

**WAYZATA PLANNING COMMISSION
WORKSHOP MEETING MINUTES
MARCH 4, 2013**

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

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

Present at roll call were Commissioners: Cooper, Crowder, Iverson, Pearson, Ramy Jr., and Vanderheyden. Absent and excused: Chair Gonzalez. City Planner Gadow, Council Member Amdal, and Park and Trails Board Member Babcock were also present.

Vice Chair Iverson made a motion, seconded by Commissioner Ramy, to approve the February 22, 2013 meeting minutes as presented. The motion passed 3/0/3 (Cooper, Pearson, Vanderheyden).

AGENDA ITEM 2. Workshop Items:

a. Discussion of Tree Preservation Ordinance

City Planner Gadow advised the Council has expressed some interest in revisiting the topic of a Tree Preservation Ordinance, which the City had started looking at it in 2010 and then consideration delayed due to other big-ticket items. The Council asked the Planning Commission and newly formed Park and Trails Board for their review and comment. City Planner Gadow indicated that once received, he would provide the Commissioners with the comments of the Park and Trails Board with another discussion held prior to holding a public hearing. He noted the attendance of former Planning Commissioner Babcock who has been appointed to the Park and Trails Board and provided some of the "heavy lifting" when the Tree Preservation Ordinance was previously considered in 2010.

City Planner Gadow stated the City's Tree Ordinance was amended in 1999 and then, in 2008, the City of Minnetonka revised its tree ordinance, which Wayzata was aware of during its 2010 discussions. In addition, the City of Excelsior also updated its ordinance and that information has been provided to the Planning Commission. He stated he can provide copies of other city's ordinances, if desired.

Commissioner Pearson suggested providing additional background information as only Commissioner Crowder was serving on the Planning Commission the last time this matter was under consideration.

City Planner Gadow stated the current Tree Ordinance is not too dissimilar to the draft under consideration and indicates the City, as a whole, is within a tree preservation area and when development occurs, a Tree Preservation Plan is required. The current ordinance, however, is lacking in situations where people remove trees outside the boundaries of a building pad or development site. On a residential site, if a significant number of trees are being removed that are located outside of the building pad site, there are currently no ordinance provisions to require

1 replacement or submission of a Replacement Plan. In 2010, it was found that was lacking and to
2 be more cognizant of the importance of trees, a Tree Replacement Policy should be added to the
3 ordinance for both private and public property. The other element added to the draft, and issue
4 of discussion and a bit controversial, is to require property owners to replace trees but it was felt
5 it should be discussed to determine the position of the Planning Commission and City Council.
6 City Planner Gadow advised that other items were added to clarify the current ordinance. He
7 explained that due to the economic downturn experienced in 2008-2010, the City laid off a
8 number of staff including in the Parks Department. The full-time City Forester was replaced by
9 two staff members who had training and background in those topic areas. City Planner Gadow
10 stated the proposed language amendments would clarify the roles and responsibilities of staff to
11 review the Tree Preservation Plans by indicating "designee of the City Manager." Then should
12 there be changes in staff, a violation of the current ordinance would not occur but would assure
13 the staff member reviewing the Replacement Plan had the required background and training to
14 do so. He indicated staff members receive continual training so they are up-to-date on those
15 issues.

16
17 Commissioner Pearson noted Section 710.03, Duties and Qualifications of the Forester,
18 indicates: "b. Qualifications of the Forester. The qualifications of the Forester shall be, as a
19 minimum, those qualifications prescribed for certified arborists by the Minnesota Society of
20 Arboriculture or by the Commission of Agriculture. In the event that there is no City Forester on
21 staff, the designee should have the knowledge and resources to enable them to conduct the
22 responsibilities of the position." Commissioner Pearson asked whether the second sentence
23 provides an exception to the first sentence, that they would not have to be qualified but just
24 someone who has demonstrated they know something about trees.

25
26 City Planner Gadow stated that was the issue raised in 2010; there may not be someone on staff
27 with a graduate degree in forestry and if that situation arose, the City would have to find a way to
28 backfill that position with current staff receiving training. The intent of the second sentence is to
29 address that type of situation.

30
31 Commissioner Pearson stated if it is a definite exception, the language should be clearer.

32
33 Commissioner Crowder asked whether someone with experience in cutting down trees could be
34 qualified to be the City's Forester. He noted this position has a lot of power and he thinks more
35 training should be required to hold this position. City Planner Gadow stated he will clarify that
36 language.

37
38 Commissioner Crowder asked if the proposed ordinance goes beyond replacement and gives the
39 City more power in deciding what a private land owner can do with their trees, even if not within
40 a new development or subdivision or on public land. City Planner Gadow agreed the proposed
41 ordinance goes further than the existing ordinance.

42
43 Commissioner Crowder asked if the City Attorney had rendered an opinion whether this
44 language was defensible. City Planner Gadow stated the draft ordinance is not that far into the
45 process but that opinion will be obtained once the draft language is clear.

46

1 Commissioner Crowder felt posing simple questions to the City Attorney would be appropriate.
2 He suggested this language “smacked” of a taking because the City is asserting rights to private
3 individual’s trees, telling them what they can and cannot do, and under which conditions action
4 can be taken. In addition, the City did not pay to plant those trees, prune the trees, water or care
5 for the trees but once of a certain size, the City is saying it gets to decide what happens with
6 those trees. Commissioner Crowder stated he has a problem with that situation and questions
7 how the City thinks it has obtained that right (constitution or statutory). He stated he
8 understands the language can be couched to address increased oxygen, but he found this to be a
9 taking and thinks the City Attorney should be asked to render an opinion in that regard.

10
11 Commissioner Pearson stated he agrees with the comments of Commissioner Crowder and his
12 reaction, particularly where it becomes a criminal charge. He stated prior to Council
13 consideration, he would like an opinion from legal counsel as to whether this is a constitutional
14 ordinance. Commissioner Pearson stated he would not want the City to spend a lot of money in
15 court fighting with a property owner about this. He stated he agrees with the intent and goal of
16 the ordinance, but thinks as worded it is over reaching.

