

**WAYZATA PLANNING COMMISSION
MEETING MINUTES
APRIL 15, 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: Cooper, Crowder, Gonzalez, Iverson, Pearson, Ramy Jr., and Vanderheyden. Absent and excused: None. City Planner Gadow and Mayor Willcox were also present.

Commissioner Pearson stated he was not present so he would recuse himself from participating in meeting minute approval. He stated he appreciates the way the minutes are written in an active, rather than passive voice, but preferred using consistent verbs. Commissioner Pearson stated the minutes use verbs such as: "stated, referenced, explained," and he preferred all comments to be reflected as a statement. He stated some comments use opinionated verbs (explained, referenced, advised) and "stated" and "asked" would be more appropriate.

Chair Gonzalez stated her understanding that "explained" is used in the minutes when City staff is providing a requested explanation. Commissioner Pearson stated the use of "staff explained" tells you why your are wrong and "staff expressed the opinion" would be a better reflection.

Commissioner Crowder stated the stenographer should use the words as stated and if not articulate, the record can speak for itself. He preferred the minutes not be paraphrased and accurately reflect the statements made.

Chair Gonzalez asked the City Planner to talk with the transcriptionist.

Commissioner Vanderheyden made a motion, seconded by Commissioner Crowder, to approve the April 1, 2013, Work Shop meeting minutes as presented. The motion passed 6/0/1 (Pearson).

Chair Gonzalez stated about one month ago she missed a meeting as she was out of town and had watched the rerun on television. She stated she found it difficult to hear some of the Commissioners so she would ask all to speak directly into the microphone.

AGENDA ITEM 2. Regular Agenda Public Hearing Item.

a. 701 Lake Street – Yogurt Lab

1. Outdoor Sidewalk Café Conditional Use Permit (CUP)

City Planner Gadow presented the Conditional Use Permit (CUP) application by Mikael Asp of Yogurt Lab for an outdoor sidewalk café at 701 Lake Street. He displayed an aerial slide depicting the subject site and described the surrounding streets and buildings, noting the proposed use is within the middle of the building and block. City Planner Gadow displayed slides of the proposed sidewalk café comprised of five tables and twenty chairs located on four

1 feet of the 701 Lake Street property and the remainder on public sidewalk. He stated the
2 ordinance requires sidewalk cafés to be cordoned off; however, staff could support either way
3 (requiring or not requiring the sidewalk café to be cordoned off) considering this location. City
4 Planner Gadow stated requiring it to be cordoned off may restrict the space so a variance could
5 be considered to not require such a system.

6
7 Commissioner Pearson asked, when City Planner Gadow states “staff,” beyond him who is staff
8 and whose opinions. City Planner Gadow stated “staff” is all department heads including the
9 Police Chief, City Engineer, Parks Department, City Manager, Utility Supervisor, and the Fire
10 Marshal. He stated the department heads, particularly the Police Chief, indicated a bollard
11 system may not be necessary so the sidewalk would remain clear. City Planner Gadow
12 displayed several more views of the proposed sidewalk plan to provide perspective with the
13 entire sidewalk/streetscape.

14
15 Commissioner Crowder stated he went out there on Saturday and measured the sidewalk. He
16 stated if you are supposed to have five feet for pedestrians, there is no way to get that right-of-
17 way north of the trees and light post and still have space for this outdoor café. Commissioner
18 Crowder stated if you measure from the curb, you can do it, but not to the north of the light pole
19 if using eight feet.

20
21 City Planner Gadow stated the applicant’s architect prepared a rendering, which he displayed,
22 and they came up with five feet four inches from the light pole to the edge of the bollards. City
23 Planner Gadow stated he found it was 14 feet from the building edge to that curb line.

24
25 Commissioner Crowder stated he does not think there is enough room for two to walk abreast
26 with an eight-foot area for tables and chairs. City Planner Gadow stated it may be possible to
27 adjust the location of the table and chairs to give a bit more space along that edge.

28
29 Commissioner Crowder stated he does not think there is enough room and the sidewalk is owned
30 by the public for their use. City Planner Gadow stated the tables could be moved farther north to
31 assure there is five feet or more. Commissioner Crowder stated they want eight feet so maybe
32 you give them six feet and if you remove the barrier it may make it easier, but the barrier makes
33 it look much nicer.

34
35 City Planner Gadow completed presentation of the staff report and displayed pictures of the
36 metal tables and chairs, which was an allowed material for outdoor sidewalk café furniture.

