

**WAYZATA PLANNING COMMISSION
WORKSHOP MEETING MINUTES
February 3, 2013**

AGENDA ITEM 1. Call to Order, Roll Call and Approval of Minutes.

Chair Gonzalez called the meeting to order at 7:00 p.m.

Present at roll call were Commissioners: Gonzalez, Iverson, Ramy Jr., Tyacke, Gnos, Vanderheyden and Pearson (arrived at 7:09 p.m.). Absent and excused: None. Councilmember Tanner, City Attorney Robert Meller, and City Planner Gadow were also present.

Commissioner Ramy stated on page 1, line 11, his name should be spelled "Ramy."

Commissioner Vanderheyden made a motion, seconded by Commissioner Ramy, to approve the January 4, 2014 meeting minutes as amended. The motion passed 4/0/2 (Commissioners Iverson and Ramy abstained).

AGENDA ITEM 2. Workshop Items:

a. Planning Commission Training with City Attorney

City Attorney Meller stated this discussion and training is held every year. He explained the City Charter, which would be considered a local constitution, governs the Planning Commission. The Charter authorizes the City Council to appoint members to the Planning Commission. In addition to the Charter the City also has ordinances and codes, which establish the zoning and the third thing that governs the Planning Commission is State Statutes. The State Statute authorizes the Charter and sets up the planning and Planning Commission. If there is a conflict between State Statute and the Charter, the Statute controls. Questions about land use needs to be tied to public health and safety and if it is not then the Planning Commission is outside of its powers. He explained the way the law works in Minnesota is if there is a good record created then the courts will defer to the process. The Planning Commission is important going forward because if they make the record they win the case.

City Planner Gadow asked for clarification on what would be considered the record.

City Attorney Meller stated under the by-laws the Planning Commission is required to create written minutes, a written record, and a tape of meetings. In cases where decisions are made, these records will be referenced.

Commissioner Pearson arrived at 7:09 p.m.

City Planner Gadow stated Commissioner Iverson needed to leave the meeting early and requested that election of Chair and Vice-Chair be held early.

The Planning Commission Training with the City Attorney was suspended at 7:10 p.m.

AGENDA ITEM 3. Other Items

a. Election of Vice-Chair

City Planner Gadow explained the role of the Chair is to serve as a moderator of the meeting. They call the meeting to order, direct conversation and discussion, recognize people on the Commission when they want to speak, and the Chair works in tandem with the City Planner and other staff to prepare for meetings. In the absence of the Chair the Vice-Chair would step in and take on the responsibilities of the Chair for that particular meeting. He recommended the Commissioners make their nominations for the open positions and that person would have to accept the nomination then a formal vote would be conducted. After the Vice-Chair is elected then the Chair will be elected. He opened the floor for Vice-Chair nominations.

Commissioner Ramy made a motion, seconded by Commissioner Pearson, to nominated and elect Commissioner Iverson as Vice-Chair for a year.

Commissioner Iverson accepted the nomination.

City Planner Gadow closed the nominations.

The motion to elect Commissioner Iverson as Vice-Chair was called to a vote. The motion passed unanimously.

b. Election of Chair

City Planner Gadow opened the floor for nominations for position of Chair.

Commissioner Iverson made a motion, seconded by Commissioner Pearson to nominate and elect Commissioner Gonzalez as Chair for a year.

Commissioner Gonzalez accepted the nomination.

City Planner Gadow closed the nominations.

The motion to elect Commissioner Gonzalez as Chair was called to a vote. The motion passed unanimously.

Commissioner Iverson left the meeting.

AGENDA ITEM 2. Workshop Items: Continued

a. Planning Commission Training with City Attorney (continued)

City Attorney Meller explained when making a record, it is important to remember when two people are speaking at the same time you will not be able to hear your record. One of the problems he has had with this Planning Commission and City Council in the past is that the City has a highly educated and intelligent people in these positions and when there are highly educated and intelligent people, they have the tendency to interrupt each other. The reason for this is economy of expression and this makes for a bad record. It is important to let people talk