17
18 Commissioner Ramy asked whether there was a catalyst case that resulted in this consideration.
19 City Planner Gadow stated in 2008 and 2010 there were a few examples, including the
20 residential properties on Manitoba and Rice. That property had a townhome proposal at that
21 time and a tree contractor had quickly removed most all of the trees on the site. The City fined
22 the property owner and received money in lieu of tree replacement for Code violation.

23
24 Commissioner Crowder stated some cite the example of when the City removed trees from the
25 bluff.

26
27 Commissioner Vanderheyden stated he did not read anything in the draft ordinance on how to
28 require the government to also abide by this policy, which was explicit in the City of Excelsior
29 ordinance language. Also, given the forcemain project and trees that were removed, he would
30 ask how this proposed ordinance would preclude such an event in the future.

31
32 Commissioner Cooper stated when she lived on the Lake off Ferndale, she could not cut down
33 any trees without City permission and she thought that was the case for everyone. However, on
34 the same street, the Dayton Burnet property was clear cut, seemingly overnight. She asked how
35 that could have occurred. City Planner Gadow stated a tree permit is needed to cut down that
36 number of trees and the Dayton Burnet property did undergo that review and received a permit.
37 He noted one of the ordinance revisions could be to provide limits on how much can be
38 removed, setting an upper limit.

39
40 Commissioner Cooper suggested the same restrictions be applied to everybody equally. City
41 Planner Gadow stated from an enforcement provision, staff would like the language tightened to
42 prevent those situations.

43
44 Commissioner Crowder felt this type of regulation is appropriate when there is a new
45 subdivision but when there is a private property owner that needs to cut down a number of trees,
46 such as to put in a pool, this ordinance would imply that cannot be done because the neighbors to

1 the subject property have a right to shade and more oxygen. He stated he cannot understand how
2 that is not a taking so he could not vote in support of such an ordinance.

3
4 Commissioner Pearson stated he has 22 trees on his property that would fall within the ordinance
5 and require approval to do anything with them. He stated he can see a lot of fights about this
6 restriction, which the City does not need with its citizens.

7
8 Vice Chair Iverson stated on the enforcement side, it has not occurred on the back side so there
9 has not been a repercussion or penalty for violation.

10
11 Commissioner Cooper stated she heard a lot when the bluff was cleared and large evergreen trees
12 were planted on Wayzata Boulevard. She stated everyone knew they would not survive and
13 heard questions asked why something that was good for the people was not good for the
14 government. That was the general feeling of her neighbors so she felt the language needed to
15 also be City specific on its actions.

16
17 Vice Chair Iverson asked about the situation when electric companies “butcher” trees and if the
18 language should address how much can be taken. City Planner Gadow stated that is more
19 difficult because if the power lines are not clear, it is a safety consideration. He agreed that
20 when a tree is topped, it will more than likely die.

21
22 Commissioner Crowder stated power companies have an easement and right to keep the power
23 line clear of trees but that would only involve cutting six feet out. Instead, they strip the tree of
24 its branches.

25
26 Commissioner Pearson noted the power company does not do that work but hires a subcontractor
27 who makes those decisions on an ad hoc basis without a review process.

28
29 Vice Chair Iverson stated all of those situations that affect the City need to be considered as well
30 as setting limits on what can and cannot be done.

31
32 Commissioner Pearson asked if litigation was involved when the Retreat went into the Big
33 Woods and if so, what were the claims. City Planner Gadow stated that was before his time with
34 the City but he was aware of the City’s action to buy the land and place a preservation easement.

35
36 Commissioner Crowder stated the trees are not the reason the project was defeated but it did
37 create a lot of public outcry and motivation. He stated the school project failed because a Statute
38 required for every grade of school, a certain number of acres and the property was too small for
39 the Providence Academy so they lost interest.

40
41 Commissioner Pearson referenced Section 710.02, Definitions, noting the defined terms are
42 capitalized, but it is not consistent. He pointed out that “DBH” is capitalized in Section 710.02
43 c., but not in Sections 710.02 f., i., and iii.

44
45 Commissioner Vanderheyden referenced Section 710.02, Definitions, f, iii., indicating: “a tree
46 that is a group of deciduous trees...” and asked what is a group. He also referenced the diameter

1 and height measurements of a high priority tree in Section 710.02 f., and i., as being 15 inches
2 for a deciduous tree, in subsection f. ii., as being 20 feet in height for a coniferous tree. In
3 subsection j., a significant tree is six inches in diameter for deciduous trees or greater than eight
4 feet in height for coniferous trees. He noted the sizes need to be reconciled.

5
6 Commissioner Vanderheyden also referenced Section 710.02, Definitions, f., iii., indicating:
7 "...within 50 feet of an arterial road and 35 feet of a minor collector, local, or private street and a
8 trail." He suggested it be revised to indicate: "...or private street, or a trail."

9
10 The Planning Commission agreed with this revision.

11
12 Commissioner Cooper asked if the number of trees within a "group" needs to be defined.

13
14 Commissioner Vanderheyden supported this suggestion.

15
16 Vice Chair Iverson agreed the definition for "group of trees" will need to be added.

17
18 Commissioner Vanderheyden referenced Section 710.02, Definitions, j., and stated he was
19 surprised he had not noticed six inches in any other city's definitions, meaning this is a higher
20 standard as the other cities used eight inches. City Planner Gadow explained that six inch
21 diameter trees and significant trees was contained in the previous ordinance so it was not a
22 change but could be a discussion topic.

23
24 Commissioner Vanderheyden asked if there was basis to set it at six inches than another
25 dimension that has found acceptance in the industry. City Planner Gadow stated he can research
26 the legislative history of why it had been set at six inches.

27
28 Park and Trails Board Member Babcock explained that whenever you do a tree survey for any
29 project, it always uses the standard of trees that are "six inches or above." She stated the DBH is
30 used when assessing deciduous trees and eight feet is when you analyze coniferous trees. These
31 are two different standards in the industry.

32
33 City Planner Gadow stated he also has a note on the previous comment by Commissioner
34 Pearson related to Section 710.03, Duties and Qualifications of the Forester.

