

**WAYZATA PLANNING COMMISSION
MEETING MINUTES
OCTOBER 19, 2015**

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

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

Present at roll call were Commissioners: Vanderheyden, Iverson, Ramy, Gnos, and Gruber. Absent and excused: Commissioners Gonzalez and Young. Mayor Willcox, Director of Planning and Building Jeff Thomson, Interim City Planner Eric Zweber, City Attorney David Schelzel, City Attorney Paul Kaminski, and Management/Planning Intern Jason Peters were also present.

a.) Approval of the September 21, 2015 Planning Commission Workshop Minutes

Commissioner Ramy made a motion, seconded by Commissioner Gnos, to approve the September 21, 2015 Planning Commission Workshop Minutes as presented. The motion carried unanimously.

AGENDA ITEM 2. Regular Agenda Public Hearing Items:

**a.) Public Hearing on Zoning Ordinance Amendment: Tree Preservation Ordinance
– City of Wayzata**

i) Recommendation on Proposed Ordinance to Amend existing City Code Chapter 710 regarding the Planting, Maintenance and Removal of trees and adding City Code § 801.36 regarding Tree Preservation

Interim Planner Zweber stated one of the City's goals for 2015 is to adopt a Tree Preservation Ordinance. While creating the Tree Preservation Ordinance, City staff has also reviewed and is recommending an amendment to City Code Chapter 710 Planting, Maintenance, and Removal of Trees to maintain that chapter's abatement procedure for diseased or hazardous trees while moving any tree preservation requirements in that chapter to the new proposed Section 801.36 of the Zoning Code. The draft Tree Preservation Ordinance was reviewed during Planning Commission workshops held September 8 and September 21. Mr. Zweber reviewed the changes to the draft Ordinance staff has most recently made based on the Planning Commission's previous comments and comments from Manuel Jordan, the City's tree consultant. Both the Planting, Maintenance and Removal of Trees (Chapter 710) regulations and the Tree Preservation Ordinance (Section 801.36) will apply to the entire City regardless of zoning district. The Tree Preservation Ordinance has different standards for land developers, individuals or companies that subdivide land, and homeowners or commercial property owners. These two standards apply because development has a greater impact on the surrounding land. He explained Staff recommends keeping the language pertaining to exemptions for trunk utilities in Section 801.36.08.D.

1
2 City Attorney Schelzel responded to a question the Commission had asked at the last meeting,
3 and explained that the proposed Tree Preservation Ordinance would apply to land owned or used
4 by other governmental units, like Met Council, within the City, unless such use or user has
5 specific authority that overrides the local regulation. The City Attorney's office has identified no
6 such authority that would allow Met Council or other governmental units to avoid the regulations
7 of a new Wayzata Tree Preservation Ordinance.
8

9 Mr. Zweber stated Sections 710.13 and 710.14, are establishing the Tree Preservation Zone and
10 its application. Before the final draft goes to the City Council for approval these two (2) Sections
11 may be moved to the 801.36 Section of the Zoning Ordinance and removed from City Code
12 Chapter 710.
13

14 Commissioner Gruber stated she had reviewed the definition for City Forester used previously
15 and noticed that the draft definition has dropped any academic requirements. She would like to
16 see minimum requirements included in the definition.
17

18 City Attorney Schelzel stated this is a position appointed by the City Manager and as it is
19 currently written, it would be up to the City Manager to use good judgment and find someone
20 who is qualified, without being tied to a specific certification, qualification, or credential. As the
21 industry requirements change this would allow the City Manager flexibility. If the City does
22 specify a credential in the Ordinance, the City Manager would be required to only hire someone
23 with that credential.
24

25 Chair Vanderheyden stated there is authority with the position of City Forester and he would like
26 to see that this person have required education and qualifications.
27

28 Commissioner Gruber stated she would recommend a minimum education requirement for the
29 City Forester. She recommended checking with the DNR or Department of Agriculture for what
30 types of certifications they require.
31

32 Chair Vanderheyden recommended Chapter 710.05.e. read: "Any ash tree at risk of infestation of
33 the Emerald Ash Borer (EAB) as determined by the City Forester" then add "in accordance with"
34 and add some standard. Either the City needs to clarify the City Forester has the qualifications or
35 the City Codes establish the qualifications. Section 801.36.02.g suggested changing "involves
36 one (1) or more" to "involves creating one (1) or more". He suggested changing "the drip line"
37 to "the critical root zone" in Section 801.36.07.B. He stated the ratios listed in Section
38 801.36.09 were higher than what the Commission had discussed previously. He questioned the
39 practicality of the City being able to accommodate a 2:1 ratio for heritage trees and a 1:1 ratio for
40 significant trees.
41

42 Commissioner Iverson asked if these ratios would be tough enough to encourage people not to
43 remove the larger heritage and significant trees.
44

1 Commissioner Ramy stated there would be practical difficulty in being able to accommodate the
2 replacement of heritage and significant trees at the ratios in the draft Ordinance.