1 so that the record can be made. It is also important that the Planning Commission treat
2 applicants with respect regardless of their opinion. It is important to hear with an open mind, not
3 prejudice anything, and not have your mind made up prior to taking any evidence. He stated the
4 Planning Commission has the Charter and a set of guidelines outlining responsibilities and
5 duties. The Chair has a lot of responsibilities including presiding over meetings, appointing
6 Commissioners to Committees, rules on procedural issues, calls the vote, and runs the meeting.
7 It is important that the Commissioners refer to the Chair in all the procedural issues because this
8 is how the by-laws are set up. The Chair must ensure that the meetings are opened and closed
9 properly, the agenda is clear and people are conducting themselves in an appropriate manner.
10 The position of Chair is difficult and he thanked Chair Gonzalez for doing it for a second year.
11 He stated the most important thing the Planning Commission does is create records and this is
12 done through public hearings and meetings. The City Council does not hold public hearings.
13 Even if the City Council does not agree with the Planning Commission recommendations there is
14 a record and it will not be overturned.

15
16 Commissioner Tyacke asked if the Planning Commission conducted a public hearing and a
17 record is created that stated they need to have findings of facts to recommend to the City Council
18 and the City Council disagrees with the Planning Commission, does the City Council create their
19 own record as a basis for disagree with the Planning Commission.

20
21 City Attorney Meller stated the City Council does not hold public hearings but they do on
22 occasion have the applicant come forward and submit a presentation. From a legal standpoint,
23 the public hearing is the key record.

24
25 City Planner Gadow stated from a procedural standpoint the City Council has an open forum on
26 their agenda for residents to discuss items not on the agenda. Once the meeting is past the
27 Resident Forum then a resident would need to fill out a blue card to speak on a particular topic.
28 This gives the Council the benefit of getting new public comment even though it is not part of
29 the official record.

30
31 Commissioner Tyacke asked if the record the Planning Commission makes when making their
32 decision binds the City Council. He asked for clarification on what the basis is the Council uses
33 in making decisions if they do not agree with the Planning Commission.

34
35 City Attorney Meller explained the City Council does not take testimony but will listen to
36 statements from residents and applicants. Some issues have set criteria that needs to be met. It
37 is not common for the City Council to disagree with the Planning Commission.

38
39 City Planner Gadow stated the City Council also creates findings of facts in cases where they do
40 not agree with the Planning Commission recommendation.

41
42 City Attorney Meller clarified the Council takes into account the work and recommendation of
43 the Planning Commission when making their decision. He stated the key land use issues the
44 Planning Commission will be asked to make decisions on are zonings and rezonings, variances,
45 conditional use permits, planned unit developments, design standards, subdivisions and
46 Comprehensive Plans.

1
2 Chair Gonzalez stated on page 4 of the guidelines, Article 7.4, states testimony from the public
3 will be limited to 5-minutes unless the Commission votes to wave that rule. She asked when the
4 Planning Commission should make this vote.

5
6 City Planner Gadow stated there were a couple of things the planning Commission could do. It
7 has been a couple of years since the Planning Commission by-laws have been reviewed. This
8 could be something that is reviewed. The Planning Commission has not historically had a time
9 limit so that the applicant and residents can present their items for the record but the by-laws are
10 the official record. If there is a meeting that has a high number of attendees the Planning
11 Commission can announce that there will be a time limit so everyone has an opportunity to talk.

12
13 Chair Gonzalez stated there had been a situation a couple of years ago with Presbyterian Homes
14 that a timer had been used. She clarified for future meetings if there are a lot of people on
15 attendance a time limit on comments will be announced and written comments will be accepted.

16
17 City Planner Gadow stated during the Planning Commission deliberations they may come in
18 contact with residents, applicants, and other people involved in a project through written
19 communication. He requested he be copied in on all these communications. He complies all
20 these written records for the Planning Commission and City Council.

21
22 Chair Gonzalez asked what the appropriate response would be when someone contacts a member
23 of the Planning Commission by email.

24
25 City Attorney Meller stated there was a case in Minneapolis where a Councilmember met with
26 neighbors on a regular basis and was critical about a project. The developer brought a lawsuit
27 and the Court of Appeals determined that the Councilmember meeting with the neighbors was in
28 violation of the rights of the applicant. There are several communities who feel that they
29 represent the residents and they should have the right to listen to their opinions. There are a lot
30 of attorneys that are recommending Councilmembers and Commissions not meet with people
31 outside of a public forum. What Planning Commission members are starting to find is that it is
32 advantageous because when there are issues they can respond by explaining there interest is
33 appreciated but they cannot discuss it outside of a public hearing and encourage them to attend
34 the public hearing. He suggested a similar response with emails. Thank them for their input and
35 do not respond any further as this will create an illegal record. Once the email has been
36 forwarded to City Planner Gadow it becomes part of the public record.