37
38 City Planner Gadow stated action steps for the Commission’s consideration are to develop
39 findings of fact based upon the staff report and any revisions the Commission wishes to make or
40 to direct staff to prepare a Planning Report and Recommendation with appropriate findings for
41 review and adoption at the next Planning Commission meeting.

42
43 Mikael Asp, co-owner of Yogurt Lab, 1600 Hillcrest Avenue, St. Paul, stated they have four
44 locations in the Minneapolis area and by the end of the calendar year, will have eight locations.
45 He stated they took the architectural plans provided by Beltz Enterprise, the building owner, and
46 it would never be their intention to impede people from walking on the sidewalk. Mr. Asp stated

1 they are flexible to reconfigure the tables/chairs and according to the building architect, it is five
2 feet from the edge of the building to the property line and eight and one-half to nine feet from the
3 building edge to where the sidewalk starts, or perhaps a little more. He stated a physical
4 measurement can be taken to confirm those measurements before they commit.

5
6 Chair Gonzalez stated this location is recessed a bit from the other spaces. Mr. Asp stated it is.

7
8 Commissioner Crowder stated he assumes they want as many tables/chairs as would allow and
9 asked what is the minimum they would tolerate.

10
11 Mr. Asp stated they assumed five feet from the building to the sidewalk and with the additional
12 three feet requested, want to provide an extra table with four chairs for a more comfortable
13 experience. He stated the easy scenario would be to remove one table and slide the remaining
14 tables farther down to create four parallel tables and eliminate jutting out. Mr. Asp stated he
15 would like a minimum of four tables and sixteen chairs.

16
17 Commissioner Ramy asked if they proposed additional lighting over what exists. Mr. Asp stated
18 they have not applied for a City approval of the signage but are considering adding a light over
19 the sign to light it and downward toward the sidewalk. He stated they have not proposed any
20 outdoor lighting in the plans and were open to comments.

21
22 Commissioner Iverson asked about the security of tables at night. Mr. Asp stated the tables are
23 stackable and would be moved inside. During the off season, the tables/chairs would be located
24 off site.

25
26 Commissioner Iverson asked about cleaning the sidewalk on a daily basis. Mr. Asp stated they
27 have access to a water hose. He stated at their Calhoun location, they have an outdoor shared
28 patio and every night they use a hose to clean it. They pride themselves on cleanliness and pay
29 from their own pocket to have it power washed every four to six weeks. He stated their product
30 can be wiped up and they will attempt to keep the patio as clean as possible.

31
32 Commissioner Iverson asked if there would be a problem with bees. Mr. Asp stated he has not
33 heard of a problem at their other locations and they do not sell soda but he knows that bees can
34 hover. He stated bees also tend to circulate around garbage cans and they can keep their can
35 inside during open hours.

36
37 Commissioner Cooper stated she had an opportunity to walk this sidewalk and feels the
38 configuration of the tables would not be a problem but the stanchions give the allusion of less
39 walk space. She stated if the stanchions are not there, it would create more space to maneuver
40 around. Commissioner Cooper stated the Gianni's space has a boardwalk around its outdoor
41 seating and it is not very wide, making it difficult to walk two abreast. She stated she would
42 consider not requiring the stanchions as they do not cut down on risk of injury.

43
44 Mr. Asp agreed and stated the ropes make him nervous that his five-year-old child may trip and
45 they have many young customers. He stated the stanchions were provided as an option since it is
46 part of City Code requirement.

1
2 Commissioner Cooper stated the stanchions appear more like a barrier. Mr. Asp stated he thinks
3 customers may step over the ropes if they want to get to the second or third table. Commissioner
4 Cooper asked if the furniture was stainless. Mr. Asp stated it was stainless.

5
6 Commissioner Pearson asked if there is any business in town that pays for the right to use the
7 public sidewalk, or if it is at the discretion of the City. City Planner Gadow stated all with a
8 sidewalk café pay an annual permit fee of \$185 in addition to making CUP application.

9
10 Commissioner Crowder asked if sidewalk café owners do not pay an annual rent fee to use the
11 sidewalk. City Planner Gadow stated at this time they do not but the Council is considering that
12 as a policy decision.

13
14 Commissioner Pearson stated it seems wrong to him as it is valuable real estate, but it is a policy
15 decision above his pay grade. He stated it is a lot of space to give them for free, but we have
16 given it to other businesses without fee. City Planner Gadow stated we have not given it for free,
17 they pay a permit fee to use the space. Commissioner Pearson stated \$180 is not much for the
18 square footage.