3
4 Commissioner Iverson stated the life span of a tree should also be factored into the replacement.

5
6 Chair Vanderheyden pointed out the draft Ordinance also establishes a 3-year guarantee on the
7 survival of replacement trees.

8
9 Commissioner Iverson stated the 3-year guarantee is important and should remain in the
10 Ordinance.

11
12 Mr. Zweber stated Section 801.36.A. does require that all possible measures be taken to preserve
13 heritage trees and removal may occur only when there is not a practical alternative. The City
14 would have the ability to require changes that would potentially preserve heritage trees as part of
15 the approval of the landscape plan and tree removal.

16
17 Commissioner Iverson asked what provisions were in place to ensure developers looked at
18 alternatives and provided adequate data for the Commission to consider when looking at
19 potentially removing a heritage tree.

20
21 Mr. Zweber explained the City could require developers to look at alternatives. In his experience
22 more often than not, when a developer reworks their plans to save a heritage tree there are more
23 significant trees removed and these are replaced at half the ratio as heritage trees. The Ordinance
24 provides the City with the ability to challenge developers and require them to provide additional
25 information on why the removal of a heritage tree is required.

26
27 Commissioner Gnos asked if the City would have the flexibility to lower the replacement
28 standards if there was an identified need.

29
30 Mr. Zweber stated the Ordinance is drafted so the City can accept a combination of trees planted
31 and fee in-lieu-of planting replacement trees.

32
33 Commissioner Iverson asked who would be responsible, within City Staff, to determine where
34 the additional planting would go.

35
36 City Attorney Schelzel stated any fees collected in-lieu of planting replacement trees should be
37 used for tree related purposes in the City. The City Forest and Public Works Staff would
38 determine where these replacement plantings would go.

39
40 Commissioner Iverson asked if these funds could be used to replace those elms the City has lost
41 due to disease.

42
43 City Attorney Schelzel stated the preferred approach would be for the City to use the fees in-lieu
44 of replacing trees for planting those replacement trees. This would have the effect of freeing up
45 other funds that the City has dedicated to planting trees for other purposes.

1
2 Chair Vanderheyden expressed concerns that if the City has a set amount they spend annually on
3 tree replacement and they use the funds that have been received for tree replacement then the
4 City would not be continuing its own replacement and the tree inventory within the City would
5 not grow as intended by the fee in-lieu. The fee in-lieu is intended to be an incremental lift to
6 what the City would normally do and not fund the normal course of business.

7
8 Mr. Zweber suggested the Commission specify in the motion that the funds received in-lieu of
9 replacing trees cannot be used to fund the City's annual budget for replacement and maintenance
10 of trees. Budgets and Ordinances are separate and there is no way to put in an Ordinance a
11 requirement of how the budget is set up.

12
13 City Attorney stated the record will reflect that the Commission has made it a point of concern,
14 and Staff should continue to discuss this if the Ordinance is implemented.

15
16 Commissioner Iverson stated the Commission does not know what the species of the trees are in
17 landscape or tree preservation plans. She asked if there was a way to ask developers to include
18 pictures of the trees they would be planting.

19
20 Mr. Zweber stated this could be included in Section 801.36.05.H if this is the direction of the
21 Commission.

22
23 Commissioner Gnos suggested having pictures recommended but not required in the Ordinance.

24
25 Commissioner Gruber does not believe this is something the Commission should require
26 developers to provide.

27
28 Chair Vanderheyden stated in Section 801.36.08.C change "construct" to "construction".

29
30 Commissioner Iverson asked if the City was giving the developer too much leeway by allowing
31 an additional 10% DBH to be removed during construction without an obligation to replace
32 these. The developers should know before construction starts what trees would be removed if
33 they were doing their due diligence.

34
35 Chair Vanderheyden stated Section 801.36.08.C applies to homeowners not developers.

36
37 Mr. Zweber clarified Section 801.36.08.C was intended to apply to those homeowners or
38 commercial businesses that were doing additions or remodeling. This activity typically happens
39 years after the original development and the trees on the site have changed.

40
41 Commissioner Gruber asked who was keeping track of the math to know what 10% of the DBH
42 would be for a property based on original approvals and accounting for changes.

