MINUTES
Greenwood City Council / Planning Commission Annual Joint Worksession & City Council Worksession

Wednesday, May 18, 2016
Old Log's Cast & Cru Restaurant, 5175 Meadville Street, Greenwood, MN 55331

CITY COUNCIL / PLANNING COMMISSION JOINT WORKSESSION

1. CALL TO ORDER | ROLL CALL | APPROVE AGENDA

Mayor Kind called the meeting to order at 7:45pm.
Members Present: Mayor Kind; Councilmembers Bill Cook, Tom Fletcher, Bob Quam, and Rob Roy; Planning Commissioners Pat Lucking, Lake Bechtell, Kristi Conrad, Doug Reeder, Fiona Sayer
Others Present: City Attorney Mark Kelly, City Zoning Administrator Dale Cooney

Motion by Quam to approve the agenda. Second by Cook. Motion passed 10-0.

2. DISCUSS OUTCOMES OF CITY COUNCIL WORKSESSION WITH CHAIRMAN LUCKING

A. Cost Saving Plan: Conduct planning commission meetings only when time-sensitive items are on the agenda (variances and conditional use permit requests that must comply with the 60-day rule for action), and hold off on ordinance reviews, etc. until a meeting takes place. The city attorney will attend meetings on an as-needed basis. Chairman Lucking will make the "call" whether or not the city attorney is needed at planning commission meetings. Mayor Kind will make the "call" whether or not the city attorney is needed at city council meetings.
B. Recruitment Plan: City council members and planning commission members are going to personally invite people to apply to the planning commission. Articles will be included in upcoming city newsletters. If there is interest, an open house will be held.
C. Training Plan: Each year mini-training will be held at the annual joint worksession. Registration links for other training opportunities will be sent to the city council and planning commission.

3. DISCUSS TREE PRESERVATION ORDINANCE

Technical / Grammar Changes: The Tree Preservation Plan was referred to in subd 2E and Subd 6 of the current code. It was felt that one definition would be clearer. Thus, the definition in subd 2E of the new ordinance now refers directly to subd 5 of the amended code, which has the detailed requirements for a Tree Preservation Plan in one place. The variance requirements now also directly reference the Tree Preservation Plan instead of “tree stock” for better clarity.

Substantive Changes:
- Noxious trees are excluded from being considered in the Tree Preservation Plan and accordingly cannot be used to game the system. Cottonwood trees will be added to the list of Noxious Trees in the ordinance.
- Subd 3A with its requirement for a conditional use permit for tree removals in shore and bluff impact zones will be deleted from the ordinance. While the intent of Subd 3A is excellent, it is questionable whether it achieves its desired purpose. It can be argued that Subd 3A is currently just an added expense and time-consumer for the property owner with little meaningful public benefit in terms of reducing the number of trees in the shore and bluff impact zones that are cut down.
- Subdb 3B (now 3A) Annual Permitted Tree Harvest will be revised to allow the removal of 1 significant tree for properties up to 1/4 acre (up to 10,890 sq ft), 2 significant trees for properties between 1/4 acre and 1/2 acre (10,890 sq ft to 21,780 sq ft), 3 significant trees for properties between 1/2 acre and 3/4 acre (21,780 sq ft to 32,670 sq ft), 4 trees for properties between 3/4 acre and 1 acre (32,670 sq ft to 43,560), etc. The intent of this change is to give consideration to the wide range of property sizes in Greenwood.
- Subd 4 Permit to Exceed Annual Tree Harvest is deleted in the new ordinance. It is unclear that this provision has ever been used and its most likely potential use is felt to be to game the system.
- Subd 5 (now 4) Construction Related Tree Cutting now uses diameter inches instead of numbers of trees to better protect larger significant trees.
- Subd 8 (now 7) Type of Replacement Trees is deleted in the new ordinance since it is unclear that this has ever been a consideration and to give property owners flexibility to provide for greater tree diversity.

