

**WAYZATA PLANNING COMMISSION
WORKSHOP MEETING MINUTES
APRIL 1, 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: Crowder, Gonzalez, Iverson, Ramy Jr., and Vanderheyden. Absent and excused: Commissioners Cooper and Pearson. City Planner Gadow and City Attorney Meller were also present.

Commissioner Vanderheyden made a motion, seconded by Commissioner Crowder, to approve the March 18, 2013 meeting minutes as presented. The motion passed 5/0.

AGENDA ITEM 2. Workshop Items:

a. Review and Adoption of Planning Commission Report and Recommendation on 110 Gleahaven Road Shoreland CUP

City Planner Gadow recapped the consideration of the Planning Commission at its last meeting and presented the Report and Recommendation for approval of the Shoreland Conditional Use Permit (CUP) for 110 Gleahaven Road. He referenced Page 5 that laid out standard conditions for Shoreland CUPs and attachments that would be included for storm water management and building plans. In addition, Page 6, Items G and H, are two conditions added by the Planning Commission relating to encouraging the applicant to secure the largest sized balled and wrapped trees and to properly grade the site and install stormwater management techniques so as to not cause water to drain onto adjacent properties. It was noted the applicant, at the March 18, 2013, Planning Commission meeting, had made a verbal commitment to secure the largest sized trees available.

City Planner Gadow displayed an in-depth grading plan for Lot 2 and described the pre- and post-construction development, noting storm water treatment methods would further mitigate stormwater on the site. He stated the Planning Commission had discussed its level of comfort relating to the aesthetics of rain barrels so the applicant has offered an alternative to instead use concrete splash guards to direct water away from the foundation and towards the rain garden. Should the rain barrels not be used, there would be no impact on Lot 1 and on Lot 2 the rain garden or drywell would be upsized to capture that 7.2 cubic feet. City Planner Gadow indicated if the Planning Commission takes action on this Report, it will be considered by the City Council at their April 2, 2013, meeting.

Commissioner Ramy asked if the channel diversion would be semi-permeable. City Planner Gadow explained it would be a concrete slab with curved sides to direct water away from the foundation.

1 Commissioner Vanderheyden stated this is the sixth meeting the proponent has attended on this
2 project and asked whether, if he knew of the experience and process in Wayzata, he would
3 consider doing it again.

4
5 Ashish Aggarwal, Shree Investments, LLC, stated the only comment he has is that he does not
6 think so. He stated the process is a good process but he had found it unsettling that at the first
7 Planning Commission meeting this was considered, no one gave any thought to the fact that if
8 one two-story house was constructed, how it would look. Mr. Aggarwal felt everyone had
9 focused on the neighbor's comments but change is inevitable, though unsettling. He stated he
10 wanted to do the right thing and the mistake he made was that he should have included residents
11 in the comments. But he had thought those on the Planning Commission would be able to see
12 through to the issue of what they were requesting. Mr. Aggarwal felt a lot had been asked from
13 him and it became a "Catch 22" situation because this will be a large purchase and the buyer will
14 want changes. He stated they have gone through all of this effort and costs but do not know
15 tomorrow if someone will say they love it. He stated he felt this was a good plan.

16
17 Commissioner Vanderheyden stated it sounds like they would not do it again. Mr. Aggarwal
18 stated that is correct, he would not. Chair Gonzalez thanked Mr. Aggarwal for the effort he took
19 to take the resident's concerns into consideration.

20
21 Mr. Aggarwal stated this is a good product and his concern was that when marketing, buyers
22 may want some change such as a shorter roofline so he may have to come back to request a
23 change.

24
25 Chair Gonzalez stated the role of the Planning Commission is to protect the applicant, residents,
26 and Lake Minnetonka. Mr. Aggarwal stated that is why he had commented that it is a good
27 process.

28
29 Chair Gonzalez referenced Page 5, Paragraph 4.1.F, and asked if the Planning Commission had
30 discussed replacement of the trees that would be removed. City Planner Gadow confirmed that
31 information is included as Attachment C.

32
33 Commissioner Vanderheyden made a motion, seconded by Commissioner Ramy, to adopt the
34 Report and Recommendation of approval of Shoreland Conditional Use Permit (CUP) for 110
35 Gleahaven Road as presented. The motion passed 5/0.

36 37 **b. Planning Commission Training with the City Attorney**

38
39 City Attorney Meller referenced the outline provided to the Planning Commission, explaining
40 Wayzata is a Home Rule Charter City and occasionally the Charter is revised by the Charter
41 Commission. He stated the Planning Commissioners should read the Charter as it is the
42 constitution of Wayzata and if there are inconsistencies between the Charter and State Statutes,
43 State Statutes control.