43

1 Mr. Zweber stated they would need to provide a plan of what is on the site at the time of the
2 construction and this would be compared to the original plans. There is no intention to record the
3 changes for every parcel every year but rather a snapshot in time.

4
5 Chair Vanderheyden asked if the City Forester would be the person who would inspect the trees
6 and verify they were still healthy during the 3-year guarantee period outlined in Section
7 801.36.14. The process is not clarified in the Ordinance.

8
9 Mr. Zweber stated it is not practice to bring the City Forester out to do the final site plan and
10 review but rather the Building Official or Planner/Engineer who is looking at the site. If the
11 Commission's intent is to require the City Forester this should be included.

12
13 Chair Vanderheyden asked for clarification on the process for people to receive their funds back.

14
15 Mr. Zweber stated City Staff would do this and this could be included in the Ordinance.

16
17 City Attorney Schelzel stated Section 801.36 would be a new section of the Zoning Ordinance,
18 and the Zoning Administrator is responsible for administering the Zoning Code and making sure
19 that it is working. Currently the City Manager holds this position in Wayzata and it would
20 become his or her responsibility to ensure that the steps in the Financial Guarantee are carried
21 out.

22
23 Chair Vanderheyden stated 3 years is a long time and he would like clarification that the City
24 would be diligent in their performance with plus or minus 20-days of planting for residents to get
25 their money back each year.

26
27 Chair Vanderheyden opened the public hearing at 8:06 p.m.

28
29 Ms. Merrily Babcock, 337 Reno Street, Wayzata, asked if the map referenced in Chapter 710.14
30 was the map on page 6.2 of the City's Comprehensive Plan.

31
32 Chair Vanderheyden stated the map would be the entire map of Wayzata not the map of where
33 significant trees are located. The Ordinance would apply to the entire City.

34
35 Ms. Babcock asked if Section 710.17 contained any fines per DBH for unlawful removal of trees.
36 She suggested changing "hardwoods" to "softwoods" in Section 801.36.02.s. She asked when a
37 project was being presented to the Commission and all of the trees have been marked on the
38 property, if there was any information on the adjacent properties and what trees were located on
39 these properties in the critical root zones. She asked if there were any ramification for a
40 developer to remove a significant or heritage tree that had been marked to be preserved and was
41 then removed without City approval.

42
43 Chair Vanderheyden clarified Xcel Energy, not the developer, had removed the tree referred to by
44 Ms. Babcock. Xcel Energy did not need City approval at that time. This Ordinance does address
45 other agencies and how the City can hold them accountable.

1
2 Ms. Babcock asked what the ramifications would be for developers who do not adhere to the
3 preservation measures outlined in the Ordinance. She asked how the public would be informed
4 of the new Tree Preservation Ordinance. The City will be losing 400 trees in the right-of-way
5 due to Emerald Ash Borer and there are other areas of the City that have a concentration of a
6 specific type of tree. If there are other diseases or infestations that affect these species then there
7 would be large areas of the City that would not have mature trees.

8
9 Commissioner Iverson asked Ms. Babcock if she believed the draft Ordinance would make
10 developers more cautious about removing trees.

11
12 Ms. Babcock stated the City would need strong enforcement in place.

13
14 Chair Vanderheyden closed the public hearing at 8:18 p.m.

15
16 Chair Vanderheyden asked the Commission for input on the replacement ratios in the Ordinance
17 for heritage trees and significant trees.

18
19 Commissioner Gruber stated the Commission had not discussed intentional damage to trees as
20 referenced in Chapter 710.16.

21
22 Mr. Zweber stated this Chapter refers to people maliciously damaging trees, not removing them.
23 Removal is addressed in Section 810.36.13. The City would be adopting a set dollar amount for
24 every inch and this will be used to calculate the fee in-lieu amount.

25
26 City Attorney Schelzel stated the proposed new section on Tree Preservation in the Zoning
27 Ordinance would be part of the City Code, and any violation of City Code is a misdemeanor and
28 can be prosecuted and/or enforced as such. The Code references the section of State law on
29 misdemeanors, and this states you can fine someone up to \$1,000 for violation and/or jail time.
30 The new tree Preservation Ordinance would be set up for people to pay when they take down a
31 tree and if they do not present a plan, they would still have to pay these fees and potentially fines.

32
33 Commissioner Iverson asked how the City would protect itself if the person/developer stated the
34 tree had been diseased and the City did not have proof of this.

35
36 City Attorney Schelzel stated the Code outlines that the City Forester would have to make the
37 determination that a tree was diseased prior to the tree being removed.

38
39 Chair Vanderheyden asked what the fines would be if trees are removed and the City does not
40 have a plan and there are no records of the trees that were removed.

