

**CITY OF HANOVER  
PLANNING COMMISSION MEETING  
NOVEMBER 28, 2016**

**CHAIR**  
**STAN KOLASA**

**COUNCIL LIAISON**  
**DOUG HAMMERSENG**

**BOARD MEMBERS**  
**JIM SCHENDEL**  
**MICHELLE ARMSTRONG**  
**DEAN KUITUNEN**  
**MICHAEL CHRISTENSON**

- 1. Call to Order and Pledge of Allegiance: 7:00 p.m.**
- 2. Approval of Agenda**
- 3. Approval of Minutes from the October 24, 2016, Planning Commission Meeting**
- 4. Citizen's Forum**
- 5. Public Hearings**
  - a. Amendments to Zoning Ordinance Related to Accessory Uses and Structures**
- 6. Unfinished Business**
- 7. New Business**
  - a. Date of December Planning Commission**
- 8. Reports and Announcements**
  - a. Planning Commission Reports**
  - b. Liaison Report**
  - c. Staff Reports**
- 9. Adjournment**

**CITY OF HANOVER  
PLANNING COMMISSION MEETING  
OCTOBER 24, 2016  
DRAFT MINUTES**

**Call to Order/Pledge of Allegiance**

Stan Kolasa called the October 24, 2016, Planning Commission Meeting to order at 7:00 pm. Members present were Stan Kolasa, Dean Kuitunen, and Mike Christenson. Also present Council Liaison Doug Hammerseng, City Planner Cindy Nash, and Administrative Assistant Amy Biren. Absent: Michelle Armstrong and Jim Schendel. No guests were present.

**Approval of Agenda**

**MOTION** by Kuitunen to approve the agenda as presented, seconded by Christenson. **Motion carried unanimously.**

**Approval of Minutes from the September 26, 2016, Regular Meeting**

**MOTION** by Christenson to approve the September 26, 2016, minutes as presented, seconded by Kuitunen. **Motion carried unanimously.**

**Citizen's Forum**

None

**Public Hearings**

None

**Unfinished Business**

None

**New Business**

**Site Plan Review of JS Steward Properties Building**

Nash started the review of the site plan saying that both this review and the following one for the Public Works Facility are related in that they are located on the 10 acres and are side by side. The Stewart site is located on the east five (5) acres. The two sites are coming before the Planning Commission at the same time as the intent is for the sites to be constructed at similar times.

The stormwater pond is shared by both properties with the condition that should either property not move forward, changes would need to be made so that the stormwater pond would be moved to the property moving forward in the process. This explains the condition which would have the City Planner and City Engineer administratively approve changes. If any changes are presented that go beyond the stormwater pond or the right of entry, these changes would come back to the Planning Commission for approval.

Hammerseng asked how the stormwater pond size is determined and Nash replied that it is based on how much water it will hold. Christenson asked if the size would change if one of the projects did not move forward. Nash concurred, explaining that when since both sites need to accommodate the stormwater, you can do more design-wise with a shared pond rather than having two separate ponds.

Christenson asked if there were any issues with the soil boring samples. Kolasa said that the soil borings are not really a matter dealt with in the Planning Commission. Nash agreed, saying that every site has soil corrections and it usually goes unnoticed as part of the construction process.

Kuitunen asked what type of business Stewart had. Kolasa said he had an excavating business. Christenson asked what types of soils would be stored on the property. Kolasa said Class 5, rock, that type of thing.

Nash recommended approval for the Stewart site plan to go to Council with the conditions listed in the memo and asked to add a third condition that the site plan is in conformance with the City's Comprehensive Plan.

**MOTION** by Kuitunen to recommend forwarding the Stewart site plan to Council for approval with the conditions listed as well as the addition of conforming to the Comprehensive Plan: If the site plan requires modifications due to right of entry or the adjacent parcel not going forward, the plan revisions may be approved by the City Engineer and City Planner; comments from the City Engineer must be addressed; and the site plan meets conformance to the City Comprehensive Plan, seconded by Christenson.

**Motion carried unanimously.**

#### **Site Plan Review of Public Works Facility**

Nash explained the project which is similar to the Stewart site plan. She went into further explanation of right of entry on adjacent properties in order to complete grading.

Hammerseng asked about how the boundaries were indicated on the site plan and Nash explained that the engineered plans shows the inclusion of the Fire Station property due to the right of entry needed.