37
38 City Planner Gadow clarified the proper response for an email would thank you for your input,
39 we encourage you to attend the public hearing on this date.

40
41 Chair Gonzalez stated she has been responding in this manner and copying City Planner Gadow
42 and Mayor Willcox.

43
44 City Planner Gadow stated this would be the appropriate process. An email is a tool for
45 communication and should be viewed as a one-way communication with residents and each
46 other. If there is something that needs to be presented to the entire Council then it can be

1 forwarded to him and he will forward it to the entire Commission. This way it cannot be viewed
2 as a serial meeting, which would be in violation of the law.

3
4 Commissioner Ramy asked if the blind email or BCC was a way to get around having personal
5 email subpoenaed.

6
7 City Planner Gadow stated this would not necessarily be the case. He would have to produce the
8 emails that were sent and on his sent account it would show all the email address it was sent to.
9 It would not be necessary to search personal emails when the records show that the same email
10 was sent to the City emails.

11
12 City Attorney Meller stated personal emails are risky and there had been a case where the courts
13 were able to search all of the personal email accounts for the Planning Commission members.
14 He stated it would be preferred if only City email addresses were used.

15
16 City Planner Gadow stated that most of the emails he sends are meeting reminders and not
17 substantial discussions.

18
19 Commissioner Pearson stated he had received an email requesting his personal information and
20 then asking if he would like this information available to the public or just other members of the
21 Commission. He asked why this information would ever be made available to the public.

22
23 City Planner Gadow stated the addresses were different because residents could send
24 Commissioners mail but only the City email is listed on the City website.

25
26 Chair Gonzalez stated residents could send letters to City Hall to get in touch with the
27 Commission. She asked how the Planning Commission should handle residents wanting to talk
28 to them about a project while they are visiting a project site.

29
30 City Planner Gadow stated the Planning Commission should visit the project sites but when the
31 owner of the property wants to discuss the project the proper response would be that you are
32 simply there to look at the project and you cannot take evidence from them outside of the
33 judicial proceedings.

34
35 Commissioner Pearson asked if the public has a due process right to know as well. The
36 applicant has the right to know what is being submitted in opposition of their application. He
37 asked if the only information the Planning Commission can receive is through the public hearing
38 process.

39
40 City Attorney Meller stated the recent case has interpreted it this way. Because the Planning
41 Commission is acting as a judge and as such not entitled to go out of the public realm and listen
42 to testimony that influences you and causes you to have a preexisting bias.

43
44 Commissioner Pearson stated the difference is on the one side you have a defendant and
45 prosecutor but the Planning Commission has the applicant and all the residents and you do not
46 know who is on the other side.

1
2 City Planner Gadow stated if a Commissioner does have contact outside of the public forum then
3 they should disclose this at a public meeting so that it is on the public record.
4

5 City Attorney Meller stated the advantage of having the person make the statements at a public
6 hearing is it avoids the he-said-she-said argument.
7

8 Commissioner Pearson asked how it would be viewed if a Commissioner was at a project site
9 taking pictures and these are looked at and considered by the Planning Commission while
10 making a decision. He asked if these pictures would need to be part of the file.
11

12 City Planner Gadow stated these would be part of the record. The staff report includes aerial
13 photos of the project sites. If there are things that need more explanation the applicant is asked
14 to provide photos as part of the application. He stated he could also go to a site and take
15 additional photos if there is a need but he would need to know.
16

17 Commissioner Pearson stated in the case that was presented a couple of weeks ago for Holdridge
18 Terrace the Planning Commission was only looking at numbers on a piece of paper for
19 elevations and this does not always mean anything. There had been a number of Commissioners
20 who went to the site to get a clear idea of what the elevations were.
21

22 City Planner Gadow stated the public also has the right to drive by a project site and look at
23 these same things.
24