41
42 Mr. Zweber stated the City would find what evidence they could about the existence of the trees
43 to verify size and species and then the fines would apply.

44
45 Commissioner Gruber asked why Chapter 710 and Section 801 were separate.

1
2 City Attorney Schelzel explained the tree preservation aspect of the new Ordinance should be
3 included in the Zoning Code, as land use regulations, and the provisions that pertain to nuisance
4 abatement can be left in Chapter 710 of the general City Code as part of the exercise of the City's
5 general police power.
6

7 Mr. Zweber explained most exercises of power under Chapter 710 would be initiated by the City,
8 and most under Section 801.36 would be initiated by a developer or resident that would like to
9 make changes to a parcel. He stated 801.36.05 contains language on the Tree Preservation Plan
10 and outlines the items that a developer or homeowner would need to supply to the Planning
11 Commission and City. Section 801.36.05.D also clarifies that trees on adjacent parcels where the
12 critical root zone may be impacted must be mapped out in the plan.
13

14 Commissioner Gruber asked if City Forester Jordan had specified a reason for increasing the
15 replacement ratios.
16

17 Mr. Zweber stated City Forester Jordan had increased these ratios based on his recollection of
18 past Planning Commission discussions.
19

20 Commissioner Gnos asked if residents would be allowed to remove one (1) tree from their
21 property without a permit.
22

23 Mr. Zweber stated existing Chapter 710.15 allows residents to remove a portion of trees based on
24 the lot size but would be removed. A homeowner can apply for a permit and remove 10% of the
25 inches that exist.
26

27 Mr. Zweber recapped the items the Planning Commission had requested and he clarified the
28 Commission would like to have a process established for applicants to receive their financial
29 guarantee back automatically when due, without the need to request it but also be flexible enough
30 for the applicant to make the request.
31

32 It was the consensus of the Planning Commission to accept the replacement ratios for heritage
33 trees and significant trees as drafted.
34

35 Mr. Zweber stated the City has been working to notify residents that the City would be
36 implementing a Tree Preservation Ordinance including notices in the Friday Update and the
37 public hearing. Once it is adopted it can be included in the Newsletter.
38

39 Mr. Thomson stated the updated information would also be included on the website.
40

41 Commissioner Gruber made a motion, seconded by Commissioner Iverson, to adopt the Planning
42 Commission Report and Recommendation, as drafted by staff, recommending the amendments
43 to existing City Code Chapter 710 regarding the Planting, Maintenance, and Removal of Trees
44 and adding City Code §801.36 regarding Tree Preservation with the modifications outlined by
45 the Planning Commission. The motion carried unanimously.

1
2 The Planning Commission recessed at 8:46 p.m.

3
4 The Planning Commission reconvened at 8:55 p.m.

5
6
7 **AGENDA ITEM 3. Regular Agenda Old Business:**

8
9 **a.) 240 Manitoba Avenue S – David Frey**

10 **i) Adopt Report and Recommendation on Requested Rear Yard and Lot**
11 **Coverage Variances for a Second Garage Stall**

12
13 Interim Planner Zweber stated during the October 5th meeting, the Planning Commission directed
14 Staff to prepare a Report and Recommendation recommending approval of the requested rear
15 yard setback and lot coverage variances to allow the construction of a second garage stall at 240
16 Manitoba Ave S.

17
18 Commissioner Iverson made a motion, seconded by Commissioner Gnos, to adopt the Report
19 and Recommendation, as drafted by staff, recommending the approval of the Application for a
20 Variance from the 20-foot Rear Yard Setback and Variance from the 30% Lot Coverage
21 Requirement for a Residential Structure in the C-1 Office and Limited Commercial District to
22 allow the construction of a second garage stall at 240 Manitoba Ave S. The motion carried
23 unanimously.

24
25 **b.) Telecommunications Ordinance – City of Wayzata**

26 **i) Adopt Report and Recommendation on Repeal of existing City Code**
27 **§801.31 and replacement with new Telecommunications Ordinance**