35
36 Commissioner Crowder stated as he reads Section 710.03, Duties and Qualifications of the
37 Forester, the duties are limited to diseased trees and significant trees in a proposed subdivision or
38 development project. It does not go into any private property.

39
40 Vice Chair Iverson asked how the City goes about addressing new or unforeseen tree disease.
41 City Planner Gadow stated language could be added indicating something like: "or any other
42 disease that becomes evident."

43
44 Commissioner Pearson suggested staff obtain the definition of disease used by a horticulture
45 society or similar group.

46

1 Commissioner Crowder stated he found Section 710.04, Disease Control Program, to be
2 misnamed as the end of the last sentence indicates: "...and trees that fall under the tree
3 protection policy as described in Section 710.17 of this Chapter." He stated that has nothing to
4 do with disease control but, as he believes, falls into the taking.

5
6 Vice Chair Iverson suggested adding language to Section 710.05, Nuisances Declared, to address
7 unforeseen tree diseases.

8
9 Commissioner Cooper referenced Section 710.05, Nuisances Declared, a. iii., indicating: "Any
10 living or standing oak tree or part thereof infected to any degree with the Oak Wilt disease
11 fungus Ceratocystis Fagacearum." She suggested the language be revised to indicate: "to any
12 degree by any organism to be controlled as set forth and described by the Commissioner of
13 Agriculture."

14
15 The Planning Commission agreed with this revision.

16
17 With regard to Section 710.06., Inspection and Investigation, Commissioner Ramy stated he has
18 a quarrel with some of the language as he has a fully fenced back yard and would not want any
19 "City Forester or duly authorized representative(s)" to inspect any tree in his back yard without
20 notification. He stated there should be some form of notification by the City for inspections
21 made on a known basis.

22
23 The Planning Commission agreed with this concern.

24
25 Vice Chair Iverson asked whether there should also be a stated reason for the inspection.

26
27 Commissioner Ramy stated he wants to preserve and protect all of his trees and would welcome
28 that insight but there should be some notice in the *Lakeshore Weekly* or mailing to inform
29 residents that the City Forester is going to be in certain areas and not to be alarmed.

30
31 City Planner Gadow stated this type of notice would be reasonable.

32
33 Commissioner Pearson noted the ordinance includes a definition of "Forester" but the term goes
34 back and forth between "City Forester" and "Forester." City Planner Gadow agreed it should be
35 a consistently used term.

36
37 Commissioner Vanderheyden noted Section 710.06, Inspection and Investigation, refers to
38 taking and sending specimens or samples of disease infestation; however, it does not address
39 who is paying for that activity.

40
41 Commissioner Ramy agreed and stated he thinks the language bears out that the City could come
42 back to cover its costs.

43
44 Commissioner Vanderheyden stated he subdivided a lot in Plymouth three years ago and the
45 Plymouth City Forester came through his property twice, with no notice, and marked dozens of
46 trees to be removed, which he found to be irritating.

1
2 Commissioner Pearson asked why the trees were designated for removal. Commissioner
3 Vanderheyden stated the City of Plymouth was removing trees in advance of something that
4 might happen.

5
6 Vice Chair Iverson asked Commissioner Vanderheyden if he had recourse or rights to debate that
7 determination. Commissioner Vanderheyden stated he did not but the City indicated the City
8 Forester had come through first and then eight days later, the Assistant City Forester had
9 remarked all of those trees plus several more. Thereafter, several notices were received with
10 potential fines attached if the trees were not removed within a certain number of days.
11 Commissioner Vanderheyden stated this proposed ordinance has a similar clause requiring
12 removal within five days of mailing and 15 days of the mailing under other circumstances. He
13 stated he takes exceptions to these timelines, especially in Wayzata where a number of residents
14 travel for length.

15
16 Vice Chair Iverson noted there is also a financial cost. Commissioner Vanderheyden concurred
17 and indicated he had to spend thousands of dollars to remove trees in Plymouth that were not
18 diseased.

19
20 Commissioner Crowder referenced Section 710.07, Abatement of Nuisances, indicating: "In
21 abating the nuisances defined in Section 710.05, the Forester..." He asked whether this section
22 should instead refer to Section 710.08.

23
24 Vice Chair Iverson suggested combining Section 710.07, Abatement of Nuisances, and Section
25 710.08, Abatement Procedure.

26
27 Commissioner Vanderheyden referenced language in Section 710.08, Abatement Procedure,
28 indicating: "...property within the City, he shall proceed to abate..." He noted that language
29 assigns a sex to the Forester and suggested that language be rewritten to indicate: "...property
30 within the City shall be abated as follows."

31
32 The Planning Commission agreed with this revision.

33
34 Commissioner Vanderheyden referenced language in Section 710.08, a. Abatement Procedure,
35 indicating: "...which the nuisance is located that the nuisance must be abated within fifteen (15)
36 days from the date of the mailing..." He noted this 15-day period is under the condition it is not
37 an eminent threat and asked if notification and confirmation can be added.

38
39 Commissioner Crowder asked why more than 15 days are not allowed if not an eminent threat.
40 He noted that while some residents may not have a problem completing this action within 15
41 days, others may not have the money to do so. Commissioner Vanderheyden agreed cost is one
42 issue but the resident may also be traveling for a month or two.

43
44 Vice Chair Iverson asked staff to address the periods of time. City Planner Gadow stated he will
45 research whether they can be lengthened.
46

1 Commissioner Vanderheyden suggested there also be another method of confirmation required,
2 such as mailing, to assure the property owners have been reached.

3
4 Commissioner Pearson stated there is an issue of notice in addition to the form of notice, such as
5 in the *Lakeshore News*. However, he does not want that type of published notice to be relied on.
6 Commissioner Pearson preferred an actual notice that is mailed to the property owner.

7
8 Commissioner Crowder suggested a certified mailed notice.

9
10 Vice Chair Iverson agreed since it was actionable on the part of the home owner.

11
12 Commissioner Pearson suggested a notice be taped to the front door, or something obvious
13 before the property owner is charged with a crime since 90% of today's mail is junk mail and the
14 notice may be missed.

