

**GREENWOOD PLANNING COMMISSION  
WEDNESDAY, NOVEMBER 19, 2008  
7:00 P.M.**

**1. CALL TO ORDER/ROLL CALL**

Chairman Lucking called the meeting to order at 7:00 p.m.

Members Present: Chairman Pat Lucking and Commission members John Beal, David Paeper (7:03), H. Kelsey Page, Todd Palmberg and Mark Spiers

Absent: None

Others Present: Council Liaison Jeff Sagal, City Attorney Mark Kelly, Councilmember Tom Fletcher and Zoning Coordinator Gus Karpas.

**2. APPROVE AGENDA**

Commissioner Beal moved to accept the agenda for tonight's meeting. Commissioner Page seconded the motion. Motion carried 5-0.

**3. MINUTES OF October 15<sup>th</sup>.**

Commissioner Spiers moved to approve the minutes of October 15<sup>th</sup>. Commissioner Page seconded the motion. Motion carried 4-0-1. Commissioner Beal abstained.

**4. LIAISON REPORT**

Council Liaison Sagal said the Council discussed a resolution that would have established a single carrier policy for waste collection in the city. It was ultimately rejected because the city found it could achieve its needs, related to smaller trucks and same day pick-up with a multiple carriers.

Sagal said the Council discussed and approved the Wheeler variance request, feeling the proposal was improving the property and setback conditions. The Council also discussed the Schmitt proposal for the redevelopment of his commercial property. Mr. Schmitt did not submit a drainage plan as the Council had hoped. Mr. Schmitt asked for a ninety day extension, which the Council denied. Mr. Schmitt is scheduled to appear before Council in December.

**5. PUBLIC HEARINGS**

**6. OTHER BUSINESS**

**TREE PRESERVATION ORDINANCE** – Discuss potential amendment of the existing Tree Preservation Ordinance.

**GREENWOOD PLANNING COMMISSION**

**WEDNESDAY, NOVEMBER 19, 2008**

**7:00 P.M.**

Zoning Coordinator Karpas discussed the memo he included in the packet on his Section by Section review of the existing ordinance.

The Commission agreed to review each subdivision of the ordinance and share their comments.

There was no discussion on **Subdivision 1** regarding the **Public Purpose of the Ordinance**.

**Subdivision 2** includes the definitions used in the ordinance. Staff had recommended the addition of a definition for the term “Licensed Tree Trimmer” and to establish a city licensing provision in the ordinance. Comments from the Commission included a concern by Chairman Lucking about enforcement of licensing, a question from Commissioner Page about the process, more specifically, what happens if the required insurance is not submitted, are the tree trimmers put in limbo and a comment by Commissioner Spiers that he would not want to make the process too cumbersome and suggested the Worker’s Compensation requirement be removed. Commissioner Beal supported the idea of requiring a license because he felt that in the act of obtaining a license tree trimmers were acknowledging they understood the ordinances. Commissioners Paeper and Palmberg supported a licensing procedure.

Zoning Coordinator Karpas agreed there were some issues with enforcement, but with a requirement, anyone cutting trees would need to provide evidence that they were licensed with the city. Addressing the insurance issue, Karpas said he hasn’t perceived an issue with legitimate tree trimmers providing the needed insurance in a relatively quick manner. He said the insurance aspect of the license is the most important component because it provides a level of comfort to residents that any damage done by a contractor would be covered.

City Attorney Kelly said the city does not need to be listed as an additional insured.

**Subdivision 3** outlines **Property Owner Restrictions on Cutting of Trees**. Staff said it would not change the existing language but noted there had been some discussion on including an additional conditional use requirement for removal of trees that exceed a certain diameter.

Commissioner Beal said that there are occasions when the right thing to do for the overall health of the trees on a property is to remove a tree. An example is when trees were planted too close together. Mr. Beal objects to the city charging an excessive conditional use permit fee for a homeowner doing what is the right thing. Mr. Beal said he thinks the city should have a fee schedule for tree ordinance permits and it should be different from the conditional use permit fee. Beal also said that the city needs a separate party, a professional arborist for example, who determines if the request to remove a tree is for the general health of the urban forest as opposed to a desire to improve the view.

**GREENWOOD PLANNING COMMISSION**

**WEDNESDAY, NOVEMBER 19, 2008**

**7:00 P.M.**

The Commission discussed the concept of a city arborist and the costs associated with their services. The majority of the Commission felt the cost should be borne by the homeowner seeking to remove a healthy tree. Commissioner Beal said he could contact the City of Minnetonka and speak with their arborist about providing the service to the city.

The Commission discussed the qualifications required to be an arborist, whether it was a license or certificate. This was important since there would need to be some verification by the city that any “arborist” submitting their opinion was actually legitimate. Commissioner Spiers volunteered to contact Rainbow Tree Care to find out the specifics of what it takes to be an arborist.