28
29 Mr. Zweber stated as part of the City's Telecommunications Study, the City Council and
30 Planning Commission would like to update the City's Telecommunications Ordinance in order to
31 better regulate the use and location of new cellular towers and other equipment. At the March 3,
32 2015 meeting, the City Council adopted a 6-month moratorium on new wireless communication
33 facilities and towers pending study and consideration of changes to the City's regulations and
34 official controls. At the City Council's September 1, 2015 meeting, the City Council allowed
35 this moratorium to expire. On August 17, the City Council and Planning Commission conducted
36 a joint workshop to review the draft Telecommunications Ordinance, which included testimony
37 from the four (4) major telecommunications providers. On October 5, the Planning Commission
38 reviewed the changes recommended at the August 17 meeting and conducted a public hearing for
39 the Telecommunications Ordinance. Following the testimony, the Planning Commission
40 provided direction on revisions to consider. To determine the new regulations for the antennas
41 on buildings added since the August 11 draft, the Interim City Planner has reviewed a number of
42 metropolitan cities' regulations for antennas mounted on existing buildings. He reviewed the
43 summary of these regulations. He reviewed a map of the locations where towers are allowed and
44 the locations where antennas could be installed on or on top of a building, the additional

1 comments received from AT&T, a summary of issues, and the comments from Verizon and
2 AT&T.

3
4 Chair Vanderheyden asked if the parapet wall would be at the maximum height for the district.

5
6 Mr. Zweber clarified there is a provision in the Ordinance that says parapet walls can be 5-feet
7 above this. The antenna could ultimately be 20-feet above the roofline because the wall could be
8 5-feet above the maximum height for the district.

9
10 Chair Vanderheyden thanked the vendors for their help with working through the draft Ordinance
11 and making recommendations.

12
13 Commissioner Iverson stated she would like to be on record that she is not comfortable with
14 these antennas and facilities being located at schools.

15
16 Commissioner Gruber asked if there were provisions for exercising safety around residential and
17 school areas.

18
19 Mr. Zweber stated this is covered in Section 5 of the Ordinance through the standards. He
20 clarified the City can regulate those items that are not related to the performance of the
21 telecommunications technology.

22
23 City Attorney Kaminski stated Section 5. I ensures that the facilities meet all of the building and
24 electrical code requirements of the City.

25
26 Commissioner Iverson stated the City could put all the safety measures in place but kids will be
27 kids and she would not like to see them get hurt. She suggested possibly lighting the facility.

28
29 Mr. Zweber stated lighting the facility could be a nuisance for neighbors and may draw kids to it
30 because it is screened and lit.

31
32 Chair Vanderheyden asked if there was a standard that could be applied to Section 5.H. for the
33 shelter/building.

34
35 Mr. Zweber stated he had not asked the vendors for input on the additional language in Section
36 5.H but he would follow up with them.

37
38 Attorney Jay Littlejohn, representing Verizon Wireless, 150 South 5th Street, Minneapolis, stated
39 the language presented makes sense but he would like to see flexibility built into this because the
40 site may not accommodate expansion or additional equipment.

41
42 Mr. Zweber stated there would always be exceptions and this would be where a variance could
43 be applied.

44

Commissioner Gruber made a motion, seconded by Commissioner Ramy, to adopt the Planning Commission Report recommending approval of an ordinance to amend Chapter 801 Section 31: Communication Reception/Transmission Devices and replace the existing language with the proposed new Chapter 801 Section 31: Commercial telecommunications Facilities and Residential Accessory Communications Devices as submitted. The motion carried unanimously.

AGENDA ITEM 4. Other Items:

a.) Review of Development Activities

Director of Planning and Building Thomson stated the City Council would be reviewing a concept plan for the subdivision on 1607 and 1613 Holdridge Terrace and a concept plan for the Meyer Brothers Dairy redevelopment at their October 20 workshop, and the Council's regular meeting agenda would include a draft term sheet for a possible Public/Private Partnership for the City Parking Ramp at Mill Street, the preliminary work for the Lake Effect, including Committee assignments for the next phase, and reviewing the system statements from the Metropolitan Council for the next Comprehensive Plan update. The November 2 Planning Commission agenda would include design review of the 1120 Wayzata Boulevard medical office building from the Davis Group, and two (2) workshop items including alternative energy and minor revisions to the Rice Street Condos. The ground breaking for the Landing Project was October 19.

Mr. Zweber stated the proposed Meyer Brothers Dairy project is 4-story building that would be 27-condominiums with underground parking. This would require a PUD and initial concepts will be presented at the City Council workshop.

b.) Other Items

Commissioner Iverson suggested in the next year the City begin working on revisions to the Sub-Division Ordinance.

Chair Vanderheyden suggested reviewing the Setback requirements of the Zoning Ordinance as well. He welcomed the new Director of Planning and Building, Jeff Thomson, and thanked Interim City Planner, Eric Zweber.

AGENDA ITEM 5. Adjournment.

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

The meeting was adjourned at 9:43 p.m.

Respectfully submitted,

- 1
- 2 Tina Borg
- 3 *TimeSaver Off Site Secretarial, Inc.*