15
16 Commissioner Vanderheyden noted the City of Plymouth has a first 15-day notice period and
17 subsequent, another 15-day notice period, which was the end of the "threat period" before the
18 City took action to abate. He noted that in Section 710.08 Abatement Procedure, subsections a.,
19 b., and c., it is presumed and intimated that the City will abate if the owner does not; however, it
20 is not clearly stated that the City is the default abatement provider.

21
22 Vice Chair Iverson noted the language indicates "which may proceed" but she would ask how
23 the fees will be collected.

24
25 Commissioner Vanderheyden stated the ordinance does contain some conjecture in how the fees
26 may be collected.

27
28 Commissioner Crowder stated he thinks a five-day notice is too short.

29
30 Commissioner Cooper agreed, noting a property owner may not be able to get someone out to
31 cut down the tree within that time.

32
33 Commissioner Vanderheyden concurred and pointed out it is five days from the date of mailing.

34
35 The Planning Commission asked City Planner Gadow to look into the timing.

36
37 In Section 710.09, Special Assessment Procedure, Commissioner Vanderheyden noted
38 subsection b. references the date of "on or before October 10 of each year" and asked if that is a
39 cut off for tax assessing for the subsequent year. He suggested the name of the event be used
40 rather than the date. City Planner Gadow stated he will look into that option.

41
42 Vice Chair Iverson asked where a person would obtain a permit. City Planner Gadow stated it
43 would be from the Public Works Department. Vice Chair Iverson suggested that be clarified in
44 the ordinance.

45

1 Commissioner Ramy referenced Section 710.12, Licensed Required, and asked if this means that
2 a private homeowner who is qualified to remove a diseased tree, could not do so. City Planner
3 Gadow explained it means someone cannot prevent the City authorized person from doing
4 forestry activities.

5
6 Commissioner Pearson referenced Section 710.11, Interference Prohibited, and stated it seems
7 that if they show up, you would have to let them on your property, which goes against the earlier
8 discussion of providing advanced notice prior to showing up.

9
10 Commissioner Vanderheyden asked if the City has existing rights to enter his private property
11 without notice. City Planner Gadow stated they can enter on utility easements.

12
13 Commissioner Crowder stated the City employee arriving with notice would be protected should
14 there be an attack-type dog on the property. City Planner Gadow agreed that prior notice is a
15 good point.

16
17 Vice Chair Iverson asked that language be included indicating the City has a list of approved
18 contractors and should a non-approved contractor not be used, there would be a fine. City
19 Planner Gadow described the process for a contractor to be placed on the approved contractor
20 list. He clarified you cannot start up your own tree removal business without a license. The
21 contractor would be responsible to get on the list and obtain the permit. If not, the contractor
22 would be liable for the fine, not the property owner.

23
24 Vice Chair Iverson asked how the contractors on the approved list are reviewed for quality of
25 service provided to residents. City Planner Gadow stated he is not involved in the permitting
26 process and would have to research that question.

27
28 Commissioner Copper asked whether the residents are confined to that list.

29
30 City Planner Gadow clarified the contractor has to be licensed within the City but the private
31 property owner would not have to be licensed to remove a tree from their private property.

32
33 Commissioner Crowder asked if the property owner has responsibility to assure the contractor is
34 licensed. City Planner Gadow stated they do not. Commissioner Crowder noted this placed the
35 burden on the tree cutter. City Planner Gadow stated that is correct.

36
37 Commissioner Crowder noted tree contractors solicit to cut down trees but may not be licensed
38 and he does not think the property owner should be prosecuted for using a contractor that is not
39 licensed. City Planner Gadow stated the intent of the language is to prevent the "fly by night"
40 type of contractor.

41
42 Commissioner Pearson stated the ordinance does not shift the onus to the home owner to know if
43 the contractor is licensed. The consequences fall strictly on the contractor.

44
45 Vice Chair Iverson asked how property owners can be educated of the need to find out if the
46 contractor is licensed.

1
2 Commissioner Vanderheyden stated he can speak from experience, indicating you can call City
3 Hall to get a list of firms that are licensed.

4
5 Commissioner Pearson stated the resident would want the contractor licensed to assure the tree
6 falls in the right direction, noting there is potential for liability.

7
8 Vice Chair Iverson suggested legal staff review the language to assure everything is included.

9
10 City Planner Gadow stated Section 710.13, Establishment of Tree Preservation Zone, describes
11 its benefits.

12
13 Commissioner Vanderheyden asked if the entire City is within a Preservation Zone. City
14 Planner Gadow stated that is correct and reviewed other ordinances that reference the
15 Preservation Zone. Commissioner Vanderheyden questioned the need to use the term “zone” if
16 it encompasses the entire City. City Planner Gadow stated the language is consistent with that of
17 other ordinances, such as the Shoreland Ordinance.

18
19 Commissioner Pearson stated he questioned why this Section was not included in the Purpose
20 section at the beginning of the ordinance, noting it is a statement of policy.

21
22 Commissioner Vanderheyden stated it is on the first or second page of the City of Minnetonka
23 ordinance.

24
25 City Planner Gadow noted the sections following address activities within the Tree Preservation
26 Zone, but agreed it could be relocated with a header referencing the activities are listed within
27 the Tree Preservation Zone section.

28
29 Commissioner Vanderheyden indicated he does not agree with the bullet point indicating:
30 “Protect and increase property values.” He stated he had a conversation with the City Assessor
31 during which this very topic came up and he learned there is no appraisal value for trees. He
32 stated he respects the intent but there appears to be no basis for it.

33
34 Commissioner Pearson asked if this tracks language of the Comprehensive Plan. City Planner
35 Gadow stated they do go to some policy statements in the Comprehensive Plan.

36
37 Vice Chair Iverson stated she does find that landscape impacts the value of property and trees
38 would be included in landscape.

39
40 Commissioner Pearson stated that may be the case with fair market value, but with appraisal
41 value, trees do not have an impact.

42
43 Vice Chair Iverson stated she thinks that bullet point should be left in the ordinance.

44
45 Park and Trails Board Member Babcock stated the bullet point establishes the importance of tree
46 preservation and the benefits they provide to the community.

