, a future amendment for a fence could be reconsidered at that time. At present, there is no need for a fence at that location, and certainly not for an aesthetically unappealing opaque fence. Denial of this Conditional Use Permit application and amendment is in the best interest of the City, the adjacent neighborhood and the community at large. I request that this message be verbally read into public record. Respectfully submitted, Jaci Lindstrom

Paul and Jody Sperduto – 2515 Woodbridge Road. The current structure near hole #7 is an eye-sore to the community! We question its purpose and efficacy. We support the Commission and Council in denying the Lafayette Club an amendment to the Conditional Use Permit. Please read this letter into the Planning Commission meeting on February 19, 2024.

Tom Eakins – 2655 Arcola Lane. My wife and I reside at 2655 Arcola Lane. Approximately 100 yards from the location of the fence constructed along the east side of Woodbridge Road. I am out of town and unable to attend the meeting to address this issue or I surely would have. I would desire you to read my thoughts herein at the appropriate meeting and have it entered into the minutes. I have reviewed the Lafayette Country Club's application and none of their stated objectives require the fence to be opaque. Additionally, 8' is nowhere near high enough to prevent an errant ball or two. I find that assertion disingenuous at best. People buy homes on golf courses expecting the hazard of the occasional poorly struck golf shot. By its nature this monstrosity had to be selected intentionally to disrupt views. The fence clearly affects the beauty and warm feeling of our neighborhood. I've walked Woodbridge hundreds of times over the years and now this fence gives me the impression of poor design or bad intent. Either not good. I personally am embarrassed by the Lafayette Club's selection and installation of this eyesore. They certainly did not select this fencing option considering their neighbors' best interests. Our City Council should help them remember how to be good neighbors, as they had been for years, by denying approval of this fence.

Jared and Kyle Hade – 2605 Woodbridge Rd. We are homeowners on Woodbridge Rd in Minnetonka Beach. We are also members of Lafayette Club. We are strongly opposed to the fence that has been put up by Lafayette Club and disappointed that they did not get proper approval before moving forward. We find it to be a terrible eyesore that serves no actual functional purpose. We feel it devalues the property in the area and is well outside of the look and feel of the surroundings. We ask that it be removed. Thank you. Jared and Kyle Hade

Tom Meskan – 2631 Arcola Lane. The purpose of this email is to provide my comments on the "fence" CUP filed by the Lafayette Club. Before getting to the substance of my comments, I want to thank you for serving in a governance role for the City. Taking the time to do this is greatly appreciated. As a member of the neighborhood who does a lot of walking in the area most immediately affected by the fence, and (by the way) as a golfing member of the Club, I am writing to provide my perspective that the fence is not consistent with the character of the neighborhood, nor the City. I cannot imagine any resident of the City, nor likely any member of the Club, who would want this fence anywhere near where they live. Therefore, I would request that the Planning Commission deny the CUP for the fence. I am aware that the Club has advanced a number of arguments in support of the fence. Should it want to continue to achieve the objectives expressed in those arguments, it

needs to come up with a completely different approach that gains Commission and Council approval. Thank you, members of the Commission, for your consideration of these comments. Sincerely, Tom Meskan

John Radford – 2625 Woodbridge Rd. Heidi, I just wanted to voice my opinion about the black privacy fence near Paine's residence. I don't think it belongs along a gorgeous golf course. I think it's fine during construction but not as a permanent fixture. It looks like something around a construction site. Thank you!!! John Radford