19
20 Commissioner Vanderheyden asked City Planner Gadow if the building owns five feet of the
21 sidewalk so if using only five feet, they would not need to come before the Planning
22 Commission for a CUP. City Planner Gadow stated that is correct and if none of the tables and
23 chairs crossed over onto City sidewalk, a CUP would not be required.

24
25 Commissioner Vanderheyden stated if the CUP is put into place for the dimensions proposed, it
26 passes into perpetuity. City Planner Gadow stated that is correct and it would be recorded with
27 the property.

28
29 Commissioner Vanderheyden stated he was trying to foreshadow a scenario. He stated if five
30 years from now this stopped being a yogurt place and became a steak restaurant, the CUP would
31 still be available to that restaurateur. City Planner Gadow stated the new restaurateur could use
32 the same layout as approved with the CUP.

33
34 Commissioner Vanderheyden asked about the stanchions. City Planner Gadow stated if the
35 Planning Commission required stanchions as part of the CUP approval, it would carry on to
36 future property owners.

37
38 Commissioner Vanderheyden asked if stanchions cannot then be required in the future if not
39 required as part of this CUP. City Planner Gadow stated if the Planning Commission wanted to
40 not require stanchions as part of this CUP but leave it open for future use, approval could be
41 conditioned that the deviation of the stanchion requirement is particular to this use.

42
43 Commissioner Vanderheyden stated this type of use is transient, in and out. Mr. Asp stated their
44 customer is in and out the door in 15 minutes.

45

1 Commissioner Vanderheyden stated with a full fledged restaurant, patrons are sitting for an hour
2 and a half. It is a different vibe and he does not want the Planning Commission to give up the
3 right to what the barrier would look like for a future use. He asked what is the width of the
4 temporary sidewalks outside of Gianni's. City Planner Gadow stated it is seven feet in width.
5 Commissioner Vanderheyden stated he would have guessed three feet.
6

7 Mr. Asp asked what type of sidewalk is used at Gianni's. City Planner Gadow stated the City
8 Council granted Gianni's temporary use of a sidewalk extender on a seasonal basis. Two to
9 three parking spaces are given up for the temporary sidewalk extender so pedestrians walk there
10 instead of through Gianni's sidewalk café. Unlike this situation, there is not an offset in space to
11 create an alcove/recession in the building to provide an additional five feet. City Planner Gadow
12 stated with Gianni's, the face of the building and sidewalk are on top of each other and because
13 Gianni's sells liquor, the sidewalk café must be cordoned and contiguous.
14

15 Commissioner Vanderheyden stated he likes Gianni's setup but the sidewalk can feel tight, at
16 times.
17

18 Commissioner Pearson asked if this is very consistent with what we have done before or outside
19 the boundaries of what has been done before. He asked for a historic perspective. City Planner
20 Gadow stated this request is well within the boundaries of what the City has considered before.
21 For example, two years ago the Planning Commission and City Council reviewed an application
22 from Starbucks to do something similar with three tables and associated chairs. The Planning
23 Commission and City Council felt a bollard system/divider was not necessary because of the
24 width of the sidewalk and wanted the tables/chairs placed closer to the curb with the pedestrian
25 walkway between the tables/chairs and building. City Planner stated with McCormick's, there is
26 a dividing line between the tables/chairs and sidewalk.
27

28 Commissioner Pearson stated he wants to make sure the Planning Commission would not be
29 arbitrary in treating them differently than those coming before. City Planner Gadow stated the
30 recommendation of approval could include the same conditions required of all businesses
31 operating a sidewalk café.
32

33 Commissioner Crowder stated if the sidewalk extension at Gianni's is seven feet wide and all
34 who use it realize that two cannot walk abreast or bypass another pedestrian, he would ask what
35 would a five-foot sidewalk be like. He stated as a matter of principal, why do we want to create
36 a choke point and narrow sidewalks for pedestrians. Commissioner Crowder stated he wants to
37 encourage business so it is a success but the public is entitled to walk down the sidewalk two
38 abreast or to meet each other without an impediment.
39

40 City Planner Gadow stated some adjustments can be made to tables and chairs to give an extra
41 foot or two and removing the stanchions would make it feel more open. He stated with Gianni's,
42 it feels more narrow because the outside stanchion protects pedestrians from traffic and the
43 inside stanchion is a State liquor licensing requirement. In this situation, it would feel and act
44 more open without the stanchions and adjusting the tables and chairs.
45

1 Commissioner Crowder stated narrowing the space of the tables and chairs would be
2 appropriate.

3
4 Chair Gonzalez asked if the tables have to be up against the building because there are other sites
5 (Ben & Jerry's and Caribou Coffee) where the tables are not against the building, the sidewalk is
6 narrower, and she has noticed no problems.