Kuitunen asked where the snowmobiling trail would be located. Kolasa explained that it should be used right behind Tom Thumb and then cross over CSAH 19 into the swamp area.

Christenson asked if the neighbors adjacent to the two projects had been notified. Nash said that since a public hearing was not required, they did not need to be. Biren had sent approximately 25 letters to surrounding properties as a courtesy and invited them to the Planning Commission meeting.

**MOTION** by Kuitunen to recommend forwarding the Public Works Facility site plan to Council for approval with the conditions listed: If the site plan requires modifications due to right of entry or the adjacent parcel not going forward, the plan revisions may be approved by the City Engineer and City Planner and comments from the City Engineer must be addressed, seconded by Christenson.

**Motion carried unanimously.**

#### **Reports:**

##### **Council Liaison:**

Hammerseng informed the members that the Council has gone ahead with approving the trail extension in the Bridges at Hanover in connection with the senior assisted living facility. The senior facility will complete the portion on their property and the City will complete the sections needed to complete it.

##### **Staff:**

Biren updated the members on the FEMA/Floodplain letters sent to residents. There were approximately 104 letters sent to residents related to 125 parcels. A dozen residents have contacted City Hall or Justin Messner, City Engineer, to get more information and the necessary documents. She also showed photos of the damage done by motorcycle(s) to the Historic Bridge. A police report has been filed.

#### **Adjournment**

**MOTION** by Christenson to adjourn, seconded by Kuitunen. **Motion carried unanimously.**

Meeting adjourned at 7:34pm.

#### **ATTEST:**

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Amy L. Biren  
Administrative Assistant

***Collaborative Planning, LLC***

PO Box 251  
Medina, MN 55340  
763-473-0569

Memorandum

Date: November 23, 2016  
To: Planning Commission  
From: Cindy Nash, City Planner  
RE: Ordinance Amendment related to Accessory Structures

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A draft ordinance is attached for your consideration related to accessory structures. The purpose was to clarify and update various items as follows:

1. Provide guidance for the use of accessory apartments.
2. Provide guidance for outdoor dining.
3. Clarify the fence requirements.
4. Add solar panels as an accessory use.

During Planning Commission deliberation, it is requested that the Planning Commission consider what types of fences should be allowed in the front and side yards. The ordinance currently only allows decorative fences in these areas, but the previous zoning ordinance allowed chain link to be used in the front and side yards. A resident has requested the consideration of the use of chain link in the front and side yards.

Attachments:

- 1) Ordinance

Section 10.25 – Modifications

1. Add a qualifier to Accessory Apartment to see Section 10.72.

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Section 10.27 – Modifications:

1. Outdoor Dining –

Change to an accessory use in only the B-1, B-1A, and B-2 Districts, with the qualifier that the outdoor dining must be on the same lot as the principal use and cannot be in the right-of-way or sidewalk areas.

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SEC. 10.17 BUILDING ELIGIBILITIES

- It is presumed that all parcels of record existing on July 2, 2013 that are zoned for residential use shall be eligible to have one single-family home (“Building Eligibility”) constructed on that parcel, subject to compliance with all other requirements of this Chapter 10 except for lot size requirements.
- Every parcel of land containing up to forty (40) acres zoned for residential use shall have one Building Eligibility on that parcel.
- For parcels larger than forty (40) acres, the number of Building Eligibilities shall equal one per 40 acres as rounded to the nearest 40 acres. By way of example, both 65 acres and 99 acres rounds to 80 acres, granting two single-family Building Eligibilities to either of those properties.
- When a parcel is annexed to the City, the parcel is considered undeveloped for the purpose of this calculation regardless of the number of lots that may have been created while under the Township’s jurisdiction.
- E. In the event that a subdivision is proposed that results in any parcel no longer having the number of Building Eligibilities that would be anticipated under paragraphs A or B above, then a condition of approval of the subdivision shall be that a document is recorded against the property documenting the remaining number of Building Eligibilities for that parcel.

~~E.F.~~ An Accessory Apartment as may be permitted in the RA zoning district is not counted as the use of a Building Eligibility for the purpose of this section.