44
45 City Planner Gadow stated the Charter is available on the City's website or he can provide
46 copies, if requested.

1
2 City Attorney Meller stated technology has evolved dramatically over the past few years, how
3 the City keeps records, projects have become larger, and issues have become more emotional.
4 The Planning Commission makes recommendations to the City Council and the City Council is
5 free to reject, amend, or accept that recommendation. What is critical, is that the Planning
6 Commission makes the record. City Attorney Meller explained if there is no record, the City is
7 at risk of litigation. To create that record, there is a public hearing that is tape recorded and
8 broadcast. He explained that in a lawsuit, the first thing the applicant's lawyer will do is request
9 copies of any and all tapes. That means the public hearing has to be structured almost like
10 theater. For example, if one Commissioner is talking at the same time as another, it will create a
11 garbled record that is open to ambiguity. Discrete and concise discussion is needed to create a
12 clear record. In addition, the Commissioners need to be non-emotional, objective, and open
13 minded. It needs to be remembered that to the applicant, it is the most important thing since they
14 have a lot of emotion and dollars invested in their plans. By the same token, neighbors are afraid
15 of change, rightly or not, and are equally emotional. City Attorney Meller noted it involves
16 talking about people's homes, which creates extreme emotion. The Planning Commission is
17 sitting as intelligent and objective members and facing emotional people so all need to be calm,
18 listen to commentary without interruption, and give all a chance to offer comment. The Chair is
19 responsible to be the conductor of this "play." Typically, the applicant will come forward with
20 their position along with their architect or engineer. The Planning Commissioners will be
21 listening with apt concern since they have not yet made up their minds because they have not yet
22 heard the presentation and evidence. The Planning Commissioner may ask thoughtful questions
23 in an orderly manner as recognized by the Chair.

24
25 City Attorney Meller explained that when the applicant has concluded the presentation, that
26 portion is closed and the public hearing is opened. The issue is that many times, people will
27 want to read written presentation, often times repeating a previous speaker. However, when
28 many repetitive comments are being made, it is not fair for the Planning Commission to have to
29 make a decision when it is late into the evening. He advised that the bylaws indicate that each
30 speaker has five minutes and as the night wears on, the Chair may need to remind speakers to not
31 provide duplicate information. The important point is to let the people be heard and create the
32 record without cutting them off, resulting in a due process claim. Unfortunately, because the
33 applicant is very emotional, as are the residents, the architect or engineer may jump to their feet
34 during the public hearing and say, "that's not true" creating a battle. The Planning
35 Commission's job is to remain calm and remind the applicant this is the public hearing and the
36 applicant may have the opportunity to speak after the public hearing, a chance for rebuttal.

37
38 City Attorney Meller explained that as with the Continental case, commissions and councils can
39 get the City into trouble by saying anything on the record that leads a fact finder to determine
40 they are predisposed. The most important thing the Planning Commission does is create the
41 record for the public hearing and deal with recommendations on Comprehensive Plan updates.

42
43 Commissioner Ramey stated he has been at public hearings where emotional residents have
44 remarks and asked how the Planning Commission can cut them off from providing duplicate
45 information without interrupting.

1 City Planner Gadow explained that in the past if it is a large project with many residents wanting
2 to speak, ground rules are laid out before the staff presentation is made to indicate each speaker
3 is allotted five minutes and to keep comments to something not stated before. Then, before the
4 public hearing, those rules are restated to set the expectation. City Planner Gadow stated at past
5 meetings, the City has had a running time so the speaker could adjust their comments, if needed.

6
7 Chair Gonzalez stated if speakers were cut off, they were invited to submit their comments, in
8 writing.

9
10 City Planner Gadow explained the notices mailed to the adjunct neighborhood indicates the date
11 of public hearing and to submit written commentary for inclusion in the staff report.

12
13 City Attorney Meller referenced Page 20 of his memorandum detailing points in effective small
14 group decision making:

- 15 • Listening to/understanding the views of others
- 16 • Constructively confronting and resolving differences
- 17 • Supporting others and showing respect for their ideas
- 18 • Participating actively in discussions
- 19 • Taking “time outs” to discuss how well group members interact with each other.

20
21 City Attorney Meller explained that a lot of times when he is listening to a Planning Commission
22 or City Council, a member comes up with an idea that another may think is “crazy” but after
23 discussion, the idea is found to be interesting. He indicated it is a professional collegiality for
24 the Planning Commission and City Council to listen to each other’s ideas, build camaraderie, and
25 “have each other’s back” because sometimes the member will be criticized by neighbors, and
26 others. If all are supporting each other and listening, they owe it to each other to work together
27 as a team and not get cross-sighted. City Attorney Meller counseled patience, courtesy, and
28 delicately when noting it is late and requesting the public to limit comments to those not already
29 heard.