7
8 City Planner Gadow stated there have not been problems with Ben & Jerry's or Caribou but with
9 Starbucks, the tables are often moved.

10
11 Mr. Ash stated if the tables are located closer to and engulfing the light pole, leaving the
12 pedestrian way open next to the building, his concern would be one of cleanliness. He stated the
13 priority is citizen clearance.

14
15 Chair Gonzalez stated if this CUP is approved, it runs with the land. She asked about a future
16 use that included a liquor license if the Planning Commission recommends a variance from
17 ordinance standards and stanchion are not required. City Planner Gadow stated if a future
18 business wants to use this sidewalk area and sell alcohol, it would be required to use stanchions.
19 He stated the type of stanchion system proposed by this applicant would not meet the State
20 alcohol licensing requirements.

21
22 Commissioner Crowder asked about vegetation by the establishment's door. Mr. Asp stated two
23 are existing and owned by the building owner. From a space standpoint, they planned to limit
24 flower pots but are concerned with making it aesthetically pleasing so if deemed to be needed,
25 they would be open to doing that.

26
27 Chair Gonzalez stated a safety concern has been voiced with the roping/cordoning but her
28 concern is if not in a contained area, the chairs could be moved or displaced and cause a tripping
29 hazard. Mr. Asp stated they have an employee assigned to consistently and regularly pick up
30 yogurt cups and reassign the tables and chairs. Chair Gonzalez stated that is one reason she
31 would like to see it cordoned, to keep the tables and chairs in place.

32
33 Commissioner Cooper stated that has not been a problem with Caribou or Ben & Jerry's. Chair
34 Gonzalez stated those tables/chairs are closer to the curb. Mr. Asp stated their perspective is to
35 come to the City and try to find a solution that works for everybody. They had included the
36 stanchions and ropes because it is an ordinance requirement but from a financial standpoint,
37 preferred it not be required and then determine if it is needed. Mr. Asp stated they are open,
38 once it is laid out and see how it operates, to provide them after-the-fact. He stated he preferred
39 that to being required to make a \$1,000 investment and then be told the stanchions are not
40 needed and to take them out.

41
42 Chair Gonzalez stated if the City Council grants the variance, it runs with the land so the City
43 does not have a "second bite at this apple" so they need to consider what is safe for the
44 community and good for the business.

45
46 Chair Gonzalez opened the public hearing at 7:40 p.m.

1
2 There being no comment, Chair Gonzalez closed the public hearing at 7:40 p.m.
3

4 Commissioner Vanderheyden stated he understood the Planning Commission could recommend
5 no stanchions and require future uses to come back for a future look. City Planner Gadow stated
6 if recommending approval without the stanchions, the language could be crafted that the
7 variance is predicated on the use being proposed. If a future restaurant has an alcohol license,
8 they could not avail themselves of this variance.
9

10 Commissioner Vanderheyden stated he thinks that getting rid of the stanchions would help with
11 the concern about the width of the sidewalk. He stated if the ordinance is five feet, he would not
12 want to constrain this applicant based on a variance from an ordinance. Instead he would
13 suggest the policy be changed if it is not accurate. Commissioner Vanderheyden stated he did
14 not support holding this applicant to a higher standards.
15

16 Commissioner Pearson stated generally he thinks these outdoor seating areas are a huge benefit
17 to the community and he would like to encourage them but his concern is whether all
18 applications are being treating in the same way. He described an area in Minneapolis that had a
19 three-foot sidewalk area and stated he found that it added ambiance to downtown Minneapolis.
20 He stated from a general policy standpoint, he does not understand why the City gets \$150 for a
21 year for use of the sidewalk, which is ridiculously low to him. Commissioner Pearson stated he
22 would encourage this type of enterprise wherever we can find it in the City so he had no
23 philosophical issue with it but wanted to get appropriately for what the City is giving.
24

25 Commissioner Cooper stated she agreed with Commissioner Pearson's comments. She stated
26 the trees are not on the establishment's property and the lamppost is the only obstruction. She
27 stated she is in favor of this request and thinks it would be a nice asset to the community.
28 Commissioner Cooper stated she thinks it would work better without the stanchions. With
29 regard to being paid for use of the sidewalk, she stated she wants to encourage businesses to
30 come to Wayzata and if businesses are "taxed" too much, it will discourage them from coming.
31