SEC. 10.66. FENCES

- A. Permit required. Except as otherwise provided herein, no person shall erect, alter or relocate any fence within the City without first having been issued a permit therefor.
- B. Permit fee. A fee as set forth by resolution of the City Council shall be charged for a permit under this subdivision for new fences, as well as the replacement of fences in the same location.
- C. Application procedures.
  - 1. Residential, single-family and two-family. Each application for a permit under this subdivision shall be submitted to the Administrator or his designee on forms provided for by the city. Each application shall include a site plan drawn to scale showing the location of the houses, garages and other structures on the lot and location of the fencing to be erected, altered or relocated. Fences six (6) feet tall and higher shall be processed as a building permit. Fences less than six (6) feet tall shall be processed as an administrative permit.
  - 2. Commercial, Industrial, and Residential, other than single-family and two-family. Commercial and industrial uses. Request for fencing shall be processed as part of and according to the procedures of site plan review. Fences six (6) feet tall and higher shall require a building permit. Fences less than six (6) feet tall shall be processed as an administrative permit.
  - 3. Agricultural Properties. Fences constructed on properties used for agricultural purposes are exempt from the provisions of this Section 10.66.
- D. Intent of fence regulations. The purpose of this section is to enact minimum restrictions on fencing necessary to ensure orderly and attractive development, to enhance "curb appeal" from city streets, to protect the health and welfare of the citizens, to allow a free flow of air, to prohibit unreasonable restrictions of you while allowing each property owner to protect his property in privacy.
- E. General requirements.
  - 1. New construction, maintenance, and design requirements.
    - a. Fencing shall be constructed and maintained so as not to endanger life or property. Any fence which through lack of repair, type of construction, or which otherwise imperils health, life, property, or the aesthetic quality of a neighborhood shall be deemed a public nuisance.
    - b. The side of the fence considered to be the face shall face abutting property. The face shall be defined as the finished side of the fence rather than the side with structural supports.

c. If fencing is built away from a property line, property on both sides of the fence must be maintained so as not to create a public nuisance.

2. Fence location requirements.

a. All fences shall be located entirely upon the private property of the person constructing the fence.

b. When driveway, trail, access, or walkway easements are located on private property, fences shall not be constructed on the easement. No fence shall be constructed **which obstructs the flow of water upon a drainage** or utility easement or which would cause the City to be unable to access the easement. The City may require that obstructions to easements be removed at the property owner's expense. **Privacy fences and other types of fences that have the potential to restrict the flow of water within a drainage and utility easement shall be constructed to allow not less than three inches of clear area from the ground to the bottom of the fence to allow the passage of water.**

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c. Fences shall not be permitted within any right-of-way or below the 100-year floodplain of any lake, river or wetland.

3. Traffic visibility requirements. On any corner lot, no fence shall be erected in the triangle formed by the front lot line, side street lot line, and a third straight line joining points on such property lines 30 feet from their intersection at the corner of the lot when such action would impede vision above a height of 2 1/2 feet above the centerline grades of the adjacent streets.

F. Requirements for residential areas.

1. General design requirements.

a. The use of barbed wire, or of any electrical current is prohibited.

b. ~~If a chainlink fence is constructed, it shall have a minimum gauge of 11.~~

2. Rear yard ~~boundary~~-fence.

a. Height restrictions. A rear yard ~~boundary~~-fence shall not exceed six feet in height.

b. Required yard location.

1. A rear yard ~~boundary~~-fence shall be permitted only within the rear yard, except where rear yard access from the principal building is achieved from an entrance/exit to a side

yard. In such instances, a six-foot ~~boundary~~ fence is permitted in the side yard to a distance not greater than three feet beyond the entrance/exit in the direction of the front yard.

~~2. Should a corner lot have a rear lot line in common with the side lot line of an abutting lot, the boundary fence shall meet the principal structure's required side yard setback for corner lots, or shall not extend past the front corner of the house on the abutting lot, whichever is less.~~

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~~3. Large lots containing structures set back 100 feet or more from a street right-of-way, a rear yard ~~boundary~~ fence shall be permitted within side yards to the front of the structure, or in the case of two adjacent structures, to a line connecting the front of such structures.~~

~~3. If a chainlink fence is constructed, it shall have a minimum gauge of 11.~~

3. ~~Decorative Front and Side Yard~~ fences.

a. Height restrictions. A ~~decorative~~ fence shall not exceed four feet in height within the limits of the front and side yards.

b. ~~Required yard location.~~

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~~1) A decorative fence is the only type of fence allowed within the limits of the front yard or side yards, except as indicated in subsection (e)(2)a of this section.~~

~~2) A decorative fence erected on a corner lot shall be subject to the additional traffic visibility requirements in subsection (e)(2)b of this section.~~

c. Design requirements. A decorative fence is the only type of fence allowed within the limits of the front yard or side yards. The decorative fence shall not exceed four (4) feet in height and shall have at least seventy-five (75) percent open area for passage of air and light. A fence meeting these design requirements may be erected in the front or side yards forward of a line drawn across the rear line of the principal building. Decorative fences shall include split rail, wrought iron, picket and other similar types of fences that meet the design requirements. Chain link fences are not decorative fences. shall have an opacity of no greater than 75 percent.