1
2 Commissioner Crowder stated if that is true, then why do developers clear cut to put in houses.
3 Vice Chair Iverson stated the issue is one of cost. Commissioner Crowder stated if the developer
4 can save 20% of the value, he still would ask why they would clear cut the property. He stated
5 to him a house is worth more if it has trees around it but to include language saying it protects
6 and increases property values may not always be true.
7

8 Commissioner Pearson stated all agree it is worth something but when going to the bank for a
9 mortgage, you will not get a bigger loan if the property has a 200-year-old oak tree.
10

11 Commissioner Vanderheyden stated he is sensitive to this issue as his taxes have increased 80%
12 in the last two years and when asked, the City Assessor affirmed nothing is included for
13 landscape or trees.
14

15 Commissioner Crowder noted the bullet point indicating: “aid in the removal of carbon dioxide
16 and generation of oxygen in the atmosphere.” He stated he remembers from 7th grade science
17 that it happens with all living things containing chlorophyll but would ask what size of tree
18 creates more oxygen than his back yard that is covered with grass.
19

20 Commissioner Crowder asked if there are studies to show that. Park and Trails Board Member
21 Babcock answered in the affirmative.
22

23 Park and Trails Board Member Babcock read information from Forestry Service studies
24 describing the benefits of the trees, tree canopy, tree roots to clean the water before it gets into
25 the Lake, reduction in storm sewer and soil erosion, removal of carbon from the air and release
26 of oxygen into the air.
27

28 Vice Chair Iverson asked if the Commissioners are seeking for more information on the two
29 bullet points brought into question.
30

31 Commissioner Pearson suggested removing the words “and increase” so the bullet point
32 indicates: “Protect property values.”
33

34 Commissioner Cooper asked if it is needed at all, noting the last bullet point indicates:
35 “Generally protect and enhance the quality of life and the general welfare of the City.”
36

37 Commissioner Pearson stated it appears the issue is with the words “and increase.”
38

39 Commissioner Vanderheyden stated in Wayzata, there is no basis according to its assessor.
40

41 Vice Chair Iverson suggested this issue be noted so the right terminology and language can be
42 addressed. She suggested the bullet point indicating: “Conserve and enhance the City’s physical
43 and aesthetic environment” be combined with the bullet point indicating: “Generally protect and
44 enhance the quality of life and the general welfare of the City.” City Planner stated he will make
45 that change.
46

1 Commissioner Crowder stated he has a problem with language in Section 710.13, 710.14, and
2 elsewhere that indicates: "all property."

3
4 Commissioner Pearson noted sections in the ordinance where the term "Tree Preservation" is
5 capitalized but it was not a defined term. City Planner Gadow indicated it would be added to the
6 definitions.

7
8 Commissioner Crowder referenced Section 710.15, Restrictions, and asked whether it would be
9 unlawful to remove a 32-inch diameter tree but not unlawful to remove a significant tree. City
10 Planner Gadow explained you cannot remove a tree in excess of 32-inches without getting a
11 permit.

12
13 Commissioner Vanderheyden noted it is proportional based on acreage so you can cut down one
14 6-inch tree or less per year. City Planner Gadow indicated that is correct.

15
16 Commissioner Crowder stated he could remove three significant trees of six inches without a
17 permit, so he questions the importance of significant trees. City Planner Gadow explained the
18 definition of significant tree sets aside the size of trees that have to be counted against the
19 threshold. Anything less than six inches can be removed without question.

20
21 Commissioner Vanderheyden stated the 32-inch threshold is only against significant trees and
22 above so he can cut down as many 3-inch trees as he wants. City Planner Gadow stated that is
23 correct, noting trees under six inches are not included on a tree survey.

24
25 Commissioner Vanderheyden corrected his prior statement and indicated he cannot cut down a
26 significant tree on his lot without a permit, ever, in this writing. City Planner Gadow stated that
27 is the case if it puts you over the limit of the property.

28
29 Commissioner Crowder referenced Section 710.15, Restrictions, noting it only applies to
30 privately owned land and asked why it does not also apply to publicly owned land.

31
32 Commissioner Vanderheyden stated that had also been his overarching comment at the
33 beginning of the discussion.

34
35 Commissioner Crowder stated if someone in City government thinks a tree should be removed,
36 he thinks a neutral party should be making the decision.

37
38 Commissioner Vanderheyden noted that issue had been raised early in the discussion relative to
39 the Metropolitan Council forcemain project. One of the conversations he had on this topic was
40 that we need to help our City employees and not put them into a bind. Commissioner
41 Vanderheyden stated if a City employee told the contractor to go ahead, he would ask whether
42 there is an ordinance to support that decision. If there is an exception to the ordinance, then that
43 City employee or his/her supervisor should have to come before the City Council to seek an
44 exception to the ordinance, the same as required of a resident. He asked how you prevent the
45 forcemain situation from happening again.

46

1 Commissioner Pearson noted it had been earlier discussed that the license requirement was the
2 contractor's responsibility; however, Section 710.15, Restrictions, indicates: "...it shall be
3 unlawful for any person or groups of persons to remove from privately-owned land any tree or
4 trees in excess of..." He asked if this is intended to apply to both the contractor and homeowner.
5 City Planner Gadow answered in the affirmative.
6

7 Commissioner Pearson stated if a contractor is hired to take down a tree, then the contractor and
8 private property owner would be responsible if the City thinks the ordinance has been violated.
9 City Planner Gadow stated if the contractor removed the tree without having a permit, they
10 would be liable.
11

12 Commissioner Pearson stated to the extent that penalties are being imposed, he thinks it should
13 be very specific in who is responsible for those penalties.
14

15 Commissioner Vanderheyden noted that 32 inches is divisible by 8, not by 6, going back to the
16 size of significant tree needing to be reconciled.
17

18 Commissioner Crowder stated the language indicates "any person" and 710.20, Violation, it
19 seems to suggest anybody who is there and involved in any way is guilty of a misdemeanor. He
20 stated he can see the argument that the homeowner and boss of the tree removal company are
21 liable, but the language implies that all of the employees would be guilty of a misdemeanor. He
22 felt the employees do not know or get paid enough to be responsible for that.
23