Stacie Richter – 2603 Woodbridge Rd. The fence put up by the Lafayette Club is an eyesore in our neighborhood and seems completely excessive for its purpose of protecting people and the UNBUILT home from golf balls. Nowhere else on the course is this the case, so in my opinion, it is not even consistent with the fencing in other places on the course. In regard to our city and neighborhoods within it, the fence certainly disrupts the "the normal and orderly development of surrounding property for permitted uses predominant in the area" as stated in section "b." of 3.4.4: Conditional Use Permits. By definition, in section 2.4, the fence DOES NOT ..."conform to the comprehensive plan, and that the structure and/or land use is compatible with the existing neighborhood." In addition, under the strategies of policy 7.1, it states, "Residential open space around homes is necessary to protect the quality of the various residential areas and enjoyment of the City's natural resources. This informal open space should not be occupied in such a way as to limit the quality of the residential area." The open area where our immediate neighborhood of those living on Woodbridge Road meets the new homesite and Lafayette Club, is essentially gone, and creates a substantial physical barrier not consistent with our beautiful community. It's ugly, classless and certainly doesn't "preserve and enhance the aesthetic quality" of Minnetonka Beach. The most obvious to me, is how this impacts our neighbors immediately adjacent to the fence. I would be livid as a homeowner who pays a hefty property tax value to have to concede to the thoughtlessness of the Lafayette Club in putting up the fence. Our neighbors at 2663 and 2669 Woodbridge Road have had their views and aesthetic beauty of their properties totally changed in no fault of their own. As a resident of Minnetonka Beach and a property owner who shares this stretch of Woodbridge Road, I wake up grateful for this special piece of the Lake that we were lucky enough to find and proud enough to take care of...the neighborhood feel, the privacy and the beauty are all rare finds on Lake Minnetonka. To be in the shoes of our neighbors at 2663 can 2669, would make me angry, upset and let down by my community. Please don't let down our neighbors and allow this fence to remain in its current capacity. Thank You, Stacie Richter

John and Susan Breon – 2633 Woodbridge Rd. We are Minnetonka Beach residents living at 2633 Woodbridge Rd just east of Lafayette Country Club. We are writing to request that the City of Minnetonka beach deny the proposed amendment to the Conditional Use Permit that Lafayette CC has proposed. We understand there is some sort of dispute about when and if a house will be built there. It doesn't really matter what the problem is, we find the fence unsightly and an eyesore. My husband John Breon has reached out to the Lafayette CC president and was told it is within the Clubs rights to erect the fence, so they did. We suspect that the reason for the fence is to dissuade anyone from building a house on the property as it will be difficult to manage construction equipment on Woodbridge Rd. The city and Lafayette CC have enjoyed a good mutually beneficial relationship. I view this fence as extraordinarily disrespectful to the clubs' neighbors and to the city of Minnetonka Beach. I also believe that if asked, the club's members would agree. Who wants to play golf next to a black tarp? We, as respectful Minnetonka Beach citizens, do not plan to erect an 8 foot high black fence in our yard to prevent bikers on the trail from seeing into our yard. Nor would we erect one in the event that our neighbors decided to build a new house. We question why Lafayette CC should be allowed to have such an unsightly fence. Plenty of golf courses exist where houses are adjacent to golf holes. Why do we have to look at this black wall, located so close to present beach homes? Respectfully submitted, John and Susan Breon

Mike Richter – 2603 Woodbridge Rd. The deliberate actions of the Lafayette Club to violate the terms of their Conditional Use Permit (CUP) and install a fence of their choosing without prior approval, has denied residents of Minnetonka Beach the opportunity to provide input on a suitable alternative. Instead, we are taking time out of our lives to fight a hideous eyesore, that does not conform to the Comprehensive Plan and the visual standards of our community. As an avid golfer myself, I know that I'm responsible for the outcome of my shots. It is not Lafayette Club's responsibility to protect a potential future homeowner at 2669 Woodbridge, from errant shots. Any person willing to live, or build a future home on a golf course, would surely understand the inherent risks of that decision, and either live with the consequences or work to find a suitable solution. This opaque monster is not a solution our city leaders would ever approve for a homeowner and therefore should not do the same for Lafayette Club. If there is not a fence protecting homeowners on Lafayette Club hole #1, then there should not

be one here protecting a potential future resident. If residents of our community are expected to receive approval prior to starting major projects such as this, then a Club allowed to operate in our city by virtue of a CUP, needs to abide by the same plans, codes and standards as homeowners. Respectfully, Mike Richter

Laura Paine stated she forgot to make her final point and asked to add it. Breazeale stated he did not want rebuttals on what was said but if this were part of her original thought, he would allow it. She stated it was.