30
31 Commissioner Crowder stated the idea is to hold the public hearing and make the decision on the
32 recommendation the same night so it can be considered by the City Council; however, some
33 meetings go into the wee hours of the night and after listening to all of that, his mind is not as
34 effective at midnight as it is at 7 p.m. and he no longer wants to hash it out and get it done that
35 night.

36
37 City Planner Gadow agreed and explained that when scheduling agendas, staff is cognizant to
38 not over schedule the Planning Commission with multiple development applications. But, if
39 there is a situation where it is late, the Planning Commission can close the public hearing and
40 reconvene at the next Planning Commission meeting to deliberate on the recommendation. He
41 stated he warns the applicant that if it gets late, the Planning Commission may determine to
42 delay the determination to the next meeting.

43
44 Commissioner Vanderheyden asked whether, in the circumstance just outlined with it being
45 10:30 p.m. and 20 more people to testify, the public hearing would be continued. City Planner
46 Gadow explained it is better to finish the public hearing process and continue deliberation

1 because some may not be able to attend the continued public hearing. If that is the case, they
2 would not have received due process.

3
4 Chair Gonzalez stated the Planning Commission also has to be careful with the 60-day rule. City
5 Planner Gadow concurred and indicated staff tracks the time schedule and requests an extension,
6 if needed.

7
8 City Attorney Meller stated when emotions get high, it is not a bad idea to call a recess. City
9 Planner Gadow stated another option is when people are talking from the back of the room to
10 politely ask them to carry that conversation out to the hallway so it does not interfere with the
11 recording of the meeting.

12
13 City Attorney Meller advised that sidebar conversations are not a good idea because it causes
14 confusion and garbles the record. In addition, with educated people, they sometimes know what
15 the speaker is saying before the speaker completes the sentence so it is easy to interrupt;
16 however, that is not a good idea because it garbles the record.

17
18 City Attorney Meller stated the bylaws have recently been updated and now addresses different
19 land use concepts. He explained that zoning amendments affect a neighborhood or region and
20 not just a particular property like a CUP. City Attorney Meller explained that the process of
21 zoning started on the East Coast where people were living in factories, unsafe conditions, so in
22 the 1920-1930s, government decided to create zones to separate industry, residential, and
23 shopping areas. Then the question becomes, as time moves on, whether that zoning class may no
24 longer be appropriate. He noted that in Minneapolis, Park Avenue was the premier street but
25 times changed and those Park Avenue places became no longer supportable so the City rezoned
26 from single-family large lot residential to multi-family and the homes were changed to
27 apartments. That also happened in the Kenwood area where properties were rezoned to multi-
28 family. In Wayzata, it was predominantly residential, retail, and office but that has now changed
29 to include mixed-use with office/residential properties. City Attorney Meller explained that
30 when considering rezoning of a neighborhood, the Planning Commission needs to address all the
31 facts and why the existing zoning is no longer appropriate. It needs to listen to all and make
32 recommendations to the City Council on an important issue that will chart the future of the
33 community. This type of decision is different from quasi-judicial decisions and requires the
34 Planning Commission to be visionary. City Attorney Meller stated Wayzata was different before
35 I-394 was completed because it used to take one hour to drive to Minneapolis but now it takes
36 ten to eleven minutes. This has caused a change to the City's neighborhoods.

37
38 Chair Gonzalez stated the Planning Commission tried to be thorough with this last application
39 because there is a disconnect since it is R-3 but there are not large houses on large lots. Most of
40 the neighbors want to preserve their existing neighborhood but the Code allows subdivision or
41 building of a duplex. She asked how the Planning Commission balances this disconnect and if it
42 was worth looking at the Zoning Ordinance to reflect the reality. City Planner explained it is not
43 possible to write ordinances that predict but performance standards contained within the Zoning
44 districts can be addressed, such as an average front yard setbacks, to achieve the character
45 elements desired. That would be preferable to establishing a new zoning classification for each
46 situation because the Code would then be too expansive and difficult to enforce.

1
2 Chair Gonzalez stated residents want to continue with low ramblers on large lots until they
3 themselves want to sell to a developer who will subdivide the property. City Planner Gadow
4 noted the City cannot legislate building style but can place reasonable conditions related to the
5 request.

6
7 Chair Gonzalez asked how the Planning Commission fulfills its role in such a situation. City
8 Attorney Meller stated the critical question is, are you dealing with a particular property or an
9 entire neighborhood. If a specific property, then it is a CUP or variance consideration. If a
10 larger neighborhood issue or petition requesting rezoning, then the Planning Commission needs
11 to look at broader criteria as set forth in the ordinance such as the relationship to the
12 Comprehensive Plan, conformity with land uses, impact on the area and property value, and/or
13 impact on traffic and public services. He pointed out that most of the City's land is developed so
14 there will be fewer on a going forward basis, but there may be changes.