- It was noted that the construction related provisions of the Tree Ordinance have been its key elements as Greenwood residents typically have very high appreciation for the benefits of trees on their own properties.

4. MINI-TRAINING

A. Relation of comprehensive plan to zoning. *The city council and planning commission discussed the following excerpts from League of MN Cities Zoning Guide for Cities ...*

- Zoning and planning are not the same thing. Municipal planning is a lengthy process of collecting and analyzing economic, social and physical data about a city and organizing this information into a formal set of goals and standards for community development. The comprehensive plan is a document that embodies the city's vision for the future, including its aspirations and plans for future development that may not appear for many years to come.
- Once a comprehensive plan is adopted, the city needs a means of attaining its development goals as stated in the comprehensive plan. Zoning is one tool for implementing a comprehensive plan. In cities subject to the Metropolitan Planning Act, zoning directives must harmonize with and not contradict the city's comprehensive plan.
- It is important to emphasize that zoning is merely one of the tools available to a city to assist implementing a comprehensive plan. A city may also use its subdivision ordinance, building and housing codes, nuisance ordinance, capital improvement programs, and official map in conjunction with its zoning ordinance to achieve its goal of orderly development.

B. Regulatory takings. *The city council and planning commission discussed the following excerpt from League of MN Cities Zoning Guide for Cities ...*

To be ruled a "regulatory taking," the zoning regulations must be so severe as to render the property practically useless for the purpose for which it is zoned. For example, a regulation that would prohibit a residence in a strictly residential zone. In such a case, the court will order the city to pay the affected landowner compensation for the land lost to the regulatory taking.

C. Difference between a variance and conditional use permit. *The city council and planning commission discussed the following excerpts from League of MN Cities Zoning Guide for Cities ...*

Variances

- Variances are an exception to rules laid out in a zoning ordinance. They are permitted departures from strict enforcement of the ordinance as applied to a particular piece of property if strict enforcement would cause the owner "practical difficulties." Variances are generally related to physical standards (such as setbacks or height limits) and may not be used to allow a use that is prohibited in the particular zoning district. Essentially, variances allow the landowner to deviate from the rules that would otherwise apply.
- Under the statutory practical difficulties standard, a landowner is entitled to a variance if the facts satisfy the three-factor test of (1) reasonableness, (2) uniqueness, and (3) essential character.
- The 2011 law also provides that: "Variances shall only be permitted when they are in harmony with the general purposes and intent of the ordinance and when the terms of the variance are consistent with the comprehensive plan."
- The practical difficulties factors are:

    1. The property owner proposes to use the property in a reasonable manner. This factor means that the landowner would like to use the property in a particular reasonable way but cannot do so under the rules of the ordinance. It does not mean that the land cannot be put to any reasonable use whatsoever without the variance.
    2. The landowner's situation is due to circumstances unique to the property not caused by the landowner. The uniqueness generally relates to the physical characteristics of the particular piece of property and economic considerations alone cannot create practical difficulties.
    3. The variance, if granted, will not alter the essential character of the locality. This factor generally contemplates whether the resulting structure will be out of scale, out of place, or otherwise inconsistent with the surrounding area.

- Variances are to be granted only if strict enforcement of a zoning ordinance causes practical difficulties. A landowner who purchased land knowing a variance would be necessary in order to make the property buildable is not barred from requesting a variance on the grounds the hardship was self-imposed.
- In granting a variance, the city may attach conditions, but the conditions must be directly related and bear a rough proportionality to the impact created by the variance. For example, if the variance reduces side yard

setbacks, it may be reasonable to impose a condition of additional screening or landscaping to camouflage the structure built within the normal setback.

- An applicant for a variance is not entitled to a variance merely because similar variances were granted in the past, although in granting variances, the city ought to be cautious about establishing precedent.