Laura Paine - Before the fence installation, Honey sent an email to the Club on July 27, 2023 advising them that an appeal was under way and they chose to proceed with the fence and did so at their own risk of an adverse decision by the City at some future date, in other words that the fence might have to be removed. The Club acknowledged that and replied that they were going to install the fence anyway and did so four days later on July 31st.

Chair Breazeale stated he did not want rebuttals to input from people who were not there, stating they know there are some things that were not quite correct. Jake Saufley stated he has comments that don't specifically relate to the letters, but he would appreciate as the applicant to rebut comments from the public. Breazeale repeated, "rebut comments from the public". He then said he thinks they are good on the public hearing. Honey stated typically everyone gets a turn to provide input. Breazeale agreed and said they do not cycle back through every person.

Chair Breazeale closed the public hearing at 9:07 pm.

Breazeale referred to the request from the 2669 property owner for the Club to put a stay on the application for 60 days to work on an agreeable solution. He asked if that is something the Club would like to do or should they continue to deliberations. Saufley stated he cannot answer without speaking to his client.

Steinfeld stated it may help the Club decide on that after they listen to deliberations. Doyle added that he is just a representative of the Board and they would need to talk about it.

Breazeale stated Planning and Council have already had discussions on whether an amendment to the CUP is required or not and the comments on "customary" were already discussed. It was decided an amendment was required and now they are to focus on review criteria for the amendment. Whitely stated he is referencing City Attorney Batty's email which he thinks provides a useful framework. Batty recommends the commission review two questions, one if the fence is customary and if so, does the fence meet the review criteria. He rehashed that the club operates under a CUP. Whitely asked his clarifying question earlier to determine if the Club also agrees that being customary is one of the conditions that they need to satisfy. Carlson read some of the code language on that. Whitely stated he thinks what they heard tonight is there is not another residential property in Minnetonka Beach that has a Club fence abutting the property line, so he does not think it is customary as it relates to the Club to erect a fence on a residential property line. Whitely stated in the comments there the club cited other fences and noted a fence 96 ft from the residential property line. Whitely stated if you narrowly consider what is customary at the Club, this is not customary. Swanson stated it could be determined customary within the overall context of the Club property and not limiting it to property line fences. There are a whole lot of fences with netting and coverings strewn across the Club property and it depends on how narrowly you want to define customary. Breazeale stated the city identified the side facing the golf course as the front of the lot. He had not seen a fence being customary between a golf course and a front yard. He added that even though chain link is customary on golf courses, he does not think it is customary for houses that front a golf course. Carlson stated when the appeal came up there were quite a few examples of fences between a fairway and other residences of other golf