32 Commissioner Iverson stated all of her points have already been discussed. She stated she is in
33 agreement that anything we can do to encourage business in Wayzata is positive. She stated she
34 knows of their other businesses and thinks it would be a good addition to the downtown.
35 Commissioner Iverson stated she shares some concerns about the scale of the passageway and
36 reducing to four tables would help that concern as well as getting an actual measurement.
37

38 Commissioner Ramy stated he runs down that street and has constantly found the Caribou tables
39 are never in the same location because patrons move them where they see fit. However, he is
40 happy to see this applicant and hopes this business will be here for a long time to come.
41

42 Commissioner Crowder stated he preferred the sidewalk cafés at Gianni's or McCormick's over
43 Caribou or Starbucks. He stated he hates the idea that what we do tonight or the City Council
44 does will go with the property. He stated there is need for flexibility to have stanchions,
45 bollards, and vegetation in flower pots so a change can be made if the City does not like it or a
46 new property owner comes. Commissioner Crowder stated he likes the stanchions to create

1 separation and the ordinance says a minimum clear passage at the perimeter of the café shall be
2 at least five feet. Commissioner Crowder stated most think the metal sidewalk at Gianni's is too
3 narrow at seven feet so he would ask why should this be approved at five feet. He stated he
4 supported a sidewalk of at least seven feet in width, at a minimum. Commissioner Crowder
5 stated he wanted to be fair to businesses and deal with them equally but is more concerned about
6 citizens. The sidewalk belongs to the citizens and if the City is not receiving funds for use of
7 sidewalk, he would ask why create a choke point.

8
9 Commissioner Pearson stated the Planning Commission is not here tonight to make a policy
10 judgment but to take a standard and apply it. He asked where in the report are the standards
11 contained that the Planning Commissioners should be considering. City Planner Gadow stated
12 Section 3.1 contains the ordinance requirements for a sidewalk café and required findings.
13 Commissioner Pearson stated he is not here to express an opinion as much as consider a factual
14 recommendation.

15
16 Chair Gonzalez stated it is a wonderful use of the area, a great site, and will add a lot to the
17 community. The only concern she has is that she tends to be a little legalistic and to recommend
18 a deviation from the requirement for the area to be cordoned off, the Planning Commission
19 would need to treat it as a variance application. She asked what is the standard and what is the
20 hardship. Chair Gonzalez stated she finds this to be a reasonable use, the cordons provide some
21 safety, and it keeps the tables and chairs within that area. She stated she would support placing a
22 condition to require the sidewalk café to be cordoned off.

23
24 Commissioner Pearson stated he wants to use the same standards to which others with similar
25 applications have been held. He stated he does not have the benefit of historical considerations
26 and how the standards have been applied.

27
28 Chair Gonzalez noted every single property has its own unique characteristics and that is how
29 the Planning Commission has to look at each request. She stated the Planning Commission has
30 to be consistent and look at this particular application.

31
32 Commissioner Pearson stated he believes that precedence should govern to a certain point.

33
34 Chair Gonzalez stated the question is whether to require the area to be cordoned off and width of
35 the sidewalk.

36
37 Commissioner Crowder stated he supports requiring a seven-foot width north of the light pole
38 for the public sidewalk but some on the Commission think five feet is wide enough.

39
40 City Planner Gadow stated the ordinance is worded to indicate: "at least five feet."

41
42 Commissioner Crowder stated the City does not build public sidewalks that are five-feet in width
43 so he would ask why this application should be approved.

44
45 Chair Gonzalez stated the use is only for four months a year.

46

1 Commissioner Iverson stated it is the busiest four months of the year.

2
3 Commissioner Ramy stated the barrier of Gianni's feels more restricting because of the walls,
4 and he is more comfortable with five feet and the stanchions.

5
6 Commissioner Iverson preferred more than five feet and the stanchions.

7
8 Commissioner Cooper stated it would be nice to have more than five feet but this application
9 meets the standard of the ordinance. City Planner Gadow stated that is correct and the applicant
10 will measure the space and has stated willingness to relocate the tables/chairs to open that area of
11 restriction. He stated the Planning Commission could consider a conditional approval with a
12 condition to remove one table and adjust table location to create sidewalk clear zone of more
13 than five feet. He recommended not setting the exact width, in case it is not feasible, and that
14 staff and the applicant determine whether it can be made wider than five feet.