15
16 Commissioner Vanderheyden stated three years ago he subdivided a large lot in the City of
17 Plymouth so it went before the Planning Commission and City Council and conditions were
18 placed around reconfiguring the street. But, once the subdivision was complete, everything
19 about those lots defaulted into the standard city ordinance relating to setback, building heights,
20 hard cover limits, etc. What he found was unique and surprising on the 110 Gleahaven case, is
21 that review came down to the landscape plan, siding finishes, and those types of details.
22 Commissioner Vanderheyden noted there are two empty lots at the corner of Walker and Rice
23 and if homes are built on those properties, it will never come before the Planning Commission.

24
25 Chair Gonzalez stated that is the case only if the project does not require a CUP or subdivision.

26
27 Commissioner Vanderheyden stated his point is where, from a quasi-judicial behavior
28 standpoint, does over reaching start to creep in because the Planning Commission is not applying
29 what is in an ordinance but to a point of applying opinion or support of a neighborhood's desire,
30 which may be well intended but if not supported by an ordinance, he is not comfortable in that
31 role. City Planner Gadow explained the difference is that the Subdivision Ordinance language
32 indicates the Planning Commission is to review the character of the structure and how it relates
33 to the neighborhood. That allows the ability to look at those things.

34
35 Chair Gonzalez stated a large lot with an existing house on one side was subdivided in her
36 neighborhood but it did not have to come to the Planning Commission. It only comes before the
37 Planning Commission when the property owner wants to do more or exceed what is allowed
38 under the ordinance and then the Planning Commission has to perform due diligence.

39
40 Commissioner Vanderheyden stated he wanted to be sensitive to the developer's need in that, in
41 essence, the Planning Commission has forced the choosing of every plant in the yard before
42 there is a buyer who may want to paint the house tan instead of gold.

43
44 Commissioner Crowder stated he looks at the Planning Commission as being mediators between
45 the developer and neighbors because the neighbors never want change. He stated he did not
46 want change in his neighborhood either. Commissioner Crowder indicated he does not look at

1 developers as enemies but as business people who want to generate a good deal of profit, which
2 is not a bad thing but their interest is not the same as the residents. The Planning Commission's
3 interest is for the City, to balance those two interests, and enhance the City without trampling on
4 the developer's or resident's rights. Commissioner Crowder referenced the question posed to the
5 developer asking, "Would you do it again?" and indicated if a developer answered "no" then he
6 should not be in the developing business because he does not feel that developer was "put
7 through the ringer." Commissioner Crowder stated he has no problem making the developer
8 come back to another meeting because ultimately the product that evolves, in most instances, is
9 better than what was originally presented. He stated sometimes he thinks the Planning
10 Commission gets carried away with its power to make the decisions, but you have to be
11 subjective when looking at the ordinance while keeping in mind what is in the best interest of the
12 City.

13
14 City Planner Gadow indicated it is staff's responsibility to let the Planning Commission know
15 when they are going too far. He stated that is why he indicates he will ask for a legal opinion on
16 the conditions imposed to find out whether or not they are defensible and if not, how to reword
17 those conditions. That is the role of staff, to help the Planning Commission during that
18 mediation.

19
20 Commissioner Crowder stated the Planning Commission is lucky because in the past there have
21 been City Planners who wanted their recommendation "rubber stamped."

22
23 Commissioner Vanderheyden stated his question to the applicant was only based on his sole
24 experience in Plymouth, which must have a different subdivision ordinance. City Planner
25 Gadow agreed that getting into the building design is unique to Wayzata. Commissioner
26 Vanderheyden explained that in Plymouth, you had to prove a reasonably sized and designed
27 home would fit on the lot so in the subdivision application, and the city planner then goes
28 through the process once a person chose to build.

29
30 Chair Gonzalez noted tonight's applicant could have built what he wanted on a single lot or
31 could have subdivided and constructed two smaller homes, but a CUP was needed because he
32 wanted to construct two buildings and exceed hard cover. The size and height of the house is
33 what the applicant offered to appease the neighbors. It was not imposed on the applicant by the
34 City. Chair Gonzalez stated residents have asked why they should bother to bring their concerns
35 to the public hearing when they are not taken into consideration; however, that is why staff drafts
36 the findings of fact so the public's concerns are included. City Planner Gadow advised that
37 whether the recommendation is for approval or denial, neighborhood opinion cannot be used as
38 the sole rationale so staff needs to be careful when drafting the findings of fact.