25 Commissioner Pearson asked about a property by the lake the Planning Commission had gone to
26 last year and met with the applicant. This is not an area the general public is allowed to go to.
27

28 City Planner Gadow explained this was carefully arranged by being properly noticed to the
29 public and there was no quorum present at any time. The Planning Commission was allowed on
30 the property because this is part of the development process.
31

32 Chair Gonzalez stated the Planning Commission was only allowed to ask questions during this
33 site review.
34

35 City Attorney Meller stated getting back to emails, under the course of recent decisions, he does
36 not recommend a replay all response. This is considered a meeting violation. Emails are
37 appropriate for discussing scheduling but there should not be any email correspondence going
38 back and forth regarding Planning Commission business.
39

40 City Planner Gadow stated the Planning Commission does practice using email only for
41 scheduling purposes and it is to him.
42

43 Chair Gonzalez asked if Planning Commissioners could be fined personally for breaking the
44 open meeting law.
45

1 City Attorney Meller stated the open meeting law is taken serious and Chair Gonzalez is correct.
2 He went on to discuss the Comprehensive Plan and Zoning and the Planning Commissions role.
3 The Comp Plan controls and the Zoning Code must to be consistent with the Comp Plan. If it is
4 not then the Zoning Code needs to be amended rather than the Comp Plan. He explained zoning
5 regulates the use of the property including the height, width, size of buildings, and the amount of
6 vacant space, setbacks, and density to name a few things. Historically there was not zoning and
7 people could build what they wanted. The problem became people were living in tenements next
8 to factories, which resulted in illnesses. At that time it was decided that it would be appropriate
9 for people to not live where they worked. The idea was to segregate residential from factories.
10 Then the thought was to have regular residential zoning with minimal lot sizes and uniform
11 setbacks. This created the grid pattern that everyone is familiar with in developments. It was
12 then decided to have the commercial separate from the residential and industrial. These were
13 further divided to retail districts and office districts. This is how cities have developed. If
14 someone wants to amend a zone the Planning Commission will need to conduct a public hearing.
15 The City Council, the Planning Commission, or the property owner can request zoning
16 amendments. If there is a zoning amendment request then proper notice must be provided to the
17 public, a public hearing is held, and the Planning Commission must provide written
18 recommendations and findings of fact. Within a zone there are permitted uses, which means if a
19 person proposes a permitted use they are entitled to it as a matter of right. Each zone also has
20 conditional uses. Conditional uses come from a separate State Statute and is a separate part of
21 the City's ordinance. Typically in a zone, conditional uses are important because they represent
22 things that should be in the City but may not be right for a particular zone. When looking at a
23 conditional use the ordinance spells out the criteria the Planning Commission looks at and if a
24 project meets these criteria then the conditional use has to be granted but if it does not meet all
25 the criteria then it should not be granted. The record becomes especially important in cases
26 where an application is denied. There needs to be a record for each factor outlined in the
27 ordinance. This is an area where the ordinance needs to be carefully followed. Conditional uses
28 permits are a property right and it runs with the land, it is not a license or individual thing. Once
29 a conditional use permit is granted it goes with the land regardless of how many times it is
30 bought and sold. The conditional use permit but also be notarized, properly documented and
31 filed with the County. Conditional use permits cannot be revoked unless the conditions under
32 the conditional use permit are violated.

33
34 City Planner Gadow stated the City typically has six conditional use permits per year for things
35 such as additional building height or outdoor café seating. When these applications come to the
36 City staff outlines the criteria the Planning Commission is asked to review and provides analysis
37 of these criteria based on the application without any formal recommendation.

38
39 Commissioner Pearson asked if there was a defined list of what the conditional use permits are.

40
41 City Planner Gadow stated if you wanted to open a business in a district that did not have it
42 listed as a conditional use then the applicant could ask the City to do a study to determine if the
43 type of use would be appropriate for the district.

44
45 Chair Gonzalez asked if this would be considered a use variance.

46

1 City Planner Gadow stated it would not be considered a use variance.

2
3 Chair Gonzalez stated in a previous situation the district did not allow a use as conditional so the
4 Planning Commission had amended the ordinance to include the use as conditional.