15
16 Commissioner Pearson stated he is not trying to express a personal opinion but under the
17 standard and previous approvals given, he cannot come to any conclusion other than that this
18 should be approved.

19
20 Commissioner Vanderheyden stated he supported five feet.

21
22 Chair Gonzalez stated most have expressed support for a minimum of five feet and segregation
23 around the seating area to contain the tables and chairs and protect the sidewalk from
24 encroachment.

25
26 Commissioner Pearson supported staff preparing a written Planning Report and
27 Recommendation for approval with findings and conditions as discussed so it can be reviewed
28 prior to taking action. City Planner Gadow noted the staff report contains findings of fact but
29 staff can prepare the Planning Report and Recommendations to include the conditions that have
30 been discussed.

31
32 Commissioner Iverson stated some commented on language for future tenants, which should be
33 addressed at the same time and included in the findings for review at the next meeting.

34
35 Chair Gonzalez asked who is willing to accept a minimum of five feet. Chair Gonzalez,
36 Commissioners Vanderheyden, Pearson, Cooper, and Ramy stated they would support a
37 minimum of five feet. Chair Gonzalez stated a majority of Commissioners has also expressed
38 support to require the stanchions.

39
40 Commissioner Pearson made a motion, seconded by Commissioner Vanderheyden, to direct staff
41 to prepare a Planning Report and Recommendation of approval for a CUP for an outdoor
42 sidewalk café for Mikael Asp of Yogurt Lab with appropriate findings and conditions for review
43 and adoption at the May 6, 2013, Planning Commission meeting. The motion passed 6/1
44 (Crowder).

45

1 Mr. Asp asked whether the five-foot area had to be a contiguous line, noting the trees and
2 lamppost do not line up. City Planner Gadow stated it would have to be a straight linear line and
3 include the sidewalk extensions.

4
5 Mr. Asp stated he is okay whether or not the stanchions are required and asked if there is an
6 option to temporarily set up the bollards so it can be physically inspected. He stated they will be
7 opening in May. City Planner Gadow stated he would have to research that further before
8 answering.

9
10 Commissioner Vanderheyden asked whether another public hearing would be held if this came
11 before the Planning Commission again. City Planner Gadow stated it would not.

12
13 Chair Gonzalez stated the responsibility of the Planning Commission is to determine what is the
14 best for the residents and make a recommendation to the City Council. The City Council makes
15 the final decision and on occasion has gone against the recommendation of the Planning
16 Commission. She noted Mr. Asp has many options to locate the stanchions.

17
18 Mr. Asp asked who makes the determination on the colors and style of bollards. City Planner
19 Gadow stated it could be looked at closer to the time the stanchions are installed but generally
20 they are of a darker color.

21
22 Commissioner Crowder stated he would recommend Mr. Asp bring information to the City
23 Council relating to the type of stanchions they will be using.

24
25 **AGENDA ITEM 3. Workshop Items:**

26 **a. Discussion of Tree Preservation Ordinance**

27 City Planner Gadow stated this item was on the agenda so he could provide an update. He stated
28 he had received a lot of good feedback from the Planning Commission on their concerns, items
29 to add, and items for additional research. The City Attorney is addressing the Commissioner's
30 questions about the legality of a number of provisions so the draft is not yet ready for formal
31 review. In addition, the Parks and Trails Board has not yet reviewed the ordinance or provided
32 comment.

33
34 City Planner Gadow stated he provided additional information for the Commission's review and
35 once the legal opinion and Parks and Trails Board recommendation are received, the ordinance
36 will be considered again by the Planning Commission. City Planner Gadow stated he has not
37 contacted the communities to get background on the ordinances provided but can take the
38 Commissioner's feedback.

39
40 Commissioner Vanderheyden stated he liked the Plymouth City Code, Section 530.13(2)F,
41 indicating: "Trees to be planted shall be from certified nursery stock defined and controlled by
42 Minnesota Statute..." Commissioner Vanderheyden stated he also liked Section 530.19,
43 Amendments, indicating: "...The Zoning Administrator shall have authority to approve
44 amendments, except that a change resulting in removal of more than ten percent of the
45 significant tree inches that were shown as preserved ...", allowing staff a modicum of latitude.

46

1 Commissioner Vanderheyden stated the Plymouth City Code contained no definition of
2 “significant tree” though he recalled it was eight inches. In Greenwood a significant tree is ten
3 inches for deciduous and twelve feet for evergreens. He stated the Planning Commission had
4 been seeking data points on that issue in its last conversation.