courses. Carlson asked if they want to consider customary only within the realm of Lafayette Club or he would consider broadening it (customary) to all the recreational facilities and golf courses in the region that are somehow similar. Steinfeld stated under the City's interpretation of this lot, the front yard is the back yard basically. He thinks it would be difficult to find a house with the front yard on a golf course, it's usually the back yard, which makes this difficult and he does not think it is customary because it is very different than what you expect to see. It is not logical. You are wedging in that it is the front yard, but it is the back yard in that it faces the golf course. You wouldn't put a fence on the front yard, but front yards usually face roads and people put up fences in front yards for privacy. He stated he does not think this is customary because the lot is not, and it is not the type of fence you would put on the property. Carlson stated the 2669 lot is not usual, but the fence on the golf course is very customary. Steinfeld stated you have to look at the entire effect and decide if the fence is necessary, reasonable, proper and fits. He agrees that fence itself could be ok depending on where it is. Steinfeld referred to the fence photos supplied by the Club and said this fence does not look like any in the photos, none are 8 ft, none have fabric and most of them are border fences and not dividing a fairway from a person's home. Breazeale expressed concerns that if chain link is customary then they could put up fences anywhere they wanted to. He added that the code says customary on tennis courts, athletic fields, or other permitted recreational, so he thinks the spirit of the code is that if someone got a permit for a tennis court this would apply. He doesn't think the intent is for a golf course. Carlson explained that permitted can mean it has been granted a permit and also mean simply allowed. The Club is an allowed use with its conditional use permit and a case could be made that a chain link fence could be placed on the golf course. Whitely stated it is not customary in Minnetonka Beach for a chain link fence to be between the golf course and along the resident's property line which brings them to the second question in Attorney Batty's memo if the fence meets the CUP standards in the code. He stated in the letter, they do not need to move on to that based on their answer to the customary question. In the interest in going through the analysis, they heard different concerns and one that was repeated was concern about sight pollution. Steinfeld stated that in code 3.4.4.(1)(e), the applicant referred to sight pollution as things like neon signs, but to Steinfeld it means something like it is out of character with the entire environment. He agreed that a person does not have a right to a view because nobody could build a house next to another one, but he thinks in this case sight pollution is something to consider. The other concern was 3.4.4.D.(1)(a) Welfare that they should consider because public comments were that welfare is not just health but also economics. He is not sure if that is true or not. Finnegan stated she thinks economic impact is mentioned in the Comp Plan. Section 1.6 of the zoning code states it is a policy of the City that the Comp Plan is the guiding document for the regulation of land use.

Steinfeld stated his understanding is the applicant doesn't feel the Club needs to be here requesting the CUP amendment but Planning recommended and Council voted and decided the Club needed to apply. Steinfeld stated the Club has legal rights and may take advantage of those rights and that is not our problem. What the Planning Commission needs to do is to review this and determine whether or not the application conforms to the CUP requirements and the Comp Plan. Breazeale added to look at it with fresh eyes as if it was the first time. Steinfeld stated this is why he asked the applicant about their position on how it conforms and whether they had any comments on how it conforms to the Comp Plan and he did not hear any from the Club.

Swanson stated Carlson's recommendations were the most compelling in applying code. She was struck at the previous meeting, and in the packet for this meeting there wasn't anything from property owners at 2669 and when they spoke this evening it was the first they heard from them. The timeline provided by the Club indicates that the property owners should have known that the fence was being planned and that the Club was planning to go ahead with it at the time that they purchased the lot. If they didn't, that is an issue between them and the seller. She then discussed the Club's argument

about safety issues of people traipsing across hole #7 if there is no fence there, and that the owners did not want to indemnify the Club. She added that she thinks the aesthetic question is subjective and they shouldn't concern themselves with it. She stated there were various people who talked about who would be legally liable if golf balls hit a person or property. She would like to hear a legal opinion on that. Steinfeld stated that she would likely not get one. Swanson then stated she felt more positive about the fence when she saw the planting plan. Swanson felt it was customary and aligned with CUP requirements.

Steinfeld stated this is a certain kind of fence. A smaller fence could keep people off the property or plantings could do the same thing. He suggested if they could come together, they could address some of these issues like trespassing. Indemnity is beyond the Planning Commission scope, but he would never advise a client to sign an indemnification agreement as it would be cost prohibitive or likely greatly impact on their insurance.

There was discussion about the Comp Plan. Carlson did not address the Comp Plan specifically. Steinfeld had an issue with being able to decide without addressing the Comp Plan. Finnegan stated she doesn't think it complies with the Comp Plan.