24 Vice Chair Iverson noted that early on it was mentioned that legal counsel needs to look at the
25 language to assure clarity.
26

27 Commissioner Vanderheyden stated to Commissioner Pearson's point there is need to clarify to
28 whom the language is referring, the homeowner or the contractor, as being liable.
29

30 Vice Chair Iverson stated that type of language is included throughout the ordinance and
31 suggested notes be made to identify areas in need of clarification.
32

33 Commissioner Crowder referenced Section 710.16, Permit, indicating: "Any person with due
34 authority desiring a permit..." He asked what is meant by "due authority" and if the language
35 should just indicate: "Any person desiring a permit..." City Planner Gadow stated he would
36 make that correction.
37

38 Vice Chair Iverson stated it had been suggested earlier to add transporting of diseased wood.
39

40 Commissioner Vanderheyden referenced Section 710.16, Permit, b., indicating: "...the City
41 Forester shall visit and inspect the site and adjoining lands within five (5) days..." He noted the
42 language does not indicate whether it is designated as calendar or business days but in other
43 areas that is designated.
44

45 Commissioner Vanderheyden referenced Section 710.16, Permit, b., indicating "...the permit
46 application may be approved." However, the last sentence indicates: "If the City Forester

1 determines otherwise, the application shall be denied.” Commissioner Vanderheyden stated he
2 was looking for the same standard in both sentences. City Planner Gadow stated he will change
3 the language to apply the same standard.

4
5 Commissioner Pearson referenced Section 710.17, Preservation Plan, c., noting it indicates the
6 City Forester’s review of the Preservation Plan shall be based upon criteria that is then listed.
7 However, the language does not indicate what the standard is for that consideration. He
8 preferred giving more guidance to the City Forester rather than leaving it in a discretionary area.
9 Commissioner Pearson suggested including objectivity and consistency in consideration through
10 an overriding standard.

11
12 City Planner Gadow asked what should be the definition of that standard. Commissioner
13 Pearson stated he does not know but in the end, it has to add up to something, a determination
14 has to be made, and a standard met.

15
16 Commissioner Crowder asked what are the criteria for a subdivision. City Planner Gadow
17 explained the standards and criteria for a subdivision are spelled out. He explained the intention
18 is that the City Forester is evaluating the Preservation Plan against the criteria listed in
19 subdivision c.

20
21 Commissioner Pearson asked if the language should indicate the City Forester shall approve a
22 Preservation Plan if he/she determines, based on preponderance of the evidence and based on the
23 following criteria. Then the report can cite the standard and rationale.

24
25 Commissioner Vanderheyden referenced Section 710.17, Preservation Plan, indicating: “...The
26 Applicant shall meet with the City Forester to discuss tree preservation on the site...” He asked
27 if that is a mandate or if the applicant “may” meet with the City Forester. City Planner Gadow
28 stated the preference is for someone to meet with the City Forester on site but it could be the
29 applicant’s designee/representative if they were out of State for a period of time.

30
31 Commissioner Crowder noted a correction to the last sentence of Section 710.17, Preservation
32 Plan, to indicate: “...All costs associated with the preparation of the Preservation Plan shall be
33 borne by the applicant.” City Planner Gadow indicated he would make that correction.

34
35 Vice Chair Iverson asked about the potential costs. City Planner Gadow stated costs could
36 include a tree survey, identifying species and DBH of each tree, plans showing what would be
37 removed, advice from an Arborist, etc.

38
39 Vice Chair Iverson asked if the costs should be spelled out. City Planner Gadow noted the
40 previous page identifies the components of a Preservation Plan and what the City is looking for
41 so it is already spelled out.

42
43 Commissioner Vanderheyden stated, in defense of Commissioner Pearson’s comments around
44 clarity, when he subdivided the property in Plymouth, you were precluded from removing
45 greater than 25 percent of the caliper inches of significant trees. That was the “bar,” so it was an
46 easy thing to meet with the City on, calculate, and there were not many opinions. However, in

1 this section there are a fair amount of opinions, the ease with which he could alter or revise an
2 improvement to accommodate.

3
4 Commissioner Crowder stated for those who own property with trees, this ordinance becomes
5 onerous. He asked, for property owners who do not have trees, why they are not paying him for
6 oxygen generated by his trees, or requiring them to plant trees on their own property.
7 Commissioner Crowder stated if the tree owners are saddled with this responsibility, he thinks
8 all should be held responsible for planting trees, paying for the trees, or planting trees on public
9 land if they do not own property.

10
11 Commissioner Vanderheyden stated to affirm that point, if he is building a house in Wayzata he
12 has far more latitude in being able to remove anything he needs from the building pad plus 20
13 feet, and he is not required to replace any of that. City Planner Gadow stated that is correct for
14 trees within the pad, but the ordinance will have to spell out what that is. In Minnetonka it is 20,
15 which may be a bit much.

16
17 Commissioner Vanderheyden noted in the City of Plymouth, you get no credit for the building
18 pad, you cannot take down in excess of 25 percent caliper inches of significant trees. So, you
19 can move the location of the house or make it smaller but you cannot take down any more than
20 that. He stated his point is if you put greater burden in the ordinance, if he were to construct a
21 house he may need to put in more trees.

22
23 Vice Chair Iverson stated she would like the Planning Commission to revisit what is happening
24 with subdivisions so the developer cannot just come in and take all the trees down if they are not
25 being required to plant new trees.

26
27 Commissioner Vanderheyden stated if the City is trying to set a new standard, he likes that one.
28 If he is taking down "x" percent of caliper inches or greater on a new pad, he would then be
29 required to put back into the City's coffers or on his own property, if reasonable. He noted this
30 would start grandfathering a higher standard that might serve the City.

31
32 Commissioner Vanderheyden stated he has an issue with Section 710.17, Preservation Plan, c.,
33 iv., e), indicating: "Whether tree removal will affect air quality by significantly affecting the
34 natural cleansing of the atmosphere by vegetation." He stated he agrees entirely with the science
35 behind that statement but as it relates to the City Forester assessing that line item, it feels like a
36 high standard.