39
40 Chair Gonzalez noted the Planning Commission has to take into consideration the public's
41 opinion and asked how that is balanced. City Planner Gadow stated it is balanced by one of the
42 considerations but cannot be the only basis of the recommendation. Staff provides a base
43 analysis and preliminary analysis of the criteria without presupposing the outcome.

44
45 Chair Gonzalez stated in the 110 Gleahaven application, there was an issue of drainage onto
46 adjacent properties when the building was moved to within 12 feet of the property line. This was

1 raised as a public concern and incorporated into a condition of the recommendation. City
2 Planner Gadow stated that would have been required to be mitigated regardless.

3
4 Commissioner Iverson indicated the issue of landscaping came up with the subdivision due to
5 the number of trees to be removed. City Planner Gadow stated a consideration is what impact
6 the subdivision has on trees and natural features. A landscaping plan is required so the Planning
7 Commission can determine what will be impacted and what will be replaced.

8
9 Commissioner Iverson stated the Planning Commission has not told the developer what to plant
10 but reviewed what they are going to do. City Planner Gadow advised it would be over reaching
11 for the Planning Commission to dictate the species of landscaping required set. In this case, the
12 applicant hired his own independent landscaper and the City's Forestry Department was
13 supportive of their landscape plan.

14
15 Commissioner Vanderheyden stated the City Forester reviewed their plan and found it
16 acceptable and then it came to the Planning Commission for secondary review. He indicated that
17 is where he is confused. He stated if the City's approval for a standard is not sufficient, then the
18 City should change the standard rather than filing something to a standard, and then coming to
19 the Planning Commission for a secondary review. Commissioner Vanderheyden stated he is not
20 qualified to talk about landscape.

21
22 City Planner Gadow explained that in the case of a subdivision, one of the findings relates to the
23 impact of the subdivision to trees and natural features. The net result is that they would be
24 replanting so the Planning Commission is asked to comment on that landscaping plan. He felt it
25 was still valuable to have a citizen body say they have looked at the plan, heard comments of the
26 City Forester, and concur or do not concur, and to state the reasons. In this case, language was
27 added to encourage the applicant to purchase the largest balled and wrapped trees, which the
28 applicant stated they would do during the meeting.

29
30 Chair Gonzalez indicated it has been her experience that the City Engineer reviewed drainage
31 and streets and the Planning Commission also goes through the whole thing with their
32 recommendation. She stated the Planning Commission does not need to "rubber stamp" that
33 staff recommendation. The Planning Commission can make a recommendation to the City
34 Council for approval or denial but as the issues are being discussed, some problems may come
35 up.

36
37 City Planner Gadow explained that the Planning Commission has every right to provide
38 commentary independent of staff's recommendation. But, there are situations where staff may
39 have a perspective different than the Planning Commission. As an example, in the case of
40 requesting a private street, the City's street standards are 26 feet curb-to-curb but staff has found
41 in certain situations if the subdivision is in treed lots, it is not appropriate because staff is
42 weighting the impact of the additional street width on trees. Under certain circumstances, staff
43 has recommended a 20-foot private street, not meeting public street standards because there are
44 compelling issues with impact to trees.

45

1 City Attorney Meller next addressed variances, explaining there is a separate statute dealing with
2 variances from the Subdivision Ordinance. When a variance for a subdivision, there is different
3 criteria than a variance from the Zoning Ordinance. He explained that a variance is saying that
4 because of unique circumstances, it will permit the applicant to vary from the terms of the
5 ordinance (height, setback). Prior to the 2011 amendment, variances depended upon an “undue
6 hardship.” An undue hardship, under the overruled Statute, said the property in question cannot
7 be put to a reasonable use if used under conditions allowed by the official control. City Attorney
8 Meller referenced Page 7, Variances; Practical Difficulties, indicating: “...the plight of the
9 landowner is due to circumstances unique to the property not created by the landowner, and the
10 variance, if granted, will not alter the essential character of the locality...” He explained this
11 was a harsh standard and, as a result, the lower courts argued that the Legislature must not have
12 meant that harsh of a standard and came up with a “reasonable use” standard. This resulted in a
13 problem with granting variances because most did not meet the Statute standard. In addition, 20
14 years ago, a previous City Planner decided to call variances “conditional use permits” because
15 then the undue hardship criteria was not a rationale. During that time, the City granted
16 conditional use permits for parking, which is actually a variance consideration.