4. Screening Fence. Lots within Residential Districts which are developed with single family homes may erect an eight (8) foot high privacy fence along the side or rear of the lot that is adjacent to commercial or industrial lots provided:

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- a. The fence is not located in a drainage or utility easement.
- b. The fence is set back a minimum of ten (10) feet from the property line or right-of-way line, whichever is greater.
- c. The fence does not extend into the front yard.

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G. Requirements for commercial and industrial areas.

1. Fences for screening outdoor storage areas.
  - a. Height restrictions. All fences required for the screening of outdoor storage areas shall be at least six but not more than eight feet in height.
  - b. Construction and design requirements.
    1. All fences required for screening open storage areas shall have an opacity of at least 90 percent.
    2. Screening fences shall be architecturally harmonious with the principal building and shall be compatible with the natural surroundings.
2. Fences for the separation of incompatible land uses.
  - a. Explanation. Fences used for screening may be required at locations where commercial or industrial uses are adjacent to or across the street from property zoned or developed for residential or public use.
  - b. Height restrictions. The screening required shall consist of a continuous fence or wall at least six but not more than eight feet in height.
  - c. Construction and design requirements.
    - 1) The screening fence required shall have an opacity of at least ~~75~~90 percent.
    - 2) A louvered fence shall be considered adequate if it blocks vision from a 90-degree angle to the fence.
    - 3) Plant materials of a type approved by the City Council may also be required in addition to, or in lieu of, fencing.

- d. Required location on property.
  - 1) The screening fence shall not extend to within 15 feet of any street or driveway opening onto a street.
  - 2) The fence shall be placed along property lines or, in case of screening along a street, five feet off the property line with landscaping (trees, shrubs, grass, and other plant materials) between the screening fence and the property line.
- 3. Fences for protection from danger and of valuable private property. It may be necessary for a commercial or industrial use to construct fences specifically to protect people from danger or to guard valuable private property. Such uses may be enclosed with an industrial chainlink fence of at least six feet but not more than eight feet in height topped with three strands of barbed wire, provided they project over the property on the interior side of the fence.

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#### Section 10.71 Solar Systems

Add Solar Systems as permitted in Section 10.71 as an accessory use in the use charts for each zoning district in Sections 10.25 and 10.27

**DEFINITIONS. (Note that these would be added to the definitions section of the ordinance).**

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**ACTIVE/SOLAR ENERGY EQUIPMENT/SYSTEM.** A solar energy system whose primary purpose is to harvest energy by transforming solar energy into another form of energy or transferring heat from a collector to another medium using mechanical, electrical, or chemical means.

**BUILDING-INTEGRATED PHOTOVOLTAIC (BIPV) SYSTEMS.** A solar energy system that consists of integrating photovoltaic modules into the building structure by replacing typical building material, such as the roof or the façade and which does not alter the relief of the roof.

**FLUSH-MOUNTED SOLAR PANEL.** Photovoltaic panels and tiles that are installed flush to the surface of a roof and which cannot be angled or raised.

**FREESTANDING OR GROUND-MOUNTED SOLAR ENERGY SYSTEM.** A solar energy system that is installed directly in the ground or by means of brackets or poles and is not attached or affixed to an existing structure.

**PHOTOVOLTAIC (PV) SYSTEMS.** A solar energy system that produces electricity by the use of semiconductor devices, called photovoltaic cells, that generate electricity whenever light strikes them.

**QUALIFIED SOLAR INSTALLER.** A person who has skills and knowledge related to the construction and operation of solar electrical equipment and installations and has received safety training on the hazards involved. Such training shall include the proper use of special precautionary techniques and personal protective equipment, as well as the skills and techniques necessary to

distinguish exposed energized parts from other parts of electrical equipment and to determine the nominal voltage of exposed live parts.