5
6 City Planner Gadow stated this would be the correct process. There is a study to determine if it
7 is appropriate then an action to amend the zoning ordinance to make the use either conditional or
8 permitted. In most cases it is established as a conditional use so the City can place conditions on
9 the use. He clarified the Planning Commission is not permitted to grant a variance for the use of
10 a property only performance standards.

11
12 Commissioner Ramy asked if a one-time violation of a condition in a conditional use permit
13 would be grounds for revoking the conditional use permit.

14
15 City Planner Gadow suggested a violation would have to be pretty major in order to revoke a
16 conditional use permit. The City tries to work with the applicant because in some situations they
17 are not aware they are in violation of the conditional use permit. If the same violation continued
18 to occur then it could be looked at.

19
20 Commissioner Ramy clarified the process included notifying the owner/applicant that there was
21 a violation that could result in revocation of the conditional use permit.

22
23 City Planner Gadow stated there has not been a situation since he has worked at the City where
24 violations were enough to result in a revocation of a conditional use permit.

25
26 Commissioner Tyacke asked about restaurants, noting one has an area that juts out into a parking
27 space and they have seating on the sidewalk.

28
29 City Planner Gadow clarified this was Gianni's and they do have a sidewalk conditional use
30 permit and a City permit to use the City right-of-way.

31
32 Commissioner Tyacke asked if this was a permanent situation or if these could be revoked.

33
34 City Planner Gadow stated there were a number of conditions established with the conditional
35 use permit including if the City needed to do something with the street the City had the ability to
36 take back that area.

37
38 Commissioner Pearson clarified that if the criteria is met then a conditional use permit must be
39 granted. He asked how the City could put conditions in place when the objective criteria is met.

40
41 City Planner Gadow clarified conditions could be placed on a number of things including hours
42 of operation, lighting, and keeping within certain boundaries. These conditions are established
43 so the business can meet the criteria.

44
45 Commissioner Pearson asked if there were defined conditions the City could put in place.

46

1 City Planner Gadow stated there is not a defined set. If the Planning Commission wants to
2 establish a condition then it needs to be reviewed to make sure the City is within its rights to set
3 that condition.

4
5 City Attorney Meller stated variance statutes have changed dramatically over the last few years
6 causing the City to look at potential changes in the ordinances. The previous variance statute
7 would allow a variance from a literal provision of the zoning ordinance in instances where strict
8 enforcement would cause undue hardship because of circumstances unique to the individual
9 property under consideration and to grant such variances only when it is demonstrated that such
10 actions will be in keeping with the spirit and intent of the ordinance. In this undue hardship used
11 in connection with granting a variance means the property in question could not be put to a
12 reasonable use if used under the conditions allowed by the official controls. This is a high
13 standard to reach. The court of appeals has come out with some cases that have distorted this
14 standard to be if the use the property owner wants is reasonable it should be allowed but a case
15 in Minnetonka that resulted in the strict interpretation of the statute to be enforced. There was
16 heavy lobbying because cities do not like the strict interpretation and would like some flexibility
17 in granting variances. This resulted in a new statute that talks about practical difficulties not
18 reasonable use. The statute reads "Variances may be granted when the applicant for the variance
19 establishes that there are practical difficulties when complying with the ordinances. Practical
20 difficulties when used in connection with the granting of a variance means the property owner
21 proposes to use the property in a reasonable manner permitted by the ordinance, the owner's
22 plight is due to circumstances unique to the property not created by the owner, and the variance,
23 if granted, will not alter the locality's essential character. Economic considerations alone do not
24 constitute practical difficulties." Under this statute new criteria are reviewed such as is the
25 variance in harmony with the intent and purpose of the ordinance, is it consistent with the
26 Comprehensive Plan, does the proposal put property to use in a reasonable manner, are there
27 unique circumstances of the property that create the hardship, and will the variance, if granted,
28 alter the essential character of the locality. This frees up the City's standards for granting a
29 variance. The written report from City Planner Gadow will reflect the new criteria and it will be
30 easier for the City to grant variances and it permits the Planning Commission to honor the
31 language of the statute. Historically, the City did not like the harsh variance standards and they
32 wanted more flexibility than what the statute allowed. As a result, the City's code reflects
33 several items that would be considered variances not conditional use permits. He gave the
34 example of the code that references parking. This is a variance that is cloaked as a conditional
35 use permit.