City Attorney Kelly suggested that a sliding fee could be developed for tree permits which would take into account the cost for the city hiring/contracting with an arborist.

Commissioner Spiers discussed the concept of a Heritage tree which would be afforded additional protection under the ordinance.

**Subdivision 4, Permit to Exceed Property Owner Annual Permitted Tree Harvest.**

Staff suggested no changes to the language but felt a fee needs to be attached to the required permit and an actual permit form be created.

Commissioner Beal questioned why the city should allow property owners to remove healthy trees without a good reason. Council Liaison Sagal agreed. Commissioner Page disagreed stating it is an issue of private property rights. He feels the removal of trees should be regulated, not prohibited. He said some homeowners may just want to remove trees they feel are unsightly and within reason, they should be allowed to do so.

Commissioner Spiers discussed a methodology he learned on how to measure the height of a tree using just a ruler. He said it is in city’s best interest to maintain the larger trees in the community. Chairman Lucking said sometimes the removal of a tree comes down to a safety issue, especially in cases where a tree may damage a home if it fell.

Staff said they would work on obtaining some examples of simple permit forms for the Commission to review.

The Commission had no changes to or discussion about **Subdivision 5** relating to **Construction Related Tree Cutting Permits**, **Subdivision 6** relating to **New Construction/Redevelopment Tree Preservation Plan** or **Subdivision 7** relating to **Subdivision Approval – Tree Replacement**.

**Subdivision 8, New Construction Tree Replacement Schedule.** Staff said he had some concerns that the existing replacement schedule may be confusing and may provide an opportunity for a developer to find a loophole.

**GREENWOOD PLANNING COMMISSION**

**WEDNESDAY, NOVEMBER 19, 2008**

**7:00 P.M.**

Commissioner Spiers commented that under the existing schedule, the trees required to replace larger tree may require a greater amount of space available for planting. Commissioner Paeper said it would still be important to maintain some combination of varying sizes for replacement trees. City Attorney Kelly stated he remembered a great deal of discussion on replacement during the development of the ordinance and suggested that maybe the city could go back to the idea that the property owner develops a plan with mixed sizes for Staff review.

Commissioner Paeper asked about the size of the risk this ordinance is intended to protect. Council Liaison Sagal said it's huge, considering the Old Log Theatre property may be developed in the future.

Commissioner Page discussed a typical situation in which a new property owner moves in and removes a number of trees to fit their liking. Commissioner Spiers agreed that, if unregulated, the situation could get out of hand. Commissioner Beal said he sees the problem being related to developers who don't care and those cutting for a view.

The Commission agreed to look at how other cities regulated replanting before suggesting any changes to this section.

There were no changes to **Subdivision 9, Property Owner/Developer Warranties of Replacement Trees.**

**Subdivision 10, Property Owner/Developer's Security for Replacement Trees Planted.** Staff agreed with the provisions but believed an administrative process needed to be developed regulating the holding of securities.

City Attorney Kelly agreed, stating a uniform process would be helpful for other areas of the ordinance as well. Chairman Lucking asked if securities could be added to properties as a tax lien. Commissioner Page said the cost to do so would not be worth it and discussed the process required for establishing such a lien. City Attorney Kelly said cash up front gives the city leverage.

**Subdivision 11, Construction Related Tree Protection.** Staff didn't recommend any changes to the existing ordinance but asked the Commission for their comments on the concept of tree wrapping raised by Commissioner Beal.

Chairman Lucking said the example used by Carmel was a little excessive and would not be necessary to the same degree. He supports a requirement to wrap the base of a tree. City Attorney Kelly said tree wrapping could be required for certain type and size trees. Chairman Lucking said, regardless of tree wrapping, certain species of trees will die if certain types of activities are conducted within a certain radius of them.

Commissioner Beal discussed the tree wrapping process. Commissioner Page suggested that tree wrapping be required for all trees within a certain distance of the construction.

**GREENWOOD PLANNING COMMISSION**  
**WEDNESDAY, NOVEMBER 19, 2008**  
**7:00 P.M.**

Commissioner Paeper discussed the provision requiring City Engineer review. Commissioner Page said the Engineer's review would be limited to soil condition, while the wrapping requirement would fall on City Staff. He suggested the addition of the phrase "including, but not limited to, tree wrapping" at the end of the paragraph.

**Subdivision 12, Enforcement.** Staff did not propose any changes to the existing language but sought the Commission's comments on the concept raised by Commissioner Spiers for measuring the stump of a tree removed without a permit for determining if a violation of the ordinance occurred.