Conditional use permits

- The concept of a conditional use permit (CUP) was created to give cities more flexibility in zoning ordinance administration. Generally, conditional uses are uses that are often too problematic to be permitted uses as of right in a district. However, since the use is still generally favorable or necessary, outright prohibition of the use is generally not practical or desired. A classic example of such a mixed positive / negative use is a gas station in a residential area. Conditional uses seek to strike a middle ground between outright, unchecked permissive establishment and complete prohibition. Conditional uses are uses that will be allowed if certain conditions (that minimize the problematic features of the use) are met.
- Cities must specify conditional uses in a city ordinance. Generally, a list of conditional uses will be found alongside the permitted uses in a city ordinance. The ordinance must also establish what conditions or standards must be met to allow the conditional use. Ordinances that fail to establish standards for granting the listed conditional uses are problematic and potentially invalid.
- The city must grant the CUP if the applicant satisfies all the conditions established in the ordinance.
- CUPs are considered property interests that run with the land – that is, they pass from seller to buyer when the land is sold or transferred.
- Once issued, a CUP's conditions cannot be unilaterally altered by the city, absent a violation of the CUP itself.

Neighborhood opposition

- Certain zoning applications may generate vocal public opposition. Frequently, cities struggle with handling vocal neighborhood opposition in their findings of fact. However, general statements of public opposition should not be a finding of fact listed as a basis for denying a zoning application. Nor should the official record intimate that public opposition is the underlying basis for the city's findings of fact. If a zoning application meets the requirements of the ordinance, it must be granted, despite the disapproval of the neighbors.
- However, this does not mean that all statements of the public must be disregarded. A significant part of the zoning process is generally the public hearing mandated by the Municipal Planning Act. The Municipal Planning Act requires that all parties interested in an application, including the applicant and neighbors, be granted an opportunity to speak and present their views on the application. While general statements of opposition may not be used as a finding of fact, statements made by the public that are concrete and factual relating to the public welfare are acceptable findings.

D. Massing ordinance perspective. Councilman Fletcher explained the intent of the massing ordinance was to control the size of homes in relation to the lot size. Since the massing ordinance was approved, there has not been a negative affect on property values.

E. Hardcover ordinance perspective. Planning Commission Chairman Lucking explained that historically hardcover was one of the key zoning regulations that limited house sizes on a lots. Now that the city has a massing ordinance, we could consider relaxing hardcover regulations for smaller lots while still complying with state regulations regarding shoreland protection.

F. Setback requirements perspective. Councilman Cook explained that setbacks from property lines have historically been used as a tool to reduce the impact of construction on neighboring properties. He suggested that the city could reduce the number of zoning districts to simplify the setback requirements in the city and possibly have graduated setbacks based on lot size.

G. LMCD / DNR / MCWD / City / County / State ... "Who's on first?" This topic was not discussed due to time constraints.

5. OPEN DISCUSSION

A. Planning commission expectations. This topic was not discussed due to time constraints.
B. An opportunity for planning commission and city council members to share thoughts or concerns. This topic was not discussed due to time constraints.

6. ADJOURNMENT

Motion by Cook to adjourn the joint worksession at 9:45pm. Second by Bechtell. Motion passed 10-0.

CITY COUNCIL WORKSESSION

1. CALL TO ORDER | ROLL CALL | APPROVE AGENDA

   Mayor Kind called the meeting to order at 9:45pm.
   Members Present: Mayor Kind; Councilmembers Bill Cook, Tom Fletcher, Bob Quam, and Rob Roy
   Others Present: None

   Motion by Quam to approve the agenda. Second by Cook. Motion passed 5-0.

2. DISCUSS DEEPHAVEN SERVICES CONTRACT

   The council discussed the Deephaven contract that will be placed on the June 1, 2016 city council agenda for approval.

3. ADJOURNMENT

   Motion by Quam to adjourn the worksession at 9:57pm. Second by Roy. Motion passed 5-0.