36
37 City Planner Gadow stated these were changes made in the 1980s and 1990s.

38
39 Commissioner Tyacke asked if the applicant's use of the property in the Minnetonka case would
40 have been upheld under the new law.

41
42 City Attorney Meller stated he believed it would have and it would depend on the records kept.

43
44 Chair Gonzalez stated the City had paid for her to attend an advanced Planning course presented
45 by the League of Cities. She stated the Minnetonka case was discussed in depth and one of the

1 things that came out of that was if a city is continually granting variances then the zoning
2 ordinance should be reviewed.

3
4 Commissioner Pearson stated the Planning Commission has had problems with the condition
5 pertaining to the plight of the landowner due to circumstances unique to the property and not
6 created by the landowner. If you go back to the Minnetonka case, what about that property made
7 it unique for the character of the property to allow a yoga studio. He asked City Planner Gadow
8 to provide some examples that would fit these criteria.

9
10 City Planner Gadow stated things unique to the property would include the topography, slopes,
11 wetlands, soil conditions, or the original structure was built into the setbacks and if the owner
12 wanted to do an addition it would be non-compliant. Variance requests are reviewed on a case-
13 by-case basis and staff would provide findings for the Planning Commission to review when
14 making their recommendations.

15
16 City Attorney Meller stated the next topic was Planned Unit Developments. The typical zoning
17 is the grid pattern with retail separate from residential and industrial separate but modern
18 thinking is not necessarily this way. A planned unit development is a way the City seeks to alter
19 those standards to allow better planning to allow a project that works in a better fashion.
20 Developers use this to provide the City with an option for a development that may be better for
21 the City and less invasive to the environment. Wayzata is unique in that there could be a PUD
22 for a single lot. City Planner Gadow will list the criteria the Planning Commission has to
23 consider as set forth in the ordinance. A PUD is used to foster innovations in development and
24 the growing demand for all styles of economic expansion, a greater variety in type, design, and
25 placement of structures, higher standards of height and building design, more convenience in
26 location, use of natural topography and features, offer smaller networks of utilities and streets,
27 must be consistent with the Comprehensive Plan, and creates a more desirable and creative
28 environment than what might be possible under the strict application of the zoning and
29 subdivision regulations. The process of a planned unit development is the first document that
30 comes forward is the concept plan. This is what the developer will come up with to give a
31 general overview of the concept. If the concept plan is approved then the developer applies for a
32 general plan. The general plan is the nuts and bolts of the planned unit development. This is
33 were the next to final plans and is the document that needs to be decided because the next step is
34 the final plan stage but this stage is really just a rubber stamp stage. The Planning Commission
35 and City Council cannot materially change the plans at the final plan stage. Under the ordinance
36 and the law the developer has some vested interest at this stage.

37
38 City Planner Gadow stated final plan approval is really staff overview, making sure that the
39 plans that were approved in the general overview match the architectural and final plans. The
40 final plans are also the legal documents that are filed against the property. This to make sure
41 they are building what the developer said they would build.

42
43 City Planner Gadow stated the City's design standards were created in the late 1990s to provide
44 a guideline for commercial and multi-family developments. These were more recommendations
45 the City would like to see developers do but could not enforce. In early 2000s and again in
46 2007-2008 these guidelines were converted into standards that would be easier to enforce. This

1 makes it easier to evaluate a project but it also is a hindrance because it makes it more
2 challenging for the City Council and Planning Commission to get into the aesthetics of a project
3 because a project may meet the mathematical requirements of the standards but the aesthetics are
4 undesirable. The City tries to work with developers to come up with a product that works for the
5 community before the public hearings. As part of staff review of a project, staff will prepare a
6 design critique in a matrix format.

7
8 Commissioner Ramy asked how trends are accommodated in the design standards.

9
10 City Planner Gadow stated every 5-years or so the standards would be reviewed to include new
11 technology and products.

12
13 City Attorney Meller stated standards started out as guidelines and applicants did not feel they
14 needed to comply with guidelines. It is now part of the zoning ordinance.

15
16 Commissioner Tyacke asked who considers tax revenue from a development.