Carlson explained that the zoning ordinance states its purpose is to implement the Comprehensive Plan, meaning the Comp Plan is there and now there is zoning ordinance, and it is implementing the Comp Plan. Within the language of the zoning ordinance are the standards about fences, standards about what is allowed and what is not, standards on what is exempt. It is implied if it is in the zoning ordinance, it is implementing the Comp Plan, and that the zoning ordinance takes some exemptions to what might be otherwise considered an obvious point. Homeowners are not going to put up 8 ft chain link fences between their properties, but the zoning ordinance says yes, you can for a recreational facility.

Breazeale stated the zoning ordinance is written to support the Comp Plan. He stated his interpretation of that is the CUP requirements should reflect the Comp Plan. He thinks economic welfare is welfare and that maps to the Comp Plan about property values. He also commented on it shall not result in a nuisance and they received 23 letters from residents and a significant percentage of those commented on the fence being unsightly. He then said the amount of public input is staggering.

Steinfeld did not hear any golfer or anyone except the Club in support of the fence.

Breazeale stated it was important to him that they were against it for a reason that is in the review criteria.

Finnegan stated customary depends on how narrow the confines are. Within Minnetonka Beach and the Club itself as a whole, she says the fence is customary, but the submission of photos from the Club show that broadly there are different fences bordering other golf courses. The fence could be customary across the Twin Cities, but it is probably not customary in the context of our community and the context of this Club. She did not think it meets the sight pollution criteria. She agrees with the 23 letters that the fence is ugly, adding that may be subjective but it is part of their role.

Blodgett did not feel the fence was customary at all. The Club should have tried netting to see what balls it stops, even at 8 ft. This fence with fabric basically ruins the 2669 lot. It blocks their views. Arborvitae will only be attractive to people driving on Woodbridge Rd and the lot owner would face the black fabric and have the expense of planting the other side. He doesn't think the fence is

necessary. Its not really a safety hazard. If it was, there would be more fences bordering other neighbors. He then stated with all due respect, he almost feels the Club was spiteful in putting up the fence. From all he had heard and seeing the property himself, the fence is not necessary and should be taken down.

Steinfeld asked if the Club or a recreational entity have a right to put up a fence that was completely unnecessary, or are they required to have a purpose for the fence. Carlson stated that if they see a purpose in it, you have to go back to the standards in the code. An ordinance does not consider motive or a reason, it is just standards to allow or not. Steinfeld then said it doesn't matter if the fence is effective or not. There have been suggestions that the fence doesn't do any good and golf balls are still flying over it. Logically if you hit a ball low, you probably aren't going to cause as much of a problem as if you hit it high and hit someone on the head so this fence wouldn't solve the liability problem. He added there is probably a greater chance of a car or person being hit on the road than all the way on this property. Carlson stated it is not a good idea to pin reasons for it because individuals may have very different reasons. The commissioners should look at the ordinance and the principles involved and apply those.

Breazeale stated they previously determined that a CUP amendment is required and said he is focusing on the review of the criteria and that there are 23 residents saying it doesn't meet criteria in very strong language. Steinfeld stated they have to look at this application as if the fence was not already installed and they came to Planning with a proposal, they would listen to people who were for or against it and then make some determination. Breazeale added that they would want the Club to work with the neighbors. Steinfeld stated that generally when they review an application and they have objections, the applicant goes back and makes changes and talks to neighbors to come up with a solution that everyone can agree on. If the Club had applied two years ago, that would have likely been the process and the Club may feel reluctant to redo it because they have incurred the cost of the fence. The Planning commissioners is a more objective panel in reviewing and recommending and maybe the Club should consider this. Breazeale pointed out that Honey informed the Club there was an appeal pending and the Club chose to install the fence.

Steinfeld discussed making a motion on whether or not to recommend to City Council to approve or not approve the application, meaning he would be calling the question since they have had a good discussion on it. He added that between the time that they vote and depending how it turns out, if the applicant wants to meet with any objectors, they can decide what they want to do or they can continue on to City Council decision.