17
18 City Attorney Meller provided an explanation of the Minnesota Supreme Court’s 2010 decision
19 in the *Krummenacher v. City of Minnetonka* case, wherein the property owner wanted to
20 construct an addition on top of a flat-roofed garage to accommodate a yoga studio, claiming an
21 undue hardship and requesting a height variance. The neighbors complained that was not an
22 undue hardship since the property owner wanted to use it for a yoga studio. The District Court
23 upheld the City’s decision and the Court of Appeals affirmed that decision. The Krummenachers
24 then appealed to the Minnesota Supreme Court. The Supreme Court agreed with the
25 Krummenachers that the City did not apply the correct standard to “reasonable use” of the undue
26 hardship test. City Attorney Meller read the Minnesota Supreme Court’s position and explained
27 that intensive lobbying resulted and in 2011, a new Variance Statute and Ordinance provided a
28 “practical difficulty” standard as opposed to an “undue hardship” standard. This new standard
29 retains the familiar three-factor test of reasonableness, uniqueness, and essential character and is
30 set forth in the City’s ordinance. When evaluating a variance under the new law, the Planning
31 Commission should adopt findings addressing the following:

- 32 1. Is the variance in harmony with the purposes and intent of the ordinance?
- 33 2. Is the variance consistent with the Comprehensive Plan?
- 34 3. Does the proposal put property to use in a reasonable manner?
- 35 4. Are there unique circumstances to the property not created by the landlord?
- 36 5. Will the variance, if granted, alter the essential character of the locality?

37
38 City Attorney Meller explained the new Statute gets rid of the prior harsh standard and staff will
39 set forth the variance criteria that has to be met, but it makes the Planning Commission’s job
40 more difficult because there is currently no case law. He encouraged Planning Commissioners to
41 review the new ordinance and State statute, noting it will be easier to grant and more difficult to
42 deny a variance under the new standards.

43
44 Chair Gonzalez noted the language indicates “the circumstances are not created by the property
45 owner” but every variance is created by the owner wanting to do something else with the
46 property, such as wanting a yoga studio. City Planner Gadow explained that with some

1 circumstances, it is clear the circumstance is created by the property owner. But there are also
2 cases where a building has been constructed into a setback, which is unique to the property and
3 not created by the applicant.

4
5 Chair Gonzalez stated some applicants want to build closer to the property line to construct a
6 larger building, which is a situation created by the property owner. City Planner Gadow
7 explained that would involve a case-by-case analysis. It was noted that since the law changed,
8 only two variance applications have been considered in Wayzata.

9
10 City Attorney Meller advised that if denying under the current Statute, it is the easiest to cite the
11 rationale related to the plight of the property owner.

12
13 Commissioner Crowder asked whether the complete Statute for variances includes the review
14 criteria language included on Page 9 and five findings as listed. City Planner Gadow answered
15 in the affirmative. Commissioner Crowder stated he has conceptual difficulty distinguishing
16 between variances and CUPs and after reading the information from the City Attorney, he
17 remained confused because variance is an “authorized violation” and a CUP is a “permitted
18 exception.” City Planner Gadow explained you cannot use a variance to vary the use. A CUP
19 can change the use on the property. As an example, you cannot apply for a variance to have a
20 duplex in a single-family district but if it meets certain criteria, you can make a CUP application
21 to have a duplex in a single-family district. City Planner Gadow noted variances consider
22 performance standards (i.e., setbacks, building heights, hard cover).

23
24 City Attorney Meller indicated that within any zone, there will be a series of permitted uses so if
25 someone wants a single-family home in single-family zone, that property owner has that right.
26 But, within the single-family zone, there are conditional uses that are allowed if they meet
27 criteria of the ordinance. As an example, in an R-1 zone, a conditional use is a tennis court,
28 which is not an automatic right but can be approved through the CUP process. City Attorney
29 Meller stated there are also uses that the community recognizes are needed but they want them
30 excluded from most zones due to the offensive nature of the use. This could be the situation with
31 a funeral home or adult use. For a funeral home CUP in a commercial zone, staff would present
32 the criteria the Planning Commission needs to find to consider a recommendation of approval.

33
34 Commissioner Crowder asked whether the ordinance relating to permitted uses in zoning
35 districts should be reviewed to determine if language needs to be updated to address permitted
36 CUPs. City Attorney Meller answered in the affirmative. City Planner Gadow stated that could
37 be a longer-term project, noting it is a time intensive process and costly but could be considered
38 in the latter part of the year.

39
40 Chair Gonzalez stated if a church use is not listed as a conditional use in a residential zone,
41 maybe the Planning Commission should address that situation. City Attorney Meller agreed,
42 noting there is a lot of case law relating to mega-churches purchasing large acreages and taking
43 that property off the tax rolls.

44
45 City Planner Gadow stated the problem with adding more uses to the conditional use category, is
46 that the use becomes permitted if the set out criteria is met.