17
18 City Planner Gadow stated as a Planning Commission they are not allowed to take that type of
19 tax analysis into account. The Planning Commission looks at what the criteria of the zoning
20 ordinance and if the project meets these requirements. The City Council may have a little more
21 flexibility in considering taxes.

22
23 City Attorney Meller stated if the Planning Commission has a particular area that is continually
24 asking for variances then the zoning for this area should be reviewed. If you have a piece of
25 property it has a legal description and tax ID number that is what a person can buy. If you have
26 a 10-acre parcel and want to divide it into smaller parcels then the landowner needs to come in
27 under the City's subdivision ordinance. If a landowner wants to consolidate two or more lots
28 this would also be handled under the subdivision ordinance. Landowners need to have defined
29 legal descriptions in order to buy and sell properties. The criteria for a subdivision are laid out in
30 the ordinance including providing public streets, sewer, water and utilities and easements. An
31 interesting provision in the statute is called a premature subdivision. A premature subdivision
32 has separate criteria. Section 805.16 talks about if the City deems a subdivision to be premature
33 it can be turned down. A subdivision may be deemed premature if any of the provisions set forth
34 in the following provisions exist: a.) lack of adequate drainage, b.) lack of adequate water
35 supply, c.) lack of adequate roads or highways to serve the subdivision, d.) lack of adequate
36 waste disposal, and e.) inconsistency with the Comprehensive Plan. The concept there is if
37 someone comes in and says I want to subdivide this property and the city asks to see the sewer
38 and water, if it is not there then it can be declared a premature subdivision. The way the
39 subdivision works is the applicant comes in with a preliminary plat, which is followed by the
40 final plat. In the subdivision ordinance, there is a variance provision. The variance provision is
41 more like the old variance statute because it is not a practical difficulties statute. He suggested
42 this is something the City may want to review.

43
44 City Planner Gadow stated the reason a variance from the subdivision would come up is may be
45 a situation where a 26-foot wide street is required but in order to reduce tree loss the applicant is
46 requesting a variance for the road width to be smaller.

1
2 City Attorney Meller stated State Statute states the City can put in criteria for a variance and the
3 City of Wayzata did this. These criteria include there are special circumstances that are highly
4 unique and affect the property such as the strict application of the provisions of the ordinance
5 would deprive the applicant of the reasonable use of his land, the granting of the variance would
6 not be detrimental to the public health and safety, and the variance is to correct inequalities
7 resulting from the extreme physical hardship such as topography, and hardship related to
8 economic difficulty shall not be considered for the purposes of granting a variance, the variance
9 is not the result of an action of the owner, landowner, applicant, or developer. These criteria
10 make it difficult to get a variance. A plat needs to be decided on within 120 days of the filing of
11 the final plat according to the ordinance. City Planner Gadow will monitor all time frames to
12 make sure the Planning Commission is acting within the specified amount of time.
13

14 City Planner Gadow stated the Planning Commission might be reviewing the subdivision of the
15 Anchor Bank property if that project moves forward. The City is about 98% built out so the
16 request for subdivisions will become less and less.
17

18 City Attorney Meller stated the record is very important in all subdivision cases because the
19 Planning Commission will hold the public hearing. In 2006, the legislature added language to
20 the effect that a municipality must approve a preliminary plat that meets the applicable standards
21 and criteria contained in the municipality zoning and subdivision regulations unless a
22 municipality adopts written finding based on a record from a public proceeding as to why the
23 application shall not be approved. He stated another item that will come up that should be fixed
24 are park dedication fees because under the statute there has to be a rational nexus behind having
25 a portion of the property dedicated to a park or alternatively where the City can extract park
26 dedication fees. There must be a nexus between the park dedication fee and the use the
27 development is going to make of the park. The City's ordinance is in the process of fixing this
28 section to reflect this change in the statute.
29

30 Chair Gonzalez stated the ordinance also states these cash payment cannot be used for the on
31 going maintenance of parks. She stated she was not sure if the City had used these funds for
32 items other than parks.
33

34 Commissioner Vanderheyden stated at a County Planning Commission meeting they had a
35 negative find of fact. The Planning Commission still approved the project. He asked if this was
36 possible.
37

38 City Attorney Meller stated he had not seen this before and he would not advise it.
39

40 City Planner Gadow stated staff provides the Planning Commission with several options when
41 reviewing an application. These include developing finds of facts to approve or deny the project,
42 direct staff to draft written finds of facts for the Planning Commission to adopt at the next
43 meeting. Typically, with complex applications the Planning Commission directs staff to draft
44 written finds of fact.
45

1 Commissioner Vanderheyden asked what the Planning Commission was reviewing in the case
2 where staff is directed to draft the findings of fact to be adopted the next Planning Commission
3 meeting.