37
38 Commissioner Vanderheyden noted Section 710.17, Preservation Plan, d., again indicates:
39 "...may be approved." He suggested consistently using the term "shall" or "might."

40
41 The Planning Commission agreed with this change.

42
43 Vice Chair Iverson referenced Section 710.17, Preservation Plan, d., i., indicating: "Land
44 Subdividers, developers, builders and property owners shall be required to replace significant
45 trees..." She asked that the language include clear requirements on the replacement sizes and
46 species. City Planner Gadow indicated it is defined in the next section and identifies the sizes.

1
2 Commissioner Pearson stated Section 710.17, Preservation Plan, d., has the criteria and asked if
3 it has to comply with every single aspect of the criteria or comply with a certain percent. He
4 noted at a certain point, someone will find something that does not comply and suggest it should
5 not be approved. He stated the intent is to have some guidance for the City Forester to engage in
6 a balancing test.

7
8 Vice Chair Iverson stated on the replacement language, she does not feel replacing a six inch or
9 larger tree with a three inch or larger tree is enough. She feels it should be replaced with the
10 same caliper inch that was taken out.

11
12 Commissioner Cooper noted that a six-inch tree would be very expensive.

13
14 Commissioner Vanderheyden added that the odds for survival are also a lot less.

15
16 Commissioner Crowder stated the last time he paid for a six-inch tree, it was \$3,000. He noted
17 you cannot go larger than a six-inch tree, due to survivability, and they are hard to find.

18
19 Commissioner Vanderheyden stated you could also replace the total caliper inches, which would
20 be a different standard.

21
22 Vice Chair Iverson stated she thinks the Planning Commission needs to think about having some
23 “penalty” because it is easy to take them down but people do not replace them.

24
25 Commissioner Pearson stated that is particularly true with commercial property where it is easier
26 to ask forgiveness after the fact. He noted the case on Manitoba and Rice where the trees will
27 take a generation to reach the size of what had been removed.

28
29 Vice Chair Iverson felt the consequence should be stronger, and sometimes that is in the pocket
30 book, so a decision is made on why the tree has to come down.

31
32 Commissioner Cooper stated a lot of it relates to diseased trees and asked if a diseased tree
33 would have to be replaced. Commissioner Vanderheyden noted a diseased tree would not have
34 to be replaced.

35
36 Commissioner Cooper stated if a tree is being removed so a swimming pool can go in, each tree
37 removed would have to be replaced. She asked if there is not room on the lot, would they then
38 have to give money to the City to plant a tree somewhere else.

39
40 Commissioner Crowder stated under that scenario, if 36 inches of trees are removed to install a
41 swimming pool, you would have to replace it with six six-inch trees, which could cost \$20,000.
42 He asked if the City of Wayzata was also going to prohibit the sale of 20-ounce soda pops.

43
44 Commissioner Cooper stated if you do have to replant with six-inch trees at a cost of \$20,000
45 and do not have room, would you have to give the City \$20,000 to plant trees elsewhere. She
46 stated concern there could be abuse with such a requirement.

1
2 Commissioner Pearson stated the original point is, at what point is it appropriate for the City to
3 tell private property owners what they can do with their property that they paid for. He stated he
4 hopes property owners with a 200-year old tree will realize it is a valuable asset and not cut it
5 down without thinking about it. He stated he is in favor of a system, but micromanaging what
6 people do with their own property “rubs him the wrong way.”
7

8 Vice Chair Iverson stated she brought it up for discussion to consider the few that abuse it by
9 taking down multiple, multiple trees. She asked how the City can prevent that from happening,
10 noting it is the exception.
11

12 Commissioner Vanderheyden stated the City has a fairly strong “club” at \$500 and \$5,000, for
13 someone who does it improperly, which he found to be reasonable.
14

15 Commissioner Cooper stated in terms of subdivision/development, it can be much stricter with
16 more rules. But, with private property owners, she thinks it is different.
17

18 Vice Chair Iverson stated she is looking at it from the point of the few who abuse the ordinance,
19 and how to prevent that from occurring.
20

21 Commissioner Pearson stated we then end up wielding too big a “club” and punishing people
22 who are not abusing it and preventing people from “buying a 32-ounce Coke” because it is not
23 good for them.
24

25 Commissioner Crowder referenced Section 710.17, Preservation Plan, c., iv., indicating: “Impact
26 upon the built and natural environment...” He asked whether “built environment” is a planning
27 term. City Planner Gadow answered in the affirmative.
28

29 Commissioner Vanderheyden referenced Section 710.17, Preservation Plan, d., vii., indicating:
30 “...the City shall designate such funds within a dedicated fund to provide for the care and
31 replacement of shade trees within the City of Wayzata.” He asked who would manage the City’s
32 penalty fund. City Planner Gadow stated the fines for tree removal go into the Parks and Trail
33 Fund, which leads him to ask if a policy should be adopted by the City Council to establish how
34 the funds are used. Commissioner Vanderheyden stated if such a dedicated fund has not been
35 established, it needs to be established in conjunction with this.
36

37 Commissioner Crowder referenced Section 710.17, Preservation Plan, c, vii., indicating:
38 “Whether the removal of the tree(s) is for the purpose of thinning a heavily wooded area where
39 seventy-five (75) percent of the trees will still remain.” He asked whether that sentence could be
40 better worded. City Planner Gadow indicated it is a sentence from the City of Minnetonka
41 ordinance.
42

43 Commissioner Crowder stated he thinks it means the area can be thinned but 75% of the trees
44 need to remain. City Planner Gadow stated he will look at how to clarify that wording.
45

1 Commissioner Vanderheyden noted in Section 710.18, Standards for Preservation of Trees in
2 New Construction or Redevelopment, c., again includes language indicating: "...Preservation
3 Plan may be approved..."

4
5 Commissioner Vanderheyden referenced Section 710.19, Intentional or Deliberate Damage,
6 indicating: "...whoever willfully and without lawful authority injures any tree, timber or shrub
7 on City property is liable for treble the amount of damages..." Commissioner Pearson stated it
8 means "triple the amount of damages" and is a proper legal term.