1
2 Commissioner Crowder stated even if listed as a conditional use, that does not mean it is
3 permitted because you still have to satisfy planning criteria. City Planner Gadow agreed that is
4 the case and if the applicant can demonstrate no negative impact on traffic or property owners, it
5 may have to be approved. Or, if the City can prove a documented impact that would be rationale
6 for denial.
7

8 The Planning Commissioners considered the appropriateness, from a planning standpoint, of
9 locating certain uses within single-family or other districts. City Attorney Meller advised that a
10 CUP runs with the land so as long as it is operated in accordance with the approved CUP, it
11 cannot be revoked.
12

13 City Attorney Meller next addressed Planned Unit Developments (PUD), explaining it is the
14 antithesis of traditional zoning that uses grids and segregated uses. As a recent example, the
15 developers of Locust Hills said that under traditional zoning, they could put in 44 lots that meet
16 acreage criteria but it would need 44 driveways and 26-foot streets with curb and gutter, and no
17 trees or green space or amenities. The Locust Hills developers asked to use the PUD process
18 that sets forth things that can vary, such as having no lot lines and allowing homes to cluster in
19 non-treed areas with the remaining area being green space. Locust Hills asked to cluster the
20 homes and create open/park spaces that created a better use of the property. On the other hand, a
21 PUD is not appropriate for a two-lot subdivision in place of a variance. City Attorney Meller
22 explained that many cities have a minimum acreage to request a PUD but Wayzata does not have
23 that restriction within its ordinance. With a PUD, the steps are: concept plan and design review
24 (preliminary approval), general plan approval (giving vested rights), and final plan approval.
25

26 City Planner Gadow reviewed the history of Design Standards that were drafted in the late 1990s
27 to provide suggested guidelines for commercial and multi-family but did not have force of
28 ordinance. In 2007 and 2008, the City converted those guideline standards into mathematically
29 driven Code by detailing percentage for materials such as glass and the setbacks. However, this
30 makes it more challenging for the Planning Commission and City Council. Staff provides a grid
31 listing Design Standard criteria and a comparison and asks the Planning Commission and City
32 Council whether the proposed design meets that numerical criteria. During site plan review,
33 commentary is offered and the developer most times takes it into consideration when preparing
34 the design. City Planner Gadow stated, as an example, the 415 Indian Mound application
35 submitted one design and Planning Commission worked with the applicant's architect to change
36 the design to add aesthetic elements and meet criteria. However, the review focus needs to be on
37 the numerical criteria.
38

39 City Attorney Meller stated with subdivisions, the State has a vested interest in having a
40 different tax identification number for each property so it can be taxed. In the past, property
41 owners want a subdivision approved but the City needs to get approval from the State taxing
42 authority. He explained the Statute specifically deals with subdivisions and what an applicant is
43 required to provide including things like streets, parks, open spaces, grading, location of lots,
44 structures, public trails, streets, lighting, and other utilities. The City will insist upon easements
45 for utility and drainage and streets to ensure the subdivision is appropriate. The City's ordinance
46 also addresses issues such as premature subdivision, which provides the City with the ability to

1 deny a subdivision request if it lacks adequate drainage, roads, waste disposal, etc. In the past,
2 the City denied one subdivision because it was not provided with water service and found to be a
3 premature subdivision. The ordinance also addresses cul-de-sacs and indicates they cannot
4 exceed 600 feet in length. City Attorney Meller indicated that with all of this, the subdivision
5 ordinance provides for variances. That Statute authorizes a variance where an usual hardship on
6 the land exists. City Attorney Meller read the findings that had to be met for a variance under
7 the subdivision ordinance and stated the City has been strict in not granting variances for
8 subdivisions unless that criteria is met.

9
10 City Planner Gadow noted the compelling factor with the 324 Bushaway application was to
11 preserve old growth trees so the road width was reduced from 26 feet to 20 feet, which met State
12 Fire Code.

13
14 City Attorney Meller cautioned the problem with private roads is that they deteriorate and then
15 the property owners want the City to take over. City Planner Gadow stated the development
16 agreement and resolution language state the roads, in perpetuity, will be private and the City will
17 not accept the road back as a public roads.

18
19 Chair Gonzalez asked what happens when the road deteriorates to the point it becomes a danger.
20 City Planner Gadow indicated it is dealt with as a nuisance.

21
22 Chair Gonzalez asked about the park dedication fees and successful action against the City of
23 Bloomington because it used those fees to maintain Hyland Park. City Planner Gadow stated the
24 park dedication fees go into the CIP and are focused on tree replacement. It was noted that the
25 new Parks & Trails Commission will provide recommendation to the Council to assure use of
26 park dedication fees are consistent with Statutes.