Commissioner Page feels such a provision is necessary for enforcement of the ordinance. Chairman Lucking noted there are exceptions contained within the ordinance, so it would be necessary to identify the species as part of the determination of whether a violation occurred. Commissioner Paeper suggested this could be done by an arborist. Commissioner Spiers noted that the base of a tree is typically larger than the tree itself would be at four feet. City Attorney Kelly said he was inclined to include a provision stating if the stump exceeds the significant tree measurement at four feet; it should be deemed a violation. The Commission agreed to add relevant language to that effect to the enforcement provisions.

**Subdivision 13, Municipal Projects Tree Replacement in Conjunction with Public Improvement Projects.** Staff was concerned the term "shall" would require the city to replant trees when it may not be feasible to do so.

Commissioner Spiers referred to his previous comments on the amount of replacement trees not being able to fit on a lot and whether they could be then donated to the city for planting on publicly owned land. It was noted by Commissioners that this concept had been discussed during the drafting of the ordinance and it was determined there was not enough suitable, city owned land for such replanting. It was pointed out this may be a mute point if a new replanting schedule is adopted. City Attorney Kelly said language would be added that indicated, when feasible, the city would replant trees in conjunction with a municipal project.

There were no proposed changes to **Section 14, Prohibition Against Tree Removal Within the Shoreland Setback and Bluff Zones.**

**Subdivision 15, Ordinance Administration.** Staff had no proposed changes to this section but suggested, based on the Commission's discussion about the hiring of an arborist, that language to that effect be added to the ordinance once that has happened.

Commissioner Spiers asked to discuss the concept of Heritage trees further. He said the removal of certain trees within a neighborhood could have a significant impact on the neighborhood. He used the example of how he felt his property would be impacted if a particularly large tree on his neighbor's property would be removed. City Attorney Kelly said he would not be opposed to the concept, but felt an arborist would need to establish

**GREENWOOD PLANNING COMMISSION**  
**WEDNESDAY, NOVEMBER 19, 2008**  
**7:00 P.M.**

the criteria for such a designation. Commissioner Spiers agreed, but wanted to make sure the criteria didn't set the bar too low for a Heritage designation.

Chairman Lucking, playing Devil's Advocate, summarized a scenario where a particular tree was prohibited from removal and subsequently fell onto an adjacent property causing significant damage. He asked if there would be liability on the city's part. City Attorney Kelly said there may be and that is why a provision related the distance from certain structures relative to a trees height might be part of the designation. Kelly said a review process would need to be established to permit the removal of a designated tree which required very specific criteria. Commissioner Spiers would support such a process if specific standards are created. Commissioner Page warned against developing too rigid standards that could be construed as a taking. He used the example of standards which would have been too prohibitive to allow the Lyman Lodge area to be developed.

The Commission agreed to further discuss this issue and the tree ordinance at its December meeting.

**ZONING HANDOUT** – Discuss Zoning handout created by Commissioner Fletcher proposed for distribution to the general public.

Councilmember Tom Fletcher said he thought the proposed handout would be helpful to residents and those newly seated to the Planning Commission and City Council.

Commissioner Spiers liked the document and suggested that it be reviewed from time to time to reflect changes in the ordinance, such as the tree ordinance.

Commissioner Page said he had a number of comments. He said the disclaimer should be removed because it means nothing. He said once the city hands this information out to the general public it is liable for content. He has no issue with handing it out as an internal document to incoming Commission and Council members. Page said the second paragraph is fraught with peril. He would keep the third paragraph, but relocate it to just under the title on page four, before the zoning provisions. He doesn't like the content of paragraph four, including the examples of circumstances that don't support a variance.

Commissioner Page continued to page two and said he would remove all discussion related to neighbor support. He said neighbor comments must be taken in context with the variance criteria. He would also remove any discussion related to the creation of precedence, noting that each property and request is deemed unique. The proposed language would encourage an argument of precedence.

City Attorney Kelly commented that the handout must follow the code.

Councilmember Fletcher said he just threw out a bunch of information and wasn't expecting everything to be acceptable. He would just like to start the conversation. Commissioner Page said he was supportive of all the relevant ordinance information contained in the document. Commissioner Beal agreed.

**GREENWOOD PLANNING COMMISSION**  
**WEDNESDAY, NOVEMBER 19, 2008**  
**7:00 P.M.**

The Commission discussed the inclusion of an amended document to the variance and building permit applications. Commissioner Page suggested that some focus also be given to amending the variance application. Zoning Coordinator Karpas said he felt the City of Woodland had a pretty good application and he would bring it to the Commission for discussion.

**7. PLANNING COMMISSION LIAISON**

Commissioner Spiers will serve as the Planning Commission Liaison at the December 2<sup>nd</sup> City Council meeting.

**8. ADJOURN**

Motion by Commissioner Beal to adjourn the meeting. Commissioner Paeper seconded the motion. The meeting was adjourned at 9:15 p.m.

Respectively Submitted  
Gus Karpas - Zoning Coordinator