**ROOF OR BUILDING-MOUNTED SOLAR SYSTEM.** A solar power system in which solar panels are mounted on top of the structure of a roof either as a flush-mounted system or as modules fixed to frames which can be tilted toward the south at an optimal angle.

**SOLAR COLLECTOR.** A solar photovoltaic cell, panel, or array, or solar hot air or water collector device, which relies upon solar radiation as an energy source for the generation of electricity or transfer of stored heat.

**SOLAR ENERGY SYSTEM.** A set of devices whose primary purpose is to provide for the collection, storage, and distribution of solar energy for space heating, cooling, electricity generation, or water heating.

**SOLAR FARM.** A commercial facility that converts sunlight into electricity, whether by photovoltaics (PV), concentrating solar thermal devices (CST), or other conversion technology, for the primary purpose of wholesale sales of generated electricity. A solar farm is the principal land use for the parcel on which it is located.

**SOLAR PANEL.** A device for the direct conversion of solar energy into electricity.

#### **1. PERMITS AND STANDARDS.**

**(A) Rooftop and Building-Mounted Solar Collectors.** Rooftop and building-mounted solar collectors are permitted in all zoning districts in the City subject to the following conditions:

(1) Building permits shall be required for installation of all rooftop and building-mounted solar collectors.

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(2) Notwithstanding the height limitations of the zoning district, roof or building-mounted solar energy systems shall not extend higher than the height limitations of the zoning district the solar energy system is located within.

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(3) In residential districts or on residential structures, the solar energy system shall be flush-mounted.

(4) In commercial and industrial districts, the solar energy system may be constructed as modules affixed to frames if the structure upon which it is being affixed is either a flat or shed roof, however the height of the solar collectors shall not extend higher than ten (10) feet above the surface of the roof. If the type of roof is any type other than a flat or shed roof, then the solar panels shall be flush-mounted.

(3) An engineer licensed with the State of Minnesota shall be required to determine whether or not the roof system is structurally capable of supporting the solar collectors.

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**(B) Ground-Mounted and Freestanding Solar Collectors.** Ground-mounted and freestanding solar collectors may be allowed under a Conditional Use Permit as an accessory structure in the RA Zoning District on lots that contain not less than 10 acres.

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(1) Building permits are required for the installation of all ground-mounted or freestanding solar collectors.

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(2) The location of the solar collector shall meet all applicable setback requirements for accessory structures in the zoning district in which it is located.

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(3) The height of the solar collector and any mounts shall not exceed 15 feet when oriented at maximum tilt.

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(4) Solar energy equipment shall be located in a manner to reasonably minimize view blockage for surrounding properties and shading of property to the north, while still providing adequate solar access for collectors.

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(5) Solar energy collectors shall be screened through the use of architectural features, earth berms, landscaping, or other screening which will harmonize with the character of the property and surrounding area.

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(6) Solar energy systems are to be located in the rear yard only.

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## **2. PLANNING, DESIGN, AND COMPLIANCE.**

(A) Plan Applications. Plan applications for solar energy systems shall be accompanied by to-scale horizontal and vertical (elevation) drawings. The drawings must show the location of the system on the building or the property for a ground-mounted or freestanding system, including property lines.

(1) Pitched Roof - Mounted Solar Energy Systems. For all roof-mounted systems, except those on a flat roof, the elevation must show the highest finished slope of the solar collector and the slope of the finished roof surface on which it is mounted.

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(2) Flat Roof - Mounted Solar Energy Systems. For flat roof applications, a drawing shall be submitted showing the distance to the roof edge and any parapets on the building, and shall identify the height of the building on the street frontage side, the shortest distance of the system from the street frontage edge of the building, and the highest finished height of the solar collector above the finished surface of the roof.

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(B) Compliance with Building Code. All active solar energy systems require approval of the local building code official pursuant to provisions of the State of Minnesota Building Code, and solar thermal systems shall comply with the HVAC-related requirements of the Energy Code.

(C) Compliance with State Electric Code. All photovoltaic systems shall comply with the State of Minnesota Electric Code.

(D) Compliance with State Plumbing Code. Solar thermal systems shall comply with applicable Minnesota State Plumbing Code requirements.

(E) Utility Notification. The owner of a solar energy system that will physically connect to a house or other building's electrical system and/or the electric utility grid must enter into a signed interconnection agreement with the local utility provider prior to the issuance of a building permit.