27
28 City Attorney Meller stated in 2006, the park dedication Statute was changed and the City now
29 has to update its ordinance. Now, on a case-by-case basis, the City has been indicating what it
30 thinks is fair and asking the developer for an agreement. Under the Statute the City can require
31 dedication of so much of the project for a park, as long as it is reasonable. But, many times, the
32 subdivision is not large enough to insist on park land so, under Statute, the City can extract a
33 park dedication fee. This fee is not deposited in the City's general coffers but dedicated to use
34 with parks and trails.

35
36 Chair Gonzalez asked whether the Statute requires park dedication fees to be used to purchase
37 new parks or allows use of the fees to maintain existing parks. City Attorney Meller stated he
38 will research the Statute but thinks park dedication fees can be used to maintain existing parks.
39 He explained the park dedication is a percentage of the fair market value but in a case with lake
40 lots of high value, it has been challenged so the City negotiated for a lower park dedication fee.

41
42 City Attorney Meller advised that one of the most important things the Planning Commission
43 will deal with is the Comprehensive Plan and to hold those public hearings. The City is required
44 by law to periodically update its Comprehensive Plan. One issue is that previously, a
45 Comprehensive Plan was an irrelevant document and if there was a conflict between the Zoning
46 Ordinance and Comprehensive Plan, the Zoning Ordinance prevailed. However, several years

1 ago, the Legislature indicated the Comprehensive Plan controls and Zoning Ordinance and the
2 two documents have to be consistent. In addition, the Comprehensive Plan has to be approved
3 by the Metropolitan Council. Because of that, developers have initiated lawsuits when a
4 Comprehensive Plan is not consistent with the Zoning Ordinance. The Planning Commission
5 needs to make every decision on zoning and land use planning applications by analyzing each
6 against how it relates and fits with the Comprehensive Plan.

7
8 City Planner Gadow explained the Comprehensive Plan is updated on a ten-year basis and last
9 completed in 2008. The process for the 2018 update will start late-2015 but if an applicant asks
10 for a Comprehensive Plan amendment for a project, that request will be considered on a case-by-
11 case basis.

12
13 Chair Gonzalez referenced Page 4, second to the last bullet point, describing the proper
14 procedure for entertaining, discussing, and passing motions. She asked when the conditions of
15 approval are discussed. City Planner Gadow explained that after the public hearing is closed and
16 the Commissioners are deliberating the application, it is appropriate to ferret out the conditions.
17 The maker of the motion should list the conditions of approval. The motion would then be
18 seconded and if there are additional conditions, the motion would be amended. He explained
19 that with a simple project, the conditions can be determined at the meeting but with larger
20 projects, direction can be given to staff to draft the conditions, based on the Planning
21 Commission's input, for consideration at the following meeting.

22
23 Chair Gonzalez asked about the process to remove their personnel e-mail addresses from the
24 City's site. City Planner Gadow stated he sends information to both accounts (personal and
25 City) and to send it to one, he only needs a commitment that the Commissioner will check that
26 account. City Attorney Meller cautioned the Planning Commissioners against sending and
27 responding to e-mail to each other or conference calls.

28
29 Commissioner Vanderheyden stated, relating to responsiveness to citizens, he has received e-
30 mails from citizens and understands no material response but asked about acknowledgement of
31 receipt. City Planner Gadow suggested an acknowledgement that the e-mail has been received
32 but no other commentary. Commissioner Vanderheyden asked if he could copy the City Planner
33 when he acknowledges receipt. City Planner Gadow stated that would be acceptable.

34
35 Chair Gonzalez asked if that e-mail information then needs to be provided to the City so there is
36 a record. City Attorney Meller agreed that in a perfect world, all evidence should be presented
37 in front of the applicant so there is opportunity for rebuttal. He again cautioned the Planning
38 Commissioners from adding commentary to the acknowledgement of receipt.

39
40 Commissioner Crowder asked about process if he receives a letter. City Planner Gadow
41 suggested submitting the letter to staff so it can become part of the record.

42
43 Chair Gonzalez thanked City Attorney Meller and City Planner Gadow for providing this
44 information.

45
46 **AGENDA ITEM 3. Other Items**

a. Review of Development Activities

City Planner Gadow stated the next meeting agenda may include an application for an outdoor sidewalk café as well as the tree and telecommunication draft ordinances.

b. Other Items

None.

AGENDA ITEM 4. Adjournment.

There being no further business, Commissioner Crowder made a motion, seconded by Commissioner Ramy, to adjourn the meeting. The motion passed unanimously.

The meeting was adjourned at 9:04 p.m.

Respectfully submitted,

Carla Wirth

Recording Secretary

TimeSaver Off Site Secretarial, Inc.