4
5 Chair Gonzalez stated at one time after staff had been directed to prepare the finds of fact
6 recommending approval she reviewed these findings and changed her vote to deny the project
7 because she had realized there were still some shortcomings with the project. She stated she had
8 prepared a document outlining her reasons for changing her vote. She asked if changing her vote
9 was proper.

10
11 Commissioner Vanderheyden asked what the Planning Commission was voting on when the
12 finds of fact are brought back to the next meeting.

13
14 Chair Gonzalez stated the Planning Commission is voting on the finds of fact.

15
16 City Planner Gadow clarified the Planning Commission is being asked to adopt the formal
17 finding of fact and conditions. It is possible at the second meeting there is not a majority that
18 agrees with these findings. If the motion to adopt the findings fails then next step the Planning
19 Commission should take is to direct staff to draft the findings in the negative. The Planning
20 Commission should not leave the application with no recommendation. The Planning
21 Commission has 45 days to make a recommendation before it gets moved on to the City Council.
22 He also stated under State law the City has 60-days, from the time a complete application is
23 received, to start and complete a review of the land use application. This is usually not enough
24 time with complex projects and the City can formally grant an additional 60-days but after this
25 the City needs the applicants permission to extend the deadline.

26
27 Chair Gonzalez stated where she fell short previously was she should have asked for a motion
28 recommending denial based on the findings she had presented.

29
30 City Planner Gadow stated each year the Government Training Service, a non-profit in St. Paul,
31 hosts land use courses. The 2014 schedule has not been released yet but he would notify the
32 Planning Commission when it was available.

33
34 City Attorney Meller stated the Planning Commissioners would welcome to contact him with
35 questions and the League of Minnesota Cities website has a handbook available, which would be
36 good.

37
38 City Planner Gadow stated he had a schedule set up for Planning Commissioners to attend the
39 City Council meetings, a copy of the 2014 public meeting calendar, a copy of the by-laws and
40 the charter.

41
42 **AGENDA ITEM 3.**

43 **c. Review of Development Activities**

44 City Planner Gadow stated the next Planning Commission meeting was scheduled for Monday,
45 February 24. The Planning Commission will be reviewing a draft ordinance that staff has been
46 working on and possibly the tree ordinance. On February 18, at 6:00 p.m., the City Council is

1 having a workshop on the Wayzata Lake Effect Project with a formal presentation at the March 4
2 regular City Council meeting.

3
4 Chair Gonzalez stated the Commission member scheduled to attend the City Council meetings
5 would receive a packet of information for the meeting. Commissioners are not required to stay
6 for the entire meeting but should remain through the Planning agenda items.

7
8 Commissioner Pearson stated there were three workshop sessions prior to the last City Council
9 meeting. The City Council salaries were discussed because salaries have not been touched in 17-
10 years. There was also discussion of payment for Planning Commissioners. He stated the City
11 Council also discussed the Emerald Ask Borer, and the City hockey boards were being replaced.
12 The City Council also discussed the Anchor Bank project. The two items they reviewed were
13 the street vacation on Emerald Lane and the core project. The City Council reviewed and
14 approved the Holdridge Terrace subdivision with the conditions the Planning Commission had
15 established.

16
17 City Planner Gadow stated the street vacation was approved 3-1. The City Council had also
18 added a couple of conditions to the Holdridge Terrace project regarding drainage and additional
19 trees.

20
21 **d. Other Items**

22 None.

23
24 **AGENDA ITEM 4. Adjournment.**

25
26 There being no further business, Commissioner Vanderheyden made a motion, seconded by
27 Commissioner Pearson, to adjourn the meeting. The motion passed unanimously.

28
29 The meeting was adjourned at 8:51 p.m.

30
31 Respectfully submitted,

32 Tina Borg

33 Recording Secretary, *TimeSaver Off Site Secretarial, Inc.*