(F) Feeder Lines. All power exterior electrical or other service lines must be buried below the surface of the ground.

(G) Exemptions – Building-integrated photovoltaic systems (BIPV) are exempt from the requirements of this section and shall be regulated as any other building element.

**3. SAFETY.**

(A) Solar energy systems and equipment shall be permitted only if they are determined by the City not to present any unreasonable safety risks including, but not limited to, the following:

(1) Weight load

(2) Wind resistance

(3) Ingress (entrance) or egress (an exit) in the event of fire or other emergency.

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(B) All solar collector installations must be performed by a qualified solar installer.

(C) Solar energy system components shall be certified by Underwriters Laboratories Inc. and the Solar Rating and Certification Corporation. The City reserves the right to deny a building permit for proposed solar energy systems deemed to have inadequate certification.

(D) Prior to operation, electrical connections must be inspected by an appropriate electrical inspection person or agency as determined by the City.

(E) Any connection to the public utility grid must be inspected by the appropriate public utility.

(F) Solar energy systems shall be maintained in good working order.

(G) Rooftop and building-mounted solar collectors shall meet Minnesota’s Fire Safety Code and Building Code standards.

(H) If solar storage batteries are included as part of the solar collector system, they must be placed in a secure container or enclosure meeting the requirements of the Minnesota State Building Code when in use; and when no longer used, shall be disposed of in accordance with the laws and regulations of City and other applicable laws and regulations.

**4. ABANDONMENT.**

(A) If a solar collector ceases to perform its originally-intended function for more than 12 consecutive months, the property owner shall remove the collector, mount and associated equipment by no later than 90 days after the end of the twelve-month period.

**Section 10.72. Accessory Apartment.** Accessory apartments must comply with the following standards:

(A) The accessory apartment shall be clearly a subordinate part of the single-family dwelling. In no case shall it be more than thirty (30) percent of the building's total floor area nor greater than eight hundred (800) square feet nor have more than two (2) bedrooms.

(B) The principal unit shall have at least 850 square feet of living space remaining after creation of the accessory apartment exclusive of garage area. Accessory apartments shall have at least 500 square feet of living space. Living space square footage for the accessory apartment shall be exclusive of utility rooms, common hallways, entryways or garages. Living space for the accessory apartment shall include a kitchen or cooking facilities, a bathroom and a living room.

(C) No front entrances shall be added to the house as a result of the accessory apartment.

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(D) The house must be owner-occupied.

(E) A minimum of three off-street parking spaces must be provided, two of which must be enclosed.

(F) The accessory apartment and principal unit must meet the applicable standards and requirements of the Building Code.

(G) The building and property shall remain in single ownership and title and shall only have one mailing address.

(H) Only one accessory apartment is permitted per detached single family home.



*Attorneys*

Douglas J. Brown  
Jeffrey G. Carlson  
Mark G. Pryor  
Gregory R. Broos\*  
Gina M. Uhrbom  
Thomas V. Maguire

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James K. Helling  
Timothy J. Manahan\*  
Carrie I. Jacobson\*  
Eric S. Hayes\*  
Tracy M. Borash  
Elizabeth Chambers-Brown  
Darren B. Glur

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Penny F. Helgren  
Paula A. Larson  
Kathryn M. Perlinger  
Autumn Capelle Hoag  
Nicholas J. Micheletti\*  
Daniel D. Carlson  
Kristin Driscoll Nervig  
Julie A. Williams  
Gregory B. Lawrence  
Sean M. Abernathy\*\*

*Of Counsel*

Jon K. Hammarberg  
Elizabeth Holden Hill

*Administrator*

Barbara J. Romanko

*Paralegals*

Lisa M. Lewnau  
Darren D. Dyer  
Michelle L. Daniels  
Katherine L. Hettle  
Tammara L. Thurmer  
Lesia S. Fasching  
Lisa M. Matzke  
Jennifer A. Peterson  
Livja R. Christianson  
Linda K. Brickley  
Heather R. Bakken

\* Also Admitted in Wisconsin

\*\* Also Admitted in Illinois

5411 Circle Down Avenue  
Suite 100  
Minneapolis, MN 55416-1311  
(763) 591-9950  
Fax (763) 591-9202  
www.browncarlson.com

**VIA E-MAIL AND MAIL**

City of Hanover Planning Commission  
11250 Fifth Street, N.E.  
Hanover, MN 55341-0278