5
6 Commissioner Vanderheyden stated the last page of City of Greenwood ordinance, Subdivision
7 13, contains what he was looking for personally, a Municipal Projects Tree Replacement
8 subdivision that requires the City to abide by the same principle as its citizens.

9
10 Commissioner Pearson stated he has no specific comments other than his primary concern is that
11 whatever we do does not end us in a morass of litigation. He asked what is the proposed process
12 for the City Attorney telling us their view of what we can and cannot do. City Planner Gadow
13 stated they will highlight anything that is a “red flag” for litigation and, if desired, the City
14 Attorney could attend a Planning Commission meeting to answer questions.

15
16 Commissioner Pearson stated he is a “process guy” as opposed to “substance guy” and wants to
17 assure he is not violating the Constitution by telling a neighbor what they can do in their back
18 yard.

19
20 Commissioner Cooper stated Page 5 of the City of Greenwood ordinance has a New
21 Construction Tree Replacement Schedule that is quite substantial and asked if the City’s
22 ordinance has a similar schedule. City Planner Gadow stated he was unsure and would have to
23 talk with Greenwood about how they came up with that schedule. He stated he is concerned that
24 it would be too confusing to administer but it is an interesting way to categorize.

25
26 Commissioner Iverson stated we need to go through enforcement with legal to learn what we
27 actually can and cannot do, and then actually do it. She asked if an expert can be used to
28 determine how many years it would take a tree to die from root damage instead of using an
29 arbitrary number.

30
31 Commissioner Crowder stated he liked Plymouth’s scope better than the City’s proposed
32 language provides. He stated the Plymouth ordinance applies to subdivisions and preliminary
33 plat applications and only encourages that all other property owners follow it. It is not a
34 requirement but an encouragement, which he likes. Commissioner Crowder stated the City of
35 Greenwood’s ordinance does the same thing and defines the Shore Impact Zone as being 50 feet
36 back from the ordinary high water mark. He stated he does not know what a Bluff Impact Zone
37 Area is. City Planner Gadow stated it is specific to certain properties based on topography.

38
39 Commissioner Crowder stated he assumes the Greenwood ordinance does not apply to all
40 property owners. City Planner Gadow stated he was unsure and would have to check to
41 determine if it is all encompassing.

42
43 Commissioner Pearson stated at a previous meeting he thought Commissioner Crowder had
44 stated that “encourage” means nothing so he wants to know what Commissioner Crowder thinks
45 we can do to make it achieve the desired ends. Commissioner Crowder stated he does not think
46 the City should tell a property owner that they cannot cut down a tree because the City has an

1 interest in the tree. He stated the City did not plant the tree or care for the tree, so he does not
2 “buy” that the City can say he cannot cut down his tree. Commissioner Crowder stated he likes
3 to encourage property owners, which lets them be the steward of their land. He stated if someone
4 is subdividing a plat, the City should consider what is in the best interest of the community and
5 that is a completely different situation than saying to every property owner in Wayzata that they
6 cannot make a decision on their trees unless the City agrees.

7
8 Commissioner Pearson stated he thought at a meeting a couple of weeks ago, Commissioner
9 Crowder had made a point that encouraging someone was meaningless as opposed to compelling
10 someone. He stated he would like to encourage people to preserve trees but does not know how
11 to put that into an ordinance.

12
13 Commissioner Crowder stated the proposal a couple weeks ago pertained to the caliper of tree
14 that a developer was going to put in and he said if you tell a developer “do your best effort to
15 find a five-inch tree,” they will say they could not find it and put in a three-inch tree because it is
16 cheaper. He felt it meant nothing to tell a developer to do it because they would not.

17
18 Commissioner Pearson stated he does not understand the distinction being made between
19 “encourage” and “best effort.” Commissioner Crowder stated he is saying that he approves the
20 City of Plymouth’s view that the regulations apply to subdivisions and do not apply to private
21 property owners.

22
23 Chair Gonzalez stated one of the functions of government is to protect the health, safety, and
24 welfare of the community and it could be said that retaining large trees cleans the air we all
25 breath and cleans water that ends up in Lake Minnetonka so maybe the City has the right and
26 duty to say something about what happens to trees on private property.

27
28 Commissioner Crowder suggested the City then pay for maintaining the trees.

29
30 Commissioner Iverson asked if we want to live in a City where people can cut down all of their
31 trees.