Steinfeld motion that they call the question and decide whether or not to recommend the approval or rejection of the application by the Lafayette Club.

Swanson stated when you call a question the discussion stops and then a motion is made. Breazeale stated he is trying to get to something concrete that they could vote on. He then asked if they needed more discussion.

Carlson stated when working with Conditional Use Permits, the advice is that a conditional use is considered a permitted use to which reasonable conditions can be attached. It is very unusual to deny a conditional use permit application outright, to say no you cannot have a fence of any kind here. It is the Planning Commissioners prerogative to recommend that but that is the advice he gives to planning commissions and city councils based on the precedent of how conditional uses are typically handled. He went on to say that they could recommend denial or approval and what would the conditions be that would make this fence, this use, acceptable. Steinfeld stated that is the problem because he does

not want to be in the position of telling them what to do and would rather be in the position of telling them we don't or do like what they are proposing. Carlson stated in planning practice that is what the city does. It suggests conditions that would make that use acceptable.

Breazeale stated the options laid out are recommend approval as requested, recommend denial with reasons, or continue this at a future meeting. He then discussed the variance process and that they would deny a variance for a specific reason. Tonight, he heard residents talk about the unsightliness of the fence as a reason for denial of the conditional use permit amendment. The feedback would be that 23 residents voiced their concern on the unsightliness of this and we recommend you go and look at options that meet your safety concern that are not as unsightly. This would be the same as variance requests where they heard the commissions concerns and come back with a revised proposal. Carlson stated that is an option and to be as detailed as they wish to be. Breazeale stated he would like to see options and, based on his own opinion after visiting the site, as the homeowner he would prefer a 30 ft high net that he could see through instead of the fence if he was concerned about golf ball safety. The Club and the residents both have concerns. Steinfeld stated that Blodgett suggested an 8 foot high netting would accomplish the same as the fence but he does not know if that would be acceptable to them. Breazeale stated they should present options to meet the need. More dangerous balls are those that come from a high height. He then stated if he is in the yard on a patio, it may be better if the property owner could see out to see if there are golfers nearby for awareness and improved safety. Breazeale stated if the Club and the property owners would meet and discuss there will be a better solution and he thinks if they want an extension, they could work something out. Steinfeld discussed denial but to come back with something that addresses the safety factor and that the community feels conforms to the Comp Plan, Blodgett added for it to be acceptable to the neighbors. Breazeale then stated the code is reflective of the Comp Plan and they should refer to the code. He referred to code Section 3.4.4.A Conditional Use Permit Purpose and Scope, and 3.4.4.D Review Criteria, stating the importance of compatibility with surrounding properties. Residents also mentioned welfare and unsightliness.

(Steinfeld motion, Whitely second to recommend City Council deny the application as written because it is not in compliance with 3.4.4.A to ensure compatibility between the proposed use and surrounding properties and also specifically fails to address 3.4.4.D(1)(a) welfare and 3.4.4.D(1)(e) sight pollution, and that we will reconsider the application should they address the aforementioned issues;

Blodgett asked if they can require the Club to take down the fence until this is settled. Steinfeld stated he would not amend the motion with that and Blodgett could make a motion to that if he wished. Finnegan asked if it was worth discussing ideas that would fit 3.4.4.D(1)(a) and (e). Commissioners thought the applicant should speak with the neighbors and come up with a solution. Finnegan asked if they need to refer to "customary" in the motion. They chose to leave the motion as is. Breazeale called for a vote.

Ayes – Blodgett, Breazeale, Finnegan, Steinfeld, Whitely. Nay – Swanson.) Motion passed.

Breazeale called for a break 10:03 pm, and resumed the meeting at 10:10 pm.

Breazeale stated that Blodgett had wanted to make a second motion to require the Club to remove the fence during the previous motion.