**RE: Property of Kelsey S. Wilmes at 11553 Erin Street, Hanover, MN**

Dear City of Hanover Planning Commission:

I have been asked to write to you on behalf of one of your constituents, Kelsey S. Wilmes, who recently built a house at 11553 Erin Street, in Hanover. Ms. Wilmes has small children and she plans on raising them at that location

As you are probably aware, the house is located on a corner lot, at the intersection of Erin Street and 11<sup>th</sup> Street NE. Because of the corner location, Ms. Wilmes has very reasonable concerns about traffic safety. It is, therefore, her intention to have a fence installed around her backyard. However, she has encountered some resistance in that she has been told by City officials that her proposed fence would not be in compliance with Ordinance Sec. 10.66, and will be denied a permit for the fence. Ms. Wilmes feels that the denial of the permit is unfair and unreasonable. She is asking that you rescind the earlier decision, and allow her to install her fence as planned.

As I understand the situation, the denial of the permit was based upon two contentions: 1. That the fence was not "decorative"; and, 2. That it did not comply with the pertinent set-back requirements. I would like to address those points.

**1. Decorative Fence.**

The proposed fence would be made of black, vinyl-covered, chain link material, and stand no more than four feet in height. The vinyl covered chain link material is unobtrusive and consistent with the design of the house on the property. This type of fencing is frequently used around country club golf courses and other, similar, up-scale recreational properties. It is material that is durable and requires no periodic maintenance, such as painting or staining, to keep it in its original condition. It is, in fact, decorative without being garish or obtrusive.

When Ms. Wilmes asked how or why her fence was not felt to be "decorative, she was told simply that the fence was not "decorative" without further explanation.

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I have reviewed Section 10.66(F) with regard to residential fences. Subsection 1.(b) sets out the gauge requirement for chain link fences. Clearly, therefore, certain types of chain link fences are contemplated as being appropriate for residential applications.

Section 10.66(F)(3) deals specifically with "Decorative Fences". That section sets out requirements for height (4') opacity (75%) and location. Ms. Wilmes' fence clearly meets these requirements. The only issue in this regard, therefore, is whether the fence is "decorative". However, nowhere in Section 10.66, or anywhere else in the Hanover City Ordinances that I can see is the term "decorative" defined. The question of whether a given fence is "decorative" for purposes of the zoning ordinance is left to the subjective judgement of City officials.

For the reasons stated above, I submit that the Ordinance is unconstitutionally vague as to what constitutes a decorative fence. One person's decorative fence is another person's eyesore. The fence that Ms. Wilmes seeks to install is certainly no eyesore and complies with all of the objective criteria that are set out in the Ordinance.

## **2. Location.**

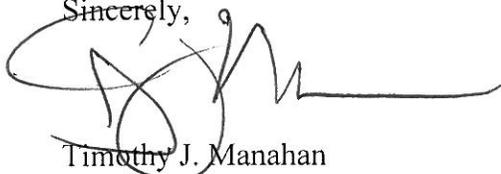
Ms. Wilmes seeks to have her fence run north from the back (west) line of her house to the sidewalk, west along the sidewalk to the west property line, south along the property line to the south property marker and then east to a point even with the back line of her house, and north to the house. She has been told by City officials that this location is acceptable so long as that portion of the fence which extends beyond the north and west sides of the house is decorative, whatever that means. The remainder of the fence need not be decorative. It is respectfully submitted that such a proposal would result in a "two tone" fence, partially constructed in one style, and partially constructed in another.

In contrast, Ms. Wilmes' planned fence would be all of one type, neat, unobtrusive, and otherwise in full compliance with the City's Fence Ordinance.

I respectfully request that the City rescind its denial of a fence permit for Ms. Wilmes. Her planned fence is in full compliance with all objective criteria of the Fence Ordinance. The claim that the proposed fence is not sufficiently decorative is subjective, and arbitrary. There is no objective basis for the determination that the fence is not decorative, and the denial of the requested fence permit on that basis is therefore unreasonable. The denial should be overturned and Ms. Wilmes' request for a fence permit should be granted.

Thank you for your consideration of this request.

Sincerely,

A handwritten signature in black ink, appearing to read "Timothy J. Manahan", with a long horizontal line extending to the right.

Timothy J. Manahan

*Writer's direct line: 763-253-0125*

*e-mail: tmanahan@brownandcarlson.com*

cc: Kelsey S. Wilmes (*via e-mail*)