9
10 Commissioner Vanderheyden asked what if the violation is by a governmental entity, which goes
11 back to the opening statement of managing the City and County in the same way it manages its
12 citizens.

13
14 Commissioner Pearson stated he doubts the Council will pass an ordinance that assesses treble
15 damages against the City.

16
17 With regard to Section 710.20, Violation, Commissioner Pearson stated he is not sure whether
18 making this a criminal violation is appropriate but may be all right if the language is tightened to
19 eliminate vagueness about whether you are violating the ordinance. Commissioner Pearson
20 stated he is reluctant to consider criminal charges for actions that are generally civil matters. He
21 stated he would support a fine, but not citing with a misdemeanor.

22
23 Commissioner Crowder stated he thinks Section 710.21, Severability, is essential.

24
25 Commissioner Pearson asked Park and Trails Board Member Babcock, who is considered the
26 oracle in Wayzata about trees, to provide an overview of the worst abuses in the last ten years
27 and how this ordinance would prevent those occurrences in the future.

28
29 Park and Trails Board Member Babcock stated we need to value larger trees and she believes
30 that a lot of people in this town do not value them. She stated she knows that Commissioner
31 Crowder does value trees but others do not value them. Park and Trails Board Member Babcock
32 stated every application considered while she served on the Planning Commission took down a
33 lot of very valuable trees, and Manitoba and Rice is a perfect example. However, she has no
34 idea where those funds went. In addition, she felt it was an absolute crime when Mill Street was
35 clear cut. Park and Trails Board Member Babcock stated a lot of significant trees will be lost
36 with the Bushaway Road project due to hardcover. She stated this ordinance needs to be worked
37 and if there are not ramifications for taking something down, such as a 32-foot DBH oak tree
38 that took 150 years to grow to construct a street, you need a major issue to discourage taking that
39 action. Whether replacing the DBH one-for-one or giving 10-15 trees to the City for planting in
40 the parks or through a lottery for citizens of the community, people have to be made to think
41 about these things. Park and Trails Board Member Babcock stated we also need to evaluate
42 whether the City should get an Arborist or share that service with the City of Plymouth or
43 Minnetonka. She stated the trees lost for the Bushaway Road project equals a major amount of
44 money.

1 Commissioner Ramy noted the projects referenced (Bushaway Road, Mill Street) involved
2 governmental action, not that of private citizenry. Park and Trails Board Member Babcock
3 stated that is correct and the most egregious violation was at Manitoba and Rice.

4
5 Commissioner Ramy asked if she is saying the City should be held to some of these standards.
6 Park and Trails Board Member Babcock clarified she had not stated that but thinks there are a lot
7 of problems and it stems from a lack of knowledge.

8
9 Commissioner Crowder stated he does not have a problem with the ordinance except as it relates
10 to private property owners and removal of trees for something like a home addition. For
11 developers and subdivision of land, he thinks the ordinance is great. Commissioner Crowder
12 stated he has a philosophical argument in his paying for the property and the City telling him if
13 he can or cannot remove a tree. If trees are important to the City, he suggested property owners
14 get a reduction on property taxes for every tree planted. If the City is interested in green,
15 improving the environment, and aesthetic value, he supported something like that but not telling
16 property owners they cannot cut down a tree to install a pool.

17
18 Park and Trails Board Member Babcock stated she understands what Commissioner Crowder is
19 saying but does not think the City will do that. She thinks many residents do not realize the
20 value of the tree on their property and its societal benefits. Park and Trails Board Member
21 Babcock noted there are other City restrictions placed on property, such as she cannot have a
22 drug store on her property, requiring certain setbacks, and allowing only 25% hard cover if
23 within a Shoreland District. She asked if the City values trees or does not value trees, thinking
24 that is the bottom line.

25
26 Commissioner Pearson stated he does not disagree with any philosophically, but wondered if this
27 ordinance does anything other than make us feel good. He asked if the ordinance will solve any
28 of the issues raised by Park and Trails Board Member Babcock as perceived to be major abuses
29 or real tragedies in loss of large trees because there were no restrictions.

30
31 Park and Trails Board Member Babcock stated this ordinance is needed because there have been
32 weak restrictions and abuses because of it. She supported redrafting the ordinance so trees are
33 valued.

34
35 Commissioner Pearson asked if this ordinance solves a problem. Park and Trails Board Member
36 Babcock stated it is like any law, if you do not hold people accountable, it does not mean
37 anything.

38
39 City Planner Gadow stated he has good direction relating to the ordinance and the Park & Trails
40 Board will also review and make comment, which he will provide to the Planning Commission.
41 Once that is completed, discussion will be held again.

42 43 **AGENDA ITEM 3. Other Items**

44 45 **a. Review of Development Activities**

1 City Planner Gadow stated the March 18, 2013, agenda may include the two-lot subdivision of
2 110 Gleahaven Road to review the stormwater management techniques.

3
4 **b. Other Items**

5 Commissioner Crowder asked if notice will be sent to every resident when the public hearing on
6 the Tree Ordinance is held. City Planner Gadow stated he has been thinking about how to do
7 that notice, agreeing with Commissioner Pearson that a notice in the newspaper would not be
8 sufficient. He stated he will consider other pathways including the website.

9
10 Commissioner Crowder suggested an interview article in the *Sun Sailor*.

11
12 Commissioner Pearson asked if the City has a resident e-mail data base that can be used. City
13 Planner Gadow stated the City does have an email listserve that can be used, on a limited basis,
14 to obtain meeting agendas but listserve exclusively for crime coalition cannot be used. He stated
15 the City has a number of new social media outreach opportunities that can be used in conjunction
16 with other means.

17
18 **AGENDA ITEM 4. Adjournment.**

19
20 There being no further business, Commissioner Vanderheyden made a motion, seconded by
21 Commissioner Crowder, to adjourn the meeting. The motion passed unanimously.

22
23 The meeting was adjourned at 9:06 p.m.

24
25 Respectfully submitted,

26
27
28 Carla Wirth
29 Recording Secretary
30 *TimeSaver Off Site Secretarial, Inc.*