Blodgett discussed requiring the Club to remove the fence, install netting instead of fabric, or remove the fence and leave the posts up until there is a permanent decision. He stated they sort of bullied their way through and put the fence up. He then stated if there are concerns about the expense, they

could take the fence down and leave the posts up. He added that would open up the views for the neighbors who rallied around and said we need to get rid of this fence. Carlson stated the commission can make any recommendation they want but the fence was put up legally and the Club relied on his interpretation as the zoning administrator and then an appeal was made that required them to do this process. Steinfeld stated that is not a good idea from an economic standpoint and they could get an injunction to preserve the status quo. The status quo is that the fence is there right now and that is where it may remain at the end of the day. Their position is they don't even need to do what the city is asking them to do. It may remain there and there is no logical reason to make them take it down. He prefers not engaging in that. Breazeale agreed. Blodgett withdrew his request to make a motion.

5.2. Zoning Code Amendments

5.2.1. Zoning Code Amendments – Reordering Code, Moving Shoreland into Common Code, and DNR Compliance Draft Language

Breazeale stated this is the public hearing for the code movement and draft language previously approved by the commission. Council approved it for this public hearing and to go to DNR. DNR has stated they do not need to review the reordering and movement of code so council can do final approval and publication will put it in effect. The compliance language will be reviewed by the DNR with floodplain.

Breazeale opened the public hearing at 10:16 pm.

Jake Saufley – He stated he wanted to reiterate his comments from earlier tonight and make it clear on the record that the city enjoys an enhanced impervious surface coverage on residential properties due to the open space that exists at the Club. He wants to make sure people understand the benefit the Club provides to the residents and how it relates to that development within context of the shoreland overlay ordinance. He also pointed out the shoreland overlay ordinance applies to all properties in the Beach and hard packed surface coverage does impact residential properties, city properties and other properties here.

Breazeale closed the public hearing at 10:17 pm.

Breazeale recommended two changes on shoreland compliance -

- Bluff definition Section 2.4., wants to add that “all of Minnetonka Beach is shoreland”.
- 3.3.13 – Mitigation –also refer to environment review in addition to referring to mitigation for various permits, additional language stating the 3.3.13. and 3.3.14. must be met.

(Finnegan motion, Whitely second to recommend adoption of reordering of the code, moving shoreland provisions to appropriate sections, and DNR compliance language all that was presented previously; All ayes.) Motion passed.

5.2.2. Zoning Code Amendment – Section 3.4.4.J – Conditional Use Permit Amendments

Honey stated this language was drafted by the commission and zoning administrator at the last meeting to provide clarification when a conditional use permit amendment is required. It was approved by council and will go back to them for final approval.

Breazeale opened the public hearing at 10:32 pm

Jake Saufley – Larkin Hoffman, representing the Lafayette Club - Saufley stated we oppose the proposed amendments to code section 3.4.4.J and we feel that the code as written properly adheres to MN law as it relates to conditional use permits and the rights enjoyed by permit holders. Once a use

is established as long as it is continued, the owner is allowed to continue to operate, use and operate and proven properly in a manner consistent with the zoning ordinance and consistent with the terms of the CUP. Any alleged ...(inaudible)... to amend a CUP is not only illegal but also (inaudible) inconsistent in a professional nature of a CUP and its function thereof under MN law.

We feel the proposed amendment is unnecessarily burdensome and creates additional requirements that are unnecessary on new CUP holders and seeks to retroactively change the conditions of approval on existing CUP holders. MN law clearly protects entitled property rights of CUP holders as related to subsequent changes in the law ...(inaudible)...With that, you have my comments for now and I can answer any questions you might have about the concerns the club has about the change.

Swanson asked what his point was about MN Statutes.

Saufley stated by attempting to expand the conditions of approval via city ordinance, it is a retroactive change on existing conditional use permit holders and functions as a unilateral change in violation of case law in MN. It is a violation of the rights conferred upon the holder of the CUP.