32
33 Commissioner Crowder stated he spends more money on trees than most, has planted 20 trees
34 and paid to prune them each year. He stated he does not need the City to tell him he cannot cut
35 down three trees to put in a swimming pool when his neighbors all have swimming pools
36 because residents need more oxygen.

37
38 Chair Gonzalez stated the City Attorney is reviewing that language and we will see what he
39 comes up with.

40
41 Commissioner Crowder stated he does not know whether the City has the legal right.

42
43 Commissioner Pearson stated he had raised the issue in the first place.

44
45 Chair Gonzalez stated no one is assuming, but trying to draft language to explain the goals of the
46 ordinance and reasonable ways of enforcing.

1
2 Commissioner Pearson stated there are two issues: enforcement and litigation risk for exercising
3 enforcement. He stated if the City is not going to enforce due to fear of litigation risk, then why
4 have it in the first place.

5
6 Chair Gonzalez stated the guide to developing a Preservation Ordinance says the City needs an
7 inventory of trees and what is significant. City Planner Gadow stated the City has some
8 information from Hennepin County on species and gets some information through projects and
9 development applications but does not have a tree inventory for the City as a whole.

10
11 Chair Gonzalez stated one of the things is to identify areas of priority for preservation. She
12 asked what has been done to involve the community and suggested it be brought up in *The*
13 *Portal*. City Planner Gadow stated once we have a sense of what to talk about, it can be
14 included in *The Portal* and other social media to inform the community a conversation is being
15 held on the ordinance.

16
17 Chair Gonzalez stated it would be good to hear from developers who have vested interest in
18 making this work. City Planner Gadow stated we first need something for them to react to. He
19 stated the City does provide education on Emerald Ash Borer but more can be done from a
20 community education standpoint.

21
22 Commissioner Iverson asked how it works when utility companies come in and trim trees under
23 the power lines. Chair Gonzalez stated it is a State law and since they have easements the utility
24 companies can cut trees to any shape they want to protect the power lines. City Planner Gadow
25 stated he will look into that issue and get more information. Commissioner Iverson stated she
26 would like to know if ordinance language can be included to address that issue.

27
28 Commissioner Vanderheyden stated a Commissioner had also requested case law reference to
29 support this kind of ordinance.

30
31 Commissioner Pearson stated his point is to have confidence that we are on solid legal ground
32 before we “go out on a limb.”

33
34 Chair Gonzalez invited members of the public to make comment on trees.

35
36 Joe McCarthy, 307 Margaret Circle, stated he wanted to provide one current example of what
37 can happen on one lot with one builder because if not careful, Wayzata will look like Hopkins
38 without any trees. Mr. McCarthy stated the lot at Gardner and Walker had a 60-70 year old
39 resident with a 30-foot by 40-foot house, gravel driveway, detached garage, many trees, and no
40 water situation. But, someone forgot to protect the trees. He displayed a picture from 2012
41 depicting a house with no trees and stated every tree was removed. He stated the roof now
42 collects water and all downspouts go towards the rear of the lot, resulting in water going into the
43 basement of the adjacent property. Mr. McCarthy stated there always was a slope to this lot but
44 there had also been trees. He stated the City has 1,852 residences and there are probably 200-
45 300 residences facing some kind of tree changes or removal. Mr. McCarthy stated somebody
46 suffers and it is up to the Planning Commission to make the decisions.

1
2 City Planner Gadow stated he will continue to research the Commissioner's questions and once
3 the Parks and Trails Board has provided a recommendation, it will be presented.
4

5 **AGENDA ITEM 4. Other Items**
6

7 **a. Review of Development Activities**

8 City Planner Gadow stated the May 6, 2013, meeting agenda will include the Planning Report
9 and Recommendation for the Yogurt Lab sidewalk café. He reminded the Planning Commission
10 of the Bay Center tour.
11

12 Commissioner Vanderheyden reported on City Council actions at its April 2, 2013, meeting.
13

14 Chair Gonzalez asked whether rain barrels are an appropriate mitigation item. City Planner
15 Gadow stated rain barrels cannot be used as the sole mitigation method but can be part of a
16 collection of systems.
17

18 **b. Other Items**

19 None.
20

21 **AGENDA ITEM 5. Adjournment.**

22 There being no further business, Commissioner Pearson made a motion, seconded by
23 Commissioner Ramy, to adjourn the meeting. The motion passed unanimously.
24

25 The meeting was adjourned at 8:38 p.m.
26

27 Respectfully submitted,
28

29
30 Carla Wirth

31 *TimeSaver Off Site Secretarial, Inc.*