Whitley asked that he be more specific about what right this language takes away.

Saufley stated the conditions of approval of an amendment are contained in the original Conditional Use Permit from 1989. By altering the city's process to make that process different, it is a change in our (Lafayette Club's) rights.

Whitley stated the language is relatively broad and says future changes would require amendments.

Breazeale asked if he is saying the Club should be able to change anything because they have a CUP from 1989.

Saufley stated no, the thrust of the comment is that expanding the criteria for consideration beyond what it was.

Breazeale stated the criteria for consideration is the code. Finnegan stated the city should be able to amend the code. Breazeale stated he is trying to understand how this is an expansion.

Saufley – By amending the code in this way, you are creating additional criteria that the permit holder needs to satisfy in making applications. Breazeale asked him what he thought was expanding in criteria. Breazeale stated the scope of the ordinance is not expanding the criteria because it is just saying that if it is covered in this ordinance, so it is just referring to itself.

Carlson stated that previously it said that a change to the conditional use permit required an amendment, and this clarification language was not intended to go back and change an existing conditional use permit. It says if a permit holder proposes a change in a characteristic or use of a property, then the CUP has to be amended.

Swanson stated it is a proposed change in physical feature or use within the scope of the code.

Breazeale stated in past conversations they discussed if the Club wanted to move trash cans or paint the parking lot, they would not need to amend the CUP. They wanted to require an amendment only if it is for something related to the code. It is not changing the scope but clarifies when an amendment is needed. This seems like the opposite of Saufley's statement because it is following what was done

before and making the Club understand that if it is for something not in the code, they don't have to apply for an amendment.

Saufley stated he appreciates the comments and questions and stated they have a difference in opinion.

Breazeale closed the public hearing at 10:37 pm.

Breazeale expressed concerns about the proposed Comprehensive Plan language because the code reflects the Comp Plan. The intent was if it is in the zoning code, a Conditional Use Permit amendment is needed. Carlson stated a CUP is a zoning action so it should refer to this ordinance meaning the zoning code. The discussion was to remove the Comp Plan language because they don't want to expand the scope. Delete the rest of #2 after "scope of this ordinance".

(Whitely motion, Swanson second to recommend city council adopt 3.4.4J(2) to read: A change to a physical feature, use, or other characteristic of a property on which there is a Conditional Use Permit shall require an amendment to the Conditional Use Permit if such a feature, use or other characteristic is within the scope of this ordinance; All ayes.) Motion passed.

6. Zoning Code Amendments

6.1. Table 3.2.1.: Summary of Roles of Decision-Making Bodies

Breazeale stated the proposed changes document the intention that the Zoning Administrator is the decision maker on if a permit, variance, conditional use permit, interim permit, or amendments are required.

(Swanson motion, Steinfeld second that City Council give preliminary approval the addition to Table 3.2.1 for the requirement for all permits including a variance, conditional use permit, interim use permit, or amendment thereto that the decision maker be designated as the zoning administrator; All ayes.) Motion passed.

6.2. Floodplain and DNR Compliance

Breazeale stated that due to how late it is, he recommends tabling this agenda item to the next meeting.

(Swanson motion, Steinfeld second to table this agenda item to the next meeting; All ayes.) Motion passed.

7. Reports – no reports

8. Adjournment

(Steinfeld motion, Finnegan second to adjourn; all ayes.) Motion passed.

Chair Breazeale adjourned the meeting at 10:49 p.m.

PUBLIC IN ATTENDANCE – Steve Doyle – Lafayette Club, Laura Paine, Tim Magnusson, Amy Lamparske, Lori Dovolis, Chris Dovolis, Nancy Birkholtz, Arlyn Birkholtz, Lindsay Paine, Thomas M. Flint, Mike Lang, Patty Rezabek, Jacob Saufley, Kim Petersen

Minutes respectfully submitted by City Administrator Heidi Honey